

Oneida Tribe of Indians of Wisconsin
On-Site Monitoring Review

FINAL REPORT



U. S. Department of Housing and Urban Development
Eastern / Woodlands Office of Native American Programs (E/WONAP)
Grants Evaluation Division

William O. Dawson III, Director

October 19, 2016

TABLE OF CONTENTS
Oneida Tribe of Indians of Wisconsin
Final Monitoring Report

IHBG Program

<u>Subject</u>	<u>Page #</u>
Introduction	1
Summary of Findings and Concerns.....	3
Significant Accomplishments	3
Organization and Structure.....	4
Financial and Fiscal Management	8
Procurement and Contract Administration	13
• FINDING #2016IHBG-1	
• CONCERN #2016IHBG-1	
• FINDING #2016IHBG-2	
• CONCERN #2016IHBG-2	
• FINDING #2016IHBG-3	
• FINDING #2016IHBG-4	
Self-Monitoring.....	33

ICDBG Program

<u>Subject</u>	<u>Page #</u>
Introduction	35
Summary of Findings and Concerns.....	37
Administration and Grant Compliance.....	37
Environmental Review Record	39
Financial and Fiscal Management	40
Financial Reporting.....	43
Procurement and Contract Administration	44
• FINDING #2016ICDBG-1	

Oneida Tribe of Indians of Wisconsin

Final Monitoring Report

IHBG

On December 1–3, 2015, the Eastern Woodlands Office of Native American Programs (E/WONAP) conducted an on-site monitoring review of the Oneida Tribe of Indians of Wisconsin’s (OTIW) Indian Housing Block Grant (IHBG) program. The purpose of the review was to fulfill the U.S. Department of Housing and Urban Development’s statutory obligation under Section 405 of the Native American Housing Assistance and Self-Determination Act (NAHASDA), to review the performance of an IHBG recipient’s compliance with the requirements of NAHASDA.

The review was designed to evaluate OTIW’s performance in: complying with its Indian Housing Plans (IHP); implementation of eligible activities in a timely manner; submission of accurate Annual Performance Reports (APR); and carrying out its programs in accordance with the requirements and primary objectives of NAHASDA, the IHBG program regulations at 24 CFR Part 1000, and other applicable laws and authorities¹. The performance measures at 24 CFR Section 1000.524 were used to conduct the monitoring review.

The grant reviewed was:

Indian Housing Block Grant (IHBG)
55IT5549100

The areas reviewed for these programs were:

- Organization and Structure
- Financial and Fiscal Management
- Procurement and Contract Administration
- Self-Monitoring

E/WONAP staff who participated in the review were:

- Mario Lindsey, Grants Evaluation Specialist
- Mary White, Grants Management Specialist

¹ Note: Effective December 26, 2014, the regulations at 2 CFR Part 200 replaced Office of Management and Budget Circulars A-21, A-50, A-87, A-89, A-102, A-110, A-122, and A-133; and the regulations at 24 CFR Parts 84 and 85, and 2 CFR Parts 215, 220, 225, and 230. HUD will make every attempt to cross reference the obsolete and new citations.

An entrance conference was held on December 1, 2015 with the following officials and staff representing OTIW:

Lisa Summers, Tribal Secretary
JoAnne House, Chief Counsel
Geraldine Danforth, HR Area Manager
Larry Barton, CFO
Justine Hill, Office Manager
Cindy Kohl, Sr. Accounting Assistant
Jaime Metoxen, Sr. Accounting Assistant
Dana McLester, Accounting Supervisor
Jean Van Dyke, Accounting Manager
Lee Thomas, Controller
Scott Denny, Operations Manager
Paul Witek, Senior Tribal Architect
Troy D. Parr, Asst. Development Division Director
Trish King, Treasurer

The following staff representing OTIW were consulted or interviewed as part of the review:

Scott Denny, Housing Operations Manager
Jean Van Dyke, Accounting Manager
Dana McLester, Accounting Supervisor
Lawrence Barton, Chief Financial Officer
Patrick Stensloff, Director of Purchasing
Travis Wallenfang, Indian Preference Coordinator
Paul Witek, Senior Tribal Architect
Troy Parr, Assistant Development Division Director

An exit conference was held on December 3, 2015 with the following officials and staff representing OTIW:

Lee Thomas, Controller
Scott Denny, Operations Manager
Troy D. Parr, Asst. Development Division Director
Paul Witek, Senior Tribal Architect
Jenny Webster, Council Member
Tehassi Hill, Councilman
David Jordan, Councilman
Laurel Spooner, Collection Specialist
Geraldine Danforth, HR Area Manager
Lisa Summers, Tribal Secretary
Dana McLester, Accounting Supervisor
Jean Van Dyke, Accounting Manager
JoAnne House, Chief Counsel
Dawn Moon-Kopetsky, Senior Policy Advisor
Larry Barton, CFO
Patrick Stensloff, Director of Purchasing
Cindy Kohl, Sr. Accounting Assistant

Jaime Metoxen, Sr. Accounting Assistant
Lisa Vega, Resident Service Specialist
Justine Hill, Office Manager
Trish King, Treasurer

SUMMARY OF FINDINGS AND CONCERNS

The review identified four (4) findings and two (2) concerns. A finding is a deficiency in program performance that represents a violation of a statutory or regulatory requirement. Corrective actions must be taken to address a finding.

A concern is a deficiency in program performance that does not constitute a violation of a statutory or regulatory requirement. While it is not required that concerns be addressed, doing so can avoid a reoccurrence of the problems or ensure that these problems do not develop into something more serious.

The summary of findings and concerns identified during the monitoring review is presented below.

- **Organization and Structure**
 - No findings or concerns in this area

- **Financial and Fiscal Management**
 - No findings or concerns in this area

- **Procurement and Contract Administration**
 - Finding #2016IHBG-1: Conflict of Interest Policy - CLOSED
 - Concern #2016IHBG-1: Procurement Process
 - Finding #2016IHBG-2: Procurement by Sealed Bid - CLOSED
 - Concern #2016IHBG-2: Bonding Requirements
 - Finding #2016IHBG-3: Procurement by Noncompetitive Proposals - OPEN
 - Finding #2016IHBG-4: Organizational Conflicts of Interest - OPEN

- **Self-Monitoring**
 - No findings or concerns in this area

SIGNIFICANT ACCOMPLISHMENTS

OTIW developed subdivisions near central Oneida to construct individual houses on the majority of the lots within the neighborhoods. The Green Valley neighborhood infrastructure was completed in 2012 and the Elder Village neighborhood infrastructure was completed in 2014. OTIW used IHBG funds under the Native American Housing Assistance and Self Determination Act (NAHASDA) to build housing. The residents of the Elder Village neighborhood are tribal member elders. The Green Valley neighborhood is a mix of low to moderate income tribal members and tribal member owned homes. The projects were completed in December 2015.

The Oneida Housing Authority with assistance from VISTA Worker Joann Muir is in the process of developing a Handbook entitled “Ensuring Your Success.” The Handbook is directed towards participants of the Housing Authority’s two programs, Rental and Homeownership. The Handbook will provide a complete guide of what is expected from participants in either program. Some of the areas addressed for renters include: payment of rent, Insurance, maintenance and inspections. The Housing Authority provides homeownership counseling to families entering homeownership programs. In addition, OHA requires families on the waiting list to attend educational programs to assist them in understanding the admission and occupancy policies as well as the tribal laws that are incorporated into these policies and the handbook. The handbook will be given to all applicants that apply for the rental or homeownership programs. It is the goal of the Housing Authority to educate tenants as to what is required to have a successful housing experience.

ORGANIZATION AND STRUCTURE

The purpose of the organization and structure and administration of programs review is to determine the recipient’s implementation of key areas of authority, appropriate lines of reporting, and adequate controls to ensure that assets are safeguarded. Proper administration and structure are important to the operation of any organization because they provide the overall framework for planning, directing, and controlling operations. Structure defines the form and nature of the organization as well as the management functions and reporting relationships, and is a key element of internal control.

The NAHASDA statute and the regulations at 24 CFR Part 1000 establish the framework within which HUD evaluates a grant recipient’s administrative capacity to manage the IHBG program. Administrative capacity measures a recipient’s ability to effectively undertake the affordable housing activities in its Indian Housing Plan (IHP). E/WONAP considered the following elements of administrative capacity in its assessment:

- Organizational structure and related systems of internal control which minimize the potential for fraud, waste, and mismanagement.
- Policies, procedures, and certifications that meet the requirements of the NAHASDA Statute and the regulations at 24 CFR Part 1000.

Documents Reviewed

- Oneida Tribe of Wisconsin Constitution and Bylaws
- Oneida Tribe of Wisconsin Code of Ethics, Chapter 3, adopted 10-21-91 and amended 9-27-06.
- Oneida Tribe of Wisconsin Travel Policy, adopted on October 6, 2003
- Oneida Housing Authority, Policies and Procedures, approved on April 19, 2006
- Oneida Housing Authority Housing Policies
 - Maintenance Policy
 - Tribal Housing Criteria and Selection Policy
 - NAHASDA Self-Monitoring Policy
 - Admissions and Occupancy
- Oneida Tribe of Wisconsin Tribal Council Meeting Minutes

- November 25, 2015
- December 9, 2015
- Special Meeting, December 18,2015
- December 23, 2015
- January13, 2016

Staff Interviewed

OHA Housing Director
 OHA Office Manager
 Finance Director
 Accounting Director

The Oneida Tribe of Wisconsin Constitution and By-Laws, were originally adopted on November 14, 1936 by the Oneida Tribe and approved by the Secretary of Interior, December 21, 1936. The By-Laws establish that the Oneida Business committed is made up of (a) a chairman, (b) a vice –chairman, (c) a secretary, (d) a treasurer, (e) and five councilmen, which are elected by voters of OTIW. A majority of the Business Committee including the Chairman or the Vice-Chairman shall constitute a quorum of this body. Regular meetings of the Business Committee may be established by resolution of the Business committee. In 2009 the Oneida Housing Authority (OHA) formally a THDE became a Department of the Tribe and thus the oversight of the Housing Department is relegated to the Oneida Business Committee. The Housing Director reports quarterly to the Oneida Business Committee. In addition, the housing authority participates in monthly meetings with the Community Development Planning committee comprised of Business Committee members and other entities of the organization.

The Oneida Housing Authority does not use any of its NAHASDA funds for stipends. However, travel monies, wages and fringe benefits are charged to the Admin and Planning line item of the IHP.

E/WONAP staff reviewed five (5) sets of Oneida Business Committee (OBC) meeting minutes from the period of November 25, 2015 to January 2016. The OBC minutes demonstrated that the Council is functioning as a policy-making body. While it is clear that the Oneida Business Committee is a decision making body for the Tribe, there were no housing related issues in any of the above referenced meetings. In order to further analyze how decisions that affect the Housing Authority were made, the E/WONAP staff requested copies of:

- July 8, 2015 meeting minutes which includes action by the Business Committee to approve the FY '15 3rd quarter report from Oneida Housing Authority
- July 13, 2015 meeting minutes which includes action by the Business Committee to approve the Indian Housing Plan for FY 2016
- October 14, 2015 meeting minutes that include action by the Business Committee to approve to amend the FY 2015 Indian Housing plan to include Housing Acquisition and to approve the FY '15 4th quarter report from the Housing Authority.

Certification, Policies and Procedures

Sections 203 and 207 of NAHASDA, implementing regulations at 24 CFR Part 1000, and 2 CFR Sections 200.300 and 200.318 require that the recipient develop written policies and procedures to provide guidance for its programs, and implement effective internal controls. In order for the housing department to successfully administer its grants, it is essential that policies and procedures are adopted and followed. If the policies are available and utilized, they will assist all parties in understanding NAHASDA requirements concerning eligibility, participant selection, management and maintenance of housing units, property acquisition, procurement and contract administration, and how daily operations are to be conducted in order to ensure program compliance.

Grant recipients are required to develop written policies in the following areas:

1. Rents and homebuyer payments
2. Eligibility, admission, and occupancy
3. Tenant and homebuyer selection
4. Management and maintenance
5. Fiscal and Financial Management
6. Procurement and contract Administration

In addition to the policies listed above, the following standards, statements, or policies are required:

1. Real property acquisition and relocation
2. Tribal or Indian Preference
3. Provision, to the maximum extent possible, of job training, employment, and contracting opportunities for low-income individuals pursuant to Section 3 of the Housing and Urban Development Act of 1968 and 24 CFR Section 1000.42

Finally, the following policies, procedures, or standards are required under certain circumstances:

1. Investment and Internal Control
2. Travel

NAHASDA Section 102(b)(2)(D) requires certification of compliance with the following requirements:

- Certification that the recipient will comply with the applicable provisions of Title II of the Civil Rights Act of 1968, and other applicable Federal laws and regulations;
- Certification that the recipient will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts under NAHASDA;
- Certification that the recipient has policies in effect and available for review by the Secretary and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under NAHASDA;
- Certification that the recipient has policies in effect and available for review by the Secretary and the public governing rents and homebuyer payments;
- Certification that the recipient has policies in effect and available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts under NAHASDA; and
- Certification that the recipient will comply with Section 104(b), i.e., Labor Standards.

