



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



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

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**AUDIT OF THE OFFICE OF JUSTICE PROGRAMS
CORRECTIONAL SYSTEMS AND CORRECTIONAL ALTERNATIVES
ON TRIBAL LANDS PROGRAM GRANTS AWARDED TO THE
NAVAJO DIVISION OF PUBLIC SAFETY
WINDOW ROCK, ARIZONA**

EXECUTIVE SUMMARY

The U.S. Department of Justice (DOJ) Office of the Inspector General (OIG) completed an audit of grants awarded by the Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA), under the Correctional Systems and Correctional Alternatives on Tribal Lands (CSCATL) Program to the Navajo Division of Public Safety (NDPS), a department of the Navajo Nation, in Window Rock, Arizona.¹

The objective of this audit was to determine whether costs claimed under the grants were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and the terms and conditions of the grants. To accomplish this objective, we assessed performance in the following areas of grant management: financial management, expenditures, budget management and control, drawdowns, federal financial reports, and program performance. The criteria we audited against are contained in the OJP Financial Guide and the grant award documents.

NDPS was awarded four grants totaling \$70,542,837 to plan and construct tribal justice facilities associated with the incarceration and rehabilitation of adult offenders subject to tribal jurisdiction. Specifically, the amounts of the four grants were to support the following four projects: (1) \$150,000 for the planning and design of a correctional facility in Dilkon, Arizona; (2) \$150,000 for the planning and design of a new correctional facility in Kayenta, Arizona; (3) approximately \$38.6 million to build a correctional facility in Tuba City, Arizona, to replace the existing jail; and (4) approximately \$31.7 million to build a multi-purpose justice center in Kayenta, Arizona, to replace the existing jail.

As of January 2015, NDPS had drawn down \$65,579,800 in grant funds, although none of the awarded grants were fully expended. We examined NDPS accounting records, financial and progress reports, and operating policies and procedures and found that NDPS did not comply with essential award conditions related to the use of funds, performance, and financial controls. Specifically, NDPS: (1) did not check the suspension and debarment status of contractors paid with grant funds; (2) incurred \$656,921 in unsupported costs and \$2,554,924 in unallowable costs; (3) did not meet the \$16,669 match requirement for one grant; (4) did not expend \$535,545 in awarded funds; (5) did not submit accurate Federal

¹ This program was formerly referred to as the Correctional Facilities on Tribal Lands Program.

Financial Reports for three of the four grants; and (6) expended \$290,116 in unnecessary planning grants.

We further found that NDPS built correctional facilities in Tuba City and Kayenta, Arizona with capacities that were at least 250 percent larger than needed, at an excess cost of \$32,034,623. In Tuba City, NDPS constructed a 132-bed corrections facility with the \$38.6 million grant, even though its March 2007 master plan called for building a 48-bed corrections space at a cost of \$18.2 million and even though the average monthly jail occupancy for Tuba City from 2008 to 2014 was between 14 and 22 inmates, with a high of 49 inmates in July 2010. Similarly, in Kayenta, NDPS built an 80-bed corrections facility and a police station with the \$31.7 million grant, even though its March 2007 master plan stated a need for a 32-bed facility and law enforcement area at a cost of \$20.0 million and even though the average monthly jail occupancy for Kayenta from 2008 through 2014 was between 7 and 11 inmates, with a high of 24 inmates in December 2011.

As a result, based on the needs stated in the March 2007 master plan for Tuba City and Kayenta, which were relied on in the grant applications, we recommend that OJP remedy \$32,034,623 in unallowable expenditures for building sizes in excess of stated need.

The excessive size of both facilities also creates increased costs for operations and maintenance staff, which are significantly funded by the Bureau of Indian Affairs (BIA). Due to funding constraints, BIA told us they can only provide 40 percent of requested funding for tribal corrections officers, which would be about 25 of the 63 full-time employees needed to fully operate the Tuba City facility and 20 of the 51 full-time employees needed to fully operate the Kayenta facility. As a result, there is an increased risk that the Tuba City and Kayenta facilities will not become fully operational due to a lack of funding.

BJA was responsible for providing oversight of the awarded grants, including reviewing semiannual progress reports for each grant and site visits to the construction projects. Those progress reports indicated increases in bed space. In addition to its own oversight activities, BJA contracted with a technical assistance provider to assist it with ensuring that NDPS was implementing the construction projects in the most cost effective and efficient manner. Despite these apparent oversight efforts, the NDPS built facilities that were at least 250 percent larger than needed at an excess cost of \$32,034,623. We also found that NDPS does not have the resources available to staff facilities of this size.

Our report contains nine recommendations to OJP. Our audit objective, scope, and methodology are discussed in Appendix 1 and our Schedule of Dollar-Related Findings appears in Appendix 2. In addition, we requested a response to our draft audit report from NDPS and OJP, and their responses are shown in Appendix 3 and 4.

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INTRODUCTION

The U.S. Department of Justice (DOJ) Office of the Inspector General (OIG) completed an audit of grants awarded by the Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA), under the Correctional Systems and Correctional Alternatives on Tribal Lands (CSCATL) Program to the Navajo Division of Public Safety (NDPS), a department of the Navajo Nation, in Window Rock, Arizona.¹ NDPS was awarded four grants totaling \$70,542,837, as shown in Table 1.

**Table 1
Grants Awarded to NDPS**

AWARD NUMBER	AWARD DATE	PROJECT START DATE	PROJECT END DATE	AWARD AMOUNT
2008-IP-BX-0036	09/15/08	07/01/08	12/31/14	\$150,000
2009-IP-BX-0074	09/03/09	07/01/09	06/30/13	\$150,000
2009-ST-B9-0089	09/21/09	07/01/09	06/30/14	\$38,587,560
2009-ST-B9-0100	09/21/09	10/01/09	03/31/15	\$31,655,277
Total:				\$70,542,837

Source: OJP

Funding through the CSCATL Program supports efforts related to planning, constructing, and renovating tribal justice facilities associated with the incarceration and rehabilitation of juvenile and adult offenders subject to tribal jurisdiction, including exploring community-based alternatives. In 2010, the CSCATL Program was modified to allow the use of funds to construct multi-purpose justice centers that combine tribal police, courts, and corrections services.²

Audit Approach

The objective of this audit was to determine whether costs claimed under the grants were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and the terms and conditions of the grants. To accomplish this objective, we assessed performance in the following areas of

¹ This program was formerly referred to as the Correctional Facilities on Tribal Lands Program.

² 42 U.S.C. § 13709.

grant management: financial management, expenditures, budget management and control, drawdowns, federal financial reports, and program performance.

We tested compliance with what we consider to be the most important conditions of the grants. The criteria we audited against are contained in the OJP Financial Guide and the award documents. The results of our analysis are discussed in detail in the Findings and Recommendations section of the report. Appendix 1 contains additional information on this audit's objective, scope, and methodology. The Schedule of Dollar-Related Findings appears in Appendix 2.

FINDINGS AND RECOMMENDATIONS

NDPS was awarded \$70,542,837 under Grant Numbers 2008-IP-BX-0036, 2009-IP-BX-0074, 2009-ST-B9-0089, and 2009-ST-B9-0100 to plan and construct tribal justice facilities associated with the incarceration and rehabilitation of adult offenders subject to tribal jurisdiction. The objective of Grant Number 2008-IP-BX-0036 was to plan and design a correctional facility in Dilkon, Arizona. The objective of Grant Number 2009-IP-BX-0074 was to plan and design a new correctional facility in Kayenta, Arizona. Grant Number 2009-ST-B9-0089 was awarded to build a new correctional facility in Tuba City, Arizona. Grant Number 2009-ST-B9-0100 was awarded to build a multi-purpose justice center in Kayenta, Arizona.

Grant Financial Management

According to the OJP Financial Guide, all grant recipients and subrecipients are required to establish and maintain adequate accounting systems and financial records and to accurately account for funds awarded to them. We reviewed the Single Audit Reports for Navajo Nation for fiscal years 2011, 2012, and 2013 to identify any control weaknesses and significant non-compliance issues related to NDPS. We also conducted interviews with financial staff and examined policies and procedures to determine whether the grant financial management system NDPS uses for the processing and payment of funds adequately safeguards grant funds and ensured NDPS complied with the terms and conditions of the grants. The Single Audit Reports identified issues with Navajo Nation management of federal grants including the potential for *Davis-Bacon Act* noncompliance; lack of adequate monitoring and reconciliation of accountable property, including grant-funded property; risk of noncompliance with suspension and debarment requirements; and inaccurate reporting. The inaccurate reporting findings were specifically related to DOJ grants.

We identified weaknesses with NDPS management of the audited grants. Specifically, the OJP Financial Guide requires grantees to avoid business with debarred and suspended organizations. NDPS officials stated they required contractors to self-certify that they were not suspended or debarred, but did not verify that information. We recommend that OJP ensure that NDPS implements a process to verify that recipients of DOJ funds are not suspended or debarred.

Grant Expenditures

For Grant Numbers 2008-IP-BX-0036 and 2009-IP-BX-0074, NDPS received budget approval for planning costs, including contractual expenditures, and matching costs including personnel and fringe benefits. NDPS received budget approval for construction and travel costs for Grant Numbers 2009-ST-B9-0089 and 2009-ST-B9-0100. As discussed below, we tested a judgmental sample of transactions from each audited grant to determine whether costs charged to the awards were allowable, supported, and properly allocated in compliance with award requirements. The following sections describe the results of that testing.

Direct Costs

The general ledger for Grant Number 2009-ST-B9-0089 indicated 274 transactions totaling \$42,290,705. We tested 100 transactions totaling \$23,544,870 and found 5 unsupported transactions totaling \$656,921 and 22 unallowable transactions totaling \$1,906,592.³ Unallowable transactions included \$528,082 for court relocation costs, \$149,081 for two expenditures from another construction project, \$666,166 for 19 other non-grant expenditures, and 3 expenditures totaling \$563,262 that were paid or incurred before NDPS received environmental clearance from OJP for the project on June 2, 2010.⁴

The general ledger for Grant Number 2009-ST-B9-0100 indicated 300 transactions totaling \$33,973,568. We tested 110 transactions totaling \$25,310,209 and found evidence of 20 unallowable transactions totaling \$648,332. These transactions were unallowable because they were paid or incurred before NDPS received environmental clearance from OJP for the project on June 6, 2011.⁴

Matching Costs

When testing grant expenditures, we also assessed matching expenditures applied to the audited grants and determined the accuracy, support, and allowability of expenditures with matching funds. To accomplish this we reviewed matching requirements for each grant.

Grant Number 2008-IP-BX-0036 was originally awarded with a 10-percent match requirement of \$16,669. However, on June 18, 2013, OJP removed the match requirement from the grant budget by a Grant Adjustment Notice (GAN).

Grant Number 2009-IP-BX-0074 was awarded with a 10-percent match requirement of \$16,669. Based on our review of NDPS accounting records, no match was recorded for this grant. NDPS officials stated they requested a waiver of the match requirement for the grant, but could not provide OJP approval of the waiver. NDPS officials also provided timesheets as support for the matching requirement for this grant. However, the timesheets provided did not contain sufficient detail regarding dollar amounts, employee names and activity, or supervisory approval, to support the match requirement for this grant. We determined the additional documentation provided by NDPS was not adequate to support the matching requirement for this grant. Therefore, we recommend that OJP remedy the \$16,669 in matching funds not allocated to the grant project.

³ Includes three transactions with duplicated questioned costs of \$199,176. Those questioned costs were duplicated because the transactions included non-grant expenditures and also occurred before NDPS received environmental clearance for the project.

⁴ Special Condition 9 of the grant award states "the recipient may not obligate, expend, or draw down any funds until the program office has verified that the recipient has submitted all necessary documentation required to comply with Department of Justice Environmental Impact Review Procedures."

Grant No. 2009-ST-B9-0100 was awarded with a 10-percent match requirement of \$3,517,253. NDPS accounted for the match requirement by allocating 10 percent of each month's expenditures to the match. At the time of this audit, the total match allocation was \$2,653,852, which was less than 10 percent of the \$33,973,568 in total expenditures. However, NDPS had until the grant end date of March 31, 2015, to satisfy the match requirement. We recommend that OJP ensure NDPS meets the match requirement by the end of the grant.

We did not identify any exceptions for Grant Number 2009-ST-B9-0089.

Based on our transaction testing, we recommend that OJP remedy \$656,921 in unsupported questioned costs, \$2,554,924 in unallowable questioned costs, and \$16,669 in unallocated matching costs related to expenditures prohibited by grant special conditions and non-grant expenditures charged to the OJP grants.

Budget Management and Control

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

For Grant Numbers 2008-IP-BX-0036 and 2009-IP-BX-0074, we compared grant expenditures to the approved budgets to determine whether NDPS transferred funds among budget categories in excess of 10 percent. We determined that the cumulative difference between category expenditures and approved budget category totals was not greater than 10 percent.

Since Grant Numbers 2009-ST-B9-0089 and 2009-ST-B9-0100 were designated as construction grants, we determined that the NDPS was required to follow 28 CFR 66.30(c). According to 28 CFR 66.30(c), construction grants to state and local governments do not require grantees to request approval for any deviations from the budget unless additional grant funds are necessary. As a result, we found that the 10-percent rule does not apply.

Drawdowns

According to the OJP Financial Guide, an adequate accounting system should be established to maintain documentation to support all receipts of federal funds. If, at the end of the grant award, recipients have drawn down funds in excess of federal expenditures, unused funds must be returned to the awarding agency. NDPS made drawdowns as reimbursements, but did not appear to make drawdowns using a schedule or any specific methodology. To assess whether NDPS managed grant receipts in accordance with federal requirements, we compared the total amount reimbursed to the total expenditures in the accounting records. As shown

in Table 2, at the time of the last drawdown, total drawdowns did not exceed total expenditures for any of the four grants.

Table 2
Drawdowns by Grant

AWARD NUMBER	AWARD AMOUNT	DATE OF LAST DRAWDOWN	TOTAL DRAWDOWNS ⁵	TOTAL GRANT EXPENDITURES ⁶	FUNDS NOT DRAWN DOWN
2008-IP-BX-0036	\$150,000	12/24/13	\$27,839	\$37,459	\$122,161
2009-IP-BX-0074	\$150,000	10/03/13	\$149,736	\$149,736	\$264
2009-ST-B9-0089	\$38,587,560	10/03/14	\$38,061,635	\$38,061,635	\$525,925
2009-ST-B9-0100	\$31,655,277	04/22/14	\$27,340,590	\$28,241,748	\$4,314,687
Total:			\$65,579,800	\$66,490,578	\$4,963,037

Source: OJP and NDPS

As shown in Table 2, for three of the four grants, the NDPS had not drawn down grant funds within 90 days of the grant expiration date as required by the OJP Financial Guide. Specifically, for Grant Number 2008-IP-BX-0036, \$122,161 of the \$150,000 grant was not drawn down as of January 20, 2015, despite a grant end date of December 31, 2014. NDPS had 90 days after the grant end date to draw down funds, and OJP provided documentation of NDPS drawdowns of \$109,363 on March 6, 2015, and \$3,178 on April 1, 2015; an unobligated balance of \$9,620 remained. For Grant Number 2009-ST-B9-0089, \$525,925 in unobligated grant funds remained as of January 20, 2015, despite a grant end date of June 30, 2014. We recommend that OJP remedy the \$535,545 in funds to better use for Grant Numbers 2008-IP-BX-0036 and 2009-ST-B9-0089.

Federal Financial Reports

According to the OJP Financial Guide, recipients shall report the actual expenditures and unliquidated obligations incurred for the reporting period on each financial report. To determine whether Federal Financial Reports (FFR) submitted by NDPS were accurate, we compared the four most recent reports to NDPS accounting records for each grant.

⁵ Total drawdowns as of January 20, 2015.

⁶ Total expenditures as of date of last drawdown.

