May 16, 2013

Honorable E. Scott Pruitt
Attorney General of Oklahoma
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105

Attorney General Pruitt:

Transmitted herewith is a summation of our Special Investigation of the Lead-Impacted Communities Relocation Assistance Trust Property Improvement Clearance Project that was let and awarded on or about March 24, 2010. (Objective One)

We performed this investigation, pursuant to your office's request and in accordance with the requirements of 74 O.S. § 18f.

The objectives of our investigation primarily included, but were not limited to, the concerns noted in your request. Our findings and supporting evidence related to these concerns are presented in detail in the accompanying documents.

Sincerely,

Gary A. Jones, CPA, CFE
Oklahoma State Auditor & Inspector
The Honorable Gary Jones  
State Auditor and Inspector  
100 State Capitol Building  
2300 N. Lincoln Blvd.  
Oklahoma City, OK 73105-4802

Re: Allegations of Wrongdoing Regarding Awarding of Tar Creek Reclamation Contracts by or on behalf of the Lead-Impacted Communities Relocation Trust (LICRAT)

Dear Mr. Jones:

I have received the enclosed Memoranda from Jerry Morris, State Director for the Honorable Tom A. Coburn, U.S. Senator, expressing certain concerns brought to the attention of the Senator and his staff pertaining to the awarding of certain contracts for reclamation of properties in the Tar Creek area. Forwarded with these Memoranda was a large quantity of documents gathered and supplied in support of the several allegations. The concerns expressed by the Memoranda are in reference to the suspected unlawful contracting practices of the Lead-Impacted Communities Relocation Trust (also known as LICRAT), a Public Trust and Agency of the State of Oklahoma, as attempted to be executed on its own behalf and later executed through the auspices of the Department of Central Services, also a State Agency. I have determined that these concerns are serious in nature such that an investigation of the matter is warranted.

I hereby request, pursuant to 74 O.S. 2001, § 18f, that you undertake an Investigative Audit of these matters and provide a report of your findings to address the following concerns:

1. In regard to the Lead-Impacted Communities Relocation Assistance Trust Property Improvement Clearance Project that was let and awarded on or about March 24, 2010 by the LICRAT:

   A. Were bids solicited, received and contract awarded pursuant to the provisions of the Public Competitive Bidding Act of 1974 (as amended), 61 O.S. 2001, §§101 et seq.?

   B. If the contract was awarded to any bidder than the lowest bidder, was a credible written explanation of the award of bid filed in accordance with 61 O.S. 2001, § 117?
C. Is there any evidence of an agreement or collusion among bidders, prospective bidders and/or material suppliers in restraint of freedom of competition [including, but not limited to, whether the winning bidder served as a “straw bidder” for an actual other person or entity], 61 O.S. Supp. 2008, § 115? If so was a knowingly false affidavit of non-collusion filed in support of a bid, 74 O.S. Supp. 2009, §85.22? Were the rights to the contract unlawfully transferred from the winning bidder to another person or entity?

D. Is there any evidence of an illegal conflict of interest between the entity awarded the winning bid and any Trustee of the public trust or its chief administrative officer contrary to 61 O.S. 2001, § 114?

E. Is there any evidence of any unlawful disclosure(s) by any person contrary to 61 O.S. Supp. 2006, § 116?

F. Is there any evidence that the successful bidder knowingly provided misstatements of existing or past material fact(s) to the Public Trust in support of its bid for the award of the contract, 21 O.S. 2001, § 1541.1 and 1541.2?

G. Is there any evidence that two (2) or more persons agreed to take, and thereafter undertook, any action or make any representation to the Public Trust calculated to impair, obstruct or defeat the Public Trust in its lawful function of awarding the contract to the lowest and best bidder, 21 O.S. 2001, § 424?

H. Is there any evidence that the awarding of the contract was influenced in any way by the promise or transfer of some thing of value or gift to a public official or employee, 21 O.S. 2001, §§381 & 382, 21 O.S. 2001, § 341(First), or 74 O.S. 2001, § 3401 et seq.?

I. Is there any evidence of an Open Meeting violation by the LICRAT Trustees in the awarding of the contract, 25 O.S. 2001, § 314? If so, has the District Attorney taken any action in regard to that event?

2. In regard to the re-letting of the contract by LICRAT through the Department of Central Services:

A. Were bids solicited, received and contract awarded pursuant to the provisions of the Public Competitive Bidding Act of 1974 (as amended), 61 O.S. 2001, §§101 et seq.?