E/WONAP staff reviewed a series of Oneida Tribe of Wisconsin and Oneida Housing Authority Housing Board Policies and Procedures as follow:

- Oneida Tribe of Wisconsin (Amended) Constitution and By-Laws
- Oneida Tribe of Wisconsin Purchasing Policies and Procedures, October 15, 2012
- Oneida Tribe of Wisconsin Code of Ethics, Amended 9/27/06
- Oneida Tribe of Wisconsin Travel and expense policy, Amended August 6, 2008
- Oneida Tribe of Wisconsin Drug and Alcohol Free Work place policy, Amended December 11, 2013
- Oneida Tribe of Wisconsin Real Property Law, Amended April 28, 2010
- Oneida Housing Authority Housing Board Policies
 - Admissions and Occupancy
 - Compensation and Benefits Policy
 - Maintenance Policy
 - Memorandum of Understanding between Oneida Housing Authority and the Division of Land Management
 - NAHASDA Self-Monitoring Policy
 - Oneida Housing Authority Organizational Chart.

The policies and procedures established by the Oneida Business Committee did not disclose any violations of NAHASDA requirements at Sections 203 and 207 and at 24 CFR Section 1000.30-36.

E/WONAP staff reviewed the OTW Organizational Chart which outlines the structure for the Oneida housing department and which includes the following staffing for its operation:

- Executive Director
- Operations Manager
- Office Manager
- Administrative Assistant I – 1 position
- Administrative Assistant II – 1 position
- Recreation Specialist (crime prevention) – 1 position
- Maintenance Supervisor
- Maintenance Crew – 7 positions
- Carpenter Trainee- 1 position
- Rehabilitation Supervisor
- Rehab crew – 9 positions
- Resident Services Specialists – 4 positions
- Case Worker – 1 position
- Housing resource Coordinator – 1 position
- New Development Project manager – 1 position
- Vista Worker – 1 position
- Central accounting: Accounting Supervisor
- Senior accounting assistants – 2 positions

A review of the Constitution, Business Committee meeting minutes and accompanying resolutions and Oneida Tribe of Wisconsin policies and procedures disclosed that they are comprehensive, indicate approval dates and are well-maintained. The E/WONAP review of OTIW administration of its programs did not disclose any violation or noncompliance with the regulatory requirements set forth on 24 CFR Part 1000 and 2 CFR Part 200. The policies and procedures are established in accordance with Section 203 of NAHASDA.

There were no findings or concerns identified in the Organization and Structure monitoring area.

FINANCIAL AND FISCAL MANAGEMENT

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Requirements”) at 2 CFR Part 200 is applicable to non-federal entities that either receive or distribute federal awards. The scope of the performance review for financial and fiscal management included funds drawn down, accounting records, internal controls, cash management, budget control, audits, and investments.

The Uniform Requirements, at 2 CFR Section 200.302(a), state that each non-federal entity must have a financial management system that is sufficient to permit the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

In general, an audit that complies with the Uniform Administrative Requirements also assists HUD in making the determination that the recipient’s IHBG funds have not been used in violation of the restrictions and prohibitions of NAHASDA, and the implementing regulations. Specifically, the Uniform Administrative Requirements require, under 2 CFR Section 200.302(b)(2), non-federal entities to provide accurate, current, and complete disclosure of each federal award or program in accordance with its reporting requirements. Reporting requirements are addressed in NAHASDA Guidance No. 98-04. The Line of Credit Control System (LOCCS) requires semi-annual reports for certain grants provided under the U.S. Housing Act of 1937 (1937 Housing Act), as well quarterly reports for NAHASDA grants. When progress reports are not submitted as required, LOCCS does not allow funds to be disbursed.

NAHASDA recipients are required to submit the Federal Financial Report (SF 425) and the APR. The SF 425 is due from the recipient no later than calendar 30 days following the end of the quarter. Regarding financial audits, the Uniform Administrative Requirements require, under 2 CFR Sections 200.501 and 200.514, that any non-federal entity that expends \$750,000 or more in federal funds in a fiscal year must have an annual audit conducted which meets the Generally Accepted Government Auditing Standards (“GAGAS”). Also, the Uniform Administrative Requirements state, under 2 CFR Sections 200.507(c)(1) and 200.512(a)(1), that the non-federal entity must submit the audit to the Federal Audit Clearinghouse (“FAC”) within 30 calendar days after receipt of the auditor’s report, or nine months after the end of the audit period. The audit should cover all IHBG grants that were open at any time during the audit period. The regulations at 24 CFR Section 1000.548 require that a copy of the latest audit, compliant the

Uniform Administrative Requirements, be submitted to the Area ONAP at the same time it is submitted to the Federal Audit Clearinghouse.

HUD regulation 24 CFR Section 1000.156 requires housing funded under the IHBG program be of moderate design. Further, 24 CFR Section 1000.158 establishes Total Development Cost (TDC) limits that a recipient may not exceed, without prior HUD approval, when developing its low-income units. Notice PIH 2011-63, which extends Notice PIN 2010-47, states that the tribe/Tribally Designated Housing Entity (TDHE) is responsible for ensuring that the amount of funds from all sources used to develop each low-income unit does not exceed the established TDC limits. The tribe/TDHE must maintain records showing that the housing was developed in keeping with this and other applicable requirements.

Documents Reviewed

- Accounts Payable Invoice Processing – Proof, Edit, Vouchering and Posting Policy, December 28, 2011
- Tribal Cash Handling Policy, Revised September 8, 2011
- Processing & Review of Journal Entries Standard Operating Procedure, July 20, 2004
- Chart of Accounts, April 29, 2015
- Current Trial Balance, November 13, 2015
- LOCCS Disbursement History for IHBG 55IT5549100
- Federal Financial Reports (SF-425) IHBG, Sept. 30, 2014 – Sept. 30, 2015
- Selected General Ledger reports, IHBG August 29, 2013 – August 25, 2015
- 2014 Annual Performance Report (APR)
- 2014 Audit

Staff Interviewed

Scott Denny, Housing Operations Manager
Jean Van Dyke, Accounting Manager
Dana McLester, Accounting Supervisor

E/WONAP staff reviewed the documents that OTIW uses to determine accounting policies and procedures. These documents include the Accounts Payable Invoice Processing Policy, Processing & Review of Journal Entries Standard Operating Procedure, and Tribal Cash Handling Policy. These documents provide guidance to OTIW Central Accounting for classification of accounting activity including the procedures for receiving funds including NAHASDA draws, journal entries, and accounts receivable and account payable processes. The Processing & Review of Journal Entries procedure ensures accounting controls as set forth by the Sarbanes Oxley Act. The financial management system for OTIW properly retains records, provides methods for collection, transmission and storage of information.

E/WONAP staff reviewed OTIW trial balance, general ledgers and income statements. The 2014 Annual Performance Report (APR) and 2014 audit which were previously been submitted by OTIW to E/WONAP were utilized for reconciliation. OTIW's Federal Financial Reports (SF-425), which were submitted quarterly, also provided a reference for NAHASDA funded expenditures.

E/WONAP staff reviewed OTIW's financial documentation which supports five (5) recent LOCCS drawdowns from the IHBG 55IT5549100. The draws occurred in Fiscal Years 2013, 2014 and 2015.

The following table lists the LOCCS draws which were reviewed.

TABLE 1	
Drawdowns Reviewed	
Date	Amount
August 29, 2013	\$1,207,306.91
December 5, 2013	\$745,834.12
August 21, 2014	\$290,528.25
July 1, 2015	\$2,482,923.44
August 25, 2015	\$1,209,518.10

OTIW's documentation indicated the draws were expenses from OTIW's housing department, Oneida Housing Authority (OHA)'s activity. Documents OTIW provided include the Attachment to Reconciliation, which lists the amount drawn; the Revenue & Expense Summary which summarizes the general accounts; and the Detail Report, which lists the individual transactions. E/WONAP staff reviewed these documents.

The following table summarizes OTIW's drawdown of \$1,209,518.10 made on August 25, 2015.

TABLE 2				
August 25, 2015 Drawdown				
Description	General Ledger Account	Class Description	Current Months Transaction	Subtotal
Development	001-1209100-100-401100-000	Program/Cont Revenue-Fed	-\$150,720.25	
	001-1209100-100-401301-000	Capital Grant-Federal	\$185,778.90	
			Subtotal/Total Revenue	\$35,058.65
Development	001-1209100-100-401100-000	Program/Cont Revenue-Fed	\$341,815.09	
			Subtotal	\$341,815.09
Crime Prevention	001-1209200-200-401100-000	Program/Cont Revenue-Fed	\$10,277.57	
			Subtotal	\$10,277.57
			Total Revenue	\$352,092.66
Development	001-1209300-100-401100-000	Program/Cont Revenue-Fed	\$54,343.57	

		Subtotal/Total Revenue		\$54,343.57
Development	001-1209400-100-401100-000	Program/Cont Revenue-Fed	\$557,303.91	
		Subtotal		\$557,303.91
Crime Prevention	001-1209400-200-401100-000	Program/Cont Revenue-Fed	\$11,254.93	
		Subtotal		\$11,254.93
		Total Revenue		\$568,558.84
Planning	001-1209500-100-401100-000	Program/Cont Revenue-Fed	\$199,464.38	
		Subtotal/Total Revenue		\$199,464.38
Total				\$1,209,518.10

E/WONAP staff was able to determine the items on the backup documentation for the August 25, 2015 reconciled with the amount drawn.

The following table summarizes OTIW's drawdown of \$2,482,923.44 made on July 1, 2015.

TABLE 3				
July 1, 2015 Drawdown				
Description	General Ledger Account	Class Description	Current Months Transaction	Subtotal
Development	001-1209200-100-401100-000	Program/Cont Revenue-Fede	\$43,045.41	
		Subtotal		\$43,045.41
Crime Prevention	001-1209200-200-401100-000	Program/Cont Revenue-Fede	\$19,240.95	
		Subtotal		\$19,240.95
Development	001-1209200-100-401100-000	Program/Cont Revenue-Fede	\$47,766.95	
		Subtotal		\$47,766.95
		Total Revenue		\$110,053.31
Development	001-1209300-100-401100-000	Program/Cont Revenue-Fede	\$1,654,214.27	
		Subtotal		\$1,654,214.27
Rehabilitation	001-1209300-300-401100-000	Program/Cont Revenue-Fede	\$68,729.67	
		Subtotal		\$68,729.67
Development	001-1209300-100-401100-000	Program/Cont Revenue-Fede	\$536,314.42	

		Subtotal		\$536,314.42
		Total Revenue		\$2,259,258.36
Development	001-1209100-100-401100-000	Program/Cont Revenue-Fede	\$4,834.48	
		Subtotal/Total Revenue		\$4,834.48
Planning	001-1209500-001-401100-000	Program/Cont Revenue-Fede	\$108,777.29	
		Subtotal/Total Revenue		\$108,777.29
Total				\$2,482,923.44

On July 1, 2015, OTIW made a LOCCS draw in the amount of \$2,482,923.44. The supporting Attachment to Reconciliation documents list Accrual/Deferral amounts of \$110,053.31, \$2,259,258.36, \$4,834.48, and \$108,777.29. OTIW accounting staff explained to E/WONAP staff that these totals are added to determine the amount that is drawn. Upon review of the supporting Revenue & Expense Summaries for the July 1 drawdown, it was determined that total expenses were \$110,053.31, \$2,259,258.36, \$4,834.48, and \$108,777.29.

E/WONAP staff randomly selected line items from OTIW's financial record and OTIW provided supporting documentation for those items.

The following table is a breakdown of a line item of \$565,174.26 taken from the General Ledger.

TABLE 4				
Invoice Analysis - Green Valley/Elder Village - May 4, 2015				
Phase/Task	Invoice #	Invoice Date	Vendor	Subtotal
Duplex C Lot 1	151110	15-Apr-15	OTIE	\$44,077.29
Duplex C Lot 3	151110	15-Apr-15	OTIE	\$53,013.96
Duplex C Lot 18	151110	15-Apr-15	OTIE	\$82,077.86
Duplex C Lot 20	151110	15-Apr-15	OTIE	\$113,519.19
Duplex C Lot 6 Henry Road	151110	15-Apr-15	OTIE	\$19,530.71
Split Level D Lot 2	151110	15-Apr-15	OTIE	\$107,105.92
Split Level D Lot 4	151110	15-Apr-15	OTIE	\$79,669.05
Split Level D Lot 19	151110	15-Apr-15	OTIE	\$50,195.30
Subtotal				\$549,189.28
Green Valley Site Work	151110	15-Apr-15	OTIE	\$15,984.98
Subtotal				\$15,984.98
Total				\$565,174.26

OTIW provided a summary of these items in an Invoice Analysis document, the Application and Certification for Payment from the vendor, and Continuation Sheet which is an itemized invoice for the specific properties. These items reconciled with the General Ledger line item.

Insurance Coverage Documentation:

E/WONAP staff reviewed the OTW business liability and property replacement insurance as required by NAHASDA Section 203(c) and 24 CFR Sections 1000.136 – 139. A review of the Amerind Risk Management Corporation, Schedule of Property Coverage Document number ARMHO/003288/2015, documented that the single family housing units, multi-family housing units and commercial properties are insured as required. A review of the OTW insurance coverage did not disclose any violation of the program and regulatory requirements applicable to NAHASDA Section 203(c) and 24 CFR Sections 1000.136 – 139.

E/WONAP staff reviewed the OTW business liability and property replacement insurance as required by NAHASDA Section 203(c) and 24 CFR Sections 1000.136 – 139. A review of the Amerind Risk Management Corporation, Schedule of Property Coverage Document number ARMHO/003288/2015, documented that the single family housing units, multi-family housing units and commercial properties are insured as required. A review of the OTW insurance coverage did not disclose any violation of the program and regulatory requirements applicable to NAHASDA Section 203(c) and 24 CFR Sections 1000.136 – 139.

