



Newtok Traditional Council-Project Management

Performance Audit Report on the Project Management of the Mertarvik Evacuation Center, September 10, 2013.

TSutton
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EXECUTIVE SUMMARY

Why was this audit conducted?

September 10, 2013

This is the second part of a two part audit report. The first part (released July 12, 2013) focused on Newtok Traditional Council's financial compliance with grant agreement terms, it tested the reliability of accounting reports and provided a historical summary of project milestones. This second part is a performance audit report concentrating on construction management practices relative to such factors as: economy, efficiency and effectiveness; and meeting the project goal of constructing the Mertarvik Evacuation Center or MEC. Because of the large scale construction, potential of cost overruns and the possibility of not meeting project goals this audit has been conducted.

The continuing erosion of the village's town site into the ocean has required the evacuation of villagers to a more stable site named Mertarvik. Once villagers begin to move, the Newtok villagers will need an enclosure to provide emergency shelter and serve as multi-use facilities for residents to relocate.

The state of Alaska has funded the MEC project in two phases. The first phase occurred in the legislative session of 2010, a designated grant of \$4 million was awarded to the Newtok Traditional Council or NTC for a construction of an evacuation center. In the 2011 legislative session, an additional \$2.5 million was provided to help complete the project.

In July of 2010, a Memorandum of Understanding agreement between NTC and the Department of Transportation and Public Facilities (DOT/PF) stipulated the department was to manage all aspects of the design and construction of the MEC. Initially, the shelter design consisted of a building of approximately 8,200 square feet and would have provided a gathering space for 300 people. Construction progressed under DOT/PF's management until September of 2011 when NTC decided to cancel the agreement. The NTC decided its tribal administrator and the newly hired CEO of the Mertarvik Community Development Corporation would manage all aspects of a re-design and the further construction of the MEC. The NTC chose to proceed with a different construction method—one that would use prefabricated panels. The panels would be assembled on the foundation already constructed by DOT/PF's general contractor.

Of the two grants for construction purposes, DOT/PF expended approximately \$2.6 million of the initial \$4 million grant—leaving \$1.4 million and another \$2.5 million from the 2011 designated grant. The combined funding of the two grants, \$3.9 million (\$1.4 + \$2.5) was made available to NTC project team which consisted of—the tribal administrator, the “CEO” and three assistants. The audit scope of this performance review is focused on using economy, efficiency and effectiveness as factors when considering the project team's administration and management of the construction project. Specifically; I designed the audit to address the following question:

- **Has the Newtok Traditional Council and its project team established and followed sound processes to effectively manage MEC's construction?**

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I conducted the audit under the authority of audit provisions within the articles of the grant agreement. The purpose is to promote: accountability, cost-effective use of state funds and provides a prospective focus for future construction management. Furthermore, the report is to provide guidance and describe the “project management practices” issued by the Project Management Institute and utilized by the industry.

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

Audit results

The Newtok Traditional Council had previously developed policies and procedures to manage projects like the MEC. The procedures generally were well designed and included most of the leading practices of the construction industry. However, there are certain gaps in procedures, which if addressed, could improve policies and procedures and provide greater assurance construction projects will be adequately managed and monitored.

For example, the policies and procedures should require with complex and large projects only experienced and licensed professionals will be hired to increase the probability that key issues of cost, time and quality of workmanship will be addressed. A policy should also be developed that identifies the minimum terms and conditions that should be included in construction and consulting contracts.

Additionally, it was found NTC’s project team did not always follow prescribed policies and procedures. Deviations from policies and procedures consisted of: not maintaining procurement integrity, the apparent failure of not inspecting the workmanship of received manufactured goods and failure to meet established standards for writing “requests for proposals” and procurement contracts.

At this time it is difficult to determine the precise impact of the noted weaknesses on the overall cost of the project. Grant administrators need to pursue and obtain information on \$696,696 of “unresolved costs” due to the failure to inspect manufactured goods. Also, expenditures with the consulting contract for project superintendent and management services should be reviewed because of possible “conflict of interests.” In conclusion, I believe the deficiencies of the project team to fully comply with management policies and internal procedures have had negative effects’ on MEC costs and project results.

Recommendations

Focusing on the project team’s management practices, the following improvements are recommended to the NTC:

- **To address project management and oversight**--I recommend the NTC hire a licensed and bonded general contractor that is able to provide the expertise to complete the MEC construction; to act as a representative between the general contractor and the NTC, consideration should be given to hiring a professional project manager that will be responsible for accomplishing project goals and objectives; prior to proceeding with any construction activities, NTC’s project manager should contact the “Architect of Record” because of the architect’s “claims” of deficiencies in the current architectural plans.

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- **For contract development, negotiations and approvals**--I recommend the NTC adopt policies and procedures to include: provisions that require the hiring of an “experienced and professional” project manager to manage large and complex building projects; and describe the minimum “terms and conditions” to be written in procurement contracts as a protection to NTC’s financial interests. To promote “procurement integrity” the tribal administrator should review all competitive bids for potential “conflict of interests” and report deficiencies found to the NTC. To safeguard assets the tribal administrator should inspect and record received goods and products and compare such items with specifications required in the procurement contracts.

As a result of examining the project team’s handling of the two contracts, the following are recommendations for the Division’s grant administrators:

- **Accountability of grantee**--I recommend the grant administrators withhold reimbursement of expenditures concerning the Kenai Manufacturing consulting contract to prevent funding a contract that has a potential “conflict of interests” between an NTC employee and Kenai Manufacturing. Also, grant administrators should determine if NTC’s project administrators breached NTC’s policies and procedures by not inspecting the delivered SIP panels and determining whether the items meet the required specifications in the procurement contract. The 2012 reimbursements for the SIP panels totaled \$696,696 and are “unresolved costs” until NTC confirms the delivered panels meet the required specifications in contract provisions.

What’s next?

There are no requirements of NTC to consider the audit findings, conclusions and recommendations. However, the Director of the Division of Community and Regional Affairs (DCRA) or grant administrators could ask to receive comments from the council members or the tribal administrator on the findings and recommendations. Any comments from the NTC concerning corrective actions taken in response to the audit would help develop a good working relationship between the two organizations.



PHOTO BY SALLY RUSSELL COX - AUGUST 2013

The U.S. Department of Defense Innovative Readiness Training (IRT) program has assisted Newtok’s relocation to Mertarvik by providing road and building assistance. At left are two building which were completed by the IRT and are meant to provide storage during the relocation.

INTRODUCTION

Audit overview

During 2010 the NTC began the construction project of the Mertarvik Evacuation Center by engaging the expertise of DOT/PF to manage all aspects of the center's construction. Initially, the project consisted of the planning and construction of 8,200 square foot building capable of handling 300 people. The DOT/PF project team was responsible for, but not limited to:

- Architectural design of the facility.
- Engineer subcontractors for civil, structural, mechanical and electrical engineering.
- Consultants associated with analyzing storm water pollution and determining prevention measures.
- Consultants required for inspecting the site in accordance with EPA regulations.
- Design and construction of a site septic system and water well supporting the drinking water system.
- Construction of a piling foundation and structural deck for the building.
- Obtaining all required permits and inspections for the building to be ready for occupancy.