B. If the contract was awarded to any bidder than the lowest bidder, was a credible written explanation of the award of bid filed in accordance with 61 O.S. 2001, § 117?

C. Is there any evidence of an agreement or collusion among bidders, prospective bidders and/or material suppliers in restraint of freedom of competition [including, but not limited to,
The Honorable Gary Jones,  
State Auditor and Inspector  

whether the winning bidder served as a “straw bidder” for an actual other person or entity], 61 O.S. Supp. 2008, § 115? If so was a knowingly false affidavit of non-collusion filed in support of a bid, 74 O.S. Supp. 2009, §85.22? Were the rights to the contract unlawfully transferred from the winning bidder to another person or entity?

D. Is there any evidence of an illegal conflict of interest between the entity awarded the winning bid and any Trustee of the public trust or its chief administrative officer contrary to 61 O.S. 2001, § 114?

E. Is there any evidence of any unlawful disclosure(s) by any person contrary to 61 O.S. Supp. 2006, § 116?

F. Is there any evidence that the successful bidder knowingly provided misstatements of existing or past material fact(s) to the Public Trust in support of its bid for the award of the contract, 21 O.S. 2001, § 1541.1 and 1541.2?

G. Is there any evidence that two (2) or more persons agreed to take, and thereafter undertook, any action or make any representation to the Public Trust calculated to impair, obstruct or defeat the Public Trust in its lawful function of awarding the contract to the lowest and best bidder, 21 O.S. 2001, § 424?

H. Is there any evidence that the awarding of the contract was influenced in any way by the promise or transfer of something of value or gift to a public official or employee, 21 O.S. 2001, §§381 & 382, 21 O.S. 2001, § 341(First), or 74 O.S. 2001, § 3401 et seq.?

I also provide herewith the several documents supplied to us by Senator Coburn’s office.

Respectfully,

[Signature]
Scott Pruitt  
Attorney General

ENCLOSURES

cc: file
TABLE OF CONTENTS

Summary of Concerns.................................................................1

Key Individuals...........................................................................2

Synopsis of Events........................................................................3

Concerns......................................................................................9

Lawsuits....................................................................................25
# Summary of Concerns

<table>
<thead>
<tr>
<th>Concern</th>
<th>Topic</th>
<th>Statute Reference</th>
<th>Evidence for Violation of Statute</th>
<th>Work Paper Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Competitive Bidding Act</td>
<td>61 O.S. § 101 <em>et seq.</em></td>
<td>Yes</td>
<td>A-1 to A-10</td>
</tr>
<tr>
<td>B</td>
<td>Lowest Bidder Chosen or Higher Bid Substantiated</td>
<td>61 O.S. § 117</td>
<td>Yes</td>
<td>B-1 to B-5</td>
</tr>
<tr>
<td>C</td>
<td>Collusion Among Bidders Non-Collusion Affidavit Unlawful Assignment</td>
<td>61 O.S. § 115 74 O.S. § 85.22</td>
<td>Yes</td>
<td>C-3 to C-19</td>
</tr>
<tr>
<td>D</td>
<td>Conflict of Interest</td>
<td>61 O.S. § 114</td>
<td>No</td>
<td>D-1</td>
</tr>
<tr>
<td>E</td>
<td>Unlawful Disclosure</td>
<td>61 O.S. § 116</td>
<td>Yes</td>
<td>E-1 to E-3</td>
</tr>
<tr>
<td>F</td>
<td>Obtaining Property by False Representation</td>
<td>21 O.S. § 1541.1 21 O.S. § 1541.2</td>
<td>No</td>
<td>F-1 to F-2</td>
</tr>
<tr>
<td>G</td>
<td>Conspiracy Against State</td>
<td>21 O.S. § 424</td>
<td>Yes</td>
<td>G-1 to G-3</td>
</tr>
<tr>
<td>H</td>
<td>Bribery/Kickbacks</td>
<td>21 O.S. §§ 381, 382 21 O.S. § 341 74 O.S. § 3401 <em>et seq.</em></td>
<td>No</td>
<td>H-1 to H-4</td>
</tr>
<tr>
<td>I</td>
<td>Open Meetings Act</td>
<td>25 O.S. § 314</td>
<td>Yes</td>
<td>I-1 to I-5</td>
</tr>
<tr>
<td>J*</td>
<td>Contractor Bonding</td>
<td>61 O.S. 103(A)</td>
<td>Yes</td>
<td>J-1 to J-3</td>
</tr>
<tr>
<td>K*</td>
<td>Federal Award Payments</td>
<td>OMB Circular A-87</td>
<td>Yes</td>
<td>K-1 to K-3</td>
</tr>
</tbody>
</table>