TABLE 5				
OTW Insurance Documentation				
January 01, 2015 – December 31, 2015				
Supplier Name	Coverage Document	Invoice/Doc #	Date	Amount (\$)
Amerind Risk Management Corporation	ARMHO/003288/2015	3288-12	12/17/2014	118,422.00

No findings and no concerns were identified in the Financial and Fiscal Management monitoring area.

PROCUREMENT AND CONTRACT ADMINISTRATION

The Uniform Requirements are applicable to all non-federal entities that either receive or distribute federal awards. The regulations at 2 CFR Section 200.319 require that all procurement transactions be conducted in a manner providing full and open competition consistent with the standards set forth the Uniform Requirements. The regulations at 2 CFR Section 200.318(i) also require the maintenance of procurement records sufficient to detail the significant history of procurement. These records are to included, but are not necessarily limited to documentation of the rationale for: These records are to include, but are not necessarily limited to documentation of the rationale for: 1) the method of procurement (small purchase, sealed bid, competitive or noncompetitive proposals); 2) the selection of contract type; 3) the contractor selection or rejection; and 4) the basis for the contract price, including the cost or price analysis required by 2 CFR Section 200.323. Additionally, for a cost to be allowable, under 2 CFR Section 200.403, it must be “necessary and reasonable” and conform to the program requirements. The regulations at 2 CFR Section 200.318(b) require grantees have a contract administration system in place to ensure

that contractors perform in accordance with the terms, conditions, and specifications of the contract or purchase orders.

The Uniform Requirements at 2 CFR Section 200.318(c)(1) require that grantees maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. The written code of conduct must contain a conflict of interest provision specifically prohibiting the grantee's employees, officers or agents from participating in the selection, or in the award or administration of a contract if a conflict of interest, whether real or apparent, would be involved. A conflict of interest arises when: (i) such an employee, officer or agent of the grantee, (ii) any member of his immediate family, (iii) his or her partner, or, (iv) an organization which employs, or is about to employ, any of the above, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. Additionally, the officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, except to the extent the non-Federal entity has set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must also provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

Documents Reviewed

- OTIW Purchasing Policies and Procedures Manual, dated October 2012 and revised September 2014
- Oneida Code of Laws, Chapter 3 Code of Ethics, Adopted October 1994; Amended September 2006
- Oneida Code of Laws, Chapter 57 Indian Preference in Contracting, Adopted March 2013
- Oneida Tribal Policies, Conflict of Interest Policy, Adopted June 1998; Amended September 2006
- Procurement
 - Green Valley / Elder Village Project

Staff Interviewed

Lawrence Barton, Chief Financial Officer
Patrick Stensloff, Director of Purchasing
Travis Wallenfang, Indian Preference Coordinator
Paul Witek, Senior Tribal Architect
Troy Parr, Assistant Development Division Director

E/WONAP staff reviewed the OTIW Purchasing Policies and Procedures Manual which was revised in September 2014. As required by regulations at 2 CFR Section 200.318(a) (24 CFR Section 85.36(b)(1)), OTIW has a procurement policy which appear sufficiently detailed to ensure compliance with the regulations and provide general directions to staff. The purchasing policy provides procurement threshold amounts that different from the amounts allowed by NAHASDA. For purchases up to \$3,000, OTIW requires competitive sourcing. Purchases for amounts between \$3,001 and \$25,000, a written quote is required from an adequate number of qualified sources. Purchases that are greater than \$25,001 require the sealed bid process. The

written standards for conduct covering conflict of interest are in the procurement policy and the Oneida Tribal Policies. NAHASDA Sec 203(g) allows for micro-purchase simplified acquisition procedures for purchase of supplies or services up to \$5,000. In addition, 2 CFR Section 200.88 notes small purchase methods may be used to purchase property or services up to the Simplified Acquisition Threshold of \$150,000.

OTIW has a conflict of interest policy which requires employees and officials to disclose conflicts of interest to OTIW. The OTIW Conflict of Interest Policy does not require employees and officials that disclose potential conflicts of interest be excluded from decision making capacity. The OTIW Code of Ethics includes requirements for government officials to disqualify themselves when their action or inaction may be reasonably questioned for reasons including personal bias and individual or family financial interest. However, the OTIW Code of Ethics do not appear sufficient to ensure compliance with the conflict of interest requirements in the procurement regulations. Specifically, OTIW's Code of Ethics provides an exception through which OTIW may waive an employee's conflict of interest after disclosure, but 2 CFR Section 200.318(c) does not recognize such an exception.

**FINDING #2016IHBG-1: Noncompliance: Conflict of Interest Policy - CLOSED
2 CFR Section 200.318(c)(1)**

Condition:

The OTIW Conflict of Interest Policy does not include the requirement that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

Criteria:

The regulation at 2 CFR Section 200.318(c)(1) requires the non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

Cause and Effect:

The OTIW Conflict of Interest Policy requires employees and officials to disclose conflicts of interests, but does not disqualify those who disclose conflicts of interest from decision-making capacity in procurements. The OTIW Code of Ethics provides an exception which could allow government official to participate in a proceeding or action after disclosing conflicts of interests. As a result, an OTIW employee, officer, or agent with a conflict of interest may be allowed to participate in the selection, award, or administration of a contract supported by a Federal award if the conflict of interest has been disclosed.

Recommended Corrective Action:

To address this finding, OTIW should provide E/WONAP with an updated OTIW Conflict of Interest Policy which states no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

OTIW Response:

The report identifies that the Oneida Nation's Conflict of Interest Policy does not meet the requirements of purchasing using federal funds. We have reviewed this policy and agree with the recommendation.

The Oneida Housing Authority was originally an autonomous independent entity chartered by the Oneida Nation. As a result of audits and reporting, the Oneida Business Committee adopted a resolution moving the Oneida Housing Authority from an autonomous independent entity to a program of the Oneida Nation. *Resolutions # BC-01-09-08-B and BC-06-30-08-A*. In addition, the Oneida Business Committee identified that the Oneida Nation was designated as the TDHE. The movement of the Oneida Housing Authority into the Oneida Nation's organizational structure was gradual and involved a significant transition of both financial and employment activities.

The Oneida Business Committee adopts, amends, or repeals laws in accordance with the Legislative Procedures Act.² The Conflict of Interest Policy was adopted by resolution # BC-0610-98-C and amended in 2006 by resolutions # BC-04-12-06-JJ (emergency amendments) and BC-09-27-06-E. The process took approximately five months to complete from the emergency amendments to the permanent action in 2006. The Legislative Procedures Act has shortened some of the notice and posting periods, however, the time required to make amendments still takes several months to complete.

The draft report identifies that 2 C.F.R. 200.318(c)(1) requires that individuals with conflicts of interest be prohibited from participating in the selection, award or administration of a contract. Our Conflicts of Interest Policy was drafted with the understanding that elected officials and employees serve in a different capacity for the Oneida Nation and that their duties and responsibilities recognize that conflicts can exist, but would not necessarily prohibit their participation. We understand that incorporating the TDHE responsibilities within the organization has inadvertently caused a conflict between federal regulatory requirements and our requirements for the actions of government officials and employees. We believe that amendments to the Conflicts of Interest Policy can be drafted and the policy can be amended to accommodate the federal regulatory requirements without undermining the Oneida Nation's beliefs and desires regarding the actions of its government officials. The Oneida Business Committee has adopted the following motion at its July 13, 2016 meeting.

"Motion by Lisa Summers to request the Legislative Operating Committee to develop emergency amendments to the Conflict of Interest Policy to address mandatory recusal in the event of certain conflicts within forty-five (45) days; and to bring back final amendments as soon as possible (in regards to Finding #1), seconded by Brandon Stevens, Motion carried unanimously."
July 13, 2016, Oneida Business Committee minutes, p. 14.

² Prior to 2013 the guiding law for actions regarding laws was the Administrative Procedures Act. The Legislative Procedures Act and other laws and resolutions cited in this memo are located on the Oneida Nation's website.

The Legislative Operating Committee has placed this on its agenda and is moving forward with drafting the emergency amendments to be presented to the Oneida Business Committee in accordance with the Legislative Procedures Act. The emergency amendments were presented at a regularly scheduled meeting of the Oneida Business Committee on August 10, 2016, and adopted by resolution # BC-08-10-16-M. The permanent amendments can be completed within six months of that date in accordance with the Legislative Procedures Act.

E/WONAP Response:

OTIW submitted an updated conflict of interest policy which states that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a conflict of interest as prescribed in E/WONAP’s recommended corrective action. This finding is closed.

E/WONAP staff randomly selected reviewed IHBG procurement transactions and related supporting documentation to review for compliance with the OTIW procurement policy and applicable regulations.

The following table summarizes the OTIW procurements that were reviewed:

TABLE 6				
OTIW: Random Procurement Samples				
Vendor Name	Description	Invoice Number	Check Number	Invoice Amount
ABC Supply	Supplies & Materials	41532279	1717081	\$6,279.36
Olson Trailer & Body	Equipment Purchases	61258E	1701724	\$5,322.00
Menards Inc.	Supplies & Materials	8486	1639707	\$1,837.84

The purchase order for ABC Supply was issued on May 27, 2015. This item was part of an invoice dated July 1, 2015 which totaled \$7,367.55. The amount charged to IHBG funds was itemized as a “Metro HD Shingle Shadow Wood” for \$6,279.36. The order form which was dated on May 26, 2015 from OTIW listed Oneida Housing Authority as the business unit had a total of \$9,122.73. The sole source justification was for an emergency roof repair. Provided information did not include necessary approval for purchase as required in the OTIW purchasing policy.

The purchase with Olson Trailer & Body included quotes with other vendors. The record is complete and compiles with the OTIW purchasing policy.

The purchase with Menards was part of a \$100,000 purchase order which was for items purchased during Fiscal Year 2012. The transaction date was October 31, 2012, which is during Fiscal Year 2013. The invoice price for this purchase was \$5,513.52.

The following table lists the October 31, 2012 purchase from Menards:

TABLE 7

Menards - Purchase October 31, 2012			
Quantity	SKU	Description	Invoice Amount
20.00	3003027	Cutler Hammer Special Ord	4,987.20
18.00	3640881	Yellow Wiregard 18-10 Awg	167.04
1.00	3003029	GB Special Order	22.15
6.00	3003029	GB Special Order	165.36
18.00	3640894	Red Wiregard 18-10 Awg	167.04
1.00	3641244	Blue Wiregard 22-16 Awg	4.73
Total			5,513.52

This invoice total of \$5,513.52 was broken into three line items on the OTIW general ledgers in equal amounts of \$1,837.84.

CONCERN #2016IHBG-1: Procurement Process

Condition:

OTIW procurements invoiced on July 1, 2015 and October 31, 2012 lack documentation which show OTIW procurement process was followed completely in respective procurements.

Cause and Effect:

The purchase with ABC Supply was the result of an emergency procurement. The OTIW procurement policy allows for a sole source emergency purchase when the Business Unit obtains the necessary approval for the purchase as soon as possible after the emergency. The purchase is below the threshold of \$50,000 which would require OTIW Finance Committee approval. The supporting documentation for the purchase does not include approval. The purchase with Menards was completed after the authorizing purchase order expired on September 30, 2012. Payment for the invoiced amount of \$5,513.52 was recorded in OTIW general ledger in amounts that are below OTIW micro-purchase threshold of \$3,000. As a result of these actions, the records appear to show that these procurements were not consistent with the OTIW procurement requirements.

Suggested Action:

While a concern does not require a corrective action plan, OTIW should understand that a non-Federal entity is required to adhere to its own documented procurement procedures according to 2 CFR Section 200.318. Therefore, OTIW procurement records must clearly document the justification for special circumstances within the procurement process.

OTIW Response:

You have identified that there were some purchases that lacked sufficient documentation regarding procurement procedures and approvals in accordance with the Oneida Nation's procurement policies. These purchases involved emergency purchases during a construction project. As a result of the amount of some of the purchases, the purchase documentation fell

below the required specific types of documentation and that some of the emergency purchases utilized an expired purchase order.

We have reviewed this and agree that sufficient documentation should be maintained regarding all purchases. Dale Wheelock, Housing Authority Director, Troy Parr, Assistant Development Division Director, James Pettijean, Interim Planning Director, and Patrick Stensloff, Director of Purchasing will be reviewing the purchasing processes to ensure that this does not occur. In addition, our Internal Audit Department has been notified of this concern and the possible need to include a procedural audit of these types of purchases in its regular audit schedule.

E/WONAP Response:

E/WONAP acknowledges OTIW’s response to Concern #2016-1 and its revised purchasing processes as noted above.

Green Valley and Elder Village

OTIW submitted a letter to E/WONAP on July 9, 2015 requesting a review of the contracting process of the Elder Village Cottages project due to concerns errors may have been made during the procurement. OTIW asked E/WONAP to conduct an on-site monitoring review to ensure OTIW conducted the proper processes to meet regulatory requirements. The company selected for the project was Oneida Total Integrated Enterprises, LLC (OTIE). OTIE is a wholly-owned corporation of OTIW.

In the letter, OTIW provided a disclosure of the relationship of the tribe’s Development Division Director Wilbert “Butch” Rentmeester with OTIE. Mr. Rentmeester served on the OTIE Board of Directors. OTIW was aware of Mr. Rentmeester’s dual roles and understood he recused himself by not participating in the bidding process with OTIW and the administration processes with OTIE. OTIW had discussions in the Business Committee and the Development Division about the relationship and realized the protections Mr. Rentmeester implemented to protect OTIW from a conflict of interest. At the time of the letter, Mr. Rentmeester had retired from his employment with OTIW though he was still a member of the OTIE Board of Directors.

