



December 2013

INTERNAL CONTROLS

Corrective Actions Under Way to Address Control Deficiencies at the Morris K. Udall and Stewart L. Udall Foundation

Why GAO Did This Study

The Foundation was established as an executive branch agency to provide educational opportunities related to environmental policy and Native American health care and tribal policy, and also to assist in resolving environmental disputes that involve federal agencies. In December 2012, a DOI OIG audit of the Foundation identified significant issues primarily related to the Foundation's failure to appropriately monitor and assess the effectiveness of its internal controls as required by FMFIA and the absence of key internal controls over its personnel and contracting practices. GAO was asked to review whether the Foundation has sufficient internal controls to ensure that it is complying with applicable laws and regulations regarding financial management and contracting. The objective of this report is to describe the Foundation's actions to improve its internal control assessment process and its controls over personnel and contracting, and determine the extent to which the design of the Foundation's actions that have been sufficiently documented is consistent with internal control standards and applicable laws and regulations.

To address this objective, GAO reviewed relevant documents, interviewed Foundation management, and assessed the Foundation's actions against relevant standards and guidance.

In commenting on a draft of this report, the Foundation accepted GAO's results in full. The Foundation also provided a summary of the changes it has made in its operations and structure since the DOI OIG report.

View [GAO-14-95](#). For more information, contact J. Lawrence Malenich at (202) 512-9399 or malenichj@gao.gov.

INTERNAL CONTROLS

Corrective Actions Under Way to Address Control Deficiencies at the Morris K. Udall and Stewart L. Udall Foundation

What GAO Found

Officials at the Morris K. Udall and Stewart L. Udall Foundation (Foundation) developed a Corrective Action Plan to address the findings in the Department of the Interior (DOI) Office of Inspector General's (OIG) December 2012 audit report. The Corrective Action Plan included steps to address deficiencies in the Foundation's (1) internal control monitoring and assessment process, (2) internal control related to personnel issues, and (3) internal control related to contracting. For those actions that were sufficiently documented at the time of its review, GAO found that their design was consistent with internal control standards and applicable laws and regulations.

To address identified deficiencies in its internal control monitoring and assessment processes under 31 U.S.C. § 3512(c), (d), commonly known as the Federal Managers' Financial Integrity Act (FMFIA), and implementing guidance, the Foundation contracted with an external consultant to perform an internal control review with an overall goal of achieving compliance with the Office of Management and Budget (OMB) Circular No. A-123, *Management's Responsibility for Internal Control and Standards for Internal Control in the Federal Government*. GAO determined that the design of this action to contract for the performance of a thorough internal control review is consistent with internal control standards related to monitoring operations and internal controls and with FMFIA requirements to monitor and assess the effectiveness of internal controls.

To address deficiencies in its internal control related to personnel issues, the Foundation developed policies and procedures to address specific DOI OIG findings in the areas of outside employment and termination of employees. The procedures were still in draft form, and it was too soon for GAO to assess the design of the changes.

To address the DOI OIG's findings related to its contracting practices, the Foundation entered into a 5-year interagency agreement with the DOI Interior Business Center (IBC), under which IBC agreed to assist the Foundation on contracts related to the Foundation's environmental conflict resolution activities, including mediation, facilitation, and assessment services. GAO determined that the design of this action is consistent with internal control standards and applicable guidance for federal executive agencies. For example, the Foundation's interagency agreement with IBC for managing environmental conflict resolution contracts is generally consistent with OMB's Office of Federal Procurement Policy guidance on management and use of interagency acquisitions. For other contracts, the Foundation planned to issue a policy and guidance on internal contracting processes, but it was not finalized at the time of GAO's review.

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Abbreviations

ADR	Alternative Dispute Resolution
DOI	Department of the Interior
COR	contracting officer's representative
FAR	Federal Acquisition Regulation
FMFIA	Federal Managers' Financial Integrity Act
IBC	Interior Business Center
OFPP	Office of Federal Procurement Policy
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPM	Office of Personnel Management