*These Concerns were not part of the original Attorney General 74 O.S. § 18f request.*
KEY INDIVIDUALS

Jack Dalrymple, Project Manager ................................................................. LICRAT
Larry Roberts, Operations Manager ......................................................... LICRAT
Dr. Mark Osborn, Trust Chairman ......................................................... LICRAT
Jim Thompson, Trust Member (Deceased) ........................................ LICRAT
Virgil Jurgensmeyer, Trust Member ......................................................... LICRAT
Angela Hughes, Land Protection Division ........................................ DEQ
Chris White, Owner ........................................................................ Vision Construction, CWF
Frank Close, Employee ...................................................................... Vision Construction, CWF
Lloyd Stone, Owner ........................................................................... Stone’s Backhoe Dozer & Trucking
Synopsis of Events

Before addressing the specific questions asked of us in the Attorney General’s 74 O.S. § 18f request letter, the following time line is presented to detail some of the activities, relationships, actions and behaviors surrounding pre-bid activity, letting of bids and the bid award process for the March 2010 Property Improvement Clearance Project. The information detailed below is essential in aiding the understanding and assessment of each individual Concern addressed in detail following this Synopsis.

Total Property Improvement Clearance Project Payout
(March 2010 and December 2010 Contract Period)

<table>
<thead>
<tr>
<th>Contract Date</th>
<th>Bid Amount</th>
<th>Total Paid</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 2009</td>
<td>$599,988</td>
<td>$0</td>
<td>Lowest bid; contract never awarded</td>
</tr>
<tr>
<td>December 2009</td>
<td>10% of</td>
<td>$36,128</td>
<td>Jack Dalrymple’s Contract Payment; 10% of amount awarded to Vision</td>
</tr>
<tr>
<td></td>
<td>Contractor’s Invoice</td>
<td></td>
<td>through District Court settlement (less legal fees);</td>
</tr>
<tr>
<td>March-June 2010</td>
<td>$0</td>
<td>$9,000</td>
<td>Payments to Engineering Service/Dalrymple</td>
</tr>
<tr>
<td>March 2010</td>
<td>$2,100,000</td>
<td>$366,283</td>
<td>Highest bid; Partial completion; Contract then voided by the Court</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>and payment to Vision</td>
</tr>
<tr>
<td>June 2010</td>
<td>$0</td>
<td>$10,429</td>
<td>Mandated payment of legal fees relative to March 2010 bid process</td>
</tr>
<tr>
<td>September 2010</td>
<td>$305,472</td>
<td>$185,361</td>
<td>Dalrymple’s Professional Services Contract for the December 2010 DCS</td>
</tr>
<tr>
<td>December 2010</td>
<td>$1,701,753</td>
<td>$3,050,786</td>
<td>Contract completed through DCS; bid included an alternate bid and an</td>
</tr>
<tr>
<td>Contract</td>
<td>$1,324,033</td>
<td></td>
<td>option bid, both paid out</td>
</tr>
<tr>
<td>Alternate Option</td>
<td>$25,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Cost</td>
<td></td>
<td>$3,657,987</td>
<td></td>
</tr>
</tbody>
</table>

The Lead-Impacted Communities Relocation Assistance Trust (LICRAT) Property Improvement Clearance Project process was set in motion with a Request for Proposal (RFP) issued on September 16, 2009. The initial bids were received on October 22, 2009 with the lowest bid submitted in the amount of $599,988. If the bid had been awarded and completed at this time, the cost to the Trust for completion of this project could have been less than $600,000.

As the following described events transpired, the total contract, which in the end took almost two more years to complete, ended up costing the Trust, and ultimately the taxpayers, a total of $3,657,987.
The initial Property Improvement Clearance Project RFP was issued with the proposal of employing a contractor, through a personal services contract, to clear property by means of demolition and salvage within the Tar Creek region. This RFP was issued requiring compliance with the Davis-Bacon Act. The Davis-Bacon Act is a provision that requires "prevailing wages" to be paid, which historically results in "union" wages to be paid, frequently increasing the cost of federally funded contracts.