Table 3
FFR Analysis

REPORT NUMBER	REPORT PERIOD FROM DATES	REPORT PERIOD TO DATES	PERIODIC EXPENDITURES PER FFR	CUMULATIVE EXPENDITURES PER FFR	CUMULATIVE EXPENDITURES PER ACCOUNTING RECORDS	CUMULATIVE DIFFERENCE
2008-IP-BX-0036						
23	01/01/14	03/31/14	\$0	\$27,839	\$37,459	\$9,620
24	04/01/14	06/30/14	\$0	\$27,839	\$37,459	\$9,620
25	07/01/14	09/30/14	\$0	\$27,839	\$37,459	\$9,620
26	10/01/14	12/31/14	\$0	\$27,839	\$146,822	\$118,983
2009-IP-BX-0074						
13	07/01/12	09/30/12	\$19,974	\$138,074	\$138,074	\$0
14	10/01/12	12/31/12	\$4,971	\$143,045	\$143,045	\$0
15	01/01/13	03/31/13	\$4,034	\$147,079	\$147,079	\$0
16	04/01/13	06/30/13	\$2,658	\$149,736	\$149,736	\$0
2009-ST-B9-0089						
17	07/01/13	09/30/13	\$12,162	\$34,076,927	\$36,096,382	\$2,019,456
18	10/01/13	12/31/13	\$1,831,956	\$35,908,882	\$36,096,382	\$187,500
19	01/01/14	03/31/14	\$0	\$35,908,882	\$36,096,382	\$187,500
20	04/01/14	06/30/14	\$2,152,752	\$38,061,635	\$36,371,661	(\$1,689,974)
2009-ST-B9-0100						
17	10/01/13	12/31/13	\$3,143,164	\$21,867,162	\$24,971,770	\$3,104,608
18	01/01/14	03/31/14	\$5,473,428	\$27,340,590	\$28,241,748	\$901,158
19	04/01/14	06/30/14	\$580,136	\$27,920,726	\$30,096,923	\$2,176,197
20	07/01/14	09/30/14	\$247,697	\$28,168,423	\$30,344,619	\$2,176,197

Source: OJP and NDPS

For three of the four grants, none of the four most recent FFRs were accurate to Navajo Nation accounting records. For Grant Number 2009-ST-B9-0089, the cumulative difference appeared to be due to timing, as there were subsequent general ledger entries that matched the shortage amount. For Grant Numbers 2008-IP-BX-0036 and 2009-ST-B9-0100, the discrepancies between the FFRs and accounting records did not appear to be due to timing, as we were unable to identify nearby expenditures in the accounting records that would offset the discrepancies. However, we did note that at the end of each fiscal year, Navajo Nation's financial department frequently used adjusting entries to move expenses into the following fiscal year, which could have an effect on data provided for the FFR periods immediately before and after the fiscal year end date.⁷ We recommend that OJP ensure that NDPS implements a process to submit FFRs that accurately reflect expenditures for each reporting period.

Program Performance and Accomplishments

Correctional Facility Planning Grants

Grant Number 2008-IP-BX-0036, in the amount of \$150,000, was awarded to NDPS on September 15, 2008, to plan and design a correctional facility in

⁷ Navajo Nation's fiscal year ends September 30.

Tuba City, Arizona. Grant Number 2009-IP-BX-0074, in the amount of \$150,000, was awarded on September 3, 2009, to plan and design a correctional facility in Kayenta, Arizona.

For Grant Number 2008-IP-BX-0036, NDPS subsequently requested and received a GAN to repurpose this grant to plan a correctional facility in Dilkon, Arizona, because Navajo Nation had recently completed a master plan for the Tuba City facility. That master plan, dated March 2007, was completed prior to the award of both planning grants and provided details for 13 judicial/public safety facilities across the Navajo Nation, including correctional square footages, specific rooms and work areas, prototype layouts, number of jail beds needed, and project budgets. The March 2007 master plan included facilities in Tuba City, Dilkon, and Kayenta. Because the NDPS already had a master plan in place for the correctional facilities in Tuba City, Dilkon, and Kayenta, in our opinion the 2008 and 2009 planning grants awarded to NDPS for the development of master plans for these facilities were unnecessary. Therefore, in addition to the \$9,620 previously questioned as funds to better use, we are questioning the total amount of \$140,380 drawn down for Grant Number 2008-IP-BX-0036, and the total amount of \$149,736 drawn down for Grant Number 2009-IP-BX-0074 as unallowable. We recommend that OJP remedy \$290,116 in unallowable expenditures for unnecessary planning grants.

Correctional Facility Construction Grants

Grant Number 2009-ST-B9-0089, in the amount of \$38,587,560, was awarded to NDPS on September 21, 2009, to fund construction of a new correctional facility in Tuba City, Arizona, which replaced the existing jail. Grant Number 2009-ST-B9-0100, in the amount of \$31,655,277, was also awarded to NDPS on September 21, 2009, to fund construction of a new multi-purpose justice center in Kayenta, Arizona, to replace the existing jail.

According to Navajo Nation's Operational and Space Program (Program) for the new Tuba City facility, the existing jail had a maximum capacity of 34 people from 2004 to 2009.⁸ The Program stated that on average, 18 adult arrests and 1 juvenile arrest were made per day in 2009, although law enforcement officers were reluctant to make arrests due to jail space limitations. It also identified a significant decrease in calls for service from 2005 to 2008.⁹ According to BIA data, monthly jail occupancy reported for Tuba City from 2008 through 2014 ranged from a low of 2 in October 2014, to a high of 49 in July 2010; from 2008 to 2014, average monthly occupancy ranged between 14 and 22 inmates.¹⁰ Navajo Nation's

⁸ *Navajo Nation Large District Justice Center Operation and Space Program, Tuba City, AZ*, October 1, 2009 (updated March 14, 2011).

⁹ For calls to the Tuba City police dispatch for any type of complaint, there was a 54-percent decrease from 2005 to 2007, offset slightly by a 9-percent increase in service calls from 2007 to 2008.

¹⁰ Occupancy counts represent total inmates confined within a calendar month. Daily occupancy rates were not provided.

March 2007 master plan stated the new Tuba City facility should follow the “Large District Judicial/Public Safety Facilities Prototype Space Program,” which planned for a 107,036 square foot (SF) multipurpose facility that included corrections, court, law enforcement, and peacemaking spaces, including 48 inmate beds.

As shown in Table 4, the March 2007 master plan stated an anticipated total project budget of \$36,927,253 for a 107,036 SF multipurpose facility at Tuba City. After construction, the judicial, law enforcement, and peacemaking spaces were built 2,724 SF smaller than needed per the master plan, and \$2,626,711 less than budgeted.¹¹ However, the corrections space was expanded from 52,790 SF to 87,709 SF, inmate beds increased from 48 to 132, and the corrections space cost increased by \$25,398,705.

Table 4
Tuba City Justice Center—Planned Size vs. Built Size

FUNCTIONAL AREA	SIZE PER MASTER PLAN (SF)	ACTUAL SIZE (SF)	DIFFERENCE (SF)	COST PER MASTER PLAN ¹²	ACTUAL COST	DIFFERENCE
Corrections ¹³	52,790 ¹⁴	87,709	34,919	\$18,212,326	\$43,611,031	\$25,398,705
Courts/Law Enforcement	54,246	51,522	(2,724)	\$18,714,927	\$16,088,216	(\$2,626,711)
Total:	107,036	139,231	32,195	\$36,927,253	\$59,599,247	\$22,771,994

Source: NDPS

In its grant application, NDPS applied for the Tuba City construction grant based upon the total facility sizes, functions, and budgets stated in its March 2007 master plan. The Tuba City application stated NDPS intended to build a 111,848 SF facility that increased the number of jail beds. NDPS then built the court and law enforcement buildings using a bank loan, and funded the correctional facility through Grant Number 2009-ST-B9-0089. However, rather than follow the March 2007 master plan, which allocated about \$18,212,326 to build a 48-bed corrections space, the NDPS built a 132-bed corrections facility with the \$38,587,560 grant. From February 2010 to February 2014, NDPS submitted progress reports to OJP

¹¹ Construction of the Tuba City judicial, law enforcement, and peacemaking functional areas was funded by a bank loan and not funded by Grant Number 2009-ST-B9-0089.

¹² Calculated at \$345 per square foot using data provided in the NDPS March 2007 master plan.

¹³ The March 2007 master plan indicated that correctional spaces and shared building functions were budgeted at \$19,872,633, and the entire facility (correctional, court, law enforcement, and peacekeeping space) was budgeted at \$38,587,560 for a 111,848 SF facility; however, \$1,660,307 was budgeted twice for 4,813 SF of building entrance and lobby spaces, resulting in an actual budget of \$18,212,326 for Tuba City’s correctional spaces and \$36,927,253 for the entire facility.

¹⁴ Total includes 26,346 square feet of jail space and 31,256 square feet of building space shared by all functional areas (building entrances, lobbies, conference rooms, staff areas, visitation space, and building infrastructure spaces); we determined these spaces to be integral to the building and therefore inseparable from the Corrections functional area. The total also accounts for the 4,813 SF of duplicated spaces discussed above.

that referenced the March 2007 master plan, but gradually increased the corrections component from 48 beds, to 62 beds, to 132 beds. Neither OJP nor NDPS officials could provide us with documentation approving a change in size for the Tuba City corrections building. NDPS grant records included documents that stated the corrections building size was increased due to receipt of the grant. As a result, based on the needs stated in NDPS March 2007 master plan and the facility that was actually constructed, we are questioning \$20,375,234 related to the larger-than-planned building constructed under Grant Number 2009-ST-B9-0089.¹⁵

Kayenta's existing jail had two cells that could hold up to 30 people. A March 2012 Navajo Nation report stated that the Kayenta district's population decreased by 4.4 percent from 2000 to 2010, and calls for service decreased by an average annual rate of 7.2 percent from 2006 to 2010. According to BIA data, monthly jail occupancy reported for Kayenta from 2008 through 2014 ranged from a low of 0 in September and October 2011, to a high of 24 in December 2011; from 2008 to 2014, average monthly occupancy ranged between 7 and 11 inmates.¹⁶ Navajo Nation's March 2007 master plan stated the new Kayenta facility should follow the "Medium District Judicial/Public Safety Facilities Prototype Space Program," which planned for an 86,224 SF multipurpose facility that included corrections, court, law enforcement, and peacemaking spaces, including 32 inmate beds.

As shown in Table 5, the March 2007 master plan stated a total project budget of \$29,747,112 for an 86,224 SF multipurpose facility at Kayenta. Judicial and peacemaking spaces were planned at 28,625 SF but were not built. Law enforcement spaces were planned at 10,232 SF, but 13,427 SF was built for law enforcement use, which was 3,195 SF more than needed per the master plan and cost \$2,420,197 more than budgeted in the master plan. The corrections space was expanded from 47,727 SF to 54,455 SF, and inmate beds increased from 32 to 80. NDPS built a larger correctional space at Kayenta than the master plan stated was needed, which increased the size of the corrections function by 6,728 SF and increased its cost by \$8,404,192.

¹⁵ The March 2007 master plan indicated that correctional spaces and shared building functions were budgeted at \$18,212,326; subtracting that amount from the grant award of \$38,587,560 results in an unallowable cost of \$20,375,234 that was used to build a larger than planned facility.

¹⁶ Occupancy counts represent total inmates confined within a calendar month. Daily occupancy rates were not provided.

Table 5

Kayenta Justice Center—Planned Size vs. Built Size

FUNCTIONAL AREA	SIZE PER MASTER PLAN	ACTUAL SIZE (SF)	DIFFERENCE	COST PER MASTER PLAN ¹⁷	ACTUAL COST	DIFFERENCE
Corrections ¹⁸	47,727 ¹⁹	54,455	6,728	\$16,465,885	\$24,870,077	\$8,404,192
Law Enforcement	10,232	13,427	3,195	\$3,530,002	\$5,950,199	\$2,420,197
Courts/ Peacemaking	28,265	- ²⁰	(28,265)	\$9,751,225	-	(\$9,751,225)
Total:	86,224	67,882	(18,342) ²¹	\$29,747,112	\$30,820,276	\$1,073,164

Source: NDPS

Similarly, in its grant application, NDPS indicated that it was using the March 2007 master plan, which stated a need for a 32-bed facility in Kayenta. However, the application also stated the project would provide 60 new beds. Rather than follow the March 2007 master plan for the Kayenta facility, which allocated about \$19,995,888 to build a 32-bed corrections space and law enforcement areas, NDPS built an 80-bed corrections building and a police station with the \$31,655,277 grant. NDPS officials stated the increased correctional facility size was due to a planning study completed on March 27, 2012. However, that planning study was completed two and a half years after the Kayenta construction grant was awarded, 5 and 11 months after the start of site grading and construction management, respectively, and over a year after NDPS started the re-design of the corrections facility to 80 adult beds in January 2011. Neither OJP nor NDPS officials could provide us with documentation approving a change in adult bed space for the Kayenta corrections building. As a result, based on the needs stated in the March 2007 master plan and the facility that was actually constructed, we are questioning

¹⁷ Calculated at \$345 per square foot using data provided in the NDPS March 2007 master plan.

¹⁸ The March 2007 master plan indicated that correctional spaces, law enforcement spaces, and shared building functions were budgeted at \$21,656,195, and the entire facility (correctional, court, law enforcement, and peacekeeping space) was budgeted at \$31,407,420 for a 91,036 SF facility; however, \$1,660,308 was budgeted twice for 4,813 SF of building entrance and lobby spaces, resulting in an actual budget of \$19,995,888 for Kayenta’s correctional and law enforcement spaces and \$29,747,112 for the entire facility.

¹⁹ Amount includes 23,759 square feet of jail space and 28,781 square feet of building space shared by all functional areas (building entrances, lobbies, conference rooms, staff areas, visitation space, and building infrastructure spaces); we determined these spaces to be integral to the building and therefore inseparable from the Corrections functional area. The total also accounts for the 4,813 SF of duplicated spaces discussed above.

²⁰ Corrections, court and law enforcement spaces were specified in the March 2007 master plan, but only corrections and law enforcement spaces were built at Kayenta.

²¹ Differences in the total amounts in the tables in the report are due to rounding. The sum of individual numbers prior to rounding may differ from the sum of the individual numbers rounded.

\$11,659,389 related to the larger than planned building constructed under Grant Number 2009-ST-B9-0100.²²

When we informed NDPS officials of our findings related to the excessive building sizes at Tuba City and Kayenta, they provided us with a 2005 NDPS Department of Corrections comprehensive plan that stated Tuba City needed 152 adult beds and space for 24 juveniles, and Kayenta needed 104 adult beds and space for 24 juveniles. However, that plan also provided options to close the Tuba City jail and lease bed space at other correctional facilities, or to use a 16-bed modular facility at Tuba City and the same at Kayenta. Additionally, NDPS officials told us that the Navajo Nation tribal council thought the building sizes stated in the 2005 plan were too large, which led to creation of the March 2007 master plan that was used to build NDPS justice centers and to apply for the construction grants. We reviewed the additional documentation and determined it was not related to the construction grants, as the applications and progress reports for each grant only referenced the March 2007 master plan. Overall, for these construction grants we recommend that OJP remedy \$32,034,623 in unallowable expenditures for building sizes in excess of stated need.

The excessive size of both facilities will also create increased costs for operations and maintenance staff, which are significantly funded by the Bureau of Indian Affairs (BIA). At the time of this audit, the Tuba City facility had staff to support 2 housing units and NDPS officials stated they needed to hire 16 more people before another housing unit could be staffed. The March 2007 master plan stated a need for eight corrections staff at each facility. An August 2010 OJP site visit report stated that Tuba City had 12 correctional officers for its existing jail, and planned to hire 51 additional officers when the new facility was completed. BIA officials stated they expressed concerns to the BJA and Navajo Nation officials regarding the large size of the Tuba City correctional facility, but BJA did not object to the size and Navajo Nation stated it was part of the Navajo Nation's master plan.

Additionally, a February 2012 OJP site visit report stated that Kayenta had 8 correctional officers and 1 supervisor for its existing jail, and would need a total of 51 full-time employees when the new facility was completed. BIA officials stated they had concerns about staffing for the Kayenta correctional facility, because the Kayenta district does not have the population to support the jail size. BIA stated they had suggested to the BJA Crownpoint and Shiprock as alternative locations to build facilities to house Kayenta inmates.²³ Currently, due to funding constraints, BIA can only provide 40 percent of requested funding for tribal corrections officers, which would be about 25 of the 63 full-time employees stated for Tuba City and

²² The March 2007 master plan indicated that correctional spaces, law enforcement spaces, and shared building functions were budgeted at \$19,995,888; subtracting that amount from the grant award of \$31,655,277 results in an unallowable cost of \$11,659,389 that was used to build a larger than planned facility.

