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AUDIT OF THE OFFICE OF JUSTICE PROGRAMS' TRIBAL JUSTICE SYSTEMS INFRASTRUCTURE PROGRAM

EXECUTIVE SUMMARY*

Violent crime rates in Indian country are more than 2.5 times the national rate and some reservations face more than 20 times the national rate of violence.¹ However, many tribal nations do not have the resources to develop the necessary correctional infrastructure. In some cases, jails have not been upgraded since they were built and lack sufficient staffing and funding to function safely and effectively.

At the Department of Justice (DOJ), the Bureau of Justice Assistance (BJA) within the Office of Justice Programs (OJP) administers the Tribal Justice Systems Infrastructure Program (TJSIP), which provides grants that support planning, constructing, and renovating tribal justice facilities. BJA helps tribes conduct comprehensive justice system planning through two vehicles: (1) direct planning grants to recipients who are planning to construct or renovate correctional facilities; and (2) funding cooperative agreements with entities that provide training and technical assistance (T&TA) to recipients of BJA planning grants. From fiscal years (FY) 2009 through 2014, BJA awarded \$275,960,760 in funds to support the TJSIP.

While BJA is responsible for awarding grants to construct or renovate tribal justice facilities, responsibility for supporting, operating, and maintaining them generally falls to a different organization in an entirely separate agency, the Bureau of Indian Affairs (BIA) within the Department of Interior (DOI). Due to limited funding, BIA generally does not fund any corrections program in full.

The Office of the Inspector General (OIG) conducted this audit to: (1) assess OJP's management and oversight of the funding provided under the TJSIP, including the contracting activities of grantees; and (2) determine the extent of OJP's cooperation and coordination with BIA to ensure efficient and effective correctional services in Indian country. The audit was supported by the results of five separate OIG audits of TJSIP grantees issued between December 2014 and November 2015.² Each of those audits found issues with respect to those specific TJSIP grants.

Based on our review of TJSIP activities from FYs 2009 through 2014, the OIG concluded that coordination between OJP and BIA was not always effective, resulting in delays in the completion of TJSIP grants and grantees' inability to

* Redactions were made to the full version of this report for privacy reasons. The redactions are contained only in Appendices 4 and 5, OJP's and Alpha Corporation's responses, respectively, and are of individuals' names.

¹ We use the term "Indian country" in this report because that is language used in 18 U.S.C. § 1151 (2012).

² See Appendix 1 for specific details related to the five TJSIP audits of the: (1) Pueblo of Laguna, Laguna, New Mexico; (2) Fort Peck Assiniboine and Sioux Tribes, Poplar, Montana; (3) Navajo Nation, Window Rock, Arizona; (4) National Indian Justice Center, Santa Rosa, California; and (5) Eight Northern Indian Pueblos Council, Ohkay Owingeh, New Mexico.

operate and fully staff grant-funded facilities upon completion of construction. We also determined that inadequacies existed with OJP's due diligence during the application process and oversight of the TJSIP grantees. This led to: (1) construction of excessively large facilities that were not aligned with the tribes' documented needs; (2) unused planning products; (3) premature funding of construction before adequate planning was completed; (4) ineffective use of TJSIP funds; (5) conflict of interest issues between one of the TJSIP funded T&TA providers and TJSIP grantees; and (6) contract management issues.

The coordination deficiencies we found between OJP and BIA resulted in three TJSIP-funded correctional facilities that could not be opened, or could only be partially opened, due to construction flaws or operations and maintenance funding issues involving BIA. These three facilities, which together cost nearly \$22 million, remained non-operational or partially operational for over a decade after the initial awards were made, and for 3 or more years after the TJSIP grants were fully expended. We also found that OJP lacked a formal protocol with BIA that would help to promote the timely progression of TJSIP-funded facility construction through BIA's design review and certificate of occupancy processes.

We found that OJP failed to complete adequate due diligence during the awarding process, including awarding approximately \$81 million in TJSIP grants without verifying the grantees' stated needs for the grant funds. As a result, grantees constructed facilities that significantly exceeded planned and approved facility capacities, incarceration needs, or staffing requirements. One example of this was discussed in our prior report on the grants awarded to the Navajo Nation.³ The application information provided by the Navajo Nation indicated a need for \$38 million to build two correctional facilities, yet OJP ultimately awarded, and the Navajo Nation spent, \$70 million on facilities far in excess of stated need and without documented justification for the additional funds.

Also, related to OJP's due diligence during the awarding process, we found that, despite BIA's concerns that the tribe was building beyond its current capacity, OJP awarded the Nisqually Tribe \$11 million to build a portion of a correctional facility intended to generate profit where up to 98 percent of the inmates were not subject to tribal jurisdiction. The use of funds to build the BJA-funded portion of the facility was not permissible per the grant solicitation since it was intended to be profit-generating and did not comply with the statutory authority of the TJSIP to build facilities that address violations of tribal civil and criminal laws.

We also determined there were inadequacies with OJP's post-award oversight and management of TJSIP grants. For example, as explained in our previous report, the Navajo Nation used the \$32 million in awarded excess funds to

³ *Audit of the Office of Justice Programs Correctional Systems and Correctional Alternatives on Tribal Lands Program Grants Awarded to the Navajo Division of Public Safety, Window Rock, Arizona*, Audit Report GR-60-15-015 (September 2015). OJP disagrees with some of the conclusions from the OIG's report, which questioned the excessively large facilities built by the Navajo Nation compared to the stated need. Consequently, two of the report's recommendations concerning more than \$32 million in questioned costs remain unresolved.

significantly expand the sizes of both correctional facilities. Throughout the award period, the Navajo Nation and one of OJP's T&TA providers submitted documentation to OJP indicating the two projects were being expanded. In this audit, we found that OJP could not provide documentation indicating it was aware of the project increases or that it reviewed and approved the amended plans for expanded facilities that would justify changes in project sizes. Such significant project changes should have required approval as the added space necessitated additional resources to manage larger capacities and should have been coordinated with BIA. After constructing facilities at least 250-percent larger than the stated need, the Navajo Nation lacks sufficient resources to fully staff or operate either facility built with TJSIP grant funds.

We also identified two issues relating to OJP's current approach with the implementation of T&TA for the planning grants. First, OJP has not adequately defined the services that T&TA providers should provide, leading to potential overlap between the T&TA services and the services that TJSIP grantees contract for separately. Second, we found that conflicts of interest (COI) can arise because BJA allows T&TA providers to provide similar services directly to TJSIP grantees through separate contracts in addition to providing T&TA services to the same TJSIP grantees. For example, we determined that the TJSIP-funded T&TA provider, Justice Solutions Group (JSG), received separate TJSIP funds from a tribe to assist with the development of facility concept designs. Then OJP requested that JSG, as the T&TA provider, review and provide feedback on the very same designs it helped create. This situation raised questions about whether a COI existed since the same entity performed both functions. As a result of COI concerns, we questioned \$842,879 in funds T&TA providers received from TJSIP grantees.

We also believe a material cost savings to the government may be possible if OJP were to define T&TA services to include planning services that are currently provided through separate TJSIP grant-funded contracts. This would include clarifying that T&TA grants are intended to fund the completion of needs assessments and master plans, rather than just funding general assistance to tribes through the planning process. We estimate that had such a modification been in place during the period of our audit, it would have resulted in savings of over \$3 million in FYs 2009 and 2010, and also could have helped to eliminate the potential for COIs.

Finally, regarding contract oversight, we found that OJP paid \$59,338 to Alpha Corporation (Alpha Corp), another TJSIP-funded T&TA provider, for work that was not in compliance with contract terms and conditions.

This report makes 12 recommendations to improve OJP's management and oversight over the TJSIP and coordination with BIA, and to address nearly \$12 million in new dollar-related findings that are in addition to the dollar-related findings contained in our prior audit reports.

**AUDIT OF THE OFFICE OF JUSTICE PROGRAMS'
TRIBAL JUSTICE SYSTEMS INFRASTRUCTURE PROGRAM**

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AUDIT OF THE OFFICE OF JUSTICE PROGRAMS' TRIBAL JUSTICE SYSTEMS INFRASTRUCTURE PROGRAM

INTRODUCTION

In recent decades, tribal nations have faced significant challenges in addressing public safety issues. Violent crime rates in Indian country are more than 2.5 times the national rate, and some reservations face more than 20 times the national rate of violence.⁴ However, many tribal nations do not have the resources to develop a robust and coordinated correctional infrastructure. Furthermore, many jails in Indian country have not been upgraded since they were built in the 1960s and 1970s. A 2011 evaluation by the Department of the Interior (DOI) Office of Inspector General found that many tribal jails remain in “egregious physical condition,” plagued by overcrowding and serious disrepair.⁵ Many lack sufficient staffing, training, and funding to function safely and effectively. Additionally, some tribal nations do not have sufficient alternatives to incarceration.

At the Department of Justice (DOJ), the Bureau of Justice Assistance (BJA) within the Office of Justice Programs (OJP) has administered, since 1999, the Tribal Justice Systems Infrastructure Program (TJSIP), formerly the Correctional Facilities on Tribal Lands Program.⁶ Funding through the TJSIP supports efforts related to planning, constructing, and renovating tribal justice facilities associated with the incarceration and rehabilitation of juvenile and adult offenders subject to tribal jurisdiction. In 2010, the TJSIP was expanded to allow the use of funds to construct multipurpose justice centers that combine tribal police, courts, and corrections services. This funding also allows tribes to explore community-based

⁴ 18 U.S.C. § 1151 (2012) defines Indian country as: (1) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

⁵ U.S. Department of the Interior Office of Inspector General, *Bureau of Indian Affairs' Detention Facilities*, Report No.: WR-EV-BIA-005-2010 (March 2011).

⁶ 42 U.S.C. § 13709 (2012). The *Tribal Law and Order Act* (TLOA) of 2010 (Pub. L. No. 111-211) amends Section 20109 of the *Violent Crime Control and Law Enforcement Act of 1994* (42 U.S.C. § 13709) by expanding the scope of the program. As the result of the TLOA, *Violent Crime Control and Law Enforcement Act of 1994* funds may now be used to construct multipurpose justice centers that combine tribal police, courts, and corrections services. TLOA also emphasizes that funds should be used to develop correctional alternatives. Correctional alternatives may include day reporting centers, substance abuse treatment services, or transitional living facilities. To reflect the expanded scope of the Correctional Facilities on Tribal Lands Program as a result of the TLOA, BJA changed the name of the program to the TJSIP. Beginning in FY 2012, BJA received more flexibility in managing the TJSIP program, because the appropriations were no longer specifically tied to the underlying statute, 42 U.S.C. § 13709. Rather, a lump sum was made available for “assistance to Indian tribes.” Appropriations since then have retained this flexibility. The Corrections Program Office administered these grants until 2002, when it was absorbed within the BJA.

alternatives to help prevent and control jail overcrowding due to alcohol and other substance abuse–related crime. The funding does not support the operations or maintenance costs of detention facilities. Figure 1 below depicts the geographic distribution of the TJSIP renovation and construction grants awarded from fiscal year (FY) 2007 through 2014.

Figure 1
Geographic Distribution of the
TJSIP Renovation and Construction Grants Awarded from
FYs 2007 through 2014



Note: The numbers in the chart correspond to awards made to each tribe. See Appendix 3 for details.

Source: BJA

BJA helps tribes conduct comprehensive justice system planning through two different assistance vehicles: (1) direct planning grants to recipients who are planning to construct correctional facilities; and (2) training and technical assistance (T&TA) provided for recipients of planning grants by T&TA providers, who BJA funds through separate cooperative agreements. The purpose of these

planning efforts is to determine correctional system needs as a first step to exploring the construction of new tribal correctional facilities associated with the incarceration and rehabilitation of juvenile and adult offenders. This planning process helps tribes conduct a communitywide assessment for the purpose of developing a comprehensive master plan for the design, use, capacity, and cost of adult and juvenile justice sanctions and services. The end result of the justice system planning process for tribes that receive planning grants is a master plan. The master plan may include recommendations for renovation/construction of correctional facilities, multipurpose justice centers, or correctional alternative facilities, including programming to meet the rehabilitative needs of offenders or implementing community-based correctional alternatives or reallocating existing resources to better serve the population.⁷ The planning process does not necessarily lead to facility construction or renovation. Planning grants could determine that construction is not the tribe's best course of action. Moreover, even if the planning process results in a determination that facility construction or renovation most appropriately served the needs of the tribe, BJA cannot fund every construction project identified by a planning grant. OJP officials told us that in FY 2010 BJA broadened the scope of planning grants to allow tribes to do more than master planning, including pre-construction activities such as schematic designs and architectural drawings.

Construction and renovation funds are awarded to: (1) renovate existing correctional facilities that are no longer considered safe or secure; (2) complete existing construction projects; or (3) construct new single jurisdiction tribal correctional facilities, regional detention centers, multipurpose justice centers, and community based correctional alternative facilities.⁸ These funds also cover other costs associated with construction or renovation of a facility, such as roads, sewer, water hook-ups, and land preparation. T&TA is offered to TJSIP grantees for facility renovation and construction.

From FYs 2009 through 2014, BJA awarded \$275,960,760 in funds to support the TJSIP. Table 1 shows the total funds awarded for FYs 2009 through 2014.

⁷ In 2012, the strategic planning program was expanded to engage in comprehensive justice system wide strategic planning to improve tribal justice, community wellness, and safety, including activities outlined in the TLOA, such as strategic planning and the development of a Tribal Action Plan. BJA, the Office of Community Oriented Policing Services (COPS), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Office on Violence Against Women (OVW), and the Office for Victims of Crime (OVC) committed resources to fund applications to support the Comprehensive Tribal Justice Systems Strategic Planning Program. In FY 2014, to allow for more resources to support renovation projects, BJA discontinued planning grants through TJSIP. Tribes are now encouraged to conduct a broader, more comprehensive assessment of their justice system needs with planning funds through the Comprehensive Tribal Justice Systems Strategic Planning Program.

⁸ Beginning in FY 2014, BJA no longer provides funding for the construction of new tribal justice facilities because the current levels of funding available through the BIA to operate, staff and maintain tribal detention centers are not sufficient to meet the need for Indian country. BJA told us that unless there is a significant increase in funding levels to support the construction of new facilities as well as operations, BJA will not be awarding funds for the construction of new facilities. The following section discusses in more detail BIA's role in operating completed facilities.

Table 1
TJSIP Funding Awarded for FYs 2009 through 2014

FISCAL YEAR	PLANNING	RENOVATION/ CONSTRUCTION	T&TA	TOTAL
FY 2009	\$1,605,855	\$3,375,952	\$1,769,188	\$6,750,995
2009 ARRA ^a	- ^b	219,999,058	4,487,335	224,486,393
FY 2010	2,355,396	6,446,306	838,221	9,639,923
FY 2011	2,125,762	6,254,076	850,000	9,229,838
FY 2012	- ^b	8,392,283	1,108,511	9,500,794
FY 2013	1,055,945	7,930,038	900,000	9,885,983
FY 2014	523,479	5,893,355	50,000	6,466,834
Total Funding FYs 2009 through 2014			\$275,960,760	

^a This funding was awarded under the *American Recovery and Reinvestment Act* (Recovery Act).

^b BJA did not award planning funds these years.

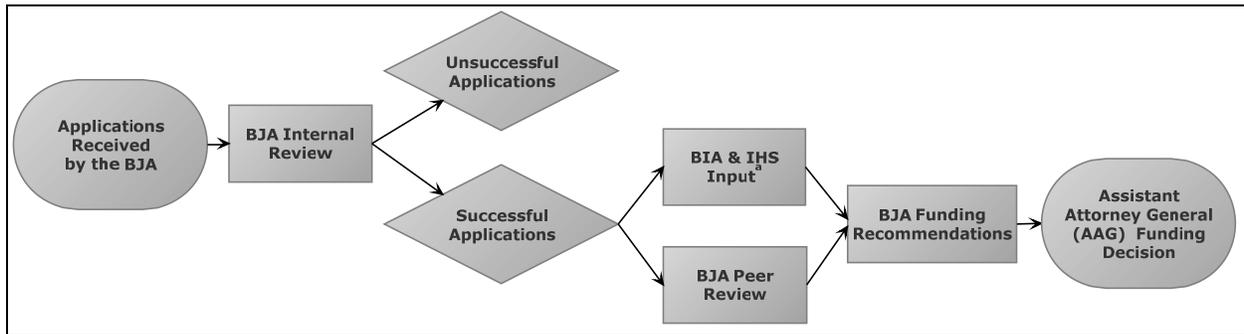
Source: OJP

The Bureau of Indian Affairs (BIA) within the DOI, is responsible for overseeing and operating adult and juvenile facilities in Indian country. It manages or oversees detention facilities that are: (1) operated by BIA, (2) contracted with tribes under the *Indian Self-Determination and Education Assistance Act of 1975* (Pub. L. 93-638), (3) self-governance compacted between BIA and the tribes, or (4) operated by state and local entities under contract with BIA.⁹ A small number of Indian country jails are operated strictly by tribes without BIA fiscal support. In its 2014 budget justification, BIA stated that it oversaw 95 corrections programs providing support for 87 detention facilities in 58 tribal nations. These funds supported operation and maintenance costs such as utilities, staff, janitorial service, and refuse collection. Due to limited funding, BIA funds operations at varying levels, but generally does not fund any corrections program in full. According to OJP, tribes that can afford to supplement BIA funding generally are in a better position to fully operate and maintain their correctional facilities.

⁹ Tribes and tribal organizations may enter into agreements with the federal government to manage DOI and/or Indian Health Services programs that impact their members, resources, and governments pursuant to agreements with the federal government, in accordance with the *Indian Self-Determination and Education Assistance Act of 1975* (Pub. L. No. 93-638) and the 1994 amendments to that law. These agreements are commonly referred to as either "638 contracts" or "self-governance compacts" and have very similar goals and objectives.

As shown in Figure 2, prior to funding TJSIP awards, each application submitted to BJA undergoes a review process to ensure the most qualified applicants are awarded grants.¹⁰

Figure 2
BJA TJSIP Award Process



a Starting in FY 2013, BJA also provided the applications to the Indian Health Services (IHS) for review and input as it relates to community-based rehabilitation.

Source: OJP

First, BJA performs an internal review to determine if the applications meet the basic minimum requirements of the solicitation. Successful applications are then sent to independent peer reviewers for evaluation. BJA defines the criteria and the weighting of each criterion used to evaluate applications submitted under the TJSIP. For example, the criteria for *the American Recovery and Reinvestment Act* (Recovery Act) applications included evaluating the statement of the problem, the project design and implementation, the capabilities and competencies of the tribe, the project budget, and the impact or outcome of the project. Each criterion is assigned a weight (percentage) by BJA. A peer reviewer’s overall application score is on a scale of 0 (unacceptable) to 100 (excellent), and is the sum of each criterion’s weighted score. BJA also forwards successful applications to BIA for input regarding which tribes should receive awards, as tribes generally seek funding through BIA to support costs to maintain, staff, and operate the facilities. After applications have been peer reviewed and recommendations from BIA have been received, BJA program office management collaborates to recommend applications

¹⁰ Beginning in FY 2010, all awards under TJSIP are made under the DOJ Coordinated Tribal Assistance Solicitation (CTAS). CTAS is designed to encourage tribes to assess their public safety resources needs in a comprehensive way, taking into account the state of the entire tribal justice system. Prior to the implementation of CTAS, each tribal-specific grant funding stream, including TJSIP funding, utilized a separate competitive solicitation and application approval process. Through CTAS, only one application is accepted from each federally recognized tribe to encourage comprehensive planning and assessment of needs. Each tribe can apply for funding under purpose areas where the funding addresses the needs of the tribe as outlined in its tribal and community profile. TJSIP is funded through CTAS Purpose Area 4, *Corrections and Correctional Alternatives*.

for funding.¹¹ Funding recommendations, including the rationale for selection, are then sent to OJP's Assistant Attorney General (AAG) for approval. While BJA recommends applications for funding, the ultimate funding decision is made by the AAG for OJP. After the AAG approves funding recommendations, awards are made.

Once the awards are made, BJA utilizes T&TA providers to support the TJSIP grantees through the planning, renovation, or construction, of correctional facilities, multi-purpose justice centers, or correctional alternative facilities. Planning T&TA providers assist tribes through the planning process to determine correctional needs, while construction T&TA providers are essentially a construction management team for BJA to ensure grantees renovate or construct facilities cost effectively and according to schedule. Planning milestones for the grantee include: (1) appointing a project manager, (2) attending a DOJ training workshop, (3) hiring a consultant, (4) completing a community profile and case processing review, (5) identifying goals and objectives, (6) creating a preliminary budget, and (7) submitting a master plan to BJA. Construction or renovation milestones include: (1) site selection, (2) establishing a project budget, (3) appointing a project manager, (4) conducting a *National Environmental Policy Act* (NEPA) review, (5) submitting an Environmental Assessment to BJA, (6) selecting an architecture and engineering firm, (7) selecting a construction company, and (8) building construction.¹² Not all milestones are applicable to each grantee; therefore, not all grantees are required to complete every milestone.

The T&TA providers provide site assistance to grantees and subsequently submit site visit reports to BJA for every onsite visit conducted at a TJSIP grantee. Quarterly or semiannual reports are also submitted to BJA related to accomplishments for the period, including the number of training sessions conducted, the number of technical assistance events conducted, the status of renovation and construction projects, and any challenges grantees faced during the period.

As of September 2014, according to BJA officials there were also three BJA program managers assigned to the administration of the TJSIP – one managed the competitive awarding process and two monitored grantees once awards were made. These BJA program managers and other OJP officials participated in biweekly meetings to discuss grantee status and concerns. BJA grant managers also reviewed semiannual progress reports submitted by grantees and conducted site

¹¹ As part of the funding recommendation process through CTAS, the DOJ grant-making components meet to discuss and agree on the recommended awards to each tribal applicant.

¹² NEPA requires the federal government to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony. NEPA also requires federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach. Specifically, all federal agencies are to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions that may significantly affect the environment. These statements are commonly referred to as Environmental Impact Statements and Environmental Assessments.

visits and desk reviews, while the Office of the Chief Financial Officer conducted financial reviews. Other oversight activities performed by BJA included:

- Developing a monthly Status Tracking Chart for Recovery Act grantees to track each project's major milestones through to completion, including the NEPA clearance, BIA design reviews, and the four main stages of construction. The Monthly Tracking Charts were provided to BJA and OJP leadership on a monthly basis.
- Using its Grant Assessment Tool to assess the potential risk of the Recovery Act grants, which included OJP's Office of Audit, Assessment, and Management conducting quarterly risk indicator reviews on grantee metrics, such as reporting compliance and drawdown activity, to identify potential at-risk grantees in real time. These reports were used by the BJA to perform follow-up with grantees.
- Preparing Program Performance Reports (PPR) yearly based on the performance measurement data self-reported by TJSIP grantees. The intent of the PPR is to increase the transparency and accountability of the TJSIP program by highlighting grantee progress toward achieving strategic plans, renovation, or construction projects.
- Completing a GrantStat Report in June 2011 and again in April 2012 for the TJSIP, which discussed the grantees' progress, program activities, and any assistance needed by the grantees. The end result was a spreadsheet ranking of Recovery Act TJSIP projects based on overall progress.
- Conducting quarterly conference calls with Recovery Act grantees, T&TA providers, and BIA to discuss grantees and any issues.
- Contacting TJSIP grantees via telephone or email and receiving reports from T&TA providers.
- Coordinating with BIA through email regarding design reviews and facility openings.

OIG Audit Approach

The objectives of our audit were to: (1) assess OJP's management and oversight of the funding provided under the TJSIP, including the contracting activities of grantees; and (2) determine the extent of OJP's cooperation and coordination with BIA to ensure efficient and effective correctional services in Indian country.

To accomplish these objectives, we conducted interviews with officials at OJP, DOJ's Office of Tribal Justice (OTJ), BIA, employees of TJSIP grantees, and the

T&TA contractor. We incorporated as necessary throughout this report the results from five OIG audit reports of individual TJSIP grantees previously issued by the OIG between December 2014 and November 2015.¹³ Each of the five audit reports described more granularly the issues we found in auditing the particular TJSIP grantees, while this report focuses on issues related to OJP's management and oversight identified in part through these audits. We also incorporated as necessary throughout this report the results from 10 reviews by the OIG of planning grantees.¹⁴ For these reviews, we analyzed consultant expenditures to determine the total cost of each TJSIP grantees' master plan. Finally, we conducted one review of the Nisqually Tribe to assess the results of the \$10,720,232 construction project.

We also analyzed contract documentation related to OJP's contract to provide T&TA services to TJSIP grantees. The scope of our audit generally covered FYs 2009 through 2014, although our focus was primarily on the grants awarded prior to FY 2014 since grants that were more recently awarded have had little progress. Appendix 1 contains a detailed description of our audit objectives, scope, and methodology.

This report provides the results of our assessment of OJP's coordination with BIA as well as our review of OJP's oversight and management of the TJSIP grantees and our assessment of OJP's implementation of the services provided to TJSIP grantees by OJP's T&TA providers.

¹³ The five TJSIP grant audits include: (1) U.S. Department of Justice Office of the Inspector General, *Audit of the Office of Justice Programs Bureau of Justice Assistance Correctional Systems and Correctional Alternatives on Tribal Lands Program Grants Awarded to Pueblo of Laguna, Laguna, New Mexico*, Audit Report Number GR-60-15-003 (December 2014); (2) U.S. Department of Justice Office of the Inspector General, *Audit of the Office of Justice Programs Correctional Systems and Correctional Alternatives on Tribal Lands Program Grants Awarded to the Fort Peck Assiniboine and Sioux Tribes, Poplar, Montana*, Audit Report GR-60-15-009 (May 2015); (3) U.S. Department of Justice Office of the Inspector General, *Audit of the Office of Justice Programs Correctional Systems and Correctional Alternatives on Tribal Lands Program Grants Awarded to the Navajo Division of Public Safety, Window Rock, Arizona*, Audit Report GR-60-15-015 (September 2015); (4) U.S. Department of Justice Office of the Inspector General, *Audit of the Office of Justice Programs Grants Awarded to the National Indian Justice Center, Santa Rosa, California*, Audit Report Number GR-90-15-006 (September 2015), (5) U.S. Department of Justice Office of the Inspector General, *Audit of the Office of Justice Programs Correctional Systems and Correctional Alternatives on Tribal Lands Program Grant Awarded to the Eight Northern Indian Pueblos Council, Ohkay Owingeh, New Mexico*, Audit Report GR-60-16-001 (November 2015).

¹⁴ Of the 11 planning grants, 1 award made to the Fort Peck Assiniboine and Sioux Tribes (Fort Peck) had been reviewed by the OIG as part of the 5 grant audits referenced previously. Therefore, we reviewed a total of 10 new TJSIP grantees during this audit.

FINDINGS AND RECOMMENDATIONS

Coordination between OJP and BIA was not always effective, which resulted in three TJSIP-funded correctional facilities, built at a cumulative cost of \$21,820,000, remaining non-operational or partially operational for over a decade after the initial awards were made and 3 or more years after the TJSIP grants were fully expended. The coordination deficiencies also resulted in delays with the design and certificate of occupancy processes as well as issues with tribes obtaining sufficient operations and maintenance funding to fully operate the facilities upon construction completion.

We also determined that there were inadequacies with OJP's due diligence during the application process and oversight of the TJSIP grantees, which led to: (1) the construction of excessively large facilities that were not in line with the tribes' documented needs; (2) unused planning products; (3) premature funding of construction before adequate planning was completed; and (4) ineffective use of TJSIP funds. The excessively large facilities had proportionately higher operating costs that in most cases greatly exceeded available funding from BIA, resulting in facilities that were not fully occupied, fully staffed, or fully operational when completed. The inadequacies with OJP oversight also resulted in poorly defined T&TA services; conflict of interest (COI) issues between one of the TJSIP-funded T&TA providers, Justice Solutions Group (JSG), and TJSIP grantees; and potential savings to the government of over \$3 million related to comprehensive justice planning. OJP's management of a contract with Alpha Corporation (Alpha Corp) was also inadequate to fully ensure compliance with contract terms and conditions.

As a result of these issues, we identified \$43,657,072 in total dollar-related findings specific to deficiencies with OJP's oversight and management. This figure includes approximately \$32 million that the Navajo Nation spent on excessively large detention facilities, which we separately questioned in a prior audit report and also attribute to OJP's lack of oversight in this report, as well as nearly \$12 million in new questioned costs.¹⁵ The new questioned costs include \$10,720,232 misused by the Nisqually Tribe on a correctional facility intended to generate profit with as little as 2 percent of the total inmate population

¹⁵ *Audit of the Office of Justice Programs Correctional Systems and Correctional Alternatives on Tribal Lands Program Grants Awarded to the Navajo Division of Public Safety, Window Rock, Arizona*, Audit Report GR 60 15-015 (September 2015). OJP disagrees with some of the conclusions from the OIG's report, which questioned the excessively large facilities built by the Navajo Nation compared to the stated need. Consequently, two of the report's recommendations concerning more than \$32 million in questioned costs remain unresolved.

subject to tribal jurisdiction; \$842,879 related to COI issues; and \$59,338 for contract non-compliance.

OJP Coordination with BIA

While OJP is responsible for awarding TJSIP grants to plan, construct, and renovate adult and juvenile facilities in Indian country, BIA is responsible for oversight and operations. As described below, instances of ineffective coordination between a component of DOJ and a component of the DOI has presented significant problems that have contributed to spending tens of millions of dollars on constructing tribal justice facilities that were excessive in size and in some cases, facilities that have never been opened or experienced lengthy delays before becoming operational.

BIA requires tribes to submit designs for approval at certain phases of the architectural design process and also issues certificates of occupancy for new facilities whose operations will be funded by BIA. However, we found that coordination efforts between OJP and BIA lacked a formal protocol that could promote the timely progression of TJSIP-funded facility construction through BIA's design review process and certificate of occupancy process. We identified three instances where TJSIP grants were used to build facilities with construction flaws that significantly delayed or prevented facilities from operating.

Additionally, it is BIA that funds the operations of facilities based on BIA's funding availability and BIA generally does not fund any program in full. An April 1998 letter to DOJ from BIA indicated the DOI would submit budget requests to Congress for staffing and operations and maintenance for correctional facilities constructed with TJSIP funding. Ensuring that the necessary funding will be available to operate, staff, and maintain TJSIP-funded facilities when they are complete therefore requires coordination between OJP and BIA. Yet we found that there are no formal procedures or agreements between OJP and BIA to help ensure that this coordination occurs.

Design Review Process

For BIA-funded facilities, BIA requires tribes to submit architectural designs for review at 70 percent, 99 percent, and 100 percent completion. Based on guidance from BIA, tribes should not proceed to the next phase of design without BIA's approval, as BIA provides comments related to code compliance that need to be incorporated in the next design submittal. However, when designs are submitted, BIA does not provide a timeframe for a response or acknowledgment of receipt, and there are no status updates until an approval is received. According to OJP, BJA tracked the status of these reviews through Status Tracking Charts and would contact the grantees or BIA to obtain information on the status of the architectural review process.