The MEC has been funded by the legislature in two phases. The first funding took place in the 2010 legislative session for which a designated legislative grant of \$4 million was appropriated. Secondly, in the 2011 legislative session a \$2.5 million grant was awarded for continued financial support.

Construction progressed under DOT/PF's management until September of 2011 when NTC decided to cancel the management agreement with DOT/PF. The NTC determined its tribal administrator and the newly hired CEO of the Mertarvik Community Development Corporation would manage all aspects of the planning and construction of the MEC.



Of the two grants for construction, DOT/PF expended approximately \$2.6 million of the initial \$4 million grant—which left \$1.4 million. The other \$2.5 million grant was not expended. The combined and available funding of the two grants, \$3.9 million (\$1.4 + \$2.5 million), was accessible to the NTC project team. The project management team—consisted of the tribal administrator, the “CEO” from MCDC and three recently hired assistants.

The audit scope of this performance review is focused on NTC's project team management of the project after it was turned over to NTC by DOT/PF. At the close of DOT/PF's involvement in September of 2011 several phases had been completed. The most visible is the completed foundation for the building. At left is a picture of the foundation as it sat in August of 2013.

After September of 2011, NTC’s newly appointed project team was responsible for the management of all phases of the project—which included but not limited to: planning, implementing and coordinating construction activities. However, none of the employees of the project team had any experience with construction management. Further complicating matters, it was decided by NTC to change the architectural design and use a different method of constructing the building. The plan was to use the existing foundation—but complete the building with prefabricated polyurethane structural insulated panels or more commonly known in the industry as SIPs. This change in direction required a whole new set of architectural designs, engineer studies and certifications by engineers. New subcontractors would need to be selected and supervised in the professional fields of electrical, mechanical, plumbing, and structural engineering.

I conducted the audit under the authority of audit provisions within the articles of the grant agreement. Although the purpose of the audit is to determine the economy, efficiency and effectiveness of management, the report is also designed to promote: accountability, cost-effective use of state funds and provides a prospective focus for future construction management. Furthermore, the report is to provide guidance and describe the “project management practices” issued by the Project Management Institute and utilized by the industry. Specifically, I designed the audit to determine:

- **Has the Newtok Traditional Council and its project team established and followed sound processes to effectively manage MEC’s construction?**

Audit scope

The audit scope covers NTC’s management of the MEC project following the cancelation of the agreement with DOT/PF in September of 2011. Therefore, the audit scope is NTC’s project management from October of 2011 to December 31, 2012. The ending date of December 31, 2012 is selected because NTC financial reporting is based on a calendar year basis. Additionally, grant administrators “suspended” reimbursing expenditures of NTC after that date. During the period under review, NTC advertised and engaged the services of two contractors: one for the manufacturing of SIP panels and another for construction management services. The products, services and contractual amounts of the two contracts consisted of the following:

- I. A \$774,000 contract for the architectural design, engineering, consulting, product manufacturing and delivery of SIP panels. A vital requirement of the contract mandated the SIP panels to be manufactured with a thickness of 10.25 inches for the floors, walls and roof panels.
- II. A \$230,000 contract for consulting services relative to oversight and management of the assembly of panels and construction of the building. The contract also required the contractor to develop a “virtual project management service” through the setup of an online project management tool. Furthermore, the contractor was to train, support and assist the local workforce.

During 2011 and 2012 the only invoices reimbursed were Earthcore SIPs for manufacturing and it amounted to \$696,696. It should be noted that billings from the contractor for consulting services in 2012 were not made available during the audit. It wasn’t until May of 2013 that NTC paid \$35,165 to the consulting firm for services allegedly provided in 2012. Please **look to Exhibit 1** on page 6 for more details on the contracts audited.

Methodology

To gain an understanding of construction requirements and responsibilities I reviewed studies, audits and publications that identify “best practices” associated with construction management. I interviewed employees of firms that provided subcontractor services to determine how the project team conducted oversight responsibilities. To gain an understanding of the history of the project I interviewed the DOT/PF project manager in charge of the MEC project.

Audit in accordance with government auditing standards

This audit was conducted in accordance with the generally accepted government auditing standards prescribed by the U.S. Government Accountability Office. Those standards require that I plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for my findings and conclusions which is based on audit objectives.

The project team of NTC did not answer certain questions posed in emails and did not provide pertinent documentation in some instances. For example, the documentation requested and not provided consisted of the following:

- The company, Earthcore SIPs bid in response to the “Request for Proposal” concerning design and manufacturing of SIP panels.
- The 2012 invoices for consulting services provided by Kenai Manufacturing LLC.
- The “Completion Statement” or correspondence relating to the close of the contract with Earthcore SIPs.

Although these actions reduced the capability of determining the appropriateness of some management practices and expenditures, I believe the collaborating evidence obtained provides a reasonably basis for my findings and conclusions.

Government audit standards require that I disclose any impairment to independence in the audit report and how such impairment would of affect or could have affected the audit results. There were no impairments to this auditor’s independence in the assessment of findings or the preparation of the audit report. In my opinion, the audit results are based on my objective assessment of the sufficient and appropriate evidence and it provides a reasonable opinion as to the findings and conclusions--based on the audit objectives.

Exhibit 1

Construction Contracts Audited					
Project	Description	Original Budget	Contract Award	Expenses Audited	Transaction Dates Audited
Manufacture of SIPs Panels for 6,700 sq. foot MEC Building.	Architectural, engineering and manufacturing of panels ready to assemble panels at site. Contract included freight costs from Colorado to Mertarvik.	(a)	\$ 774,106	\$ 696,696	Jan-12 Dec-12
Construction management services.	Consisting of project oversight of the assembly of SIPs panels at Mertarvik. Includes supervision of attaching panels to foundation.	(a)	\$ 230,000	\$ - (b)	Oct-12 Dec-12
<p>Notes: (a) Each contract was derived from a competitive bid process. (b) Although the contractor billed NTC in 2012--there were no payments until 2013, outside of the audit scope. It should be noted a request was made to examine the 2012 invoices, however, the invoices were not provided.</p>					

BACKGROUND AND LEADING PRACTICES

Background on the construction of the Mertarvik Evacuation Center

Newtok is a growing Yup'ik Eskimo village (population approximately 350) located on the Yukon-Kuskokwim Delta along the western coast of Alaska and near the confluence of the Newtok and Ninglick Rivers. 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.

After a relocation study the village confirmed the selection of Mertarvik—a site located nine miles from the existing village of Newtok. In 2003, the Newtok Native Corporation acquired 10,943 acres for the new town site from the U.S. Department of Interior.

The Newtok Traditional Council or NTC is an elected 7 member board that governs the Newtok village. The council sets policies, priorities and manages the tribe's resources. The NTC appoints a tribal administrator that manages the day-to-day operations. With the approval of the NTC, the tribal administrator selects and supervises employees to carry out the responsibilities of fiscal, program and project matters.