²³ Construction of a correctional facility funded by the Navajo Nation and BIA was completed in Crownpoint in 2013 and a new correctional facility is planned for Shiprock starting in 2016.

20 of the 51 full-time employees stated for Kayenta in the OJP site visit reports. As a result, there is an increased risk that the Tuba City and Kayenta facilities will not become fully operational due to a lack of funding.

While we determined that NDPS constructed the Tuba City and Kayenta correctional facilities in excess of need, as documented in the March 2007 master plan, we also noted that BJA was responsible for providing oversight of the grant funding for those construction projects. BJA possessed a copy of the March 2007 master plan and conducted site visits of the Tuba City and Kayenta correctional facility projects in 2010 and 2012. BJA also contracted with Alpha Corporation & Engineering (Alpha Corp) to provide technical assistance services to assist BJA with ensuring that grantees were implementing projects in the most cost effective and efficient manner and meeting proposed projects timelines. Alpha Corp was required to provide quarterly reports to BJA about projects it assisted. For the Tuba City and Kayenta projects, Alpha Corp provided direct technical assistance to NDPS, by phone and with site visits. Additionally, BJA received semiannual progress reports from NDPS for each project. As previously noted, those progress reports indicated increases in bed space. We also learned during this audit that NDPS does not have the resources available to staff facilities of this size. BJA was therefore in possession of information that allowed for comprehensive oversight, yet the construction projects still resulted in significant excess capacity and questionable use of grant funds.²⁴

Categorical Assistance Progress Reports

According to the OJP Financial Guide, progress reports are prepared twice a year and are used to describe performance of activities or the accomplishment of objectives as set forth in the award application. Progress reports must be submitted within 30 days of the end of the reporting periods, which are June 30 and December 31. Therefore, progress reports are due semi-annually on January 30 and July 30 for the life of the award.

To determine whether the progress reports submitted by the NDPS accurately reflected the activity of the grants, we performed testing of some of the accomplishments described in the last two Categorical Assistance Progress Reports for each grant. We did not identify significant discrepancies with accomplishments described in the progress reports.

Conclusion

The objective of this audit was to determine whether costs claimed under the grants were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions. We examined NDPS accounting records, budget documents, financial and progress reports, and financial management procedures. We found that NDPS had internal control weaknesses

²⁴ We intend to discuss the matter of BJA monitoring of grantees in a separate, forthcoming audit report assessing related oversight activities by OJP and BJA.

related to suspension and debarment checks, incurred \$656,921 in unsupported costs and \$2,554,924 in unallowable costs, did not meet the \$16,669 match requirement for one grant, did not expend \$535,545 in awarded funds, did not submit accurate Federal Financial Reports for three of the four grants, expended \$290,116 for two unnecessary planning grants, and expended \$32,034,623 with grant funds to build correctional facilities with capacities that were at least 250-percent larger than planned.

We made nine recommendations to improve NDPS management of awards.

Recommendations

We recommend that OJP:

1. Ensure that NDPS implements a process to verify that recipients of DOJ funds are not suspended or debarred.
2. Remedy \$656,921 in unsupported questioned costs for Grant Number 2009-ST-B9-0089.
3. Remedy \$2,554,924 in unallowable questioned costs associated with the following issues:
 - a. Remedy \$528,082 in grant reimbursements expended on court relocation costs charged to Grant Number 2009-ST-B9-0089.
 - b. Remedy \$815,248 in grant reimbursements for non-grant expenditures charged to Grant Number 2009-ST-B9-0089.
 - c. Remedy \$563,262 in grant reimbursements for expenditures that occurred prior to environmental clearance for Grant Number 2009-ST-B9-0089.
 - d. Remedy \$648,332 in grant reimbursements for expenditures that occurred prior to environmental clearance for Grant Number 2009-ST-B9-0100.
4. Remedy \$16,669 in unallocated matching costs for Grant Number 2009-IP-BX-0074.
5. Ensure NDPS meets the match requirement for Grant Number 2009-ST-B9-0100 by the end of the grant.
6. Remedy \$535,545 in funds to better use associated with unexpended grant funds:
 - a. Remedy \$9,620 in funds to better use for Grant Number 2008-IP-BX-0036

- b. Remedy \$525,925 in funds to better use for Grant Number 2009-ST-B9-0089.
- 7. Ensure that NDPS implements a process to submit FFRs that accurately reflect expenditures for each reporting period.
- 8. Remedy \$290,116 in unallowable expenditures associated with unnecessary planning grants:
 - a. Remedy \$140,380 for Grant Number 2008-IP-BX-0036.
 - b. Remedy \$149,736 for Grant Number 2009-IP-BX-0074.
- 9. Remedy \$32,034,623 in unallowable expenditures associated with excessive building sizes:
 - a. Remedy \$20,375,234 for Grant Number 2009-ST-B9-0089.
 - b. Remedy \$11,659,389 for Grant Number 2009-ST-B9-0100.

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OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of this audit was to determine whether costs claimed under the grants were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the grants. To accomplish this objective, we assessed performance in the following areas of grant management: financial management, expenditures, budget management and control, drawdowns, federal financial reports, and program performance.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This was an audit of the Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA), grants awarded to the Navajo Division of Public Safety (NDPS) under the Correctional Systems and Correctional Alternatives on Tribal Lands (CSCATL) Program. NDPS was awarded \$70,542,837 under Grant Numbers 2008-IP-BX-0036, 2009-IP-BX-0074, 2009-ST-B9-0089, and 2009-ST-B9-0100. Our audit concentrated on, but was not limited to September 15, 2008, the award date for Grant Number 2008-IP-BX-0036, through February 13, 2015, the last day of our fieldwork. At the time of our audit, Grant Numbers 2008-IP-BX-0036, 2009-IP-BX-0074, and 2009-ST-B9-0089 were ended, but none of the grants were fully drawn down.

To accomplish our objective, we tested compliance with what we consider to be the most important conditions of NDPS activities related to the audited grants. We performed sample-based audit testing for grant expenditures, financial reports, and progress reports. In this effort, we employed a judgmental sampling design to obtain broad exposure to numerous facets of the grant reviewed, such as unique payroll and fringe benefits adjustments throughout the year. This non-statistical sample design did not allow projection of the test results to the universe from which the samples were selected. Unless otherwise stated in our report, the criteria we audit against are contained in the OJP Financial Guide and the award documents. In addition, we evaluated NDPS (1) grant financial management, including grant-related procedures in place for financial status reports, progress reports, procurement, and contractor monitoring; (2) budget management and controls; (3) drawdowns, and (4) program performance.

During our audit, we obtained information from OJP's Grant Management System (GMS) as well as the NDPS accounting system specific to the management of DOJ funds during the audit period. We did not test the reliability of those systems as a whole. Any findings related to information received from those systems were verified with documentation from other sources.

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APPENDIX 2

SCHEDULE OF DOLLAR-RELATED FINDINGS

<u>QUESTIONED COSTS</u> ²⁵	AMOUNT	PAGE
<u>Unallowable Costs</u>		
Court Relocation Costs	\$528,082	4
Non-Grant Expenditures	815,248	4
Non-Compliance with Special Condition 9 (Grant Number 2009-ST-B9-0089)	563,262	4
Non-Compliance with Special Condition 9 (Grant Number 2009-ST-B9-0100)	648,332	4
Unnecessary Grant (Grant Number 2008-IP-BX-0036)	140,380	8
Unnecessary Grant (Grant Number 2009-IP-BX-0074)	149,736	8
Excessive Building Size (Tuba City)	20,375,234	10
Excessive Building Size (Kayenta)	11,659,389	11
Total Unallowable Costs	\$34,879,663	
<u>Unsupported Costs</u>		
Grant Number 2009-ST-B9-0089	\$656,921	4
Total Unsupported Costs	\$656,921	
<u>Unallocated Matching Costs</u>		
Grant Number 2009-IP-BX-0074	\$16,669	4
Total Unallocated Matching Costs	\$16,669	
 <u>GROSS QUESTIONED COSTS</u>	 \$35,553,253	
<i>Less Duplicative Costs</i> ²⁶	\$199,176	4
NET QUESTIONED COSTS	\$35,354,077	

²⁵ **Questioned Costs** are expenditures that do not comply with legal, regulatory, or contractual requirements; are not supported by adequate documentation at the time of the audit; or are unnecessary or unreasonable. Questioned costs may be remedied by offset, waiver, recovery of funds, or the provision of supporting documentation.

²⁶ Some costs were questioned for more than one reason. Net questioned costs exclude the duplicate amount, which include three transactions for non-grant expenditures that also occurred before environmental clearance was received for Grant No. 2009-ST-B9-0089.

Funds to Better Use

Grant Number 2008-IP-BX-0036	\$9,620	6
Grant Number 2009-ST-B9-0089	525,925	6
Total Funds to Better Use	\$535,545	

TOTAL DOLLAR RELATED FINDINGS **\$35,889,622**

OFFICE OF JUSTICE PROGRAMS
RESPONSE TO THE DRAFT REPORT²⁷



U.S. Department of Justice

Office of Justice Programs

Office of Audit, Assessment, and Management

Washington, D.C. 20531

AUG 24 2015

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

FROM: Ralph E. Martin
Director 

SUBJECT: Response to the Draft Audit Report, *Audit of the Office of Justice Programs, Correctional Systems and Correctional Alternatives on Tribal Lands Program, Grants Awarded to the Navajo Division of Public Safety, Window Rock, Arizona*

This memorandum is in reference to your correspondence, dated June 16, 2015, transmitting the above-referenced draft audit report for the Navajo Division of Public Safety (NDPS), a department of the Navajo Nation, in Window Rock, Arizona. We consider the subject report resolved and request written acceptance of this action from your office.

The draft report contains **nine** recommendations and **\$35,354,077¹** in net questioned costs, and **\$535,545** in funds to better use. The following is the Office of Justice Programs' (OJP) analysis of the draft audit report recommendations. For ease of review, the recommendations are restated in bold and are followed by our response.

- 1. We recommend that OJP ensure that NDPS implements a process to verify that recipients of DOJ funds are not suspended or debarred.**

OJP agrees with the recommendation. However, NDPS also provided OJP with a copy of its July 20, 2015 response to the draft audit report. In its response, NDPS provided a copy of written procedures implemented to ensure that recipients of U.S. Department of Justice (DOJ) funds are not suspended or debarred (see Attachment 1). These procedures appear to sufficiently address the recommendation. Accordingly, the Office of Justice Programs requests closure of this recommendation.

¹ Some costs were questioned for more than one reason. Net questioned costs exclude the duplicate amounts.

²⁷ Attachments to this response were not included in this final report.

2. **We recommend that OJP remedy the \$656,921 in unsupported questioned costs for Grant Number 2009-ST-B9-0089.**

OJP agrees with the recommendation. We will coordinate with NDPS to remedy the \$656,921 in questioned costs, related to unsupported direct expenditures that were charged to Grant Number 2009-ST-B9-0089.

3. **We recommend that OJP remedy the \$2,554,924 in unallowable questioned costs associated with the following issues:**

- a. **\$528,082 in grant reimbursements expended on court relocation costs charged to Grant Number 2009-ST-B9-0089.**

OJP agrees with this part of the recommendation. We will coordinate with NDPS to remedy the \$528,082 in questioned costs, related to court relocation expenditures that were charged to Grant Number 2009-ST-B9-0089.

- b. **\$815,248 in grant reimbursements for non-grant expenditures charged to Grant Number 2009-ST-B9-0089.**

OJP agrees with this part of the recommendation. We will coordinate with NDPS to remedy the \$815,248 in questioned costs, related to non-grant expenditures that were charged to Grant Number 2009-ST-B9-0089.

- c. **\$563,262 in grant reimbursements for expenditures that occurred prior to environmental clearance for Grant Number 2009-ST-B9-0089.**

OJP agrees with this part of the recommendation. We will coordinate with NDPS to remedy the \$563,262 in questioned costs, related to grant reimbursements for expenditures that occurred prior to removal of the environmental clearance special condition under Grant Number 2009-ST-B9-0089.

- d. **\$648,332 in grant reimbursements for expenditures that occurred prior to environmental clearance for Grant Number 2009-ST-B9-0100.**

OJP agrees with this part of the recommendation. We will coordinate with NDPS to remedy the \$648,332 in questioned costs, related to grant reimbursements for expenditures that occurred prior to removal of the environmental clearance special condition under Grant Number 2009-ST-B9-0100.

4. **We recommend that OJP remedy the \$16,669 in unallocated matching costs for Grant Number 2009-IP-BX-0074.**

OJP agrees with the recommendation. We will coordinate with NDPS to remedy the \$16,669 in unallocated matching costs charged to Grant Number 2009-IP-BX-0074.

5. **We recommend that OJP ensure that NDPS meets the match requirement for Grant Number 2009-ST-B9-0100 by the end of the grant.**

OJP agrees with the recommendation. We will coordinate with NDPS to ensure that the matching requirements, under Grant Number 2009-ST-B9-0100, are met by the end of the award period.

6. **We recommend that OJP remedy the \$535,545 in funds to better use associated with unexpended grant funds:**

- a. **Remedy \$9,620 in funds to better use for Grant Number 2008-IP-BX-0036.**

OJP agrees with this part of the recommendation. On June 17, 2015, OJP deobligated the \$9,620 in undrawn grant funds that had expired for Grant Number 2008-IP-BX-0036 (see Attachment 2).

- b. **Remedy \$525,925 in funds to better use for Grant Number 2009-ST-B9-0089.**

OJP agrees with this part of the recommendation. On June 23, 2015, OJP deobligated the \$525,925 in undrawn grant funds that had expired for Grant Number 2009-ST-B9-0089 (see Attachment 2).

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

7. **We recommend that OJP ensure that NDPS implements a process to submit Federal Financial Reports (FFRs) that accurately reflect expenditures for each reporting period.**

OJP agrees with the recommendation. However, NDPS also provided OJP with a copy of its July 20, 2015 response to the draft audit report. In its response, NDPS provided a copy of written policies and procedures implemented to ensure that future Federal Financial Reports accurately reflect expenditures for the reporting (see Attachment 1). These procedures appear to sufficiently address the recommendation. Accordingly, the Office of Justice Programs requests closure of this recommendation.

8. We recommend that OJP remedy the \$290,116 in unallowable expenditures associated with unnecessary planning grants:

- a. Remedy \$140,380 for Grant Number 2008-IP-BX-0036.**
- b. Remedy \$149,736 for Grant Number 2009-IP-BX-0074.**

OJP respectfully disagrees with all parts of the recommendation, and does not believe these grants were unnecessary. OJP's Bureau of Justice Assistance (BJA) performed another review of the applications that the Navajo Nation submitted, under the Correctional Systems and Correctional Alternatives on Tribal Lands (CSCATL) Program solicitations, and determined that the Navajo Nation provided an outline to comprehensively plan for regional correctional facilities, specifically in Tuba City, Arizona, and Kayenta, Arizona. BJA made the awards for this planning activity, through Grant Numbers 2008-IP-BX-0036 and 2009-IP-BX-0074, respectively, in the amount of \$150,000 each. BJA found that there was no mention in these applications that the Navajo Nation had produced a reservation-wide Public Safety Facilities Master Plan in 2007 (Master Plan), as stated in the draft audit report. BJA further determined that the Master Plan provided an overall vision for correctional services throughout the Navajo Nation. BJA stated that the Master Plan made recommendations and provided prototypes for the types of facilities and services that would best address the needs for the various judicial districts across the reservation.

However, BJA determined that Master Plan did not eliminate the need for planning activities for site-specific construction. The planning, to be completed through Grant Numbers 2008-IP-BX-0036 and 2009-IP-BX-0074, was specific to the Tuba City (later Dilkon, Arizona) and Kayenta facilities. These plans were developed to review the needs and modify the Master Plan prototypes specific to each location and facility. As funding became available for construction of these facilities, through the American Recovery and Reinvestment Act (ARRA), the specific scope of each award was modified. The revised scope of activities for each grant was allowable, under the parameters provided through the CSCATL Program solicitations. Accordingly, the Office of Justice Programs respectfully requests closure of the questioned costs associated with this recommendation.