BIA officials told us that when the Recovery Act funds were awarded, the number of designs submitted to BIA for review increased dramatically, and BIA did not have enough staff to handle the increased workload. This caused delays in returning designs to tribes. Indeed, we found that several of the TJSIP construction grants we reviewed during this audit suffered delays due to the lengthy BIA review process. For example, the project of the Fort Peck Assiniboine and Sioux Tribes (Fort Peck) experienced BIA design review delays that required the tribe to request a project extension from OJP for the TJSIP grant.¹⁶ At the Pueblo of Laguna, two of the required BIA design reviews took over 10 months. Another tribe we interviewed stated it took 6 to 8 weeks for BIA to conduct design reviews. Based on our analysis performed at the tribes that we visited, we found that it can take anywhere from 2 to 10 months to receive BIA design approval.

There is no formal procedure or agreement between OJP and BIA related to the coordination of activities for the design review that establishes: (1) the roles and responsibilities of OJP and BIA, (2) how communication between OJP and BIA will be conducted, (3) milestones to gauge when projects are not meeting targets, or (4) a process to ensure TJSIP grantees can involve OJP if reviews are delayed to expedite the process. Although OJP does not have authority over BIA and may not always be able to enforce agreement terms, establishing a formal procedure or agreement would enhance the coordination between OJP and BIA to promote a seamless design review process for TJSIP grantees.

In contrast, one of the construction projects we reviewed during this audit that did not require BIA's architectural design review, OJP's grant to the Eight Northern Indian Pueblos Council totaling \$5,636,317 to construct an alternative substance abuse treatment facility for juveniles, was completed within 7 months.¹⁷ BIA was not involved with the project because the facility was not a correctional facility. Because designs were not required to be reviewed by BIA, the tribe was able to use a design build model, which allowed construction to begin once the architectural designs reached 50-percent completion. Although the project suffered delays at the beginning due to a scope and location change, construction started in April 2013 and the facility was completed in November 2013.

¹⁶ U.S. Department of Justice Office of the Inspector General, *Audit of the Office of Justice Programs Correctional Systems and Correctional Alternatives on Tribal Lands Program Grants Awarded to the Fort Peck Assiniboine and Sioux Tribes, Poplar, Montana*, Audit Report GR-60-15-009 (May 2015), examined whether costs claimed under the grants were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the grants.

¹⁷ U.S. Department of Justice Office of the Inspector General, *Audit of the Office of Justice Programs Correctional Systems and Correctional Alternatives on Tribal Lands Program Grant Awarded to the Eight Northern Indian Pueblos Council, Ohkay Owingeh, New Mexico*, Audit Report GR-60-16-001 (November 2015), examined whether costs claimed under the grants were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the grants.

Issuance of Certificates of Occupancy

After construction completion, BIA generally provides the tribe with a temporary certificate of occupancy and final punch list of issues that need to be resolved before a final certificate of occupancy can be issued. Once all issues with the punch list are resolved, BIA issues a final certificate of occupancy. We identified delays in tribes receiving temporary and final certificates of occupancy from BIA. For example, Fort Peck reached substantial completion in January 2014, but did not receive a temporary certificate of occupancy until October 2014. It received a permanent certificate of occupancy in December 2014. According to Fort Peck officials, the delays were caused by BIA's inaction to schedule a visit to resolve one outstanding issue related to the fire sprinkler system in the kitchen. One of the Navajo Nation's projects also suffered delays in opening because BIA delayed scheduling a site visit to conduct its inspection. According to BIA officials, the size of the staff was not large enough to accommodate the increased workload as a result of the Recovery Act awards.

There is no formal procedure or agreement between OJP and BIA related to the coordination of activities for the certificate of occupancy process that establishes: (1) the roles and responsibilities of OJP and BIA, (2) how communication between OJP and BIA will be conducted, (3) milestones to gauge when projects are not meeting targets, or (4) a process to ensure TJSIP grantees can involve OJP if inspections are delayed. Although OJP does not have authority over BIA and may not always be able to enforce agreement terms, establishing a formal procedure or agreement would enhance the coordination between OJP and BIA to promote a seamless certification of occupancy issuance process for TJSIP grantees.

Operation and Maintenance of Completed Facilities

According to the National Institute of Corrections, for every dollar that is spent building the detention structure, between \$9 and \$15 is required to operate it. Staffing accounts for 80 percent of the total operating costs, which also includes supplies and maintenance. BIA's operational funding does not cover health care expenses, including treatment for substance abuse and mental health issues, or for treatment of sex offenders. Because staffing is dependent upon facility design, jurisdictions must identify staffing requirements during the planning stages rather than wait until the building is open. Tribes also need to balance their options for size and quality of new facilities with available funding.

We found that for TJSIP-funded facilities, funding for staff operations is not secured from BIA until the facility is built. BJA requires a grantee to explain in the grant application process the tribe's intention for operations and maintenance funding. Additionally, during the TJSIP awarding process, BJA provides a list of TJSIP applicants to BIA to obtain recommendations from BIA on prioritizing funding requests based on BIA's ability to financially support projects and a tribe's need.

However, due to BIA's appropriation process, BIA cannot guarantee funding will be available at the end of the construction process, which often takes 2 or more years.

We identified facilities funded by OJP through the TJSIP that were excessive in capacity, which subsequently led to operations and staffing shortages due to a lack of BIA funding that ultimately prevented facilities from becoming fully operational. We previously conducted an audit of four awards, totaling approximately \$70 million, made to the Navajo Division of Public Safety (NDPS) that were used to, among other things, construct two correctional facilities. These two correctional facilities were built with capacities that were at least 250-percent larger than the need stated in the March 2007 master plan, which was used as the basis for developing the Navajo Nation's grant applications. According to OJP, as of September 2016, one of the two facilities remained unopened due to construction issues, while the other facility had only 2 of 11 pods (each pod contains 12 beds) in one wing being utilized as well as the temporary holding cells due to a lack of operational funding from BIA.¹⁸

A BIA official told us that BIA met with the NDPS on multiple occasions to discuss the large size of both facilities and explained BIA would not be able to fund the staffing required to fully operate the two facilities.¹⁹ The excessive size of each facility creates increased costs for operations and maintenance staff, both of which are significantly funded by BIA. Due to BIA's funding constraints, BIA told us it generally can only provide 40 percent of requested funding for tribal corrections officers. As a result, there is an increased risk that these two facilities will not be able to become fully operational anytime in the near future, if ever, due to a lack of funding. If tribes cannot realistically be expected to use the full capacity of the constructed facilities within a reasonable time frame, or cannot staff the buildings, then the TJSIP funds were not efficiently utilized and could have potentially been used more efficiently to fund other TJSIP projects.

In this audit we reviewed \$10,720,232 awarded to the Nisqually Tribe in Olympia, Washington on September 21, 2009 under the TJSIP, to build a correctional facility with a 108-bed special needs housing unit, two 96-bed dorm-style housing units, and a support services building.²⁰ The Nisqually Tribe stated in its application materials that it would fund the facility without BIA support by entering into fee-for-service agreements with other local and tribal jurisdictions to house inmates, which the Nisqually Tribe noted would be more than sufficient to sustain program operations. Yet after construction of the 288-bed non-tribal

¹⁸ U.S. Department of Justice Office of the Inspector General, *Audit of the Office of Justice Programs Correctional Systems and Correctional Alternatives on Tribal Lands Program Grants Awarded to the Navajo Division of Public Safety, Window Rock, Arizona*, Audit Report GR-60-15-015 (September 2015).

¹⁹ Subsequent to the awarding of TJSIP funds to the Navajo Nation, the Navajo Nation increased the sizes of both facilities by at least 250 percent.

²⁰ See OJP's Due Diligence During Award Process section of this report for additional analysis of the award made to the Nisqually Tribe.

facility, the Nisqually Tribe requested \$7 to \$9 million in funding from BIA to support operations, which BIA denied. With the average inmate population subject to tribal jurisdiction at as little as 2 percent of capacity, the Nisqually Tribe built a facility that far exceeded its need, which BIA would not support. Greater coordination between OJP and BIA could have helped ensure that a reasonably sized facility was built to meet the needs of the tribe, and that adequate operations and maintenance funding would be available once construction was complete.

According to BJA, while \$225 million in Recovery Act funds were provided to OJP to distribute under the TJSIP to support construction projects, no additional funding was provided to BIA to operate the facilities constructed with Recovery Act funds. As a result, the operating cost of these facilities is a significant issue. We believe greater coordination between OJP and BIA in the planning process would have helped to ensure tribes constructed appropriately-sized facilities that would have allowed the facilities to be fully operational after construction given the limitations on BIA's funding capabilities.

Unopened Facilities

During our review, we identified three TJSIP-funded facilities that remained non-operational or only partially operational for 3 or more years after the TJSIP grant funds were fully expended as a result of construction issues. If the grants are closed before the buildings are completed, free from construction flaws, and operational, the end goal of incarcerating and providing rehabilitation services to juvenile and adult offenders cannot be achieved and there is an increased risk that facilities will remain unopened for many years.

Tribe Number 1²¹

Tribe Number 1, located in North Dakota, received \$4,195,000 through the TJSIP from FYs 2004 through 2009 to construct a 16-bed secure juvenile correctional facility.²² In October 2011, Tribe Number 1 received its permanent certificate of occupancy from BIA and the final TJSIP grant ended in November 2011 and was closed shortly thereafter in June 2012 when all grant funds were expended. However, the facility was never opened or became operational. According to BJA officials, BJA had, on multiple occasions, expressed its concerns to BIA about the non-operational status of the facility, which initially was due to an issue of inadequate funding between BIA and Tribe Number 1 to provide staff. In 2013, when OJP conducted a site visit to Tribe Number 1 to tour the facility and monitor other grants, OJP officials learned that after the permanent certificate of

²¹ Throughout this report we discuss details related to recipients, including tribes, consultants, and an individual who received TJSIP funding. We named those recipients who individually had a significant effect on our audit approach, recommendations, and conclusions. We determined that certain recipients did not have such an effect individually, and those recipients therefore are not named. Instead, those tribes, consultants, and individual are numbered sequentially in order of appearance in this report.

²² The original \$3,000,000 award to Tribe Number 1 in 2004 was a congressional mandate.

occupancy was issued by BIA in October 2011, BIA generated a repair list of items that needed to be fixed before the facility could open. According to OJP, it has continued to work with the tribe and BIA to facilitate the opening of the facility.

According to BIA, Tribe Number 1 passed a resolution after the certificate of occupancy was issued requesting support from BIA. When BIA inspected the facility there were several operational issues that were linked to the construction and installation of items in the facility. The facility did not meet several *Americans with Disabilities Act* requirements, required life safety mandated repairs to meet codes, and had electrical and mechanical problems that prohibited BIA from operating it. The tribe itself needed to make repairs as these were construction and installation issues. BIA and Tribe Number 1 entered into an agreement outlining the repairs that were needed prior to the facility becoming operational. BIA upgraded operational systems, added utilities, paid for the operations and maintenance, and occupied the building administratively. An inspection of the facility was scheduled for December 9, 2014. However, as of September 2015, 4 years after the certificate of occupancy was issued, the facility remained unopened because the repairs were not completed. As a result, BIA transports youths to nearby contract facilities. According to OJP, Tribe Number 1 secured the funds necessary to make the repairs and expected to open the facility in the summer of 2016.

Tribe Number 2

Tribe Number 2, located in South Dakota, received \$9,395,000 through the TJSIP from FYs 2004 through 2009 to renovate a former boot and moccasin factory and turn it into a 21-bed adult and 10-bed juvenile detention center.²³ As of September 30, 2011, all grant funds had been expended. The final TJSIP grant was administratively closed in March 2015 after resolving an issue with the match requirement.

According to BIA, the 21,920 square foot (SF) facility received a temporary certificate of occupancy from BIA's Office of Facilities Management around June 2012, which permitted the tribe to occupy the facility. Tribe Number 2 passed a resolution requesting support from BIA. However, there were several operational issues that were linked to the construction and installation of items in the facility. The facility did not meet several *Americans with Disabilities Act* requirements,

²³ The total funding received by Tribe Number 2 includes 3 separate awards: (1) \$2,900,000 awarded in 2004 as a congressional mandate, (2) \$695,000 awarded in 2006 through BJA's competitive award process, and (3) \$5,800,000 awarded in 2009 as part of the Recovery Act. Tribe Number 2 was originally awarded \$1,338,750 in 1997 by the Corrections Program Office under the Violent Offender Incarceration and Truth-in-Sentencing Incentive Formula Grant Program. The project stalled when all construction bids came in much higher than anticipated. Tribe Number 2 was not interested in scaling back the size of the facility, and so, in June 1999, after \$151,093 was used for demolition and planning, the remaining \$1,187,657 in funds were deobligated, and the award was closed.

required life safety-mandated repairs to meet codes, and had electrical and mechanical problems that prohibited BIA from operating it.

According to BIA, if the construction contractor had built according to the approved plans from BIA's Office of Facilities Management, there would have been fewer repairs and installation issues. However, according to BJA, BIA officials did not have or could not locate copies of the approved plan during a quarterly conference call. Nevertheless, Tribe Number 2 has had several contractors working on the facility over the past 11 years. According to BIA, the tribe terminated a recent contractor and hired a new one to make repairs. As of April 2015, the tribe had received its third temporary certificate of occupancy. On June 22, 2015, the tribe received the permanent certificate of occupancy and the facility became operational. We determined OJP closed the grant prior to the resolution of issues related to construction and opening the facility. For 3 years after the first temporary certificate of occupancy was issued in June 2012, the facility remained unused and BIA transported adults and youths to nearby contract facilities.

Tribe Number 3

Tribe Number 3, located in South Dakota, received \$8,230,000 through the TJSIP from FYs 2002 through 2006 to plan, design, and construct a 36-bed adult and 22-bed juvenile correctional facility to be located on Tribe Number 3's reservation. OJP administratively closed the grant in April 2009 because of the tribe's non-compliance with close-out requirements. Specifically, after multiple attempts, the tribe failed to submit a final progress report and was not in compliance with grant special conditions.

According to BIA, the tribe passed a resolution requesting support from BIA once the facility was built. When BIA inspected the facility, it found several issues related to the construction and installation of items in the facility. The roof was not properly installed and had caved in on the juvenile section, and the facility was not wired to properly connect security and automation systems, causing the doors and security systems to malfunction. However, because the tribe administered the maintenance portion of the facility, BIA could not open the facility until the tribe completed the necessary repairs. As of September 2015, facility repairs were made and it is operational. We determined OJP closed the grant prior to the resolution of issues related to construction and opening the facility. For 6 years after the grant was closed by OJP in April 2009, the facility was only used as a temporary holding facility until inmates could be transported to other locations. BIA was transporting both adult and juvenile inmates to nearby contract facilities.

DOJ has invested millions of dollars to fund the construction of correctional facilities to address the significant public safety issues in Indian country. However, OJP closed TJSIP grants prior to ensuring that all construction flaws were resolved, and that the facilities were open and fully operational. If facility construction is inadequate and facilities cannot be operational, the funds used to build each facility are futile while also impeding the tribe's ability to address the significant public

safety issues in Indian country. We found that despite coordination efforts including email correspondence with BIA and quarterly conference calls, the coordination between OJP and BIA was not always effective to ensure appropriately sized facilities that met all construction requirements were opened and fully operational. The coordination efforts between OJP and BIA also lacked the protocols that could promote the more timely progression of TJSIP-funded facilities through BIA's design review process and certificate of occupancy process.

We recommend that OJP coordinate with BIA to improve the design and certificate of occupancy processes as well as ensure appropriately sized facilities can be funded, completed, opened, and fully operational. This includes developing a formal agreement between OJP and BIA to document the roles and responsibilities of each agency, expectations of each agency, and areas of coordination. Additionally, we recommend that OJP review the circumstances of the facilities that remained unopened or non-operational after the TJSIP grants were closed, determine if any grant funds should be repaid by the grantees due to the ineffective or inappropriate use of funds, and develop a corrective action plan to ensure that all unopened facilities or less than fully operational facilities become fully operational within a reasonable timeframe.²⁴

OJP's Due Diligence During Award Process

We found that BJA does not require grantees to include plans in their grant applications, such as a master plan identifying the number of beds proposed for construction. BJA only requests that applicants demonstrate some type of planning has occurred. Our audit further found that TJSIP construction grants were awarded before complete plans were submitted to BJA, particularly where facility needs and funding from BIA for operating costs had not been determined. As a result, significant inefficiencies resulted, including facilities that had substantial excess space and grant funds that went unused for long periods of time. We believe, based on the following information that we identified concerning grants awarded to particular tribes, that BJA did not adequately assess requests for substantial funding amounts due to insufficient knowledge of tribes' needs, which could have been supported with documented planning results and coordination with BIA.

The Navajo Nation

As mentioned previously, in a prior grant audit, we reviewed four TJSIP awards, totaling approximately \$70 million, made to NDPS in which we identified over \$35 million in questionable uses of grant funding mostly related to the construction of two correctional facilities. These two correctional facilities were built

²⁴ Since May 2015, representatives from BJA, OJP's Office of the Assistant Attorney General, and DOJ OTJ have held biweekly meetings to address issues for facilities that are not yet open. Additionally, in May 2016, OJP developed a new policy to address the need to define, monitor, and track real property in which the government holds a continuing interest, which includes construction and renovation projects funded through the TJSIP. The policy requires entities to submit annual reports on the status of real property.

with capacities that were at least 250-percent larger than the need stated in the March 2007 master plan, which was used as the basis for developing the Navajo Nation's grant applications.

In this report we analyzed OJP's oversight of these grants. We found that, during the application process for 2009 Recovery Act funds, BJA encouraged applicants to provide information such as: (1) an assessment of bed space needs; (2) violent crime statistics; (3) BIA assessment of need and support; (4) a complete construction or renovation plan; and (5) demonstration that the tribe or BIA had the capacity to operate and sustain facility operations once construction or renovation was complete.²⁵

Despite these suggestions, we found that BJA awarded funds to NDPS even though NPDS' application did not include specific information related to bed space needs. Instead, the NDPS application referenced a master plan from March 2007 and stated that the NDPS was applying for funds based on this master plan, which included specific square footages and budgets for each location that matched exactly the total amounts listed in the application materials. Although we believe these representations made the master plan an inseparable part of the NDPS application, we found that the master plan was not included in the application package in OJP's Grant Management System (GMS). BJA officials told us that they received the March 2007 master plan separately from the application package in late 2011, nearly 2 years after the two construction grants were awarded in September 2009. Additionally, once the March 2007 master plan was provided, BJA officials only gave it a brief review.

We reviewed the master plan and determined that it provided comprehensive plans to build justice complexes at 13 locations across the Navajo Nation, which included corrections, courts, law enforcement, and peacemaking spaces that incorporate lighting, shapes, and forms typical of the Navajo traditions. The March 2007 master plan also included detailed information for each site, including construction budgets; facility purposes, such as detention, courts, and police; facility needs, including inmate beds and square footage of specific rooms; and requirements as specific as beverage station and refrigerator sizes. However, as we described in our prior audit report, NDPS applied for and was awarded these TJSIP grants at a time when TJSIP funds could only be used for detention facility construction. Despite this limitation, NDPS sought TJSIP funding based on the total

²⁵ According to OJP, starting in 2012, BJA started requesting more specific inmate and facility statistics as part of the application. We found that BJA requested information related to what additional resources the tribe "may" leverage to complete the project. It did not require the tribe to clearly describe the other funding sources that had been secured in order to complete the project. BJA also requested information related to the tribe's request to BIA for staffing, operations, and maintenance of the proposed facility. Since 2013, BJA stated in the solicitation that if a tribe provides a needs assessment or master plan, which would allow BJA to see details of the facility plan such as bed space, it will receive priority consideration. However, BJA does not require that these documents be submitted. Beginning in 2014, BJA required grantees to submit the average daily population in the current correctional facility for the last 6 months; however, BJA does not require information sufficient to show longer-term facility trends.

square footage and cost to build the entire criminal justice complex at Tuba City and Kayenta, including court facilities, law enforcement buildings, and correctional facilities. Because BJA did not review the March 2007 master plan at the time of the award, it was unaware of the Navajo Nation's original project plan. BJA therefore failed to identify that the request by NDPS for approximately \$70 million in grant funds was \$32,034,623 in excess of the stated need based on the master plan referenced specifically in the application materials.

We asked BJA officials if they were aware that the master plan called for less bed space at the two correctional facilities, and of the subsequent increase in correctional facility sizes beyond the specifications of the master plan. They told us they were not certain why the bed space increased from the March 2007 master plan as the information related to bed space was not included in the application. OJP relies on grantees to apply for grant funds based on need. However, because the March 2007 master plan was specifically identified in the applications and the funding request was based on the master plan, we believe these representations made the master plan an inseparable part of the Navajo Nation's application, which OJP failed to review until late 2011.

OJP officials further stated that OJP determined the data from the March 2007 master plan was outdated, and that the Navajo Nation therefore needed to revisit plans for the Recovery Act projects prior to actual construction to ensure the facilities were being built to meet current and future needs. However, as Recovery Act awards, these projects were required to be "shovel ready" and prepared to begin construction within 180 days of the award. If the data were in fact outdated and in need of reassessment, it is unlikely the projects would have met this requirement. Additionally, OJP's determination was inconsistent with the Navajo Nation's applications for the construction awards at Tuba City and Kayenta, in which the Navajo Nation indicated that planning had been completed and each project was ready to proceed to construction by February 2010. For the Kayenta facility, the March 2007 master plan specifically stated that design and construction of a new correctional facility had already been initiated.

According to the Director of the Department of Corrections for the Navajo Nation, once the construction grant funds were awarded, the Navajo Nation learned it could not build the court or law enforcement facilities with grant funds. As a result, these officials told us, the sizes of the correctional facilities at Tuba City and Kayenta were expanded. The facilities therefore appear to have been expanded due to availability of funds, not because of updated analysis related to need. This was also confirmed through our review of construction contract documentation.

In our judgment, given the availability to BJA of critical information that was referenced in the grant applications, we believe BJA had or should have had sufficient knowledge to prevent the awarding of \$32,034,623 in excess funds without first conducting additional, necessary due diligence. Furthermore, because BJA awarded funds to NDPS in excess of demonstrated need by \$32,034,623, there is a strong potential that other tribes who applied for Recovery Act TJSIP funding

did not receive needed funds. For example, based on our review of Recovery Act TJSIP applications to BJA, one tribal application for \$26,792,857, one tribal application for \$4,913,840, and one tribal application for \$2,665,354 could have been funded to address justice system needs at these tribes with the excess funds received by NDPS.

Nisqually Tribe

As previously mentioned, under the Recovery Act TJSIP, the Nisqually Tribe in Olympia, Washington, was awarded \$10,720,232 on September 21, 2009, to build a correctional facility with a 108-bed special needs housing unit, two 96-bed dorm-style housing units, and a support services building. According to the project narrative, the Nisqually Tribe was requesting funding only for the portion of the facility that would be used to house the tribal population, which was 60 percent of the total \$17,867,054 correctional facility construction costs. In the narrative, the tribe explained that to sustain program operations at the new facility it would generate revenue through contracts with other jurisdictions in the Nisqually service area to house prisoners who had been arrested for or convicted of crimes in those jurisdictions, which could include non-tribal offenders.

According to BJA, the Nisqually service area includes the Nisqually reservation as well as multiple counties near the reservation. At the time of the grant application, the tribe had signed contracts with four neighboring tribes and five neighboring cities to house inmates for them. The tribe also had a contract with the Washington State Department of Corrections to house Department of Corrections overflow at the Nisqually facility, and the tribe advised BJA that the Department of Corrections could immediately make use of another 100 beds at the Nisqually facility due to the severe nature of its overcrowding. According to the Nisqually Tribe, based on the level of interest expressed by local tribes, and consultations with other off-reservation jurisdictions, a target inmate population of 60-percent native and 40-percent non-native was initially identified for a facility of this size.

According to the Recovery Act solicitation, grant recipients were not to profit from housing members of other tribes or non-tribal individuals for the portion of the facility funded by the BJA. In September 2011, 2 years after the award, BJA reiterated this solicitation requirement to the Nisqually Tribe. BJA told us that its understanding, through discussions with the tribe and OJP's Office of General Counsel (OGC), was that the Recovery Act funding would be used only for the portion of the facility that would house the tribal population and would not generate a profit. The remaining 40 percent of the building would be funded with other sources to house inmates from other entities within the tribal service area. The TJSIP program statute stipulated that funding must be used to incarcerate and rehabilitate offenders under tribal jurisdiction. OJP officials told us that based on the tribe's representations that it would only use program funding for the portion of the facility used for tribal offenders, OJP concluded that Nisqually's strategy was consistent with that statutory provision.

We asked BJA officials if they requested or reviewed inmate statistics at the time of the award to verify that 60 percent of the population of the previous jail facility comprised tribal members. BJA officials explained that it only reviewed application information contained in GMS, which did not include inmate statistics. According to BIA, the capacity of the Nisqually Tribe’s original facility was 70 beds and was always full with tribal and non-tribal inmates as the tribe had contracts to house inmates with other tribes, counties, and Washington state. As shown in Table 2, the average yearly inmate population prior to facility completion, including non-tribal inmates, ranged from 58 inmates in 2008 to 87 inmates in 2013.²⁶

Table 2
Average Yearly Inmate Population for the Nisqually Tribe’s Original Detention Facility

YEAR	AVERAGE INMATE POPULATION	MAXIMUM INMATE POPULATION	MINIMUM INMATE POPULATION
2008	58	82	25
2009	67	76	53
2010	67	81	57
2011	72	83	56
2012	64	77	50
2013	87	95	69

Source: BIA

The Nisqually Tribe provided average daily population information as well, including a breakdown of tribal inmates as shown in Table 3.²⁷

²⁶ Inmate population data reported to BIA did not break down the population between tribal inmates and non-tribal inmates.

²⁷ The Nisqually Tribe provided average daily population information that was not consistent with BIA statistics. We did not analyze the statistics to determine the cause of the difference.

Table 3
Average Yearly Inmate Population
Reported by the Nisqually Tribe for
the Original Detention Facility

YEAR	AVERAGE INMATE POPULATION	TRIBAL	PERCENT TRIBAL
2008	35	11	31
2009	35	11	31
2010	35	11	31
2011	50	18	36
2012	68	20	29
2013	90	40	44

Source: The Nisqually Tribe

As shown, at the time the Nisqually Tribe applied for Recovery Act TJSIP funds, only 31 percent of the inmate population was tribal in 2008 and 2009, far less than the representation in the Nisqually Tribe’s statements in its application narrative that 60 percent of the new facility would house tribal inmates. Moreover, the statistics failed to show whether the tribal inmates at the facility were subject to tribal jurisdiction, as required by the statutory authority of the TJSIP, or instead were being housed pursuant to service contracts the Nisqually Tribe had with other neighboring cities and the Washington Department of Corrections who were not subject to tribal jurisdiction.²⁸ According to the Nisqually Tribe, the 60-percent tribal population figure was only a target, and the tribe continues to work to meet this target through outreach with other tribes in the service area who are in need of corrections services. The tribe’s goal is to use the new facility as a regional facility for Washington tribes on the west side of the mountains. The Nisqually Tribe told us it is confident it will reach the 60-percent target eventually. In our judgment, BJA failed during its due diligence process to undertake the type of review that it should have to ensure the claims being made by the tribe were supported by the data.

²⁸ The service contracts the Nisqually Tribe has with neighboring cities and the Washington Department of Corrections state that the Nisqually Tribe has contractual custody of the inmates and is responsible for their care. Care is defined as room and board. Each city and the Washington Department of Corrections maintain jurisdiction over the inmates. Therefore, these prisoners are not being held for violations of tribal civil and criminal laws.

Figure 3
Nisqually Public Safety Complex



Source: BJA

Construction for the new 288-bed facility was completed in December 2013 and it became occupied in March 2014. According to the Nisqually Tribe, since opening, facility operations have ramped up on a gradual basis over the last 2 years, with a focus on staff recruitment and training. The Nisqually Tribe provided detailed inmate data for 2014 and 2015, which showed the breakdown between tribal inmates and non-tribal inmates being held in the new facility. According to these statistics, the tribal population at the facility ranged from 18 percent to 43 percent, well below the 60 percent tribal population figure the tribe included in its application. Moreover, the tribal population data again failed to distinguish between those tribal inmates who were subject to tribal jurisdiction and those tribal inmates who were being held through service contracts and therefore were not subject to tribal jurisdiction, regardless of ethnicity. According to the Nisqually Tribe's inmate roster on September 1, 2015, which listed a total of 315 inmates, we found that 7, or 2 percent of the total prison population, were inmates who we could explicitly determine were subject to tribal jurisdiction. Therefore, at full capacity, up to 98 percent of the inmates housed at the Nisqually correctional facility were not subject to tribal jurisdiction, including the inmates housed through the service contracts with neighboring cities and the Washington Department of Corrections.²⁹

According to the AAG's funding memo for the 2009 Recovery Act TJSIP awards, the Nisqually Tribe application was not endorsed by BIA because the tribe proposed to build beyond current capacity. However, BJA noted in the AAG funding memo that the tribe indicated it would assume responsibility for operational and

²⁹ As of June 7, 2016, inmate population statistics were similar to September 2015. Of the total of 284 inmates, we found that 14, or 5 percent of the total prison population, were inmates who we could explicitly determine were subject to tribal jurisdiction.

staffing costs associated with the facility. According to BIA, it did not endorse the facility due to the excessive size, and also because the tribe had advised BIA that the new facility was intended as a profit-generating operation. The Nisqually Tribe explained that the tribe was unaware that BIA did not support the facility when the Nisqually Tribe applied for funding. Further, Nisqually Tribe officials explained that during the design phase, the tribe submitted architectural drawings at 60 percent, 90 percent, and 100 percent completion to BIA for review and approval. However, while the design review process ensures compliance with all applicable building codes, assessments of whether the building meets or exceeds a tribe's need are not included.

According to the master plan completed by the Nisqually Tribe in July 2010, the estimated "bottom line" profit would be around \$1.5 million per year. The master plan further stated that with the expanded facility there would be greater potential for fee-for-service contracts. In its application, the Nisqually Tribe stated it would provide the master plan via FedEx to OJP for inclusion in the grant proposal, as the file was too large to upload to OJP's GMS. BJA officials did not recall receiving the master plan nor was it part of the competitive application review. BIA officials further explained that in 2013, the Nisqually Police Chief requested \$7 to \$9 million in BIA funding for operating costs despite assertions in the application materials that the tribe would assume responsibility of operational and staffing costs. BIA's Office of Justice Services Director declined the request due to the Nisqually Tribe's low inmate population and the facility's excessive size as compared to the actual need of the tribe. Despite these concerns and the stated commercial intentions of the facility use, OJP funded the construction of this facility.

