



NATIONAL ENDOWMENT FOR THE


Humanities

OFFICE OF INSPECTOR GENERAL

## MEMORANDUM

Date: February 10, 2012

To: James A. Leach, Chairman  
Carole Watson, Deputy Chairman  
Jeff Thomas, Assistant Chairman for Planning and Operations  
Adam Wolfson, Assistant Chairman for Programs  
Karen Mittelman, Deputy Director ~ Division of Public Programs  
Susan Daisey, Director ~ Office of Grant Management

From: Laura Davis, Acting Inspector General 

Subject: Pre-Award Survey Memorandum Report: OIG-12-01 (TS)  
**The Dr. Haing S. Ngor Foundation**  
**Santa Monica, CA**

We have completed our pre-award survey of The Dr. Haing S. Ngor Foundation (the "Foundation"). The purpose of our survey was to obtain information to determine the adequacy of the organization's accounting system, management controls, and policies and procedures designed to administer NEH grant funds.

This organization's Media Makers Development Grant (TW-50203 - \$74,804) was approved for funding in November 2011. The Foundation, a Section 501(c)(3) tax exempt organization, recently had its non-profit status reinstated by the Internal Revenue Service (August 2011). The Foundation, partnering with an independent filmmaker, plans to produce a documentary film chronicling Dr. Ngor's life and the destructive practices of the Khmer Rouge in Cambodia. During the organizational survey process, the Office of Grant Management determined that the Foundation represents a very small organization, with limited staffing and financial resources, which has never administered a Federal grant. Accordingly, the matter was referred to the Office of Inspector General and a pre-award survey conducted.

### Scope

Our efforts were limited to a review of the pre-award survey document, as completed by the Foundation, and a subsequent conference call with both the Foundation's Executive Director and outside accountant, who was recently engaged to assist with this NEH project. The pre-award survey document provides a road map to assess the organization's accounting system and related financial management controls. As part of this process, we also reviewed the organization's newly completed finance manual (effective 1/1/2012) and the December 31, 2010 statement of financial position, (unaudited).

## Conclusion

We conclude that the Foundation's recently upgraded accounting system, management controls, Governance oversight, and formalized policies/procedures will allow the nonprofit to sufficiently manage and account for NEH grant funds. However, we identified several specific areas, in which existing financial management controls can be improved upon as follows:

- At this time, the Foundation has not adopted formal, written procurement policies and procedures. To ensure compliance with OMB Circular A-110 requirements, such a policy needs to be developed immediately. Areas to be covered include competitive bidding procedures, sole source justification (if applicable), contract file documentation requirements, suspension/debarment monitoring, and conflict of interest guidelines (see detailed guidance below – item #3).
- The vast majority of the budgeted grant work will be performed by the third party filmmaker (Deep Focus Productions). However, the Foundation's existing *Finance Manual* is silent concerning subrecipient compliance monitoring.

The Financial Management Standards apply to both the Foundation and subrecipients. Accordingly, the Foundation is ultimately responsible for ensuring Deep Focus Productions successfully implements the core components of these standards to include an accounting system, source documentation retention procedures, internal controls/segregation of duties, budget controls, and Federal cash management procedures. The Foundation has taken the first step and executed a sponsorship agreement with the filmmaker. However, to ensure compliance with the subrecipient monitoring function, we advised the Foundation to perform a site visit and meet with the subrecipient's accounting staff prior to the kickoff of the NEH project. In particular, the two entities should ensure their respective chart of accounts mesh and provide sufficient detail to allow for the proper completion of the financial report(s) required by the NEH.

Furthermore, we identified a potential cash flow issue that warrants further scrutiny and continuous monitoring. At the end of calendar year 2010, the organization's total net assets consisted of \$ [REDACTED] and the Foundation has never undergone a formal audit due to its limited activities. Based upon these facts, the OIG believes that the Foundation's liquidity situation needs to be actively monitored by NEH management and may require the inclusion of certain safeguards in the approved grant award (especially a subsequent production grant), as suggested by OMB Circular A-110, Subpart B, Paragraph .14, *Special award conditions*<sup>1</sup>. Some suggestions include drafting language requiring the Foundation to immediately notify the NEH of possible grant overruns; mandating that the grantee obtain an annual financial statement audit<sup>2</sup> and alert the NEH of any "going concern" comments or adverse audit opinions; or even administering the grant on a cash reimbursement basis.

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<sup>1</sup> OMB Circular A-110, Subpart B-Pre-Award Requirements .14 Special award conditions: If an applicant or recipient: (a) has a history of poor performance, (b) **is not financially stable**, (c) has a management system that does not meet the standards prescribed in this Circular, (d) has not conformed to the terms and conditions of a previous award, or (e) is not otherwise responsible, Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed.

<sup>2</sup> Annual audit not currently performed or required by the Foundation's bylaws.

Foundation management has also been advised of several core compliance requirements that directly impact this NEH award and, therefore need to be monitored on an ongoing basis to ensure proper implementation.

1. The organization's accounting system must provide accurate, current, and complete disclosure of all financial transactions related to each federally-sponsored project. Unallowable expenditures should be separately tracked in the general ledger and excluded from charges to Federal awards.
2. Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, must be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports, except when a substitute system has been approved in writing by the cognizant agency.

Reports reflecting the distribution of activity of each employee must be maintained for all staff members whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate.

Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

3. The Foundation shall establish written procurement procedures that provide for, at a minimum, the following procedural requirements:
  - a. The Foundation must ensure that all parties with whom they contract for goods or services are not debarred or suspended from doing business with the Federal government when (1) the amount of the contract is \$25,000 or more, or (2) the contract requires NEH consent, or (3) the contract is for federally-required audit services. A term or condition must be included in the contract that requires the contractor's compliance with Subpart C of 2 CFR Parts 180 and 3369.
  - b. Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices, and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.
  - c. Procurement records and files for purchases in excess of the simplified acquisition threshold (currently \$100,000) shall include the basis for contractor selection, justification for lack of competition when competitive bids or offers are not obtained, and the basis for award cost or price.
  - d. The type of procurement instrument used, e.g., fixed price contracts, cost reimbursable contracts, incentive contracts, purchase orders, will be determined by the Foundation, but must be appropriate for the particular procurement and for promoting the best interests of the program involved. The "cost-plus-a-

percentage-of-cost" or "percentage of construction cost" methods shall not be used.

- e. Contracts in excess of the simplified acquisition threshold (currently \$100,000) must provide for:
  1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and such remedial actions as may be appropriate.
  2. Termination for cause and for convenience by the Foundation, including the manner by which it will be effected and the basis for settlement. In addition, these contracts shall also contain a description of the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
  3. Access by the Foundation, the NEH, the Comptroller General of the United States, or any other duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
4. As the sponsor of this media project, the Foundation must ensure proper procedures are implemented to oversee the primary subrecipient (Deep Focus Productions). As stipulated in NEH's *Requirements for Grant Recipients that Serve as Sponsors of Projects* guidance, the sponsor for any project that entails work being performed by a subrecipient is responsible for the following:
  - a. The sponsor must provide to the subrecipient identifying information on the Federal award, such as the award name and number, NEH's name, and the relevant CFDA number (found at the bottom of the "Official Notice of Action").
  - b. The sponsor must advise the subrecipient of the requirements of the NEH award, such as the applicable Federal laws and regulations, as well as the terms and conditions and general grant provisions of the grant agreement.
  - c. The sponsor must collect the certifications that flow down to subrecipients, as outlined in the application guidelines for the particular NEH grant program.
  - d. The sponsor must maintain an organizational prior approval system to manage the subrecipient's activities.
  - e. The sponsor shall review financial and performance reports submitted by the subrecipient.
  - f. The sponsor shall conduct site visits to review financial and programmatic records and observe operations.
  - g. The sponsor shall ensure that the scope of the project, as approved by NEH, is not changed without prior approval from NEH.

- h. In addition to the sponsor's own audit, it must ensure that the subrecipient has a single audit, if one is required by the standards outlined in OMB Circular A-133 (see #6 below). The subrecipient must be required to provide both the sponsor and auditors access to its records and financial statements as necessary.
  - i. The sponsor is responsible for issuing management decisions on subrecipient audit findings; and must see that the subrecipient takes timely and appropriate corrective action in response to the audit.
  - j. In the case of media production grants, the sponsor must ensure that distribution agreements are submitted to the NEH for review before being finalized. Distribution agreements must contain the following NEH requirements: 1) acknowledgment of NEH support; 2) the NEH's royalty-free nonexclusive license to use and reproduce and allow others to use and reproduce materials produced under a grant; and 3) disposition of the NEH's share of program income earned by the project.
  - k. The sponsor must monitor the activities of and maintain contact with the subrecipient as necessary to ensure compliance with the requirements mentioned above, and to ensure achievement of performance goals.
5. Arrangements with consultants must be documented in writing. The written consultant agreement should include (at a minimum):
- a. A clear description of all services to be rendered and/or products (written reports, etc.);
  - b. Fees to be paid;
  - c. Method of payment (submission of invoices, payment schedule, etc.);
  - d. Allowable expenses for reimbursement;
  - e. An explanation of who will provide materials, equipment, and office space;
  - f. A statement that the consultant pays applicable state and Federal income taxes;
  - g. An acknowledgement by the consultant that he/she is not entitled to any of the benefits provided to employees of the organization;
  - h. A description of the term of the agreement, (one week, one season, or until the project is completed); and
  - i. A description of the circumstances under which the organization or the consultant can terminate the agreement.
6. As a first-time recipient of a Federal grant, the Foundation was notified that OMB Circular A-133 "*Audits of States, Local Governments, and Non-Profit Organizations*" requires non-Federal entities that expend \$500,000 or more in a fiscal year in Federal awards to undergo a single or program-specific audit.

7. Financial records, supporting documentation, statistical records, and all other records pertinent to the NEH award must be retained by the Foundation for three years from the date of submission of the final *Federal Financial Report*.

### **Management Representations**

We have received written assurance from [REDACTED] (Executive Director) and [REDACTED] (President) that the Foundation will:

1. Maintain supporting documentation in accordance with NEH and OMB regulations;
2. Comply with all of the specific terms and conditions of the NEH award;
3. Comply with the Uniform Administrative Requirements of OMB Circular A-110;
4. Comply with the Cost Principles for Nonprofit Organizations (OMB Circular A-122);
5. Comply with NEH General Terms and Conditions for Awards to Organizations; and
6. Comply with the audit requirements of OMB Circular A-133.

Please note that the Office of Inspector General plans on performing an interim review to assess the Foundation's a) compliance with the terms and conditions of the NEH award and b) progress made addressing the items discussed in the *Conclusion* section of this memorandum. Moreover, this review will be performed prior to the issuance of any subsequent Media Maker production grant award.