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December 6, 2013

Congressional Requesters

The Morris K. Udall and Stewart L. Udall Foundation (Foundation) was established as an executive branch agency to provide educational opportunities related to environmental policy and Native American health care and tribal policy, and also to assist in resolving environmental disputes that involve federal agencies.¹ In December 2012,² a Department of the Interior (DOI) Office of Inspector General (OIG) audit of the Foundation identified significant issues primarily related to the Foundation's failure to appropriately monitor and assess the effectiveness of its internal controls as required,³ and the absence of key internal controls over its personnel and contracting practices. The DOI OIG audit was performed after the Foundation's Board of Trustees (Board) became aware of some questionable actions by Foundation employees relating to these areas. Since the Foundation does not have an internal audit function, at the suggestion of the Deputy Secretary of the Interior—who serves as a Board trustee—the Board's Chair and Vice Chair requested a review by the DOI OIG under an Economy Act agreement.⁴

¹See the Foundation's authorizing legislation, which is *classified, as amended*, at 20 U.S.C. chapter 66.

²The DOI OIG audit report, *Stewardship of the Morris K. Udall and Stewart L. Udall Foundation*, was released in December 2012 to the Foundation's Board of Trustees and the Foundation's Acting Executive Director. The report was not made available to the public.

³Under 31 U.S.C. 3512 (c), (d), commonly known as the Federal Managers' Financial Integrity Act (FMFIA), and implementing guidance, federal executive agencies must establish internal control and financial systems that provide reasonable assurance of achieving the following three objectives of internal control: effectiveness and efficiency of operations, compliance with regulations and applicable laws, and reliability of financial reporting. FMFIA also requires the agency head to provide an annual statement of assurance on whether the agency has met these requirements.

⁴The Economy Act, *codified, as amended, in part*, at 31 U.S.C. § 1535, authorizes federal agencies to acquire services from other federal agencies and to pay for those services. A federal agency may make such an acquisition under the Economy Act if these requirements are met: (1) amounts to pay for the services are available to the acquiring agency, (2) the acquisition is in the best interests of the United States, (3) the servicing agency is able to provide them or get them by contract, and (4) the services cannot be provided by contract as conveniently or as cheaply by a commercial enterprise.

Since the release of the DOI OIG audit report, the Foundation's controls have been in a significant state of transition and continued to be so during the time of our audit because of new management's efforts to develop and implement changes to improve internal controls over financial management, including personnel and contracting.⁵ You asked us to review whether the Foundation has sufficient internal controls to ensure that it is complying with applicable laws and regulations regarding financial management and contracting. Our objective is to describe the Foundation's actions to improve its internal control assessment process and its controls over personnel and contracting, and determine the extent to which the design of the Foundation's actions that have been sufficiently documented is consistent with internal control standards and applicable laws and regulations.

Scope and Methodology

To address our objective, we (1) obtained and reviewed the DOI OIG audit report and supporting workpapers; (2) interviewed Foundation management and selected staff members to determine the extent to which its actions to improve internal controls and the Federal Managers' Financial Integrity Act (FMFIA) assessment process have been sufficiently documented (i.e., whether such changes have been issued in final form or whether draft policies of planned changes have been reviewed by senior management and the in-house General Counsel); (3) obtained and reviewed documentation related to the Foundation's actions to improve internal controls and its FMFIA assessment process; and (4) assessed the Foundation's actions against the criteria established under *Standards for Internal Control in the Federal Government*,⁶ Office of Management and Budget (OMB) Circular No. A-123, *Management's Responsibility for Internal Control* (December 21, 2004) (OMB Circular

⁵On August 27, 2013, the Board unanimously voted to appoint the Acting Executive Director as Executive Director of the Foundation. The Executive Director previously served as the Foundation's Deputy Executive Director for Finance and Education. In addition, a new General Counsel was hired on July 1, 2013.

⁶GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

No. A-123),⁷ other OMB guidance concerning contracting, and the Federal Acquisition Regulation (FAR). The scope of our work did not include performing procedures to validate the findings included in the DOI OIG audit report. We discussed with DOI OIG officials responsible for conducting the audit at the Foundation the audit procedures they performed and reviewed supporting DOI OIG workpapers. We also met with Foundation management responsible for responding to the DOI OIG audit report and developing corrective action plans. These procedures allowed us to gain an understanding of the DOI OIG's work performed, the conclusions drawn, and management's response to the DOI OIG audit report.