Most of the inmates in the new facility come from service contracts with neighboring cities and the Washington Department of Corrections with which each city or the Washington Department of Corrections maintains jurisdiction over the inmates. As such, for future contracts, the Nisqually Tribe could seek to increase the contract costs to allow the facility to generate profits. Overall, we believe the Nisqually Tribe constructed a facility that did not conform to the statutory requirement of the TJSIP, which requires that funds be used to incarcerate and rehabilitate offenders subject to tribal jurisdiction. Based on information in the July 2010 master plan along with the number of service agreements with non-tribal jurisdictions, we concluded that the facility was primarily intended to be a profit-generating facility, which is not permissible under the solicitation.³⁰ We believe BJA should have more carefully considered and taken into account BIA's concerns when deciding whether to fund the construction that the tribe had proposed, and that its failure to do so resulted in an excessively large facility being built that was inconsistent with the requirements in the Recovery Act solicitation and statutory requirement of the TJSIP. As a result, we question the \$10,720,232 awarded and expended by the Nisqually Tribe as misused funds. Further, BJA's decision to fund the Nisqually Tribe's correctional facility may have impacted the decision to deny

³⁰ Nisqually Tribe officials stated that the facility has been running at a deficit and if a profit were generated it would be invested back into the program.

funding to other tribes with expressed needs for justice facilities and who applied for Recovery Act TJSIP.

Tribe Number 4

Tribe Number 4 received a grant for \$120,000 in 2009 to conduct planning for a regional adult and juvenile detention facility to be located on Tribe Number 4's land to serve the tribes located in western Nevada. Tribe Number 4 coordinated with Tribe Number 5, who also received \$150,000 to plan an adult and juvenile regional correctional facility in northwestern Nevada. According to the progress reports submitted to BJA, Tribe Number 5 would complete the master plan while Tribe Number 4 would complete an environmental assessment.

On September 27, 2012, before the master plan was complete or clearly defined facility needs were determined, Tribe Number 4 was awarded \$3,982,729 under the TJSIP to construct a 122-bed adult and juvenile regional detention facility. According to OJP, BJA awarded these funds to Tribe Number 4 because it met a great need in an undeserved area, had regional support, and had support from BIA. In the program narrative, Tribe Number 4 noted that the community collaboration for this project had already been completed in the original planning process completed by Tribe Number 4 and planning by Tribe Number 5 was ongoing. However, according to Tribe Number 5, the selection of a facility concept by Tribe Number 4 preceded Tribe Number 5's implementation of its goals, including space requirements, program development, a facility operation program, and facility design concept. Tribe Number 5 also noted that there were continued challenges confirming BIA's commitment to funding the operation of a new facility and the transportation of incarcerated individuals. As of June 30, 2015, nearly 3 years after Tribe Number 4 was awarded the construction grant, Tribe Number 5's master plan was still not complete.³¹

Tribe Number 4's original construction proposal for the 2012 TJSIP grant of a 122-bed facility was deemed not feasible by OJP and, according to OJP, the award funds were placed on hold until the tribe could provide documentation to ensure sufficient funds were available to cover construction costs or plans were modified to ensure no cost overruns.

BJA's T&TA provider, the National Indian Justice Center (NIJC) assisted the tribe with identifying options that were feasible given the tribe's budget constraints. Specifically, NIJC's consultant found that the 122-bed facility could not be built with the available funding and provided the tribe with three options to proceed, but noted that all three options needed to be viewed as the first phase of a larger project. Tribe Number 4 elected the option to build a sentenced facility, which was for the development of a secure, long-term detention facility for residents all of one

³¹ On August 28, 2015, a GAN was approved by OJP for Tribe Number 5 to shift the planning grant from a regional to a local analysis of Tribe Number 5 demands for incarceration and rehabilitation.

gender. While this option complied with BIA detention standards, BIA had never operated a facility of this type before. The NIJC consultant's analysis of Tribe Number 4's proposal raised concerns about the sentenced facility option, including likely budget overruns and expensive operation costs. Despite the NIJC consultant's concerns, OJP approved a Grant Adjustment Notice (GAN) on April 30, 2014 submitted by Tribe Number 4 with the revised project narrative, to adjust the scope of its original project from a 122-bed adult and juvenile regional facility to a 24-bed regional sentenced facility solely for adult males.

As of June 30, 2015, more than 2 years after OJP awarded the nearly \$4 million construction grant, Tribe Number 4 had completed the building design, but had not completed the BIA design review process and had not begun construction on the correctional facility. Additionally, through the June 2015 progress report, Tribe Number 4 informed BJA that BIA would not fund operations and maintenance or provide staffing for the facility. According to OJP, as of May 2016, OJP could not come to a viable arrangement with Tribe Number 4 and intended to deobligate the funds. As we identified, the TJSIP grant funds were awarded without an adequate plan in place and, as a result remained idle while other applicants, such as the Nebraska tribes described in the following section, did not receive funding for other tribal justice projects. We believe BJA could be more diligent when awarding TJSIP funds to ensure projects fully prepared for construction are funded.

Nebraska Tribes

In 2008, in response to numerous juvenile and adult offender issues facing their tribal populations, four tribes in Nebraska (Nebraska tribes) created a partnership to apply for TJSIP funding to plan and construct a regional juvenile detention center and an adult jail in northeastern Nebraska. Each tribe realized that as an individual entity, it would be unable to take on the high costs of construction and operations for a regional facility. As shown in Table 4, OJP awarded \$1,740,666 to the Nebraska tribes under the TJSIP.

Table 4
TJSIP Funding Provided to the Nebraska Tribes

AWARDING INFORMATION	AWARD AMOUNT	START DATE	END DATE	GOAL
Tribe #6				
2009 Planning Award	\$ 140,926	07/01/2009	06/30/2011	Regional Adult Facility Needs Assessment, Site Assessment, Pre-Design
2011 Planning Award	149,995	10/01/2011	09/30/2013	Regional Juvenile Facility Master Plan and Regional Adult Facility Master Plan
2014 Construction Award	999,745	10/01/2014	12/30/2015	Renovation Youth Crisis Intervention Center (single jurisdiction)
Total Awarded	1,290,666			
Denied Application 2012	150,000	NA	NA	Needs Assessment and Master Plan for Regional Juvenile Facility
Tribe #7				
2010 Planning Award	150,000	10/01/2010	09/30/2012	Needs Assessment and Master Plan for a single jurisdiction multi-service juvenile and/or adult facility
Total Awarded	150,000			
Denied Application 2011	949,102	NA	NA	Construction of a community-based correctional alternative facility for juveniles
Denied Application 2012	1,000,000	NA	NA	Construction of a single jurisdiction criminal justice center facility
Tribe #8				
2008 Planning Award	150,000	04/01/2008	05/28/2010	Regional Juvenile Facility Needs Assessment
2009 Planning Award	150,000	07/01/2009	06/30/2011	Regional Juvenile Facility Master Plan
Total Awarded	300,000			
Denied Application 2011	150,000	NA	NA	Infrastructure Needs Assessment for the regional youth services center
Grand Total Awarded	1,740,666			

Note: The fourth tribe in Nebraska did not apply for or receive any TJSIP awards during our audit period.

Source: OJP

As shown above, since 2008, OJP has provided the Nebraska tribes \$1,740,666 to support efforts to build correctional facilities. Included in these funds were four separate grants to Tribe Number 6 and Tribe Number 8 to create

needs assessments and master plans to address the regional justice system needs of the four tribes, at a total cost of \$590,921. Funding two separate tribes' four awards with the same goal of assessing regional needs and developing recommendations to implement justice system needs raises the concern that these costs may have been for duplicative efforts. OJP stated that the awards to Tribe Number 6 were to fund planning efforts related to a regional adult correctional facility, while Tribe Number 8 received funding to plan a regional juvenile correctional facility. For Tribe Number 6, we found that 2009 planning funds were used to complete a needs assessment and master plan for a regional adult facility; 2011 planning funds were used to complete a master plan for a juvenile regional facility as well as additional planning documents for an adult regional facility. For Tribe Number 8, 2008 planning funds were used to complete a needs assessment and master plan for a regional juvenile facility. For 2009 planning funds, no final work product was submitted to OJP; therefore, OJP stated it could not confirm how grant funds were used.

In our judgment, it may have been more effective, with the potential for cost savings, to fund one comprehensive needs assessment and master plan that addressed the regional needs of the four tribes – including adult and juvenile corrections – rather than funding multiple tribes to create different needs assessments and master plans at a cost of \$590,921.

Additionally, because the Nebraska tribes thought obtaining funds for a regional facility would not be possible, Tribe Number 7 eventually sought and was awarded \$150,000 in TJSIP funding to create an entirely separate needs assessment and master plan for a single jurisdiction juvenile and/or adult facility. Although Tribe Number 7 successfully completed a master plan, it did not obtain construction funds through the TJSIP. According to OJP, the 2011 application was denied because, although it was for a regional alternative facility with short-term holding, the application received a peer review score that OJP does not generally fund. OJP further stated that the 2012 application was denied because the proposal was for a single jurisdiction facility and \$1,000,000 would not have been enough funding to construct a facility.³² Because the tribe did not receive construction funds, Tribe Number 7 is no longer pursuing plans for construction and its master plan will go unused.

Tribe Number 6 was ultimately successful in obtaining \$999,745 in 2014 to renovate an existing facility into a youth crisis intervention center that would serve only Tribe Number 6. However, the overall needs of the four Nebraska tribes have not been met as the three remaining Nebraska tribes still have a need for a correctional facility. A regional facility, funded in part with the money spent on duplicate and unused planning products, could have been more cost effective in terms of construction costs as well as staffing and operations for BIA instead of staffing two or more separate facilities. Given the Nebraska tribes' unmet regional

³² BJA has funded other projects that did not provide sufficient funding to construct the entire facility. See the Pueblo of Laguna section of this report.

needs and the idle funds associated with Tribe Number 4, we believe BJA could be more diligent when awarding TJSIP funds to ensure the most cost-effective projects are funded.

Pueblo of Laguna

We previously issued an audit of two OJP grants totaling \$1,767,373 awarded to Pueblo of Laguna in Laguna, New Mexico, under the TJSIP.³³ The audit found several grant management weaknesses, including that Pueblo of Laguna: (1) was operating under an expired indirect cost rate, (2) was not conducting suspension and debarment checks for contractors paid with grant funds, (3) did not fully achieve one of the five objectives for one of its grants, and (4) did not comply with a special condition of one of its grants. Additionally, during our prior audit, Pueblo of Laguna officials told the OIG that, as of June 2014, one of the two TJSIP grants for \$1 million, awarded in FY 2012 to fund a juvenile detention facility, had not yet been used.

As of September 30, 2015, Pueblo of Laguna had not spent any of the \$1 million TJSIP grant, which was expected to fund a portion of a \$33 million multi-purpose facility for all justice programs including detention, police, courts, and probation. According to the grant application, the tribe was pursuing funding for the remaining cost. As such, BJA awarded these TJSIP grant funds before Pueblo of Laguna had secured the remaining funds for construction. Pueblo of Laguna was not able to draw any grant funds until all funding to build the facility was secured. On August 27, 2015, OJP approved a GAN submitted by Pueblo of Laguna to extend the project period to September 30, 2016, because the grantee was working on project funding. OJP stated that by preventing the grantee from accessing the funds it performed its due diligence since the award would be useless unless additional outside funding was obtained. However, \$1 million in TJSIP grant funds has remained idle for 3 years and may never be used if the tribe cannot obtain outside funding, while other applicants, such as the Nebraska tribes described previously, did not receive funding for other tribal justice projects. We believe BJA could be more diligent when awarding TJSIP funds to ensure construction-ready projects are funded.

Based on our analysis, the due diligence performed by BJA on the TJSIP applications was not adequate to properly assess each tribe's need or evaluate BJA's ability to operate and maintain the facilities after construction. As a result, TJSIP grantees were awarded funds: (1) in excess of stated need, (2) to construct facilities that did not support the statutory authority of the TJSIP, (3) that did not meet the overall needs of regionally based tribes, and (4) that remained unspent

³³ U.S. Department of Justice Office of the Inspector General, *Audit of the Office of Justice Programs Bureau of Justice Assistance Correctional Systems and Correctional Alternatives on Tribal Lands Program Grants Awarded to Pueblo of Laguna, Laguna, New Mexico*, Audit Report Number GR-60-15-003 (December 2014), examined whether costs claimed under the grants were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the grants.

for years after the award. As a result, we recommend that OJP remedy \$10,720,232 relating to grants to the Nisqually Tribe. We also recommend that OJP enhance its due diligence process to ensure sufficient comprehensive justice planning has been completed before construction or renovation, which includes assessing alternative treatment needs. This may include requiring and verifying additional information that is currently not required as part of the application materials - such as an assessment of bed space needs, BIA assessment of need and support, a complete construction or renovation plan, and inmate population statistics for more than a 6 month period - as well as assessing the overall impact of awards to ensure the grants will meet tribes' needs and allow them to fully open, operate, and maintain the facilities. This also includes enhancing its process to deobligate funds more quickly if TJSIP grantees are not prepared for construction.

OJP's Oversight and Management of the TJSIP Program Post Award

As previously described, as of September 2014, according to BJA officials, there were three BJA program managers assigned to the administration of the TJSIP – one managed the competitive awarding process and two monitored grantees once awards are made. OJP stated that while different staff may take the lead for certain aspects of oversight and management, all of the BJA staff, including BJA program managers, supervisors, and managers, work collaboratively throughout the grant cycle. As part of the oversight activities completed by BJA, these program managers participate in biweekly meetings, review semiannual progress reports submitted by grantees, and conduct site visits and desk reviews. Quarterly, BJA has a conference call with BIA to discuss grantees and any issues. Finally, BJA utilizes T&TA providers as another oversight mechanism to determine the status and progress of each TJSIP grantee. Despite these oversight activities, we identified several instances in which BJA's oversight and management of TJSIP awards was inadequate, which resulted in the misuse and ineffective use of TJSIP funds.

Navajo Nation Construction Grant Awards

After OJP awarded the \$70 million in grants to NDPS, NDPS learned it could not build the entire justice complex with TJSIP funds and therefore increased the sizes and bed space at the two correctional facilities. We found that with regard to the correctional facility in Tuba City, Arizona, from February 2010 to February 2014, NDPS submitted progress reports to BJA that referenced the March 2007 master plan but that also reported gradual increases in the size of the correctional facility from 48 beds, to 62 beds, and then to 132 beds, which far exceeded the master plan. In addition, we found that during the grant period, BJA conducted two site visits, including a visit while the facility was under construction. Despite the information presented in the progress reports and conducting site visits, during our audit we received no evidence to suggest that BJA officials were aware of the project increases or initiated any formal process to review and approve amended plans for an expanded facility that would justify the change in project size.

BJA stated that even though NDPS changed the project in terms of capacity and number of inmate beds, it was apparent to BJA from the outset that the Tuba City project was going to be around 132 beds. BJA further stated that a scope change was not required because the overall size of the facility remained consistent with the application. OJP told us that a change in bed-space alone would not require a GAN, as the total square footage listed in the application of 111,848 SF was ultimately the size of the correctional facility built, even though the 111,848 SF matched the original size of the entire justice complex per the March 2007 master plan.³⁴ In BJA's view, that size did not depend on the number of beds or the portion allocated to bed space, but rather the total square footage listed in the application. Despite BJA's statements, the correctional facility ultimately built was just 87,709 SF, which is not the same square footage listed in the application. Therefore, based on BJA's statements it appears a GAN was required since the total square footage listed in the application compared to what was ultimately built changed by 24,139 SF. Using the budgeted cost per square foot of \$250 from the application materials provided by NDPS, the 24,139 SF discrepancy amounted to \$6,034,750 in excess funds. Such a large dollar value difference should have required additional BJA review and an assessment on how those funds should be used.

Figure 4
NDPS - Tuba City Justice Center



Source: BJA

Additionally, the OJP Financial Guide states that grantees are required to submit a GAN for changes in scope that affect the budget and, as indicated, the increase in bed space at Tuba City from the original plan listed in the March 2007 master plan increased the total cost of the correctional facility by approximately \$25 million. Additionally, as a matter of prudence, such changes should have required approval as the additional space necessitates additional resources to manage larger capacities and should have been coordinated with BIA. We believe

³⁴ We also note that OJP's position that a GAN was not required conflicts with information we received from a BJA official during our fieldwork, on March 19, 2015, who told us such a change would require OJP approval.

the GAN process exists for scope changes to ensure the changes are allowable, appropriate, and necessary. During the grant period, the Tuba City correctional facility underwent an extensive change that affected budgets, building square footage, and bed space, which we believe required the NDPS to go through the scope change process.

Overall, BJA was unable to provide us with documentation approving or justifying a 132-bed facility, which represented 275 percent of the 48 inmate beds at the Tuba City facility stated in the NDPS's March 2007 master plan, which was used as the basis for developing the Navajo Nation's grant application, at an additional cost of approximately \$25 million.³⁵ In our opinion, the project scope was expanded due to excess funds being available rather than based on demonstrated need, which resulted in a correctional facility being built that is materially in excess of stated need and that is not fully operational.

With regard to the other NDPS detention facility in Kayenta, Arizona, NDPS provided documentation to OIG showing the re-design of the corrections facility from 32 adult beds to 80 adult beds starting in January 2011, which was over a year after the TJSIP grant was awarded. During the grant period, BJA conducted two visits to the Kayenta facility, including one during construction. Despite conducting site visits, during our audit we received no evidence to suggest that BJA officials were aware of the project increases or initiated any formal process to review and approve amended plans for an expanded facility that would justify the change in project size.

Figure 5
NDPS - Kayenta Justice Center



Source: BJA

We found that NDPS submitted a GAN to BJA on March 29, 2012, which requested a scope change to construct a support building in addition to the corrections facility and also mentioned as background information that “with the programming changes instead of a 32-bed facility, [Navajo Department of

³⁵ The total \$25 million in additional cost to build the correctional facility included \$20 million in grant funds.

Corrections] will construct an 80-bed adult correction facility with a 4-bed temporary holding for juvenile[s].” Twelve additional pages of supporting documentation included in the GAN request only discussed the addition of a support building, and provided no justification for increasing the number of beds. This request was approved by OJP on August 7, 2012. While the expansion from 32 to 80 adult beds was referenced in the GAN request, OJP’s approval of the GAN was connected to the construction of the support building and did not reference the increase in number of inmate beds. Specifically, OJP stated that “the Navajo Department of Corrections has planned for a correctional facility, and in the planning it had some funding available for a program support building. Based upon this, the [Navajo Department of Corrections] will be adding a support building to construct with funds. Therefore, the scope of work will change.” We were not provided documentation that the change in bed space from 32 to 80 adult beds was ever officially reviewed for appropriateness or approved by OJP. We, therefore, concluded that OJP’s approval of the GAN was only for the support building.

In addition to its own oversight activities, to ensure the projects were effectively managed, BJA awarded a grant to T&TA provider Justice Solutions Group (JSG) to assist tribes with the planning necessary to establish tribal correctional facilities that are appropriate for the intended population, and contracted with T&TA provider Alpha Corporation (Alpha Corp) to assist in ensuring that the NDPS was implementing the construction projects in the most cost effective and efficient manner and meeting proposed project timelines.³⁶ From our review it appears JSG did not make assessments for either Navajo Nation project since it was not a requirement to use these services. It was JSG’s understanding that when these awards were made, the projects were shovel ready. Based on the information provided to JSG, the architectural designs were already completed through the Navajo Nation-wide master plan. Therefore, no assessment was needed. However, since the project scope changed subsequent to the award of funds a new assessment of need may have identified and prevented NDPS from building facilities at least 250-percent larger than its stated need.

As part of its T&TA services, Alpha Corp reviewed pay applications from contractors, any modifications to contracts, and toured facilities throughout construction. The contract with Alpha Corp also stated that one of the major tasks was to ensure grant recipients were utilizing efficient and cost-effective strategies to achieve project goals as proposed in the grant application. OJP also clarified that Alpha Corp’s role was to apply its specialized knowledge and expertise in construction matters to assist grantees and BJA with construction project management and implementation matters, including with maintaining cost effectiveness and efficiency. Grants management and implementation matters, and overall grants program and grantee oversight, are the responsibility of BJA.

³⁶ Throughout the report we refer to the T&TA awards as grants. However, OJP identified these awards as cooperative agreements, which generally require more involvement by the federal government.

Under the T&TA contract, Alpha Corp was required to provide site visit reports to BJA after each visit to each facility location, which provided BJA a status of the project. According to Alpha Corp, it produced site visit reports for BJA that clearly noted the status of the project scope and any changes, budget, and schedule as well as Recovery Act requirements; actual project conditions; quality control; project control activities; and any risks.

We reviewed all the Alpha Corp site visit reports provided by OJP, as follows.

- Tuba City, Arizona

For Tuba City, BJA provided eight site visit reports starting on June 15, 2010, through December 12, 2012. In all eight of the site visit reports, Alpha Corp noted that the project consisted of designing and constructing a 132-bed correctional facility. In Site Visit Report Numbers 1 and 2, Alpha Corp noted 92,000 as the total square footage of the correctional facility. This was slightly modified for Site Visit Report Numbers 3 through 8 to 89,623 SF. However, in the application materials, the Navajo Nation had requested \$38,587,560 to construct a 111,848 SF correctional facility. BJA was provided information through these site visit reports to identify an approximate 21,000 SF discrepancy between the stated project size in the site visit reports and application budget size. Using the cost per SF of \$321 listed in Site Visit Report Numbers 1 and 2, this amounted to a \$6.7 million difference in cost between the application and the site visit report facility size.

Additionally, in Site Visit Report Number 2, Alpha Corp noted that the Tuba City facility was being re-designed with a possible expansion of up to 48,000 SF. Again, BJA should have noticed the difference between the original project size and project sizes listed in each site visit report.

For four of the eight site visit reports, Site Visit Report Numbers 5 through 8, Alpha Corp included an attachment from the NDPS project manager showing the original project scope was 48 beds, while all eight of Alpha Corp's site visit reports noted a project size of 132 beds.³⁷ Again, BJA was provided information through these site visit reports to identify a change in scope from 48 beds to 132 beds. In Site Visit Report Number 3, Alpha Corp included an attachment from the NDPS project manager showing the total project cost of \$38,587,560 for the entire judicial complex at Tuba City— not just the correctional facility— which was the amount shown in the BJA-approved budget for just the correctional facility. Alpha Corp's site visit report listed the total judicial complex cost at \$58,899,750. BJA was provided information through these site visit reports to identify the \$20,312,190 difference in cost compared to that provided by the NDPS project manager for the total judicial complex. The attachment to Alpha Corp's site visit report from the NDPS project manager also indicated that when the project was

³⁷ The original project size of 48 beds noted by the NDPS project manager matched the project size from the March 2007 master plan, which was referenced in the application materials and was the basis for the Navajo Nation's budget request.

advertised for project management, architectural, and construction manager services in 2009, it was determined that the March 2007 master plan budget would be maintained.

- Kayenta, Arizona

For Kayenta, BJA provided 10 site visit reports starting on June 15, 2010, through July 22, 2013. As shown in Table 5 below, Alpha Corp noted the project size during each site visit.

Table 5
Alpha Corp Site Visit Report Building Sizes

A	B	C	D	E	F	H
SITE VISIT	DATE	GRANT APPLICATION FACILITY SIZE	CORRECTIONAL FACILITY SF AS NOTED IN THE ALPHA CORP SITE VISIT	SUPPORT BUILDING SF AS NOTED IN THE ALPHA CORP SITE VISIT	DIFFERENCE IN SF BETWEEN GRANT APPLICATION AND ALPHA CORP SITE VISIT REPORT [C-(D-E)]	DIFFERENCE (\$) AT \$250/SF ^a [F x \$250]
1	06/15/10	91,036	29,000	-	62,036	\$15,509,000
2	12/22/10	91,036	29,000	-	62,036	15,509,000
3	03/24/11	91,036	52,682	-	38,354	9,588,500
4	06/22/11	91,036	52,682	-	38,354	9,588,500
5	11/10/11	91,036	54,650	13,552	22,834	5,708,500
6	06/18/12	91,036	53,190	13,552	24,294	6,073,500
7	08/17/12	91,036	53,009	13,427	24,600	6,150,000
8	01/07/13	91,036	53,009	13,427	24,600	6,150,000
9	04/15/13	91,036	53,009	13,427	24,600	6,150,000
10	07/22/13	91,036	53,009	13,427	24,600	6,150,000

^a The cost per SF used to calculate the dollar value difference was \$250 per SF, which was the estimated cost listed in Navajo Nation's application materials.

Source: OJP

In all 10 of the site visit reports for Kayenta, Alpha Corp noted the project size of the adult correctional facility, which increased and did not match the application project size. BJA had information from these site visit reports to identify the differences related to the correctional facility from what was proposed in the grant application. Further, in Site Visit Report Number 2 Alpha Corp stated that the project may undergo a redesign, while Site Visit Report Number 3 stated that the project had undergone a redesign that resulted in major scope and programmatic changes. From these site visit reports, BJA had the information to identify significant discrepancies between the square footages and building cost listed in the application and the project size presented by the Navajo Nation during each site visit for the correctional facility and subsequently added support building.

Overall, despite the additional oversight activities performed by the T&TA provider, BJA provided no evidence to suggest that it was aware of the project increases or initiated any formal process to review and approve amended plans for an expanded facility that would justify the change in project size. Ultimately, the facilities were built at least 250-percent larger than the stated need and cannot be fully staffed or operated by BIA.

In our judgment, given the availability to BJA of critical information that was referenced in the grant applications and should have been readily apparent through review of progress reports, on-site visits, desk reviews, and T&TA provider site visit reports, we believe BJA had or should have had sufficient knowledge to prevent the unapproved and unjustified expansion of the correctional facilities sizes beyond the stated need. During our previous audit of the Navajo Nation, we found that the Navajo Nation lacked sufficient resources to fully staff or operate either facility built with TJSIP grant funds.

Tribe Number 9

Tribe Number 9, located in Montana, was awarded a planning grant for \$150,000 on September 29, 2009, to fund the development of a comprehensive master plan that would systematically examine the full range of adult detention, criminal justice service, support options, and community-based alternatives. The comprehensive master plan was completed by a contractor in May 2012 for \$124,697.³⁸

In November 2014, we met with Tribe Number 9 officials regarding the status of the \$124,697 master plan and discovered that they had no knowledge of the master plan until we brought this information to their attention and were generally unaware of any related activity to pursue construction. According to tribal officials, there is a great need for a correctional facility. However, the original planning team involved with this grant was no longer employed at the tribe, which is why Tribe Number 9 officials we spoke with were unaware of the project.

Additionally, since the master plan was completed in 2012, Tribe Number 9 had not had any contact from BJA and had not received any information on how to proceed with construction. This condition again demonstrates our concerns over BJA's oversight and technical assistance with the TJSIP program. In our judgment, the longer the master plan sits unused, the more likely it is to become irrelevant, resulting in ineffective use of grant funding. OJP explained that BJA does not have any control over a tribe's transfer of knowledge process when there is staff turnover or a change in administration. Although we agree that BJA may not be aware of tribal staff changes and may not be able to fund every construction project identified through planning grants or the Tribal Justice Systems Strategic Planning

³⁸ This price includes the cost of the contractor, but does not take into account grant administration costs incurred by Tribe Number 9.

Program, completing planning efforts without the intention of assisting tribes with implementing plan recommendations does not appear to be the best use of limited resources. Also, given the resources available through T&TA, which is available to current TJSIP grantees as well as non-TJSIP tribes seeking assistance, it seems reasonable to offer assistance.

Based on our review of OJP's oversight and management of the TJSIP grantees, and particularly the examples described above, we recommend OJP ensure any current or future facilities are constructed or renovated in a timely fashion, to a size that meets tribal needs that is also within the funding availability and intent of the TJSIP program. Finally, we recommend that OJP develop a process to ensure planning grantees or the Tribal Justice Systems Strategic Planning Program grantees are provided the tools to implement recommendations that resulted from the planning process, which may include providing outreach and technical assistance.

OJP's Implementation of Services Provided by Training and Technical Assistance Providers

As discussed previously, to support the TJSIP BJA utilizes T&TA providers.³⁹ OJP awarded four grants, including two non-competitive supplement awards to JSG and one grant, including two non-competitive supplement awards to the NIJC to assist TJSIP grantees or other non-TJSIP grantees through the justice system planning process. OJP also competitively awarded a time and materials task order against a General Services Administration (GSA) Federal Supply Schedule contract to Alpha Corp to assist the TJSIP grantees during the construction phase.

Planning Grantee Training and Technical Assistance Providers

As shown in Table 6, JSG was awarded grants by OJP in 2008 and 2009 totaling \$7,694,615 to provide T&TA to TJSIP grant recipients in 2008, 2009, and 2010, including Recovery Act TJSIP grant recipients.

³⁹ We reviewed the T&TA services provided by three T&TA providers to TJSIP grantees.

Table 6
TJSIP T&TA Grants Awarded to JSG

GRANT AWARD	AWARD START DATE	AWARD END DATE	AWARD AMOUNT
2008-IP-BX-K001	02/01/2008	09/30/2010	\$999,871
2009-S4-BX-K146	09/01/2009	02/28/2011	369,394
2009-IP-BX-K002			
Original Award	08/01/2009	07/31/2011	999,794
Supplement 1	09/17/2010	09/30/2013	587,614
2009-ST-B9-0101			
Original Award	09/01/2009	08/31/2011	4,487,335
Supplement 1	09/24/2010	06/30/2015	250,607
TOTAL AWARDED			\$7,694,615

Source: OJP

Grant Numbers 2008-IP-BX-K001 and 2009-IP-BX-K002 were awarded to assist tribes with the planning necessary to establish tribal correctional facilities that are appropriate for the intended population, supportive of cultural and traditional values, safe and secure when completed, and adhere to current standards regarding correctional operations, programs, and design.