In the fall of 2011, the NTC determined there was a less expensive option of constructing the MEC and it would use the existing foundation. The change of construction was the use of prefabricated polyurethane structural insulated panels which are commonly known as SIPs. This was a design change from the former DOT/PF design which required “point loading (or columns) at each steel piling of the foundation.”¹ As a result of NTC's decision, it required the NTC project team to open a competitive bid process for the selection of a contractor familiar with manufacturing SIPs. Additionally, the contractor would be responsible for selecting subcontractors to provide the architectural plans and reviewing the structural engineering plans. The responsibilities of obtaining the necessary construction permits and shipping the panels to the construction site also fell to the selected contractor.

The Request for Proposal or RFP for the Mertarvik Evacuation Center

During February of 2012, the NTC selected from Colorado the manufacturing firm of Earthcore SIPs to provide the manufacturing for the project. The “Request for Proposal” or RFP required the selected contractor to “deliver all materials to the respective project site [Mertarvik] not later than August 17, 2012.”

Earthcore SIPs² or Earthcore won the competitive bid because it would manufacture SIP panels with a 10.25 inch width and at a lower cost than the competition. The competitive bid provided by Earthcore was protested by at least one Alaskan manufacture. The primary reason for protesting the bid was the premise that 10.25 inch SIP panels are not a proven or a tested process and they claimed, “*As a non-proven process, it was the reason why 10.25 inch SIP's are not manufactured or offered for sale by any of the longtime SIP manufacturers.*”

The protest was rejected by NTC and on February 23, 2012 the council entered into a contract with Kenai Manufacturing LLC which was representing Earthcore SIPs. Earthcore's manufacturing plant is located in Colorado and as a result the company selected an architect licensed in Colorado. The assignment according to the architect was to, “*Just design the envelope [or exterior of the MEC] so that the framing could begin in the 2012 building season.*” The architect's plans called for a smaller building than previously designed and resulted in a building with an area of 6,700 square feet. Once

¹ Memorandum dated September 20, 2011 and prepared by DOT/PF's project manager—Ms. Kim Mahoney, PE.

² To alleviate confusion—Earthcore SIPs of Colorado does business in Alaska under Kenai Manufacturing LLC. The owner and manager of both companies is Mr. Scott Anderson.

finished, the “framing” plans were submitted to an Alaskan engineer for certification as the “engineer of record.” The “engineer of record” is responsible for warranting the “framing” plans meet Alaska building codes and may be used as a guide to assemble the framing. After the approval by the “engineer of record” the plans were submitted to the Alaska Fire Marshal Office for review and approval as required by Alaska statutes and regulations. On June 1, 2012 the Fire Marshal gave a “Framing Only” plan approval for the erection of the building frame. Any work associated with the interior of the building would require a more extensive “Final Plan” approval by the Fire Marshal’s Office.

According to the architect of record—Mr. George Watt, *“The “structural plans” submitted to the Alaska engineer were never meant to be used as a guide to attach the framework of the building to the existing foundation. The plans were drafted for informational purposes only. After inspecting the foundation in Mertarvik I could see the existing foundation had changed from engineering plans I based my preliminary drawings upon. This is not uncommon in construction; the built foundation does not match the initial architectural drawings.”* This issue is addressed in **recommendation 3**.

Furthermore, according to Mr. Watt, *“What should be completed before any framing construction and assembling of SIP panels are new structural architectural plans which would be in coordination with the foundation as it was built.”* Of course this requires another engineering professional to be the “engineer of record” and approve the plans for submission to the state Fire Marshal. Once the Fire Marshal has again issued a “Framing Only” plan, construction of MEC’s framing and envelope may proceed.³ The Fire Marshal’s two step process of approving architectural and engineering plans is done to allow the builder to assemble the outer envelope (the outside panels, framing and trusses) of building in the summer months and once the “Final Plan” is approved the interior (i.e. walls, plumbing and electrical) of the building may be completed without regard to the weather.



Above is a picture of the containers which was taken during August of 2013 by Ms. Sally Russell Cox—a Local Government Specialist with DCRA

³ However, these steps are to be taken only if NTC approves of the SIP panels and materials delivered to Mertarvik in June of 2012. It appears the panels were not inspected to determine if panels were manufactured in accordance with contract specifications. There is a genuine risk the panels are 5 ½ inch instead of the required width of 10 ¼ inches. See item B of page 15.

Before any work is completed within the envelope of the building, the architect of record should consult with engineers in the fields of plumbing, electrical, mechanical and fire hazard in which the outcome would be detailed in the finalized architectural plans. Furthermore, once the complete architectural plans are compiled; structural, and mechanical and electrical engineers need to become “engineers of record” for their area of expertise. The combined architectural plans are then sent by the architect to Fire Marshal’s Office for “Final Plan” approval. Once the plan approval is in hand--construction in the interior of the building may proceed.

For the required remaining work (the finalized architectural plans) the architect stated, “*It is 90% of my effort to complete the architectural planning and drawing.*” None the less, to meet the contractual deadline set by the project team Earthcore manufactured the panels and packaged in protective containers they were delivered to Mertarvik in July of 2012.

After the delivery of the materials and panels last year, the project team needed to start the process of selecting a project superintendent and project manager to oversee the construction and assembly of the panels. Through the RFP process, NTC again selected the firm of Kenai Manufacturing LLC—the manufacturer of the SIP panels. The contracted amount was a “proposed fee” of \$215,000 for the management services. Per the contract the enactment date of the agreement was November 20, 2012 for the, “furnishing of project management services for the MEC from October 2012 – December 2013 for NTC located at Mertarvik.”

According to the owner of Kenai Manufacturing LLC or “Kenai”—planning for the upcoming 2013 construction began in December of 2012. Billing for services rendered were sent to NTC, however, payment was not received by Kenai until May of 2013. Because administrative issues with NTC bookkeeping, this author requested the Kenai owner to provide a copy of the service invoices for 2012. Although his response was cooperative the documentation was never sent and thereafter phone calls were never returned. Although consulting services were allegedly performed in 2012 and paid for in 2013⁴ the precise nature and extent of services rendered is not known.

Roles and responsibilities of the NTC project team

The tribal administrator, working with the assistance of the “CFO”, a project assistant and two accounting technicians was responsible for—but not limited to: budget development, procurement, personnel actions, accountability, safeguarding funds, staff supervision and grant administration.⁵ Furthermore, the tribal administrator insures internal control procedures are adhered to by all personnel as outlined in NTC’s, *Procurement Management System – Policies and Procedures* and the *Policies Manual*.

Exhibit 2 on the next page, details the roles and responsibilities of project management staff, the contractor and other sub-contractors during the audit period:

⁴ NTC bank account records indicate wire transfer of \$35,165 to Kenai Manufacturing on May 8, 2013.

⁵ Per the NTC Policy Manual, III Administration, page 5.