We conducted this performance audit from May 2013 to December 2013 in accordance with generally accepted government auditing standards. Those standards required that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Foundation was established as an independent executive branch agency in 1992 to honor Morris K. Udall's 30 years of service in the U.S. House of Representatives as a leader on issues related to the environment and Native Americans. In 2009, its authorizing legislation was amended to also honor Stewart L. Udall's public service legacy. The Foundation is committed to educating a new generation of Americans to preserve and protect their national heritage through scholarship, fellowship, and internship programs focused on environmental and Native American issues. The Foundation consists of the Morris K. Udall and Stewart L. Udall Trust Fund, which is used to operate the Foundation's education programs, and the Environmental Dispute Resolution Fund. The latter fund is available to the Foundation to operate the U.S. Institute for Environmental Conflict Resolution, which was established by the

⁷OMB Circular No. A-123, *Management's Responsibility for Internal Control*, (Dec. 21, 2004). This circular provides guidance to federal managers on improving the accountability and effectiveness of federal programs and operations by establishing, assessing, correcting, and reporting on internal control. The circular provides internal control standards and specific requirements for conducting management's assessment of the effectiveness of internal control over financial reporting.

Environmental Policy and Conflict Resolution Act of 1998 to promote the principles and practices of environmental conflict resolution and to assist in resolving conflict over environmental issues involving federal agencies. The Foundation depends on federal appropriations for the majority of its operations and received no-year appropriations of roughly \$6.0 million in fiscal years 2012 and 2013.

Under its authorizing legislation, the Foundation is subject to the supervision and direction of the Board, which is to consist of 13 trustees, 11 of whom are to be voting members of the Board.⁸ The authorizing legislation charges the Board with appointing the Executive Director and setting his or her compensation. Further, the Foundation's operating procedures provide that it is the Board's role and duty to appoint senior management staff members and set their compensation; approve the organizational structure for the staff of the Foundation; approve the Foundation's budget and arrange for an annual financial audit; set policies, including internal controls, for the conduct and management of the agency's finances, personnel, and programs to be implemented by its staff; and approve the strategic direction and priorities for the Foundation.

DOI OIG Audit Report

The DOI OIG's December 2012 audit report of the Foundation concluded that—despite signed statements of assurance by the former Executive Director claiming otherwise—the Foundation had not appropriately assessed the effectiveness of its internal controls for at least 6 fiscal years from 2006 through 2011 and was thus not in compliance with FMFIA. Under FMFIA and implementing guidance, federal executive agencies must establish internal control and financial systems that provide reasonable assurance of achieving the following three objectives of internal control: effectiveness and efficiency of operations, compliance with regulations and applicable laws, and reliability of financial reporting. FMFIA also requires the agency head to provide an annual statement of assurance on whether the agency has met these requirements. OMB Circular No. A-123 defines management's responsibility for internal control in federal executive agencies, including maintaining the

⁸The President appoints nine members of the Board, with the advice and consent of the U.S. Senate. The other four members serve by virtue of their positions within government and include the Secretary of the Interior or the Secretary's designee, the Secretary of Education or the Secretary's designee, the President of the University of Arizona, and the chairperson of the President's Council on Environmental Quality.

appropriate level of documentation and continuously monitoring the effectiveness of internal control during the normal course of business. In relation to internal control over financial reporting, this includes documenting both the controls in place and the assessment process and methodology that management used to support its assertion as to the effectiveness of internal control, and performing monitoring activities that include direct testing of the controls as part of the assessment process.⁹ The DOI OIG's audit report also found that the Foundation was missing key internal controls over its personnel and contracting practices. The DOI OIG December 2012 audit report stated that the office does not have the authority to make formal recommendations to the Foundation to improve its internal controls. However, the DOI OIG audit report did include several suggestions for corrective actions for the Foundation's consideration.

⁹These internal control activities would be generally consistent with the requirements in OMB Circular No. A-123's Appendix A, *Internal Control Over Financial Reporting*, which contains additional guidance related to the process for separately assessing and documenting internal control over financial reporting. While Appendix A only applies directly to the 24 Chief Financial Officers Act agencies, which do not include the Foundation, this does not preclude the Foundation's management from voluntarily adopting this guidance as a best practice.