A cost analysis for the Green Valley and Elder Village dated August 29, 2014 was provided to OTIW by the project architect, Standing Stone Design.

The following table shows the cost analysis for the Green Valley/Elder Village project:

TABLE 8			
Green Valley/Elder Village Cost Analysis			
Model	Unit Estimate	Number of Units	Total
Green Valley Duplex	\$329,150	5	\$1,645,750
Green Valley Split Level D	\$275,338	3	\$826,014
Elder Village Cottage A	\$247,050	2	\$494,100
Elder Village Cottage B	\$248,340	6	\$1,490,040

The Green Valley and Elder Village Housing Development project was advertised in OTIW's newspaper *Kalihwisaks* in the September 4, 2014 and September 17, 2014 issues. According to the advertisement, the project would consist of five (5) duplexes, three (3) split level, four (4) Cottage A designs, and four (4) Cottage B designs. The published invitation for bids listed locations where the project specifications could be found, Indian Preference, and that the bids had to be received by September 23, 2016 at 2:00 PM. The advertisement posted the sealed bids would be opened publicly.

The *Oneida Housing Project for Green Valley/Elder Village Subdivisions* project manual was dated September 4, 2014. The document confirmed the bids had to be received by OTIW by September 23, 2014 at 2:00 PM. The Project Manual differs from the Invitation for Bid in adding the bids would be opened, reviewed, and qualified privately by the Architect (Standing Stone Design) and Owner (OTIW).

OTIW received bids from three (3) companies: Oneida Total Integrated Enterprises, LLC; Green Bay Area Builders, LLC (GBAB); and Bear Claw Construction Management (BCC). OTIW opened the sealed bids privately, contrary to its advertisement.

**FINDING #2016IHBG-2: Noncompliance: Procurement by Sealed Bid - CLOSED
24 CFR Section 85.36(d)(2)(ii)(C)**

Condition:

The Green Valley and Elder Village housing project Invitation for Bid did not provide a time and location for the public opening of the sealed bids following the bid closing date and time.

Criteria:

The regulation at 24 CFR Section 85.36(d) (which has been updated in 2 CFR Section 200.320(c)) requires that all bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly. The OTIW procurement policy includes this regulation.

Cause and Effect:

OTIW staff opened sealed bids at a date and time which were not publicly disclosed. As a result, OTIW denied bidders the opportunity to compete in a full and open competitive process.

Recommended Corrective Action:

To address this finding, OTIW should provide E/WONAP with:

- 1) Documentation that explains the irregularities identified in the OTIW procurement record for this sealed bid project.
- 2) Scheduled Procurement training dates for appropriate OTIW staff. Also, provide EWONAP with training certificate(s) upon completion of training.

OTIW Response:

You have identified that the requirements of 2 C.F.R. 200.318 were not met because of a conflict between the posted bid notice and the Project Manual. We agree with the description of the

processes that occurred at this bid opening. However, we believe what actually happened at the bid opening reflected the bidder's understanding of the posted bid notice, not the Project Manual. Since 2008, the Oneida Nation's organizational structure and employee base has undergone significant change as a result of retirement, reducing the work force levels, and re-organization. In addition, there have been changes regarding federal procurement, reporting and auditing requirements that have affected the Oneida Nation. We believe that it is timely to institute training and cross-training for employees of the Oneida Nation so that no gap exists in regards to the Oneida Nation's or the federal government's requirements regarding purchasing. As a result, the Oneida Business Committee adopted the following motion on July 13, 2016.

"Motion by Lisa Summers to direct the Chief Financial Officer to address training requirements, including that there is cross-training to ensure a trained employee is available during each step of the process (in regards to Finding #2), seconded by Jennifer Webster. Motion caned unanimously."
July 13, 2016, Oneida Business Committee minutes, p. 14.

To comply with this directive, the Chief Financial Officer has engaged William Helmich with Bill Helmich Associates to provide training to the Housing Authority and other relevant areas of the Oneida Nation. This on-site training is scheduled for October 2016, the earliest date it could be provided. The goal of this training is a broader perspective on federal procurement requirements.

In addition, Dale Wheelock, Housing Authority Director, is coordinating attendance at the 2016 NAHASDA Essentials Training on August 25 and 26, 2016, instructed by Mike Boyd. This training will provide a "comprehensive introduction to Native American Housing Assistance & Self Determination Act (NAHSDA)." This is scheduled to include personnel from the Housing Authority, Purchasing Department, Law Office, Finance/Accounting Department, and Development Division. This training is intended to specifically address federal procurement from the construction project and Housing Authority perspective.

Specifically regarding the sealed bid opening for Green Valley/Elder Village, the following is presented. The advertisement for bids, as indicated in the draft report, identified that the bid opening would be public. The Project Manual developed by Standing Stone Design, LLC was based on the Oneida Nation's standard manual. Our internal processes when utilizing the Oneida Nation's funds are set forth in the standard project manual our Development Division utilizes. Standing Stone Design, LLC did not incorporate the public bid opening requirement into the Project Manual. However, the bid opening was attended by subcontractor representatives from Seymour Lumber, OTIE and Menominee Tribal Enterprises who were present based on the notice presented in the advertisement.

Mike Showers was the Project Manager assigned to the Green Valley/Elder Village project. He had attended technical assistance training on Procurement Management presented by the Native American Housing Council on December 2-5, 2013. He should have caught this error between the bid notice and the Project Manual.

Additional individuals who would have identified this error were unavailable to review and correct this error. Wilbert Rentmeester, the prior Development Division Director, was aware of

this requirement. However, he had recused himself as a result of the conflict with his also being on the Board of Directors of OTIE. He was unable to review any documents related to this project. Ultimately, he retired from his position as Development Division Director as the contract was being finalized. Dale Wheelock, Housing Authority Director, would have identified this error but he was not employed during the bidding of this project. Upon his re-employment, his review of the project did identify corrective actions that needed to occur prior to the project moving forward specifically regarding the total development costs.

As identified above, we recognize the gaps within our organization that could be addressed through further cross-training. We have scheduled that and the appropriate personnel will be attending the training. In the interim, Mr. Wheelock will be available to provide additional assistance and review to ensure the Oneida Nation is complying with the applicable laws and regulations. Further, we have asked Mr. Wheelock to develop a reminder that refresher training should be scheduled to insure future gaps do not occur and employees are given reminders of federal requirements.

In addition, the Development Division and the Housing Authority will be creating a HUD Project Checklist to confirm that required elements are present before bidding documents are released. This checklist is somewhat complex; however we anticipate that it should be completed within six months.

Finally, Patrick Stensloff, Director of Purchasing has reviewed the existing Standard Operating Procedures to identify this issue. A draft has been completed and it is anticipated that it will be finalized and approved by the Chief Financial Officer and/or the Finance Committee before the end of September, 2016.

E/WONAP Response:

E/WONAP acknowledges the explanation provided by OTIW about confusion among the participating parties resulting in OTIW not publicly disclosing the bid opening date and time for the Green Valley and Elder Village housing project. OTIW has scheduled procurement training for the housing department and other relevant areas of the Oneida Nation as prescribed in E/WONAP's recommended corrective actions. This finding is closed.

On Monday, September 29, 2014 at 3:02 PM, the Oneida Engineer Department Project Manager sent an email to the respective bidders to the Green Valley and Elder Village project. The email revealed that bonding requirements should have been included in the Project Manual. The email required the bidders to submit bonding information to OTIW by close of business on Friday, October 3, 2014. An attachment to the email included information about the bonding requirements.

GBAB replied to OTIW that they did not have the bonding required. BCC emailed a desire to find a resolution to the bonding issue, but did not provide the required bonding. As a result, these bids were considered non-responsive and the bids were disqualified.

CONCERN #2016IHBG-2: Bonding Requirements

Condition:

OTIW did not disclose bonding requirements to prospective bidders prior the September 23, 2014 deadline for sealed bid submission for the Green Valley and Elder Village housing project.

Cause and Effect:

OTIW did not include bonded requirements in the project specifications. When OTIW realized the required bonding information had been excluded, bidders were contacted after the close of the bidding and given four (4) business days to provide bonding information. No explanation was provided on why only four days were given to other bidders to secure bonding, or whether the four-day time period was commercially reasonable in light of the scale and the complexity of the project. The bidding period during which the bonding requirements were not disclosed was the nineteen (19) calendar days. As a result, two bidders did not provide the bonding information and their respective bids were disqualified.

Suggested Action:

While a concern does not require a corrective action plan, OTIW should recognize not disclosing requirements for potential vendors prevents a full and open competitive process. Green Valley/Elder Village was a construction project which exceeded the Simplified Acquisition Threshold of \$150,000, so the bonding requirements of 24 CFR Section 85.36(h) applied. The OTIW procurement policy also includes this bonding requirement. OTIW should schedule procurement training dates for appropriate OTIW staff to ensure comprehension of the regulation. OTIW should disclose bonding requirements to potential bidders in future procurements. Failure to provide a disclosure could be determined to be a finding for inhibiting fair and open competition in OTIW procurements.

OTIW Response:

The original bids for the Green Valley/Elder Village project did not disclose bonding requirements prior to the bid deadline. The draft report identifies that four days were given to all bidders to respond with information regarding bonding requirements. Two bidders did not provide the information and were ultimately disqualified.

The Oneida Nation has reviewed this concern and agrees that there are projects that require bonds and that information should be located in the bid package. During this particular project, a transition between two Housing Directors and two project managers (one from housing and then one from the Development Division) occurred during the early portions of the project. This led to the Development Division being responsible for the first time in a Housing Authority construction project.

We were also attempting to begin this project in time to avoid winter construction project conditions. Finally, the Development Division project manager assigned was also a relatively new employee. As identified above, Mr. Showers had received training in regards to federal procurement processes, this was his first project. Although we have identified that mentoring and supervision were appropriate, the project underwent too many supervisory changes.

We have asked Larry Barton, Chief Financial Officer, Troy Parr, Assistant Development Division Director, and Dale Wheelock, Housing Authority Director, to ensure that appropriate

cross-training is in place to allow for a more seamless transition when supervision on this, or any other project, changes during the course of the project. We have also asked the Troy Parr and Patrick Stensloff, Director of Purchasing, to review the bidding processes for these types of activities, including checklists and form documents, to verify that the processes and documents conform to the higher of federal or Oneida Nation's purchasing and procurement requirements. This should allow any project to meet or exceed existing requirements and avoid this from occurring in the future. Finally, we have asked that the Patrick Stensloff schedule annual reviews of purchasing and procurement processes in order to verify that we continue to meet or exceed federal procurement requirements.

However, we have also committed to the utilization of Indian preference in contracting. In part, where there is no mandatory requirement for bonding, we may avoid requiring a bond as it may be outside of the ability of an Indian preference contractor to obtain a bond. We balance this requirement to protect the work product of the projects and its completion, against other methods of ensuring quality and complete projects.

E/WONAP Response:

E/WONAP acknowledges OTIW's response to Concern #2016-2 and its bonding efforts.

As a result of two bids being determined non-responsive, the only responsive and responsible bid came from OTIE.

The following table shows the bid tabulation for the Green Valley/Elder Village project, dated October 6, 2014:

TABLE 9

		Green Bay Area Builders		Bear Claw Construction		Oneida Total Integrated Enterprises (OTIE)		OTIE - Indian Preference Equivalent	
Description	Qty.	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
Green Valley									
Duplex C	5	\$386,916	\$1,934,580	\$383,827	\$1,919,135	\$410,155	\$2,050,775	\$379,147	\$1,895,736
Split Level D	3	\$345,148	\$1,035,444	\$355,898	\$1,067,694	\$314,267	\$942,801	\$314,267	\$942,801
Site Work	1	\$117,500	\$117,500	\$202,654	\$202,654	\$388,885	\$388,885	\$357,830	\$357,830
Subtotal			\$3,087,524		\$3,189,483		\$3,382,461		\$3,196,367
Elder Village									
Cottage A	2	\$269,329	\$538,658	\$314,225	\$628,450	\$304,746	\$609,492	\$279,961	\$559,922
Cottage B	6	\$262,669	\$1,576,014	\$325,133	\$1,950,798	\$313,569	\$1,881,414	\$288,255	\$1,729,529
Site Work	1	\$117,500	\$117,500	\$202,654	\$202,654	\$388,885	\$388,885	\$357,830	\$357,830
Subtotal			\$2,232,172		\$2,781,902		\$2,879,791		\$2,647,281
Project Total			\$5,319,696		\$5,971,385		\$6,262,252*		\$5,843,648

*Bid recorded on OTIW Bid Tabulation document was \$6,251,728 which was based on the alternate bid for Elder Village.

OTIE was registered with OTIW as a Native American owned company and qualified for the bid to be discounted in the sealed bid competition. The Indian Preference discount allows Indian owned businesses greater flexibility in sealed bid competition based on lowest price. The OTIW procurement policy includes the following scale to calculate Indian Preference discount in construction contracts:

- Ten percent (10%) of the first \$50,000 segment of a bid.
- Plus nine percent (9%) of the next \$50,000 segment of a bid.
- Plus eight percent (8%) of the next \$100,000 segment of a bid.
- Plus seven percent (7%) of the next \$100,000 segment of a bid.
- Plus six percent (6%) of the next \$100,000 segment of a bid.
- Plus five percent (5%) of the next \$100,000 segment of a bid.
- Plus four percent (4%) of the next \$500,000 segment of a bid.
- Plus two percent (2%) of the next \$1,000,000 segment of a bid.
- Plus one percent (1%) of any amount over \$2,000,000.

