Newtok Traditional Council-Fiscal Management of Grants

A Special Report on the Newtok Traditional Council and the Mertarvik Evacuation Center Project, July 12, 2013.

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DCCED
July, 2013

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Sean Parnell, Governor
Susan K. Bell, Commissioner
Scott Ruby, Director

Division of Community and Regional Affairs

INTERNAL AUDIT SECTION

SUMMARY OF: Financial Compliance Audit and Performance Review on the Newtok Traditional Council (NTC) and its administration of the following Division of Community and Regional Affairs' designated legislative grants for two years ending December 31, 2012:

Grant #	Grant Recipient	Project Name	Start Date	Award	Grant Type	Status
11-DC-559	NTC	Newtok Evacuation Shelter & Access Road	7/1/2010	$ 4,000,000	Legislative	Open & Active
12-DC-550	NTC	Metarvik Evacuation Shelter & Access Road	7/1/2011	$ 2,500,000	Legislative	Open & Active

PART 1 of 2

This report is the first part of a two part audit report. The first part will focus on NTC's financial compliance with certain grant agreement terms. The second part will be a performance report concentrating on the economy, efficiency and effectiveness of NTC to meet the objectives of the grant funded projects.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

In accordance with the Division of Community and Regional Affairs' grant agreement audit requirements a financial compliance review of the Newtok Traditional Council's (NTC) grant administration was conducted. The objectives of a financial compliance review consist of an assessment of the organization's ability to conduct its financial activities in compliance with terms and conditions of the grant contract. Furthermore, the audit will review the reliability and integrity of the accounting and financial information presented by NTC to grant administrators.

Scope

The scope of the first part includes the objectives described over the course of two calendar years from January 1, 2011 to December 31, 2012. The NTC's accounting period is based on a calendar year cycle. Although grant number 11-DC-559 was effective July 1, 2010 very little financial activity occurred in the calendar year ending December 31, 2010.

In accordance with Single Audit requirements, NTC released a Single Audit report for 2010. Therefore, the scope of this review will concentrate on the two calendar years, 2011 and 2012 for which a Single Audit Report has not been issued by the date of this report. Specific auditing procedures were applied in this review with the sources of information identified within the Methodology section.

Methodology

To gain an understanding of NTC's operations and activities, I reviewed or interviewed the following sources:

- The *Traditional Constitution of the Newtok Traditional Council-Newtok Alaska;*
- The NTC *Procurement Management System – Policies and Procedures, June 1998;*
- The NTC *Policies Manual* [Date Unknown];
- The NTC *Meeting Resolutions* from January 1, 2011 through December 31, 2012;
- The NTC *Financial Audit Report for Year Ended December 31, 2010;*
- The NTC *Minutes of Regular Meeting* held from January 1, 2011 through December 31, 2012;
- The Metarvik Community Development Corporation (a nonprofit corporation) *Articles of Incorporation*, Dated August 2010;
- The Metarvik Community Development Corporation (MCDC), *Corporation Bylaws*, Dated August 2010;
- The MCDC website, *NewtokMoves.org*;
- Examined MCDC employment contracts and NTC construction contracts, procurement contracts, expenditure payments processed and classifications of expenditures;
- Reviewed the NTC accounting system for reliability, accuracy and functionality;
- Reviewed NTC expenditure reports and financial statements supporting the requests for reimbursement and sent to the Division of Community and Regional Affairs (DCRA or the Division);
- Interviewed NTC Tribal Administrator—Mr. Stanley Tom;
- Interviewed MCDC Chief Executive Officer—Mr. George Owletuck;
- Interviewed DCRA Grant Administrators—Ms. Debi Kruse and Ms. Rachael Spicer;
- Interviewed DCRA Local Government Specialist—Ms. Sally Russell Cox;
- Assessed the internal control procedures related to various objectives of the audit, including controls over procurement, contract administration and contractor services.
- *Memorandum* written by Kim Mahoney, PE, Project Manager, DOTPF to Moses Carl, President, NTC and dated September 20, 2011, Re: "Termination of MOU Agreement..."

BACKGROUND INFORMATION

The Organization

The Newtok Traditional Council or NTC is the governing body of the federal recognized native village of Newtok. Newtok is a growing Yup'ik Eskimo village located on the Yukon-Kuskokwim Delta along the western coast of Alaska, near the confluence of the Newtok and Ninglick Rivers. The NTC represents the village and exercises the powers of the village as cited in the "*Traditional Constitution of the Newtok Traditional Council.*"

The NTC has seven members who are elected by the majority of the votes cast in a village election. The NTC consists of a President, Vice-president, Treasurer, Secretary and three other members. The Newtok village acting through the NTC has significant powers which include and is not limited to the following:

- Make agreements with Federal, State and local village governments on activities which affect the Newtok village;
- Protect the peace, health, education and welfare of the members of Newtok village,
- To gain property and accept gifts;
- To administer Newtok village assets including funds and manage affairs and business of the NTC;
- To contract for services concerning economic development enterprises for the benefit of Newtok village members;
- To administer funds within the control of the NTC;
- To protect and preserve wild life and natural resources within the area under jurisdiction of the Newtok village.

The Tribal Administrator

The bylaws of the NTC provide for the delegation of certain administrative duties and responsibilities. The *Policy Manual* of NTC describes an administrator position that is hired by and work under the direction of the NTC President and Board of Directors. The administrator position is more commonly known as the "Tribal Administrator." As the President's designee the tribal administrator is responsible for the implementation of NTC policies as well as the daily administration of NTC projects. The tribal administrator provides supervision and direction to all employees. Other responsibilities include the approval of travel, disbursement of funds and conducting personnel action requests. The tribal administrator has overall responsibility for ensuring the accountability and safeguarding of NTC funds, grants and contracts. Working with project assistants and accounting staff the tribal administrator is responsible for--but not limited to: budget development and control, new revenue proposals and insures each project carries out the purpose and requirements of a grant and related contracts. Furthermore, the tribal administrator insures internal control procedures are adhered to by all personnel working for NTC as outlined in the *Procurement Management System – Policies and Procedures* and the *Policies Manual* of the NTC.

Climate change impact on Newtok requires evacuation to Mertarvik

The village of Newtok is threatened by advancing erosion caused by the Ninglick River adjacent to the village. This progressive erosion, in combination with permafrost degradation and flooding of the village during seasonal storms has created a serious threat to the existence of the village.

Years of erosion studies have concluded that Newtok must relocate as there is no permanent and cost-effective alternative for remaining at the current village site.

In 2006, the Newtok Traditional Council requested the assistance of the Department of Commerce, Community and Economic Development (the Department), with Newtok's relocation effort. As a result, the Department is tasked by two Alaska Administrative Orders--No. 231 and 239. The two orders require the Department, *"to act as the state coordinating agency to coordinate with the other state and federal agencies to propose long-term solutions to the ongoing erosion issues in...affected coastal communities..."*

In 2008, the Department engaged the commitment of the Department of Defense Innovative Readiness Training (IRT) program to assist with Newtok's relocation to Nelson Island or Mertarvik. The IRT program provides services to American communities in need while providing military training to the Armed Forces. The IRT has committed to providing assistance to Newtok's relocation but it is contingent upon the State providing building materials and support.