9. We recommend that OJP remedy the \$32,034,623 in unallowable expenditures associated with excessive building sizes:

- a. Remedy \$20,375,234 for Grant Number 2009-ST-B9-0089.**
- b. Remedy \$11,659,389 for Grant Number 2009-ST-B9-0100.**

OJP agrees in part with the recommendation, and does not believe that there were unallowable expenditures associated with excessive building sizes. BJA performed another review of the applications submitted by the Navajo Nation to construct the 118,848 square foot multi-purpose justice center in Tuba City, Arizona, and the 91,036 square foot detention center in Kayenta, Arizona. BJA made these awards, in the amounts of \$38,587,560 under Grant Number 2009-ST-B9-0089 for the Tuba City project; and \$31,655,277 under Grant Number 2009-ST-B9-0100 for the Kayenta project. The applications, which were peer reviewed, detailed the Navajo Nation's need for new facilities on the reservation.

As early as June 2010, BJA noticed that several grant-related documents for the Tuba City Project, under Grant Number 2009-ST-B9-0089, used different terminology in referring to capacity of the multi-purpose justice center. Specifically, the semi-annual progress reports, the National Environmental Policy Act (NEPA) documentation, and reports submitted by the Alpha Corporation (Alpha), BJA's training and technical assistance provider for the CSCATL Program, mentioned facility size in terms of overall square footage for the facility, and/or 92,000 square feet and 132 beds for the detention portion of the facility. Three months into the project, the first semi-annual progress report, submitted in January 2010, included meeting notes that referred to 48 beds. However, it was apparent to BJA, through the substantive documentation listed above, that the Tuba City project was going to be at or near the 132-bed capacity.

BJA also found that the early semi-annual progress reports for the Kayenta project, under Grant Number 2009-ST-B9-0100, indicated that the total square footage of the facility would increase to accommodate additional programming space, but would not increase the bed space. As planning and design continued for the facility, BJA found that Alpha had noted that the project's scope had increased in size and bed space. Because of these changes, BJA and Alpha worked with the Navajo Department of Corrections (NDOC) to submit a change in project scope Grant Adjustment Notice (GAN) for the grant which included these changes, as well as addressed any potential issues with the NEPA clearance. These changes were reviewed and approved by BJA, in GAN Number 14, on August 7, 2012 (see Attachment 3).

In addition, BJA closely tracked the project milestones for its construction projects, beginning in January 2011. BJA held bi-weekly meetings on the ARRA-funded projects and established a monthly tracking mechanism, which included the facility bed-space numbers for all of the ARRA-funded projects, including the Tuba City and Kayenta facilities, as well as progress towards completion of each of the project milestones, including completion of the NEPA requirements and submission of project designs to the U.S. Department of Interior, Bureau of Indian Affairs (BIA) for review and approval.

As the projects moved through the design phase, BJA was aware of and was tracking the bed-space plans and any modifications. Because the overall size of the facilities remained consistent with the applications, BJA determined that a change of scope GAN for the Tuba City and Kayenta projects based on bed-space alone was not necessary. If a change in the purpose, scope, or overall use of the facilities being constructed with the grant funds had been identified, a GAN would have been required, as it was with the Kayenta project.

The OIG report used the term “excessive” to describe the size of the Tuba City and Kayenta facilities that were constructed. The deplorable conditions in many tribal correctional facilities that actively house offenders remains a concern that ARRA addressed through the new construction of facilities on tribal lands. BJA focused efforts on reducing and replacing the use of out-moded structures that fail to provide programming space to impact offender behavior, and that through design may provide a more safe and efficient use of correctional staff in their management of inmates.

BJA found that the Navajo Nation stated in its applications, for the Tuba City and Kayenta projects, it had five adult jail facilities throughout the various parts of the Navajo Nation that were old, deteriorated, and facing closures. The Navajo Nation further stated in its applications that a group of inmates had filed a class action suit in 1992 alleging inhumane conditions, such as overcrowding, lack of personal hygiene, and inadequate nutrition in Navajo jails. In response, the Navajo Nation Window Rock District Court issued a consent decree that required that all persons housed in Navajo jails should be detained under humane conditions. The consent decree held that, if funds were not available to take the necessary steps to house offenders under humane conditions, the jail population must be reduced so that the remaining inmates are housed accordingly.

To that end, the Navajo Nation stated that it had to stop prosecuting certain crimes because they were not able to house offenders at the standards required under the consent decree. Based on the information in Navajo Nation’s grant applications, prior to the consent decree, five of six Navajo Nation jails had a capacity of more than 50 beds per facility, for a total of 250 beds, compared to the total of 59 beds (all facilities combined) prior to receiving ARRA funding. The Navajo Nation President was able to end the consent decree requirements in December 2014, due in part to the new bed-space capacity provided through the ARRA-funded projects.

BJA supports tribal justice systems' ability to use correctional facilities as a tool to provide for public safety, as well as to apply correctional programming to offenders to reduce recidivism rates by addressing domestic violence, gang violence, substance abuse and other serious crimes. In consideration of Navajo Nation's population of approximately 250,000, which covers an area the size of the state of West Virginia, the provision of the two new modernized facilities in Tuba City and Kayenta, with a combined capacity of 212 beds through the ARRA funding, BJA does not believe these facilities are excessive.

Further, the OIG stated in its report that the BIA expressed concerns to BJA regarding the large size of the Tuba City correctional facility and staffing for the Kayenta correctional facility because the Kayenta district does not have the population to support the jail size. BJA stated that BIA maintains an inventory of tribal detention facilities and an assessment of detention needs for tribes in Indian Country. Given BIA's limited resources to fund operations, maintenance, and staffing of detention, and knowledge as it relates to their tribal facilities priority listing, BJA has always recognized the importance of including BIA in the decision-making and development of all BJA-funded construction projects on tribal lands.

However, when given the history of funding available, the BIA is funded only to provide operational capacity at approximately 40-50 percent, regardless of where in Indian County the facilities are built. The BIA did not provide information on funding capability specific to any particular project, but informed BJA of the shortfall in operations and maintenance, after the awards were made under ARRA. ARRA provided \$225 million in construction dollars to build capacity for the incarceration of offenders subject to tribal jurisdiction without the guarantee of future funding for operations and maintenance of these facilities. If the tribal governments are not able to operate a facility on their own, then the tribe would have the opportunity to request that the BIA assume responsibility for operating and maintaining these facilities.

Given the important role of the BIA in future success of projects constructed through the CSCATL Program, BJA and the Navajo Nation coordinated with BIA throughout the design and construction of the Tuba City and Kayenta projects. BIA was also given the opportunity to review and comment on the applications submitted under the CSCATL solicitations, and concurred with BJA on the funding decisions for both the Tuba City and Kayenta projects. Further, the Navajo Nation provided BIA with the design documents for the facilities at the 20 percent, 70 percent, and 99 percent design review levels. These designs were approved by BIA prior to construction at the Tuba City and Kayenta facilities.

Additionally, BJA held conference calls every 3-5 months with the Navajo Nation, Alpha, and BIA to discuss the design and construction status as well as operational and transitional planning. BJA stated that all participants were given the opportunity to raise any concerns regarding the construction and future operation of the facilities. Further, BJA stated that BIA did not express any concerns or objections to BJA regarding the size or operation of the facilities during the conference calls or throughout the project period of these grants.

In hindsight, BJA recognizes that there appears to be some discrepancy with the recommended size for the facilities in relation to the 2007 Master Plan. However, no formal scope change was required, since the size requirements for the Tuba City and Kayenta facilities were not specific to bed-space numbers in the applications, as originally submitted. Additionally, the size and scope of the construction related to the Kayenta project (Grant Number 2009-ST-B9-0100) was formally approved by BJA on August 7, 2012, through GAN Number 14. Based on the foregoing information, the Office of Justice Programs respectfully requests closure of all parts of this recommendation.

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

Attachments

cc: Jeffery A. Haley
Deputy Director, Audit and Review Division
Office of Audit, Assessment, and Management

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NAVAJO NATION RESPONSE TO THE DRAFT REPORT²⁸



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

July 20, 2015

David Sheeren, Regional Audit Manager
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Office of the Inspector General
Denver Regional Audit Office
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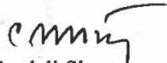
RE: Navajo Nation Response to June 16, 2015 OIG Draft Audit Report

Dear Mr. Sheeren:

Enclosed is the Navajo Nation Response to the June 16, 2015 Audit of the Office of Justice Programs Correctional Systems and Correctional Alternatives on Tribal Lands Program Grants Awarded to the Navajo Division of Public Safety. The Response consists of a Cover Letter, the Management Representation Letter, a Table of Contents, the Narrative, and Exhibits.

If you have any questions, please call me at (928) 871-6033.

Sincerely,


Cordell Shortey
Contracting Officer
Contracts and Grants Section
Office of Management and Budget

Enclosure

cc: Robert Willie, *Acting* Controller, OOC
Delores Greyeyes, Director, DOC
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²⁸ Attachments to this response were not included in this final report.

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NAVAJO NATION RESPONSE TO OIG DRAFT AUDIT REPORT
Submitted on July 20, 2015

Introduction

The Navajo Nation responds to the Draft Audit Report ("Audit Report") of the USDOJ Office of Justice Programs Correctional Systems and Correctional Alternatives on Tribal Lands Program Grants Awarded to the Navajo Division of Public Safety. While the Navajo Nation recognizes that the grantees of the American Recovery and Reinvestment Act ("ARRA") Grants were the Navajo Division of Public Safety ("NDPS"), the Response is structured in terms of explaining and discussing the actions of three specific Navajo Nation Programs:

- Department of Corrections ("DOC") is the Department within NDPS that actually administered and implemented the audited ARRA grants;
- Office of the Controller ("OOC"), within the Division of Finance, is responsible to develop policies to implement financial accounting and reporting for grants awarded to the Navajo Nation; and
- Office of Management and Budget ("OMB") provides services to Navajo Nation Programs in the areas of budget development, contract and grant administration, and management and policy development.

The bracketed numbers before dollar amounts noted in this Response are numbers keyed to the spreadsheet that was provided by the Office of the Inspector General ("OIG Spreadsheet") and is incorporated as Exhibit 1. Exhibits provide supporting documentation except for those documents presumed to be known or obtained by the Office of Inspector General team that conducted the audit such as the ARRA Grant Award documents and the 2007 Navajo Nation Master Plan.

1. Ensure that NDPS implements a process to verify that recipients of DOJ funds are not suspended or debarred **Concurrence**

Exhibit 2 is the DOC Policy Memo that officially notifies DOC staff to implement the procedure outlined effective immediately in order to verify that recipients of USDOJ funds are not suspended or debarred.

2. Remedy \$656,921 in unsupported questioned costs for Grant Number 2009-ST-B9-0089 **Partial Concurrence**

DOC identified the transactions listed on the OIG Spreadsheet by the Transaction Date column of the OIG Spreadsheet, which dates matched the dates that Navajo Nation checks were issued for each respective transaction listed in the OIG spreadsheet. DOC uses the term "pay apps" for pay applications.

a. [1] \$189,258 Pay App #8 Arviso-Okland Nonconcurrence
Arviso-Okland submitted the total invoice amount for \$2,033,369. The amount by Arcadis of \$1,830,032 was incorrect because it should not have deducted 10% retainage from Arviso-

Okland's amount. DOC subtracted out \$14,079 from the total Arviso-Okland invoice because \$14,079 was unallowable costs. The adjusted total invoice amount thus became \$2,019,290. The Receiving Record requested payment to Arviso-Okland using the \$2,019,290 amount, and the \$189,258 is included in the \$2,019,290. Exhibit 3

b. [3] \$392,311 Pay App #22 Arviso-Okland Nonconcurrency
Pay App #22 paid three (3) invoices that totaled \$838,339. Invoices were paid on a 73% (ARRA) and 27% (other sources) split. Seventy-three percent of \$838,339=\$611,987. However, because the Furniture, Fixtures & Equipment balance at that time was \$392,311, only \$392,311 was charged to ARRA. Since, now, 2009-ST-B9-0089 has an ending balance of \$525,925, the difference (\$219,676) between \$611,987 and \$392,311 will be charged to the ARRA account. DOC has drafted a Worksheet that OOC can use as a basis for a processing this transfer. Exhibits 4 and 5.

c. [4] \$34,034 Invoice #1 Dyron Murphy Concurrence
The total amount for invoice #1 was \$261,177, of which 75% was to be charged to ARRA. However, only \$34,034 was initially charged to ARRA. The difference (\$161,849) between \$261,177 and \$34,034 will be transferred to the ARRA account. DOC has drafted a Worksheet that OOC can use as a basis for processing this transfer. Exhibit 5.

d. [5] \$36,387 Pay App #3 Dyron Murphy Concurrence
Even though the invoice stated that \$74,642 of the total invoice amount (\$111,029) was to be charged to ARRA, \$111,029 was charged to ARRA. The difference (\$36,387) between \$111,029 and \$74,642 will be transferred to a non-ARRA account. DOC has drafted a Worksheet that OOC can use as a basis for processing this transfer. Exhibit 5.

e. [25] \$ 4,929 Pay App #61 Dyron Murphy Nonconcurrency
The folder containing this transaction did not have the supporting documents for the invoice total of \$4,929. OOC forwarded the supporting documents for this transaction to DOC, and they are attached. Exhibit 6.

3. Remedy \$2,554,924 in unallowable questioned costs associated with the following issues:
Partial Concurrence

a. Remedy \$528,082 in grant reimbursements expended on court relocation costs charged to Grant Number 2009-ST-B9-0089 Nonconcurrency
[2] \$528,082 Pay App #17 Arviso-Okland
DOC identified Pay App #17 as the transaction that OIG seemed to believe paid court relocation costs. In the front of Pay App #17 folder were stapled pages of which the first page included a chart that listed "court relocation costs" in the amount of \$528,082. Exhibit 7a. DOC surmises that OIG may have used this sheet as a basis for believing that \$528,082 was used for court relocation costs. These stapled pages should not have been in the Pay App #17 folder and have been removed from this folder.

The General Conditions and Site Conditions listing from this Pay App show that none of items listed was for "court relocation costs." Exhibit 7b. Pay App #17 did not pay for court relocation costs.

DOC located the three (3) Pay Apps that did pay court relocation costs. Exhibits: 8a-Pay App #2 Arviso-Okland, 8b-Pay App #4 Arviso-Okland, 8c-Pay App #6 Arviso-Okland. And these costs were not charged to the ARRA account.

b. Remedy \$815,248 in grant reimbursements for non-grant expenditures charged to Grant Number 2009-ST-B9-0089 Partial Concurrence

1) [6] \$27,276 Pay App #4 Arviso-Okland Concurrence
The 5/10/11 Arcadis letter and the invoice noted that invoice charges were for both Tuba City and Crownpoint. The total invoice amount was \$33,149. The \$27,276 incorrectly charged to the ARRA account will be correctly transferred to a non-ARRA account. DOC has drafted a Worksheet that OOC can use as a basis for processing this transfer. Exhibit 5.

2) [26] \$121,805 Pay App #13 Arviso-Okland Concurrence
All the costs included in this Pay App were expended for Crownpoint, but the total invoice amount of \$121,805 was incorrectly charged to the ARRA account. The total charge of \$121,805 will be transferred to a non-ARRA account. DOC has drafted a Worksheet that OOC can use as a basis for processing this transfer. Exhibit 5.

3) \$666,166 Other Non-Grant Expenditures Partial Concurrence
The Nation noted these transactions as "partial concurrence" because over a year ago DOC submitted worksheets for OOC to transfer these transactions to appropriate accounts. Initially, these costs were all charged to CO1412.6813, the Sales Tax Fund, because this was the only fund available during the pre-construction phase. In January 2014, DOC submitted Worksheet 1, Exhibit 9, to OOC so OOC could base its transfers on the Worksheet. But OOC instructed DOC to revise Worksheet 1. DOC did so and submitted the revision as Worksheet 2 in March 2014, Exhibit 10. However, when OOC actually processed the transfers in July 2014, it inadvertently based the transfers on Worksheet 1 instead of Worksheet 2. Exhibit 11. DOC has drafted a Worksheet that OOC can use as a basis for processing transfers of the following transactions from Exhibit 1: [10-22, 24, 27, 7b, 8b, and 9b]. Exhibit 12. [23] does not need to be transferred as explained below.

a) [23] \$10,976.91. The total invoice amount was \$50,793.13. But the Receiving Record dated 7/02/12 charged only \$31,821.20 to the ARRA account. The \$10,976.91 was not charged to the ARRA account. So no action needs to be taken on the \$10,976.91. Exhibit 13.

b) [27] \$43,326.13. The total invoice amount was \$174,151.89. The Receiving Record dated 11/22/10 showed that \$123,788.94 was initially charged to the ARRA account and \$50,362.95 was charged to the Sales Tax Fund. DOC has drafted a Worksheet that OOC can use as a basis for processing a transfer of \$43,326.13 to a non-ARRA account. Exhibit 14.

c) [8b] \$27,011.96. The total invoice amount was \$77,528.04, but Receiving Record dated 7/01/10 charged only \$71,938.56 to the Sales Tax

Fund. This \$71,938.56 was incorrectly transferred to the ARRA account. Because of the short pay on this transaction, only \$25,178.50 (not \$27,011.96) needs to be transferred to a non-ARRA account. DOC has drafted a Worksheet that OOC can use as a basis for processing this transfer. Exhibit 15.