The Foundation Is Taking Actions to Improve Its Internal Controls to Comply with Internal Control Standards and Laws and Regulations

The Foundation developed a Corrective Action Plan during fiscal year 2013 to address the findings identified in the DOI OIG audit report and related financial management weaknesses to improve internal controls over its key financial management processes. Major elements of the Corrective Action Plan include performing a complete assessment of the Foundation's current internal control structure to identify adequate, inadequate, and missing controls, and developing (or contracting to have developed) policies and procedures to implement appropriate internal controls in all areas where inadequate or missing controls are identified.¹⁰ The Corrective Action Plan included steps to address deficiencies in the Foundation's (1) FMFIA internal control monitoring and assessment process, (2) internal control related to its personnel processes, and (3) internal control related to its contracting processes. For those actions that were sufficiently documented at the time of our review, we found that their design was consistent with internal control standards and applicable laws and regulations, as discussed in the following sections.

Foundation Actions to Improve FMFIA Internal Control Monitoring and the Assessment Process

Since the release of the DOI OIG audit report, the Foundation has experienced significant turnover in its senior management ranks, and new management has acknowledged that the Foundation did not (1) maintain adequate documentation of the controls in place, (2) perform monitoring activities that included direct testing of the controls as part of the internal control assessment process required under FMFIA, (3) document the assessment process and methodology that management used to support its assertion as to the effectiveness of internal control over financial reporting, and (4) include appropriate representations from officials and personnel responsible for monitoring, improving, and assessing internal controls. In addition, new management at the Foundation acknowledged that the Foundation's failure to comply with FMFIA requirements and

¹⁰The Foundation is also seeking changes to its appropriations language that will assign the DOI OIG responsibility for providing future oversight for the Foundation. In this regard, the House and Senate Committees on Appropriations, Subcommittees on Financial Services and General Government, have each approved the Financial Services and General Government Appropriations bills for fiscal year 2014 (H.R. 2786 and S. 1371). S.1371, as noted in its companion Senate Report No. 113-80, includes an earmark providing for the DOI OIG to conduct annual audits and investigations of the Foundation in order to ensure that the Foundation's spending, management, and other activities are subject to regular oversight and review. However, the Continuing Appropriations Act, 2014, Pub. L. No. 113-46, 127 Stat. 558 (Oct. 17, 2013), which is effective through January 15, 2014, did not include a provision providing funding for Foundation investigations and audits by the DOI OIG.

implementing OMB Circular No. A-123 guidance contributed to the financial management weaknesses identified in the DOI OIG audit report.

The Foundation has taken action to comprehensively assess its internal controls and plans to make changes based on the results of that assessment. Specifically, the Foundation contracted with an external consultant to perform an internal control review with an overall goal of achieving compliance with OMB Circular No. A-123 and *Standards for Internal Control in the Federal Government*. We determined that the design of this action to contract for the performance of a thorough internal control review is consistent with internal control standards related to monitoring operations and internal controls and with FMFIA requirements to monitor and assess the effectiveness of its internal controls.

The scope of work for this review included performing an assessment of the Foundation's current internal control structure to identify adequate, inadequate, and missing controls; recommending improvements to controls and the control environment;¹¹ recommending procedures for annual monitoring and testing of controls; recommending a format for the annual statement of assurance; and reviewing and recommending improvements for communication of control responsibilities to its staff. The Foundation exercised its option to order additional services from the external consultant to perform an assessment of the implementation of the recommendations in its report, which was issued in late September 2013.¹² This assessment is expected to be performed from December 2013 to February 2014.

¹¹The control environment sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure. Control environment factors include the integrity, ethical values, and competence of the entity's people; management's philosophy and operating style; the way management assigns authority and responsibility and organizes and develops its people; and the attention and direction provided by the board of directors.

¹²The external consultant's internal control review made recommendations to strengthen the control environment in the areas of ethical values, management philosophy, authority and responsibility, and human resources practices and oversight.

Foundation Actions to Address Internal Control Deficiencies Related to Personnel

The Foundation acknowledged that it did not have internal controls related to personnel in the areas of outside employment and termination of employees. Potential violations of applicable laws and regulations were detected by the DOI OIG as a result of these deficiencies. The Foundation's Corrective Action Plan contained planned changes to address the two key areas that were cited in the DOI OIG's audit report.