State support for evacuation center and adjoining road

During the legislative session of 2010, a designated legislative grant of $4 million (11-DC-559) was awarded to NTC for the construction of an evacuation shelter and to construct an access road to the shelter at Mertavik. In the grant agreement the scope of the project is defined as: *"The design and construction of an evacuation shelter and building materials for the construction of an access road to the shelter. This project is part of Newtok's multi-phased relocation to Nelson Island [Mertarvik]. The evacuation shelter will provide a staging facility during the relocation effort."*

In the 2011 legislative session, another designated legislative grant for $2.5 million (12-DC-550) was awarded for the continuing support and to allow the state Department of Transportation and Public Facilities (DOT/PF) to continue working with the NTC and the Pentagon's IRT program. The grant agreement contained the following project description: [Project includes] *"costs associated with relocation to include long term sustainability of the community, such as: continued design; environment permitting; purchase of road and building materials; building and road materials mobilization/shipping; well drilling; foundation pile driving for wastewater treatment plant; fuel tank and building foundation; gravel; wastewater treatment system; ongoing engineering and permitting; planning, project management, [and] consulting services."*

These two grants have contributed to the Department's mission of promoting a healthy economy and strong communities by providing the means of economic growth in the state's communities and fulfilling the requirements of the Administrative Orders No. 231 and 239.

Figure 1. The beginning of a new village--Mertarvik Barge landing, Access road and evacuation center foundation (right). Photo: Harvey Smith, DOT/PF

Development of the Memorandum of Agreement

During the fall of 2010, DOT/PF entered into a Memorandum of Agreement (MOA) with NTC to manage and supervise the construction of the Mertarvik Evacuation Center (MEC). The source of funding for management and construction was the FY 2011 designated legislative grant of $4 million. As the construction manager, DOT/PF engaged several contractors to work on various aspects of the new village site at Mertarvik. From the fall of 2010 to late summer of 2011 the following objectives were met:

- Architects and planners were engaged for the architectural plans. Engineers provided services for civil, structural, mechanical and electrical engineering;
- The site's septic system, water well and water system were designed, installed and inspected;
- Environmental services and studies were provided for the work site and a quarry--used as a source of gravel;
- Inspections were conducted as required by the EPA Clean Water Act and the "Construction General Permit" was obtained, plus;
- A subcontractor constructed the piling foundation, structural deck and drilled the water well.

The companies providing for the above services billed DOT/PF as the contracting agency. In turn, DOTPF billed NTC for the invoices received by subcontractors and added overhead expenses for services rendered by DOT/PF personnel.

Bezek Durst Seiser Architects or BDS were prime consultants responsible for the architecture. PDC Engineers were sub-consultants responsible for civil, structural, mechanical and electrical engineering. The design plans for the MEC were prepared by both BDS and PDC.

After the termination of the MOA with NTC, DOT/PF's main concern has been, "any changes made to design [such as the building attached to the foundation] are required to be reviewed and accepted by the newly appointed Alaskan Engineer/Architect of record. The existing foundation installed 2011, requires point loading or "columns" at each steel piling."

Once NTC took responsibility of the project—it was decided the type and nature of building structure would be—prefabricated polyurethane structural insulated panels (SIPs). The SIPs have yet to be proven compatible with the existing foundation structure—designed by BDS.

According to experts, "modification to the BDS design requires close attention to the engineering to ensure a safe, long-lasting structure able to withstand the wind, snow and live [heavy] loads to the structure." The BDS design has been permitted by State Fire Marshall's offices—as a public building—at that location. Design modifications (such as SIPs) require a separate approval from State Fire Marshall's office.

Architectural Designs by BDS

DOT/PF engaged the firm of Bezek Durst Seiser Architects and Planners (BDS) to design the new evacuation center for the relocated village of Newtok. The company cooperated with NTC, the state and federal agencies to develop a site plan and infrastructure to withstand the demanding weather in that part of Alaska.

In order to develop a building with a strong cultural link, the designers incorporated traditional elements based on input from the Newtok Traditional Council, the Elders, and the Newtok Planning Group. The following renditions of the proposed Mertarvik Evacuation Center were provided by the firm Bezek Durst Seiser Architects.

Figure 2. From the firm Bezek Durst Seiser Architects *of Alaska*

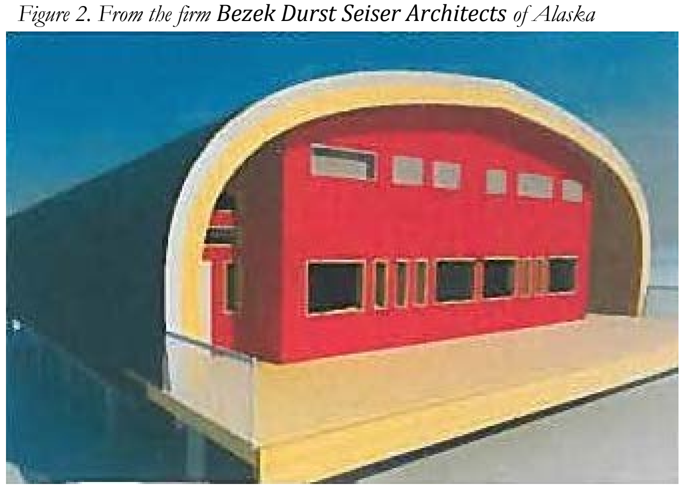

Figure 3. From the firm Bezek Durst Seiser Architects *of Alaska*

On September 14, 2011, the NTC Tribal Administrator—Stanley Tom called the DOT/PF project manager in charge of the Mertarvik project. Mr. Stanley Tom requested the existing MOA between DOTPF and NTC to be dissolved. The following month the MOA was dissolved and the project, with several contracts in progress, was turned over to NTC's administration.

At the end of the MOU the costs incurred by DOTPF were $2,604,309. At that point the foundation of the evacuation center was completed and ready for the construction and attachment of a building structure.

Background and events leading up to the dissolution of the MOA

Prior to the cessation of the MOA certain events occurred with the council's members and the tribal administrator which eventually lead to the unfolding of DOT/PF and NTC's relationship. During September of 2010, the NTC created the non-profit Mertarvik Community Development Corporation or MCDC. The President, Vice President, Treasurer, Secretary and three members of NTC held similar positions with the newly formed MCDC. As indicated in the corporation's bylaws the purpose of the corporation was the provision of: economic development activities, sustainable housing, charity and educational purposes.

It appears MCDC's fiscal and program activities were minimal until the summer of 2011. At that time, there was an effort to hire an administrator or Chief Executive Officer (CEO) for the corporation. On June 15, 2011—Mr. George Owletuck submitted an application for the position. According to an employment contract dated August 24, 2011—Mr. Owletuck was hired by Mr. Moses Carl as President of both NTC and MCDC. The CEO duties were outlined in the employment contract and consisted of the following:

> "*The CEO's duties shall include, but are not limited to, raising funds, management of contract and corporate services, management, oversight and negotiations in connection with the subsidiary Mertarvik Community Development Corporation, professional services, fiscal affairs, corporate assets, corporate meetings, corporate representations and such functions and duties as the Mertarvik Community Development Corporation Board of Directors, or President may direct from time to time, or as required by Newtok Traditional Council.*"

In a NTC meeting on August 28, 2011 the council passed a resolution, *"To transfer $250,000 Gravel Sales Revenue from the NTC $2.5 million Alaska Legislative grant to the Mertarvik Community Development Corporation for Economic Development purposes."*

On September 14th, the tribal administrator called the DOT/PF project manager—Ms. Kim Mahoney and asked for a termination of the MOA between the two parties.

Without the benefit of direct evidence, it appears by the beginning of September—2011, the Newtok Traditional Council decided it had the management to administer construction of the MEC and the adjoining road access. This conclusion is drawn because of the circumstantial evidence found within: NTC meeting minutes, NTC employee emails and MCDC memorandum.