This initial RFP was issued without "Quality Control" requirements, the implication of which will be shown throughout the following commentary. The RFP was issued with an assignment clause in the draft "Personal Services Contract" which would expressly prohibit assignment of the contract without "prior written authorization of the TRUST". This issue will also be set apart as relevant in the details of the January 30, 2010 and February 24, 2010 commentaries.

On October 22nd bids were received from three vendors for the September 16th RFP. The bid amounts for each vendor are noted below.

<table>
<thead>
<tr>
<th>Vendor</th>
<th>DT Specialized Services, Inc.</th>
<th>Kingston Environmental Co.</th>
<th>Stone's Backhoe, Dozer &amp; Trucking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Bid</td>
<td>$599,988.00</td>
<td>$646,550.94</td>
<td>Bid Not Totaled</td>
</tr>
</tbody>
</table>

In the weeks leading up to the opening of these bids, discussions were held between DEQ, EPA and LICRAT as to whether the Davis-Bacon Act should apply to the Property Clearance demolition contract. In an October 26th email EPA Administration communicated that they had determined that the Davis-Bacon Act would not be applicable to this demolition contract. Based on this determination, discussions were then held as to whether LICRAT should now rebid the contract.

Legal counsel for the Oklahoma DEQ determined that LICRAT should rebid the contract since, "A major condition has been changed that would materially affect the bid price (in our favor)...." Based on this information it is acknowledged that the new bid amounts submitted for the project should be less than the original bids. The October 22, 2009 bids were canceled.
November 3, 2009

There was a handwritten note found in LICRAT’s files dated November 3rd explaining that each bidder was called and advised that a revised RFP would be submitted for rebid based upon new information including the elimination of the Davis-Bacon Act; a more thorough description of the properties in the RFP; and the establishing of a local certified dump site for debris placement.

November 6, 2009

Jack Dalrymple writes a “Professional Services Proposal” addressed to the LICRAT Trust Members proposing to be hired to provide Project Management and Quality Assurance for the upcoming Clearance Project. Included in his proposal was a “Quality Control” plan that the winning contractor would be required to submit for acceptance by the Trust.

The proposal included suggested compensation for Dalrymple’s services as “10% of the successful contractors bid proposal”. As a result, the higher the awarded contract the higher the compensation to be paid Dalrymple.

November 10, 2009

In a board meeting held on November 10th it was discussed and suggested that due to the increase in duties for the Trust Operations Manager it would be beneficial to hire a project manager for the upcoming Property Clearance Project. A motion was made and accepted to authorize the Trust Chairman, Mark Osborn, with the approval of the Property Disposal Committee, (which consisted of three board members) to secure the services of a construction project manager to oversee the property clearance properties.

The actual wording in the minutes was “to seek and secure” a project manager. This proposal was made in the trust meeting after Dalrymple’s proposal letter had already been prepared (November 6th). It could not be determined when the letter was actually presented or delivered to the Trust only that was it was prepared prior to the “suggestion” that the Trust “seek” a project manager.
A letter was prepared by Chris White, owner of CWF Enterprises, Inc, proposing the hiring of CWF for asbestos removal services. The letter was addressed to:

Jack Dalrymple  
Project Manager  
Lead-Impacted Communities Relocation Assistance Trust

As of November 13th Jack Dalrymple had not yet been hired as LICRAT’s ‘Project Manager’. He was purportedly not hired until November 24th during a Property Disposal Committee meeting. At the date of Chris White’s letter there should have been no knowledge of Jack Dalrymple’s possible employment with LICRAT.

November 24, 2009

The Property Disposal Committee met on November 24th with two of the three members present, Jim Thompson and Virgil Jurgensmeyer. The Committee minutes documented that a discussion was held in review of the “written project proposal” prepared by Jack Dalrymple. In the meeting, Jurgensmeyer recommended that Dalrymple be hired as the Property Clearance Manager. Thompson seconded the vote, motion carried.

As noted above Dalrymple’s proposal for the position was dated November 6th, eighteen days before this meeting and four days before the Trust even suggested the hiring of a project manager.