- **Outside employment.** The DOI OIG concluded that the Foundation did not comply with the Dual Compensation Act when approving outside employment activities for employees.¹³ As of November 2013, the Foundation was taking steps to improve its internal controls related to employees' outside employment. Specifically, the Foundation prepared a draft Outside Employment Policy, which requires Foundation employees to obtain management approval prior to engaging in any outside employment. As of November 2013, the draft Outside Employment Policy was in the process of being reviewed by the Foundation's General Counsel for compliance with applicable law and implementing Office of Personnel Management (OPM) regulations and guidance. According to Foundation officials, the policy is expected to be finalized in early 2014.
- **Termination of employees.** The DOI OIG audit report cited a lack of internal controls as the basis for questionable actions that were taken by Foundation management to encourage employees to either voluntarily, or involuntarily, leave their Foundation employment. The Foundation was taking steps to improve its internal controls relating to termination of staff members' employment. Specifically, as of November 2013, the Foundation was updating its personnel policies to direct that all personnel actions taken must comply with applicable law and implementing OPM regulations and guidance, and that any deviation from such regulations and guidance must be documented and justified in writing. According to Foundation officials, the policy is expected to be finalized in early 2014.

Because the Foundation's planned actions to improve its internal controls related to employees' outside employment and termination of employment were not finalized, it was too soon for us to assess the

¹³The Dual Compensation Act, *codified, as amended, in part at* 5 U.S.C. § 5533, imposes limitations on dual compensation for most federal government employees. The act states that unless an express exception applies, an individual is not entitled to receive basic pay from more than one position for more than an aggregate of 40 hours of work in 1 calendar week (Sunday through Saturday). The act authorizes the Office of Personnel Management to prescribe regulations under which exceptions to this general prohibition may be made.

design of these actions and whether they are consistent with internal control standards and applicable laws, regulations, and guidance. The draft Outside Employment Policy and the personnel policies relating to termination of employees will not be finalized until the Foundation's General Counsel and Executive Director and the Board have reviewed and approved the proposed changes. Once approved, the extent to which the new personnel-related internal controls and their implementation will help the Foundation to successfully improve its internal controls and comply with applicable laws and regulations will require the continued involvement and vigorous oversight of Foundation management and the Board.

Foundation Actions to Address Internal Control Deficiencies Related to Contracting

The Foundation acknowledged the need for improvement in its internal controls related to contracting and was taking some steps to address these issues. The Foundation's Corrective Action Plan contained planned changes to address the findings from the DOI OIG audit report that are listed below. According to the report, the Foundation

- potentially violated the Antideficiency Act,¹⁴ which provides that an employee of the U.S. government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund;
- may have billed agencies in violation of the bona fide needs rule,¹⁵ which provides that an appropriation made for a definite period of time may be used only to fulfill a genuine, legitimate, and otherwise bona fide need arising during the period of availability of that appropriation;
- had conflict-of-interest issues that potentially violated the Ethics in Government Act of 1978,¹⁶ as amended, and implementing regulations, including (1) a contract awarded to a company owned by a Foundation employee's relative, (2) hiring a contractor as a Foundation employee prior to the expiration of an existing contract with that person, and (3) improperly awarding a contract to a former Foundation employee;

¹⁴Antideficiency Act, *codified, as amended, in part at* 31 U.S.C. § 1341(a).

¹⁵The *bona fide* needs rule is based on the Time Statute (31 U.S.C. § 1502(a)).

¹⁶See the Ethics in Government Act of 1978, which is *codified, as amended, in* 5 U.S.C. appendix §§ 401-408. The Director of the Office of Government Ethics has issued implementing regulations, which are *codified, as amended, in* 5 C.F.R. parts 2634-41.

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- was not in compliance with the FAR when awarding sole source contracts.¹⁷ Most of the sole source contracts were justified using the Alternative Dispute Resolution (ADR) exception to full and open competition;¹⁸ but the DOI OIG determined that the work being contracted did not meet the essential elements required for an ADR exception under FAR 6.302-3 (“acquire services of an expert or neutral person for any current or anticipated litigation or dispute”). Further, not all contracts had approved sole source justifications as required by the FAR, and some justifications contained inaccurate information;
 - inappropriately modified some contracts to add additional funding, add work outside the scope of the contract, extend the period of performance beyond the original dates, or a combination of these; and
 - awarded what appear to be personal service contracts, which the FAR defines as contracts characterized by the employer-employee relationship it creates between the government and the contractor’s personnel. Obtaining personal services by contract, rather than by direct hire, circumvents the civil service laws unless Congress has specifically authorized acquisition of the services by contract.