The following summarizes the aforementioned and other significant events within the given time line:

- August 18th the NTC President signs the grant agreement identified as: "12-DC-550",
- August 24th the CEO was selected and the employment contract was signed,
- August 28 the joint meeting of NTC and NNC voted to "transfer $250,000 to MCDC",
- September 12th NTC requested an "advance" of $99,080 for supplies and wages for the Project Director [CEO], Tribal Administer, Project Assistant, Accountant, Accounting Assistant and Inspectors (Prior to this advance there had been no reimbursement requests for administrative payroll)
- September 14th the CEO submitted memorandum requesting retroactive pay back to July 1, 2011—this was one of the terms of the employment contract signed August 24th,
- September 14th the Tribal Administrator requests DOT/PF to dissolve the MOA,
- September 23rd five employees consisting of: the CEO, Tribal Administrator, Accountant, Project Assistant and Accounting Assistant all received back pay starting at July 1, 2011 to September 2, 2011.

There is conflicting evidence as to when the new MEC project team was actually assembled. If one accepts the five employees' time sheets as factual record of work then accordingly July 1st would be the starting work date. Considering the timeline and the chain of events, one could rightfully argue the actual starting work date was probably during the first or second week of September.

Nevertheless, either before or after the appointment of the CEO and the dissolution of the MOA—the NTC members decided to abandum the architecture plans and structural designs provided by the firm Bezek Durst Seiser Architects or BDS.

It's well known, the MEC requires architecture that is long-lasting and resistant to severe weather. To overcome these obstacles and to reduce costs it was determined by NTC to utilized pre-fabricated building systems made with polyurethane foam core, "Structural Insulated Panels" or SIPs. On January 6, 2012, a Request for Proposal (RFP) was advertised in the state's newspapers. Proposals were obtained from 3 manufacturers, two from Alaska and one from Colorado. According to records provided by the CEO, on February 1st the NTC issued a notice of intent to award the contract to the Colorado firm "Earthcore SIPs." The winning bid was $774,107 for the manufacture of panels to fit the foundation designed by BDS.

With the NTC contract, Earthcore SIPs hired the Colorado architectural firm of, "George Watt Architecture" to design a SIPs panel structure that would accommodate the existing foundation designed by the Alaskan architectural firm BDS. A review of the Division of Corporation, Business and Professional Licensing's data base for Alaska licensed architects disclosed, George L. Watt with an address in Boulder, Colorado. Also, it indicates Mr. Watt's Alaska license was first issued on August 9, 2012. This is one month passed the delivery date of the SIPs panels to the Mertarvik site. This issue will be addressed in the next Performance Audit report--"Part II."

Nevertheless, the following figure no. 4 is Mr. Watt's rendering of the SIPs manufactured building once it is assembled in Mertarvik. On July 10, 2012 the SIP panels, lumber, gravel and equipment were delivered to the MEC site. With that shipment, all the supplies necessary to assemble and construct the evacuation center had been delivered.

Figure 4. From the firm, George Watt Architecture of Bolder Colorado.

From September 7th to September 19, 2012 advertisements were made with another RFP. This RFP was a solicitation for a project superintendent and construction manager to oversee local labor and supervise the assembly of panels and construction of the MEC. According to minutes of a NTC meeting held September 28th the council considered two companies for superintendent services. The council voted to select Kenai Manufacturing LLC (the Kenai Company) as the preferred applicant. During a recent interview with the Kenai Company owner he stated, "*Kenai Manufacturing began invoicing NTC for "planning and preliminary" work during November 2012 and ultimately received a payment of $35,000 during March or April of 2013.*"

The history and significant events just described lead up to the last "Progress and Request for Reimbursement" reports submitted for each grant at the end of December 2012. There has been no "requests for reimbursements" in 2013. However, at the beginning of 2013, NTC submitted a request

The figure at left is George Watt Architecture's (GWA) rendering of the SIPs manufactured building.

Citing GWA's website the following was provided as background information: *"Numerous discussions and work sessions with members of the Council, a personal survey of every member of the village conducted to understand individual concerns (and dreams), and deep research into cold climate construction informed our designs. The first building due to be completed in summer 2013 is the Mertarvik Evacuation Center, the foundation and platform for which was built last season. This net-zero energy building has been designed to provide shelter during a flood event in Newtok, transition to a construction camp support building, and eventually become a community center while the village homes are built out."*

for an advanced funding of $63,600. The purpose of the advance was for 3 separate invoices for the: construction superintendent, NC Power Systems and freight.

Based upon the "Progress and Request for Reimbursement" reports for 2011 and 2012--the below schedule are the results of NTC's financial activity compiled by account and calendar year.

Newtok Traditional Council
Schedule of Grant Expenses by Calendar Year

	Date Ending December 31, 2011		Date Ending December 31, 2012		
Grant Number	11-DC-559	12-DC-550	11-DC-559		12-DC-550
Original Grant Award/Balance Forward From 2011	$ 4,000,000	$ 2,500,000	$ 2,726,570	(a)	$ 2,313,972
DOTPF Construction Project	1,272,287		1,488,362		
NTC Construction Project			370,343		696,696
Professional Fees			9,740		2,660
Equipment		1,453	83,119		3,451
Fuel			22,184		
Admin Wages - NTC Construction Proj.		167,822	283,830		20,643
Payroll Expense		10,518	23,070		2,198
Travel	1,143	6,098	5,458		616
Administrative		137	13,087		16,150
Total Expenses	1,273,430	186,028	2,299,192		742,414
Difference Between Award and Total Expenses	$ 2,726,570	$ 2,313,972	$ 427,378		$ 1,571,557
	(a)	(a)			
Add: Duplicate Payments to Vendors - Disallowed Expense (See Appendix A-Figure 5 and Audit Recommendation No. 1)			195,699		
Net Balance Available From Grants As of December 31, 2012			$ 623,077		$ 1,571,557
			(b)		(b)

Legend:
(a) -- Ending Balance from 2011 to Beginning Balance 2012
(b) -- Reconciles to Division's "Balance Remaining"
for Grant Reports No. 26 and 18, Respectively

Acknowledgements:

DCCED/DCRA Website:
www.commerce.alaska.gov/dnn/dcra/PlanningLandManagement/NewtokPlanningGroup
Mertarvik Airport Site Selection Study AKSAS No. 52240 December 2012 Final
State of Alaska Capital Project Summary for SB230, Ch.43 FY2010 and FY2011
State of Alaska Capital Project Summary for SB46 Combined Enacted FY2011 & FY2012
Correspondence from CEO George Owletuck to NTC Tribal Administrator Stanley Tom on September 14, 2011, RE: Timesheets
Employment Agreement entered into August 24, 2011 between NTC and George N. Owletuck for CEO position with MCDC
Correspondence from Project Manager Kim Mahoney to NTC President Moses Carl on September 20, 2011, Re: Termination of MOU Agreement between DOTPF and NTC
DCCED/DCRA Website: www.bdsak.com/index.php/portfolio/state-of-ak-mertarvik-evac-center

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1
The Division should take measures to require the Newtok Traditional Council (NTC) to return funds related to certain costs that are unallowable. The Bill for Collection for the grant 11-DC-559 would be $215,139 and for grant 12-DC-550 is $87,405.