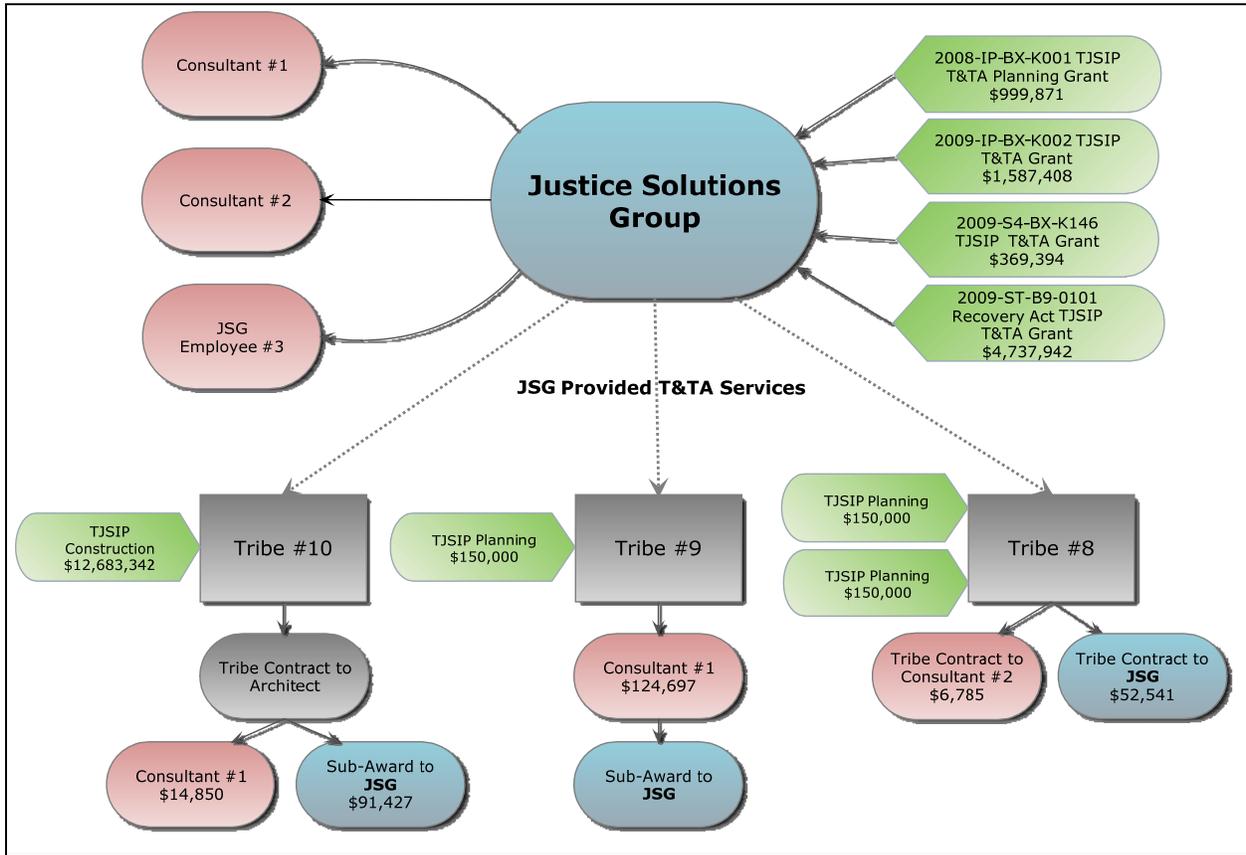
Grant Number 2009-S4-BX-K146 was awarded to host and deliver Tribal Detention Administrators Forums and TJSIP Workshops to tribal jail administrators and planning teams. Recovery Act Grant Number 2009-ST-B9-0101 was awarded to provide tribal communities funded under this program with knowledge, skills, and a methodology to develop effectively functioning justice systems that promote public safety by utilizing a range of facilities, sanctions, and services consistent with offender risks and needs.

As shown in Figure 6, we found that JSG received funds in addition to OJP grant funds it received to provide T&TA to TJSIP grantees, either directly through contracts with the tribes that JSG was tasked with providing T&TA, or as subawards of contracts with the tribes that JSG was tasked with providing T&TA. The contracts or subawards were entered into by the tribe and paid with the tribe's planning grant funds to complete required planning products, such as a master plan and needs assessment. These contracts were in addition to OJP grant funds awarded to JSG to provide T&TA to assist with the planning process to complete a master plan. Through the T&TA grants, JSG employs individuals as employees or consultants to provide T&TA services to tribes.⁴⁰ These employees and consultants also contract directly with the tribes and are paid with the tribes' planning grant funds to complete planning products.

⁴⁰ According to the OJP Financial Guide, a consultant is an individual who provides professional advice or services. These consultants had contracts with JSG to perform services and were not employees of JSG. According to JSG, JSG does not have any authority over consultants outside of the work performed through the T&TA grants.

Figure 6

BJA's Training and Technical Assistance Provider Business Model



Note: Blue indicates contract funds received by JSG; pink indicates contract funds received by consultants and employees; and green indicates TJSIP grant funds.

Source: Tribe Number 10, Tribe Number 9, Tribe Number 8, and OJP

BJA's other T&TA provider, the NIJC, has a consultant who provides a substantial amount of T&TA to grantees. According to NIJC's consultant, it does not contract directly with the tribes for which it provides T&TA because this would result in a COI.

Undefined Training and Technical Assistance Services

During our review of grant award materials, solicitations, and interviews with BJA officials, we were unable to determine specific services that T&TA providers should be providing to TJSIP planning grantees as technical assistance. According to BJA, the scope of work provided under the T&TA grants is broad, but the general idea is to assist grantees with the planning process.

According to BJA, the major milestones of the planning process include:

- appointing a project manager,
- attending an OJP-provided training workshop,
- hiring a consultant,
- completing a community profile review,
- conducting a case processing review,
- conducting a data review,
- identifying the goals and objectives of the project,
- creating the preliminary project budget, and
- submitting a master plan to BJA.

The services BJA has stated that are outside the scope of T&TA include: (1) development of a master plan, which includes a justice system assessment, data collection, and plan development; (2) preparation of architectural design for justice system facilities; and (3) implementation of master plan recommendations and findings. BJA officials explained that as the T&TA provider, JSG provides training to grantees for the master plan development and ad-hoc type work for grantees to help them with the planning process. They explained that the master plan is above and beyond the T&TA services per the grant agreement. BJA further explained that T&TA providers can provide services directly to a grantee for a fee, but the awards must be made in accordance with DOJ procurement rules and regulations. According to BJA officials, they expect T&TA providers to disclose extra work, but until 2013 there was no requirement for certifying supplemental fee-for-service activities between T&TA providers and grantees. BJA officials told us that they provide grantees with COI criteria, which requires grantees to conduct all procurement transactions with open, free, and fair competition. The OJP Financial Guide also requires grantees to be free from personal or organizational COI, both in advice and appearance.

However, we determined that some of the services provided by the T&TA providers under T&TA grants from OJP coincide with the services contracted for an additional fee that BJA has stated are outside the scope of T&TA. For example, the T&TA providers have been tasked with assisting at each phase of the planning process. This includes the master plan development process. Tribes contract to complete master plans for an additional fee. As a result, there is potential overlap between needs assessment and master planning services, and assisting TJSIP grantees in achieving each major milestone of project planning. BJA's T&TA

services are not adequately defined to determine what services are provided by T&TA providers through OJP grants.

Currently, BJA's T&TA providers are permitted to solicit additional business from the tribes directly or through subawards. Because BJA has not adequately defined T&TA services, it is difficult to determine if services contracted directly by the tribe should be covered with T&TA funds rather than tribes contracting with firms to complete services at an additional cost to the tribe. Additionally, because T&TA providers provide services in addition to the T&TA services, there is motivation to solicit new business rather than perform T&TA services to existing grantees.

Subsequent to our initial work, OJP officials sought to clarify the scope of T&TA services. OJP stated that TJSIP T&TA was designed to provide tribes with guidance on how to develop a master plan and training on what needed to be included in master plan development. However, we believe this description does not fully describe the role of the T&TA providers. We reviewed the work of T&TA providers, which included the following: (1) conducting site visits to facilitate meetings with planning teams to address the planning process; (2) providing feedback on construction documents, plans, or the feasibility of a project and describing any issues foreseen with the project; (3) reviewing, writing, or providing Request for Proposals (RFP)/ Request for Quotes (RFQ); (4) raising questions to the tribes about the projects; (5) assisting tribes to determine the elements of the mission and vision to incorporate in the master plan; (6) providing design concepts; (7) assisting with developing operational plans that include staffing; and (8) providing quick needs assessments, establishing short-term and long-term program and project goals, and then conceptualizing the project. We therefore found the T&TA providers were much more involved than simply providing guidance and training about master plans to grantees. We also believe the fact that OJP has not clearly defined T&TA services has contributed to any inconsistent understandings of what is included among T&TA services.

OJP Conflict of Interest Policy

The OJP Financial Guide requires grantees to be free from personal or organizational COI, both in advice and appearance. As it relates to a COI in advice, the OJP Financial Guide further states that, recipients should not participate in any decisions, approval, disapproval, recommendations, investigation decisions, or any other proceeding concerning any person or organization with whom they are negotiating or who has an arrangement concerning prospective employment, has a financial interest, or for other reasons can have less than an unbiased transaction with the recipient. As it relates to a COI in appearance, the OJP Financial Guide states that recipients should avoid any action that might result in, or create the appearance of: (1) using one's official position for private gain; (2) giving special treatment to any person; or (3) losing complete independence or objectivity.

According to OJP OGC officials, it is OJP's position that T&TA recipients cannot seek or obtain direct contracts with the same grantees to whom they are providing T&TA services. OGC officials explained that this practice would, at a minimum, create the appearance of a COI in violation of OJP's Financial Guide. In comparison, according to BJA policy from FY 2013, determining if an apparent COI exists depends on the specific facts of each case. The basic principle to evaluate whether a tribe may contract directly with a T&TA provider is that all procurement transactions must be conducted with open, free, and fair competition in accordance with DOJ procurement rules and regulations. We found that OJP's position was more stringent than BJA policy.

It was JSG's understanding through conversations with OJP that it could compete and contract directly with tribes. However, based on our review, we identified several instances where a COI existed in advice or appearance as a result of contracting directly with tribes.

- Tribe Number 10

Under the Recovery Act, Tribe Number 10 contracted with an architectural firm for the design of its adult correctional facility. The architectural firm subawarded to JSG for \$91,427 to: (1) validate population analysis and bed requirements, the operational program, and the architectural space program; and (2) provide building organization options and facility concept designs. The architectural firm also subawarded to Consultant Number 1 for \$14,850 to assist with adding cultural aspects to the facility that were not originally included in the plan. According to officials from Tribe Number 10, the architectural firm had a previous relationship with JSG. Due to the lack of documentation, we could not determine if the procurement of these subawards was conducted with open, free, and fair competition as required by BJA's policy.

While JSG was contracted by the architectural firm, BJA had also requested JSG, as the T&TA provider, review Tribe Number 10's designs to provide feedback. JSG therefore reviewed the designs it helped create. Because of the relationship with the tribe, JSG could not impartially perform its duties as the T&TA provider, which is a COI in appearance. We therefore questioned the \$91,427 that was paid to JSG and \$14,850 paid to Consultant Number 1 as unallowable due to the COI.

- Tribe Number 9

In 2009, Tribe Number 9 received one planning grant from OJP for \$150,000. In response to a RFP for the development of a comprehensive master plan, published in May 2011, Tribe Number 9 received two proposals – one for \$86,401 submitted by an architectural firm and one for \$92,828 submitted by Consultant Number 1. In its proposal, Consultant Number 1 partnered with JSG and one additional company to provide Tribe Number 9 with a comprehensive master plan and referenced JSG projects. Further, according to Tribe Number 9, Consultant

Number 1 was also related to Tribe Number 9's Chief Judge, the project manager for the TJSIP grant. Tribe Number 9 ultimately selected Consultant Number 1 to develop the master plan.

The master plan was completed in May 2012 by Consultant Number 1, JSG, and a third firm. Nevertheless, on May 29, 2012, after the master plan had been completed, the tribe modified the contract with Consultant Number 1 to include outlining concept design services to complete the original master plan even though these services were already included in the original scope of work. The modification increased the contract cost by \$31,970 or 34 percent of the original contract amount. According to the invoice submitted by Consultant Number 1, the services under the modification were provided from July 1, 2012, to August 31, 2012, which was after the master plan was completed in May 2012.

From our review, a potential COI in advice existed with JSG and Consultant Number 1 because JSG and Consultant Number 1 had financial interests in Tribe Number 9 through the separate contract with the tribe while providing advice to the tribe through the T&TA. It would not be possible for JSG or Consultant Number 1 to remain unbiased in providing T&TA for work in which they had a financial interest because they also worked as contractors for Tribe Number 9. Additionally, as the T&TA provider, JSG was tasked with assisting the tribes in cost effectively creating a comprehensive master plan. As the tribe's consultant, JSG and Consultant Number 1 added approximately \$31,970 for services that were part of the original bid in addition to the amount paid under the original contract amount of \$92,727. We questioned \$124,697 that was paid to JSG and Consultant Number 1 as unallowable due to the COI and unjustified costs incurred above the original contract amount.

- Tribe Number 8

Tribe Number 8 received two planning grants from OJP, one in 2008 for \$150,000 and one in 2009 for \$150,000. We found that Tribe Number 8 entered into two contracts to complete a needs assessment and master plan using grant funds. One contract was directly with Consultant Number 2 to provide professional consulting services in the area of needs assessment, planning, and community development. Consultant Number 2 received \$6,785 from both TJSIP planning grants awarded to Tribe Number 8 for services in addition to payments received from JSG for providing services under BJA T&TA grants. The services provided by Consultant Number 2 to Tribe Number 8 to assist the tribe through the planning process appear to be the same services provided through the BJA T&TA grant awarded to JSG. As a consultant of JSG, the consultant knew or should have reasonably known these services were to be provided by JSG at no cost, and therefore the contract with Tribe Number 8 was inappropriate. The second contract was with JSG to conduct the needs assessment and master planning. JSG received \$52,541 to complete Tribe Number 8's master plan, in addition to OJP grant funds it received for providing T&TA to assist Tribe Number 8 with the planning process to complete a master plan.

From our review, a potential COI in advice existed with JSG and Consultant Number 2 because JSG and Consultant Number 2 had financial interests in Tribe Number 8 through the separate contracts with the tribe while providing advice to tribes through T&TA. Therefore, we questioned \$59,326 that was paid to JSG and Consultant Number 2.

- Tribe Number 7

Tribe Number 7 received a planning grant in 2010 for \$150,000. We found that Tribe Number 7 non-competitively awarded a contract to three consultants to complete the needs assessment and master plan. One of the three consultants was Consultant Number 2, who received \$30,998 from the TJSIP grant through this contract. Consultant Number 2 was simultaneously providing advice to tribes through T&TA, thereby creating at a minimum a potential COI in advice since Consultant Number 2 had a financial interest in Tribe Number 7 through the separate contract with the tribe. Therefore, we questioned \$30,998 paid to Consultant Number 2.

- Tribe Number 11

Tribe Number 11, located in Arizona, received a planning grant in 2010 for \$150,000 to plan a juvenile detention facility. According to Tribe Number 11, JSG, as the T&TA provider, helped write the RFP for the planning contractor and provided a list of organizations to send the RFP. We reviewed the list of justice planning firms provided to the tribe and found that the first listed on JSG's list of potential contractors was JSG itself. This created a COI in appearance since JSG used its position as the T&TA provider for private gain by recommending itself as a contractor.

The tribe ultimately selected a different contractor, a partnership between an architectural firm and JSG Employee Number 3, to provide planning and concept design architectural services for the proposed juvenile detention treatment center.⁴¹ The final product of the contract was a comprehensive master plan, at a total cost of \$91,494. Tribe Number 11 subsequently entered into a second contract with the same partnership that included JSG Employee Number 3, to develop the Treatment Program and Operations Protocols to be implemented by Tribe Number 11. The scope of services provided by JSG Employee Number 3 was to facilitate monthly team meetings, assist in the review and evaluation of programs and facilities, provide site selection assistance, and advance the design concept. The partnership that included JSG Employee Number 3 received \$45,000 from the TJSIP grant through the second contract.

⁴¹ The individual identified here as JSG Employee Number 3 was a consultant who became an employee in January 2010.

Although technical assistance has not been adequately defined by BJA, we believe the services provided through the \$45,000 contract, including facilitating monthly team meetings, assisting in reviews and evaluations, and assisting with site selection, were services that were provided through the T&TA grants awarded to JSG.⁴² Additionally, as an employee of JSG, JSG Employee Number 3 knew or should have reasonably known these services were to be provided by JSG at no cost and therefore inappropriately contracted with Tribe Number 11. Moreover, a potential COI in advice existed with JSG Employee Number 3 because JSG Employee Number 3 had a financial interest in Tribe Number 11 through the separate contract with the tribe while providing advice to tribes through T&TA. We therefore questioned \$136,494 paid to the partnership with JSG Employee Number 3 through the two contracts with Tribe Number 11.

- Tribe Number 12

Tribe Number 12, located in Arizona, received a planning grant in 2009 for \$146,183 to create a comprehensive master plan for the development, building, and operation of a correctional facility. We found that Tribe Number 12 awarded a contract to JSG for \$109,230 to complete the needs assessment and master plan. The total amount paid under the contract to JSG was \$105,723. To implement the recommendations of the needs assessment and master plan, Tribe Number 12 subsequently received a renovation grant in 2011 for \$976,935 to develop and outfit a correctional alternative facility through the renovation of an existing building that formerly housed an Indian Health Services clinic. Through this award, JSG was paid \$179,885 through a fixed-fee contract to provide programming and project design. Tribe Number 12 was unable to provide documentation showing the contract to JSG was competitively bid. Services provided by JSG to the tribe under the contract included: (1) facilitating the formation of a Justice System Advisory Board, (2) reviewing recommendations of the comprehensive master plan, (3) conducting regular coordination meetings with the grant recipient to monitor progress, and (4) monitoring and facilitating grant reporting.

From our review, a potential COI in advice existed with JSG because JSG received grant funds to provide T&TA to Tribe Number 12, while also receiving funds to complete the needs assessment, a master plan, and programming and project design. JSG could not impartially provide advice to the tribe it has a financial interest in through the separate contract. Therefore, we questioned \$285,608 that was paid to JSG. Additionally, although technical assistance has not been adequately defined by BJA, the services described appear to be assistance that the T&TA provider should provide at no cost to the grantee.

⁴² OJP stated that these services are not within the purview of T&TA, but our review indicates that T&TA providers were providing these services to TJSIP grantees.

- Tribe Number 13

Tribe Number 13, located in Washington, received a planning grant in 2010 for \$150,000 to hire a consultant to conduct a jail feasibility study to determine the viability of building and operating a new jail facility on Tribe Number 13's reservation. To conduct the jail feasibility study, including a needs assessment and master plan, Tribe Number 13 competitively awarded a contract to JSG for \$99,480. The needs assessment and master plan was completed by JSG in June 2013 for a total cost of \$99,480. From our review, a potential COI in advice existed with JSG because JSG had a grant to provide advice to Tribe Number 13 through T&TA, while also receiving funds to complete the needs assessment and master plan. Therefore, we questioned \$99,480 that was paid to JSG.

According to OJP, as early as 2008, BJA contacted OJP's OGC with specific questions about COIs related to T&TA providers contracting directly with TJSIP grantees. Based on the documentation provided by OJP, at that time, OJP's OGC did not specifically prohibit direct contracting between T&TA providers and grantees, but cautioned against the practice due to potential COI issues. According to OJP, again in 2010, BJA brought the issue to OJP's OGC, which again determined this practice was not specifically prohibited. In May 2011, the OIG brought the issue to OJP's OGC. At that time, OJP's OGC informed the OIG that it was OJP's position that T&TA recipients cannot seek or obtain direct contracts with the same grantees to whom they are providing T&TA services. OJP OGC officials explained to the OIG that this practice would, at a minimum, create the appearance of a COI in violation of OJP's Financial Guide. In 2013, BJA worked with OJP's OGC to develop a policy to address COI issues going forward. The policy, as stated previously, explained that determining if a COI exists depended on the specific facts of each case. The basic principle to evaluate whether a tribe may contract directly with a T&TA provider was that all procurement transactions must be conducted with open, free, and fair competition in accordance with DOJ procurement rules and regulations. Additionally, starting in 2013, a special condition was developed and included in all DOJ T&TA awards. The special condition developed by OJP stated the following:

Recipient understands and agrees not to engage in activities constituting organizational conflicts of interest, such as bidding on specifications that you guided as part of the provision of training and technical assistance under this award. Forbidden organizational conflicts of interest are described more fully in detail in the Federal Acquisition Regulations, 48 C.F.R. § 9.505. Prior approval from your grant manager is required for any work with a grantee.

Had OJP developed and implemented policies and procedures based on the information provided in 2008, 2010, or 2011, these COIs could have been prevented. Additionally, based on our review, OJP's current policy still does not specifically prevent T&TA providers from contracting directly with grantees.

Overall, when a T&TA provider assists a tribe through the planning process and then also enters into a separate contract with the tribe to complete the same planning, it creates, at a minimum, the appearance of a COI. It would not be possible for JSG to appear unbiased in providing T&TA for work it conducted as a contractor. We questioned \$842,879 paid to JSG and its consultants directly by the tribes, including \$106,277 paid by Tribe Number 10, \$124,697 paid by Tribe Number 9, \$59,326 paid by Tribe Number 8, \$30,998 paid by Tribe Number 7, \$136,494 paid by Tribe Number 11, \$285,608 paid by Tribe Number 12, and \$99,480 paid by Tribe Number 13.⁴³ This is in addition to the \$7,694,615 OJP awarded to JSG to provide T&TA to TJSIP grantees. Based on our analysis, BJA T&TA providers should not separately contract with TJSIP grantees if they have also been tasked with assisting through the planning process.

Cost of Producing a Master Plan

According to BJA, the T&TA Program was established to assist tribes in developing strategies to cost-effectively plan, renovate, and/or construct facilities associated with the incarceration and rehabilitation of juvenile and adult offenders subject to tribal jurisdiction. OJP awarded JSG a grant totaling \$999,794 in 2009 and a supplemental award in 2010 for \$587,614 to primarily assist tribes who received non-Recovery Act planning awards in 2009 and 2010. JSG was to assist the tribes with the planning necessary to establish tribal correctional facilities that were appropriate for the intended population; supportive of cultural and traditional values; safe and secure when completed; and adhere to current standards regarding correctional operations, programs, and design. BJA has stated to the OIG that these services did not include the completion of a needs assessment or master plan. Of the 18 awards in 2009, 11 were for planning grants, which totaled \$1,605,855. Of the 25 awards in 2010, 17 were for planning grants, which totaled \$2,355,396. Overall, these awards, including T&TA funding, totaled \$5,548,659.

Through our analysis, we determined that the average cost for completion of a needs assessment and master plan was \$85,509, which included all analysis, travel, and production costs charged by the consultant.⁴⁴ Consequently, the total cost for each of the 28 planning grants from 2009 and 2010 for tribes to complete a needs assessment and master plan using the average cost of \$85,509, would have been approximately \$2,394,247. This is \$3,154,412 less than the total awards made to planning grantees and to JSG. As addressed previously, JSG was also being paid additional funds by the tribes, through separate contracts or subawards, to complete needs assessments, master plans, or other design input. Therefore, OJP was indirectly paying JSG to complete the needs assessments, master plans, or

⁴³ The differences throughout the report are due to rounding.

⁴⁴ The average cost of a master plan was calculated by taking the average cost for the eight tribes judgmentally selected for our review to complete a master plan. Our original sample included 11 tribes. However, of the 11 tribes, 2 had not selected a consultant to complete the master plan and 1 completed an environmental assessment with the TJSIP grant funds. Therefore, the calculation was based on the results from eight tribes.

other design aspects, while also providing funds to JSG to facilitate the planning process. According to BJA officials, the cost of a master plan is significantly more than providing T&TA to assist with the process. However, based on our analysis there appears to be a material cost savings to the government if T&TA is focused on providing services to complete the needs assessment and master plan, which is the ultimate goal of the planning grants awarded under the TJSIP, rather than funding T&TA providers to assist tribes through the planning process. Additionally, from our review, we found that the average cost of a master plan completed by JSG or one of its consultants was \$101,579, while the average cost of a master plan completed by an independent consultant not involved with JSG was \$58,726. The price difference was approximately \$42,852 to use JSG or one of its consultants to complete the tribe's planning work product.

OJP stated they no longer provide funding specifically for planning correctional facilities. However, funding is provided to tribes through the Comprehensive Tribal Justice Systems Strategic Planning Program to conduct broader, more comprehensive assessments of justice system needs. If BJA awards planning projects specific to tribal construction or renovation in the future, OJP stated it will structure the program to ensure that the most cost-effective approach to provide technical assistance to grantees is used. We found that BJA announced a competitive grant for FY 2016 Tribal Justice System Capacity Building Training and Technical Assistance Program to provide tribal jurisdictions with assistance to: (1) develop strategies to address crimes relating to substance abuse and other controlled substances, and (2) implement and enhance tribal justice systems. Although T&TA is no longer provided specific to correctional facilities, there is still a potential for the same issues to persist through this T&TA. Therefore, the concerns raised in this report are relevant to OJP's ongoing activities.

Other Management and Oversight Issues

The goal for the TJSIP grant awarded to BJA's T&TA provider, the NIJC, was to assist tribes in assessing their existing justice system continuum of services to determine the strategies that will be most effective, efficient, and sustainable in addressing the tribal correctional and/or correctional alternative needs.⁴⁵ We found that the NIJC completed the following deliverables under the grant: (1) planning tool for project management, (2) online version of Planning New Institutions training, and (3) two publications. As of August 2015, the NIJC was waiting for BJA approval to implement these items. For the planning tool, the NIJC had been waiting for BJA approval since July 2013. We did find that the NIJC requested and was approved for a project extension to continue providing T&TA through December 31, 2015, and to process the publications through BJA's approval process. These deliverables were created to assist TJSIP grantees through the

⁴⁵ U.S. Department of Justice Office of the Inspector General, *Audit of the Office of Justice Programs Grants Awarded to the National Indian Justice Center, Santa Rosa, California*, Audit Report Number GR-90-15-006 (September 2015), examined whether costs claimed under the grants were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the grants.

planning process. However, due to BJA's lengthy review process, over 2 years in one instance, approved resources that could be valuable to grantees to complete planning were not being utilized.

According to OJP, not all work products are approved as they do not all meet OJP's quality standards and investing further resources into the product may not be in the best interest of the government. However, the performance of this grantee was, in part, based on producing four work products for planning grantees to utilize during the planning process. In at least one instance, the grantee waited over 2 years for feedback from OJP to produce a work product to meet its performance requirements. OJP should have been monitoring and assisting the grantee throughout product development to ensure that each product met quality standards and resources were not wasted on products OJP has deemed inadequate. Also, if work products are not approved the grantee cannot meet performance requirements, which seems like an ineffective use of grant funds.

Based on our review of the planning grantees' T&TA providers, BJA did not properly administer awards to the TJSIP T&TA grantees. Specifically, BJA did not ensure: (1) T&TA services were properly defined; (2) T&TA providers were free from COIs; (3) that funds were efficiently utilized to assist tribes with grant goals and objectives; and (4) ensure all work products submitted by grantees are reviewed and approved in a timely manner.

Construction Grantee Training and Technical Assistance Provider

Alpha Corp is a full-service consulting firm offering a wide array of program and construction management, project controls, and engineering services. It provides services to a broad spectrum of clients, including government agencies, municipalities, institutions, architectural and engineering firms, private enterprises and contractors. Alpha Corp's team includes professional engineers, program and project managers, project controls experts, and other professionals.

OJP awarded Alpha Corp \$2,553,727 on September 30, 2009, through a task order against a GSA Federal Supply Schedule contract. The Federal Supply Schedule is managed by GSA and provides federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying. Under the contract, Alpha Corp was tasked with assisting TJSIP grantees during the construction of detention facilities. BJA sought a comprehensive project management strategy to assist BJA with ensuring that grantees were implementing projects in the most cost effective and efficient manner and meeting proposed projects timelines. Assistance included working with TJSIP grant recipients to: (1) ensure that renovation and/or construction projects were completed according to the schedule timeline; (2) ensure that TJSIP grant recipients were utilizing efficient and cost-effective strategies to achieve project goals as proposed in the grant application; (3) conduct on-site visits and meetings with project directors and/or managers to ascertain the status and progress of renovation and construction projects; (4) assist BJA in ensuring that Recovery Act

TJSIP grantees are adhering to the Recovery Act Buy American requirement and the Recovery Act *National Environmental Policy Act* (NEPA) requirement in renovating or constructing facilities through telephonic monitoring, on-site visits, and review of invoices; and (5) ensure that grantee projects are constructed or renovated in accordance with appropriate correctional facility standards.

OJP Award Process

We reviewed the award process for the competitively bid time and materials contract. We found that OJP did not prepare a Procurement Acquisition Plan as required by the Federal Acquisition Regulation (FAR). The Procurement Acquisition Plan is a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. The purpose is to ensure that the government meets its needs in the most effective, economical, and timely manner.

Invoice Analysis⁴⁶

To receive payment, Alpha Corp submitted to OJP monthly progress reports and invoices. The Contracting Officer's Technical Representative (COTR) would review the expenses and receipts submitted. Once approved by the COTR, the invoice would be approved by the contract specialist, who would verify that the rates billed matched the rates per the contract. We reviewed the invoices submitted by Alpha Corp. We found that OJP paid Alpha Corp for invoices that included charges for a position that was not part of the GSA Federal Supply Schedule or an approved position under the contract at the time of payment. For GSA Federal Supply Schedule contracts the FAR states:

For administrative convenience, an ordering activity contracting officer may add items not on the GSA Federal Supply Schedule to an individual task or delivery order only if: (1) all applicable acquisition regulations pertaining to the purchase of the items not on the GSA Federal Supply Schedule have been followed; (2) the ordering activity contracting officer has determined the price for the items not on the GSA Federal Supply Schedule is fair and reasonable; (3) the items are clearly labeled on the order as items not on the Federal Supply Schedule; (4) all clauses applicable to items not on the GSA Federal Supply Schedule are included in the order.

OJP paid \$213,472 to Alpha Corp for a NEPA Coordinator position to help grantees fulfill the NEPA requirements of construction grants, related to site preparation. This position and hourly rate were not on the pricelist of services offered by Alpha Corp on the GSA Federal Supply Schedule. According to Alpha Corp, Alpha Corp submitted to BJA a proposal for a NEPA Coordinator position,

⁴⁶ On November 1, 2016, OJP provided the OIG with additional documentation submitted by Alpha Corp on May 13, 2016 to OJP to address the questioned costs we identified. OJP stated this information had not been provided to the OIG earlier due to an oversight by OJP. Our analysis of the additional documentation appears in Appendix 6.

which included a list of duties and proposed fee amount for the associated work. BJA accepted Alpha Corp's proposal and issued a modification to the contract to increase the funding for the NEPA Coordinator position. According to Alpha Corp, the NEPA Coordinator position was substantially equivalent to the primary role of the Quality Assurance Engineer/Manager position, which was an approved position on the GSA Federal Supply Schedule. Alpha Corp also stated it provided BJA a 5.5 percent discount on the rate for the NEPA Coordinator position from the scheduled rate for the Quality Assurance Engineer/Manager. Despite Alpha Corp's statements, BJA did not document that the NEPA Coordinator position was equivalent to the Quality Assurance Engineer/Manager position or that Alpha Corp provided BJA with a discount. Therefore, it was not apparent that OJP was in compliance with the requirements of the FAR.

We also found one invoice submitted by Alpha Corp to OJP that included 189 hours of work by the Project Coordinators. However, the timesheets submitted by Alpha Corp only supported 166 hours of work. Therefore, Alpha Corp overbilled and OJP overpaid Alpha Corp by 23 hours at \$107 per hour for a total of \$2,470, which we consider unallowable.