The Foundation recognized that internal controls for contracting were deficient and had taken some action and was developing other changes to correct control deficiencies in this area. According to the Executive Director, after discussion and approval from the Chair and Vice Chair of the Board, the Foundation entered into a 5-year interagency agreement for assisted acquisitions on March 11, 2013, with the DOI Interior Business Center’s (IBC) Acquisition Services Directorate. IBC provides comprehensive acquisition services to federal agencies, managing the entire process from planning, soliciting, and evaluating offers to awarding and administering contracts through closeout.¹⁹ We determined that the

¹⁷The FAR is the primary regulation for use by all federal executive agencies in their acquisition of supplies and services with appropriated funds.

¹⁸Federal agencies conducting procurements generally are required to obtain full and open competition through the use of competitive procedures unless a specific exception applies. One exception provided for in the FAR is when an agency is acquiring the services of a neutral person to facilitate an Alternative Dispute Resolution process for any current or anticipated litigation or dispute. See FAR, 48 C.F.R. subpart 6.3, “Other Than Full and Open Competition.”

¹⁹GAO discussed some of the services provided by IBC in GAO, *Interagency Contracting: Improvements Needed in Setting Fee Rates for Selected Programs*, [GAO-11-784](#) (Washington, D.C.: Sept. 9, 2011).

design of this action is consistent with internal control standards and applicable guidance for federal executive agencies. Specifically, the Foundation's interagency agreement with IBC for managing environmental conflict resolution contracts is generally consistent with OMB's Office of Federal Procurement Policy (OFPP) 2008 policy guidance on management and use of interagency acquisitions.²⁰ The formal agreement generally follows OFPP's model agreement for an assisted acquisition, including delineating the roles and responsibilities of both the requesting (Foundation) and servicing (IBC) agencies throughout the acquisition life cycle. The agreement is an appropriate strategy for addressing the findings identified by the DOI OIG in this area and meeting internal control standards for proper implementation and oversight of agency contracting activities.

Pursuant to the terms of the interagency agreement, IBC has agreed to assist the Foundation on contracts related to environmental conflict resolution activities, including mediation, facilitation, and assessment services. An IBC official serves as the Contracting Officer for contracts that IBC awards to private service providers on the Foundation's behalf.²¹ IBC also will provide contracting officer's representatives (COR) until such time that Foundation Program Managers become qualified to be authorized CORs by completing existing training requirements and receiving Federal Acquisition Institute certification as CORs.²² Per the agreement, IBC will help the Foundation comply with the bona fide needs rule by managing funds according to the Foundation's guidance, recording transactions in a timely fashion, and implementing and exercising controls to ensure compliance with all applicable statutory and regulatory fiscal requirements.

Further, per the agreement, the Foundation will provide IBC with information on project objectives, deliverables, and schedule milestones, and IBC will select an appropriate award type based on the nature of the

²⁰Office of Federal Procurement Policy Memorandum, *Improving the Management and Use of Interagency Acquisitions* (June 6, 2008).

²¹A contracting officer is an individual with the authority to enter into, administer, and terminate contracts and make related determinations and findings. See FAR Parts 1.602 and 2.101.

²²A COR is an individual designated and authorized in writing by the contracting officer to perform specific technical or administrative functions. See FAR Part 2.101, "Definitions."

requirement and associated risk. IBC is responsible for ensuring that the environmental conflict resolution contracts comply with competition requirements, including seeking competition unless an exception is justified and approved at the appropriate level; requiring the Foundation to furnish supporting rationale and appropriate documentation to support an exception to competition; and reviewing the sufficiency of the Foundation's justification and documentation before approving and proceeding with a noncompetitive action. The interagency agreement with IBC also defines the roles and responsibilities for evaluating proposed contract modifications. Per this agreement, the Foundation is to work with IBC to evaluate proposals for changes and, if requested by the IBC Contracting Officer, to participate in negotiation of changes, modifications, and claims. Further, the Foundation is responsible for ensuring that it is not authorizing work (making commitments or promises, issuing instructions to start or stop work, or directing changes), changing any contractual documents, modifying the scope of work (including the period of performance), authorizing accrual of costs, or otherwise providing direction to the contractor, except as expressly authorized in the COR appointment by IBC's Contracting Officer. IBC is responsible for working with the Foundation to evaluate proposals for changes and ensuring that any modifications to the requirements or price of the award remain within the overall scope of the original award. The agreement should help in improving management and oversight on those environmental conflict resolution contracts being serviced by IBC. The total amount paid on these environmental conflict resolution contracts was approximately \$2.7 million in fiscal year 2013.