The disallowed costs for 11-DC-559 consist of: "$195,699--for Duplicate Payments on Invoices," and "$19,440--Accounts Payable disbursements to the CEO of Mertarvik Community Development Corporation (MCDC)." The disallowed costs for 12-DC-550 are: "$66,762--Retroactive Wages for Employees" and "$20,643--Paid to the CEO for bogus reasons." Combining all of the disallowed payments the total is $302,544. The details of the disallowed transactions are as follows:

$195,699--for Duplicate Payments on Invoices--The $195,699 relates to duplicate reimbursement payments on the same vendor invoice. An examination of the invoices submitted as "backup" information for the Division's form "Project Report and Request for Reimbursement" uncovered three invoices that had been submitted twice for reimbursement. The invoices consisted of: (1) a purchase of equipment for $38,970, (2) a DOTPF billing of $156,340 and (3) a newspaper advertisement of $389. The detailed information of these transactions is as follows:

Duplicate Payments on Invoices For Calendar Year 2012						
Grant				11-DC-559	12-DC-550	Total
Submitted and Paid--Request for Reimbursement Forms						
Report No.	Reporting Dates		Description			
19	5/1/2012	5/30/2012	DOTPF Invoice	$ 156,339.79		$ 156,339.79
20	6/1/2012	6/30/2012	DOTPF Invoice	156,339.79		156,339.79
19	5/1/2012	5/30/2012	Purchase Machinery	38,970.00		38,970.00
24	10/1/2012	10/31/2012	Purchase Machinery	38,970.00		38,970.00
23	9/1/2012	9/30/2012	Fairbanks Daily News	389.25		389.25
15	9/1/2012	9/30/2012	Fairbanks Daily News		389.25	389.25
			Totals	$ 391,008.83	$ 389.25	$ 391,398.08
					Due From NTC for Duplicate Payments:	$ 195,699.04
					($391,398.08 divided by 2)	

$19,440--Accounts Payable disbursements to the CEO--There were two transactions amounting to $52,670 in 2011 that should have been processed as payroll to the employee. The MCDC—CEO's retroactive pay ($33,230--see the following section) and the CEO's payroll ($19,440) from September 1st to October 15th were processed as vendor payments through accounts payable. These direct payments to an employee and bypassing payroll are a violation of IRS rules and regulations. The federal government requires payroll taxes to be withheld and paid on employees. There are substantial fines; penalties and interest on such tax matters. Whether the CEO of MCDC (hereafter, the CEO) is an employee of MCDC or NTC is answered in the employment contract.

The employment contract signed on August 24, 2011, specifies under Section 2--Salary (a): *"Employer [NTC] agrees to pay CEO hours his services $90 an hour payable in the same installments as other employees of Newtok Traditional Council."*

The State grant agreement does not provide the reimbursement of "costs" that are illegal or contrary to IRS tax laws and regulations. Such matters are against the "public purpose" of the funding. However, of the two transactions the $33,230 for retroactive pay has already been disallowed for reasons provided in the next section. This leaves the $19,440 payment as disallowed costs.

$66,762--Retroactive Wages for Employees--The CEO negotiated an employment contract that provided for retroactive pay from July 1, 2011 to the hire date August 24, 2011. On September 14, 2011 the CEO submitted a memorandum to the tribal administrator requesting payment of $33,120 for "alleged" hours worked in the two months--July and August. Coinciding with the CEO's request, the tribal administrator and 3 newly hired employees—a project assistant and two accountants, filed time sheets reporting payroll for the same period. The tribal administrator submitted his timesheet and approved the four other payroll requests. This was the first time administrative wages were submitted for reimbursement with the state grant.

The time sheet hours and pay rate for each of the five individuals--reconciles directly to compensation described in a budget prepared by the CEO. The budget was prepared sometime after he was hired on August 24th. The budget has been reproduced with Figure 1 on Appendix A. The column titled, "Sept. 2 Advance" corresponds directly with each position's compensation for July and August. The payments consist of:

Position or Individual	Retroactive Pay	
CEO	$	33,120
Tribal Administrator	$	13,230
Project Assistant	$	6,804
Accountant	$	6,804
Accountant Assistant	$	6,804
Total	$	66,762

This author discussed the retroactive pay with the CEO. The CEO's response: *"he was working on MEC issues during those two months."* To find evidence that services were provided the CEO was asked to provide emails demonstrating his involvement with the MEC project. The emails disclosed there were insignificant and limited efforts contributing to the MEC project. However, Mr. Owletuck was also receiving $500 a month for consulting services during July and August. Which begs the question—were the consulting fees for the limited services provided in June and August? Common sense question's the validity of a tale—a person will work two months, full time, without knowing he will be paid.

The tribal administrator, project assistant, accountant and accounting assistant provided a description of work activities during the two months. These narratives are reproduced and available for review with Appendix B—figure 2. After analyzing the narratives of work activities, one is left with the opinion, there was no real contribution of effects for the project at hand—the planning for the MEC's construction.

Another stretch of the imagination is the $6,804 of compensation paid to each newly hired employee: project assistant, accountant and accounting assistant. To reach the $6,804 reported in the budget, it required each position to report 3.73 hours a day--5 days a week—for 9 weeks. It is highly improbable that 3 individuals would actually work the same hours and days as reported.

There is no obligation of the State to "fund" retroactive pay stipulated in the CEO's employment. The $66,762 was not based on hours worked—evidence supports these amounts were derived from an estimated budget. Reimbursable expenditures for salaries are based on "bona fide services" and efforts provided for the project.

$20,643--Paid to the CEO for Bogus Reasons--On February 8, 2012, the CEO wrote NTC's payroll service contractor the need to finish payroll for 2011. The CEO's correspondence in an email stated: *"Ladies: I helped engineer this $2.5 M [million] appropriation for Newtok. Please see the spreadsheet; I am owed pay for my hours remaining; what is the status?"*

The payroll service contractor, Ms. Julia Reader of MCAC-CPAs, returned with an email on February 9th in which the following statement was written:

"In reviewing the files this morning, this is what I found.

George Owletuck was paid in 2011 Grant 12-DC-550:	$ 39,837	through payroll
	$ 33,120	through accts payable
Total 12-DC-550 Wages	$ 72,957	
Total 12-DC-550 Fringe Est.	$ 3,529	On payroll wages

If I am reading your budget correctly, there was $93,600 allocated for the CEO position with another $37,400 in fringe benefits. This would leave in the budget as of 12/31/11 **$20,643** for wages and $33,871 for fringe benefits."

Later on the same day the CEO responded to Ms. Julia Reader, "*Excellent, thank you*!" The CEO's response and Ms. Reader's above email was also copied by the CEO to the tribal administrator--Stanley Tom. Obviously this was done to keep Mr. Tom apprised of Mr. Owletuck's intentions.

On February 23, 2012 the $20,643 payment was made to the CEO through the payroll process. However, for purposes other than transparency, it was described incorrectly on the payroll stub as, *"Payroll occurring from December 18 through December 31, 2011."* The $20,643 was merely the results of a calculation derived from the CEO's estimated budget of hours to be worked in 2011, versus, actual hours compensated for 2011.

The $20,643 payment was discussed with the CEO on May 10th of this year. His response was, *"it's my understanding this is [the $20,643] for unpaid time and benefits."* However, the "*benefits*" described in his budget and mentioned by Mr. Owletuck were never included in the CEO employment contract. As for "*unpaid time*"—Mr. Owletuck was compensated for every hour reported on time sheets. If he presents an argument it was "cash out" of accrued personal leave hours—this too is contrary to the employment contract. The contract states, *"Unused personal leave may be cashed out upon termination of this agreement."* This is the only reference in the contract relative to cashing out personal leave and he did not terminate the contract. At the end of our discussion on May 10th, Mr. Owletuck acknowledged a *responsibility to NTC* if the $20,643 payment was disallowed.