December 18, 2009

J.D. Strong, Oklahoma Secretary of the Environment, after reviewing a draft contract for Dalrymple’s employment, suggested that compensation for Dalrymple be capped at 10% of the amount invoiced by the contractor, up to a maximum of $60,000. Dalrymple had requested in his contract that compensation be 10% of the amount invoiced with no capping. J.D. Strong’s suggestion was not accepted; Dalrymple’s contract was signed December 18th with a 10% of amount invoiced as pay out with no capping. So therefore, the higher the contract awarded, the higher the compensation for Jack Dalrymple.
January 9-24, 2010

In review of e-mail communications between Angela Hughes, ODEQ, Mark Osborn, Trust Chairman and Jack Dalrymple, the new Project Manager; documentation shows that Dalrymple was responsible for rewriting the September 2009 RFP. With authorization to rewrite the new RFP, Dalrymple includes very specific Quality Control requirements and a modified contract assignment clause.

January 30, 2010

Jack Dalrymple emailed a draft copy of the re-written RFP to Jim Thompson, Angela Hughes and Mark Osborn. This draft included all of the new Quality Control language that had been introduced initially in Dalrymple’s Professional Services Proposal letter submitted during his hiring process. To be specifically noted, this draft included the same Contract ‘Section 13’ as in the original September 16, 2009 RFP; specifically defining the assignment of the contract as allowable only under “prior written authorization of the TRUST”.

February 24, 2010

The second RFP was officially released, rewritten by Jack Dalrymple. We could find no discussion or official review or approval of the RFP in the Trust minutes.

This RFP included all of the new Quality Control requirements to be met by the bidders, but most importantly the officially issued RFP now included a change in Contract Section 13. As noted above, in relation to assigning the contract, the draft copy sent to Thompson, Hughes and Osborn for review included the assignment of the contract as allowable only under “prior written authorization of the TRUST”.

The contract, as of February 24th now stated that the contract could not be assigned, “without prior written authorization of the TRUST engineer”. Jack Dalrymple now had authority to assign the contract without the Board’s knowledge or approval.
March 17, 2010

The bid proposals were received in response to the February 24th RFP. Of the four bids submitted Stone’s Backhoe Dozer and Trucking was the highest at $2,100,000. (See Concern A concerning other bid amounts.) Stone’s bid amounts for most items in the RFP were now double the amounts submitted just a few months earlier in the September 16, 2009, bid documents. A comparison is shown in the table below.

<table>
<thead>
<tr>
<th>Stone’s Backhoe Dozer &amp; Trucking Bid Comparison</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Unit Cost/Unit Prices</strong></td>
</tr>
<tr>
<td>---------------------------</td>
</tr>
<tr>
<td>Base Bid per square foot</td>
</tr>
<tr>
<td>Removal of well houses</td>
</tr>
<tr>
<td>Plugging of water wells</td>
</tr>
<tr>
<td>Septic System pump and fill</td>
</tr>
</tbody>
</table>

Additionally, Stone’s bid proposal included a Quality Control plan that incorporated word-for-word, portions of the quality control language in Jack Dalrymple’s job proposal to the Trust Board months earlier. Stone’s Quality Control plan was submitted as a document owned by Vision Construction; the contract included a confidentiality agreement signed by Stone stating that he was not allowed to “disclose” the quality control information submitted in his own bid.

As will be discussed later in ‘Concern C’ Stone’s contract was subsequently assigned to Vision Construction.

March 24, 2010

A contract was signed by Dr. Mark Osborn, Trust Chairman, and Lloyd Stone of Stone’s Backhoe Dozer & Trucking for the Property Clearance Project. The contract was for the highest bid submitted and was not reviewed, discussed or approved by the Trust Board.
Concerns

The Attorney General’s 74 O.S. § 18f request specifically defined nine “Concerns” to be addressed for the contract awarded by the Lead-Impacted Communities Relocation Assistance Trust in the March 2010 Property Improvement Clearance Project. Each “Concern” is individually listed below verbatim as presented to us and highlighted in red print; our findings and responses to these concerns immediately follow.

<table>
<thead>
<tr>
<th>Overview of the March 2010 Property Improvement Clearance Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 24, 2010</td>
</tr>
<tr>
<td>March 17, 2010</td>
</tr>
<tr>
<td>March 24, 2010</td>
</tr>
<tr>
<td>April 9, 2010</td>
</tr>
<tr>
<td>April 22, 2010</td>
</tr>
<tr>
<td>April 27, 2010</td>
</tr>
<tr>
<td>April 30, 2010</td>
</tr>
<tr>
<td>May 3, 2010</td>
</tr>
<tr>
<td>May 5, 2010</td>
</tr>
<tr>
<td>June 23, 2010</td>
</tr>
</tbody>
</table>
Concern A

Were bids solicited, received and contract awarded pursuant to the provisions of the Public Competitive Bidding Act of 1974 (as amended), 61 O.S. 2001, §§ 101 et seq.?