- c. Remedy \$563,262 in grant reimbursements for expenditures that occurred prior to environmental clearance for Grant Number 2009-ST-B9-0089 Partial Concurrence
These three transactions are [7], [8], and [9] listed in Exhibit 1. DOC began expending funds relative to an environmental clearance with the understanding that funds could be expended so long as it paid for activities that did not "break ground." This understanding was confirmed by the seminars on grant management that were attended by DOC staff¹. Pursuant to the training received in these seminars, DOC understood that Special Condition 9 in the ARRA Grants meant that funds could be obligated and expended prior to an environmental clearance so long as the funds were expended for activities that did not "break ground." Thus, the three transactions were for pre-construction activities such as developing schematic designs, conducting design reviews, investigating geotechnical factors, coordinating utility factors, and paying costs related to (travel, lodging) conducting charrettes. "Charrettes" is a construction industry term that means owner, project manager, and general contractor meetings that discuss and decide overall management and monitoring issues. Expending funds for these types of pre-construction activities was consistent with DOC's understanding confirmed by the financial grant management seminars.

DOC does plan to submit a request to the USDOJ Bureau of Justice Assistance ("BJA") for a final determination and retroactive approval of these three transactions by submitting explanation, justification and supporting documentation for its request.

- d. Remedy \$648,332 in grant reimbursements for expenditures that occurred prior to environmental clearance for Grant Number 2009-ST-B9-0100 Partial Concurrence
These twenty transactions [28 through 47] are listed in Exhibit 1. DOC began expending funds relative to an environmental clearance with the understanding that funds could be expended so long as it paid for activities that did not "break ground." This understanding was confirmed by the seminars on grant management that were attended by DOC staff. Pursuant to the training received in these seminars, DOC understood that Special Condition 9 in the ARRA Grants meant that funds could be obligated and expended prior to an environmental clearance so long as the funds were expended for activities that did not "break ground." Thus, the twenty transactions were for pre-construction activities such as rights of way issues, charrettes, and conducting concept designs, design reviews, schematic designs, and utility coordination. Expending funds for these types of pre-construction activities was consistent with DOC's understanding confirmed by the financial grant management seminars.

¹ A DOC staff member attended financial management seminars that were held in Washington DC and Albuquerque NM. The DOC Director and one staff member attended the Regional Financial Management Training Seminar held in Phoenix on February 21-24, 2012. (could not locate training announcements within the time frame to submit our Response)

In addition, DOC initiated an environmental clearance-related process in 2009. As is usually the case, numerous issues came up which had to be addressed and mitigated. Over the course of obtaining environmental clearance, DOC worked with four USDOJ policy advisors. Alpha Corporation, a construction firm hired by BJA to provide technical assistance to Indian construction projects, was able to finally clarify and coordinate all the work that had been done so that an environmental clearance approval was finally issued in June 2011.

DOC does plan to submit a request to BJA for a final determination and retroactive approval of these twenty transactions by submitting explanation, justification and supporting documentation for its request.

4. Remedy \$16,669 in unallocated matching costs for Grant Number 2009-IP-BX-0074
Concurrence

DOC had initiated in November 2012 a request for waiver of the match requirement for this Grant. However, our request for waiver was never processed for action. We will now submit a request to BJA for a retroactive approval for a waiver of the match requirement. Exhibit 16.

5. Ensure NDPS meets the match requirement for Grant Number 2009-ST-B9-0100 by the end of the grant
Nonconcurrence

The Nation concludes this as a nonconcurrence because it has met the match requirement already. The match requirement for this Grant was met by an appropriation in the amount of \$3,517,253 from the Judicial Public Safety Special Revenues Fund. The appropriation was used as a cash match and is verified on the Navajo Nation FMIS printout. Exhibit 17.

6. Remedy \$535,545 in funds to better use associated with unexpended grant funds:
Concurrence

a. Remedy \$9,620 in funds to better use for Grant Number 2008-IP-BX-0036
The implementation of this Planning Grant did result in an unused balance of \$9,620. Goals and objectives were completed.

b. Remedy \$525,925 in funds to better use for Grant Number 2009-ST-B9-0089
This Construction Grant did result in an unused balance. DOC will submit documentation to OOC to process transfers both off and on to the ARRA account as stated elsewhere in this Response.

7. Ensure that NDPS implements a process to submit FFRs that accurately reflect expenditures for each reporting period
Partial Concurrence

OOO prepares and submits Federal Financial Reports ("FFRs") on USDOJ grants awarded to Navajo Nation Programs. OOC's Contract Accounting Section processes FFRs and initiates drawdowns of USDOJ funds. The process to submit FFRs by OOC is shown in Exhibit 18.

and which is from the Accounting Policies and Procedures Manual, Contract/Grant Standard Reporting Process Procedures.

The Contract and Grants Section ("CGS") of OMB monitors Navajo Nation Programs that administer USDOJ grants to ensure compliance with the grant agreements. In order to more effectively monitor that these Programs are complying with Grant Special Conditions, the Navajo Nation implemented a higher level of compliance review.

CGS uses Letters of Assurance ("LOAs") as a means by which Programs verify their compliance with Grant Special Conditions. In addition, CGS conducts other reviews that include financial review, narrative reports, budget revisions, matching funds, and single audit. Upon the completion of the LOAs with attachments, Exhibit 19, CGS notifies OOC that it may proceed with drawdowns of USDOJ funds.

The steps for the compliance review are as follows:

1. A Program is responsible for the timely submission of its annual and quarterly narrative reports to USDOJ funding agency. The Program forwards a copy of its narrative reports to CGS for review.
 2. OOC is responsible for the timely submission of quarterly FFRs to USDOJ funding agencies. OOC forwards copies of the FFRs to CGS for review.
 3. CGS conducts the Compliance Check by reviewing the Program's most recent FFRs and narrative report, budget revisions, matching funds, single audit, Grant Adjustment Notices ("GAN"), and Close Out of Contracts.
 4. Upon completion of the Compliance Check, CGS issues an LOA with attachments that informs OOC that the Program is in compliance and that OOC may proceed with drawdown of USDOJ funds.
 5. Once an LOA is received by OOC, OOC will drawdown the funds for that quarter.
8. **Remedy \$290,116 in unallowable expenditures associated with unnecessary planning grants** **Nonconcurrency**

a. Remedy \$140,380 for Grant Number 2008-IP-BX-0036

This Planning Grant was initially funded for the Tuba City facility, but approval was received through a GAN to use the Grant for a facility proposed for Dilkon. The justification stated in GAN dated 11/22/11 explained that Navajo Nation Tax Fund had paid for most of the Tuba City facility planning; and therefore, it requested that the Planning Grant be repurposed to planning for a Dilkon facility. Exhibit 20. DOC made no reference to the 2007 Master Plan ("Master Plan") in its justification.

The Planning Grant funded a needs assessment that extensively surveyed and analyzed the Dilkon community.² The needs assessment focused on factors specifically rooted in

² As noted in the Introduction, documents that are known to OIG or were provided to OIG by the Navajo Nation during the OIG audit will not be included as exhibits, but page numbers, where appropriate, are cited. For example, this section discusses the Dilkon Needs Assessment Report, the Kayenta Planning Study Report, and the 2007 Master Plan.

the Dilkon community—factors such as population trend, economic projects ongoing in the community, education level profiles, calls for service to Dilkon Police District, arrests, criminal and civil case profiles in the Dilkon District Court, and jail detention statistics. Thus, the activities conducted under this Planning Grant focused specifically on researching, collecting, and analyzing information that would inform decisions to be made about designing and constructing a corrections facility in Dilkon.

The purpose of the Master Plan was entirely different from the purpose of the Planning Grants. The Master Plan was intended as a “vision” that addressed proposed justice system services for the entire Navajo Nation, pg. 1.2. The Master Plan stated that it presented prototypes for categories of facilities (large, medium, and small) and that these prototypes should be specifically adapted for each specific project, pg. 1.8. The prototypes would need to accommodate variations and would need to be modified because the prototypes were not intended for any specific location, pgs.1.4, 1.9 and 2.2. The planning presented by the Master Plan focused on a Navajo Nation-wide scale whereas the Dilkon Planning Grant focused on the community of Dilkon. Therefore, the Planning Grant for Dilkon was necessary.

b. Remedy \$149,736 for Grant Number 2008-JP-BX-0074

This Planning Grant funded a needs assessment that extensively surveyed and analyzed the Kayenta community. The needs assessment focused on factors specifically rooted in the Kayenta community—factors such as population trend, education level profile, employment profile, calls for service to Kayenta Police District, arrests, bookings, characteristics of Kayenta jail population, criminal and civil case trends in the Kayenta District Court, and jail detention statistics. Thus, the activities conducted under this Planning Grant focused specifically on researching, collecting, and analyzing information that would inform decisions to be made about designing and constructing a corrections facility in Kayenta.

The purpose of the Master Plan was entirely different from the purpose of the Planning Grants. The Master Plan was intended as a “vision” that addressed proposed justice system services for the Navajo Nation, pg. 1.2. The Master Plan stated that it presented prototypes for categories of facilities (large, medium, and small) and that these prototypes should be specifically adapted for each specific project, pg. 1.8. The prototypes would need to accommodate variations and would need to be modified because the prototypes were not intended for any specific location, pgs.1.4, 1.9 and 2.2. The planning presented by the Master Plan focused on a Navajo Nation-wide scale whereas the Kayenta Planning Grant focused on the community of Kayenta. Therefore, the Planning Grant for Kayenta was necessary.

9. **Remedy \$32,034,623 in unallowable expenditures associated with excessive building sizes** **Nonconcurrency**

a. Remedy \$20,375,234 for Grant Number 2009-ST-B9-0089

b. Remedy \$11,659,389 for Grant Number 2009-ST-B9-0100

The Nation's Response to Recommendation 9 addresses both grants.³ In the specific circumstances of this audit, the term, "excessive building size" implies that the Nation constructed facilities that exceeded the square footage ("SF") set out in the grant applications. The grant application for the Tuba City facility stated 111,848 SF, and the completed facility did not exceed this SF. The SF of the Tuba City facility actually turned out to be 87,709 SF. Exhibit 21. The SF for the Kayenta facility was stated as 91,036, and the completed facility did not exceed this SF. The SF of Kayenta actually turned out to be 53,009 SF. Exhibit 22. Thus, the Nation did not construct facilities of "excessive size." Too, the number of beds per facility was not proposed nor stated in the grant applications for Tuba City and Kayenta. The ARRA Grant Awards for each facility set out no requirement as to specific SF or numbers of bed per facility. The discussion below clearly shows that the Nation did not construct facilities of "excessive size."

Tuba City Facility

Grant application. The Nation's Application Narrative for the Tuba City Construction Grant states the purpose of the application in only two places. On page 7, the Nation stated, "The goal of this proposal is to build a Multi-Purpose Justice Center in Tuba City, Arizona to replace the old jail that was demolished." On page 12 is the statement: "The Navajo Nation requests \$38,587,570 to construct a[] 111,848 square foot Multi-Purpose Justice Center to replace the military barracks currently used as jails." In addition, the Application Narrative does not state that a certain number of beds is intended or planned for the proposed Tuba City facility.

The Nation's Application Narrative mentions the Master Plan in only two places. The first mention, on page 7, notes only that a Master Plan was completed, and the second mention, on page 9, states that the Master Plan "includes land withdrawals, site assessments and evaluations." Thus, the Application Narrative merely notes a Master Plan has been completed. It does not go on to state that the Master Plan required a certain number of beds and square footage for the proposed Tuba City facility. Moreover, the Master Plan, pg. 1.8, noted that its "size of detention components" was based on the assumption that a Navajo Correctional Rehabilitation Center would be established. Therefore, the detention sizes presented in the Master Plan must be modified in light of the fact that, as of this date, no plans are being contemplated to establish a Rehabilitation Center.

Grant Award. The Tuba City Application Budget Narrative and Budget Detail Worksheet note the facility's SF as 111,848 SF. The Tuba City ARRA Grant Award includes no mention, much less a requirement that the Tuba City ARRA Grant is to be used to construct only a certain square-footage facility with a certain number of beds. In addition, the Grant Manager's Memorandum, PT.I: Project Summary notes that the Master Plan presents a "vision" for addressing diverse services that could reduce rates of re-arrests and incarceration, but does not require the Nation to strictly apply the SF and number of beds from the Master Plan to the design and construction of the Tuba City facility

³ Again, references to grant applications, grant awards, and Master Plan cite only page numbers as OIG has these documents.

Kayenta Facility

Grant Application. The Nation's Application Narrative for the Kayenta Construction Grant states the purpose of the application in only one place. On page 7, the Nation stated, "The goal of this proposal is to build a Detention Center to replace the old jail." The Application Narrative does not state a specific SF nor that a certain number of beds was intended or planned for the proposed Kayenta facility.

The Nation's Application Narrative for Kayenta mentions the Master Plan in only two places. The first mention, on page 7, notes only that a Master Plan was completed, and the second mention, on page 10, states that Kayenta Township had already completed its site plan that complemented the Master Plan which "includes land withdrawals, site assessments and evaluations." Thus, the Application Narrative merely notes a Master Plan has been completed. It does not go on to state that the Master Plan required a certain number of beds and square footage for the proposed Kayenta facility. Moreover, the Master Plan, pg. 1.8, noted that its "size of detention components" was based on the assumption that a Navajo Correctional Rehabilitation Center would be established. Therefore, the detention sizes presented in the Master Plan must be modified in light of the fact that, as of this date, no plans are being contemplated to establish a Rehabilitation Center.

Grant Award. Only the Kayenta Application Budget Detail Worksheet notes the proposed SF for the facility as 91,036 SF. The Kayenta ARRA Grant Award includes no mention much less a requirement that the Kayenta ARRA Grant was to be used to construct only a certain square-footage facility with a certain number of beds. In addition, the Grant Manager's Memorandum, PT.1: Project Summary notes only that the Master Plan "entails a strategy" regarding various services but does not require the Nation to strictly apply the SF and number of beds from the Master Plan to the design and construction of the Kayenta facility.

The Master Plan was intended as a "vision" that addressed proposed justice system services for the entire Navajo Nation, pg. 1.2. The descriptions of the general designs for each type of facility (large, medium, small) are meant to function as prototypes, pg. 1.4. These prototypes are then to be "adjusted during design to accommodate variations in staffing and operations for each District location," pg. 1.4. The prototypes would need to accommodate variations and would need to be modified because the prototypes were not intended for any specific location, pgs.1.4, 1.9 and 2.2. In other words, the Master Plan was not intended to provide specific site specifications for every large, medium, and small facility to be built eventually on the Navajo Nation. Therefore, the square footage and numbers of beds for the Tuba City and Kayenta facilities were consistent with the process of adaptation and modification envisioned by the Master Plan.

The actual process of decision-making regarding numbers of beds occurred in the charrettes.⁴ Decisions made in charrettes were based on factors such as changes in site conditions, revised or new assessments, changes in costs, and contingency issues that arose. Also, the change in number of beds reflected the Master Plan intention that the prototypes would necessarily have to be adapted to specific facilities. As it was, if the facilities had remained with the initial bed numbers, a large balance would have resulted in the ARRA Grants for Tuba City and Kayenta

⁴ Charrettes are defined on page 4 of this Response.

because the facility sizes would have been necessarily smaller. This result would have, certainly, resulted in findings against the Nation.