Article 17 of the grant agreement describes the "Prohibition Against Payment of Bonus or Commission." There are two separate instances provided in the "Article" where there is a prohibition against bonus' and commissions. In the first instance it states, *"assistance provided …shall not be used in payment of any bonus or commission for the purpose of obtaining approval or concurrence under this contract* *provided."* Secondly it states, *"However …reasonable fees of bona fide…services are not prohibited if otherwise eligible as project costs."*

The $20,643 payment *was not bona fide services rendered.* Furthermore, the statement of the CEO, *"I helped engineer this $2.5 M [million] appropriation for Newtok… I am owed pay for my hours remaining",* is incriminating because it appears the CEO felt the payment should be done "in concurrence" with the grant agreement.

Recommendation No. 2
The Tribal Administrator should follow the policies of NTC's "Procurement Management System" and articles of the grant agreement concerning the procurement of construction services.

In 2012, the NTC awarded two contracts that are currently active. However, the contract with Kenai Manufacturing LLC or "the Kenai Company" was improperly selected and the services rendered by the company are unlicensed general contractor activity. The other contract underway is with Earthcore SIPs—the manufacturing firm that provided the manufactured insulated panels for the MEC. Both procurement contracts, the Kenai Company and Earthcore SIPs, were crafted without the "terms and conditions" required by the grant agreement and NTC's "Procurement Management System."

The Kenai Company Contract and Procurement Policies
The Kenai Company responded to a Request for Proposal (RFP) that was advertised by NTC during the month of September, 2012. The firm was selected by NTC to provide superintendent and project management services and oversee labor assembling the panels and constructing the MEC. The contract was awarded and the estimate for services was at least $215,000. The Kenai Company's contract is "questionable" because the integrity over the procurement process was compromised and secondly, the ability of the Kenai Company to provide the services required in the contract amounts to: *"unlicensed general contractor activity."*

The Kenai Company contract was provided to this author by the CEO on June 7, 2013. When reviewing the Kenai Company's contract proposal it described the CEO as participating in the contract as the "Project Manager." The compensation of the CEO as project manager was listed as $60,000. The contract did not indicate if the $60,000 is a onetime payment or somehow represents a number of hours devoted to the project. As a NTC employee and working in tandem with the Kenai Company contract, this amounts to a clear "conflict of interest" for the CEO.

Since the beginning of employment, the CEO has been very much involved with procurement; composing the RFPs, evaluating proposals and negotiating contracts. He participated in the solicitation, evaluation and bid selection of Earthcore SIPs. Without conflicting evidence, one must assume Mr. Owletuck provided the same assistance with the Kenai Company--especially since he is the highest paid employee of NTC.

The CEO participating in the Kenai Company contract is direct conflict of interest. The NTC employee duties and Mr. Owletuck' self interest--substantially conflict. In fact, not just Mr. Owletuck, but any NTC employee participating with the Kenai Company is a conflict of interest.

I discussed the contract with the three individuals linked with the agreement—the tribal administrator, the CEO and Scott Anderson--the owner of the Kenai Company.[1] The primary question posed to the individuals was, "What is Mr. Owletuck' participation as Project Manager in the Kenai Company contract?"

The responses from each individual were different and confusing:

- The tribal administrator wrote me, "***I didn't know that, sorry I cannot answer that.***"
- Mr. Owletuck wrote in part, ***"I was surprised my name appeared on the Project Management team fir [for] the Kenai contract. We proposed instead that a Project Coordinator position is created to fill that position and it would be recruited from within the village, we have documentation to demonstrate that fact. No funds were paid to me to accommodate that aspect of the proposed contract; our intent was to have a local Project Coordinator fill that position. We created such a job description and I'm certain Carolyn George, Secretary posted it."***
- Mr. Scott Anderson responses to the specific question were: Question—Mr. Owletuck is the "Project Manager" in the contract and is to be compensated $60,000. Is that a onetime fee or represents an established number of hours devoted to the project? Answer**—*"I would never place Mr. Owletuck down as Project Manager. We drafted an amendment to that proposal—and placed another [individual] down as project manager. We amended that contract."***

Neither Mr. Tom nor Mr. Owletuck mentioned anything about an amended contract. As of the date of this report an amended contract has been received.

The NTC document titled, "Procurement Management System" has section 2.9 which provides instruction for, "Contracts with the NTC Employees." This section requires the tribal administrator to not award contracts to employees unless there's "the most compelling reason." Mr. Owletuck' assistance to the Kenai Company is neither compelling nor required.

The grant agreement has Article 14 which prohibits any "conflict of interest" by the grantee's employees. Furthermore, Mr. Owletuck' employment contract has "Section 8" which describes the CEO's responsibilities as, *"The CEO shall not use his position for personal financial gain…"* Any payments to the Kenai Company with the CEO acting as Project Manager would be disallowed costs.

The Kenai Company's Contract and Unlicensed General Contractor Activities

The Department of Labor—Wage and Hour Administration is responsible for the enforcement of unlicensed general contracting in the state. The state employee (mechanical inspector) who enforces "general contractor" laws and regulations was interviewed. The mechanical inspector provided

[1] Mr. Scott Anderson is the owner of both Earthcore SIPs and Kenai Manufacturing LLC.

interesting facts relating general contracting, *"Any time a public building is constructed it must be done with a licensed contractor. A public building is a building used by the local residents. The assembly of "prefabricated panels" is not exempted from this requirement*."

The panels manufactured by Earthcore SIPs were intended to be assembled by the Kenai Company. Per the Division of Corporations, Business and Professional Licensing, the owner of the Kenai Company—Scott Anderson is not a licensed general contractor. If the Kenai Company supervised the assembly of the MEC it would be contrary to construction laws and regulations. Any expenditure contrary to laws and regulations are disallowed.

NTC's "Procurement Management System" (PMS) and the grant agreement require certain "terms and conditions" in subcontracts

The contracts awarded to Earthcore SIPs and the Kenai Company amounted to $774,107 and $215,000, respectively. However, of the two contracts--a copy of the Earthcore SIPs manufacturing contract has not been provided. Therefore the adequacy of the terms and conditions of the contract cannot be determined. The Kenai Company's contract was provided and reviewed. However, the crafting of the contract did not include key provisions required in the PMS and the articles of the grant agreement.

As noted in the PMS and articles in the grant agreement, all procurement contracts are required to include certain provisions to protect the interests of NTC and the state. These provisions require the subcontractor to provide evidence it is abiding with certain laws, regulations and insurance requirements.

For the benefit of NTC and grant administrators, key terms and conditions of the PMS and grant agreement have been summarized and provided in a chart below:

General Conditions for Contracts Per the Procurement Management System (PMS) and the Grant Agreement (GA)
General Terms and Conditions
Indian preference clause-**PMS 1.3 – AA 1**
Subcontractors must be in compliance with Copeland "Anti – Kickback" Act-**PMS 1.3 – AA 2**
Subcontractors must be in compliance with Davis – Bacon Act – **PMS 1.3- AA 3**
Subcontractor must be in compliance with "Contract Work Hours and Safety Standards Act" **PMS 1.3 AA 4**
Subcontractor must be in compliance with "Equal Employment Opportunity – **PMS 1.3 – AA5 and GA Article 30**
With grantee subcontracts-a provision indemnifying the State from any claims, damages and costs arising out of or in connection with activities authorized by the grant agreement. **GA Article 2**
Any subcontractor engaged by the Grantee shall be required to comply with all provisions of the grant agreement. Grantee will bind all subcontractors to each and every applicable grant agreement provision. **GA Article 13**
No employee of the Grantee shall have personal gain in any contract, subcontract or the proceeds thereof, for work performed in connection with the project assisted under this grant agreement. **GA Article 14**
Shall require any contractor to provide Workers' Compensation Insurance for its employees (AS 23.30) and contractor must be licensed, bonded and insured for at least the amount of the project and if appropriate maintain professional liability insurance. **GA Article 26 and Appendix B2**
Any subcontracts for engineering services, grantee required engineering firm certify authorized to do business in State of Alaska. **GA Article 27**
Grantee or subcontractor must pay prevailing wage per AS 36.05.010. **GA Article 34**

Figure 6—Compiled by Tom Sutton

The MEC construction project has involved several different parties: designers, prime subcontractors and a manufacturing supplier. Each party has different interests. Construction projects always pose great risks. Aside from PMS and grant agreement requirements--the primary purpose of the construction contract is to: (1) allocate the duties between the parties, (2) recognize and allocate the risk to the different parties, and (3) reduce the uncertainty surrounding the project and allow the parties to plan for the project and the future.