Bids were solicited and received for the March 2010 LICRAT Property Improvement Clearance Project. However, the project was not awarded in accordance with the Public Competitive Bidding Act.

Bids were solicited through a ‘Request for Proposal’ dated February 24, 2010. A bid opening was held by LICRAT’s Property Clearance Committee on March 17th. Those in attendance at the bid opening were: Jack Dalrymple and Larry Roberts, LICRAT; Lloyd Stone, Stone’s Backhoe; Frank Close, Vision Construction; David McAfee, DT Specialized Services.

The minutes from the Committee meeting asserted that the bids were opened and read aloud and that the decision to award the bid would be deferred until after reference checks were made and tabulation sheets completed. The bid amounts received were:

- DT Specialized Services, Inc. – $558,988
- Midwest Trucking - $861,671
- K & M Dirt Services – $1,447,971
- Stone’s Backhoe, Dozer & Trucking - $2,100,000

Sometime between March 17th and March 24th the bid review process was conducted and the bid was ultimately awarded to the highest bidder, Stone’s Backhoe, Dozer & Trucking. The bid evaluation and award process was not conducted in an open meeting, the contract was not awarded to the lowest bidder or approved by the Trust board and no documentation or explanation as to why the lowest bidder was not chosen was documented at the time of the award.

The contractor choice was actually announced to the Trust Members in an email from Amanda Storck, Office of the Secretary of Environment, dated March 25, 2010. In addition, the Trust Chairman, Dr. Mark Osborn, was notified of the contractor selection individually in an email from Jack Dalrymple dated March 25, 2010, although Osborn had already signed the project contract with Stone’s on March 24th.

It should be noted that DT Specialized Services, Inc. sued LICRAT in District Court claiming in a sworn affidavit by David McAfee, VP of DT, that the bids were not going to be read aloud until he insisted, and that the awarding of the bid to the highest bidder was not adequately explained. As a result of these court proceedings, the bid process was halted and all bids voided.
Concern B If the contract was awarded to any bidder [other] than the lowest bidder, was a credible written explanation of the award of bid filed in accordance with 61 O.S. 2001, § 117?

We found no "credible" written explanation why the Property Improvement Clearance Project was not awarded to the lowest bidder. We also found no publicized statement executed in accompaniment with the contract, documenting the reason LICRAT awarded the contract to someone other than the lowest bidder, until after the fact.

A hearing was held May 5, 2010 in the District Court of Ottawa County to rule on alleged violations of the Open Meeting Act as it related to LICRAT's contract with Stone's Backhoe. On the evening of May 4th LICRAT held a 'Special Meeting' at First National Bank and Trust of Miami. As the only item of business, the Trust voted to accept Stone's Backhoe's bid of $2,100,000, the highest bid submitted. At this "eleventh hour" meeting the Trust approved the following statement:

"That although the Stone Backhoe, Dozier and Trucking was not the low bid, it was by far the best bid and the only one which adequately addressed the requirements in the RFP regarding the quality control issues. I move that the bid of Stone Backhoe, Dozier and Trucking be approved as being the best bid for the project."

The contract had previously been signed and approved by the board chairman on March 24th, so this statement by the Board six weeks later does not appear sufficient to meet statutory requirements of a "public agency accompanying its actions" with a credible explanation for why the Trust selected the highest bid submitted.

The removal of the Davis-Bacon Act from the bid requirements should have resulted in lower bid amounts, as indicated in an email between the Oklahoma Department of Environmental Quality and the Attorney General’s Office. In fact, DT Specialized Services, Inc., the unsuccessful bidder who sued LICRAT in District Court, did lower their bid $41,000, from $599,988 to $558,988.
Concern C

Is there any evidence of an agreement or collusion among bidders, prospective bidders and/or material suppliers in restraint of freedom of competition [including, but not limited to, whether the winning bidder served as a “straw bidder” for an actual other person or entity], 61 O.S. Supp. 2008, § 115?

There is evidence to suggest that Stone’s Backhoe, Dozer & Trucking served as a “straw bidder” for Vision Construction and Project Management (Vision).