GBAB and BCC were not documented in this procurement as qualifying for Indian Preference. OTIE had the highest bid of the three bidders, but was lower than the BCC bid when factoring in Indian Preference. OTIE was the only bidder which met the bonding requirement and as a result, OTIE submitted the only bid determined to be responsive.

OTIW advertised the original invitation for bids for the project in two issues of OTIW's newspaper *Kalihwisaks*. Despite cost analysis forecasting this project would cost over \$5,000,000, OTIW only received three (3) bids from potential vendors. After the two bidders were deemed unqualified due to their inability to secure bonding within four (4) business days, OTIW did not rebid the project with a new invitation to bid including bonding requirements with broadened advertisements to attract the greatest level of potential responsive and responsible bidders in hopes of greater competition to promote lower pricing for OTIW for more efficient use of Federal funds. Rather, OTIW proceeded to treat the Green Valley and Elder Village project as a sole source procurement. The OTIW procurement policy allows sole source purchases over \$50,000 with Oneida Finance Committee approval. OTIE's bid was approved by the Finance Committee as submitted. 24 CFR Section 1000.158 states projects cannot exceed the Total Development Cost (TDC) by more than ten (10) percent without prior HUD approval. Since OTIE's bid was more than 10 percent higher than the TDC, OTIW would need to consult with E/WONAP before awarding the project as a noncompetitive procurement.

The following table compares the project cost analysis, TDC and the final OTIE bid:

		Cost Analysis		Total Development Cost (TDC) PIH 2014-16		Oneida Total Integrated Enterprises (OTIE)	
Description	Qty.	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
Green Valley							
Duplex C	5	\$329,150	\$1,645,750	\$384,391	\$1,921,955	\$410,155	\$2,050,775
Split Level D	3	\$275,338	\$826,014	\$384,391	\$1,153,173	\$314,267	\$942,801

Site Work	1					\$383,623	\$383,623
Subtotal		\$2,471,764		\$3,075,128		\$3,377,199	
Elder Village							
Cottage A	2	\$247,050	\$494,100	\$307,408	\$614,816	\$304,746	\$609,492
Cottage B	6	\$248,340	\$1,490,040	\$307,408	\$1,844,448	\$313,569	\$1,881,414
Site Work	1					\$383,623	\$383,623
Subtotal		\$1,984,140		\$2,459,264		\$2,874,529	
Project Total		\$4,455,904		\$5,534,392		\$6,251,728	

OTIE's bid was approved by the Oneida Finance Committee without documented negotiation to lower the price from the original bid. A contract was completed between OTIW and OTIE for a price of \$6,251,728 on October 27, 2014. E/WONAP was not contacted to approve this procurement by non-competitive proposal. OTIE's bid was \$932,032 higher than the disqualified low bid that OTIW received for this project. After an April 2015 project change order in the amount of \$5,535,856, the procurement with OTIE was \$216,160.36 higher than the original low bid.

**FINDING #2016IHBG-3: Noncompliance: Procurement by Noncompetitive Proposals - OPEN
24 CFR Section 85.36(d)(4)(i)**

Disallowed Costs: \$116,822.96

Condition:

OTIW approved a noncompetitive proposal (sole source) which exceeded the Simplified Acquisition Threshold without getting approval from HUD and when other competitive proposals were not infeasible.

Criteria:

The regulation at 24 CFR Section 85.36(d)(4) (which has been updated in 2 CFR Section 200.320(f)) states procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

- (A) The item is available only from a single source;
- (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (C) The awarding agency authorizes noncompetitive proposals; or
- (D) After solicitation of a number of sources, competition is determined inadequate.

Cause and Effect:

OTIW determined that only one qualified bid was received during the sealed bid procurement, so the project was categorized as a sole source procurement. OTIW followed their policy and

submitted the proposal to the Oneida Finance Committee for approval. As a result, the Green Valley and Elder Village project was treated as a noncompetitive proposal.

Recommended Corrective Action:

To address this finding, OTIW should provide E/WONAP with:

- 1) An updated OTIW Procurement Policy that clarifies the procurement process for sole source procurements that exceed the Simplified Acquisition Threshold to comply with the Federal regulation for noncompetitive proposals.
- 2) Scheduled Procurement training dates for appropriate OTIW staff. Also, provide EWONAP with training certificate(s) upon completion of training.
- 3) Please note that failure to provide sufficient documentation for this procurement activity may result in any questioned costs being determined to be unallowable and returned to HUD using non-federal funds either by check or electronic funds.
- 4) The subject funds must be returned either by check or electronic funds. Any amount over \$2,000 should be sent as a wire transfer.

Provide E/WONAP, by fax, a copy of the repayment transaction. Send fax to 1-312-353-8936.

If returning by check, send to:

U. S. Department of HUD
Project/Grant No. 55IT3717440
P. O. Box 277303
Atlanta, GA 30384-7303

If sending a wire transfer, please use the following information:

Treasury Dept. Code: ABA Number 021030004 TREAS NYC HUD FTW, TX
Beneficiary: D
Agency Location Code: 86011101

Include all other necessary data on the disposition and amount of funds in the wire, to include the grant number and the line item the funds are to be deposited into.

OTIW Response:

The project solicited open competitive bidding via published advertisements for bids. The Pre-Bid Conference attendance listing identifies there were multiple companies that were interested. Only three bids were received by the bid date: Green Bay Area Builders (GBAB), Bear Claw Construction (BCC), and Oneida Total Integrated Enterprise (OTIE). Shortly after bid opening it was discovered that the requirement for Payment and Performance Bonds was not included in the Bid Documents. The Project Manager (Mike Showers) solicited bond pricing from the three bidders request a very quick response time in order to keep the project moving forward to avoid winter conditions costs in the construction work.

Two of the bidders (GBAB and BCC) were unable to provide the required bonds and were deemed as non-responsive bids. The contract approval process was initiated with OTIE as the only responsive bid. Under the Oneida Nation's bidding process, it was determined that this

resulted in a sole source bidding process which required approval from the Oneida Nation's Finance Committee in order to move forward. This process was followed and Finance Committee approval was received.

The Project Manager was not aware that this situation also resulted in a noncompetitive proposal which exceeded the Simplified Acquisition Threshold and should have had HUD approval to proceed with contract award. The individual with the most knowledge of the federal procurement processes, Wilbert Rentmeester, Development Division Director, had recused himself from the bidding and award process to avoid any conflict of interest as a board member of OTIE. Had Mr. Rentmeester been involved he most likely would have brought the issue to light and the project would have been re-bid. Another key person who is familiar with the requirements is the Housing Authority Director, Dale Wheelock; unfortunately Mr. Wheelock was not employed with the Oneida Nation during this time period. Mr. Wheelock would have identified the issue had he been available to be involved in the process.

After contract award it was discovered that some of the costs of the units exceeded the allowable Total Development Cost (TDC). The discrepancy wasn't noticed sooner because again the Project Manager was unfamiliar with the requirement and key players were not involved in the process at the time. Upon the discovery the design of the units was changed to reduce the square footage and associated costs. A change order to OTIE's contract was issued to bring the unit cost within TDC allowances (OTIE Change Order was previously submitted to E/WONAP) regarding the Green Valley and Elder Village projects shows the breakdown of final unit's costs relative to TDC.

The report identifies the TDC for Duplex C as $\$384,391 \times 5 \text{ buildings} = \$1,921,955$; which is treating each building as a four bedroom unit. The duplexes constructed consist of two independent units with 2 bedrooms each forming a building. It is our understanding that TDC would be calculated as $\$307,408 \times 2 \text{ units} = \$614,816 \times 5 \text{ buildings} = \$3,074,080$. Each side of the duplex has a different tenant, separate living, kitchen, bath, bedroom, and garage and there is no inside access from side to side, so the building shouldn't be considered a four bedroom unit. With the corrected TDC value, the contracted amount is well within the TDC for Duplex C.

The report notes a value of \$216,160.36 as a difference between the OTIE Contract value and the original low bid; however, this value fails to acknowledge that the OTIE value includes the costs of bonds and the original low bid does not. OTIE's contract includes a total amount for bonds of \$56,012.04. Further, a change order to OTIE's contract regarding an unused contingency line in the amount of \$43,325.36 should also be deducted from the OTIE contract amount. This would make the total questioned costs \$116,822.96. Upon review of this information and a final determination regarding questioned costs, the Oneida Nation will wire the amount within the identified time frame.

There was no intent to not comply with federal regulations on this project it was simply the key players not being available and the staff working on the project not having the procurement experience with federal funded projects. All parties currently involved in the procurement process are now familiar with these requirements and will ensure this situation does not reoccur. In addition, the Oneida Business Committee adopted the following motion.

"Motion by Lisa Summers to direct the Chief Financial Officer to begin development of an updated or new Standard Operating Procedure addressing sole source contracting and, where needed, documentation of external funding approval of sole source (in regards to Finding #3), seconded by David Jordan. Motion carried unanimously." *July 13, 2016, Oneida Business Committee minutes, p. 14.*

Patrick Stensloff, Director of Purchasing, has been tasked with reviewing the Standard Operating Procedures of the Purchasing Department and the procedures of the Finance Committee and developing corrections to address this issue and ensure the proper approvals are in place. A draft of the revised procedures is included in Attachment #5. We anticipate that a final document will be approved within 60 days.

E/WONAP Response:

E/WONAP accepts the OTIW calculation for repayment and adjusts the disallowable costs to \$116,822.96. OTIW has scheduled procurement training for the housing department and other relevant areas of the Oneida Nation as prescribed in E/WONAP's recommended corrective action. OTIW is revising its procurement policy and should provide the final version of the policy upon OTIW approval.

FMR Recommended Corrective Action:

To address this finding, OTIW must provide E/WONAP with:

- 1) A copy of the updated OTIW Procurement Policy that clarifies the procurement process for sole source procurements that exceed the Simplified Acquisition Threshold to comply with the Federal regulation for noncompetitive proposals with confirmation the policy has been adopted by OTIW.
- 2) The subject funds must be returned either by check or electronic funds transfer and any amount exceeding \$2,000 should be sent via wire transfer in accordance with the instructions above.

Target Date for Completion: February 20, 2017

The Green Valley and Elder Village contractor, OTIE, is a wholly-owned corporation of OTIW. This relationship is disclosed on the Consultant/Contractor Conflict of Interest Disclosure Form which is "Exhibit D" of the contract between OTIW and OTIE. Several people are listed as having both positions with OTIW organizations and on the OTIE Board of Managers. The Development/Engineering Director of the Development Division for OTIW was also the Chairperson of the OTIE Board of Managers. The Development Division was the department for OTIW which was responsible for planning and completing the housing project. The Director reportedly recused himself with both OTIW and OTIE for the project. E/WONAP staff was not provided any documentation such as meeting minutes which would confirm recusals of OTIW or OTIE staff in the procurement process other than the disclosures included in the agreement between OTIW and OTIE.

OTIW solicited bids for a construction project with cost projections over \$5,000,000. OTIW received three (3) bids including from OTIE, a company that OTIW owns. The sealed bid from OTIE did not include a disclosure of potential conflicts of interest in the relationship between the company and OTIW. OTIW did not provide a notice of a public opening of the sealed bid, but OTIE was in attendance while the other bidders were not. The other bidders were disqualified when they were unable to satisfy bonding requirements after OTIW emailed a notice of bonding requirements after the deadline to receive sealed bids. Afterwards, OTIW chose to follow its sole source procurement process instead of resubmitting an Invitation for Bid. Based on the sole sourcing process, OTIW approved an agreement with OTIE which was 40% higher than OTIW's cost analysis for the project. OTIW currently does not have a specific Conflict of Interest policy which addresses organizational conflicts of interest.

FINDING #2016IHBG-4: Noncompliance: Organizational Conflicts of Interest - OPEN
2 CFR Section 200.318(c)(2)

Condition:

OTIW has a wholly owned subsidiary which competes for Federal-funded OTIW projects, but OTIW does not have an organizational conflicts of interest policy.

Criteria:

The regulation at 2 CFR Section 200.318(c)(2) states if the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

Cause and Effect:

OTIW has a subsidiary organization which participates in OTIW procurement opportunities. OTIW does not have written standards of conduct covering organizational conflicts of interest. As a result, OTIW's Conflict of Interest policy creates a process that could allow OTIW's subsidiary to be an influence in procurement selection.

Recommended Corrective Action:

To address this finding, OTIW should provide E/WONAP with:

- 1) An updated OTIW Conflicts of Interest Policy which includes written standards of conduct covering organizational conflicts of interest. This policy update would create an impartial process for a procurement action involving a related organization.
- 2) Scheduled Procurement training dates for appropriate OTIW staff. Also, provide EWONAP with training certificate(s) upon completion of training.

OTIW Response:

The Oneida Nation employs individuals and reviews conflicts of interest at the point of employment. Employees are expected to report conflicts of interest during their term of employment. In addition, the Oneida Nation appoints members to boards, committees and

commissions of the Oneida Nation. Each application requests applicants to identify potential conflicts of interests. The Oneida Nation also engages in contracts with individuals who may also be employees, these conflicts are reviewed in the contracting process. Finally, the Oneida Nation appoints members to corporate boards and reviews conflicts of interests during the appointment process.