Composing a construction contract or service agreement that meets the "primary purpose" described is difficult and in most cases should be drafted by an attorney with "business law" expertise. It appears neither of NTC's contracts, with a combined total of $989,107, was prepared or reviewed by an attorney. Otherwise, these procurement contracts would have contained other basic "contract provisions" found in most construction contracts.

The website of the U.S. Department of Housing and Urban Development provided great insight as to what construction contracts should address. The NTC should review these general conditions and determine which provisions should be included in future contracts. The typical and general conditions shown are not "new ideas." They represent common "contract conditions" known by an attorney that routinely practices business law.

General Conditions for Construction Contracts	
Construction Requirements	**General Terms**
Preconstruction Conference and Notice to Proceed	Definitions
Construction Progress Schedule	Contractor's Responsibility for Work
Site Investigation and Conditions Affecting the Work	Architect's Duties, Responsibilities and Authority
Differing Site Conditions	**Administrative Requirements**
Specifications and Drawings for Construction	Contract Period
Material and Workmanship	Order of Precedence
Permits and Codes	Payments
Health, Safety, and Accident Prevention	Contract Modifications
Temporary Buildings and Transportation Materials	Changes
Availability and Use of Utility Services	Suspension of Work
Prohibition Against Liens	Disputes
Protection of Existing Vegetation, Structures,	Default
Equipment, Utilities, and Improvements	Liquidated Damages
Temporary Buildings and Transportation Materials	Termination of Convenience
Inspection and Acceptance of Construction	Assignment of Contract
Use and Possession Prior to Completion	Royalties and Patents
Warranty of Title	Examination and Retention of Contractor's Records
Warranty of Construction	
Source: U.S. Department of Housing and Urban Development	

Figure 7

Recommendation No. 3

Under the authority of Article 13 of the grant agreement, the grant administrator should consider reviewing construction contracts before the grantee is fully obligated to the contractor. The intent should not be to provide a legal assessment, but a determination if the contract was prepared by an attorney who addressed the requirements of the grant agreement and typically found contract issues.

As noted in the findings of Recommendation No. 2, the grantee has failed to exercise good business judgment in the procurement of construction services. To summarize the findings:

- The grantee's management has not adhered to the organization's Procurement Management System,
- Construction contracts did not include important provisions that eliminate risk to the state, such as, "indemnification" and insurance provisions,
- Grantee's management has compromised procurement integrity with evidence of a "conflict of interest" and
- Contrary to state law, the grantee has procured the services of a consultant which amounts to "unlicensed general contractor activities."

Considering the infractions leads to the assessment there is a failure of internal controls relating to procurement. The normal "check and balances" found with procurement management appears not to exist. With a material failure of internal controls there is the risk that a "material" error or omission will occur with procurement and it will not be found by the grantee--we have evidence of this premise.

Without a "review" of procurement contracts there is risk of continued failures and not achieving project goals. In the normal course of grant administration, the administrator is not expected to provide a review or assessment of procurement contracts and that is proper. However, due to the nature and extent of mistakes by the grantee—it requires more "due diligence" than normally required.

The intention of this recommendation is ask the administrator to review and confirm, through evidence, that procurement contract was compiled by an attorney with knowledge of grant requirements and general conditions for construction contracts. The two charts in the previous recommendation, "General Conditions for Contracts per the Procurement Management System and the Grant Agreement" and the "General Conditions for Construction Contracts" could be a used as reference for future reviews. As a state official there is a "standard of care" which requires more "due diligence" when confronted with management practices and financial records that are sometimes misleading and inaccurate.

Recommendation No. 4

Prior to accepting further Requests for Reimbursement forms the Division should require NTC to comply the grant agreements: "Attachment A - Project Management Reporting" and "Article 9 – Financial Management and Accounting." These two provisions require the grantee to establish and maintain a financial management and accounting system conforming to Generally Accepted Accounting Principles.

The NTC's management and internal accounting controls are so ineffective that financial statements and general ledgers are unreliable and inaccurate for grant administrators to use as financial tool. The NTC's management and accounting personnel are not reviewing financial documentation for errors and internal controls appear not to exist. As a result, accounting errors will not be found in the normal course of conducting business. Moreover, these deficiencies have caused the grant administrator to devote an inordinate amount of time to the grantee.

For years 2011 and 2012, the grantee submitted a combined total of 44 "Project Report and Request for Reimbursement" forms for the two grants under review. Of the 44 forms submitted, 28 were (64% error rate) were either: (1) incomplete with missing information, (2) containing mathematical errors and, (3) the backup supporting documents did not reconcile to the period expenses reported. As a result of these mistakes the grant administrator was required to finish or correct the form.

Additionally, NTC is delinquent on the submission of a State Single Audit for calendar year ending December 31, 2011. As required by regulation 2 AAC 45, the grantee is required to submit a Single Audit to the state coordinating agency within 9 months after the financial year end. A "noncompliance declaration" by the state Single Audit Coordinator has been issued to the NTC.

Other accounting errors have been reported in Audit Recommendation No. 1. To reiterate these problems: there were $195,700 of duplicate payments on invoices, compensation of $52,670 to the CEO bypassed payroll taxes and another $20,643 paid to the CEO for bogus services rendered.

In the Division's grant agreement there is "Article 9—Financial Management and Accounting." It states, *"The grantee shall establish and maintain a financial management accounting system that conforms to generally accepted accounting principles [GAAP]."* With Article 12—Recordkeeping, it states in part, "*The Grantee agrees to keep such records as the Department may require. Such reports will include…assets, liabilities, outlays and income."*

One essential the building block for administering an accounting system is the monthly reconciliation of bank accounts. All assets, liabilities, revenues and expenditure transactions fall into place after the bank reconciliations are conducted. Following reconciliations, the payroll expenses and tax liabilities should be reconciled to the financial statements. These are just a few of the steps, NTC needs to establish and maintain a GAAP orientated accounting system.

To achieve the grant agreement accounting requirements, NTC should consider engaging a professional accounting firm and a payroll service. Monthly reconciled financial statements and payroll transactions reviewed by a professional accountant would meet GAAP requirements. Professional accounting and payroll services would provide "assurance" of the reliability and accuracy of financial data provided as "backup" for cost reimbursements.

Recommendation No. 5

The Division should reframe from reimbursing grantee administrative wages until NTC has taken direct administrative and managerial control of payroll activities and implemented the required federal regulations, "2 CFR 225 – Cost Principles" pertaining to "Time and Effort" payroll reporting.

Generally, the financial backup provided as evidence of payroll expenditures has been NTC's document, "Transactions Detail by Account" or simply "the transaction report." However, the underlying documentation leading to the "transactions report" has often consisted of fabricated, misleading and less than transparent information. The troubling occurrences consist of the following:

- Timesheets prepared where the hours reported appear fabricated,
- Management oversight and approval of payroll transactions are deficient,

- Compensation has been paid without taxes deducted and employer taxes paid,
- Employee was paid without regard to any hours worked,
- The tribal administrator has charged different hourly rates for federal and state grants, and
- Exhorbant or unreasonable compensation has been paid to certain employees.