Further, we found that OJP improperly paid Alpha Corp for per diem expenses incurred for travel. For time and materials contracts the FAR states that contractors can only be reimbursed for actual costs. Per diem rates for meals and incidentals are not based on actual costs. We found that Alpha Corp initially submitted invoices with actual travel expenses. However, starting in June 2010, Alpha Corp converted to the per diem method of reimbursement. This change in policy was not permissible under the contract. In total, we questioned \$22,574 paid to Alpha Corp for per diem reimbursement.

Finally, as a time and materials contract, the FAR requires "appropriate government surveillance of contractor performance to give reasonable assurance that efficient methods and effective cost controls are being used." However, despite the review performed by OJP prior to payment, we identified other deficiencies with OJP's oversight of Alpha Corp's compliance with federal and Alpha Corp travel policies as follows:

- Reimbursed per diem rates that were not consistent with the GSA per diem rates including using the end location, with higher per diem rates, to claim per diem on the last day of travel; and receiving per diem in addition to reimbursement for actual meal costs when providing lunches to tribal members while conducting on-site visits;
- Inconsistent/improper methods to allocate costs between personal time, TJSIP work, and non-TJSIP work, which included combining non-TJSIP work with the TJSIP work during a week and charging full hotel and per diem to the TJSIP; or extending work travel without working full days to remain in a locale over a weekend;

- Stayed at non-grantee locations at higher per diem when performing site visits. This includes conducting 1-day site visits to a tribe while staying extra days for report preparation in cities more expensive than the tribe's location, such as Las Vegas, Nevada, and Monterey, California, which ultimately incurred extra travel costs at increased per diem;
- Duplicate expenses;
- Unauthorized purchases for airfare upgrades;
- Unallowable charges for rental cars including upgrades, insurance, and prepaid fuel;
- Missing receipts for hotel, car rental, parking, or cell phones; and
- Support for travel costs that did not match costs claimed in invoices.

As a result of these deficiencies, we identified \$15,022 in unallowable costs and \$19,273 in unsupported expenses, including \$17,080 in invoice costs that lacked adequate supporting documentation, and \$2,193 in other unsupported travel expenses.⁴⁷

Contract Performance

Finally, we reviewed the performance of Alpha Corp. The Statement of Work describes Alpha Corp as filling a comprehensive project management function and specifies that the scope of work would include conducting proactive, ad-hoc on-site meetings with grantee project directors and providing progress information to BJA.

As some of the objectives and tasks listed in the contract were not required, OJP clarified that Alpha Corp's role was to apply its specialized knowledge and expertise in construction matters to assist grantees and BJA with construction project management and implementation matters, including maintaining cost effectiveness and efficiency. Grant management and implementation matters, and overall grant program and grantee oversight, were the responsibility of BJA.

Under the T&TA contract, Alpha Corp was required to provide site visit reports to BJA after each visit to each facility location, which provided BJA a status of the project. According to Alpha Corp, it produced site visit reports for BJA that clearly noted the status of the project scope and any changes, budget, and schedule as well as Recovery Act requirements, actual project conditions, quality control, project control activities and any project risks. As part of the site visits, Alpha Corp also reviewed pay applications from contractors and contract

⁴⁷ Of the \$15,022 in unallowable costs identified, \$970 were also questioned as unallowable per diem payments since this was a time and materials contract that required actual cost reimbursement and for food expenses that were in addition to the per diem received.

modifications. For the Navajo Nation, we reviewed all the Alpha Corp site visit reports provided by OJP, which are discussed in more detail previously in this report. While Alpha Corp submitted the site visit reports for Navajo Nation, ultimately, the facilities were built at least 250-percent larger than the stated need and cannot be fully staffed or operated by BIA.

In our judgment, OJP did not properly manage the time and materials contract awarded to Alpha Corp to provide T&TA to the TJSIP grantees during the construction of the detention facilities, resulting in inadequate contract documentation, \$40,065 unallowable costs, \$19,273 in unsupported costs, and instances of non-compliance with contract terms and conditions.

Based on our review of BJA's T&TA providers, we recommend that OJP remedy the \$842,879 in unallowable costs related to the COI issues, \$40,065 in unallowable costs improperly incurred under the time and materials contract, and \$19,273 in unsupported costs related to deficiencies with federal travel and Alpha Corp's travel policies. We also recommend that OJP ensure T&TA services are well defined and COI policies are enforced. We recommend OJP implement policies that ensure T&TA providers do not contract separately to provide services to grantees or, in the rare circumstance a contract may be necessary, require prior OJP approval before T&TA providers contract separately with grantees or accept subawards from a grantee's contractor. We recommend OJP analyze the costs and benefits of including master planning services as a service provided through T&TA. We recommend that OJP ensure that once TJSIP funds are awarded, all work products submitted by grantees are reviewed and approved in a timely manner. Finally, we recommend that OJP ensure compliance with the FAR when awarding contracts as well as throughout the execution of a contract, which includes properly documenting changes to the contract and reviewing invoices to ensure costs are allowable and supported.

Recommendations

We recommend that OJP:

1. Coordinate with BIA to improve the design and certificate of occupancy processes as well as ensure appropriately sized facilities can be funded, completed, opened, and fully operational. This includes developing a formal agreement between OJP and BIA to document the roles and responsibilities of each agency, expectations of each agency, and areas of coordination.
2. Review the circumstances of the facilities that have remained unopened or non-operational after the TJSIP grants were closed, determine if any grant funds should be repaid by the grantees due to the ineffective or inappropriate use of funds, and develop a corrective action plan to ensure that all unopened facilities or less than fully operational facilities become fully operational within a reasonable timeframe.

3. Remedy \$11,603,176 in unallowable costs related to the following:
 - a. \$10,720,232 awarded to the Nisqually Tribe to fund a correctional facility that was not funded or used in conformity with the statutory authority of the TJSIP, and that was inappropriately built with the intention of being a profit-generating facility.
 - b. \$106,277 paid by Tribe Number 10, \$124,697 paid by Tribe Number 9, \$59,326 paid by Tribe Number 8, \$30,998 paid by Tribe Number 7, \$136,494 paid by Tribe Number 11, \$285,608 paid by Tribe Number 12, and \$99,480 paid by Tribe Number 13 for services where a COI existed.
 - c. \$2,470 overpaid to the Project Coordinator position, \$22,574 unallowable per diem travel expenses, and \$15,022 for unallowable travel costs.
4. Enhance its due diligence process to ensure that sufficient comprehensive justice planning has been completed before construction or renovation, which includes assessing alternative treatment needs. This may include requiring and verifying additional information that is currently not required as part of the application materials - such as an assessment of bed space needs, BIA assessment of need and support, a complete construction or renovation plan, and inmate population statistics for more than a 6-month period - as well as assessing the overall impact of awards to ensure the grants will meet tribes' needs and allow them to fully open, operate, and maintain the facilities. This also includes enhancing its process to deobligate funds more quickly if TJSIP grantees are not prepared for construction.
5. Ensure any current or future facilities are constructed or renovated in a timely fashion, to a size that meets tribal needs that is also within the funding availability and intent of the TJSIP program.
6. Develop a process to ensure planning grantees or the Tribal Justice Systems Strategic Planning Program grantees are provided the tools to implement recommendations that resulted from the planning process, which may include providing outreach and technical assistance.
7. Ensure T&TA services are well defined and COI policies are enforced.
8. Implement policies that ensure T&TA providers do not contract separately to provide services to grantees or, in the rare circumstance a contract may be necessary, require prior OJP approval before T&TA providers contract separately with grantees or accept subawards from a grantee's contractor.
9. Analyze the costs and benefits of including master planning services as a service provided through T&TA.

10. Ensure that once TJSIP funds are awarded, all work products submitted by grantees are reviewed and approved in a timely manner.
11. Remedy \$19,273 in unsupported costs related to deficiencies with federal travel and Alpha Corp's travel policies.
12. Ensure compliance with the FAR when awarding contracts as well as throughout the execution of a contract, which includes properly documenting changes to the contract and reviewing invoices to ensure costs are allowable and supported.

STATEMENT ON INTERNAL CONTROLS

As required by the *Government Auditing Standards*, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect in a timely manner: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the Office of Justice Programs' (OJP) management and oversight over the Tribal Justice Infrastructure Program (TJSIP) was not made for the purpose of providing assurance on their internal control structures as a whole. OJP's management is responsible for the establishment and maintenance of internal controls.

As discussed in our report, OJP needs to improve its internal controls to ensure grant funds are used to build and open cost-effective facilities that comply with the statutory authority of the TJSIP, grantees are free from any conflicts of interest, and contract payments are allowable, supported, and in compliance with all contract terms and conditions.

Because we are not expressing an opinion on the internal control structure of OJP as a whole, this statement is intended solely for the information and use of the auditee. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards*, we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices to obtain reasonable assurance that OJP management complied with federal laws and regulations for which noncompliance, in our judgment, could have a material effect on the results of our audit. Management at OJP is responsible for ensuring compliance with federal laws and regulations applicable to the Department of Justice (DOJ). In planning our audit, we identified the following laws and regulations that concerned the operations of the auditee and that were significant within the context of the audit objectives:

- 42 U.S.C. § 13709 (2012)
- Federal Acquisition Regulation (FAR) Subpart 16.6
- FAR Subpart 8.4
- FAR Part 7

Our audit included examining, on a test basis, the compliance with the aforementioned laws and regulations by OJP, and whether non-compliance could have a material effect on operations at OJP. We did so by interviewing auditee personnel, assessing internal control procedures, and examining accounting records and performance reports of TJSIP grantees and the T&TA contractor. As noted in the Findings and Recommendations section of this report, we found that OJP funded a facility intended to generate profit at the Nisqually Tribe with the population housed at this facility subject to tribal jurisdiction as little as 2 percent of the overall population. The constructed facility was not in compliance with the statute that authorized the TJSIP, 42 U.S.C. § 13709, which provides grants to tribes for the construction of tribal justice centers to address violations of tribal civil and criminal laws. Additionally, we found instances where OJP did not ensure compliance with the FAR, which resulted in the improper payment of \$59,338 to Alpha Corporation (Alpha Corp).

OBJECTIVES, SCOPE, AND METHODOLOGY

Audit Objectives

The objectives of our audit were to: (1) assess OJP's management and oversight of the funding provided under the TJSIP (formerly known as the Correctional Facilities on Tribal Lands Program), including the contracting activities of grantees; and (2) determine the extent of OJP's cooperation and coordination with the Department of the Interior Bureau of Indian Affairs (BIA) to ensure efficient and effective correctional services in Indian country.⁴⁸

Scope and Methodology

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.

Our audit generally covered, but was not limited to, fiscal years (FY) 2009 through 2014, although our focus was primarily on the grants awarded prior to FY 2014, since grants that were more recently awarded have had little progress.

To assess OJP's oversight and management, we conducted interviews with officials at OJP, DOJ Office of Tribal Justice, and BIA. We reviewed OJP documentation related to the selection of TJSIP grantees.

In this report we discuss audit work related to 19 TJSIP grantees, which resulted from 5 audits and 11 reviews completed for a judgmentally selected sample of TJSIP grantees and 3 tribes identified as having unopened TJSIP-funded correctional facilities through our review of OJP's coordination with BIA.⁴⁹ For the five audits, we interviewed personnel and performed sample-based audit testing for grant expenditures, financial reports, and progress reports. In this effort, we employed a judgmental sampling design to obtain broad exposure to numerous facets of the grants reviewed. This non-statistical sample design did not allow

⁴⁸ To reflect the expanded scope of the Correctional Facilities on Tribal Lands Program under the *Tribal Law and Order Act*, BJA changed the name of this program to the TJSIP.

⁴⁹ We completed reviews of 10 judgmentally selected TJSIP planning grantees and 1 TJSIP construction grantee. In this report, we discuss the results from 6 of the 10 TJSIP planning grantee reviews as well as 1 T&TA TJSIP grantee involved with these planning grants. Two of the six tribes conducted planning efforts with neighboring tribes; therefore we discuss three additional tribes related to these two tribes. A total of 10 TJSIP grantees related to our reviews of planning grantees and 1 TJSIP construction grantee were ultimately discussed in this report.

projection of the test results to the universe from which the samples were selected. The criteria we audited against were contained in the OJP Financial Guide and the award documents. In addition, we evaluated the TJSIP grantees': (1) grant financial management, including grant-related procedures in place for procurement, contractor monitoring, financial reports, and progress reports; (2) budget management and controls; (3) drawdowns; and (4) program performance. Below we briefly describe the results of five audit reports, which were published separately between December 2014 and November 2015.

For the 10 reviews of planning grantees, we reviewed consultant expenditures to determine the total cost of each TJSIP grantees' master plan.⁵⁰ We also interviewed personnel involved with the TJSIP grants to evaluate performance. One review of the Nisqually tribe was conducted to assess the results of the \$10,720,232 construction project. We reviewed expenditures, the master plan, inmate statistics, and interviewed personnel involved with the grant.

As it relates to OJP's contract with Alpha Corp to provide T&TA services to TJSIP grantees, we reviewed the contract award process, interviewed employees, analyzed invoices, and evaluated performance. We compared the invoices submitted by Alpha Corp to the supporting documentation to ensure the invoiced amounts were supported, expenses were allowable, and expenditures were in compliance with applicable rules, regulations, and guidelines.

To determine the extent of OJP's cooperation and coordination with BIA, we reviewed inmate population statistics and information from BIA related to the three unopened facilities identified.

During our audit, we obtained information from: (1) OJP's Grant Management System (GMS); (2) the accounting systems for the TJSIP grantees and the contractors specific to the management of DOJ funds during the audit period; (3) monthly detention operation reports from BIA; and (4) inmate statistic information from the Nisqually Tribe. We did not test the reliability of those systems as a whole; therefore, any findings identified involving information from those systems were verified with documentation from other sources.

According to generally accepted government auditing standards, auditors should obtain and report the views of responsible officials of the audited entity concerning the findings, conclusions, and recommendations included in the audit report, as well as any planned corrective actions. The OIG provided Alpha Corp, the Nisqually Tribe, and Justice Solutions Group (JSG) each the opportunity to formally respond to our findings. Alpha Corp provided a formal response, which we incorporated into this final report. The Nisqually Tribe declined to provide a formal

⁵⁰ Of the 11 planning grants we reviewed, 1 award made to the Fort Peck Assiniboine and Sioux Tribes (Fort Peck) was reviewed as part of our grant audit, described below. We determined the total cost of the master plan for Fort Peck and incorporated it in our analysis. Therefore, we reviewed a total of 10 new TJSIP grantees during this audit.

response. JSG did not provide formal response, but we obtained verbal comment from JSG related to the findings, conclusions, and recommendations, which we included in our audit report.

TJSIP Grant Audit Results

From December 2014 to November 2015, we issued five audit reports of individual TJSIP grantees – the Pueblo of Laguna, the Fort Peck Assiniboine and Sioux Tribes (Fort Peck), the Navajo Division of Public Safety (NDPS), the National Indian Justice Center (NIJC), and the Eight Northern Indian Pueblos Council (ENPIC). Summaries of these audits follow.

Audit of the Office of Justice Programs Bureau of Justice Assistance Correctional Systems and Correctional Alternatives on Tribal Lands Program Grants Awarded to Pueblo of Laguna, Laguna, New Mexico. Audit Report Number GR-60-15-003 (December 2014)

The audit covered two grants totaling \$1,767,373, awarded to Pueblo of Laguna, of Laguna, New Mexico. The purpose of the OJP grants was to plan, construct, and renovate tribal justice facilities associated with the incarceration and rehabilitation of juvenile and adult offenders subject to tribal jurisdiction, as well as the enhancement of tribal justice system infrastructure. We found that Pueblo of Laguna did not comply with essential award conditions. Specifically, the Pueblo of Laguna: (1) was operating under an expired indirect cost rate, (2) was not conducting suspension and debarment checks for contractors paid with grant funds, (3) did not fully achieve one of the five objectives for one of its grants, and (4) did not comply with a special condition of one of its grants. Additionally, Pueblo of Laguna officials told the OIG that, as of June 2014, one of the two TJSIP grants for \$1 million awarded in FY 2012 to fund a juvenile detention facility has not yet been used. The OIG made four recommendations to improve Pueblo of Laguna's management of awards. Both OJP and Pueblo of Laguna agreed with the recommendations.

Audit of the Office of Justice Programs Correctional Systems and Correctional Alternatives on Tribal Lands Program Grants Awarded to the Fort Peck Assiniboine and Sioux Tribes, Poplar, Montana. Audit Report Number GR-60-15-009 (May 2015)

The audit covered three grants totaling \$12,942,550 awarded to Fort Peck in Poplar, Montana. The purpose of these OJP grants, which were awarded from 2008 through 2010, was to plan and construct a tribal justice facility associated with the incarceration and rehabilitation of adult offenders subject to tribal jurisdiction. According to Fort Peck officials, the facility was substantially completed in January 2014, but it was not opened until October 2014 due to delays with obtaining operations and maintenance funding from the Department of the Interior. As of December 2014, Fort Peck had drawn down all funds relating to the three grants that were the subject of this audit, but we found that the facility was only partially

operational due to insufficient staffing. The OIG's audit also found that Fort Peck did not comply with essential award conditions related to the use of funds, performance, and financial controls. Specifically, Fort Peck: (1) did not ensure grant funds were not paid to suspended or debarred contractors, (2) did not maintain documentation to support allocations of employee time among multiple grants, (3) did not fully achieve a grant objective to build a facility to promote alternative treatment programs, and (4) overdraw grant funds for one of the grants. The audit also questioned \$246,983 in unallowable costs and an additional \$109,737 in unsupported costs. The OIG made six recommendations to OJP to remedy the questioned costs and improve Fort Peck's management of grant funds. OJP agreed with the recommendations. Fort Peck agreed with four of the recommendations and substantially disagreed with the two recommendations concerning questioned costs. As noted in the report's appendix, after reviewing the draft report, Fort Peck also provided additional documentation sufficient to remedy \$87,406 of the \$109,737 in unsupported costs identified during the audit.

Audit of the Office of Justice Programs Correctional Systems and Correctional Alternatives on Tribal Lands Program Grants Awarded to the Navajo Division of Public Safety, Window Rock, Arizona. Audit Report Number GR-60-15-015 (September 2015)

The audit examined four grants totaling \$70.5 million awarded to NDPS. The grants, which were awarded by OJP in 2008 and 2009, were intended to plan and construct tribal justice facilities for the incarceration and rehabilitation of adult offenders subject to tribal jurisdiction. The OIG audit identified \$35,553,253 in questioned costs, as well as concerns relating to compliance with grant requirements. Most of the questioned costs were related to the construction of correctional facilities in Tuba City, Arizona, and Kayenta, Arizona, which were built with capacities that were at least 250-percent larger than needed, and at an excess cost of \$32,034,623. We further found that OJP possessed the information necessary to identify the significant changes that expanded these projects' scope but did not take sufficient action to prevent the questionable spending.

Specifically, we found that in Tuba City, NDPS constructed a 132-bed correctional facility with a \$38.6 million grant, even though its 2007 master plan called for a 48-bed correctional facility at a cost of \$18.2 million, and even though the average monthly jail occupancy for Tuba City from 2008 through 2014 was between 14 and 22 inmates, with a high of 49 inmates. Similarly, we found that in Kayenta, NDPS built an 80-bed correctional facility and a police station with a \$31.7 million grant, even though its 2007 master plan stated a need for a 32-bed correctional facility and law enforcement areas at a cost of \$20 million, and even though the average monthly jail occupancy for Kayenta from 2008 through 2014 was between 7 and 11 inmates, with a high of 24 inmates.

The report also identified other concerns with NDPS's management of the four grants we audited including that NDPS: (1) did not check the suspension and debarment status of contractors paid with grant funds; (2) did not submit accurate

financial reports for three of the four grants; (3) incurred \$2,845,040 in unallowable costs; (4) incurred \$656,921 in unsupported costs; (5) incurred \$16,669 in unallocated matching costs; and (6) incurred \$535,545 in funds to better use. The OIG made nine recommendations, of which OJP agreed with seven of the recommendations, disagreed with one recommendation, and partially disagreed with one recommendation. The Navajo Nation agreed with three of the recommendations, partially agreed with three of the recommendations, and disagreed with three of the recommendations. As noted in the report's appendix, after reviewing the draft report, the Navajo Nation also provided additional documentation sufficient to remedy \$194,189 of the \$656,921 in unsupported costs identified during the audit.

Audit of the Office of Justice Programs Grants Awarded to the National Indian Justice Center, Santa Rosa, California. Audit Report Number GR-90-15-006 (September 2015)

The audit examined four grants totaling \$3,127,009 awarded to the NIJC in Santa Rosa, California. The purpose of these OJP grants was to fund NIJC's design and delivery of legal education, research, and technical assistance programs that sought to improve the quality of life for Native communities and the administration of justice in Indian country. One of the four grants we audited was a \$2,032,000 grant awarded to the NIJC to provide T&TA to TJSIP grantees. As it relates to the TJSIP T&TA grant, we found the NIJC did not comply with several essential award conditions. Specifically, the OIG found that the NIJC: (1) did not adequately define policies and procedures to ensure effective control over grant funds, and (2) did not submit accurate financial reports. The audit also identified \$722,864 in questioned costs, of which \$415,315 related to the TJSIP T&TA grant, including, among other things, unsupported costs related to the use of consultants, unallowable indirect costs related to the building the NIJC owns for its operations, and unallowable costs resulting from the NIJC's non-compliance with the grants' special conditions. We made 10 recommendations, of which 6 recommendations at least in part related to the TJSIP T&TA grant, to OJP to remedy questioned costs and improve the NIJC's management of awards. OJP agreed with all of the recommendations. The NIJC agreed with four of our recommendations, partially agreed with five, and disagreed with one.

Audit of the Office of Justice Programs Correctional Systems and Correctional Alternatives on Tribal Lands Program Grant Awarded to the Eight Northern Indian Pueblos Council, Ohkay Owingeh, New Mexico. Audit Report Number GR-60-16-001 (November 2015)

The audit examined one grant totaling \$5,636,317 awarded to Eight Northern Indian Pueblos Council (ENIPC) in Ohkay Owingeh, New Mexico, to construct an alternative substance abuse treatment facility for juveniles. We found ENIPC did not comply with several essential award conditions. Specifically, the OIG found that ENIPC: (1) incurred \$20,659 in unallowable costs for items purchased after the grant end date and unbudgeted indirect costs charged to the grant, and

(2) allocated \$626,257 in unsupported costs to the grant match. We made two recommendations to OJP to remedy the questioned costs. OJP agreed with both recommendations. In its formal response to our draft report, the ENIPC neither agreed nor disagreed with our recommendations, but it identified several actions it will take to address the issues we identified.

APPENDIX 2

SCHEDULE OF DOLLAR-RELATED FINDINGS

<u>QUESTIONED COSTS</u> ⁵¹	AMOUNT	PAGE
<u>Unallowable Costs</u>		
Misused TJSIP Funds (Nisqually)	10,720,232	20-24
COI with Tribes	842,879	41-47
Alpha Corp Project Coordinator Overpayment	2,470	51
Alpha Corp Per Diem Reimbursement	22,574	51
Alpha Corp Travel Policy Deficiencies	15,022	51-52
Total Unallowable Costs	\$11,603,176	
<u>Unsupported Costs</u>		
Alpha Corp Invoices Not Supported	17,080	51-52
Alpha Corp Travel Policy Deficiencies	2,193	51-52
Total Unsupported Costs	\$19,273	
<u>GROSS QUESTIONED COSTS</u>	\$11,622,449	
<i>Less Duplicate Questioned Costs</i> ⁵²	970	51-52
NET QUESTIONED COSTS	\$11,621,479	

⁵¹ **Questioned Costs** are expenditures that do not comply with legal, regulatory, or contractual requirements; 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.

⁵² Some costs were questioned for more than one reason. Net questioned costs exclude the duplicate amounts, which include \$970 in travel costs related to the deficiencies in Alpha Corp's policies.

APPENDIX 3

**TJSIP RENOVATION AND CONSTRUCTION GRANTS
AWARDED FROM FY 2007 THROUGH 2014**

2007	
1	Navajo Division of Public Safety – Renovation of Window Rock Adult Detention Facility
2	Renovation of the Lac du Flambeau Safety Building
3	Renovation Project for Sac and Fox Juvenile Detention Facility
4	Akiachak Native Community Jail Renovation
5	Red Lake Band of Chippewa Indians, Renovation of Correctional Facility
6	Confederated Tribes of the Chehalis Reservation Renovation of Women's Correctional Facilities
7	Coushatta Tribe of Louisiana – Renovation and Maintenance of Existing Detention Facilities in Oberlin
8	Confederated Salish and Kootenai Tribes – Renovation of the Flathead Tribal Jail
2008	
9	Yankton Sioux Tribe – Renovation of Correctional Facility
10	Colorado River Indian Tribes – Renovation of Existing Juvenile Holding and Detention Facility
11	Renovation of Yavapai-Apache Nation's Detention Holding Facilities
12	Pueblo of Acoma – Renovation of Detention Center
13	Sault Ste Marie Tribe of Chippewa Indians – Renovation of Juvenile Correctional Facility
14	Navajo Division of Public Safety – Renovation of the Shiprock Adult Detention Facility
15	Sisseton Wahpeton Oyate of the Lake Reservation – Renovation of Detention Center
16	Chippewa Cree Tribe – Renovation of Detention Facilities
17	Oglala Sioux Tribe – Renovation of Detention Facilities (Pine Ridge Indian Reservation)
18	Navajo Division of Public Safety – Renovation of Adult Correctional Facility in Tuba City, Arizona
19	Navajo Division of Public Safety – Renovation of Adult Correctional facility in Crownpoint, New Mexico
Recovery Act 2009	
20	Fort Peck Assiniboine & Sioux Tribes – Construction of Fort Peck New Adult Detention Facilities
21	Colorado River Indian Tribes – Construction of a New Juvenile Detention Facility

22	Navajo Division of Public Safety – Construction of Kayenta Adult Detention Facility
23	Yakama Nation – Construction of Yakama Nation Construction Detention Center
24	Ramah Navajo Chapter – Construction of an Adult Correctional Facility
25	Rosebud Sioux Tribe – Construction of an Adult Correctional Facility
26	Eastern Band of Cherokee Indians – Construction of a Multi-purpose Tribal Justice Center on the Qualla Boundary
27	Tule River Tribal Council – Construction of a Multi-purpose Tribal Justice Center
28	Puyallup Tribe of Indians – Construction of a New Correctional Facility
29	Native Village of Kwinhagak – Construction of Quinhagak Multi-purpose Tribal Justice Center
30	Chippewa Cree Tribe – Construction of Chippewa Cree Multi-Purpose Justice Facility
31	Navajo Division of Public Safety – Construction of a Multi-Purpose Justice Center in Tuba City
32	Shoshone-Bannock Tribes – Construction of a Single Tribe Justice Center
33	Pascua Yaqui Tribe – Construction of a Multi-Purpose Detention and Treatment Facility
34	Nisqually Tribe – Construction of a Corrections Facility for Low Risk Offenders
35	Yankton Sioux Tribe Fish & Wildlife – Renovation of Existing Adult and Juvenile Correctional Facility
36	Confederated Tribes of the Chehalis Reservation – Renovation of Existing Correctional Facility
37	Confederated Salish and Kootenai Tribes – Renovation and Expansion of Correction Facilities
38	White Mountain Apache Tribe – Renovation of Existing Detention Facility
39	Eight Northern Indians Pueblos Council – Construction of Residential Substance Abuse Treatment Facility
2009	
40	Sisseton-Wahpeton Oyate of the Lake Reservation – Construction of a Community Justice and Rehabilitation Center (Oyate Woazani Yuteca Tipi)
41	Lac du Flambeau Band of Lake Superior Chippewa Indians – Construction of Public Safety and Judicial Facility
42	Colorado River Indian Tribes – Renovation and Expansion of Existing Detention Facility
43	Red Lake Band of Chippewa Indians – Renovation of Red Lake Tribal Detention Center
44	Blackfeet Tribe – Renovation of White Buffalo Home Juvenile Correctional Center
45	Standing Rock Sioux Tribe – Construction of Standing Rock Youth Services Center

46	Navajo Division of Public Safety – Construction of New Jail Facility in Dilkon
2010	
47	Bois Forte Band of Chippewa Indians – Renovation of Nett Lake Law Enforcement Facility
48	Confederated Tribes of the Colville Reservation – Adult Correctional Facility Renovation
49	Fort Belknap – Renovation of Detention Facility
50	Northern Arapaho – Construction of a Multi-Purpose Juvenile Justice Center
51	Pueblo of Laguna – Renovation of Detention Facility
52	Shoshone Paiute Tribes of Duck Valley – Renovation of Juvenile Services Center
53	Three Affiliated Tribes – Renovation of Justice Center
54	Fort Peck Assiniboine & Sioux Tribes – Construction of Fort Peck New Adult Detention Facilities
2011	
55	Hualapai Tribal Nation – Renovation of the Detention and Rehabilitation Center
56	Grand Ronde – Renovation of Women's Transitional Living House
57	Menominee Indian Tribe of Wisconsin – Renovation of Alternative Facility
58	Oglala Sioux Tribe – Construction of Alternative Facility (Juvenile)
59	Makah Indian Tribe – Renovation of Detention Center
60	Ute Indian Tribe – Construction of Multi-Purpose Justice Center
61	Ponca Tribe of Oklahoma – Renovation of Detention Center
62	Shoshone-Paiute Tribes of Duck Valley – Renovation of Alternative Facility
63	Ramah Navajo Chapter – Construction of Detention Center
2012	
64	Yurok Tribe – Construction of a Multi-Purpose Justice Center
65	Pueblo of Laguna – Construction of a Multi-Purpose Justice Center
66	Lummi Nation – Construction of Correctional Alternative Facility - Transitional House
67	Fallon Paiute-Shoshone Tribe – Construction of an Adult and Juvenile Detention Facility
68	Central Council – Correctional Facility Upgrades - Kake, Hydaburg, Angoon
69	Bay Mills Indian Community – Construction of a Multi-Purpose Justice Center
70	Native Village of Kwinhagak – Construction of Kwinhagak Multi-purpose Tribal Justice Center

2013	
71	Muscogee (Creek) Nation – Construction of a Reintegration Transitional Living Center
72	Leech Lake Band of Ojibwe – Construction of a Regional Justice and Public Safety Center
2014	
73	Menominee Indian Tribe of Wisconsin – Renovation of Detention Facility
74	Winnebago Tribe of Nebraska - Renovation of Mary Hall
75	Sault Ste. Marie Tribe of Chippewa Indians - Sault Tribe Law Enforcement Renovation Project
76	Gila River - Correctional Facility Security Enhancements
77	Colorado River Indian Tribes - Renovation & Expansion of Adult Correctional Facility
78	The Tulalip Tribes of Washington - Corrections and Correctional Alternatives
79	Kaw Nation - Kaw Nation Multi-purpose Justice Center
80	Anvik Tribal Council - Tribal Public Safety Building Renovation

Source: BJA

OFFICE OF JUSTICE PROGRAMS' RESPONSE
TO THE DRAFT AUDIT REPORT⁵³



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

September 8, 2016

MEMORANDUM TO: Michael E. Horowitz
Inspector General
United States Department of Justice

THROUGH: Jason R. Malmstrom
Assistant Inspector General for Audit
Office of the Inspector General
United States Department of Justice

FROM: */s/*
Karol V. Mason
Assistant Attorney General

SUBJECT: Response to the Office of the Inspector General's Draft Audit
Report, *Audit of the Office of Justice Programs Tribal Justice
Systems Infrastructure Program*

This memorandum provides a response to the Office of the Inspector General's (OIG) August 5, 2016, draft audit report entitled, *Audit of the Office of Justice Programs Tribal Justice Systems Infrastructure Program*. The Office of Justice Programs (OJP) appreciates the opportunity to review and comment on the draft report.