The current federal regulations define an 'organizational conflict of interest as, "because of a relationship with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization." *U.S. Dept. Housing and Urban Development, Notice #SD-2015-01, dated February 26, 2015.* The effective date of this regulation was December 26, 2014, before the contract activity under review.

Wilbert Rentmeester was Development Division Director and member of the board of directors of the Oneida Total Integrated Enterprises, a company that participates in construction projects as a sub-contractor and general contractor, as well as an engineering design firm. At the time of this appointment, Housing Authority projects were managed separately outside of the Development Division. Thus no conflict existed. Mr. Rentmeester had already recused himself from all projects in which there was a conflict with OTIE participating in bidding or bid document development,

However, as a result of organizational changes and changes in the construction processes at the Housing Authority, the Development Division became more involved. This included employees under Mr. Rentmeester's supervision. The Oneida Business Committee was aware of the actions of recusal by Mr. Rentmeester in the bid processes before the Housing Authority construction projects were transferred to the Development Division. Further, the Mr. Stensloff, Director of Purchasing, along with the Development Division staff, had recently indicated that developing design documents and bidding on those design documents was a conflict of interest and would not be allowed.

The Oneida Business agrees that further steps are needed regarding managing conflicts of interest. Please see Finding # 2016IHBG-1 regarding amending the Conflict of Interest Policy. In addition, we are taking further actions regarding the corporate board of director's appointment process to address this issue.

"Motion by Lisa Summers to direct the Tribal Secretary to develop Standard Operating Procedures and necessary charter amendments regarding appointments to boards and agenda* of corporate entities which prohibit conflict with duties as a tribal employee (in regards to Finding #4), seconded by Jennifer Webster. Motion carried unanimously."

July 13, 2016, Oneida Business Committee minutes, p. 14.

* This should be "agents" not "agenda" as identified in the minutes.

This Standard Operating Procedure is being developed and will be presented at a work meeting of the Oneida Business Committee for discussion and revisions, and final approval will be made at an Oneida Business Committee meeting. We anticipate this could take approximately three months from the July 13th motion to complete.

E/WONAP Response:

The regulation at 2 CFR Section 200.318(c)(2) requires that a non-Federal entity which has a subsidy organization must also maintain written standards of conduct covering organizational conflicts of interest. OTIE is a wholly owned subsidiary of OTIW. Because OTIW has a subsidy organization which may pursue OTIW procurement opportunities, OTIW is required to have an organizational conflicts of interest policy which focuses on the organizational relationship between OTIW and its subsidiaries. These relationships are in addition to the conflicts of interest that the updated OTIW conflict of interest policy addresses. The organizational conflicts of interest policy is required in order for OTIW to be in compliance with the Federal regulation.

OTIW has scheduled procurement training for the housing department and other relevant areas of the Oneida Nation as prescribed in E/WONAP's recommended corrective action.

FMR Recommended Corrective Action:

To address this finding, OTIW must provide E/WONAP with an updated OTIW Conflicts of Interest Policy which includes written standards of conduct covering organizational conflicts of interest. This policy update would create an impartial process for a procurement action involving a related organization.

Target Date for Completion: February 20, 2017

Before construction commenced, OTIW realized the contract with OTIE exceeded TDC. According to Federal regulation 24 CFR Section 1000.158, projects cannot exceed TDC by more than ten (10) percent without prior HUD approval. OTIE revised the project to lower costs. OTIE submitted a proposal of revisions to OTIW on April 21, 2015. A change order was completed and signed by OTIW and OTIE on April 21, 2015.

The following table compares the original and revised contract prices as well as TDC:

TABLE 11				
	Original (2014)	Revised (2015)	Difference	TDC
Green Valley Total Costs				
Duplex C	\$2,050,775	\$2,050,775	\$0	\$1,921,955
Split Level D	\$942,801	\$917,894	\$24,907	\$1,153,173
Site Work	\$383,623	\$310,634	\$72,989	
Subtotal	\$3,377,199	\$3,279,303	\$97,896	\$3,075,128
Elder Village Total Costs				
Cottage A	\$609,492	\$500,164	\$109,328	\$614,816
Cottage B	\$1,881,414	\$1,503,317	\$378,097	\$1,844,448
Site Work	\$383,623	\$253,073	\$130,550	
Subtotal	\$2,874,529	\$2,256,554	\$617,975	\$2,459,264
Project Total	\$6,251,728	\$5,535,856	\$715,872	\$5,534,392

Four (4) findings and two (2) concerns were identified in the Procurement and Contract Administration monitoring area.

SELF-MONITORING

The IHBG program regulations at 24 CFR Section 1000.502 (a) requires that recipients of NAHASDA funds establish an effective system to monitor its grant activities, ensure compliance with applicable Federal requirements, and monitor its Indian Housing Plan (IHP) performance goals. In accordance with 24 CFR Section 1000.502(b), if the grant recipient is the TDHE, the grant beneficiary, the tribe, is also responsible for monitoring IHBG compliance requirements by requiring the TDHE to prepare periodic progress reports including the annual compliance assessment, performance and audit reports.

Documents Reviewed

- Oneida Tribe of Wisconsin NAHASDA Self-Monitoring Policy, dated October 10, 2012
- OHA Annual Performance Report dated FY2014
- OHA FYE September 30, 2014, accepted by the FAC on January 19, 2015
- OHA Self-Monitoring Assessment – FY2015

Staff Interviewed

Scott Denny, Acting Director, Oneida Housing Authority

OHA APR Submission

The FY2014 Oneida Housing Authority APR submission affirmed in Section 10: Self-Monitoring, that the OHA has a procedure and/or policy for self-monitoring and that it conducts an annual self-monitoring assessment in accordance with NAHASDA at Section 403(b), and the implementing regulations at 24 CFR Section 1000.52. The OHA summarized the self-monitoring activities reported to the Tribal Council as follows:

- OHA Residential Development Activities
- Maintenance and Rehab Activities
- Active Housing Stock
- Occupancy Rate

OHA Audit Submission

In accordance with OMB Circular A-133 and NAHASDA requirements, OHA submitted an unqualified single audit for FYE September 30, 2014 activities to the Federal Clearing House on January 19 2015. A copy of the audit was submitted to the E/WONAP via email on January 19 2015. The audit contained no findings.

OHA Self-Monitoring Policy

The Oneida Tribe of Wisconsin NAHASDA Self-Monitoring Policy affirms that the OHA has a procedure for self-monitoring and that it conducts an annual self-monitoring assessment in accordance with NAHASDA at Section 403(b), and the implementing regulations at 24 CFR Section 1000.502. The policy states that the self-monitoring process will be conducted by an impartial appraiser, that the results of this assessment will be made accessible to the public and

that recommendation to improve areas of significant compliance deficiencies will be developed and implemented during the preceding program year.

OHA FY 2015 Self-Monitoring Assessment

While on-site, E/WONAP staff requested and reviewed a copy of the OHA 2015 Self-Monitoring Assessment. The 3-page report provides a narrative of OHA's major programs. The report is comprehensive and includes the following elements:

- Current Housing Stock
- Occupancy Rate
- Tenant Accounts Receivable (TAR)
- Labor Standards
- Construction Standards
- Maintenance Status
- Rehabilitation Status
- New Construction Development

No findings or concerns were identified in the recipient's Self-Monitoring review area.

Oneida Tribe of Indians of Wisconsin

Draft Monitoring Report

ICDBG

On December 1 - 3, 2015, the Eastern Woodlands Office of Native American Programs (E/WONAP) conducted an on-site monitoring review of the Indian Community Development Block Grant (ICDBG) program managed by the Oneida Tribe of Indians of Wisconsin (OTIW). The purpose of the review is to fulfill the U.S. Department of Housing and Urban Development's regulatory obligation under 24 CFR Section 1003.700 to review compliance with the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), the Indian Community Development Block Grant program regulations at 24 CFR Part 1003, the grant agreement, and other applicable laws and regulations. In addition, the program regulations require HUD to determine if an ICDBG recipient has carried out program activities substantially as described in its approved application and if it has made substantial progress in implementing its program.

The grants reviewed were:

ICDBG Number	Grant Funds Awarded	
	Date	Amount
B11-SR-55-4910	09/07/2011	\$600,000.00
B12-SR-55-4910	05/12/2012	\$600,000.00

The areas reviewed for these programs were:

- Administration and Grant Compliance
- Environmental Review Compliance
- Financial and Fiscal Management
- Financial Reporting
- Procurement and Contract Administration

E/WONAP staff who participated in the review was:

- David C. Thomas, Grants Evaluation Team Lead

An entrance conference was held on December 1, 2015 with the following officials and staff representing the OTIW:

Lisa Summers, Tribal Secretary
JoAnne House, Chief Counsel
Geraldine Danforth, HR Area Manager
Larry Barton, Chief Financial Officer
Justine Hill, Office Manager
Cindy Kohl, Sr. Accounting Assistant
Jaime Metoxen, Sr. Accounting Assistant
Dana McLester, Accounting Supervisor
Jean Van Dyke, Accounting Manager
Lee Thomas, Controller
Scott Denny, Interim Housing Director and Housing Operations Manager
Paul Witek, Senior Tribal Architect
Troy D. Parr, Asst. Development Division Director
Trish King, Treasurer

The following staff representing the OTIW were consulted or interviewed as part of the review:

Scott Denny, Interim Housing Director and Housing Operations Manager
Jean Van Dyke, Accounting Manager
Lawrence Barton, Chief Financial Officer
Patrick Stensloff, Director of Purchasing
Travis J. Wallenfang, Indian Preference Coordinator
Victoria Flowers, Environmental Specialist
Paul J. Witek, Senior Tribal Architect
Troy D. Parr, Oneida Development Division - Branch Director
Kevin House, Construction Manager

An exit conference was held on December 3, 2015 with the following officials and staff representing the OTIW:

Lee Thomas, Controller
Scott Denny, Operations Manager
Troy D. Parr, Asst. Development Division Director
Paul Witek, Senior Tribal Architect
Jenny Webster, Council Member
Tehassi Hill, Councilman
David Jordan, Councilman
Laurel Spooner, Collection Specialist
Geraldine Danforth, HR Area Manager
Lisa Summers, Tribal Secretary
Dana McLester, Accounting Supervisor
Jean Van Dyke, Accounting Manager
JoAnne House, Chief Counsel
Dawn Moon-Kopetsky, Senior Policy Advisor
Larry Barton, CFO
Patrick Stensloff, Director of Purchasing
Cindy Kohl, Sr. Accounting Assistant

Jaime Metoxen, Sr. Accounting Assistant
Lisa Vega, Resident Service Specialist
Justine Hill, Office Manager
Trish King, Treasurer

SUMMARY OF FINDINGS AND CONCERNS

The ICDBG summary of findings identified during the monitoring review is presented below.

- Administration and Grant Compliance
 - No findings or concerns in this area
- Environmental Review Compliance
 - No findings or concerns in this area
- Financial and Fiscal Management
 - No findings or concerns in this area
- Financial Reporting
 - No findings or concerns in this area
- Procurement and Contract Administration
 - Finding #2016 ICDBG-01: Arbitrary Action in Procurement Process - CLOSED

ADMINISTRATION and GRANT COMPLIANCE

E/WONAP interviewed key project staff and reviewed OTIW files to ensure compliance with the approved application per 24 CFR Section 1003.700(b)(1) and with the Uniform Administrative Requirements at 2 CFR Sections 200.300 and 200.328.

Staff Interviewed

Scott Denny, Housing Operations Manager
Kevin House, Construction Manager
Paul J. Witek, Senior Tribal Architect
Troy D. Parr, Oneida Development Division - Branch Director

B-11-SR-55-4910: Henry Road Elder Village Infrastructure

In response to the HUD 2011 NOFA, dated April 20, 2011, OTIW, through its housing program, the Oneida Housing Authority (OHA), submitted a competitive proposal for Indian Community Development Block Grant funds to construct 1,800 linear feet of infrastructure to connect to a mixed-income housing neighborhood in the central portion of the Oneida Reservation, the Henry Road Elder Village Housing Infrastructure Project. The infrastructure project, to include storm water retention and detention, water lines, sanitary sewer, and paved roads with curb and gutter, was approved by OTIW Resolution 06-08-11-A on June 8, 2011. The project would ultimately support twenty-four (24) new construction elder units for the benefit of low and moderate income Oneida families. The total infrastructure cost was estimated at \$821,136, which

included a ten (10) percent contingency. OTIW requested \$600,000 of ICDBG funds and pledged to match the grant with an estimated \$200,000 from the housing program's 2011 Indian Housing Block Grant allocation.

The engineering firm McMahon Associates, Inc. was selected to provide overall design and construction related services to include property surveying, project design, acceptance of bids, contracting, conducting construction meetings, and reviewing contractor payment applications. OTIW staff provided project management, project engineering, administrative and financial oversight. Energy efficiency as an element of the project was established by the Oneida Tribe Energy Team, including the Tribe's Senior Tribal Architect and the Oneida Development Division Branch Director serving as Project Manager/Engineer.

In a letter dated September 7, 2011, E/WONAP notified OTIW that its proposal had received a score of 98 in the competitive ranking, and that the project was awarded the full \$600,000 of its request as award #B-11-SR-55-4910.

The first phase of the Elder Village Infrastructure Project was completed in June 2014. Utility hookups, natural gas and electric installations, were completed in October 2015. On September 29, 2015, OTIW submitted HUD SF-4125, ICDBG Implementation Schedule, and a request for an extension of time due numerous to project management staffing turnovers. The second phase of development, road and infrastructure design was underway and projected to be completed by August 2016.