The following are examples of the above items and it demonstrates weak management and a lack of internal controls over approval and processing of payroll transactions:

Fabricated Payroll Timesheets

Retroactive Pay Timesheets
As described in Recommendation No. 1, retroactive wages were paid to five employees from July 1, 2011 to September 1, 2011. The "fabricated timesheets" for the five employees have already been well described. But for purposes of compiling all the instances of fabricated time sheets--that findings' is included here. To reiterate, the fabricated "retroactive pay time sheets" were compiled and reported as hours worked—yet the true purpose was to match hourly compensation to a budget prepared well after the pay periods ended.

CEO's Timesheets for Six Weeks
From the date September 2nd to October 15, 2011, the CEO submitted 3 timesheets to the payroll administrator. Each time sheet represents a bi-monthly payroll period and was identical except for the tribal administrator's "approval" signature. The following represents what was submitted for payroll processing for 3 bi-weekly periods:

Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		
Date	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total
Hours Worked	8				8	8	8	8	8		8	8	8				72

The probability of an employee working the very same day--for each week--and for six weeks is extremely remote. The timesheets appear to be fabricated and not based on actual hours worked during the six week period.

Other Timesheets Appear Fictitious and Different Hourly Rates Charged for Each Grant

Tribal Administrator's Timesheets
Reviewing the tribal administrator's time sheets from July 1st to December 15, 2011 reveals some interesting trends and facts. From July 1st until November 4th the administrator reported 11 hours a day—5 days a week for 73 days. The grants charged during this period were the state grant (12-DC-550) and two federal grants. The state grant was charged 4 hours a day with a pay rate of $73.50 an hour. The remaining 7 hours a day were paid from two federal grants with an hourly rate of $19 for one grant and $73.50 for another. Except for three days in late November, from November 7th to December 15th, 6 hours a day was reported for the work week. The state grant was charged 4 hours for each day reported in these winter months.

Considering the frequency and number of hours reported in the two winter months, it is highly unlikely each hour reported represents time and effort devoted to the MEC project. Additionally, the administrator's position has different rates for different grants—when the services rendered are the same. The administrator has charged as low as $19 hour and a high of $80.50.

Often cited in the accounting profession's "Pronouncements of GAAP Rulings" is the accounting cornerstone principle which requires a "consistent framework for measuring value" and that measured value should be applied consistently throughout accounting transactions. For the tribal administrator, a standard hourly rate should be determined and that rate should be applied consistently with all grants—as a requirement of GAAP.

Compensation Paid Without Payroll Taxes Assessed

Payments to the CEO from the Accounts Payable Account
As described in Audit Recommendation No. 1, there were two transactions amounting to $52,670 in 2011 that should have been processed as payroll to the employee. The CEO retroactive pay ($33,230) and the CEO's payroll ($19,440) from September 1st to October 15th were processed as vendor payments through the accounts payable account. Payments that bypass payroll taxes are a violation of IRS rules and regulations for payroll transactions. Cost associated with violations of federal law and regulations are unallowable reimbursements.

Employee Paid Without Regard to Hours Worked

CEO compensation for Bogus Reasons
This finding is also included in Audit Recommendation No. 1. The compensation paid to the CEO were for reasons unrelated to hours worked. There were no timesheets supporting the $20,643 payment. The payment was merely the results of a calculation derived from the CEO's estimated budget of hours to be worked in 2011, versus, actual hours compensated for 2011. Nevertheless, the tribal administrator approved the payment—initials were found on the payroll stub.

The NTC has a "Policies Manual" that is supposed to govern the activities of payroll processing. The "Policies Manual" states in Part IX-B (1), "*No payroll checks will be issued unless a timesheet, with the prior two weeks accounted for, is presented to the Accounting Department.*" The tribal administrator's approval the CEO's payment, was an infringement of NTC's policies. Although this $20,643 payment has already been disallowed for another reason—it should be noted, any cost that is an infringement of NTC policies would subject the expense to an "allowability" determination by grant administrators.

Exhorbant or Unreasonable Compensation for Certain Employees

A $90 an hour pay rate for the CEO was established with the employment contract dated in August of 2011. During this same month the tribal administrator raised his hourly rate to $73.50. In 2012, both positions have had pay rates increased to $97 and $80.50, respectively. If one were to annualize the current pay rate—the CEO wages would be $201,760 and the tribal administrator--$167,440.

The "Bethel Census Area" for 2010 reported a median household income of $52,083 a year. The "Anchorage Census" reported $75,485 as the median household income. At $201,760 a year, the CEO's pay is 2.68 times Anchorage's median household income. The CEO position is located in the greater Anchorage area and does not supervise any position. Still using the "Anchorage Census" as a benchmark; the tribal administrator's compensation at $167,440 is 2.22 times Anchorage's median income.

Tribal governments receiving federal grants are subject to the federal regulation: "2 CFR 225, Cost Principles, Appendix B – Selected Items of Cost, 8 – Compensation for Personal Services and, h – Support of Salaries and Wages." For wages to be an allowable cost, *"the compensation needs to be reasonable."* Compensation should be consistent with what's paid for similar work in the labor market. In this author's opinion the compensation paid to the employees is excessive and not reasonable when compared to the census data from Bethel and Anchorage.

The NTC should be adhering to federal regulations as it relates to compensation requirements. For GAAP purposes, what should be applied as "cost principles" to the federal grant--requires the same principles applied to the state grant. Any diversions from GAAP principles, subject's the cost to an "allowability" determination by grant administrators.

To summarize the above deficiencies: there have been timesheets prepared where the hours reported appear fabricated, management oversight and approval of payroll transactions is lacking and deficient, compensation has been approved and paid without regard to payroll taxes, an employee was paid wages without regard to actual hours worked, the tribal administrator has charged different hourly rates to each grant, and it appears unreasonable compensation has been paid to certain employees.

Considering all the deficiencies noted with payroll—it leads to the determination NTC has "material weakness in internal controls over compliance." That stated there is a reasonable possibility that a material noncompliance or error will not be prevented, detected and corrected in a timely basis. This condition is a direct infraction of the grant agreement's Article 9—Financial Management and Accounting.

The NTC has several federal grants that required payroll transactions to be incompliance with federal cost principles, such as, "Time and Effort Payroll Reporting". The NTC's "Policy Manual" is the organization's sole personnel policy manual. The "Policies Manual" provides some direction in areas of personnel management. However, the "Policies Manual" should be updated to include federal cost principle requirements concerning salaries and wages.

The referenced federal regulation: "2 CFR 225, Cost Principles, Appendix B" applies to tribal governments. All employees that charge payroll to federal grants must maintain a "Time and Effort Reporting" system. The "Time and Effort" system requires the employee to document the time they spend working on the grant's objectives. Documentation must reflect "actual" time spent by employees on grant projects. The noted regulations also address and describe: allowability of compensation, reasonableness of compensation, fringe benefits, supporting documentation for wages, reporting multiple activities and unallowable costs. The following is a synopsis of these requirements:

> Allowability–-Total compensation is reasonable for the services provided and conforms to the organizations' established policy. Charges are documented and supported.
>
> Reasonableness—Compensation is consistent with that paid for similar work in the organization or in the labor market.
>
> Fringe Benefits—Include such items as: annual and sick leave, insurance and pensions. These benefits must be provided equitably under a written policy and treated consistently (same for grant funded activities and other non-grant activities).
>
> Supporting Documentation for Wages-–Charges will be distributed or split out between grants, as actual hours worked, not as budgeted. Charges for wages will be based on documented payrolls approved by a "responsible official" with the organization.
>
> Multiple Activities-–Multiple activities occur when an individual works on more than one grant. When an individual's time and effort are for multiple activities, a personnel activity report or equivalent document must be completed by the employee. The personnel activity report must be: submitted at least monthly, coincide with one or more regular pay periods and account for 100% of after-the–fact time distribution.
>
> Unallowable Costs—Salary costs that are not accurately and properly documented are unallowable costs and will not be reimbursed. If an employee has been reimbursed for a salary that was not properly recorded and supported the grantee will be required to pay back the "unallowable" costs.