Exhibit 2

Roles and Responsibilities of Construction Management				
Newtok Traditional Council (NTC)	Tribal Administrator (TA)	CEO Project Assist. Accountant Assist. Accountant	Contractor (Earthcore and Kenai)	Sub-Contractors
Management/Oversight And Direct Management Responsibilities				
NTC: Final approval of contracts, change orders and contract modifications for more than \$10,000. Establishes policy and has oversight responsibility of construction contracts.	Tribal Administrator or TA: Approves purchases under \$10,000. Oversees project team and accounting staff. Responsible for contract content ready for NTC approval. Monitors product or services deliverables from contractors.	CEO: Assist TA with budget, RFP content, contract terms, grant administration and monitors product and service deliverables. Project Assist: reviews invoices and filing paperwork. Accountant/Assist: payroll, payment of invoices and grant reporting.	Contractor: Plans, organizes, selects and supervises architect and engineer sub-contractors. Obtains all necessary permits and ensures compliance to laws and regulations. Responsible for delivery of product.	Architect, and engineers in following disciplines-- structural, electrical, plumbing, civil, mechanical and fire suppression: completes and certifies building plans for each professional discipline.

Leading practices for construction management

Good project management is critical to effectively: plan, execute, monitor and evaluate construction projects. Likewise, project managers should reduce the risk of unnecessary cost increases and improve the likelihood of projects being completed on time and within budget. There are numerous industry and government guidelines that identify best practices for project managers to use.

The literature guidelines reviewed and the architect I interviewed supports the premise; the most important step for a project of MEC’s size, scope and complexity, would be to hire a “qualified project manager.” The project manager would be separate from the general contractor whose responsibilities are different. The project manager working directly for NTC would an important “check and balance” to ensure the general contractor’s work is satisfactory and meets industry standards. It would be the general contractor’s responsibility to oversee: the sub-contractors’ work, coordinate code and building inspections, monitoring change requests, tracking budgets, controlling costs, monitoring and reporting project risks to the project manager.

No matter how many “checks and balances” in the hierarchy of management, the ultimate responsibility leads to top management. Therefore, to identify the best and leading management practices for the council members, various project management guides were reviewed. The guide that was the most straightforward was published by the *Project Management Institute*. The guide describes key phases of a project management process—and highlights the best practices associated with each phase—the guide is summarized in **Exhibit 3 on the next page**.

Exhibit 3

Global Project Management Leading Practices	
Process	Sample of Leading Practices
Develop Project Charter	Establish standardized guidelines. Assign project manager and authority level. Provide information on communication process.
Preliminary Project Scope & Statement	Develop requirements for services needed and requirements for approvals. Set project schedule for completion.
Project Management Plan	Select a project management team. Establish clearly defined performance standards for contractors, identify how performance will be evaluated and assign staff for monitoring performance. Decide how project changes will be monitored and controlled. Develop provisions for communication requirements with interest groups.
Direct and Manage Project Execution	Manage the project team and train staff. Obtain bids from contractors, negotiate contracts. Manage risks, adopt approved changes. Collect project information and report costs.
Monitor and Control Work	Assign a contract manager to monitor the project. Compare actual project performance to the project plan. Identify needs for corrective or preventative actions. Track budgets and compare invoices and charges to contract terms and conditions. Maintain accurate and timely information and documentation.
Integrated Change Control	Ensure only approved changes are implemented. Control an updated project scope, cost, budget, schedule and quality requirements based on approved changes. Document complete impact of requested changes.
Close Project Process	Verify and document project completion. Collect project records. Gather lessons learned from the project. Update all records and archive for future use.
<i>Source: Project Management Institute, A Guide to the Project Management Body of Knowledge, 2001 Third Edition.</i>	

AUDIT RESULTS

Audit Objective: Has the Newtok Traditional Council and its project team established and followed sound processes to effectively manage MEC’s construction?

In previous years the Newtok Traditional Council developed many sound policies and procedures for guiding the management of construction projects like the Mertarvik Evacuation Center. Overall the document created by NTC, “*Procurement Management System—Policy and Procedures*” addresses many of the leading practices of good management. However, I found several gaps that if addressed could improve policies, procedures and provide greater assurance that construction projects will be adequately managed and monitored. For details on this topic please see the next section titled:

“Issue – Overall, the NTC’s “*Procurement Management System—Policies and Procedures*” have appropriate contract management practices, but it could make improvements is several areas.”

I also found NTC’s project team did not always comply with established policies and procedures or provide effective management and oversight of the contractors. For example, of the two contracts under review—the project team did not abide by the following provisions within the manual: “*Procurement Management System—Policy and Procedures*.”

Exhibit 4

NTC Procurement Management System--Policies and Procedures			
Provision Title	Section Number	Infraction of policy or procedure described	Contract
Standards of Conduct	2		
Procurement Integrity	2.4-A-1	Competing Contractor included procurement official of NTC in bidding offer.	Kenai
Procurement Integrity	2.4-A-3	Competing Contractor obtained from employee of NTC source selection information on procurement.	Kenai
Negotiated RFP Contracts	5		
Solicitation Phase	5.3-A-1	RFP format did not meet format requirements such as: defined responsibilities & clear objectives.	Kenai
Evaluation & Negotiation	5.4-A-1	Award made to contractor in which offer or bid did not meet minimum qualifying requirements of RFP.	Kenai
Contract Administration	5.5-G-4	Products from contractor not inspected for required specifications-nevertheless contractor paid-in-full.	Earthcore
Contract Administration	5.5-H-4	No evidence "Completion Statement" issued to Earthcore as required when contract closed.	Earthcore
Notes: Kenai refers to Kenai Manufacturing and Earthcore refers to Earthcore SIPs contract.			

For more elaborate information on the above items please see the section titled:

“Issue – The project team did not follow certain requirements of NTC’s “*Procurement Management System—Policies and Procedures*.”

It is difficult to determine the effect of procedural gaps and noncompliance with policies on the overall cost of the project. The challenge of the remote site construction, the relatively small construction season and the complexity of changing the building design and subcontractors in the project’s midstream has a great effect on completing the project—notwithstanding the objective of staying within a reasonable budget.

Issue: Overall, the NTC's "Procurement Management System—Policies and Procedures" have appropriate contract management practices, but it could make improvements in several areas.

In general I found NTC's guidelines in the "Procurement Management System – Policies and Procedures" or "procurement policies and procedures" were well designed and addressed most of the leading practices for managing contracts for construction. Some noteworthy examples of good practices are:

- ✓ Establishing guidelines for managing projects which addressed: financial controls, roles and responsibilities of employees and monetary limits on approval of materials purchased.
- ✓ Establishing guidelines related to project records management, project reporting and communication.
- ✓ Review and approval of contract modifications and provisions for corrective action with contracts.
- ✓ Establish evaluation and selection procedures for negotiated contracts and requests for proposals.
- ✓ Establishing guidelines related to negotiations' of contracts and determining the competitive range of contractual amounts.

Nonetheless, after reviewing the project team's management with the two contracts, I found NTC could improve its "procurement policies and procedures" by adding provisions in the following areas:

- When faced with large and complex construction projects, there should be a requirement of procuring the services of a "project manager" who has professional experience managing similar projects. A project manager is the person responsible for accomplishing the stated project objectives. Key project management responsibilities include: creating clear and attainable project objectives, building the project requirements, and managing the constraints of cost, time, scope and quality.