B-12-SR-55-4910: Uskah Village/Smit Farm Infrastructure

In response to the HUD 2012 ICDBG NOFA (FR-5600-N-02), dated October 4, 2011, OTIW, through OHA, submitted a competitive proposal for ICDBG funds to construct 1,500 linear feet of infrastructure to connect to a mixed-income housing neighborhood in the central portion of the Oneida Reservation, the Uskah Village Infrastructure Project. The infrastructure project was to include storm water retention and detention, water lines, sanitary sewer, and paved roads with curb and gutter. The project will ultimately support forty (40) new construction single-family housing units for the benefit of low and moderate income Oneida families. The site is situated within walking distance of the Oneida Health Center, Oneida Child Care, and is located near Highway 172, a major thoroughfare. The total infrastructure cost was estimated at \$800,000, which included a ten (10) percent contingency. OTIW requested \$600,000 of ICDBG funds and pledged to match the grant with an estimated \$200,000 from the housing program's 2012 Indian Housing Block Grant allocation.

The ICDBG application stated that the engineering firm McMahon Associates, Inc. had been selected to provide overall design and construction related services to include property surveying, project design, acceptance of bids, contracting, conducting construction meetings, and reviewing contractor payment applications. OTIW staff will provide project management, project engineering, planning, administrative and financial oversight. Energy efficiency as an element of the project was established by the Oneida Tribe Energy Team, including the Tribe's Senior Tribal Architect and the Oneida Development Division Branch Director serving as Project Manager/Engineer. In a letter dated May 1, 2012, E/WONAP notified OTIW that its proposal had received a score of 94 in the competitive ranking, and that the project was awarded the full \$600,000 of its request as award B-12-SR-55-4910.

On November 25, 2015, the Oneida Housing Authority Housing Operations Manager and Interim Executive Director submitted a narrative report and Implementation Schedule, HUD Form 4125 for this project. The road and infrastructure design for the Uskah/Elder Village Infrastructure Project was completed in September 2015. The construction phase of the road was scheduled to begin in late November 2015 with a planned completion of July 2016. On September 29, 2015, OTIW submitted HUD SF-4125, ICDBG Implementation Schedule, and a request for an extension of time due numerous to project management staffing turnovers. The second phase of development, road and infrastructure design was underway and projected to be completed by August 2016.

E/WONAP's review of the OTIW's ICDBG administration and grant compliance did not disclose any violations of the ICDBG program regulations at 24 CFR Section 1003.700(b)(1) or the Uniform Administrative Requirements at 2 CFR Sections 200.300 and 200.328.

ENVIRONMENTAL REVIEW COMPLIANCE

The purpose of the environmental review is to determine the recipient's compliance with HUD's environmental review and clearance requirements as outlined at 24 CFR Part 58. The program regulations at 24 CFR Section 1003.605(a) state that if a tribe assumes environmental review responsibilities for Indian Community Development Block Grant (ICDBG) program activities, HUD's environmental review and clearance requirements per 24 CFR Part 58 apply. Funds may not be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds, except as allowed under 24 CFR Part 58. The program regulations at 24 CFR Section 1003.605 also state that upon completion of the environmental review, the grantee must submit a certification and request for release of funds for particular projects in accordance with 24 CFR Part 58. The regulations at 24 CFR Sections 58.34 and 58.35 state that certain activities are exempt or categorically excluded. The responsible entity, however, must document in writing its determination that each activity or project is exempt or categorically excluded, and that each project meets the conditions specified for such exemption.

The "Responsible Entity" for NAHASDA program environmental reviews is defined at 24 CFR Section 58.2(a)(7) as the Indian Tribe, whether or not a Tribally Designated Housing Entity (TDHE) is authorized to receive grant amounts on behalf of the Tribe. Under the terms of the certification required by 24 CFR Section 58.71, a responsible entity's Certifying Officer (CO) is the "responsible Federal official" as that term is used in Section 102 of the National Environmental Protection Act ("NEPA") and in the regulatory provisions cited in 24 CFR Section 58.1(b)(10). The CO is therefore responsible for all the requirements of NEPA Section 102 and the related provisions in 40 CFR Parts 1500 through 1508, and 24 CFR Part 58, including the related Federal laws and authorities listed in 24 CFR Section 58.5. The CO must also ensure that the responsible entity reviews and comments on all environmental assessments (EA) or environmental impact statements (EIS) prepared for Federal projects that may have an impact on the recipient's program.

Documents Reviewed

- Environmental Review Record (ERR) for ICDBG No. B-11-SR-55-4910

- Release of Funds, HUD 52734-A for ICDBG No. B-11-SR-55-4910, dated September 16, 2011
- Environmental Review Record (ERR) for ICDBG No. B-12-SR-55-4910
- Release of Funds, HUD 52734-A for ICDBG No. B-12-SR-55-4910, dated May 17, 2012

Staff Interviewed

Victoria Flowers, Environmental Specialist/Certifying Officer

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

The OTIW maintains comprehensive and well-organized environmental review records. The ERR's for ICDBG Nos. B-11-SR-55-4910 and B-12-SR-55-4910 contained the public notices and written determinations of environmental findings required by 24 CFR Part 58.

The review of the environmental documentation files did not disclose any violation of the regulatory requirements for 24 CFR Section 1003.605(a), 24 CFR Part 50, and 24 CFR Part 58.

FINANCIAL AND FISCAL MANAGEMENT

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Requirements") at 2 CFR Part 200, is applicable to non-federal entities that either receive or distribute federal awards.³ 24 CFR Parts 84 and 85, as well as OMB A-87 and OMB A-133 have been superseded by the Uniform Administrative Requirements now codified in 2 CFR Part 200. The scope of the performance review for financial and fiscal management included funds drawn down, accounting records, internal controls, cash management, budget control, audits, and investments.

The Uniform Administrative Requirements, at 2 CFR Section 200.302(a), state that each non-federal entity must have a financial management system that is sufficient to permit the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

In general, an audit that complies with the Uniform Administrative Requirements also assists HUD in making the determination that the recipient's ICDBG funds have not been used in violation of the restrictions and prohibitions of NAHASDA, and the implementing regulations. Specifically, the Uniform Administrative Requirements, under 2 CFR Section 200.302(b)(2), require non-federal entities to provide accurate, current, and complete disclosure of each federal award or program in accordance with its reporting requirements. The Line of Credit Control System (LOCCS) requires semi-annual reports for certain grants provided under the U.S. Housing Act of 1937 (1937 Housing Act), as well quarterly reports for NAHASDA grants. When progress reports are not submitted as required, LOCCS does not allow funds to be disbursed.

³ On December 26, 2014, HUD adopted the Uniform Requirements, 78 Fed.Reg. 78590, replacing various regulatory requirements for grant administration. Both the old regulations and the Uniform Administrative Requirements are cited in parts of this report, as old rules apply to actions or omissions that occurred before December 26, 2014. Additionally, there is a one fiscal year grace period for implementation of the new procurement standards in 2 CFR 200.317 through 200.326.

ICDBG recipients are required to submit to HUD the Federal Financial Report (SF 425) no later than 30 days following the end of the quarter. Regarding financial audits, the Uniform Administrative Requirements state, under 2 CFR Sections 200.501 and 200.514, that any non-federal entity that expends \$750,000 or more in federal funds in a fiscal year must have an annual audit conducted which meets the Generally Accepted Government Auditing Standards (“GAGAS”). Also, the Uniform Administrative Requirements, under 2 CFR Sections 200.507(c)(1) and 200.512(a)(1), state that the non-federal entity must submit the audit to the Federal Audit Clearinghouse (“FAC”) within 30 calendar days after receipt of the auditor’s report, or nine months after the end of the audit period. The audit should cover all ICDBG grants that were open at any time during the audit period.

Documents Reviewed

- Tribal Cash Handling Policy, Revised September 8, 2011
- Accounts Payable Invoice Processing, December 28, 2011
- Chart of Accounts, April 29, 2015
 - Current Trial Balance, November 13, 2015
- Line of Credit Control System (LOCCS) Grant Detail and Disbursement History Reports for B-11-SR-55-4910 and B-12-SR-55-4910
- Randomly selected checks with supporting documentation for FY’s 2013 - 2015
- Selected LOCCS ICDBG Payment Vouchers and Documentation

Staff Interviewed

Scott Denny, Housing Operations Manager
Jean Van Dyke, Accounting Manager
Dana McLester, Accounting Supervisor

E/WONAP staff reviewed the documents that OTIW uses to determine accounting policies and procedures. These documents include the Accounts Payable Invoice Processing Policy, Processing & Review of Journal Entries Standard Operating Procedure, and Tribal Cash Handling Policy. These documents provide guidance to OTIW Central Accounting for classification of accounting activity including the procedures for receiving funds including NAHASDA draws, journal entries, and accounts receivable and account payable processes. The Processing & Review of Journal Entries procedure ensures accounting controls as set forth by the Sarbanes Oxley Act. The financial management system for OTIW properly retains records, provides methods for collection, transmission and storage of information.

E/WONAP staff reviewed OTIW trial balance, general ledgers and income statements. The 2014 Annual Performance Report (APR) and 2014 audit which were previously been submitted by OTIW to E/WONAP were utilized for reconciliation. OTIW’s Federal Financial Reports (SF-425), which were submitted quarterly, also provided a reference for NAHASDA funded expenditures. E/WONAP staff reviewed the OTIW’s monthly bank reconciliations, trial balance, general ledger and the adjusting journal for the purpose of verifying compliance with the OTIW’s Financial Management Policy, Procurement Code, and 2 CFR Section 200.302(a) of the Uniform Administrative Requirements.

Staff Interviewed

Jean Van Dyke, Accounting Manager
 Dana McLester, Accounting Supervisor

Invoicing Documentation:

E/WONAP staff randomly selected three (3) recent vendor payments and requested copies of the applicable checks and supporting documentation. All supporting documentation was accurate and had been properly authorized for payment. All information was consistent with the Payment Register report as indicated in the following table:

Table 12			
OTIW Payment Register/Invoicing Documentation			
Check Number	Date	Vendor	Amount (\$)
1695615	09/29/2014	Robert J. Immel Excavating Inc.	77,708.74
1696050	10/03/2014	Robert J. Immel Excavating Inc.	70,000.00
1720918	08/27/2015	Professional Service	8,496.00

E/WONAP staff’s review of the disbursement transaction process and supporting documentation did not disclose any inconsistency of expenditures that were charged to the ICDBG program.

LOCCS Payment Voucher Documentation

E/WONAP staff reviewed nine (9) LOCCS payment vouchers and supporting documentation from B-11-SR-55-4910 and B-12-SR-55-4910 covering FY’s 2013, 2014, and 2015. OTIW’s ledger reports, vouchers and invoices supported the LOCCS draws for the nine (9) vouchers sampled for this review. The results of that review are shown in the following table:

Table 13				
OTIW LOCCS Draw Down vs. Supporting Documentation Review Results				
LOCCS – B-11-SR-55-4910		Funds Requested (\$)	Supporting Documentation (\$)	Cost Category
Payment Voucher #	Draw Date			
2192081	10/23/2013	11,331.54	11,331.54	Contract Services
2192677	01/27/2014	250,215.14	250,215.14	Contract Services, General Capital Outlay
2194016	02/11/2014	177,561.46	177,561.46	Construction (Immel), Personnel, Fringe
2194446	07/01/2015	1,280.07	1,280.07	Personnel, Fringe, Engineering
2194734	09/26.2015	11,546.90	11,546.90	Contract and Engineering Services
LOCCS – B-12-SR-55-4910		Funds Requested (\$)	Supporting Documentation (\$)	Cost Category
Payment Voucher #	Draw Date			

2193126	06/03/2014	1,554.72	1,554.72	Personnel, Fringe
2194017	01/27/2015	7,902.84	7,902.84	Personnel, Fringe, Engineering
2194268	04/25/2015	9,860.38	9,860.38	Personnel, Fringe, Contract Services
2194735	07/01/2015	28,440.35	28,440.35	Contract and Engineering Services

OTIW provided the required documentation to support the randomly-selected LOCCS draws for ICDBG awards B-11-SR-55-4910 and B-12-SR-55-4910.

The review of the financial and fiscal management documentation files did not disclose any violation of the regulatory requirements for 2 CFR Section 200.302(a).

FINANCIAL REPORTING

The Uniform Requirements, under 2 CFR Section 200.302(b)(2), require accurate, current, and complete disclosure of the financial results of each Federal award. LOCCS requires semi-annual reports for certain 1937 Housing Act grants as well as quarterly reports for NAHASDA grants. When progress reports are not submitted as required, LOCCS does not allow funds to be disbursed.

The Uniform Administrative Requirements require, under 2 CFR Section 200.501 and 200.514, state that each non-Federal entity that expends a total amount of Federal awards equal to or in excess of \$750,000 in any fiscal year to have either a single audit or a program-specific audit made for such fiscal year. Also, the Uniform Administrative Requirements, under 2 CFR Sections 200.507(c)(1) and 200.512(a)(1), state that the non-federal entity must submit a copy of the annual single audit or a program-specific audit to the FAC within thirty (30) days after receipt of the auditor's report, or nine (9) months after the end of the audit period.

PIH Notice 2012-02, issued on January 4, 2012, states that recipients of ICDBG funds must submit quarterly financial reports on HUD form SF-425. The quarterly financial reports are due within thirty (30) days following the end of each quarter.