Public safety on tribal lands is a top priority for the U.S. Department of Justice (DOJ) and OJP. The Bureau of Justice Assistance (BJA), within OJP, administers the Tribal Justice Systems Infrastructure Program (TJSIP), which is a complex program requiring extensive stakeholder engagement and coordination with other Federal agencies and tribal governments. TJSIP became a stand-alone program with its own appropriation in Fiscal Year (FY) 1999. The program has evolved over the years in an effort to meet justice system challenges in Indian Country and respond to significant legislative changes. An important element that needs to be considered when assessing the management and oversight of the TJSIP is the level of complexity and nature of the work being performed by tribal grantees under this funding as well as the significant evolution of funding over the years.

⁵³ Attachments to this response were not included in this final report.

OJP appreciates the OIG's thorough review of BJA's implementation and oversight of the TJSIP and as noted below has already implemented extensive changes to its administration of the program. While OJP agrees in concept with the OIG's recommendations, we respectfully disagree with many of the facts used to draw conclusions related to BJA's oversight and management of the program. Specifically, OJP does not agree with the conclusions that were drawn related to inadequacies with oversight and monitoring of the program, ineffective coordination with BIA, the construction of excessively large facilities, and unnecessary planning activities. In addition, the OIG has included in its audit conclusions information on three tribes (Tribes 1, 2, and 3) whose awards were made prior to FY 2009, and, in fact, are outside the scope of this audit as initially depicted to OJP. The OIG concluded that these three facilities, which together cost nearly \$22 million, remained non-operational or partially operational for over a decade. It should be noted that during the period of the conduct of the audit, these three facilities opened and became operational.

Tribal Justice Systems Infrastructure Program and the Evolution of Tribal Grant Funding

Prior to FY 2007, BJA focused on supplementing existing construction projects. It was not until FY 2007 that BJA released a competitive solicitation focused on the planning and renovation of correctional and community-based facilities. Sufficient funding was not appropriated to BJA for new construction projects in FY 2007 and FY 2008. Although the solicitations encouraged the planning of community-based/correctional alternative options, the solicitation was more focused on institutional corrections. Prior to 2009, BJA's appropriation under TJSIP provided for approximately \$8 million to be available to address justice infrastructure needs in Indian Country.

On February 9, 2009, the President signed the American Reinvestment and Recovery Act (ARRA). BJA received and awarded \$225 million to fund tribal justice system facility renovation and construction projects. ARRA provided a unique and rare opportunity for tribes to apply for funding to pursue much needed new construction of tribal justice infrastructure projects. Of similar historic impact on tribal justice was the passage of the Tribal Law and Order Act (TLOA) on July 29, 2010, which provided legislative authorities and resources to tribal communities across the United States to enhance their tribal justice systems. Beginning with FY 2011, BJA modified the TJSIP to provide more flexibility for creating, renovating, and/or expanding infrastructure to support alternatives to incarceration, transitional living facilities, regional facilities, and multipurpose justice center facilities on tribal lands, including the previously excluded court and law enforcement space.

Beginning in FY 2010, all awards under the TJSIP are made under the DOJ Coordinated Tribal Assistance Solicitation (CTAS). CTAS is designed to encourage tribes to assess their public safety resources needs in a comprehensive way, taking into account the state of the entire tribal justice system. Prior to the implementation of CTAS, each tribal-specific grant funding stream, including the TJSIP and the ARRA funding, utilized a separate competitive solicitation and application approval process. Through CTAS, only one application is accepted from each Federally-recognized tribe to encourage comprehensive planning and assessment of needs.

Each tribe can apply for funding under nine purpose areas where the funding addresses the needs of the tribe as outlined in its tribal and community profile. The TJSIP is funded through CTAS Purpose Area Corrections and Correctional Alternatives.

Given the limited funding levels of recent appropriations to support justice systems in Indian Country, it is no longer feasible to provide funding to support full-scale new construction programs for secure correctional facilities. Additionally, BJA has learned that current levels of funding that BIA receives to operate, staff, and maintain tribal detention centers are not sufficient to meet the need for Indian Country. As a result of these fiscal constraints, BJA made a policy decision beginning in FY 2013 to no longer provide funding for the construction of new tribal justice facilities. BJA currently administers funding solely for the renovation of tribal justice facilities, including detention centers, multipurpose justice centers, treatment facilities, holding facilities, courts, police departments, and transitional living facilities that serve both adult and juvenile populations.

As with all its programs, OJP continuously improves upon its processes based on known risks, evidence based practices, and findings from its monitoring and oversight activities. A year-by-year account of key changes to the TJSIP, as well as the evolving philosophy for how these programs should be administered is provided in Attachment 1.

BJA's Oversight and Monitoring of the TJSIP

The OIG concluded that inadequacies existed in BJA's oversight leading to grantee implementation issues. OJP respectfully disagrees with this conclusion as BJA conducted extensive oversight and monitoring at every stage of the award process. OJP implements a well-defined, risk-based oversight process. At every stage, program and grant management decisions are made using the best information available at the time. Known risks are identified and mitigation efforts are incorporated as necessary in each stage of the award process. Any issues identified through oversight and monitoring efforts result in corrective actions and adjustments as necessitated by the events or circumstances at the time. While the OIG draft audit report provided a brief summary of the oversight, monitoring, and technical assistance provided to TJSIP grantees, it did not adequately characterize the level and depth of effort dedicated to these activities. OJP has provided additional information on its oversight, monitoring, and technical assistance activities in Attachment 2.

OJP Coordination with BIA

The OIG concluded that ineffective coordination between OJP and BIA has presented significant problems that have contributed to the construction of facilities that were excessive in size and/or not open or experienced lengthy delays before becoming operational. In its responses to the OIG, OJP demonstrated its collaboration with the BIA through all phases of program implementation, including BIA review of applications, partnering in grantee training, participation in routine calls and meetings with grantees and the training and technical assistance (TTA) providers, design approval, funding discussions and decisions for Operation and Maintenance (O&M), and issuance of certificates of occupancy. A critical point not provided in the OIG report is that a significant timing gap exists between BJA's appropriation of funds that

support construction and renovation and BIA's budget request and appropriation of funds to support the O&M of the facilities constructed using BJA funding. With this misalignment, grantees had to proceed with construction, without the certainty of obtaining BIA O&M funding at any level.

Coordination with BJA's Federal partners was, and still is today, a key component of the TJSIP. Once awards were made under ARRA in FY 2009 and FY 2010, BJA held quarterly meetings with the grantees, BIA, and TTA providers to ensure that ARRA projects would be completed in a timely and cost-effective manner. The quarterly calls provided an opportunity for BJA to troubleshoot and follow up with partners to address any delays or impediments to project completion. BJA used these calls as an opportunity to track the grantees' collaboration with BIA on design reviews and operational funding, as applicable.

Recognizing that the BIA funding was limited and the appropriation process was a lengthy one, shortly after the ARRA awards were made, BJA began to strongly encourage grant recipients to submit their budget requests for O&M funding to BIA as early in the process as permitted under BIA procedures. BJA, BIA, and the TTA providers offered assistance to the grantees with submitting operational budgets to BIA for consideration. However, this process was hindered when the tribes were informed that BIA would not begin to consider their funding requests until construction actually commenced. Nevertheless, BJA continued to track the grantees' development of their operational budgets and encouraged them to work with their BIA representatives to determine needs.

For projects that rely on BIA for O&M funding, all designs were submitted to BIA for its review and approval. The designs were submitted to BIA at the 40 percent, 70 percent, 99 percent, and 100 percent design review level. BJA encouraged tribes that were not currently receiving BIA O&M funds but potentially would apply for the funds at a later date to also submit their designs to BIA for approval. BJA tracked the status of these reviews by BIA and provided follow up with the grantees and BIA to request that submissions and approvals were completed in a timely manner. Nevertheless, BJA does not have authority over BIA's actions and accordingly could not ensure timely completion and approval by BIA.

As the projects proceeded through construction, BJA encouraged the tribes to reach out to BIA prior to substantial completion of the construction to begin the potentially lengthy process for scheduling inspections. BJA continued to coordinate with BIA for expedited inspections when grantees indicated that there were issues with the scheduling.

Purpose and Use of Planning Grants

Grantee Audit of the Navajo Division of Public Safety, Window Rock, Arizona. The OIG concluded that inadequacies in BJA's due diligence in its management of the application process and oversight of awards led to unused planning products and premature funding of construction before adequate planning was completed. OJP has a fundamental disagreement on this issue as it believes that the planning carried out using grant funds was unquestionably necessary and premature funding of construction prior to planning did not occur. The OIG uses its findings from one grantee audit to support these conclusions. In the grantee audit of the Navajo Division

of Public Safety, a department of the Navajo Nation, in Window Rock, Arizona, the OIG concludes that planning grants provided to Navajo Nation were unnecessary, and thus unallowable under the TJSIP solicitations. OJP's position remains that the planning carried out under these awards was valuable, necessary, and allowable. With these planning funds, the Navajo Nation was able to construct facilities that addressed the specific needs of the local communities rather than just construct the rudimentary facilities described by the prototypes.

OJP does not agree with the contention of the OIG that the Navajo Nation could have moved directly into the architectural and engineering phase of construction, based upon the 2007 Master Plan for Tuba City and Kayenta. The crux of our disagreement with the OIG may be a matter of semantics, in that the planning completed by the Navajo Nation with these grants expands upon the commonly understood meaning of "master planning." A Master Plan, also called a comprehensive justice plan, provides a long-range vision to address a community's justice system needs. Although the prototype designs for categories of facilities (large, medium, small) were completed in the 2007 Master plan, given the vast size of Navajo Nation along with the jurisdictional separation in its government, additional planning for a specific locality or facility was necessary. The Master Plan clearly states on page 1.1 that "the Master Plan is the first step in discerning facility size, functioning, cost, and location for the entire Navajo Nation." The Plan goes on to state on page 2.2 that "The space programs shown in the following sections...are not intended to be the programs for any specific location, they are developed as prototypical programs and space estimates for the large, medium, and small Judicial/Public Safety facilities. As such, there are many small adjustments that will need to occur as these programs become designs for building in each specific location."

Regardless, the planning carried out by the Navajo Nation with BJA funds largely met the criteria established by the respective solicitations in describing what a "master plan" should include. In addition, at the time of the 2007 Master Plan, the Navajo Nation could not have anticipated the availability of the Recovery Act funding – a rare opportunity for tribes to increase their corrections infrastructure. This increase in funding allowed the Navajo Nation Department of Corrections to revisit their original space needs based on the 2005 analysis.

The 2007 Master Plan was considered by the tribe as a high-level planning document – this position was repeatedly stated by President Begaye, Navajo Nation Department of Justice Principal Attorney, [REDACTED], the Director of Navajo Nation Department of Public Safety, [REDACTED], and the Director of Navajo Nation Department of Corrections, [REDACTED] in its July 2016 meeting with OJP leadership. This is significant in that, regardless of how the OIG continues to characterize the Master Plan, it was never intended or used by the tribe as a facility-specific plan. The Master Plan outlined four basic facility types: Large (48 beds), Medium (32 beds), Small (16 beds), and the Navajo Correctional Rehabilitative Center (NCRC) (388 beds). The NCRC was envisioned in the Master Plan to complement the local facilities by providing 388 long-term correctional beds coupled with rehabilitation from established medical and rehabilitation facilities in the area. This planned 120,418 gross square feet facility was to be centrally located in the Navajo Nation and to be co-located with a District Judicial/Public Safety Facility, if possible. The Master Plan states on page 1.7 that "the first step to implementation of the Master Plan is facility design. In addition, page 1.8 states "the size of the detention

components in the District Facility are planned based on the assumption that the NCRC is established with 388 beds.” To date, no plans have been contemplated to establish the NCRC.

The original 2007 Master Plan did not incorporate the restorative justice model into the facility design. OJP posits that this is a prudent use of grant funds because a restorative justice model is designed to break the cycle of criminal behavior. There is evidence that suggests rehabilitated offenders are less likely to commit crimes and cause an additional burden for tax payers. As stated in the Master Plan, additional planning would allow for each community to determine if the actual size, space allocations, and programming plans detailed in the prototypes would actually meet their needs and could be built with the available resources. A significant portion of the square footage at both Tuba City and Kayenta supports programming activities including general education development (GED) classes, undergraduate programs, substance abuse programs, and parenting classes. Additionally, the space was designed to provide visitation areas (to keep inmates connected to their children and family), natural light (for promotion of sound physical and mental health), and areas to support recreational and cultural programming (such as supporting peacemaking sentences, to include sweat lodges). Also, as mentioned previously, the Tuba City facility provides space to conduct correctional training supporting the entire Navajo Nation. None of these restorative justice-related space needs were included in the original Master Plan.

Awarding Planning Grants. Recognizing the critical role of planning in establishing justice facilities and/or correctional alternative programs that are appropriate for the intended population and supportive of cultural and traditional values, beginning in FY 2007 BJA offered planning grants to tribes that were interested in comprehensive justice system planning to assess their justice system needs, primarily related to constructing and renovating facilities associated with the incarceration and rehabilitation of juvenile and adult justice-involved individuals subject to tribal jurisdiction or related to the development and implementation of correctional alternatives to meet the needs of the tribe’s population. This was done in an effort to ensure tribes had an opportunity to assess and implement sound local-level policies and practices that enable effective use of limited justice system resources prior to pursuing new construction or renovation projects. Planning grants provided tribes with an opportunity to explore all options before making a determination to construct or renovate a facility or implement alternative community corrections programs. After receiving input from tribal practitioners regarding planning needs, BJA broadened the scope of planning grants in FY 2010 to allow tribes to do more specific planning related to pre-construction activities including schematic designs and architectural drawings.

Justice system planning provides tribes with an opportunity to fully assess their justice systems and determine if there are any needs or gaps to be addressed to ensure effective use of resources in serving justice-involved individuals. As an important part of this process, tribes are encouraged to develop a Strategic Planning Advisory Board representing key stakeholders and decision makers in the tribe. Team members may include representatives from tribal government, criminal justice systems, treatment/health/mental health components, social/family-related services and community groups, local service providers, businesses, community-based organizations, faith-based service providers, media, and individuals within the proposed project’s target population. Key components of comprehensive justice system planning include:

1) collecting and examining baseline data to ensure that fiscal and programmatic resources will be used effectively and new or expanded facilities are only developed when warranted; 2) exploring an array of justice system building options; 3) applying community-based alternatives; and 4) developing sustainability plans for the operations, maintenance, and staffing of proposed justice system infrastructure options.

It is important to highlight that completion of the planning process does not necessarily lead to facility construction or renovation. Planning grants could determine that construction was not the tribe's best course of action. When planning processes resulted in a determination that facility construction or renovation most appropriately served the needs of the tribe, it was never the intention of BJA to fund every construction project identified by a planning grant.

It has always been OJP's practice and position that planning and construction activities often overlap; thus, OJP does not draw a strict distinction between the two phases for funding purposes. It is also OJP's practice that conceptual and schematic designs can, in fact, be funded during the planning process. As part of the planning process, architectural representatives may be invited to participate in early pre-architectural planning phases to answer questions, produce sketches, and provide guidance to the planning project team. These services help to guide the planning in terms of site selection, space needs, space planning, conceptual schematic designs, and cost estimates. This information is also helpful in guiding the required National Environmental Policy Act (NEPA) reviews and is a prerequisite to the development of the final design and construction documents.

Changes to BJA's planning award process. Given the immediate needs of a number of tribes with tribal justice facilities in disrepair or out of compliance with BIA standards, BJA discontinued planning grants in FY 2014 to allow for more resources to support renovation projects. Instead of providing funding through TJSIP for facility planning purposes, tribes were encouraged to conduct a broader, more comprehensive assessment of their justice system needs and resources through the CTAS Purpose Area, *Comprehensive Tribal Justice Systems Strategic Planning Program*, funding opportunity. This Purpose Area was developed in FY 2012 to assist tribes in developing a comprehensive strategic plan to identify the priority needs facing the tribe's justice system and outline a detailed, strength-based strategy, which could include law enforcement, courts, community corrections, alternatives to incarceration, tribal jails programming, crime victims' rights and services, programming to serve juvenile justice needs from prevention through reentry, and community resources to support alternatives to incarceration and reentry programming. This program allows the tribes to look at their systems as a whole and identify specific areas of funding needs.

BJA respects tribal sovereignty and realizes that tribes may want to select consultants that have an understanding of their culture and community needs. Therefore, BJA structured the planning grant category so that tribes would receive funding directly to hire a consultant to assist their strategic planning team with completing tasks associated with the comprehensive strategic planning process. The overall goal is to provide tribes with the flexibility to exercise local control over their justice assessment process. If BJA awards planning projects specific to tribal construction/renovation in the future, it will structure the program to ensure that the most cost-effective approach to provide technical assistance to grantees is used.

Facility Size Based on Tribal Need

OJP continues to disagree with the OIG's overly broad conclusion that facilities funded through TJSIP were built in excess of the tribes' needs. This finding is primarily based on the grantee audit of the Navajo Division of Public Safety, Window Rock, Arizona – and it remains OJP's position that the conclusions made by the OIG relating to this grant award are flawed. OJP has been working with the OIG since the issuance of the audit report, *Audit of the Office of Justice Programs, Correctional Systems and Correctional Alternatives on Tribal Lands Program, Grants Awarded to the Navajo Division of Public Safety, Window Rock, Arizona*, on September 29, 2015, to reach a resolution on the OIG's findings and related recommendations. In its latest correspondence to the OIG, dated August 23, 2016, OJP provided a further response to the recommendations, which remain unresolved. After a careful review, including the examination of OIG analysis and responses, as well as the significant amount of documentation provided by BJA and the Navajo Nation, OJP sent a leadership team, consisting of the Deputy Assistant Attorney General; Deputy Director, Bureau of Justice Assistance (BJA); and Assistant Attorney General staff to the Navajo Nation to assess the situation first hand. Staff traveled to the Navajo Nation to tour the Tuba City and Kayenta facilities, as well as to meet with tribal leadership, which included Russell Begaye, President, Navajo Nation; Allen Sloan, Acting Chief Justice, Navajo Nation; Lorenzo Bates, Speaker, Navajo Nation Council; as well as members of the Navajo Nation tribal council.

Based on observations made during the visit and the information obtained from meetings with tribal leadership, OJP continues to respectfully disagree with the OIG's assertion that the facilities built provide no apparent benefit to the Navajo Nation or public. OJP continues to conclude that BJA's decision to fund the Tuba City and Kayenta facilities was justified, and that the size of the facilities was justified given the extraordinary need of the Navajo Nation for jail space.

The Navajo Nation is the country's biggest and most populous Indian reservation with almost 180,000 individuals residing on the reservation. It extends into Utah, Arizona, and New Mexico and covers 27,000 square miles. At the time of the Navajo Nation's application for ARRA funding to build the facilities in Tuba City and Kayenta, the Navajo Nation Department of Corrections was only operating approximately 59 beds across the entire Navajo Nation. Prior to the 1992 Consent Decree, the five open detention facilities across the Navajo Nation had a total of 250 beds. The need for jail bed space is staggering when compared to criminal activity on the Navajo Nation. For years, there has been virtually no punishment when the laws of the Navajo Nation have been broken. Serious offenders have historically been released and returned to their communities, which has promoted a culture of fear and intimidation. The jail space limitations have impacted the decisions made by the public safety officers, prosecutors, and judges for over the last two decades.

In 2005, an assessment completed by the Navajo Nation Department of Corrections indicated the need for the Navajo Nation to plan for approximately 900 to 1,000 beds to be constructed, with plans for these to be operational over the proceeding five to ten years. It was further recommended that these beds be distributed in five facilities each containing 150 adult beds and two facilities each containing 100 adult beds. The 2005 assessment was informed using data on

districts' calls for services, number of individuals booked, and annual court statistics. In 2007, a political decision was made to reduce the bed size recommendations as part of the 2007 Master Plan based on lack of potential funding in the foreseeable future. However, the original data analysis to support the larger facilities is still valid today. In 2014, the total calls for service in Tuba City totaled 31,675, including 590 part one offenses. In Kayenta, the total calls for service was 30,294 including 327 Part 1 offenses. In 2015, the caseload in the Tuba City District Court for criminal and domestic violence offenses was 2,617. In Kayenta, the caseload for the same offenses was 1,565. The total bookings in 2015 at Tuba City was 5,550 and 2,958 at Kayenta¹. The Navajo Nation maintains, and OJP agrees, that the average daily inmate count cannot be used to calculate the bed space need. As mentioned above, due to the 1992 consent decree severely limiting the capacity to house offenders, the current inmate population numbers are not accurate representations of the true need for bed space in the Navajo Nation. The National Institute of Corrections refers to jail planning as "the science and art of predicting the future."² Jail forecasting relies on tracking a number of variables including county population, incarceration rates, crime, arrests, jail admissions, average length of stay, and average daily population.

The Navajo Nation is currently taking steps to assess its entire justice system and practices of law enforcement, prosecutors, and judges to ensure violent offenders are incarcerated, communities are safer, and justice is secured for victims by modifying its codes to include incarceration as a sentence for more punishable offenses, as appropriate. While meeting with OJP leadership, Navajo Nation President Begaye committed to the creation of a task force to address, in a holistic approach, these justice system-wide issues and focus on the remaining limitations preventing the facilities from becoming fully operational. In December 2014, Navajo Nation adopted an Amendment to Title 17 of its Tribal Council Code in which the following changes were made: incarceration was added as a punishment for 44 offenses; 25 new offenses were added, which include incarceration as a punishment; and 40 offenses were amended to include mandatory sentences. However, these changes take time to establish and implement. The tribe is still currently operating under the 1992 consent decree, however is actively working with the Navajo Nation's Attorney General to modify the consent decree.

OJP maintains that the term "fully operational" is defined as having the number of staff needed to operate at full capacity. At the time of our visit, the Tuba City facility was housing 32 inmates. Currently, there are 27 personnel on staff with one pending and 28 additional positions authorized for hiring. A significant amount of space at Tuba City supports the Navajo Nation's correctional officer training. Since the opening of the Tuba City facility, the space has been used by officers across the Navajo Nation to meet their 40-hour a year training requirements. Rather than having to find and pay for space to conduct these routine trainings, the Navajo Nation is able to utilize this space at both Tuba City and Kayenta.

¹ Data provided from the Navajo Nation Division of Public Safety Department of Corrections 2015 Annual Report and the Judicial Branch of the Navajo Nation Fiscal Year 2015 Annual Report.

² *Jail Capacity Planning Guide, A Systems Approach*, National Institute of Corrections, November 2009

Kayenta is still awaiting the certificate of occupancy from the Bureau of Indian Affairs (BIA) due to the requirement to build a water tank on premises. The installation of the tank has commenced and Navajo Nation anticipates completion in September 2016. OJP observed work being carried out to install the water tank. At this time, Kayenta has 15 personnel employed with four pending and an additional 28 positions authorized to hire. Through discussions with tribal leadership, we remain confident that the Navajo Nation is committed to finding the resources to fund the remaining positions and have taken significant steps to enhance their recruitment and hiring capabilities.

OJP believes that, given the ongoing dispute between OJP and the OIG, all references to the Navajo Nation audit report should be removed from this report in its entirety. This includes the OIG's conclusions and reference to construction of excessively large facilities that were not aligned with tribes' documented needs. Otherwise, OJP requests that the TJSIP audit report not be made available to the public until after the final resolution of this disagreement.

The draft audit report contains 12 recommendations and \$11,621,479³ in net questioned costs. For ease of review, these recommendations are summarized below and followed by OJP's response.

- 1. Coordinate with BIA to improve the design and certificate of occupancy processes, as well as ensure appropriately sized facilities can be funded, completed, opened, and fully operational. This includes developing a formal agreement between OJP and BIA to document the roles and responsibilities of each agency, expectations of each agency, and areas of coordination.**

The Office of Justice Programs agrees with this recommendation. While OJP and the BIA have coordinated their efforts in a more informal manner on multiple programs, OJP agrees that a formal agreement will be useful to establish and document communication protocols, the roles and responsibilities of each agency, and areas of coordination. Such a formal agreement would need to take into consideration that: 1) BIA cannot guarantee that the funding necessary to operate, staff, and maintain completed facilities in Indian country will be made available; and 2) BJA has no authority over BIA, and as such, cannot enforce agreement terms relating to actions to be taken by BIA and/or the timeliness of these actions. It is also important to note, that while OJP can propose the formal agreement to BIA we cannot be assured that BIA will sign and execute the agreement. Therefore, it is OJP's position that this recommendation should not remain open if OJP is unable to obtain BIA's agreement to the MOU.

The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

³ Some costs were questioned for more than one reason. Net questioned costs exclude the duplicate amounts.

2. **Review the circumstances of the facilities that have remained unopened or non-operational after the TJSIP grants were closed, determine if any grant funds should be repaid by the grantees due to the ineffective or inappropriate use of funds, and develop a corrective action plan to ensure that all unopened facilities or less than fully operational facilities become fully operational within a reasonable timeframe.**

The Office of Justice Programs agrees with this recommendation. BJA has reviewed, and continues to monitor, the circumstances surrounding the facilities that have remained unopened or non-operational after the TJSIP grants were closed by OJP. Bi-weekly meetings continue to be held with representatives from OJP's Office of the Assistant Attorney General, BJA, the Office of the Associate Attorney General, and DOJ's Office of Tribal Justice, to address issues related to tribal facilities that are not yet open due to construction delays and/or post-construction issues. As a result of these meetings, coordination and follow up with BIA and the tribes, the facilities for three of the tribes described in the OIG report are now open and operational: Tribe Number 1 opened in May 2016, Tribe Number 2 opened in June 2015, and Tribe Number 3 opened in September 2015. Further, DOJ's TJSIP project team continues to work with the Navajo Nation to open and fully operationalize the facilities funded through ARRA.

Additionally, the Office of Management and Budget (OMB) Uniform Guidance, at 2 CFR § 200.329, Reporting on Real Property, contains requirements for grantees to report on the status of real property in which the Federal government retains an interest. As a result of this requirement, a policy memorandum, dated May 6, 2016, was implemented by OJP as a new tool to monitor renovation and construction projects after closeout (see Attachment 3). Further, all TJSIP grants awarded during the FY 2016 cycle, as well as future grants under this program, will include the following special condition: (see below and Attachment 4).

Real Property Reporting

Recipient understands and agrees to report on the use and status of real property acquired, constructed, or improved under this award, throughout the useful life of the property or until the federal interest in the property ceases, whichever is shorter. Recipient further agrees to provide the required use and status reports on federal Standard Form 429, or by other reasonable method as directed by OJP, in conformance with 2 C.F.R. § 200.329.

Accordingly, the Office of Justice Programs requests closure of this recommendation.

3. Remedy \$11,603,176 in unallowable costs related to the following:

- a. \$10,720,232 awarded to the Nisqually Tribe to fund a correctional facility that was not funded or used in conformity with the statutory authority of the TJSIP, and that was inappropriately built with the intention of being a profit-generating facility.**

The Office of Justice Programs agrees with this subpart of the recommendation. Accordingly, OJP will work with the Nisqually Tribe to assess whether it is using the facility in accordance with the terms of the agreement and provide further guidance to the Nisqually Tribe. OJP will determine whether the 60 percent usage of the facility – jail occupancy and other criminal justice purposes (such as programming related to educational, substance-abuse, and parenting) is for individuals subject to tribal jurisdiction, as required by statute. In addition, OJP will assess whether any for-profit usage beyond the 40 percent is occurring. The Office of Justice Programs considers this subpart of the recommendation resolved and requests written acceptance of this action from your office.

- b. \$106,277 paid by Tribe Number 10, \$124,697 paid by Tribe Number 9, \$59,326 paid by Tribe Number 8, \$30,998 paid by Tribe Number 7, \$136,494 paid by Tribe Number 11, \$285,608 paid by Tribe Number 12, and \$99,480 paid by Tribe Number 13 for services where a COI existed.**

The Office of Justice Programs agrees with this subpart of the recommendation. OJP will examine each case carefully, focusing on the grant requirements and conflict of interest (COI) rules that apply to each party involved (e.g., consultants, employees, and grantees). Where OJP ethics officials determine an apparent or actual COI existed, OJP will determine whether the issue arose out of the grants to each tribe, or the cooperative agreement to the TTA provider, and will coordinate an appropriate response for each individual situation. The Office of Justice Programs considers this subpart of the recommendation resolved and requests written acceptance of this action from your office.

- c. \$2,470 overpaid to the Project Coordinator position, \$22,574 unallowable per diem travel expenses, and \$15,022 for unallowable travel costs.**

The Office of Justice Programs agrees with this subpart of the recommendation. OJP will coordinate with the vendor to remedy the \$40,066 in questioned costs, related to the \$2,470 overpayment to the Project Coordinator position, the \$22,574 in unallowable per diem travel expenses, and the \$15,022 in unallowable travel costs. If any of these costs are determined to be unallowable (or are not adequately supported), OJP will request that the vendor return the funds to the DOJ. The Office of Justice Programs considers this subpart of the recommendation resolved and requests written acceptance of this action from your office.

4. **Enhance its due diligence process to ensure that sufficient comprehensive justice planning has been completed before construction or renovation, which includes assessing alternative treatment needs. This may include requiring and verifying additional information that is currently not required as part of the application materials - such as an assessment of bed space needs, BIA assessment of need and support, a complete construction or renovation plan, and inmate population statistics for more than a 6-month period - as well as assessing the overall impact of awards to ensure the grants will meet tribes' needs and allow them to fully open, operate, and maintain the facilities. This also includes enhancing its process to deobligate funds more quickly if TJSIP grantees are not prepared for construction.**

The Office of Justice Programs agrees with this recommendation. As detailed above, since FY 2010, OJP has made significant TJSIP grant program changes including the shift from funding new construction to funding only renovation projects, as well as the change to support the construction and renovation of different types of multi-purpose facilities that provide services across the criminal justice system in lieu of solely supporting detention facilities.