Furthermore, a project manager is the client representative and has to determine and implement the exact needs of the client, based on knowledge of the firm they are representing. A project manager is the bridging gap between the general contractor and the client. The project manager should have full responsibility and the same level of experience and authority required to complete a project. The project manager must have communication skills and capable of discussing the problems with either party. The project manager should have the ability to adapt to the various internal procedures of the contracting party and to form good working relationships to ensure key issues of cost, time and quality can be realized.

- NTC needs to add a provision in the "procurement policies and procedures" which describes the minimum terms and conditions to be included in procurement contracts. Presently there are no guidelines to creating a written contract. Although each procurement contract is different there are certain provisions that should be in each contract, such as, workman's compensation insurance and verification of insurance. What has also stood out with the two contracts is the lack of clearly defined performance standards for the contractors and the description of criteria to which performance will be evaluated. For contracts funded by State grants, there are many required conditions that are too numerous to describe. Appendix A has table listing of general terms and conditions required by NTC's procurement policies and with State grants. Furthermore, Appendix B describes typical provisions that should be considered when writing construction contracts.

The issues above are addressed in **recommendations 2 and 4.**

Issue: The project team did not follow certain requirements of NTC's "Procurement Management System—Policies and Procedures."

Many features of NTC's policies and procedures for contract management are well designed, but they were not entirely followed or in some instances completely ignored by the project team. I categorized the deficiencies as:

- A. The project team did not follow guidelines for maintaining "procurement integrity."
- B. There is no evidence "close out procedures" for a contract was followed by documenting and inspecting the receipt of SIP panels and building materials.
- C. During "pre-solicitation phase" of contract procurement the project team did not follow prescribed procedures for composing an RFP. For the consulting contract, the RFP did not contain clear and concise language describing the "statement of work or specifications required."

A. Guidelines for maintaining "procurement integrity" were not followed.

During the acquisition of consulting services, a procurement employee of NTC gave "source selection information" to Kenai Manufacturing and included himself in the contractor's bid. The project team is responsible for ensuring "procurement integrity" is not compromised during the procurement process. The "procurement policies and procedures" prohibit contractors from making an offer of future employment or promise of a business opportunity with any procurement official of NTC. When Kenai responded to the RFP for "project superintendent and project manager" services, Kenai's bid revealed that a NTC project employee was also the Kenai project manager. The compensation for the project manager was described as \$60,000—without defining if it was a set amount or it represented a certain number of hours devoted to the project.

Since the beginning of the employee's tenure with NTC the employee was very much involved with: procurement, writing contracts and RFPs, and negotiating contracts. The employee's participation in the Kenai contract is a direct conflict of interest—compromising the integrity of the contract. Such employee and sub-contractor relationships are prohibited activity and not a reimbursable expense with State grants.

Although, the tribal administrator denied there was any participation of the NTC employee with Kenai's contract, no evidence was provided that proved the NTC employee was removed as a consultant. During November of 2012, NTC awarded the "project superintendent and project manager" consulting contract to Kenai. The review of the contract between Kenai and NTC did not disclose the identity of the participating consultants—which was a break from the RFP requirements. Kenai started billing in 2012 for services rendered. However NTC did not pay Kenai until May of 2013 when a wire transfer of \$35,165 was remitted. Although outside of the audit scope (2013 transaction) it is a matter which grant administrators should be aware of and track.

Considering the known facts and unanswered questions about the Kenai contract, any submitted "requests for reimbursement of expenditures" should be denied until certain information is obtained. Specifically, the following needs to be provided as support for the expenditures:

- a. Evidence that provides proof of the identity of the consultants.
- b. A description and verification of the services and products provided by the consultants.

These issues are addressed in **recommendations 5 and 7**.

B. There is no evidence “close out procedures” for a contract was followed by documenting and inspecting the SIP panels and building materials received on the project site.

Earthcore’s manufacturing contract required the manufactured panels and building materials to be delivered to Mertarvik. The panels and materials were packaged inside of containers and arrived in Mertarvik during July of 2012. However, no evidence has been provided that anyone from the project team opened the containers and determined if goods received matched the shipping log or the specifications in the procurement contract.

Within the “procurement policies and procedures” there are provisions that require the receipt and quality of goods and materials to be matched with contract specifications. After reviewing the architectural plans and interviewing the project’s architect and engineer of record, it was revealed that all architectural plans called for SIP panels with a measurement of 5 ½ inches in width. The RFP proposal and the contract with Earthcore required the SIP panels to be 10 ¼ inches in width. The 10 ½ width was required because of the severe weather conditions along the western Alaskan coastline.

Further complicating this issue, it *appears* the Earthcore manufacturing contract has been paid in full. According to the owner, the last and remaining invoice of \$77,410 was paid in January of 2013. The Earthcore contract called for: designing, engineering and manufacturing the SIP panels for \$774,106. For 2012, invoices totaling \$696,696 were submitted as reimbursable expenditures and grant administrators made payment. Aside from the fact the 5 ¼ inches of panel width may not be appropriate for the severe weather conditions, the oversight of not inspecting manufactured goods has significantly increased the risk of: litigation, higher project costs and project delays.

As required by Article 9 of the grant agreement, “The grantee shall establish and maintain a financial management and accounting system that conforms to generally accepted accounting principles.” The “procurement policies and procedures” of NTC are an integral part of the internal controls for financial management and accounting. Any expenditure found to be a breach of procurement policy and procedures would be “unresolved costs” which require more information. Not inspecting and comparing manufactured goods with contractual requirements is a material breach of written procedures.

The freight containers in Mertarvik should be inspected and the width of the panels measured. An inventory count of the panels and building materials should be matched with the shipping invoice. The “material supplies contract” with Earthcore should be reconciled with the received SIP panels and building materials. If the items received by NTC do not “materially” agree with the procurement contract in terms of: SIP specifications, drawings, materials, workmanship, permits and codes; then arguably the “unresolved costs” could be determined as “disallowed” and a return of the \$696,696 sought.

These issues are addressed in **recommendations 6 and 8.**

C. During the pre-solicitation phase of procurement for services, the project team did not follow prescribed procedures.

In contradiction to procurement policies and procedures, the RFP for project superintendent and project manager services did not contain clear and concise language describing the “statement of work or specifications required.” The “statement of work or specifications required” is one of the most important features of an RFP. The policies and procedures state in part, “It is essential that a complete and comprehensive statement of work or specification be provided by the program [tribal administrator] office. The statement of work describes the requirements to be performed and may describe the methods to be used.” The project team should have included in the RFP (and the ensuing contract) a clear and accurate description of the technical requirements of the consulting services to be provided. For example, the following items should have been clarified as the responsibilities of the project superintendent and project manager:

- Obtain lien waivers and affidavits from subcontractors,
- Inspection for the quality of work done by specialized sub-contractors,
- Responsible for the purchase of materials, tools and equipment,
- Report and process requests for change orders,
- Responsible party for compliance with laws and regulations,

- Provide evidence of insurance coverage and professional liability,
- Order and review the architectural plans in the areas of: mechanical, plumbing, fire suppression and electrical engineering,
- Obtain the Fire Marshal's "Plan Approval" of the "final" architectural plans.