Documents Reviewed:

- Independent Public Audit report (IPA) for the OTIW 2014 Audit
- FAC report for Single Audit submission, FY2014
- LOCCS, Grant History for B-11-SR-55-4910 and B-12-SR-55-4910
- HUD Standard Form 425 Federal Financial Reports (SF-425), for FY's 2013 through 2015

The OTIW FYE September 30, 2014 audit was due to the FAC by June 30, 2015. The FAC website (<https://harvester.census.gov/facweb/Default.aspx>) confirmed that OTIW was compliant in its submission of its FY2014, FY2013, and FY2014 audits. The 2014 audit was received and accepted by the FAC on January 19, 2015. The FYE September 30, 2013 audit was accepted by the FAC on January 18, 2014, and the FYE September 30, 2012 audit was accepted by the FAC on January 4, 2013.

During FY’s 2013 through 2015, the OTIW submitted to E/WONAP the quarterly Federal Financial Reports (HUD SF-425) for ICDBG B-11-SR-55-4910 and B-12-SR-55-4910. The funds expended as shown on the HUD SF-425 were consistent with the LOCCS reports. The OTIW submitted eleven (11) of the twelve (12) quarterly SF-425s reviewed in a timely manner as required by 24 CFR Section 85.26 for all reports submitted prior to December 2014, and 2 CFR Sections 200.507(c)(1) and 200.512(a)(1) for all reports submitted after December 2014. The due dates and received dates for the two open ICDBG grants are noted in the following table:

Table 14			
OTIW B-11-SR-55-4910 and B-12-SR-55-4910 SF-425 Reports Review Results			
Period Ending	Due to EWONAP	Date Report Submitted	Status
9/30/2015	10/30/2015	10/27/2015	Compliant
6/30/2015	7/30/2015	7/15/2015	Compliant
3/31/2015	4/30/2015	5/5/2015	Late
12/31/2014	1/31/2015	1/23/2015	Compliant
9/30/2014	10/30/2014	10/29/2014	Compliant
6/30/2014	7/30/2014	7/28/2015	Compliant
3/31/2014	4/30/2014	4/21/2015	Compliant
12/31/2013	1/31/2014	1/27/2015	Compliant
9/30/2013	10/30/2013	10/15/2013	Compliant
6/30/2013	7/30/2013	7/25/2013	Compliant
3/31/2013	4/30/2013	4/15/2013	Compliant
12/31/2012	1/31/2013	1/29/2013	Compliant

With the exception of a single case of a five-day late SF-425 report for the period ending March 31, 2015, each of the SF-425s for the period of December 31, 2012 through September 30, 2015 were submitted in a timely manner.

E/WONAP’s review of the OTIW’s fiscal management and financial reporting did not disclose any violations of the NAHASDA program regulations at 24 CFR Section 1003.501 or 2 CFR Sections 200.507(c)(1) and 200.512(a)(1).

PROCUREMENT AND CONTRACT ADMINISTRATION

ICDBG program regulations at 24 CFR Section 1003.501(a)(13) require recipients to comply with 2 CFR Sections 200.317-326, previously 24 CFR Section 85.36, when procuring goods and services. The requirements at 2 CFR Section 200.319, previously 24 CFR Section 85.36(c), require that all procurement transactions be conducted in a manner providing full and open competition. The requirements at 2 CFR Section 200.318(i), previously 24 CFR Section 85.36(b)(9), also require the maintenance of procurement records sufficient to detail the significant

history of a procurement. These records are to include, but are not necessarily limited to documentation of the rationale for the method of procurement (small purchase, sealed bid, competitive or noncompetitive proposals), the selection of contract type, the contractor selection or rejection, and the basis for the contract price. Additionally, for a cost to be allowable, under 2 CFR Part 225 (2 CFR Part 200), it must be “necessary and reasonable” and conform to the program requirements. The requirements at 2 CFR Section 200.318(b), previously 24 CFR Section 85.36(b)(2), require that grantees have a contract administration system in place to ensure that contractors perform in accordance with the terms, conditions, and specifications of the contract or purchase orders.

The Uniform Requirements at 2 CFR Section 200.318(c)(1), previously, 24 CFR Section 85.36(b)(3), require that

The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

Documents Reviewed

- OTIW Purchasing Policies and Procedures Manual, dated October 2012 and revised September 2014
- Oneida Code of Laws, Chapter 3 Code of Ethics, Adopted October 1994; Amended September 2006
- Oneida Code of Laws, Chapter 57 Indian Preference in Contracting, Adopted March 2013
- Oneida Tribal Policies, Conflict of Interest Policy, Adopted June 1998; Amended September 2006
- Request for Proposals (RFP) for Design Civil Engineering Services, Elder Village Infrastructure Project, November 7, 2011
- Public Posting of the RFP:
 - The Post-Crescent Newspaper, November 11 – November 15, 2011
 - www.Kalihwisaks.com, November 17, 2011
- Proposal Scoring Summary, December 29, 2011
- Contract for Design Services, Elder Village Infrastructure, March 7, 2012

- Request for Proposals (RFP) for Construction Services, Elder Village Infrastructure Project, May 21, 2013
- Public Posting of the RFP:
 - Green Bay Press Gazette, May 21 and May 25, 2013
 - www.Kalihwisaks.com, May 30, 2013
- Bid Opening Attendance Sheet, June 7, 2013
- Bid Tabulation Sheet, June 7, 2013
- Contract for Construction, OTIW and Robert J. Immel, September 5, 2013, for \$488,124.55

Staff Interviewed

Lawrence Barton, Chief Financial Officer
 Patrick Stensloff, Director of Purchasing
 Travis Wallenfang, Indian Preference Coordinator
 Paul Witek, Senior Tribal Architect
 Troy Parr, Assistant Development Division Director

E/WONAP staff reviewed the OTIW Purchasing Policies and Procedures Manual, revised in September 2014. As required by regulations at 24 CFR Section 85.36(b)(1) (2 CFR Section 200.318(a)), OTIW has a procurement policy which appear sufficiently detailed to ensure compliance with the regulations and provide general directions to staff. For purchases up to \$3,000, OTIW requires competitive sourcing. For those purchases of goods and services for amounts between \$3,001 and \$25,000, a written quote is required from an adequate number of qualified sources. Purchases that are greater than \$25,001 require the use of a sealed bid process. The written standards for conduct covering conflict of interest are in the procurement policy and the Oneida Tribal Policies. NAHASDA Sec 203 (g) allows for micro-purchase simplified acquisition procedures for purchase of supplies or services up to \$5,000. In addition, 2 CFR Section 200.88 allows that small purchase methods may be used to purchase property or services up to the Simplified Acquisition Threshold of \$150,000.

B-11-SR-55-4910: Design and Civil Engineering Services- Elder Village Infrastructure

A Request for Proposals for design and civil engineering services for the Elder Village Infrastructure project was prepared and dated November 7, 2011. It was posted publically in The Post-Crescent newspaper in Appleton, Wisconsin from November 11 through November 15, 2011 and in the tribal on-line newspaper, www.Kalihwisaks.com on November 17, 2011. Proposals were to be submitted by November 29, 2011 and the Selection Committee would review and score the proposals by December 5, 2011. A “Proposal Scoring Summary, dated 29 December 2011 indicated that three (3) bids had been received by the cut-off date. They were Graef USA, Mau and Associates, LLP, and Oneida Total Integrated Enterprises, LLC (OTIE). The results of the scoring summary are included in the following table:

Table 15	OTIW: Elder Village Infrastructure Project Proposal Scoring Summary for Design and Civil Engineering Services December 29, 2011
-----------------	--

Bidder	Score (out of a possible 200)	Bid Price (\$)
Graef USA	136.6	47,050.00
Mau & Associates, LLP	140.4	59,395.00
OTIE	182.2	114,050.00

OTIE received the highest score and was awarded a Contract for Design Services for Elder Village Infrastructure, fully executed by all parties on March 7, 2012. This contract contained a renegotiated final price of \$83,641.00 quoted in Exhibit C, Article 2, C2.01.A.3.

FINDING #2016ICDBG-01: Arbitrary Action in Procurement Process - CLOSED
24 CFR Section 85.36(c)(1)(vii)

Questioned Costs: None

Condition:

The OTIW December 29, 2011 Proposal Scoring Summary sheet included a scoring category entitled “Other Relevant Issues.” For this category, Graef USA received a score of 9.6/200; Mau & Associates received a 12.8/200; and OTIE received a 17.6/200.

The OTIW Senior Tribal Architect described the meaning of this category in an email dated February 10, 2016.

“This criterion allows the reviewer to consider other elements such as: quality of firm, value of services provided, any potential risk, and positive previous experience of the firm working with the Oneida Nation. I sometimes describe it as what is your “gut feeling” of this firm for this project.”

Criteria:

The procurement regulations in effect at the time of this activity were found at 24 CFR Part 85. 24 CFR Section 85.36(c)(1) states that all procurement transactions will be conducted in a manner providing full and open competition, and 24 CFR Section 85.36(c)(1)(vii) states that such transactions must not include “any arbitrary action in the procurement process.”

Cause and Effect:

Since it is possible that OTIW did not have prior working experience with either Graef USA or Mau & Associates, it is arbitrary to attempt to quantify a “gut feeling” score, which in this case, clearly benefitted OTIE in the ranking.

Recommended Corrective Actions:

To address **FINDING #ICDBG-01**, OTIW must remove the category, “Other Relevant Issues,” from its Proposal Scoring Summary and not use such general and open-ended categorizations in its ratings system. Actual categorization of, for example, prior positive or negative experience(s) with a vendor may be acceptable in making a determination of whether a bidder is responsible if the rationale is fully documented. OTIW must submit a copy of a revised Proposal Scoring Summary sheet to E/WONAP for review.

OTIW Response:

In its September 14, 2016 response to the DMR, OTIW reiterated its position that the rating process used was a qualification-based procurement for Architect/Engineer Professional Services in accordance with 24 CFR Section 85.36(d)(3)(v). OTIW agreed that the subjective category of "Other Issues (value, risk, quality, etc.)," was included on the scoresheet utilized by five reviewers in assessing the architectural and engineer proposals associated with the Elder Village Infrastructure project.

OTIW reported that it rescored the project by removing the "Other Issues" category from the Proposal Scoring Summary for the Elder Village Infrastructure project and this did not change the selection results. OTIW submitted Attachment #9, a revised scoring summary sheet, from which the subjective criterion had been removed and for which new scores were determined. Of the possible 180 total points, OTIE was still the highest scoring firm: Graef USA received an average of 127/180, Mau & Associates, LLP received 127.6/180, and OTIE received 164.6/180.

OTIW’s response concluded with the statement that *“for all future bidding processes, this category will be removed from the scoring sheet and more specific qualifications will be identified — such as prior history/knowledge of the project.”*

E/WONAP Response:

OTIW’s revised Proposal Scoring Summary sheet, its recalculation of the three (3) architectural and engineering firms’ proposals for the design and civil engineering services associated with the Elder Village Infrastructure project, and its agreement to utilize specific criteria in its future proposal selection processes are all acceptable corrective actions to address Finding #2016ICDBG-01. Additionally, E/WONAP accepts that the results of the selection process would not have changed substantially because of the subjective scoring category. Therefore, there are no longer any questioned costs, and this finding is closed.

B-12-SR-55-4910: Construction for Elder Village Infrastructure

The road and infrastructure design for the Uskah/Elder Village Infrastructure Project, was scheduled to have been completed by September 2015. A request for an extension of time projected completion by August 2016 (see also B-11-SR-55-4910). The construction phase of the road was scheduled to begin in late November 2015.

A notice that OTIW was accepting sealed bids for a Construction Contract for the Elder Village Infrastructure project was posted publically in the Green Bay Press Gazette newspaper on May 21 and May 25, 2013, and in the tribal on-line newspaper, www.Kalihwisaks.com on May 30, 2013. The project was described as the “construction of 2,000 feet of new roadways including sewer and water mains and storm infrastructure.” Sealed bids were to be submitted by 2:00pm on June 7, 2013 to the Oneida Engineering Office. A Bid Tabulation Sheet, dated June 7, 2013 indicated that eight (8) bids had been received by the cut-off date. The results of the sealed bid review are included in the following table:

Table 16	
OTIW Construction Bid Review: Uskah/Elder Village Infrastructure Project – June 7, 2013	
Bidder	Bid Price (\$)

*Robert J. Immel Excavating, Inc.	488,124.55
MCC, Inc.	511,078.08
Wood Sewer & Excavating, Inc.	532,053.12
PTS Contractors, Inc.	551,885.84
Carl Bowers & Sons Construction Co., Inc.	570,725.88
Van Straten Construction	596,143.75
Jossart Brothers, Inc.	607,082.13
De Groot, Inc.	663,377.58

*Robert J. Immel Excavating, Inc. was the lowest bidder and received the award.

With the exception of the closed **Finding #2016ICDBG-01**, E/WONAP's review of OTIW's procurement and contract administration did not disclose any violations of the program regulations at 24 CFR Section 1003.501(a)(13), compliance with federal procurement standards found at 24 CFR Section 85.36 (2 CFR Sections 200.317-326); 24 CFR Section 85.36(c) (2 CFR Section 200.319), full and open competition; or 24 CFR Section 85.36(b)(9) (2 CFR Section 200.318(i)), maintenance of procurement records.



Oneida Tribe of Indians of Wisconsin
On-Site Monitoring Review
Final Report

U.S. Department of Housing and Urban Development
Eastern / Woodlands Office of Native American Programs
Grants Evaluation Division

William O. Dawson, Director

October 19, 2016