In addition, the Nation relied on the positive feedback and approvals communicated by the Alpha Corporation and BJA. Alpha Corporation provided technical assistance and made site visits to the Tuba City and Kayenta projects on the following dates: January 25-26, 2012; May 15 & 17, 2012; July 31 & August 2, 2012; November 13, 2012; and February 14-15, 2013. Exhibit 23. These site visits included, for example, tours of construction sites, verification of Buy America provision, participation in construction project meetings, and review of pay apps. We understand the periodic reports submitted to BJA by Alpha Corporation were approved by BJA. BJA also visited the Nation from January 23-26, 2012 to review all USDOJ grants including the ARRA grants. DOC submitted progress reports to BJA which were approved by BJA. Exhibit 24. The feedback given to the Nation after these visits was unequivocally positive. In fact, USDOJ was so impressed with the implementation of the Tuba City ARRA Grant that it selected the Tuba City project as a model project⁵. Thus, the Nation reasonably relied on the feedback it continually received through the four years of design and construction for the Tuba City and Kayenta facilities.

In conclusion, the Nation did not construct facilities of excessive building size. The square footage and numbers of beds for the two facilities reflected the intention of the Master Plan that the prototypes presented there should be adapted specifically for each location.

The Nation responds here to OIG's discussion concerning jail occupancy and costs of operations and corrections staff. The approach that would reflect a truer need for holding suspects in jails across the Navajo Nation is to consider the entire process that ultimately culminates in suspects being booked in jail.

We consider first the calls for service that come in daily to the police dispatchers across the Navajo Nation. Calls for service are calls from persons who have emergency issues, need police assistance or want to report a crime. The Navajo Police Department Total Number of Call for Services per District reported statistics from 2000 to 2014 for all police districts on the Navajo Nation. Exhibit. 25. This Report stated that the Kayenta Police District calls for service between 2000 and 2014 had a range from 20,871 to 37,637, and the Tuba City Police District calls for service in 2000 was 25,136 and was 69,016 in 2005.

When police officers get to the scene, among other decisions they need to make is whether to arrest and book the person(s) engaging in criminal conduct. This requires officers to evaluate the seriousness of the offense and whether if detaining and releasing the person(s) would not further escalate the immediate circumstances for the other persons involved such as family members. Police officers generally know the jail occupancy for a given day because they have been briefed at the beginning of their shift as to the numbers in detention in the local jail. If officers know the jail occupancy is filled to or near capacity, they will detain and release the suspects and issue them notices for arraignment. However, if a suspect has allegedly committed a felony, the police officer will work with the local prosecutor and criminal investigators to either book the person in

⁵ Jason Reed of Alpha Corporation reported to DOC in the January 2012 site visit that USDOJ had selected the Tuba City project as a model project and included this in an annual USDOJ report.

the local jail or relay them for booking into an off-reservation jail pending federal prosecution. This means—if more jail space had been available—officers would likely book more suspects into jail rather than detaining and releasing them.

The numbers of persons occupying jail space on any given day in Navajo jails also impact the decisions prosecutors make concerning whether they will oppose bail and request that suspects be detained pending further court proceedings. The Judicial Branch of the Navajo Nation deals with a range of different cases throughout the year; i.e., traffic violations, family civil, dependency, child in need of supervision, criminal and domestic violence cases. The two case types which carry jail time are the criminal and domestic violence cases. We extracted the criminal and domestic violence cases handled by the Kayenta and Tuba City District Courts from 2008 to 2014. The Kayenta Court had the lowest caseload in 2013 with only 1,294 cases and the peak year in 2009 with 1,753 cases. The Tuba City District courts lowest caseload was reported in 2013 with 965 cases and their peak year in 2008 with 4,034 cases. Exhibit 26. A factor affecting the decrease in Tuba City's caseload is that the number of prosecutors employed by the Navajo Nation also decreased beginning in 2011.

Judges affect the jail occupancy rate by if and whether they impose incarceration as a sentence or they order other kinds of sentences such as probation or community service. Prosecutors and Navajo district court judges also receive daily serving rosters from the local jail. Serving rosters inform prosecutors and judges every weekday morning the number of inmates currently in the local jail. This means that knowing the current jail occupancy rate, prosecutors may move for and judges may elect to order probation or community service for less serious criminal convictions. Again, had jail capacity been greater, judges would likely order incarceration for more convicted persons.

DOC prepared a chart that shows the average number of inmates actually in jail every day for the period January-June 2015. Exhibit 27. To calculate the averages, DOC used the Inmate Receiving Roster for Kayenta and the Inmate Serving Roster for Tuba City. Each chart shows the average per month. Kayenta's average number of inmates in jail day-to-day is 16. Tuba City's average number of inmates in jail day-to-day is 66. This chart provides a truer picture of the numbers of persons actually in jail in Kayenta and Tuba City. The BIA's DOMER shows only the number in jail on the last day of the month and new bookings per month. New bookings statistics indicate the number booked into jail each day, but it does not reflect the number actually in jail on a given day.

The above discussion clearly indicates that the numbers of persons actually held in Navajo jails is less than the number that would be detained had jail capacity been greater. In other words, there is already a need for larger jail capacities. The construction of a 132-bed facility in Tuba City and an 80-bed facility in Kayenta will provide for not only current jail space need but for jail space need for several years into the future. It is better for the Navajo Nation to have larger jail capacity in these new facilities rather than having to fund and construct larger facilities in five years' time.

At the outset of these construction projects, DOC understood there would be an increased need for additional personnel and operation and maintenance ("O&M") costs for the new facilities.

DOC understands that the BIA/OJS will not be able to provide full funding for all FTEs and O&M needed to fully operate the new facilities. However, BIA/OJS informed DOC they would provide \$5.00 per SF for O&M, and as funds become available, they would provide limited funds for FTEs. DOC has initiated alternative funding approaches for more FTEs. One approach is working with the Navajo Department of Work Force Development Program, which has been providing up to \$400,000 a year for Work Force participants to train as corrections officers. A second approach is to reach an agreement with BIA/OJS for DOC to lease jail bed spaces to the BIA-operated tribal detention operations. One long term approach is to introduce legislation that would charge jail occupancy fees. The other long term approach is that once justice center facilities have been completed across the Navajo Nation, the Special Revenue Tax Fund funding these facilities could be converted for O&M for the new facilities.

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

The Department of Justice (DOJ) Office of the Inspector General (OIG) provided a draft of this audit report to the Office of Justice Programs (OJP) and the Navajo Division of Public Safety (NDPS) for review and official comment. OJP's response included statements from its Bureau of Justice Assistance (BJA). The Navajo Nation provided the response for the NDPS because three different Navajo Nation programs were involved in management of the audited grants: the Department of Corrections (DOC) within NDPS; the Office of the Controller (OOC) within the Navajo Nation Division of Finance; and the Navajo Nation Office of Management and Budget (OMB). The OJP response is incorporated in Appendix 3 and the Navajo Nation response is incorporated in Appendix 4. The following provides the OIG analysis of the responses and summary of actions necessary to resolve the report.

Recommendation:

- 1. Ensure that NDPS implements a process to verify that recipients of DOJ funds are not suspended or debarred.**

Closed. OJP agreed with the recommendation, and stated that NDPS had provided written procedures to ensure that recipients of DOJ funds are not suspended or debarred.

The Navajo Nation stated it concurred with the recommendation, and provided a new DOC Policy Memo with procedures to verify that recipients of DOJ funds are not suspended or debarred. We reviewed the memo and determined it adequately addressed our recommendation.

- 2. Remedy \$656,921 in unsupported questioned costs for Grant Number 2009-ST-B9-0089.**

Resolved. OJP agreed with the recommendation, and stated that it would coordinate with NDPS to remedy the \$656,921 in unsupported questioned costs.

The Navajo Nation stated it partially concurred with the recommendation. The Navajo concurred with two questioned expenditures; one for \$34,034 and one for \$36,387 for a total of \$70,421. The Navajo Nation stated that it will make accounting transfers to address questioned amounts. There were three questioned expenditures that the Navajo Nation did not concur with; one for \$4,930, one for \$189,259, and one for \$392,311, for a total of \$586,500. For each of the expenditures with which the Navajo Nation did

not concur, the Navajo Nation provided explanations and documentation. We reviewed the documentation and determined that it was adequate to remedy two of the questioned expenditures, in the amount of \$4,930 and \$189,259. The final expenditure was for \$392,311 in unsupported furniture expenses. The total cost of furniture in the pay application was \$769,234 including retainage and taxes. We reviewed the supporting documentation and found a worksheet submitted with the pay application that stated \$392,311 (51 percent of the pay application total) in furniture costs should be charged to the Recovery Act grant. Also, included with the pay application documentation were exact costs, not including retainage and taxes, for the furnishings installed in the law enforcement building (\$224,986), courts building (\$222,660), and the detention building (\$293,432). Only detention building costs were allowable to be charged to the grant, and the pay application evidences that those costs totaled 39 percent of the total, not 51 percent. The Navajo Nation provided an explanation, a worksheet, and invoice and accounting documentation. However, the pay application amounts did not match the worksheet amounts and, therefore, still do not adequately support the allocated furniture amount charged to the grant.

This recommendation can be closed when we receive adequate documentation to support the \$462,732 questioned for the three remaining unsupported expenditures.

3. Remedy \$2,554,924 in unallowable questioned costs for Grant Numbers 2009-ST-B9-0089 and 2009-ST-B9-0100.

Resolved. OJP agreed with the recommendation, and stated that it would coordinate with the NDPS to remedy the \$2,554,924 in unallowable questioned costs.

The Navajo Nation stated it partially concurred with the recommendation. For Grant Number 2009-ST-B9-0089, the Navajo Nation did not concur with our finding of \$528,082 in unallowable court relocation costs, and provided an explanation that the relocation costs were not charged to the grant. We reviewed the documentation submitted with Navajo Nation's response and determined it showed the court relocation expenses and included an allocation to the grant and to a non-grant account, but did not prove that the court relocation expenses were charged to the non-grant account. Therefore, we determined the documentation provided was not adequate to remedy this questioned cost.

For Grant Number 2009-ST-B9-0089, the Navajo Nation partially concurred with our finding of \$815,428 in 21 non-grant expenditures that were charged to the grant. The Navajo Nation concurred with two expenditures, one for \$27,276 and one for \$121,805, totaling \$149,081 in unallowable expenditures for the Crownpoint project that were charged to the grant. The Navajo Nation stated that it will make an accounting transfer to move these expenditures from Grant Number 2009-ST-B9-0089 to the appropriate

non-grant account. The Navajo Nation partially concurred with our finding of the remaining 19 non-grant expenditures totaling \$666,166. For 17 of these 19 non-grant expenditures, the Navajo Nation agreed the expenses, totaling \$628,178, were inappropriately transferred to the grant account. For one of the two remaining non-grant expenditures, totaling \$27,012, the Navajo Nation agreed that the funds should be transferred to a non-grant account, but believed the amount should be \$25,179 rather than \$27,012. The Navajo Nation did not provide any documentation to support the \$1,833 difference. The Navajo Nation stated that it will make accounting transfers to the appropriate non-grant account for the 18 non-grant expenditures. For the remaining expenditure, in the amount of \$10,977, the Navajo Nation stated no action was required as it was not charged to the ARRA account. For that expenditure, the Navajo Nation provided an accounting document that showed only \$31,822 of the \$50,793 invoice was charged to the grant on July 2, 2012. However, the document also stated that the invoice was underpaid by \$18,972 due to insufficient funds for the Tuba City project; that amount (which included the \$10,977 questioned expense) was subsequently paid and charged to the grant on October 9, 2012. Therefore, this expenditure is questioned as unallowable.

For Grant Numbers 2009-ST-B9-0089 and 2009-ST-B9-0100, the Navajo Nation partially concurred with our findings of \$1,211,594 in expenditures that were charged to the grants prior to receipt of environmental clearance from BJA. The Navajo Nation stated that it attended grant management seminars and understood that grant funds could be obligated and expended prior to environmental clearance, if the funds were expended for activities that did not "break ground." However, according to the grant special conditions, the recipient could not obligate, expend, or draw down any funds until the program office has verified that all necessary environmental impact documentation had been submitted to the program office. The Navajo Nation stated it will request that BJA review and provide retroactive approval of the expenditures that occurred prior to receipt of environmental clearance.

This recommendation can be closed when we receive documentation demonstrating that the \$2,554,924 of questioned costs for unallowable expenditures charged to Grant Numbers 2009-ST-B9-0089 and 2009-ST-B9-0100 have been appropriately remedied.

4. Remedy \$16,669 in unallocated matching costs for Grant Number 2009-IP-BX-0074.

Resolved. OJP agreed with the recommendation, and stated that it would coordinate with NDPS to remedy the \$16,669 in unallocated matching costs charged to Grant Number 2009-IP-BX-0074.

The Navajo Nation stated it concurred with the recommendation and had initiated a waiver request, but it was never submitted. We reviewed a copy

of that request during our fieldwork. The Navajo Nation stated it will ask BJA for a retroactive waiver of the match requirement for this grant.

This recommendation can be closed when we receive documentation that the match requirement for this grant has been remedied.

5. Ensure NDPS meets the match requirement for Grant Number 2009-ST-B9-0100 by the end of the grant.

Closed. OJP agreed with the recommendation, and stated that it would coordinate with NDPS to ensure that the matching requirement was met for Grant Number 2009-ST-B9-0100.

The Navajo Nation stated it did not concur with the recommendation because the Navajo Nation has already met the match requirement. The Navajo Nation provided accounting documentation to support that \$3,517,253 was transferred to the grant from a non-grant account. We reviewed the documentation and determined it adequately addressed our recommendation.

6. Remedy \$535,545 in funds to better use associated with unexpended grant funds for Grant Numbers 2008-IP-BX-0036 and 2009-ST-B9-0089.

Closed. OJP agreed with the recommendation, and provided documentation showing that it deobligated \$9,620 in undrawn funds for Grant Number 2008-IP-BX-0036 on June 17, 2015, and \$525,925 in undrawn funds for Grant Number 2009-ST-B9-0089 were deobligated on June 23, 2015.

The Navajo Nation stated it concurred with the recommendation. For Grant Number 2008-IP-BX-0036, the Navajo Nation stated that there was an unused balance of \$9,620, and that all goals and objectives of the grant were completed. For Grant Number 2009-ST-B9-0089, the Navajo Nation stated that there was an unused balance of \$525,925, and that DOC would submit documentation to OOC to transfer funds for the grant account as appropriate. However, OJP deobligated the undrawn funds for this grant on June 23, 2015; therefore the Navajo Nation could not draw down the unused balance.

We reviewed the documentation provided by OJP and determined it adequately addressed our recommendation.

7. Ensure that NDPS implements a process to submit FFRs that accurately reflect expenditures for each reporting period.

Closed. OJP agreed with the recommendation, and stated that NDPS had provided written procedures to ensure that future FFRs accurately reflect expenditures.

The Navajo Nation stated it partially concurred with the recommendation, and provided an explanation and documentation of the processes by which it prepares FFRs, and for monitoring and oversight of the Navajo Nation's grant programs. We reviewed the documentation provided and determined that it adequately addressed our recommendation.

8. Remedy \$290,116 in unallowable expenditures associated with unnecessary planning grants for Grant Numbers 2008-IP-BX-0036 and 2009-IP-BX-0074.

Unresolved. OJP and the Navajo Nation disagreed with the recommendation and stated that the planning grants were necessary for design and planning for Dilkon and Kayenta correctional facilities. Both OJP and the Navajo Nation provided several reasons for disagreement, which are analyzed separately later in this section.

In summary, we reviewed explanations and documentation from OJP and the Navajo Nation and sustain the recommendation based on the fact that Navajo Nation was awarded the grant to develop plans for regional correctional facilities in Tuba City and Kayenta, although a detailed plan already existed, which Navajo Nation used as a technical guide in constructing other prison facilities. Specifically and as discussed in our audit report, the Navajo Nation's March 2007 master plan was intended to address justice system needs for locations across the Navajo Nation, including Tuba City, Dilkon, and Kayenta. The master plan was created using district-specific site information, population data, and input from justice system stakeholders. The master plan contained detailed data for each location, including construction budgets and broad facility purposes, such as detention, courts, and police, as well as individual facility needs, including number of inmate beds, square footage of specific rooms, and even requirements as specific as beverage station and refrigerator sizes. The master plan also included designed prototypes and options for developing the facilities. As a result, it was readily usable as a design plan for the Tuba City and Kayenta correctional facilities built between 2010 and 2015, particularly when Navajo Nation used the master plan for just that purpose when building new justice centers at Crownpoint and Chinle starting in 2010 and still ongoing for Chinle. Crownpoint was built at the same time as the Tuba City facility by the same general contractor.