The Foundation has retained responsibility for administrative contracts and leasing activities. According to the Foundation, in fiscal year 2013, it paid approximately \$780,000 for administrative contracts managed by the Foundation. Most of the administrative contract costs were onetime expenditures to address DOI OIG audit findings, such as contracting for organizational development work, the internal control review, legal review and assistance, and the cost of the DOI OIG audit. Other administrative costs are recurring, such as payroll and financial services provided by the General Services Administration under memorandums of understanding, and the cost of the annual financial statement audit. The Foundation also spent \$361,000 on leased space at two locations.

The Foundation plans to draft guidance on internal contracting processes that will be reviewed by the Foundation's General Counsel and Executive Director. According to the Foundation, it intends to have a policy approved and in place by December 15, 2013. The Foundation expects

the policy to state that the FAR guidance should be followed, including its contract documentation requirements and prohibitions related to personal services contracts. Because the Foundation's planned actions to improve its internal controls related to its management of administrative contracts were not finalized, it was too soon for us to assess the design of these actions and whether they are consistent with internal control standards and applicable laws, regulations, and guidance. However, issuance of a new internal contracting policy that reinforces the requirements of the FAR for administrative contracts is a good step in emphasizing the need for following sound contracting practices.

Concluding Observations

The Foundation's continuing implementation of its Corrective Action Plan and the efforts to make changes in internal controls appear to be moving the Foundation in the right direction to strengthen its internal controls, comply with applicable laws and regulations, and improve management's ability to make informed decisions. Many of the Foundation's actions to improve its internal controls will be in various stages of implementation over the next few months and possibly longer. Until implementation is complete, the extent to which these changes will help the Foundation monitor and improve the effectiveness of its internal controls and comply with applicable laws and regulations cannot be fully assessed.

Agency Comments

We provided a draft of this report to the Foundation for comment. In its written comments, which are reprinted in appendix I, the Foundation stated that it accepted the results of our audit in full. The Foundation also provided a summary of the changes it has made in its operations and structure since the DOI OIG audit report. Further, the Foundation recognized that more needs to be done and stated that it was committed to ensuring that all internal controls are adequate and being followed on a continuous basis.

We are sending copies of this report to the Executive Director of the Morris K. Udall and Stewart L. Udall Foundation, the Deputy Inspector General of the Department of the Interior, and the appropriate congressional committees. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me at (202) 512-9399 or malenichj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on

the last page of this report. GAO staff members who made key contributions to this report are listed in appendix II.

A handwritten signature in black ink that reads "J. Lawrence Malenich". The signature is written in a cursive style with a large, stylized initial "J".

J. Lawrence Malenich
Director
Financial Management and Assurance

List of Requesters

The Honorable Barbara A. Mikulski
Chairwoman
Committee on Appropriations
United States Senate

The Honorable Mike Johanns
Ranking Member
Subcommittee on Financial Services and General Government
Committee on Appropriations
United States Senate

The Honorable Ander Crenshaw
Chairman
The Honorable José E. Serrano
Ranking Member
Subcommittee on Financial Services and General Government
Committee on Appropriations
House of Representatives

Appendix I: Comments from the Morris K. Udall and Stewart L. Udall Foundation



130 South Scott Avenue, Tucson, Arizona 85701
TELEPHONE: 520.901.8500 FAX: 520.670.5530

December 3, 2013

Mr. J. Lawrence Malenich
Director, Financial Management and Assurance
U.S. Government Accountability Office
441 G St. N.W.
Washington, DC 20548

Dear Mr. Malenich:

The Board of Trustees of the Udall Foundation is grateful for the work of GAO on this audit and accepts its results in full. The Board wishes to provide history and context to demonstrate how seriously it has and is taking the results of the reviews performed to assess the internal controls of the Foundation.