All of the responsibilities just described are precisely the duties and tasks of a licensed general contractor. Another provision with "procurement policies and procedures" is the requirement to include in the RFP any, "special approvals, clearances and requirements pertinent to the proposed acquisition."

The project team should have conducted research to determine the required licensing of an individual charged with the responsibility of constructing a "public building." According to State laws and regulations only an Alaska licensed general contractor may construct and assemble a public building.

The RFP for consulting services was significantly deficient in terms of protecting the interests of the NTC. Without a licensed contractor—all of the work conducted on the MEC would have been "unlicensed general contractor" activity. If the unlicensed activity had taken place, most likely, the NTC would not have been able to obtain the most important permit for the MEC—the Certificate of Occupancy.

This issue is addressed in **recommendation 1**.

AUDIT RECOMMENDATIONS

For the Newtok Traditional Council

Project management and oversight

1. The NTC should hire an experienced general contractor licensed and bonded to supervise and manage the remaining construction of the Mertarvik Evacuation Center. The general contractor should assist NTC in performing tasks such as: acquiring permits, receiving fire marshal approval, obtaining licenses and partial lien waivers, meeting grant requirements and obtaining the MEC's "Certificate of Occupancy."
2. The NTC should consider hiring a professional and experienced "project manager" as the representative between a general contractor and the NTC. The "project manager" should be responsible for the accomplishing the project objectives and managing the construction constraints of cost, time, scope and quality of work.
3. Prior to assembling the SIP panels to construct the "framing" of the MEC—NTC's project manager should consult with the former "Architect in Charge" because of that architect's claims of deficiencies in the current architectural plans.

Contract development, negotiations and approvals

4. To improve administrative controls, the NTC should amend the manual, *"Procurement Management System—Policies and Procedures"* to include provisions that address the following concerns:
 - When conducting construction projects, a project manager with experience handling similar projects should be hired to develop project objectives and manage the construction constraints of cost, time, scope and quality.
 - To create contracts that protect NTC and meet grant requirements, a section should contain guidelines that describe the minimum terms and conditions in procurement contracts. Consideration should also be given to using an attorney versed in contract law to review contracts that represent large and complex projects.
5. To protect "procurement integrity" the Tribal Administrator should review "bids or proposals" from contractors to determine if they are free of "conflict of interests" and when faults are found—whether perceived or actual—report such matters to the NTC.
6. As required by provisions in the *"Procurement Management System—Policies and Procedures"* manual, the Tribal Administrator should inspect and record received goods or materials and confirm the items match the *contracted for specifications* in the purchase contract.

Continued

Audit Recommendations

For the Division's Grant Section

Accountability of grantee

7. The grant administrators should withhold reimbursement of expenditures with the Kenai Manufacturing LLC contract until unanswered questions are resolved. Specifically, NTC should provide evidence that: proves the identity of the consultants and provides a description and verification of the services and products provided by the consultants.

8. The grant administrators should review the “unresolved costs” found with the Earthcore SIPs procurement contract. Although invoices totaling \$696,696 were paid for the manufacture and delivery of SIP panels—it appears NTC personnel have not inspected and confirmed the SIP panels meet contractual requirements. Any “material” differences between delivered panels and contract specifications—would require grant administrators to determine if “unresolved costs” should be disallowed and a return of \$696,696 sought.

APPENDIX A

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**

General Conditions for Contracts - Prepared by Tom Sutton

APPENDIX B

General Conditions for Construction Contracts

Construction Requirements

Preconstruction Conference and Notice to Proceed
 Construction Progress Schedule
 Site Investigation and Conditions Affecting the Work
 Differing Site Conditions
 Specifications and Drawings for Construction
 Material and Workmanship
 Permits and Codes
 Health, Safety, and Accident Prevention
 Temporary Buildings and Transportation Materials
 Availability and Use of Utility Services
 Prohibition Against Liens
 Protection of Existing Vegetation, Structures,
 Equipment, Utilities, and Improvements
 Temporary Buildings and Transportation Materials
 Inspection and Acceptance of Construction
 Use and Possession Prior to Completion
 Warranty of Title
 Warranty of Construction

General Terms

Definitions
 Contractor's Responsibility for Work
 Architect's Duties, Responsibilities and Authority

Administrative Requirements

Contract Period
 Order of Precedence
 Payments
 Contract Modifications
 Changes
 Suspension of Work
 Disputes
 Default
 Liquidated Damages
 Termination of Convenience
 Assignment of Contract
 Royalties and Patents
 Examination and Retention of Contractor's Records

Source: U.S. Department of Housing and Urban Development

APPENDIX C

The Following Twelve Page Report Titled “Recovering Mertarvik--2013” Was Provided
By the Grantee In Response to Audit Findings

2013

Newtok Traditional Council

Management Support:
Alan Michael LLC

Recovering Mertarvik

ROOT CAUSE ANALYSIS AND CORRECTIVE ACTION PLAN

Newtok Traditional Council's Responses to Audit Findings



NEWTOK TRADITIONAL COUNCIL

P.O. Box 5545
Newtok, Alaska
99559-5545
Phone: 907-237-2314/2316
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October 21, 2013
Thomas Sutton
Internal Auditor III
Commerce, Community & Economic Development
CRA-COMM/REG AFFAIRS
PO Box 110800
Juneau, AK 99811-0800

RE: Audit Response and the Corrective Action Plan to address the audit findings and recommendations from: Special Report; Newtok Traditional Council-Fiscal Management of Grants & Project Management for the Mertarvik Evacuation Center Project.

Dear Mr. Sutton:

The Newtok Traditional Council has received the following: *A Special Report on the Newtok Traditional Council and the Mertarvik Evacuation Center Project, July 2013* and a *Performance Audit Report on the Project Management of the Mertarvik Evacuation Center, September 10, 2013.*

We are submitting this analysis and our initial proposals for correction of the conditions leading to serious grant management issues reflected in your reports. Your reports were well prepared and appear to have followed the process and procedures required by (GAAS) Generally Accepted Auditing Standards for you to gather adequate evidence and support for what appear to be significant audit findings and to offer recommendations to resolve the findings and to improve the fiscal and project management of the Mertarvik Evacuation Center Project.

The Newtok Village is the federally recognized tribe for the Native community of Newtok. The government for the tribe is the Newtok Traditional Council (Council). The Council has been working through an elections dispute, including strong evidence the members of the Council contracting with Federal and State of Alaska agencies had expired terms and their authority to enter into or bind the Newtok Village into financial and grant agreements is questionable and debatable topic.

Although related to many of the issues in your report, it is the position of the Council elected on October 12, 2012, the election dispute does not abdicate the Newtok Traditional Council from our responsibility of proper stewardship and management of all the Newtok Village's financial and grant resources including grants: 11-DC-559 and 12-DC-550.