Additionally, we found that the Kayenta planning grant application was submitted on March 3, 2009, to develop plans for a correctional facility in Kayenta. Less than two months later, on May 3, 2009, the Navajo Nation submitted an application for Recovery Act funds to construct a correctional facility. As a Recovery Act award, the project was "shovel ready" meaning construction could begin within 180 days and, according to the Navajo Nation's submitted timeline, construction would begin in February 2010. In the Recovery Act application, the Navajo Nation stated that it had already funded planning portions of the Kayenta project to complete site evaluations,

assessments, and architectural design services and that the project was ready to move into construction. Because planning was already complete based on the statements made by the Navajo Nation in the application for Recovery Act construction funds, funds for the planning grant were not necessary. This is further demonstrated by the fact that in June 2010 the Navajo Nation attempted to repurpose these planning grant funds, which OJP denied. In this June 2010 request, the Navajo Nation was requesting to use the planning grant funds for the development of policies, procedures, and training for Navajo Nation corrections personnel as they transition into the new facility, which OJP determined was not within the CSCATL Program objectives. The Navajo Nation then submitted a project extension for the planning grant to "enhance the current master plan for the Kayenta community." Since the master plan was already complete in March 2007, these funds were not necessary for the Navajo Nation and could have been awarded to another applicant.

For the Tuba City planning grant, the Navajo Nation submitted the grant application on June 25, 2008, to develop plans for a correctional facility in Tuba City. The grant was awarded on September 15, 2008. Less than a year later, and before any of the planning grant funds were spent, the Navajo Nation submitted an application on April 29, 2009 for Recovery Act funds to build a correctional facility. The application for the Recovery Act funds stated that the March 2007 master plan included land withdrawals, site assessments, and evaluations. Additionally, as a Recovery Act award, the project was "shovel ready" meaning construction could begin within 180 days and, according to the Navajo Nation's submitted timeline, construction would begin in February 2010. Again, because planning was already complete in order to proceed to construction, funds for the planning grant were not necessary. This is further demonstrated by the fact that Navajo Nation attempted to repurpose the funds in June 2010 for the development of policies, procedures, and training for Navajo Nation corrections personnel as they transition into the new facility. OJP determined this purpose was not within the CSCATL Program objectives, and therefore denied that request. However, Navajo Nation submitted another request to repurpose the planning grant funds in November 2011 stating that "the DOC has not been able to use the funds allocated for the Tuba City Multi-Purpose Justice Center due to plans being near complete when the planning funds were allocated in September 2008." This scope change was approved by OJP, although it is clear that the original purpose for the grant was no longer applicable since the master plan was already complete in March 2007. We determined that the Navajo Nation substantially relied on the master plan for planning purposes. As a result, other applicants that could have used the funds for the designated program planning purposes were denied a funding opportunity so that Navajo Nation could receive the grants for that purpose, although it did not need funds for planning.

Our detailed analysis of OJP's and Navajo Nations' individual bases for disagreement is discussed in the following sections.

Office of Justice Programs Response to Recommendation 8

In its response, OJP stated it had performed another review of the applications for these grants, and determined the Navajo Nation had provided an outline to comprehensively plan for correctional facilities in Tuba City and Kayenta. We analyzed OJP's statements and bases for disagreement identified in the following sections.

OJP stated in its response that there was no mention in these applications that the Navajo Nation had produced a reservation-wide Public Safety Facilities Master Plan in 2007.

However, our analysis indicated that even though the Navajo Nation did not mention the existing master plan to OJP in its applications for these grants, the Navajo Nation was aware when it applied for these planning grants that it had recently developed its own master plan for correctional facilities eliminating the need for the Navajo Nation to apply for these planning grants. As a result, we believe the Navajo Nation should have disclosed the existence of the plan in its application since it had direct implications for Navajo Nation's need for additional funds for further planning.

OJP stated in its response that it determined that the master plan provided an overall vision of correctional services throughout the Navajo Nation.

We disagree and note that the Navajo Nation built correctional facilities at Crownpoint and Chinle following the parameters stated in the existing master plan. As a result, it is clear that this 2007 master plan was used by the Navajo Nation as actual technical guidance in at least one other completed construction project at Crownpoint, and therefore sufficed for more than just an overall vision.

OJP stated that the master plan made recommendations and provided prototypes for the types of facilities and services that would best address the needs for the various judicial districts across the reservation.

We agree, and conclude that this information supports our finding that these grants were unnecessary, as the existing master plan already addressed the needs and provided prototype design and space planning for each district, including Tuba City, Dilkon, and Kayenta.

OJP stated in its response that it determined that the master plan did not eliminate the need for planning activities for site-specific construction...specific to the Tuba City (later Dilkon, Arizona) and Kayenta facilities.

Our analysis indicated that the Navajo Nation initially applied for Grant Number 2008-IP-BX-0036 for planning at Tuba City, Arizona. However, this grant was subsequently redirected to change the scope to planning at Dilkon, Arizona, because the Navajo Nation had funded planning that was already in progress at Tuba City. Because planning was already in progress at Tuba City, there was no need for the Navajo Nation to apply for the Tuba City planning grant. Additionally, for each of the three locations mentioned by BJA, the Navajo Nation had already developed its comprehensive master plan. Finally, as stated previously in this report, a non-DOJ-funded correctional facility was built at Crownpoint and is under construction at Chinle following the parameters stated in the Navajo Nation's existing master plan.

OJP stated that these grants were used to review the needs and modify the [Navajo Nation's] master plan prototypes specific to each location and facility.

This justification does not make these grants necessary, because the Navajo Nation's master plan was used to construct facilities that were not funded by DOJ grants. As stated previously, the Navajo Nation built a correctional facility at Crownpoint and is building a facility at Chinle following the parameters stated in the Navajo Nation's existing master plan. Additionally, both planning grants were subsequently repurposed due to the fact that planning had been completed for both facilities. The actions by the Navajo Nation expressly reflect the fact that there was no need for it to apply for the planning grants.

Navajo Nation Response to Recommendation 8

The Navajo Nation stated it did not concur with the recommendation. We analyze statements from the Navajo Nation's response in the following sections.

The Navajo Nation stated that each planning grant funded a needs assessment that focused on the local community (respectively, Dilkon and Kayenta) and was to provide information for use in designing and constructing a correctional facility at each location.

For Grant Number 2008-IP-BX-0036, we note that the Navajo Nation originally applied for and was awarded a planning grant for the Tuba City location. The Navajo Nation then re-scoped the grant to Dilkon because, as stated in its scope change request, the "Navajo Nation Tax Fund had paid for most of the Tuba City facility planning." The Navajo Nation also attempted to re-scope the Kayenta grant because it asserted that the planning was complete, which OJP denied because the change did not meet the intent of the CSCATL Program. Again, in our judgment, if the Tuba City facility planning was already being performed with Navajo Nation funds, there was no need to apply for this grant. More importantly, during our audit, Navajo

Nation officials were unable to provide us with any planning documents for Tuba City other than the March 2007 master plan.

The Navajo Nation stated that the March 2007 master plan was intended as a "vision" that addressed proposed justice system services for the entire Navajo Nation, by presenting prototypes to be adapted for each specific project. The Navajo Nation also stated that the March 2007 master plan was created on a Navajo Nation-wide scale, while the planning grants were specific to Dilkon and Kayenta.

We note that the master plan provided specific information for each project location, including Tuba City, Dilkon, and Kayenta. We also note that the Navajo Nation built a justice center at Crownpoint and is building a justice center at Chinle based on the parameters stated in the March 2007 master plan. For each location, the master plan stated construction budgets and facility purposes, such as detention, courts, and police, and also stated facility needs, including inmate beds, square footage of specific rooms, and requirements as specific as beverage station and refrigerator sizes. As the following excerpt from the 2007 March master plan shows, the plan itself stated that it was intended to address the needs of each District:

This master plan has established size, concept, location and cost parameters for these projects. Cost is the only variable that can change with time. Therefore, it is necessary to proceed with the schedule. A notice to proceed will begin the rest of the schedule process, and assure adherence to the estimated cost of the projects.

This document is the result of the several months long master planning effort, which included the following:

- *A series of Interactions between staff and administration of Courts, Corrections and Police from all Districts and Consultants*
- *A study of existing reports, data, plans, and projections of growth across the Navajo Nation*
- *A consensus building workshop that considered the individual needs of the Districts, as well as the Navajo Nation as a whole*
- *A follow-up meeting with members of the steering committee and staff*

The result of these efforts was the development of a detailed prototypical Architectural Space Program for each component. This Space Program itemizes all functional components of the

four buildings, as well as the detailed spaces to be included in each facility. These programs were used to estimate the total square footage necessary for the large/medium/small district facilities as well as the Navajo Correctional Rehabilitation Center.

From the summary of the space required, budget cost data was applied assuming a February 2008 beginning construction date. Cost data was then applied to each component, and potential design and construction schedules were developed for each facility type. These prototypical programs will need to be adjusted during design to accommodate variations in staffing and operations for each District location.

Site conditions and recommendations for specific sites within each District were evaluated concurrently, and the resulting findings are summarized in this report.

To clarify, the prototypical adjustments refer to architectural designing which occurs as part of the construction grants, not planning grants.

As a result, our opinion remains that these planning grants were unnecessary and unallowable. This recommendation can be resolved when we receive evidence that OJP has developed an adequate action plan to remedy the planning grants, or has completed other actions that address the recommendation.

9. Remedy \$32,034,623 in unallowable expenditures associated with excessive building sizes for Grant Numbers 2009-ST-B9-0089 and 2009-ST-B9-0100.

Unresolved. OJP partially agreed with the recommendation, and the Navajo Nation disagreed with the recommendation. OJP and the Navajo Nation both stated that they disagreed that the Navajo Nation constructed facilities of excessive size. Both OJP and the Navajo Nation provided several reasons for disagreement, which are analyzed separately later in this section.

In summary, we reviewed explanations and documentation from OJP and the Navajo Nation, and sustain the recommendation based on the fact that Navajo Nation stated specific need for Tuba City and Kayenta through its applications for Grant Numbers 2009-ST-B9-0089 and 2009-ST-B9-0100, but was awarded approximately \$32 million in excess of stated need. As a result, the Navajo Nation increased the size of both facilities without approval and built facilities much larger than its stated need or ability to operate. Specifically, the Tuba City and Kayenta facilities were built to accommodate 132 and 80 adult inmates, respectively. However, according to data reported to the BIA by the Navajo Nation, Tuba City had a high of 49 prisoners in the facility on one day between 2008 and 2014, with a monthly average of only

17.6 inmates. For 2014, which was the first full year of operations at the new Tuba City facility, the maximum number of inmates was 36 while the average monthly occupancy was only 15.6. At Kayenta, there was a high of 24 inmates between 2008 and 2014, and a monthly average of only 9 inmates. The new Kayenta facility remains unopened. Based on the average monthly data reported to the BIA, the Tuba City and Kayenta inmate capacities are 749 and 885 percent larger than the need demonstrated.

The Navajo Nation disagreed with this data and therefore offered alternative data in its response indicating an average number of 66 inmates for Tuba City and 16 inmates for Kayenta. We further analyze later in our response this latest data provided by the Navajo Nation, and although we discuss later our concerns with the relevance of the new data, even taking the new data at face value indicates that the Tuba City and Kayenta facilities were built 200 and 500 percent larger than need, respectively. Further, construction of the Crownpoint facility was completed with 48 beds, construction is on-going for the facility at Chinle, and construction is still planned for the facility at Shiprock. As these facilities continue to open and become operational, the bed space needs stated by the Navajo Nation will be distributed among the new facilities, reducing actual need and occupancy in Tuba City and Kayenta.

We also noted that, due to funding constraints at the BIA, the Navajo Nation does not have the resources to operate those facilities at capacity. In actuality, the Navajo Nation only has the staff to manage 2 of the 11 pods that can hold up to 24 inmates at the Tuba City facility, which is 82 percent below the intended capacity. The Kayenta facility remains unopened. As stated in our report, the BIA expressed concerns to the BJA and Navajo Nation regarding the large size of the facilities; however OJP stated in its response that it coordinated the building design with the BIA and that the BIA never expressed any concerns. Part of that discrepancy may have been related to the discrepancies in planned bed spaces, which OJP admits existed with regard to the March 2007 master plan and OJP's knowledge of the project. We never received documentation approving the increased building size and bed spaces. While OJP indicates in its response that bed spaces did not affect the scope of the project, this also conflicts with information we received from an OJP official during our fieldwork, who stated such a change would require OJP approval. It also conflicts with the OJP Financial Guide, which states that a change in scope that requires a GAN includes a change in scope that affects the budget. As shown, the increase in bed space increased the total cost of the facilities by approximately \$25 million at Tuba City and \$8 million at Kayenta. This is a change in the budget that would, therefore, require a scope change. Additionally, such changes should have required approval as the additional space necessitates additional resources to manage larger capacities and should have been coordinated with the BIA. We believe that the lack of approvals and diligent oversight with regard to those changes may have contributed to the apparent miscommunications with the BIA, and thereby resulting in the Tuba City facility that only has resources to operate at 18 percent of the total capacity, as well as potential funding issues with

the Kayenta facility once it is operational. The Navajo Nation also reported that the Crownpoint correctional facility with 48 beds “is not receiving sufficient operation and maintenance funding and is not being used to its full capacity.” Therefore, none of the large correctional facilities are being used to their full potential, even the facility that was built with Navajo Nation’s funds to the size stated in the master plan.

Finally, both OJP and Navajo Nation indicated that the size and capacities of the facilities are not excessive given Navajo Nation’s population, calls for police service, and general criminal justice needs. Specifically, Navajo Nation had decreased arrests due to crimes that were not being prosecuted as a result of jail space limitations. OJP stated in its response that in December 2014, the agreement with the DOJ that prevented the Navajo Nation from housing inmates on its land, was lifted in part due to the Tuba City facility being constructed, as well as other facilities increasing the incarceration capacity. Despite these statements, the Navajo Nation stated it “might reach out to BIA to lease jail bed spaces.” The Navajo Nation having jail bed space to consider leasing demonstrates its facilities were built in excess of need. Also, the March 2007 master plan was a comprehensive plan for the entire nation that factored in needs of each locality, individually and collectively. Additionally, Navajo Nation could not provide any data to justify its prediction of an increasing jail population. All the data that was presented to us, including the BIA data discussed previously and our observations during fieldwork identifying only 2 of the 11 pods in use at Tuba City, supports the conclusion that the capacities of those prisons are unjustifiably in excess of the Navajo Nation’s need in those regions and of its ability to fully operate the facilities as constructed.

The need for \$70.2 million in grant funding should be justified and supported by factual data, which we have yet to be provided. Of particular concern are other tribes who likely had greater need and applied but were denied for these Recovery Act funds so that the Navajo Nation could receive \$35.6 million in excess funding to build one facility that remains unopened, and another facility that is 82 percent vacant. With these excess funds, we estimate that at least three other Recovery Act projects could have been funded to address the justice system needs at other tribes.

Our detailed analysis of OJP’s and Navajo Nation’s individual bases for disagreement is discussed in the following sections.

Office of Justice Programs Response to Recommendation 9

We analyzed OJP’s statements and basis for disagreement identified in the following sections.

OJP stated in its response that the terminology used by the Navajo Nation for Grant Number 2009-ST-B9-0089 changed in terms of

square footage and inmate beds, but that it was apparent to OJP that the Tuba City project was going to be around 132 beds.

In its application for this grant, the Navajo Nation stated it would build the facility in accordance with the Navajo Nation's March 2007 master plan. That master plan stated that a 48 bed facility was needed at Tuba City, and OJP officials previously informed us that they had received a copy of that master plan. Navajo Nation submitted progress reports to OJP throughout this grant, which showed gradual increases in inmate beds, from 48 to 132 beds. Navajo Nation did not provide documentation supporting the justification for a 275 percent increase in the number of inmate beds, and it is our continued opinion that the Tuba City corrections facility was built materially in excess of need. Additionally, on March 19, 2015, we asked OJP officials about the increase in beds, and they were unable to provide a reason why the bed count increased. During fieldwork, the BJA also informed us that a GAN should have been requested for increased inmate beds as this would be considered a change in project scope, which contradicted OJP's response to this report indicating that such a GAN was not necessary because the size of the facility did not change. The OJP Financial Guide states that a change in scope that requires a GAN includes a change in scope that affects the budget. As shown, the increase in bed space increased the total cost of the facility by approximately \$25 million. This is a significant change in the budget and would, therefore, require a scope change approved through a GAN.