The work of the DOI OIG was conducted at the unanimous request of the Board of Trustees of the Foundation. In the period since April 2012 when the Board of Trustees first became aware of the Foundation's failure to properly monitor key internal controls and the absence or inadequacy of other essential internal controls over personnel and contracting policies, the Board of Trustees has exercised its authority under 20 U.S.C. § 5603(b) to closely supervise and direct the work of the Foundation in order to institute fundamental changes in the operations and structure of the Foundation. The Foundation staff, recognizing the seriousness of the problems, has worked cooperatively and diligently to implement the changes. A short summary of those changes includes:

- An independent assessment of all internal controls has been completed and its recommendations are being implemented. The consultant who performed the review of the internal controls will also perform an assessment of the implementation of the recommendations included in the assessment. The consultant was hired through a full and open competition. When he retired from the Bureau of Land Management in 2009, he was the Assistant Director for Business and Fiscal Resources and the Chief Financial Officer for BLM.
- We conducted a complete review of the organization of the staff of the Foundation and adopted a new organization plan to ensure improved accountability and efficiency at all levels of the staff.
- Position descriptions and performance plans have been developed for all senior management positions. An Executive Director and a General Counsel have been hired. We are currently advertising for a new Director for the Environmental Conflict Resolution Program and a new Director for Finance and Operations. We have filled the positions for the Director of Education Programs and the Director

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of the DC Office. During FY 2014, the position descriptions and performance plans for rest of the staff at the Foundation will be reviewed and revised.

- With input and review by GSA, OGE and OPM, the Board developed, adopted and implemented new operating procedures, which include clear reporting requirements and timelines for the submission of reports by staff to ensure that the Board has the information necessary for the proper discharge of its duties to oversee and supervise the work of the staff.
- We entered into an interagency agreement (IAG) with the Interior Business Center under which the IBC serves as the contracting officer for all contracting relating to the U.S. Institute for Environmental Conflict Resolution, a program of the Udall Foundation. The Environmental Conflict Resolution contracts constitute the vast majority—in both number and dollar value—of the contracts awarded to perform the mission of the Foundation. We are presently amending the IAG so that IBC will issue the Foundation's internal operating contracts as well, thus all contracts governed by the FAR will be managed by IBC. In this way, the Foundation is ensuring that proper U.S. Government contracting procedures and practices are and will be applied to the procurements entered into on its behalf.
- With the assistance of GSA, we implemented outside employment policies.
- We worked with the Office of General Counsel at GSA to determine if disciplinary action was warranted based on the audit conducted by the DOI OIG and completed appropriate personnel actions.
- We amended the interagency agreement with GSA to obtain assistance in the implementation of the EEO laws.
- We resolved all of the findings of a January 2012 audit by OGE, which found no ethical violations but which identified documentation and training gaps.
- We ensured that appropriate annual Ethics Training is provided to staff and to the Board of Trustees, and implemented new processes to ensure that Foundation employees and Board members have the opportunity to identify and mitigate any conflict of interest or appearances of a conflict of interest with Foundation programs and projects.
- In order to control operating costs and plan for the impact of sequestration, we implemented a hiring freeze in the U.S. Institute and an across the board freeze on salary increases, and eliminated bonuses and merit increases during FYs 2012 and 2013.
- We suspended the Fellowship Program and reduced the Scholarship Program from 80 to 50 awards due to the decline in interest earnings on the Education

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Trust Fund resulting from the historic low interest rates over the last several years.

- We implemented a new methodology for allocating operating costs between the Education Trust Fund and the Environmental Dispute Resolution Fund based on the recommendations of our consultant as part of his review of the internal control policies.
- We oversaw the development of a new marketing plan for the U.S. Institute and are in the process of working with the staff to develop a plan to maximize the Institute's earned revenues in the years ahead.
- We developed a new strategic plan to ensure that the work of the Foundation is directed toward meeting its statutory mandates, within available funding.
- We fully cooperated in two investigations conducted by the Office of Special Counsel, both of which resulted in no findings against the Foundation or any staff.

The Board of Trustees and senior management of the Foundation recognize that there is still work to do to ensure that all internal controls are adequate and that they are being followed. We are committed to doing so on a continuous basis.

Sincerely,



Eric D. Eberhard
Chair, Board of Trustees

EDE:eem

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

J. Lawrence Malenich, (202) 512-9399 or malenichj@gao.gov

Staff Acknowledgments

In addition to the contact named above, William Boutboul (Assistant Director), Lauren S. Fassler, Patrick Frey, Wilfred Holloway, Gail Luna, Vivian Ly, Cynthia Ma, Mary Quinlan, and William T. Woods made significant contributions to this report.

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