The Council's responsibility is to serve the economic, health and social welfare of the Newtok Village membership. This responsibility includes the oversight and accountability of our employees and contractors holding positions of trust and management of the Newtok Village's resources. When this trust is held in question as forwarded in your audit findings, we take this seriously and will investigate and take the proper steps to remedy any discrepancies we find to make certain grant resources are utilized properly for the benefit of the Newtok Village.

Included with the audit report is an initial proposal for a Corrective Action Plan to guide the Council through the steps necessary to rebuild and maintain the credibility of the Newtok Village and to improve our working relationship with the State of Alaska.

Accept this response and the proposed initiation of a corrective plan to: (1) increase the administrative and management functions of the NTC and to work closely with the State of Alaska DCRA and other State and Federal government agencies to meet our mutual requirements and expectations for improved oversight and compliance of valuable and scarce resources as we move forward with our efforts to relocate our community.

Respectfully,



Katherine Charles; Audit and Finance Committee
Newtok Traditional Council.

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Introduction

A letter dated September 25, 2013 from Thomas L Sutton, CPA for the State of Alaska (State), was received requesting the Newtok Traditional Council (NTC) to review the “*Special Report on the Newtok Traditional Council and the Mertarvik Evacuation Center Project, July 12, 2013*” (Fiscal Report) and the “*Performance Audit Report on the Project Management of the Mertarvik Evacuation Center, September 10, 2013*” (Project Audit) and to respond in writing to the “findings and recommendations” of the two reports and to provide, in a separate correspondence, the current status of the required State Single Audits for calendar years ending 2011 and 2012 for State grants: 11-DC-559 “*Newtok Shelter and Road*” and 12-DC-550 “*Mertarvik Shelter & Road*”.

Background

The Newtok Village is the federally recognized tribe for the Newtok community¹. The government body for the Newtok Village is the Newtok Traditional Council (NTC).

There is currently a tribal dispute involving the membership over the composition of the NTC Council (Council) members; there are two competing councils claiming to legally represent the Newtok Village. The Bureau of Indian Affairs (BIA) recognized the selection of the Newtok Village’s council members through a determination issued by the Acting BIA Regional Director, Eufrona O’ Neill on July 11, 2013². The State, although not required, followed suit and recognized the same council members determined by the BIA as the legal and elected council of the Newtok Village government. The State notified Paul Charles, the NTC Council president, of this recognition in a letter dated August 22, 2013³

There is little question of the Newtok Village memberships’ choice of members selected for the Council. Director O’ Neill based her determination to recognize the Council, composed of: Paul Charles, George Carl, Katherine Charles, Louie Andy, Lisa Charles, Bernice John and Simeon Fairbanks Jr. on a variety of community events; an election,

¹ <http://www.bia.gov/cs/groups/public/documents/text/idc-041248.pdf>

² http://www.alan-michael-llc.com/BIA_Determination.pdf BIA Determination letter p 8.; issued July 11, 2013; “Accordingly, BIA accepts the assertion of the members of the New Council that they constitute the Traditional Council which has authority to act as the governing body of Newtok Village, and therefore BIA will comply with the directions given, if any, regarding ISDA contracting by the New Council acting as the Traditional Council, pursuant to Section 102(a)(1) of the ISDA”

³ http://www.alan-michael-llc.com/Newtok_Council_Recognition_8-21-13-1.pdf “In reviewing the history of as outlined in this summary, the State feels that the actions occurring, especially this at the June community meeting, are compelling enough for the State to recognize the council members from the new council as the members for state purposes.”

several petitions and an affirmation of majority support by the Newtok Village community for the Council during a public meeting on June 14, 2013.

The previous council members had the right to appeal and in a letter dated August 29, 2013⁴, did appeal the BIA determination to the Interior Board of Indian Appeals (IBIA). By filing an appeal the BIA's Council recognition, for all practical purposes, was automatically stayed⁵. Since this is the case, the BIA cannot proceed with any 93-638 contract agreements with the NTC until a ruling by the IBIA is issued to resolve the old council's appeal. A result of the dispute, is the operating account at the Wells Fargo bank was been suspended by Wells Fargo and the NTC's financial resources have not been available to the NTC. The action by Wells Fargo effectively suspended the administrative functions of the NTC.

Current Administrative Capacity

Due to the suspended operating account and the lack of financial resources, the normal administrative functions are non-existent. The Council went through the process of advertising and selecting a new Tribal Administrator, Mr. Tom John, however with no funds to support a salary Mr. John has not signed any employment documents, contracts or IRS forms to commence his administration duties.

To address basic administrative requirements; budget requests, resolutions, funding requests- capital projects and grant requests, establish a bank of account and correspondence deemed necessary by the Council, the NTC entered into a contract agreement for management services with Alan Michael LLC. The production of this audit response was completed with the administrative support from Alan Michael LLC.

Federal Government Shutdown

The IBIA was scheduled to notify all the interested parties of the status of the election dispute appeal twenty (20) days after the appeal was accepted by the IBIA. To date no response has been received; no announcement or any other correspondence to the NTC or previous council has arrived to Newtok.

⁴ <http://www.alan-michael-llc.com/APPEAL1.pdf> RE: Newtok Traditional Council By-Laws

⁵ http://www.alan-michael-llc.com/BIA_Sept6.pdf Newtok Traditional Council v. Alaska Regional Director, BIA p.12

Barred from NTC Administration Office and Files

Without a final decision from the IBIA, the previous council refuses to relent or acquiesce to Newtok Village's authority to select a new Council and through their administrative manager, Stanley Tom has barred access to the NTC administrative offices and specifically, access to the accounting records and grant files applicable to the audit findings. Without original documentation it is not possible to concur with or challenge any of the Fiscal report or Project Audit findings or provide any meaningful discussion about the conclusions of the Fiscal Report or Project Audit.

Audit Response: All Recommendations

The objectives of the financial compliance review consisted of: (1) an assessment of the organization's ability to conduct its financial activities in compliance with terms and conditions of the grant contract and (2) the reliability and integrity of the accounting and financial information presented by the NTC to grant administrators.

The NTC can only offer concurrence to any findings when the facts of a condition can be verified by evidence. This can suggest a strong correlation with the audit conclusions and the cause for the audit finding (s).

Your reports states: "The NTC management and internal accounting controls are so ineffective that financial statements and general ledgers are unreliable and inaccurate for grant administrators to use as (a) financial tool". This statement goes directly to the question of correct management and oversight for all the other recommendations in your report.

DISCUSSION

To correctly manage any organization there must be a functioning accounting information system and managers employed who are capable to understand the requirements for reporting to their respective boards and councils charged with oversight and setting organization policy and to for interested parties to rely on the contents of the financial reports to guide the organization. In the case of a major project, a functioning accounting information system is essential to ensure milestones are achieved and progress is successful to complete a project within a reasonable budget. The baseline definition of an accounting information system is: *"The collection, storage and processing of financial and accounting data that is used by decision makers. An accounting information system is generally a computer-based method for tracking accounting activity in*

conjunction with information technology resources. The resulting statistical reports can be used internally by management or externally by other interested parties including investors, creditors and tax authorities” (Source: <http://www.investopedia.com>).