The NTC should amend the "Policies Manual" to include policies which document the "Time and Effort" reporting system and covers the following as a minimum: (1) A sample of a Personal Activity Report, (2) Instruction to complete the timesheet/Personal Activity Report, (3) Reporting of accrual of vacation and sick leave, (4) Managing and communicating changes in "time allocation" to grants, and (5) Assessment, approval and consistent application of "reasonable compensation" rates charged to each grant.

Federal regulations describe the "Personal Activity Report" or PAR mentioned above as: "*a detailed report, prepared at least semi-monthly and documents the amount of time devoted to each funding source."* The PAR must be completed every day--per the pay period. It represents the actual time spent on each project activity. Further requirements make the PAR form to represent the actual, not anticipated, time spent. Therefore, it must be completed after the designated day. A certification of the percent of time spent from each funding source must be signed at the end of each pay period.

For our Division's purposes, the PAR should be forwarded to the grant administrator at the time the "Request for Reimbursement" is completed. An example of this form is presented on Appendix C.

The "Council" is the responsible and governing body of all NTC financial activities. Because of "material weaknesses" with internal controls and the possibility of "material errors" not being found--it must not delegate, but take administrative and managerial control of payroll activities until payroll procedures are proven to be processed in accordance GAAP and the recommended revisions of the NTC "Polices Manual."

APPENDIX A

First Page of Budget Crafted for Period July – December 2011

		100% FTE	2080	Hours		
Legislative Grant Detailed Budget Worksheet						
Name and Address of Applicant:		**Newtok Traditional Council**				
		Tom Ave.				
		Newtok, AK				
Category		Detailed Description of Budget (for full grant period)				
1. Personnel (Direct Labor)		Estimated Hours	Rate per Hour	Estimated Cost	Sept. 2 Advance	Balance
Position or Individual	% FTE Employee					
1 CEO	#	1040	90.00	93,600.00	33,120.00	60,480.00
1 Tribal Administrator	#	416	73.50	30,576.00	13,230.00	17,346.00
1 Project Assistant	#	416	40.50	16,848.00	6,804.00	10,044.00
1 Accountant	#	416	40.50	16,848.00	6,804.00	10,044.00
1 Accountant Assistant	#	416	40.50	16,848.00	6,804.00	10,044.00
Tribal Inspector	#	80	19.00	1,520.00	760.00	760.00
Tribal Inspector	#	80	19.00	1,520.00	760.00	760.00
				177,760.00	68,282.00	109,478.00
2. Fringe Benefits		Rate (%)	Base	Estimated Cost		
Direct Labor Salary/Wages			177,760.00	-	-	
1 CEO		0.40	93,600.00	37,440.00	13,248.00	
1 Tribal Administrator		0.25	30,576.00	7,644.00	3,307.50	
1 Project Assistant		0.25	16,848.00	4,212.00	1,701.00	
1 Accountant		0.25	16,848.00	4,212.00	1,701.00	
1 Accountant Assistant		0.25	16,848.00	4,212.00	1,701.00	
Tribal Inspector		0.25	1,520.00	380.00	190.00	
Tribal Inspector		0.25	1,520.00	380.00	190.00	
Total Fringe Benefits Cost				58,480.00	22,038.50	36,441.50
Total Labor & Fringe				236,240.00	90,320.50	145,919.50

Figure 1. Exact rendition of Buget prepared by the CEO on or thereafter August 24, 2011. The Budget was for the $250,000 of administative expenses allowed from the grant 12-DC-550--for $2.5 million.

APPENDIX B

Narratives Provided by NTC Employees Concerning Work Activities During July and August of 2011

Narratives Submitted with Time Sheets for July & August 2011		
Position	**Date**	**July 2011 NTC Project Activity Reported**
CEO	July-11	Did not provide any narratives--but did provide emails.
Tribal Administrator	July-11	Made a trip report to tribal council, MEC, rocky quarry, and corp. of engineers land survey. Need to have a pioneering as soon as we can. Also many trip reports unrelated to MEC.
Project Assist	July-11	Assisting the Project Manager Stanley Tom with paperwork and signatures and sent out letters to other countries requesting more funds to relocate village but the letters came back saying that they didn't have funds. Learning the budget worksheet and explaining it to the accountants so they understand. And getting familiar with the work.
Accountant	July-11	Work on payroll, credit card statements, figure out totals, accounting, etc.
Accounting Assist	July-11	Assist Accountant with work on payroll, credit card statements, figure out totals, accounting, etc.
		August 2011 NTC Project Activity Reported
CEO	August-11	Did not provide any narratives--but did provide emails.
Tribal Administrator	August-11	Met with Kim [DOTPF Project Mgr], Vadim Belozertsev, Nichelle Seely, and David Longtin, there were many people who I couldn't remember at the Mertarvik site. They came in with the Blackhawk and stayed about 2 hours. Worked with Cornerstone [DOTPF contractor] and reviewed their progress reports. Worked with Kara Merrell, with DOT invoices. Met with Sam Lamont for MEC inspections.
Project Assist	August-11	Still getting familiar with work, assist project manager with required paper work, assist with filling our progress reports, submit copies needed for progress reports, office work etc. Setting up meeting with the NTC Council Members and sent the forms that needed to be sent and help the accountants.
Accountant	August-11	Payroll, figure out totals for progress reports, book keeping, accounting, etc.
Accountant Assist	August-11	Assist Accountant with payroll, credit card statements, figure out totals, accounting, etc.

Figure 2. Source of Information is NTC's Request for Reimbursement No 1. Received Jan. 19, 2012.

APPENDIX C

Sample of Time and Effort--Time Sheet or "Personal Activity Report"

ABC ORGANIZATION

MONTHLY TIME and EFFORT REPORT (HOURS)

FISCAL YEAR 2013

MONTH/YEAR

July 15 2013

DAYS OF THE MONTH

PROGRAMS	Acct. Code	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total Time
Federal Grant XX-XXX	**101**	6.00	1.00		2.00			5.00	7.00								21.00
Federal Grant XX-XXX	**102**									4.00	2.00						6.00
State Grant 13-XX-XXX	**103**	2.00	7.00	8.00	6.00			3.00	1.00								27.00
State Grant 12-XX-XXX	**104**									4.00	6.00	8.00			8.00	8.00	34.00
Total Hours		8.00	8.00	8.00	8.00	0.00	0.00	8.00	8.00	8.00	8.00	8.00	0.00	0.00	8.00	8.00	88.00
																88.00	

CERTIFICATION

I CERTIFY THAT THIS IS A TRUE AND CORRECT REPORT OF THE ACTUAL HOURS I WORKED DURING THIS PERIOD.

I HEREBY CERTIFY THAT THE EMPLOYEE WAS PRESENT AND WORKING AS INDICATED BY THIS REPORT.

EMPLOYEE NAME	____________________	SUPERVISOR NAME	____________________
EMPLOYEE SIGNATURE	____________________	SUPERVISOR SIGNATURE	____________________
SIGNATURE DATE	____________________	SIGNATURE DATE	____________________

INSTRUCTIONS: List the actual hours you have worked under the Program Area that applies.