Beginning in FY 2014, BJA stopped making awards under the TJSIP for the construction of new tribal facilities. Currently, TJSIP funds are only available for renovation and/or expansion of existing facilities. If, in the future, BJA reinstates a construction component of the TJSIP, these awards will be governed by the TJSIP policy issued by the BJA Director on May 20, 2016 (see Attachment 5). This policy requires that no new construction projects for new tribal justice facilities will be funded until such time that the following two criteria can be met: 1) evidence of sufficient funding to complete construction, including appropriate reserves to fund the cost of any post-construction punch-list costs to obtain a Certificate of Occupancy; and 2) evidence of the tribe's ability to operate, staff and maintain the facility. For any TJSIP solicitation that includes a new construction category, BJA will require that applicants submit relevant planning documents that substantiate the need and proposed size of the facility, as a separate attachment to their application.

As it relates to renovation or expansion projects, BJA already has requirements in place to ensure comprehensive planning has been completed prior to application submission. Applicants are required to describe their renovation plan that explores correctional building options to ensure a cost-effective design.

Beginning in FY 2016, BJA required applicants seeking funds for renovation or expansion of detention facilities for housing sentenced offenders to complete a daily case record for all target population cases entering the criminal justice system over a 6-month period. Additionally, BJA requests a summary of program spaces in the proposed facility and the average daily population over a 6-month period. BJA will conduct an analysis to identify a period of time beyond six months that may provide a more robust representation of inmate population statistics and need.

BJA will continue to review each application to ensure that applicants describe any additional resources that may be leveraged to complete a renovation or existing construction project. This will ensure that applicants have already identified resources to complete the renovation or construction (when applicable). Additionally, BJA will continue to require that applicants document what resources will be used to staff, operate, and maintain the facility once the project is complete.

Another requirement of application submission is that applicants should provide the status of any requests to BIA regarding the staffing, maintenance, and operation of the facilities being planned, or renovated, if they are requesting BIA assistance to meet facility operations and maintenance needs. If an applicant is not requesting or relying on BIA resources, the applicant must submit, by authorizing resolution or other satisfactory evidence of legal authority, a commitment to fund future staffing, maintenance, and operation of the facilities renovated in lieu of BIA funding support letters, if the tribe chooses to be responsible for this ongoing cost.

BJA is in the process of drafting standard operating procedures for TJSIP. This document will memorialize existing operating procedures as well as address any areas of ambiguity as it relates to administration of TJSIP. Procedures will include a protocol for deobligation of funds if the grantee is not able to implement a project within a reasonable period of time due to lack of resources or other circumstances that the grantee is unable to resolve within a reasonable timeframe. Future solicitations will require applicants to certify in a tribal resolution or other legal authority and provide evidence to demonstrate that they have all existing resources in place to complete the proposed renovation projects.

The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

5. Ensure any current or future facilities are constructed or renovated in a timely fashion, to a size that meets tribal needs that is also within the funding availability and intent of the TJSIP program.

The Office of Justice Programs agrees with this recommendation. Beginning in FY 2014, as detailed in the response to Recommendation 4, BJA is no longer awarding grants for new construction projects. Currently, TJSIP funds are only available for renovation and/or expansion of existing facilities. If BJA, in the future, reinstates a construction program, it will be governed by the TJSIP policy issued by the BJA Director in May 2016. As it relates to applicants requesting funding to renovate and/or expand existing facilities, generally they already have a facility of a size that meets their needs. In instances where applicants request funds to expand a facility, BJA will continue to ensure that the applicant has documented the need for the expansion and planned for any new staff required as a result of the expansion.

Accordingly, the Office of Justice Programs requests closure of this recommendation.

6. Develop a process to ensure planning grantees or the Tribal Justice Systems Strategic Planning Program grantees are provided the tools to implement recommendations that resulted from the planning process, which may include providing outreach and technical assistance.

The Office of Justice Programs agrees with this recommendation. OJP agrees that, if the TJSIP planning grants are ever reinstated, grantees should receive training and technical assistance to identify their implementation needs, including guidance in identifying potential funding sources for their strategy.

Currently, OJP encourages tribes to conduct a broader, more comprehensive assessment of their justice system needs and resources through the CTAS Purpose Area (PA) 2, *Comprehensive Tribal Justice Systems Strategic Planning Program (CTJSSP)*. The CTJSSP was developed to assist tribes in developing a comprehensive strategic plan to identify the priority needs facing the tribe's justice system and to outline a detailed, strength-based strategy, which could include law enforcement, courts, community corrections, alternatives to incarceration, tribal jails programming, crime victims' rights and services, programming to serve juvenile justice needs from prevention through reentry, and community resources to support alternatives to incarceration and reentry programming. This program allows the tribes to look at their systems as a whole, and identify specific areas of funding needs.

The CTJSSP grantees are guided through a phased tribal justice system planning process by the TTA provider team to ensure development and submission of their justice system plan that identifies the tribes' priorities. The CTJSSP grantees are given the resources to develop a data-informed, comprehensive justice system strategic plan through the 3-phase planning process. These grantees, with the guidance and assistance of the TTA partners, conduct a needs assessments to gain a comprehensive understanding of the needs and resources across all departments within their justice system, and even across jurisdictions.

The strategic plan created through CTJSSP will identify the priority needs facing the tribe's justice system and outline a detailed, strength-based strategy, including identifying areas that require funding. CTJSSP grantees who submit an approved strategic plan receive priority consideration for CTAS funding to implement the plan in whole or part in future fiscal years upon submission of an application. Awards are contingent upon the availability of funds.

If BJA awards funds for planning projects specific to tribal construction in the future, it will review the structure of the CTJSSP as a guide for implementing the TJSIP planning. Additionally, BJA will ensure that the grantees' plans address the costs for constructing or renovating a facility, and/or implementing alternative community corrections programs. Further, the TTA providers will work with the grantees to identify potential sources of funding for both the construction/renovation/implementation of the project as well as ongoing operations.

The Office of Justice Programs requests closure of this recommendation.

7. **Ensure T&TA services are well defined and COI policies are enforced.**
8. **Implement policies that ensure T&TA providers do not contract separately to provide services to grantees or, in the rare circumstance a contract may be necessary, require prior OJP approval before T&TA providers' contract separately with grantees or accept subawards from a grantee's contractor.**

The Office of Justice Programs agrees with both Recommendation Numbers 7 and 8, and has already implemented the necessary corrective action to address these findings. The issue of TTA providers complying with COI policies is particularly acute in the area of tribal construction because of the relatively few professionals with experience in tribal corrections infrastructure. BJA, itself, first recognized the concern as early as 2008, and in 2013, after renewed concerns, directly addressed this issue in three separate ways:

- 1) BJA finalized a relevant special condition to attach to tribal TTA awards. To ensure that any outside work with the grantees was conducted openly and without an impermissible conflict of interest, the following special condition was added to TTA awards beginning in FY 2013:

Recipient understands and agrees not to engage in activities constituting organizational conflicts of interest, such as bidding on specifications that you guided as part of the provision of training and technical assistance under this award. Forbidden organizational conflicts of interest are described more fully in detail in the Federal Acquisition Regulations, 48 C.F.R. § 9.505. Prior approval from your grant manager is required for any work with a grantee.

- 2) Frequently Asked Questions (FAQs), developed in consultation with and approved by OGC, were added to the CTAS solicitation addressing the issue that same year so that the grantees would also be aware of this potential concern.
- 3) Finally, as this issue evolved, a new special condition was developed and added to awards in FY 2016, to make tribal grantees aware of possible COI consequences of contracting with TTA providers. The language of that condition is as follows:

Recipient understands and agrees not to engage in activities constituting organizational conflicts of interest, for recipient or any other organization, such as awarding contracts (to be paid in whole or in part with grant funds) to Department of Justice-funded training and technical assistance (TTA) providers that guided project specifications as part of the provision of training and technical assistance to the recipient of this award. Forbidden organizational conflicts of interest are described more fully in detail in the Federal Acquisition Regulations, 48 C.F.R. § 9.505. Prior approval from your grant manager is required for any work with a Department of Justice-funded TTA provider.

OJP has recognized the COI issue, and has already effectively dealt with it on multiple levels (see Attachment 6).

Accordingly, the Office of Justice Programs requests closure of Recommendation Numbers 7 and 8.

9. Analyze the costs and benefits of including master planning services as a service provided through T&TA.

The Office of Justice Programs agrees with this recommendation. As previously stated BJA discontinued the TJSIP planning grants in FY 2014 to allow for more resources to support renovation projects. Applicants are instead encouraged to apply for funding through the CTAS, PA 2 for the CTJSSP in order to conduct a more comprehensive assessment of their justice system needs and resources. This program, instituted in FY 2012, initially was structured similarly to the TJSIP planning program in that grantees were awarded funds to develop the plans with the guidance of a BJA-funded TTA provider.

Several of the tribes opted to use the funds to contract with an outside organization to conduct the needs assessment and write the strategic plan. However, the level of service and/or quality of the product that the tribes received was inconsistent, and did not necessarily meet the DOJ standards in order for the tribes to qualify for priority funding. DOJ modified the CTJSSP to enhance the TTA provided to the tribes and ensure a more cost-effective and consistent approach that instructs the grantees through a process to develop a plan meets DOJ standards and requirements.

Specifically, the CTJSSP grantees are not permitted to use grant funds for contractual or consulting costs for outside training and technical assistance providers, or outside organizations to create a strategic plan for the tribe. DOJ funds a TTA provider team, at no cost to the CTJSSP grantees, to assist in all aspects of the strategic planning process. This includes extensive on-site and office-based support for facilitating the strategic planning process, forming a strategic planning team, conducting a comprehensive needs assessment, identifying community strengths and resources, defining community challenges, and developing strategies to strengthen the applicant's justice system.

As previously stated in OJP's response to Recommendation Numbers 1 and 4-6, if BJA awards funds for planning projects specific to tribal construction in the future, it will structure the program to ensure that the most cost-effective approach to provide technical assistance to grantees is used. BJA will examine the model for TTA used by the CTJSSP program for the provision of services and resources to the tribes to complete their planning process, and adapt the structure of the TJSIP planning TTA to meet the needs of the TJSIP grantees.

Accordingly, the Office of Justice Programs requests closure of this recommendation.

10. Ensure that once TJSIP funds are awarded, all work products submitted by grantees are reviewed and approved in a timely manner.

The Office of Justice Programs agrees with this recommendation. OJP agrees that BJA should enhance its grants management policy to ensure that work products and deliverables submitted by grantees are reviewed in a timely manner. Accordingly, by December 31, 2016, BJA will revise its Publication Review Policy to ensure that the grantees are notified in writing in the event the quality of the work product or deliverable does not meet BJA's expectations.

The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

11. Remedy \$19,273 in unsupported costs related to deficiencies with federal travel and Alpha Corp's travel policies.

The Office of Justice Programs agrees with this recommendation. OJP will coordinate with the vendor to remedy the \$19,273 in unsupported costs related to deficiencies with federal travel and Alpha Corp's travel policies. If the costs are determined to be unallowable, or are not adequately supported, OJP will request that the vendor return the funds to the DOJ.

The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

12. Ensure compliance with the FAR when awarding contracts as well as throughout the execution of a contract, which includes properly documenting changes to the contract, reviewing invoices to ensure costs are allowable and supported, and monitoring contractors to ensure compliance with contract performance.

The Office of Justice Programs agrees with this recommendation, and has already implemented improvements to its contracting process. OJP's Office of Administration, Acquisition Management Division (AMD) implemented the use of standard modification language in FY 2011 to ensure that contract changes were properly documented. Contract actions above the Simplified Acquisition Threshold (currently \$150,000) are reviewed at the Associate and Deputy Director levels in AMD to ensure compliance with

the Federal Acquisition Regulation (FAR), when soliciting, awarding, and modifying contracts. In addition, contract actions above \$1M are reviewed by OGC to ensure compliance with the FAR and DOJ's procurement rules (see Attachment 7). Additionally, in December 2012, OJP implemented a new contract writing system, the Justice Programs Acquisition Management System (JPAMS), which allows contract file documents to be developed, reviewed, approved, and stored within this system. Further, in January 2015, OJP converted to an electronic contract filing system. All contract file documents are electronically stored in both JPAMS and in a secure, OJP shared drive; therefore, all contract documents are easily accessible and backed-up on a daily basis to ensure files are not lost or destroyed (see Attachment 8).

Furthermore, all invoices are submitted for review and approval in JPAMS. Contracting Officer's Representatives (CORs), Contract Specialists (CSs), and Contracting Officers (COs) review the invoices to ensure costs are allowable and supported with the appropriate documentation. Invoices for contract actions above the Simplified Acquisition Threshold are also reviewed by the COR, the CS, and the CO, to ensure compliance with the FAR and Federal Travel Regulations. Accordingly, the Office of Justice Programs requests closure of this recommendation.

Thank you for your continued collaboration to improve the administration of our grant programs. If you have any questions regarding this response, please contact Ralph E. Martin, Director, Office of Audit, Assessment, and Management, at (202) 305-1802.

Attachments

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Justice Management Division

OJP Executive Secretariat
Control Title IT20160817110236



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

JAN -9 2017

MEMORANDUM TO: Michael E. Horowitz
Inspector General
United States Department of Justice

THROUGH: Jason R. Malmstrom
Assistant Inspector General for Audit
Office of the Inspector General
United States Department of Justice

FROM: Karol V. Mason *KVM*
Assistant Attorney General

SUBJECT: Addendum to the Response dated August 5, 2016 to the Office of the Inspector General's Draft Audit Report, *Audit of the Office of Justice Programs Tribal Justice Systems Infrastructure Program*

This memorandum serves as an addendum to the Office of Justice Programs (OJP) memorandum dated September 8, 2016 which responded to the Office of the Inspector General's (OIG) August 5, 2016, draft audit report entitled, *Audit of the Office of Justice Programs Tribal Justice Systems Infrastructure Program*.

This addendum responds to the OIG revised draft report provided to OJP on December 22, 2016, which included changes based on additional information provided from Alpha Corp and a revision to Recommendation 12.

OJP's position remains unchanged in that we respectfully disagree with many of the facts used to draw conclusions related to the Bureau of Justice Assistances' (BJA) oversight and management of the Tribal Justice Systems Infrastructure Program. Specifically, OJP does not agree with the conclusions that were drawn related to inadequacies with oversight and monitoring of the program, ineffective coordination with BIA, the construction of excessively large facilities, and unnecessary planning activities. OJP continues to maintain that BJA's decisions to fund the planning grants in question, and to fund the construction of the Tuba City and Kayenta facilities, were justified for legal and policy reasons, and that the sizes of the facilities were justified particularly given 1) the uninhabitable conditions of existing facilities that led to the 1992 consent decree, 2) the population to be served, and 3) increasing demands on the Navajo

Nation's justice system as a result of Violence Against Woman Act and Tribal Law and Order Act provisions. Merely planning for its current need (bound by the limitations imposed by the existing consent decree) would clearly have been inadequate. The Navajo Nation planned for its future, not its present or its past.

The Navajo Nation is currently taking steps to assess its entire justice system and practices of law enforcement, prosecutors, and judges to ensure violent offenders are incarcerated, communities, are safer, and justice is secured for victims. OJP recognizes that the changes the Navajo Nation is working to put in place will take time to establish and implement. In the interim, OJP requested the Navajo Nation develop a plan towards operationalizing the Tuba City and Kayenta detention facilities. Navajo Nation provided its plan to OJP on December 8, 2016. The plan provides a detailed assessment of current and planned actions impacting the entire Navajo Nation justice system.

To date, both facilities are open and the Navajo Nation has dedicated FY 2017 funds to hire a total of 110 positions for Tuba City and Kayenta. Of these, 52 have been filled and vacancy announcements for the remaining funded positions have been issued. Funding for the remaining positions will be included in the annual budget cycle for FY 2018. As mentioned previously, Navajo is still operating under the 1992 Consent Decree. Navajo Nation is working to amend the Consent Decree and the detention facilities will be able to begin holding inmates in custody beyond the low numbers currently allowed. As part of the full review of the justice system, the Navajo Police Department (NDPS) is also working to hire more police officers and investigators. The NDPS has obtained additional funding to hire 70 police officers and 8 investigators. The Office of the Prosecutor was appropriated sufficient funds for FY 2017 to hire 20 total prosecutors and juvenile presenting officers. In addition on October 31, 2016, Navajo Nation hired a Chief Prosecutor. In addition, the Judicial Branch has funds available to hire two District Court Judges and a Chief Justice. The Navajo Nation will also be seeking additional funds to hire five additional District Court Judges and an Associate Justice. Through discussions with tribal leadership, OJP remains confident that the Navajo Nation is committed to finding the resources to fund the remaining positions and has taken significant steps to enhance its recruitment and hiring capabilities.

OJP will vigorously monitor, on an ongoing basis, the Navajo Nation's use of grant-funded jail facilities. The purpose of this oversight is to provide the most up to date information to OJP management so that the OJP Assistant Attorney General (AAG) can continue to coordinate DOJ policy matters related to the Navajo Nation. This vigilant oversight further allows the AAG to make appropriate fact and evidence-based decisions related to use of these facilities consistent with the facts as they may change over time.

The revised draft audit report contained an update to Recommendation 12 to which OJP maintains its original response.

12. Ensure compliance with the FAR when awarding contracts as well as throughout the execution of a contract, which includes properly documenting changes to the contract, and reviewing invoices to ensure costs are allowable and supported.

The Office of Justice Programs agrees with this recommendation, and has already implemented improvements to its contracting process. OJP's Office of Administration, Acquisition Management Division (AMD) implemented the use of standard modification language in FY 2011 to ensure that contract changes were properly documented. Contract actions above the Simplified Acquisition Threshold (currently \$150,000) are reviewed at the Associate and Deputy Director levels in AMD to ensure compliance with the Federal Acquisition Regulation (FAR), when soliciting, awarding, and modifying contracts. In addition, contract actions above \$1M are reviewed by OGC to ensure compliance with the FAR and DOJ's procurement rules.

Additionally, in December 2012, OJP implemented a new contract writing system, the Justice Programs Acquisition Management System (JPAMS), which allows contract file documents to be developed, reviewed, approved, and stored within this system. Further, in January 2015, OJP converted to an electronic contract filing system. All contract file documents are electronically stored in both JPAMS and in a secure, OJP shared drive; therefore, all contract documents are easily accessible and backed-up on a daily basis to ensure files are not lost or destroyed.

Furthermore, all invoices are submitted for review and approval in JPAMS. Contracting Officer's Representatives (CORs), Contract Specialists (CSs), and Contracting Officers (COs) review the invoices to ensure costs are allowable and supported with the appropriate documentation. Invoices for contract actions above the Simplified Acquisition Threshold are also reviewed by the COR, the CS, and the CO, to ensure compliance with the FAR and Federal Travel Regulations. Accordingly, the Office of Justice Programs requests closure of this recommendation.

Thank you for your continued collaboration to improve the administration of our grant programs. If you have any questions regarding this response, please contact Ralph E. Martin, Director, Office of Audit, Assessment, and Management, at (202) 305-1802.

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Control Title IT20160817110236

ALPHA CORPORATION'S RESPONSE TO THE DRAFT AUDIT REPORT⁵⁴



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January 6, 2017

Via Electronic Mail
David.M.Sheeren@usdoj.gov
David M. Sheeren
Regional Audit Manager
Denver Regional Audit Office
Office of the Inspector General
U.S. Department of Justice
1120 Lincoln Street, Suite 1500
Denver, CO 80203

Re: Alpha Corporation's Response to United States Department of Justice Office of the Inspector Audit Division Draft Audit Report captioned AUDIT OF THE OFFICE OF JUSTICE PROGRAMS' TRIBAL JUSTICE SYSTEM INFRASTRUCTURE PROGRAM ("Draft Report")

Dear Mr. Sheeren:

Please accept this letter as the Alpha Corporation's written response to the Draft Report. Alpha Corporation submits the instant letter to further support¹ its objection to and disagreement with certain OIG recommendations relating to an alleged overpayment, as well as to "unallowable" and "unsupported" costs.

We remain available to further discuss this matter with you.

I. Introduction/Executive Summary

Alpha disputes and disagrees with OIG's recommendations that: BJA overpaid Alpha Corporation \$2,740 for its Project Coordinator position (No. 3.c); BJA should remedy \$22,574 unallowable *per diem* travel expenses and \$15,022 for unallowable travel costs (No. 3.c); and BJA should remedy \$19,273 in alleged unsupported costs related to Alpha Corporation's travel expenses (No. 11). There was no overpayment for the Project Coordinator position because all hours invoiced were actually worked. Almost the entire balance of expenses that lacked "adequate supporting documentation" represents actual costs that Alpha incurred in connection

¹ Alpha previously submitted to OIG through OJP: (i) a response dated, May 13, 2016 to OIG's Working Draft Report; (ii) a supplemental response, dated, September 27, 2016 in response to OIG's initial Draft Report; (iii) supplemental response, dated, October 3, 2016 in response to questions from OIG relating to Alpha's September 27th response to OIG's initial Draft Report; and (iv) supplemental information *via* electronic mail, dated, November 1, 2016. Alpha also participated in a conference call with OIG on Friday, October 28, 2016.



⁵⁴ Attachments to this response were not included in this final report.



David M. Sheeren
Regional Audit Manager
Denver Regional Audit Office
Office of the Inspector General
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with getting its personnel to the many remote project sites. While Alpha Corporation did not retain and submit all receipts for its travel expenses because of its good faith *albeit* mistaken understanding that it was permitted to be reimbursed under a *per diem* reimbursement, in Recommendation No. 3.c as to both "unallowable *per diem* travel expenses" and "unallowable travel costs", OIG fails to acknowledge that the company incurred and paid actual travel expenses in the amounts invoiced to permit its personnel to perform the Agreement in the many remote locations required. Finally, OIG's calculation of alleged unsupported costs (No. 11) overstates the amount by \$12,694.68 in expenses, which amount is supported by receipts provided with Alpha's Invoice No. 10.

II. Alpha Corporation Fully Performed Under the Agreement.

The Agreement was an open-ended task or call order contract whereby Alpha was to provide BJA with logistical, administrative, management and support services (Agreement, Attachment A Statement of Work) in relation to BJA's "effort to oversee the implementation and progress of renovation and construction projects under the Correctional Facilities on Tribal Lands (CFTL) Grant Program" (SOW). Alpha Corporation supported grantees receiving funding under the Omnibus Crime Control and Safe Streets Act (OCCSSA) and American Reinvestment and Recovery Act (ARRA). Alpha was to assess the progress of projects funded by OCCSSA and ARRA and awards under CFTL to ensure that the construction/renovation projects were being completed in a cost-efficient manner on schedule and in accordance with the appropriate correctional facility standards.

Alpha Corporation's scope of work under the Agreement included reporting information to BJA on a quarterly basis about the progress of construction based on quarterly site visits, identifying risks and changes to the project, and reporting construction schedule progress and project budget status for each of the approximate sixty (60) projects covered by the Agreement. Alpha Corporation fully and professionally performed its scope of work as witnessed by its Site Visit Reports and other deliverables and communications protocols, including conducting quarterly face-to-face meetings with BJA; producing monthly progress reports; developing and maintaining a project and program risk register; supplying photographic documentation for interactive geographic map; and email and telephonic exchanges with BJA.

During site visits, Alpha Corporation personnel documented current project scopes of work based on observations and reviews of then-available project construction documents. Alpha Corporation was not included in the project scope adjustment process, nor did BJA request Alpha Corporation to evaluate programmatic changes even though, with Alpha's Site Visit Reports, such programmatic changes were made evident.

Alpha Corporation's scope of duties under its contract with BJA was *not* a construction manager and did *not* include full time, on-site assignment on any of the projects, including, the Navajo



David M. Sheeren
Regional Audit Manager
Denver Regional Audit Office
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Nation projects. Rather, as tasked by and agreed upon with BJA, Alpha Corporation typically performed half-day to full day site evaluations on a quarterly basis. Based on its quarterly site visits, Alpha Corporation personnel would clearly note status of project scope, budget, and schedule and report that information to BJA *via* a written site visit report. Alpha Corporation also reported on ARRA requirements as documented in the Site Visit Reports along with reporting on actual conditions, quality control, and project control activities.

Over the term of the Agreement, Alpha Corporation produced the following estimated number of deliverables and attended and participated in the following meetings in relation to the approximate sixty (60) projects²:

- Attended 18 BJA/Alpha Corporation Quarterly Briefing Meetings with Status, Risk Register and Tribal Outreach Quarterly Calendar discussions;
- Prepared 59 Progress and Financial Reports;
- Engaged on 63 grant-funded construction/renovation projects;
- Participated in 168 face-to-face Grantee Meetings to discuss issues related to design and/or construction status;
- Participated in 213 face-to-face Project Meetings;
- Prepared 152 Site Visit Reports;
- Prepared 47 Telephonic Outreach Reports;
- Prepared 103 Email Interim Project Status Update Reports;
- Updated the Program Website 93 times;
- Prepared 34 NEPA Progress Reports; and
- Prepared 2 Juvenile Justice Reports.

Alpha Corporation's superior performance and the significant value it brought to the projects through its services performed under the Agreement are demonstrated by the consistently superior evaluations the company received for its work under the Agreement. Copies of Alpha Corporation's Contractor Performance Assessment Reports (CPARS) for the periods 09/30/2009 through 09/29/2010, 09/30/2010 through 09/30/2011, and 09/30/2011 through 04/25/2014 are attached as Exhibit 1.

² During the October 28, 2016 conference call between OIG, BJA and Alpha Corporation, OIG advised that it understood that Alpha Corporation was only responsible for eighteen (18) projects under the Agreement. OIG appears to have mistakenly understood that only ARRA funded projects were covered by the Agreement. In fact, Alpha Corporation was responsible for reporting to BJA on over sixty (60) projects.



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Denver Regional Audit Office
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A. OIG Should Withdraw Recommendation No. 3.c Relating to Alleged Overpayment Because Alpha Corporation's Invoice No. 21 Properly Billed for 189 Hours for the Project Coordinator, and therefore, it did not overbill BJA in the amount of \$2,470.

OIG claims that Alpha Corporation overbilled BJA \$2,470 by including twenty-three (23) hours for a Project Coordinator which was not supported by any timesheet submitted in support of one invoice (Invoice No. 21). Alpha Corporation invoiced BJA for one hundred eighty-nine (189) hours for two employees who had worked as Project Coordinator during the month invoiced, but it only included timesheets totaling one hundred sixty-six (166) hours. Alpha Corporation reviewed its electronic copy of Invoice No. 21 and confirmed that timesheets for the Project Coordinator only supported one hundred sixty-six (166) hours. Alpha Corporation also confirmed that for one of the two employees (Employee ID No. 811) who had worked as Project Coordinator only had one timesheet covering only one-half of the monthly billing period, which showed three (3) hours worked for the period August 16 through August 31, 2011 for BJA (identified internally as "F452-010-39"). There was no timesheet for Employee ID No. 811 for the period August 1 through August 15, 2011 attached to Invoice No. 21.

Consequently, Alpha Corporation conducted a search of the particular employee's (Employee ID 811) timesheet history for the billing period August 1 through 31, 2011 using its Deltek GCS Premier Accounting software, which accepts, records and stores electronic timesheet entries by employees. Deltek's timesheet history report for Employee ID 811 revealed that she had worked a total of twenty-six (26) hours during the entire monthly billing period for BJA (*i.e.* F452-010-39).³ A copy of the Timesheet History Report for that employee is attached as Exhibit 2. Accordingly, OIG should withdraw and delete from its findings and recommendations (No. 3.c.) that Alpha Corporation billed BJA an unallowable expense in the amount of \$2,470 for the Project Coordinator position because Invoice No. 21 correctly identified one hundred eighty-nine (189) hours for the Project Coordinator position.

³ Deltek's Timesheet History Report makes clear that Employee ID 811 completed her electronic timesheet during the billing period to reflect her Project Coordinator work for BJA (F452-010-039) during the bi-weekly pay period August 1 through 15, 2011. Alpha Corporation has no knowledge why Employee ID 811's timesheet for the period August 1 through 15, 2011 was not attached to Invoice No. 21.



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B. Notwithstanding the *per diem* Payments, Alpha Corporation submits its travel and supply expenses constituted reasonable charges and resulted in cost-savings to the Government because of the cost-efficient and cost-effective travel planning method used by it and BJA.

OIG finds that BJA improperly paid Alpha Corporation \$22,574 in *per diem* reimbursement because the Agreement was a time and materials contract requiring reimbursement through the actual expense method. Initially, Alpha Corporation included itemization of its *per diem* expenses, but when travel requirements began to increase in frequency, number and complexity in or about June 2010, in good faith it understood that reimbursement under the lodging-plus *per diem* method of reimbursement would be permitted and would have the benefit of reducing administrative costs and inconvenience for all parties. Based on its good faith (*albeit* mistaken) belief that it was permissible to be reimbursed for travel and supply expenses through a lodging-plus *per diem* method under the Agreement, its personnel did not provide itemized amounts for meals and incidental expenses (M&IE) on their expense reports nor did they retain or submit receipts for these expense items.⁴

Alpha Corporation went to great lengths to pre-plan all travel and schedule its site visits in the most cost-efficient and cost-effective way to minimize the cost of travel and supply expenses under the Agreement. Alpha Corporation submits that notwithstanding the mistaken practice of utilizing the lodging-plus *per diem* reimbursement method, the government realized a cost-savings through its coordinated travel under the Agreement. OIG's recommendation (within No. 3.c) should be amended to recognize that the company incurred actual expenses for meals and incidentals.

⁴ The Alpha Corporation travel policy provided to OIG in or about October 2015 was not effective until after the effective date of the Agreement. However, the intent of that policy was for Alpha Corporation to seek reimbursement from clients for direct costs, including, travel expenses, in accordance with the terms of the client agreement, policy or applicable regulation. Consequently, if the client agreement, policy or applicable regulation allowed for reimbursement of travel expenses on a lodging-plus *per diem* basis, then Alpha Corporation employees would follow that method even though the company itself did not allow for that method of reimbursement outside of the client agreement. Further, as to missing receipts, while Alpha Corporation required they be provided, it would reimburse an employee without a receipt if a legitimate explanation was provided as to why the receipt was missing.



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C. Alpha Corporation and BJA Implemented Methods and Controls that were both Efficient and Cost-Effective Resulting in Reasonable Travel and Supply Expenses under the Agreement.

Alpha Corporation made every effort to minimize costs associated with travel and it is confident that its travel expenses – whether based on per diem or actual cost resulted in reasonable charges. Toward that end, Alpha Corporation worked with BJA to minimize total travel expenditures. All travel was planned out on a quarterly basis. An example of the typical travel plan schedule is attached as Exhibit 3 (FY 2013 3rd Quarter – Alpha Tribal Outreach Visitation Schedule). To minimize costs, site visits were grouped geographically such that multiple Tribes were visited in a single week. Grouping the site visits resulted in a reduction in the overall number of round trip travel costs that would have otherwise resulted if these sites were not grouped as indicated. It also is worth noting that the project sites were located in remote destinations with limited air travel, car rental, and hotel options. Alpha Corporation's practice of grouping site visits was carried out through the life of the Agreement.