Financial Management Reports Nonexistent

A long known complaint about the Newtok NTC is: there were no production of reliable or useful financial reports compiled showing the status of the funds and resources under the administration’s management. During the work associated with the election dispute it became clear the meeting minutes often reflected there were no financial reports provided to the council or to the public. Although a statement by a previous council person George Tom suggests the accounting records are open to the public for review at any time, this is counter to their current stance of non-access to the administration building and access to the grant files for review to produce this response. Emails and letters were forwarded to Mr. Stanley Tom and to their newly elected president Mr. Andy Patrick and both of these requests were ignored by Mr. Tom and Mr. Patrick.

Based on: (1) the actions of the previous council to deny access to the administration building and access to the accounting records and grant files associated with the Fiscal Report and Project Audit and (2) the minutes showing the lack of any available financial or budget reports -- produced by Stanley Tom in his attempts to show elections were completed during the last 8 years prior to Oct 2013 – there is strong evidence to support the memberships’ complaint of: No reliable financial reports were ever produced for review by the council or the public.

EVIDENCE

Based on: (1) the minutes⁶ forwarded to the BIA to support the previous council’s appeal, revealing there were no reliable, regularly published financial reports to review by the council or by the Newtok Village membership and (2) the current issues with access to the accounting and grants records the NTC must concur with your observation: “The NTC management and internal accounting controls are so ineffective that financial statements and general ledgers are unreliable and inaccurate for grant administrators to use as (a) financial tool”. In fact meeting minutes are devoid of any type of verifiable financial, budget or accounting reports deemed usable by the council

⁶ http://www.alan-michael-llc.com/No_Financial_Reports.pdf

to properly oversee any program funded through the BIA, (either the annual funding agreement or 93-638 contracts agreements) the State, regional funders such as the Coast Village Region Fund or YKHC.

There are currently no trained accounting personnel employed with the NTC. The issues of completing simple grant reporting forms to the State suggest the NTC had no qualified accounting employees on staff during CY2011 and CY2012.

CONCLUSION

Accounting and accounting information systems are an important function of any organization. The systems and the reports they produce are only as effective as the people charged with the management and operation of the organization. In the case of the NTC, the management and internal accounting controls are ineffective and any attempt to forward financial statements and general ledgers reports are unreliable and inaccurate and are of no practical use for the Council or the Newtok Village membership.

NTC Concurs with All Fiscal and Project Audit Findings

FISCAL REPORT

The process of resolving audit findings range from revising an accounting procedure or increasing staff awareness or adding a cross check, separation of duty or other recognized accounting procedure to correct a process resulting in an audit finding. Audit findings and management letters for a typical corporate organization are regarded as a mark against management and if there are too many findings or management letters, then boards and councils usually take note and begin looking closely at the managers for further training or in the extreme cases replacement and the hiring of new managers.

It has been the experience of this author, management letters and audit findings for some small tribal and city governments and even school districts, where qualified accountants and trained personnel are scare become a normal course of business. This seems to be the case for the Newtok NTC. A management letter or an audit finding for the pervious council is “nothing for them to consider” and based on their continued efforts to remain in control of the Newtok Village the reports produced by the State the: Fiscal Report and Project Audit, detailing serious fiscal and project management issues

for the Mertarvik Evacuation Center project are nothing to worry about and in fact Mr. Andy Patrick relayed to the Newtok community during a recent meeting of the previous council the audit reports were only an effort by the State to disparage the previous council.

PROJECT MANAGEMENT AUDIT

The Newtok NTC has never been involved with, or attempted to develop any construction projects outside of assembling houses. Assembling a house is a far cry from planning and managing a \$150-200 million dollar community development project in remote Alaska.

NTC CONCURS WITH THE STATE OF ALASKA ON ALL AUDIT FINDINGS

The basis for agreeing to an audit finding is usually done on a case by case basis for each finding; as stated processes have gone bad are examined, ignored procedures reviewed and steps are taken to resolve the events leading to a finding. This increases the reliability of the entire system and improves the performance of the organization.

The Fiscal Report and Project Audit detailed an entire host of issues related to the integrity of the accounting information system and project management capabilities of the administrator of the Council in charge of the overall accounting system and the contracted project manager or "CEO" of the Mertarvik Community Development Corporation, the entity formed to manage the construction of the MEC.

The NTC Council does not have access to the accounting records or the grant files to make a determination of each finding in the State reports. The basis of our agreement is from the evidence gathered outside of the accounting information system and project management of the MEC and the events surrounding the election dispute and they are: (1) the lack of monthly budget and financial reports to the Council or Newtok membership and (2) the failure of the previous council to allow access to public accounting records and grant files and (3) a public statement⁷ from the CEO and Tribal Administrator, owners and administrators of the Newtok TC internet page stating: "The management of the grants were NOT done by either MCDG George Owletuck or NTC Administrator Stanley Tom...." This statement demonstrates the lack of understanding of the basic management responsibilities inherent for both managers to properly manage the Newtok Traditional Council and maintain strict oversight and direct management for a major construction project in remote Alaska.

⁷ http://www.alan-michael-llc.com/Project_Management_Statements.pdf

Newtok Traditional Council

Root Cause Analysis and Corrective Action Plan

There are a variety of causes for failure and in the case for the MEC project it can be traced to the management capacity of the NTC. The evidence suggests, strongly, over the last decade the NTC was configured as an organization more akin to a dictatorship than a tribal council with the administrator dictating the terms to the Council and not having any Council or Newtok Village oversight. The BIA contracting process added to the difficulty of the membership to intervene and gain control and oversight of the Newtok Village government and the process is still ongoing with no apparent end in sight for the Village residents.

Capacity & Compliance

During the next several weeks the NTC will embark on the process of reestablishing their administrative and management capabilities in an adequate location. The idea of determining a “Root Cause” for the issues presented by the Fiscal Report and Project Audit should be addressed in the entirety as the NTC moves to develop a functioning accounting information system. In light of the erosion and the recent acceleration of the river taking out the Newtok site, the idea of forming an adequate project management team to oversee and develop a multimillion dollar community development in remote Alaska is



Inadequate NTC Office Space

probably, at this point a far-fetched proposition. In every recovery project there has to be step one. In this case step one is to secure an adequate location to conduct Council business.

More Inadequate Office Space



Currently at the old NTC offices there is no adequate office space to assure compliance or offer any opportunities to conduct business in an environment where compliance, separation of duties and proper management can occur to assure the mission statement of the Newtok Village is

being properly met with the scarce resources available to the Council. Training and practice areas are needed, and if the Council is to actively participate in the

development of their new community site an area to review plans, conduct meetings and provide space for visiting professionals is needed to be secured in the community.

The NTC has secured a location and with gracious cooperation of the Alaska National Guard, has secured the use of the Armory in Newtok. This space will allow the NTC to revive, quickly the stalled administrative and management functions for the Council.



New Office/Administrative Offices Area for the Newtok NTC

NTC CORRECTIVE ACTION PLAN

...to be continued during the Fall/Winter 2013.



Newtok Traditional Council Elected on October 12, 2012 by a majority of the Newtok Village membership