OJP stated in its response that for Grant Number 2009-ST-B9-0100, the Kayenta project had increased in scope and bed size, which was approved by OJP through GAN 14 on August 7, 2012.

OJP provided a copy of GAN 14, which the Navajo Nation requested and received to construct a support building with excess grant funds. In its GAN request, the Navajo Nation requested "a scope change to construct a Support building in addition to the corrections facility" and also mentioned as background information that "currently, with the programming changes instead of a 32-bed facility, NDOC will construct an 80 bed adult correction facility with a 4 bed temporary holding for Juvenile." The expansion from 32 to 80 adult beds was stated in the GAN request, but OJP did not state in its approval that the increase in number of inmate beds was approved. Specifically, OJP stated in GAN 14 that "the Navajo Department of Corrections has planned for a correctional facility, and in the planning it had some funding available for a program support building. Based upon this, the NDOC will be adding a support building to construct with funds. Therefore the scope of work will change." Twelve additional pages of supporting documentation included in the GAN request only discussed the addition of a support building, and provided no justification for increasing the number of beds at Kayenta. We concluded that OJP's approval of GAN 14 was also only for the support building. We were not provided documentation that the change in bed space from 32 to 80 adult beds was ever officially approved. Additionally, the Navajo Nation's March 2007 master plan stated that only

32 beds were needed at Kayenta. OJP did not request or provide any documentation supporting the need for the 250 percent increase in the number of inmate beds.

OJP stated in its response that the Navajo Nation has a population of approximately 250,000 across an area the size of West Virginia, and that the addition of 212 inmate beds at Tuba City and Kayenta was therefore not excessive for that population.

We note that Tuba City and Kayenta were not the only corrections facilities being built on the Navajo Nation, and neither location is centrally located for easy access from other districts. The Navajo Nation has received a number of DOJ grants in recent years for renovation of existing corrections facilities, and has also constructed a number of new corrections facilities with DOJ grants and non-DOJ funds. Specifically, a judicial complex including a 48-bed corrections facility was built in Crownpoint, a judicial complex is currently under construction at Chinle, and a new facility is planned for Shiprock starting in 2016. According to the Navajo Nation's March 2007 master plan, each of those locations needed a 48 bed facility. In total the March 2007 master plan stated a need for a total of 13 new facilities in 12 districts across the Navajo Nation: five Large District (48 beds each), three Medium District (32 beds each), four Small District (16 beds each), and one standalone Correctional Rehabilitation Center (388 beds). Per the master plan, the Tuba City and Kayenta corrections facilities were intended to serve the local needs for 2 of 12 districts across the Navajo Nation. Therefore, we believe the geographic size of the entire Navajo Nation and its overall population are not applicable to the size of this one facility, particularly since the master plan was designed to address overall need, and yet was not followed. This information does not justify such large increases in the size of these two facilities, particularly because it is apparent that Navajo Nation does not have the capacity to staff or the inmates to fill the facilities, which remains unopened at Kayenta and 82 percent vacant at TubaCity.

OJP stated in its response that there was some discrepancy with the recommended size for the facilities in relation to the 2007 Master Plan, but no formal scope change was required since size requirements for Tuba City and Kayenta were not specific to inmate bed counts.

It is our opinion that increases of 250 percent and 275 percent are significant with respect to the Navajo Nation's stated need for the grant, as measured by bed space for inmates. While the Navajo Nation's application documents for these grants did not specify bed counts for either location, each application stated that the Navajo Nation was applying for the grant based on the Navajo Nation's March 2007 master plan, which made the master plan an inseparable part of each application. Each application stated specific square footages for each location, and the master plan stated those same square footages for each location. The master plan provided construction budgets

that exactly matched the grant application amounts, and the master plan also stated the number of inmate beds needed for each location. The data we have been provided supports the need stated in the application for 48-bed and 32-bed facilities. We have not been provided verifiable information that supports the combined 525 percent increase in incarceration capacity. While conducting fieldwork in February 2015, a NDPS official stated that the correctional facility sizes were increased after learning they would not be able to build the court and law enforcement building with the Recovery Act funding. Based on our audit results, we determined that the project scope at each site was expanded due to excess funds available through the grant, but not actual need for such a large facility. With these excess funds, at least three other Recovery Act projects could have been funded to address the justice system needs at other tribes.

Navajo Nation Response to Recommendation 9

The Navajo Nation also stated it did not concur with the recommendation. We analyze statements from the Navajo Nation's response in the following sections.

The Navajo Nation stated that the building sizes were not excessive, because each grant built a smaller square footage building than was stated in the grant application materials.

The Navajo Nation does not discuss in its response that the grant applications were based on the total square footages stated in the March 2007 master plan. For Tuba City, the master plan stated need for a 111,848 square foot multi-purpose justice center, composed of a 48-bed correctional facility, a courthouse, and a police station, at a budget of \$38,587,560. NDPS applied for and was awarded the grant based on that information, but then used the entire grant amount to build a 132 bed correctional facility, and used non-grant funds to build the court building and police station. As Table 4 in our report shows, the grant-funded correctional facility was increased from 52,790 square feet to 87,709 square feet, while the non-grant-funded buildings were constructed 2,724 square feet smaller than the master plan stated was needed. Contract documentation for Tuba City construction showed that the entire multi-purpose facility was initially going to be built in accordance with the master plan using a loan, but after the grant was awarded, the court and police buildings were built with the loan and the corrections space was built with the grant. Documentation also stated that the Tuba City corrections building was expanded in size because of receipt of the grant.

For Kayenta, the master plan stated the need for a 91,036 square foot multi-purpose justice center, composed of a 32-bed correctional facility, a courthouse, and a police station, at a budget of \$31,407,420. NDPS applied for and was awarded the grant based on that information, but then used the grant amount to build an 80-adult bed correctional facility and a police

station, and then did not build the court component. As Table 5 in our report shows, the grant-funded correctional facility was increased from 47,727 square feet to 54,455 square feet, the police station was increased from 10,232 square feet to 13,427 square feet, and the 28,265 square foot judicial component was not built. The total square footage built with the grant was smaller than stated in the master plan because the judicial component was not built. Furthermore, despite the 21 percent reduction in square footage built, the Navajo Nation still spent the entire grant.

The Navajo Nation also made the following assertions to justify the 275 percent increase in inmate beds at Tuba City and the 250 percent increase in inmate beds at Kayenta.

Grant Applications

The Navajo Nation stated that while the grant applications mentioned the master plan, the applications did not specifically state the number of inmate beds needed.

However, the program abstract, application narrative, and application budget for each construction grant specifically referenced the March 2007 master plan, which, again, makes the March 2007 master plan an integral and inseparable part of the Navajo Nation's application. The application for each grant requested the exact dollar amount and square footage stated in the master plan for the entire justice complex at each site: \$38,587,560 for 111,848 square feet at Tuba City and \$31,407,420 for 91,036 square feet at Kayenta. The Navajo Nation also provided a copy of the master plan to the BJA. As mentioned, once the Navajo Nation learned they could not build the entire justice complex with Recovery Act funds, the sizes of the correctional facilities were increased. The increases were not justified to or officially approved by OJP.

Master Plan

The Navajo Nation stated that the master plan prototypes were intended to be "adjusted during design to accommodate variations in staffing and operations for each District location."

A 275 percent increase in inmate beds at Tuba City and 250 percent increase in inmate beds at Kayenta, are, in our opinion, more than an accommodation of variations in staffing and operations. As we noted previously, the master plan included district-specific data and stakeholder input, and contract documentation specifically stated that the Tuba City facility was enlarged solely because the grant was received.

Increases in Number of Beds

The Navajo Nation stated that inmate beds were increased as a result of meetings with the Navajo Nation, its project manager, and the general contractor.

OJP officials told us that increases in bed counts would be considered a scope change which would have required a GAN, although this contradicts OJP's current response to our report, which states no GAN was needed. According to the OJP Financial Guide, a change in scope that requires a GAN includes a change in scope that affects the budget. As shown, the increase in bed space increased the total cost of the facility by approximately \$25 million. No GAN was requested for the Tuba City location related to increases in inmate bed counts or construction costs for the detention facility. The GAN submitted to add the support building stated funds were available to support the project scope change. As part of the GAN request, the Navajo Nation mentioned program changes from 32 beds to 80 adult beds. However, the Navajo Nation's GAN request was only to add a support building. The supporting documentation provided was also only for the addition of the support building. Ultimately, OJP's approval was also only for the support building. As such, the Navajo Nation never received formal approval from OJP to expand the bed count from 32 to 80 adult beds.

After receiving the Navajo Nation's response to the draft report, we conducted another review of the 2012 planning study provided by the Navajo Nation that stated 80 adult beds were needed at Kayenta. However, we found evidence to question the validity of the study. Specifically, Navajo Nation started re-design of the corrections facility and added the support building to the project scope in January and February 2011, respectively. Both events occurred over one year before the planning study was complete. Further, an NDPS official told us that the correctional facility sizes were increased due to the realization that the Navajo Nation could only build the correctional facility with grant funds rather than the entire justice complex. That information led us to scrutinize the study further, and we found that it showed a 4.4 percent decrease in Kayenta's general population from 2000 to 2010, yet projected a 1 percent increase from 2011 to 2021 "based on economic growth within Kayenta and anticipated migration". However, no data was presented to support the 1 percent increase. We also found the study added 22 beds for "unmet needs as defined by the stakeholders," an unsupported increase of nearly 38 percent.

Rehabilitation Center

The Navajo Nation stated that the size of the detention components in the March 2007 master plan was based on the planned construction of a larger Navajo Correctional Rehabilitation Center, and the Tuba City and Kayenta facilities were expanded because the Rehabilitation Center was not built.

According to the master plan, the rehabilitation center would be a 388-bed correctional facility planned for a central location, and the master plan suggested Shiprock, New Mexico, as a possible location. Tuba City and Kayenta are not centrally located on the Navajo Nation—Kayenta is more than 100 miles west of Shiprock and Tuba City is about 175 miles west of Shiprock. Additionally, contract documentation specifically stated that the Tuba City facility was enlarged because the grant was received; there was no mention of using the Tuba City facility to eliminate need for the Rehabilitation Center in any project documentation. Finally, the BIA has stated that funding would not be available to fund the Tuba City facility in full. Currently, the Tuba City facility only has 10 correctional officers to operate the 132-bed facility. As a result, only 2 of the 11 pods can be used. According to a status report submitted to the Law and Order Committee of the Navajo Nation, the Crownpoint facility, which is a very large structure, “is not receiving sufficient operation and maintenance funding and is not being used to its full capacity yet, whereas another area could have benefited from the same type of facility and services.” As a result of building excessively large correctional facilities, the Navajo Nation does not have funding to fully operate any of the DOJ and non-DOJ funded buildings.

Calls for Service and Other Statistical Data

Prior to the issuance of this report in final, the Navajo Nation provided statistics in addition to calls for service and court case statistics from 2000 to 2014 originally provided in the Navajo Nation’s response related to the Tuba City and Kayenta districts. The new statistics included calls for service, arrests, new bookings, and court case data. Upon further review of this new data, we determined that it conflicted with the other data provided by the Navajo Nation in its response. Further, it conflicted with data that Navajo Nation reported to the BIA. As a result, we could not validate its reliability as Navajo Nation did not provide supporting documentation for the data. Additionally, the calls for service, arrest data, and new booking information does not necessarily correlate to bed space usage at either facility as some of these arrests and bookings could result in overnight stays in a temporary holding cells rather than longer-term stays which would use bed space. As a result, this type of data neither supports the Navajo Nation’s claims that the need for incarceration capacity is on an upward trajectory, nor adequately supports Navajo Nation’s contention that it needs such a large facility. As stated previously, all of the data we have been provided regarding actual inmate populations, as well as our own observations on site, evidence that the facilities were built in significant excess of actual need, at a significant cost to the government. As of 2014 the average daily population, which takes into account the length of stay, was 15.6 inmates for Tuba City and 10.9 inmates for Kayenta. The new data did not indicate that those figures were incorrect, and they were based on figures that the Navajo Nation reported to BIA directly. Further, these numbers do not support the Navajo Nation’s claim of increased need for jail space beyond the planned

48 beds at Tuba City and 32 beds at Kayenta, regardless of how many calls for service, arrests, bookings, or court cases it has.

Police Officer, Prosecutor, and Court Judgment

The Navajo Nation stated that arrests and jail occupancy are influenced by factors including judgment of police officers, prosecutors, and judges, who can all be influenced by current jail occupancy.

However, those factors would have been addressed in the planning process for the March 2007 master plan. As a result, the Navajo Nation should have followed the capacities identified in the master plan rather than increasing capacities without support and express OJP approval for additional need. As the master plan stated:

This document is the result of the several months long master planning effort, which included the following:

- A series of interactions between staff and administration of Courts, Corrections and Police from all Districts and Consultants;
- A study of existing reports, data, plans, and projections of growth across the Navajo Nation;
- A consensus building workshop that considered the Individual needs of the Districts, as well as the Navajo Nation as a whole; and
- A follow-up meeting with members of the steering committee and staff.

Jail Occupancy

DOC provided statistics which stated that for January through June 2015, average daily occupancy for Kayenta ranged from 15 to 17 inmates and average daily occupancy for Tuba City ranged from 51 to 66 inmates.

We note that during our February 2015 fieldwork, we observed only one cell in use during our tour of the old Kayenta jail, which had 2 cells that could hold up to 30 inmates. At the new Tuba City facility, DOC officials informed us that only 2 of the 11 pods were staffed with DOC personnel, thereby resulting in a total capacity of 24 inmates for the Tuba City facility. According to NDPS officials, one of the two pods in use at Tuba City housed inmates from the Kayenta district that would be move to the Kayenta facility once opened. Additionally, the new statistics provided by DOC did not break down which inmates were housed in cells with inmate beds designed to hold

inmates for long-term stays and which inmates were housed in holding cells – larger rooms that accommodate large groups of people for short-term overnight or day-long stays. While we were onsite at Tuba City, we noted that most of the inmates were in holding cells, thereby leaving the prison 82 percent vacant. The Navajo Nation also stated that the BIA data only shows data as of the end of the month and new bookings. However, we noted that the BIA data, which was provided to BIA by DOC, also included statistics about which day of each month was most crowded and how many inmates were housed on that day. As stated previously, the BIA data showed that Tuba City had a high of 49 inmates in the facility on one day between 2008 and 2014, with a monthly average of only 17.6 inmates. For 2014, which was the first full year of operations at the new Tuba City facility, the maximum number of inmates was 36, while the average monthly occupancy was only 15.6. At Kayenta, there was a high of 24 inmates between 2008 and 2014, and a monthly average of only 9 inmates. The new Kayenta facility remains unopened. We note that even based on the Navajo Nation's reported inmates, and assuming those inmates were housed in cells with beds, the Tuba City and Kayenta facilities were built 200 and 500 percent larger than need, respectively.

Leasing Jail Space

The Navajo Nation stated that DOC might reach out to BIA to lease jail bed spaces for BIA-operated tribal detention operations.

We note that this alternative demonstrates that the Navajo Nation has excess bed space, which is the result of building excessively large detention facilities. Additionally, it would turn at least part of the grant-funded facility into an operation that generates additional revenue from the federal government, which would require additional scrutiny and oversight.

In conclusion, we reviewed explanations and documentation from OJP and the Navajo Nation, and determined that the correctional facilities at Tuba City and Kayenta were built in excess of the Navajo Nation's stated need, and the facility sizes were expanded only because the Navajo Nation received the DOJ grants. Therefore, our opinion remains that the excessive building sizes were unnecessary. We also remain concerned the Navajo Nation will continue to experience difficulties with adequately staffing and filling the corrections facilities and with receiving sufficient funding from BIA to operate and maintain the facilities.

This recommendation can be resolved when we receive evidence that OJP has developed an adequate action plan to remedy \$32,034,623 in unallowable expenditures associated with the excess building sizes, or has completed other actions that address the recommendation.

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