Any analysis of the reasonableness of Alpha Corporation's travel and supply expenses under the Agreement requires consideration of the purpose of the travel and its utility. The total amount of travel and supply expenses over the Agreement's five (5) year term amounted to approximately \$220,000, which allowed Alpha Corporation to make one hundred fifty-two (152) site visits and produce a corresponding number of Site Visit Reports. Thus, the travel and supply cost per site visit was approximately One Thousand Four Hundred Forty-seven Dollars (\$1,447.00)⁵, which included airfare, hotel, car rental, telephone costs, and M&IE. Considering the difficulty of traveling to many of the project sites that were in remote locations, Alpha Corporation's cost per-Site Visit provided a good value to the government.

Thus, while Alpha Corporation did not retain and submit all receipts for its travel expenses because of its good faith *albeit* mistaken understanding that it was permitted to be reimbursed under a *per diem* reimbursement, in Recommendation No. 3.c, OIG fails to acknowledge that the company incurred and paid actual travel expenses in the amounts invoiced to permit its personnel to perform the Agreement in the many remote locations required. OIG's recommendation as to "unallowable travel costs" (within No. 3.c) should be amended to recognize that the company incurred actual expenses for meals and incidentals.

⁵ This amount does not include the additional meetings, such as regional meetings and quarterly meetings that Alpha Corporation personnel participated in during the Agreement's term.



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D. OIG's Calculation of Alpha Corporation's "Unsupported Costs" (Recommendation No. 11) is overstated by \$12,694.68.

OIG claims that there were "\$19,273 in unsupported costs" included in Alpha Corporation's invoices, including "\$17,080 in invoice costs that lacked adequate supporting documentation, and \$2,193 in other unsupported travel expenses." Draft Report, at 52 and 57. OIG's calculation is incorrect. The error in OIG's calculation of its total of "unsupported costs" stems from its erroneous calculation of "unsupported costs" relating to Invoice No. 10 in which Alpha Corporation invoiced \$22,003.67 for travel and supply expenses. OIG claims that Invoice No. 10 reflects \$12,801.70 (Tab 3, OIG Excel spreadsheet provided just prior to Exit Interview) in "unsupported" travel and supply expenses. OIG's stated amount is incorrect because it has ignored the majority of BJA project-related expenses that were included in Invoice No. 10 with supporting documentation relating to Alpha Corporation employees [REDACTED]. Based on OIG's Excel spreadsheet, it appears that OIG only included expenses for the month of July for [REDACTED] and only included expenses for part of the latter portion of August for [REDACTED]. In fact, Invoice No. 10 totals \$21,349.93⁶ in travel and supply expenses based on the supporting documentation for both [REDACTED] and [REDACTED] compared to OIG's erroneously calculated amount of \$9,201.97.⁷ Thus, OIG cannot claim any unsupported expense for Invoice No. 10 in any amount greater than \$653.74 and Recommendation No. 11's remedy should be modified to reduce the alleged amount of "unsupported costs" to no greater than \$7,125.04 of which amount Alpha Corporation actually incurred and paid expenses and costs in that amount even if documentation is incomplete or lacking.

III. Conclusion

For all the foregoing reasons and those previously provided in its prior submissions and communications with OIG, Alpha Corporation respectfully submits that the OIG should:

- (i) withdraw that portion of its recommendation as to remediation of an alleged overpayment for the Project Coordinator position in the amount of \$2,470 (within No. 3.c) because there was no overpayment for actual hours worked as demonstrated by time sheets provided to OIG;

⁶ This amount excludes expense amounts for rental auto insurance and gasoline and three (3) missing hotel receipts for [REDACTED].

⁷ A true and accurate copy of Invoice No. 10 along with supporting receipts and an Excel spreadsheet breaking down the expenses was provided to OIG on November 2, 2016.



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- (ii) modify its recommendation as to remediation of unallowable *per diem* expenses (within No. 3.c) to recognize that the company incurred actual expenses for meals and incidentals under the Agreement;
- (iii) modify its recommendation as to remediation of unallowable travel costs (within No. 3.c) to recognize that the company incurred actual travel costs as invoiced under the Agreement; and
- (iv) modify its findings and recommendations relating to “unsupported costs” that are currently included in the Draft Report (No. 11) consistent with this letter by reducing the figure to an amount no greater than \$7,125 from \$19,273 (*i.e.* a \$12,148 decrease) along with the acknowledgement that the company incurred actual expenses in that same or substantially similar amount.

Alpha Corporation looks forward to meeting and coordinating with BJA to review and remedy as appropriate any expenses and costs that OIG characterized as “unsupported” and “unallowable” in an effort to demonstrate such costs were actually and reasonably incurred in furtherance of the company’s performance of the Agreement.

Respectfully submitted,

Philios Angelides, PE, F.SAME, President
pa/md

cc: Kate C. Lindsey, Chairman/CEO
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**OFFICE OF THE INSPECTOR GENERAL
ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE THE REPORT**

The OIG provided a draft of this audit report to OJP. OJP's response is incorporated in Appendix 4 of this final report. In addition, Alpha Corp, a T&TA provider for the grant program, provided a response included in Appendix 5 of this report. The following provides the OIG's analysis of these responses and summary of actions necessary to resolve the report.

Analysis of OJP's Response

In response to our audit report, OJP concurred with our recommendations and discussed the actions it will implement in response to our findings. For some recommendations, the implementation of the stated actions should remedy the issues we found. However, OJP also stated that it does not agree with many facts and conclusions presented in the report. Throughout the audit, we considered OJP's position along with all the information we obtained and analyzed during the audit. We also provided OJP with multiple chances to provide documentation relevant to the findings, and to provide alternative actions that would help address the recommendation. Ultimately, we were not able to identify sufficient basis to retract the audit's conclusions with which OJP disagrees, and despite our multiple discussions with OJP to resolve these issues, OJP's proposed actions for some recommendations do not adequately address our findings. As a result, the status of the audit report is unresolved.

Throughout its response, OJP provided additional statements that we believe need to be addressed separately from the recommendations. First, OJP stated that the OIG included in its audit conclusion information on three tribes (Tribes 1, 2, and 3) whose awards were made prior to FY 2009, and, in fact, are outside the scope of this audit initially depicted to OJP. The scope, as presented to OJP, generally covered grant activities between FYs 2009 and 2013. However, while initially awarded by OJP before FY 2009, we identified millions of dollars in taxpayer funds spent on facilities that remained unopened until 2015 and 2016, which we considered to be a significant issue related to our audit objectives. Additionally, grant-related activities occurred during the scope of our audit for each grantee, and two tribes (Tribes 1 and 2) were awarded TJSIP funds in 2009, which was within our general scope. Further, although OJP noted that the three facilities finally were opened and became operational in 2015 and 2016, as detailed in our report, this was approximately a decade after the grants were awarded. Finally, it is the responsibility of the OIG to inform OJP of deficiencies so that it can implement corrective actions and best manage its programs, and we recognize that OJP routinely commits itself to such improvement based on our findings. As a result,

given our findings in this audit we believe OJP's oversight and management requires improvement to ensure grant-funded facilities become operational in a more timely manner, particularly because grantees have represented that they had high need for these facilities, and because of the high cost of building these facilities.

OJP also stated that it disagrees with the OIG's conclusion that inadequacies existed in BJA's oversight leading to grantee implementation issues. Although OJP stated that it believes the OIG did not adequately characterize the level and depth of BJA's oversight and management efforts, OJP did not offer any new information that required us to expand our descriptions of BJA's oversight or alter our characterizations thereof. As we explain in our report, our assessment of BJA's oversight and management activities along with our findings on particular grantees represent areas in which BJA can improve.

OJP additionally stated that the OIG failed to report a critical point that there is a timing gap between BJA's appropriation of funds that support construction and renovation, and BIA's budget request and appropriation of funds to support the operations and management of those facilities. Our report notes this issue and states that due to BIA's appropriation process, BIA cannot guarantee funding will be available at the end of the construction process. We agree that this creates challenges, and we believe coordination between BJA and BIA could be improved. OJP is aware of the risks this presents to its grant awards and its grantees.

Navajo Nation

The OIG previously issued a report related to approximately \$70 million awarded to the Navajo Nation through the TJSIP.⁵⁵ Two of the nine recommendations from that report are unresolved between the OIG and OJP. Both recommendations relate to the documented need for planning funds and construction funds spent by the Navajo Nation, which led to the OIG recommending that OJP remedy \$290,000 in unallowable expenditures associated with two planning grants and \$32 million in expenditures associated with excessive detention facility capacity. The OIG has identified no basis to retract or reconsider the conclusions of its specific audit of grants provided to the Navajo Nation, including the questioned costs.

In contrast to that report, which focused on the actions of the Navajo Nation, in this report, the OIG questions the adequacy of OJP's oversight and management of the construction awards made to the Navajo Nation. Specifically, OJP failed to identify the excess funding request made by the Navajo Nation during the application process. Consequently, the Navajo Nation built facilities that were at least 250-percent larger than what was presented in its applications. We found no

⁵⁵ *Audit of the Office of Justice Programs, Correctional Systems and Correctional Alternatives on Tribal Lands Program, Grants Awarded to the Navajo Division of Public Safety, Window Rock, Arizona*, on September 29, 2015.

evidence to suggest that BJA officials were aware of the project increases or initiated any formal process to review and approve amended plans for an expanded facility that would justify the change in project size. Much of OJP's response to this report pertains to issues identified in our prior audit report of the Navajo Nation. As such, we are not addressing the majority of OJP's comments related to the Navajo Nation as they are not relevant to this report.

OJP stated that we use the findings from one grantee, the Navajo Nation, to support our conclusion that there were inadequacies in BJA's due diligence in its management of the application process and oversight of awards that led to unused planning products and premature funding of construction before adequate planning was completed. The OIG disagrees. In this report, we identified a number of instances across several tribes to support our conclusion. For example: (1) Tribe Number 4 was awarded construction funds before planning was complete, (2) the Nebraska Tribes were awarded a number of planning grants that resulted in planning products that will likely not be used, (3) Pueblo of Laguna was awarded construction funds before adequate funding for the entire project was obtained, and (4) Tribe Number 9 completed a planning product that will likely not be used. In fact, this report does not discuss the planning grants awarded to the Navajo Nation. While OJP continues to disagree with the conclusions related to the prior report on the Navajo Nation, the OIG identified other additional instances that support our conclusion of inadequacies with BJA's due diligence in its management of the application process and oversight of awards.

OJP stated that with the planning funds awarded to the Navajo Nation, the Navajo Nation was able to construct facilities that addressed the specific needs of local communities. We disagree. The Navajo Nation was awarded planning funds for facilities in Dilkon, Arizona, and Kayenta, Arizona. Dilkon has not constructed a facility and the facility at Kayenta was already under construction prior to the completion of the planning product.

OJP also disputes our finding that the Navajo Nation could have moved directly into the architectural and engineering phase of construction, based upon the 2007 Master Plan for Tuba City and Kayenta. We concluded that this master plan included extremely detailed information for each site, including construction budgets; facility purposes, such as detention, courts, and police; facility needs, including inmate beds and square footage of specific rooms; and requirements as specific as beverage station and refrigerator sizes; and was intended to be used to proceed to the construction phase at each district. This conclusion is buttressed by the Navajo Nation's experience in both Tuba City and Crownpoint, where it proceeded directly to the construction phase without the creation of a separate site-specific master plan.

OJP further states that, at the time of the 2007 Master Plan, the Navajo Nation could not have anticipated the availability of the Recovery Act funding – a rare opportunity for tribes to increase their corrections infrastructure. This increase in funding allowed the Navajo Nation Department of Corrections to revisit its

original space needs based on the 2005 analysis. However, as our report details, the Navajo Nation applied for and was awarded funding based on the 2007 Master Plan. We have never been provided documentation showing that a change in scope was requested, reviewed, or approved by the Navajo Nation or OJP.

OJP states that the OIG made an assertion that the facilities built by the Navajo Nation provide no apparent benefit to the Navajo Nation or public. This statement was made in relation to the resolution process for our prior report and was taken out of context. In context, we have questioned, and continue to question, the apparent benefit of facilities that currently stand empty or substantially empty, and are too costly for the Navajo Nation to operate. Additionally, the OIG has never questioned that there is a need for correctional facilities by the Navajo Nation. This report reflects the inadequate oversight and management of grants for such facilities by BJA, which allowed the Navajo Nation to build facilities that were at least 250-percent larger than what was presented in the applications. This was done without any evidence to suggest that BJA officials were aware of the project increases or initiated any formal process to review and approve amended plans for an expanded facility that would justify the change in project size.

OJP states that the term “fully operational” is defined as having the number of staff needed to operate at full capacity. We do not disagree that to be fully operational the appropriate number of staff need to be hired. However, fully operational also includes having appropriate funding for maintenance and operations of the facility, as well as having inmates who occupy the facility. Having an empty facility or partially used facility that is fully staffed calls into question whether the facility is sized appropriately for the intended population.

Unresolved Recommendations:

- 2. Review the circumstances of the facilities that have remained unopened or non-operational after the TJSIP grants were closed, determine if any grant funds should be repaid by the grantees due to the ineffective or inappropriate use of funds, and develop a corrective action plan to ensure that all unopened facilities or less than fully operational facilities become fully operational within a reasonable timeframe.**

Unresolved. OJP stated that it concurred with our recommendation. OJP stated in its response that it has reviewed, and continues to monitor, the circumstances surrounding the facilities that have remained unopened or non-operational after the TJSIP grants were closed by OJP. According to OJP, the facilities for three of the tribes described in the OIG report are now open and operational: Tribe Number 1 opened in May 2016, Tribe Number 2 opened in June 2015, and Tribe Number 3 opened in September 2015. Further, DOJ’s TJSIP project team continues to work with the Navajo Nation to open and fully operationalize the facilities funded through ARRA.

Additionally, OJP stated that it implemented a new tool on May 6, 2016, to monitor renovation and construction projects after closeout. Grantees are now required to report on the status of real property in which the federal government retains an interest. Further, all TJSIP grants awarded during the FY 2016 cycle, as well as future grants under this program, will include a special condition requiring grantees to report on the use and status of real property acquired, constructed, or improved under the award, throughout the useful life of the property or until the federal interest in the property ceases, whichever is shorter.

While OJP's response addresses some of the findings in our report, it does not address key aspects of our recommendation. Specifically, while OJP's proposed monitoring tool would require grantees to report the status of real property in which the federal government retains an interest, OJP has not presented a plan to address reported facilities that are less than fully operational. Also, the new monitoring tool applies to facilities constructed with grants that were active as of May 6, 2016. However, several of the facilities we identified were constructed with grants that were no longer active, and therefore would not receive such monitoring. OJP stated in its response that it conducts bi-weekly meetings to address issues related to tribal facilities that are not yet open. Although such meetings undoubtedly promote coordination with BIA, they are not directly responsive to our recommendation that OJP should develop a corrective action plan to ensure facilities that are less than fully operational become fully operational. In its response, OJP did not present a corrective action plan to ensure that all grant-funded facilities that were unopened or not fully operational prior to the implementation of the new monitoring tool on May 6, 2016, become operational. OJP has identified at least two facilities at the Navajo Nation that have not been fully operationalized, one of which remains unopened. This corrective action plan should address these two facilities as well as any other facilities funded with TJSIP funds that are less than fully operational.

As a result, we do not believe OJP's proposed actions adequately address our recommendation, and as a result this recommendation is unresolved. This recommendation can be resolved when we receive corrective action plans for all facilities that are unopened and for all facilities less than fully operational to become operational.

- 6. Develop a process to ensure planning grantees or the Tribal Justice Systems Strategic Planning Program grantees are provided the tools to implement recommendations that resulted from the planning process, which may include providing outreach and technical assistance.**

Unresolved. OJP stated that it concurred with our recommendation. OJP stated in its response that if the TJSIP planning grants are ever reinstated,

grantees should receive training and technical assistance to identify their implementation needs, including guidance in identifying potential funding sources for their strategy. However, OJP did not indicate any action it would perform for current active programs.

After considering OJP's response, we do not believe the proposed actions adequately address our recommendation. Specifically, OJP indicated that it would only perform action if the discontinued TJSIP planning program was reinitiated, but it did not indicate any action to address its current programming for TJSIP planning activities. OJP has changed its programming for TJSIP planning, and now encourages tribes to conduct a broader, more comprehensive assessment of their justice system needs and resources through the CTAS Purpose Area (PA) 2, Comprehensive Tribal Justice Systems Strategic Planning Program (CTJSSP), rather than awarding planning funds under the TJSIP. Although planning is not conducted under the TJSIP, our recommendation is still relevant to grantees under the CTJSSP as TJSIP planning is performed more broadly through the CTJSSP. Therefore the actions described by OJP are still relevant to the CTJSSP including: (1) ensuring grantees' plans address the costs for constructing or renovating a facility, and/or implementing alternative community corrections programs (2) that the T&TA providers work with the grantees to identify potential sources of funding for both the construction/renovation/implementation of the project as well as ongoing operations. We believe that OJP can take action immediately to ensure proper planning occurs for TJSIP participants, given that the TJSIP planning program has been discontinued.

Because additional actions are needed by OJP, this recommendation is unresolved. This recommendation can be resolved when we receive evidence that grantees are provided tools to implement recommendations from the planning process, which may include outreach and technical assistance.

7. Ensure T&TA services are well defined and COI policies are enforced.

Unresolved. OJP stated that it concurred with our recommendation. OJP stated in its response that it has already implemented the necessary corrective action to address this finding. It further stated that COI concerns were addressed in three ways including: (1) adding a special condition to T&TA awards beginning in FY 2013, (2) developing guidance in the solicitation addressing the COI issue in FY 2013, and (3) developing a new special condition for awards starting in FY 2016 to make tribal grantees aware of possible COI consequences of contracting with T&TA providers.

OJP's response sufficiently addressed the first part of our recommendation for COI policies. But our report also found that T&TA services are not adequately defined. Our audit determined that the lack of clear definitions may result in wasted and duplicative spending through overlap in the

services that T&TA providers provide. OJP did not discuss in its response any plans to address this key part of our recommendation.

After considering OJP's response, we believe additional actions are needed to adequately address our finding. Therefore, this recommendation is unresolved. This recommendation can be resolved when we receive evidence that OJP has more clearly defined the services provided by T&TA providers.

9. Analyze the costs and benefits of including master planning services as a service provided through T&TA.

Unresolved. OJP stated that it concurred with our recommendation. OJP stated in its response that, if the TJSIP planning grants are ever reinstated, it will structure the program to ensure that the most cost-effective approach to provide technical assistance to grantees is used.

OJP indicated that it would only perform action if the discontinued TJSIP planning program was reinitiated. It did not indicate any action to address its current programming for TJSIP planning activities. OJP has changed its programming for TJSIP planning, and now encourages tribes to conduct a broader, more comprehensive assessment of their justice system needs and resources through CTJSSP, rather than awarding planning funds under the TJSIP. The CTJSSP provides T&TA to grantees using a similar approach as the TJSIP, in which the OIG identified potential cost savings. Therefore, even though planning is not conducted under the TJSIP, this recommendation is still relevant to grantees under the CTJSSP, as TJSIP planning is performed through the CTJSSP, and we believe that OJP can take action immediately to ensure cost-effective planning occurs for TJSIP participants.

Because the actions that OJP describe do not adequately address the recommendation, this recommendation is unresolved. This recommendation can be resolved when we receive evidence that OJP has analyzed the costs and benefits of including planning services as a service provided through T&TA.

Resolved Recommendations:

- 1. Coordinate with BIA to improve the design and certificate of occupancy processes as well as ensure appropriately sized facilities can be funded, completed, opened, and fully operational. This includes developing a formal agreement between OJP and BIA to document the roles and responsibilities of each agency, expectations of each agency, and areas of coordination.**

Resolved. OJP concurred with our recommendation. OJP stated in its response that a formal agreement would be useful to establish and document

communication protocols, the roles and responsibilities of each agency, and areas of coordination. OJP will propose the formal agreement to BIA.

This recommendation can be closed when we receive a final agreement between OJP and BIA. As OJP stated, it may not be able to establish a formal agreement with BIA as it does not have authority over BIA. If OJP is unable to establish a formal agreement with BIA, this recommendation could be closed when we receive evidence demonstrating attempts to establish a formal agreement as well as documentation detailing OJP's formal policies to promote coordination.

- 3. Remedy \$11,603,176 in unallowable costs related to the following:**
 - a. \$10,720,232 awarded to the Nisqually Tribe to fund a correctional facility that was not funded or used in conformity with the statutory authority of the TJSIP, and that was inappropriately built with the intention of being a profit-generating facility.**
 - b. \$106,277 paid by Tribe Number 10, \$124,697 paid by Tribe Number 9, \$59,326 paid by Tribe Number 8, \$30,998 paid by Tribe Number 7, \$136,494 paid by Tribe Number 11, \$285,608 paid by Tribe Number 12, and \$99,480 paid by Tribe Number 13 for services where a COI existed.**
 - c. \$2,470 overpaid to the Project Coordinator position, \$22,574 unallowable per diem travel expenses, and \$15,022 for unallowable travel costs.**

Resolved. OJP concurred with our recommendation. OJP stated in its response, for subpart a, that it will work with the Nisqually Tribe to assess whether it is using the facility in accordance with the terms of the agreement and provide further guidance to the Nisqually Tribe. For subpart b, OJP stated it will examine each case carefully, focusing on the grant requirements and COI rules that apply to each party involved and will coordinate an appropriate response for each individual situation. For subpart c, OJP stated it will coordinate with the vendor to remedy the \$40,066 in questioned costs, related to the \$2,470 overpayment to the Project Coordinator position, the \$22,574 in unallowable per diem travel expenses, and the \$15,022 in unallowable travel costs.

On October 31, 2016, OJP provided the OIG with additional documentation submitted by Alpha Corp to OJP on May 13, 2016, to address the questioned costs we identified. OJP stated this information had not been provided to the OIG earlier due to an oversight by OJP. Alpha Corp included in this documentation as well as in its response to the draft report, timesheets to

support 23 hours of work by the Project Coordinators for a total of \$2,470. As a result, we consider these costs remedied.

Also in Alpha Corp's additional submission to OJP from May 13, 2016, as well as in its response to the draft report, Alpha Corp stated that, while the \$22,574 received for per diem expenses was mistaken, the company did incur actual expenses for meals and incidentals. Therefore, Alpha Corp believes that the recommendation related to these questioned costs should be amended to recognize that Alpha Corp incurred actual costs meals and incidentals. However, although Alpha Corp stated it incurred actual costs, we have not been provided any documentation to support expenses that were incurred. As a result, we do not have basis to remedy any of the \$22,574 in unallowable per diem costs.

Related to the \$15,022 in unallowable travel costs, Alpha Corp stated in its response that it made every effort to minimize costs associated with travel and is confident that its travel expenses – whether based on per diem or actual cost – resulted in reasonable charges. Alpha Corp also suggests that conducting an analysis of reasonableness of travel and supply expenses would result in an assessment that Alpha Corp's cost per site visit provided a good value to the government. The \$15,022 in expenses we identified are separate from the \$22,574 in per diem expenses and relate to expenses that did not appear to be reasonable. This included improper methods to allocate costs between personal time, TJSIP work, and non-TJSIP work, which included combining non-TJSIP work with the TJSIP work during a week and charging full hotel and per diem to the TJSIP; or extending work travel without working full days to remain in a locale over a weekend. Also included in these costs were unauthorized purchases for airfare upgrades and unallowable charges for rental cars including upgrades, insurance, and prepaid fuel. Although Alpha Corp claims it incurred actual costs at a good value to the government, we have not been provided any documentation sufficient to adjust our finding that Alpha Corp incurred \$15,022 in unallowable travel costs.

This recommendation can be closed when we receive documentation supporting that the remaining \$11,600,706 in unallowable expenditures has been remedied. For subpart a, this includes documentation of OJP's assessment of the Nisqually Tribe with adequate support and justification for its conclusions, and remedying of any funds from the Nisqually Tribe that were not used in accordance with the terms of the agreement. For subpart b, this includes documentation of OJP's assessment of the COIs with adequate support and justification for its conclusions, and remedying any funds related to a COI. For subpart c, this includes OJP's assessment of questioned costs related to payments made to OJP's T&TA vendor with adequate support and justification for its conclusions, and remedying of any funds.

- 4. Enhance its due diligence process to ensure that sufficient comprehensive justice planning has been completed before construction or renovation, which includes assessing alternative treatment needs. This may include requiring and verifying additional information that is currently not required as part of the application materials - such as an assessment of bed space needs, BIA assessment of need and support, a complete construction or renovation plan, and inmate population statistics for more than a 6-month period - as well as assessing the overall impact of awards to ensure the grants will meet tribes' needs and allow them to fully open, operate, and maintain the facilities. This also includes enhancing its process to deobligate funds more quickly if TJSIP grantees are not prepared for construction.**

Resolved. OJP concurred with our recommendation. OJP stated in its response that BJA is in the process of drafting standard operating procedures for TJSIP that will memorialize existing operating procedures as well as address any areas of ambiguity as it relates to administration of the TJSIP. If, in the future, BJA reinstates a construction component of the TJSIP, these awards will be governed by the TJSIP policy issued by the BJA Director on May 20, 2016. The policy requires grantees to provide evidence of sufficient funding to complete construction and operationalize the facility. It further states that any future solicitation will require applicants to submit relevant planning documents that substantiate the need and proposed size of the facility, as a separate attachment to their application. As it relates to renovation or expansion projects, BJA stated it has requirements in place to ensure comprehensive planning has been completed prior to application submission. Additionally, for applicants seeking funds for renovation or expansion of detention facilities for housing sentenced offenders, BJA will conduct an analysis to identify a period of time beyond 6 months that may provide a more robust representation of inmate population statistics and need.

This recommendation can be closed when we receive and review the final standard operating procedures for the TJSIP that address the administration of the TJSIP as well as the analysis related to the required timeframe for inmate population statistics supplied by applicants.

- 10. Ensure that once TJSIP funds are awarded, all work products submitted by grantees are reviewed and approved in a timely manner.**

Resolved. OJP concurred with our recommendation. OJP stated in its response that BJA should enhance its grants management policy to ensure that work products and deliverables submitted by grantees are reviewed in a timely manner. By December 31, 2016, BJA will revise its Publication Review

Policy to ensure that the grantees are notified in writing in the event that the quality of their work product or deliverable does not meet BJA's expectations.

This recommendation can be closed when we receive and review the updated Publication Review Policy that addresses the timeliness of BJA's review and approval process for work products submitted by grantees.

11. Remedy \$19,273 in unsupported costs related to deficiencies with federal travel and Alpha Corp's travel policies.

Resolved. OJP concurred with our recommendation. OJP stated in its response that it will coordinate with the vendor to remedy the unsupported costs related to deficiencies with the federal travel and Alpha Corp's travel policies. If costs are determined to be unallowable or not adequately supported, OJP will request that the vendor return the funds to DOJ.

On October 31, 2016, OJP provided the OIG with additional documentation submitted by Alpha Corp to OJP on May 13, 2016, to address the questioned costs we identified as well as its performance under the contract. OJP stated this information had not been provided to the OIG earlier due to an oversight by OJP. Alpha Corp included in this documentation, as well as in its response to the draft report, a spreadsheet and explained that Invoice Number 10, which made up \$12,802 of the unsupported costs, included documentation to support the expenses. We reviewed the spreadsheet. However, no additional documentation was provided to support Alpha Corp's claim that Invoice Number 10 supported all of the expenses. In its response to the draft report, Alpha Corp stated that these expenses were included with the invoice with supporting documentation. On November 3, 2016, Alpha Corp provided the additional documentation. Based on our review, Alpha Corp's documentation supported \$9,024 of the \$12,802 originally questioned from Invoice Number 10, but did not support that the remaining \$3,778 in expenditures were allowable. As a result, we consider \$9,024 related to Invoice Number 10 adequately remedied.

This recommendation can be closed when we receive and review evidence that the remaining \$10,249 in unsupported costs have been remedied. This includes OJP's assessment of the questioned costs with adequate support and justification for its conclusions and remedying of any funds.

Closed Recommendations:

5. Ensure any current or future facilities are constructed or renovated in a timely fashion, to a size that meets tribal needs that is also within the funding availability and intent of the TJSIP program.

Closed. OJP concurred with the recommendation and provided TJSIP policy issued by the BJA Director in May 2016. Should new construction projects be considered for funding in future years, the policy states that BJA will:

- Require grantees provide a quality needs assessment that is research-based, data-driven, and informed by a thorough planning process.
- Ensure applications include any relevant supporting documentation, such as master plan documents, historical data related to use of the facility, and data on justice-involved individual populations.
- Require that all BJA-funded detention centers are used for the purposes consistent with TJSIP grant awards.
- Track the useful lives of facilities, and ensure facilities are being used consistently with TJSIP grant awards through the real property reporting process established by 2 CFR §200.329.

As it relates to applicants requesting funding to renovate or expand existing facilities, BJA stated that it will continue to ensure that the applicant has documented the need for the expansion and planned for any new staff required as a result of the expansion.

We reviewed the policy and determined these actions adequately address our recommendation. Therefore, this recommendation is closed.

8. Implement policies that ensure T&TA providers do not contract separately to provide services to grantees or, in the rare circumstance a contract may be necessary, require prior OJP approval before T&TA providers' contract separately with grantees or accept subawards from a grantee's contractor.

Closed. OJP concurred with our recommendation. OJP stated in its response that it has already implemented the necessary corrective action to address this finding. It further stated that COI concerns were addressed in three ways including: (1) adding a special condition to T&TA awards beginning in FY 2013, (2) developing guidance in the solicitation addressing the COI issue in FY 2013, and (3) developing a new special condition for awards starting in FY 2016 to make tribal grantees aware of possible COI consequences of contracting with T&TA providers. The special condition for T&TA providers

requires T&TA providers to obtain prior approval from their grant manager for any work with a grantee.

We reviewed the added special conditions and the solicitation guidance and determined these actions adequately address our recommendation. Therefore, this recommendation is closed.

12. Ensure compliance with the FAR when awarding contracts as well as throughout the execution of a contract, which includes properly documenting changes to the contract, and reviewing invoices to ensure costs are allowable and supported.

Closed. OJP stated that it concurred with our recommendation. OJP stated in its response that it has already implemented improvements to its contracting process as follows:

- OJP's Office of Administration, Acquisition Management Division (AMD) implemented the use of standard modification language to ensure that contract changes are properly documented.
- Contract actions above the Simplified Acquisition Threshold (currently \$150,000) are reviewed at the Associate and Deputy Director levels in AMD to ensure compliance with the Federal Acquisition Regulation (FAR).
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- OJP implemented a new contract writing system, the Justice Programs Acquisition Management System (JPAMS), which allows contract file documents to be developed, reviewed, approved, and stored within this system.
- OJP converted to an electronic contract filing system. All contract file documents are electronically stored.
- All invoices are submitted for review and approval in JPAMS. Contracting Officer's Representatives (CORs), Contract Specialists (CSs), and Contracting Officers (COs) review the invoices to ensure costs are allowable and supported with the appropriate documentation.

We reviewed OJP's implemented improvements and determined these actions adequately address our recommendation. Therefore, this recommendation is closed.

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