Stone’s Backhoe, as an independent contractor, was awarded LICRAT’s Property Clearance Project with the highest bid submitted of $2,100,000. A significant portion of the bid evaluation process and award was based on a required ‘Quality Control’ plan to be proposed and implemented by the successful bidder. Stone’s subcontracted with Vision Construction & Project Management to supply this ‘Quality Control’ plan as part of his bid package.

A portion of the ‘Quality Control Manual’ created by Vision Construction was word-for-word the same as the ‘Professional Services Proposal” submitted by Jack Dalrymple four months earlier, on November 6, 2009, prior to Dalrymple being contracted as LICRAT’s Project Manager.

Also included in Stone’s bid was a “Confidentiality Agreement” signed by Lloyd Stone stating that the ‘Quality Control’ plan he was submitting as part of his bid was a confidential document of Vision Construction and that Stone agreed to not disclose the information in the Quality Control Plan to protect Quality Control Manager Frank Close and Vision Construction & Project Management. The specific clause in the contract reads, “...any disclosure or use of same by reader may cause serious harm or damage to Quality Control Manager Frank Close and Vision Construction & Project Management.” The bid package containing this plan was purportedly Stone’s bid, not Vision’s.

Additionally, on March 23, 2010, before Stone’s Backhoe was officially awarded the LICRAT contract, Lloyd Stone signed two letters on Vision Construction letterhead appointing Vision employee Frank Close as Stone’s ‘Quality Control Project Manager’ and Vision owner Chris White as Stone’s ‘Alternate Quality Control Project Manager’. These appointments granted Close and White the authority to “execute forms and reports” and “control time” for the project on behalf of Stone’s Backhoe.
On April 26th Chris White, Owner of Vision Construction, wrote in an email to Larry McBurnett of Tedford & Associates Insurance Agency;

"**We** put the bid packet together as a team. We were short on time and Stone’s said they already had approval for bonding, so **we let them** enter this as the primary contractor.......At any rate, Stone’s financial statements were not good enough to qualify for [bonding]. Had we known this upfront we would have entered the bid in our name to begin with. The only reason **we were awarded this contract** was because of the quality control manual that we prepared for the project. We were the only contractor that turned in a qualifying quality control plan."

(Emphasis added)

Furthermore, on April 30th Stone’s Backhoe assigned the entire contract to CWF/Vision Construction. *(Details of assignment follow.)*

The association between Vision and Stone’s Backhoe including the pre-bid discussions noted in the above email, the inclusion of Vision’s Quality Control manual in Stone’s bid proposal, the appointing by Lloyd Stone of Vision’s staff in the role of Stone’s quality control managers and ultimately assigning the entire contract to Vision Construction/CWF Enterprises all provide evidence that Stone’s Backhoe Dozer and Trucking possibly served as a “straw bidder” for Vision Construction/CWF Enterprises.
If so was a knowingly false affidavit of non-collusion filed in support of a bid, 74 O.S. Supp. 2009, § 85.22?

A non-collusion affidavit was not submitted by Stone that met the requirements of 74 O.S. § 85.22.

A "Contractor's Agent's Affidavit" form was incorporated into the uniform "Request for Proposal" utilized by LICRAT in soliciting bids for the Property Clearance Project. This affidavit form was submitted by Stone's in lieu of the non-collusion affidavit outlined in statute. This affidavit did not address collusion among bidders and as such did not meet the requirements of 74 O.S. § 85.22.

Additionally, 61 O.S. § 108 requires that bidders include with their bid an affidavit defining the nature of any partnership or business relationships with other parties involved in a project. The "Contractor's Agent's Affidavit" did not properly address business relationships or fulfill the requirements of 61 O.S. § 108. Any relationships should have been properly disclosed during the bid process. Even if an unfair advantage in the bidding process did not exist because of relationships between parties, when associations are not properly disclosed there is an appearance that favoritism may exist.
Were the rights to the contract unlawfully transferred from the winning bidder to another person or entity?

LICRAT’s demolition contract with Stone’s Backhoe, Dozer & Trucking was assigned to CWF Enterprises, Inc. in violation of 61 O.S. § 120 which states in part, “No public construction contract shall be assignable by the successful bidder without written consent of the governing body of the awarding public agency, evidenced by resolution.”

CWF Enterprises submitted a letter to Jack Dalrymple, LICRAT’s project engineer, on April 23, 2010, requesting he approve the assignment of Stone’s contract with LICRAT to CWF Enterprises, Inc. On April 30th an assignment contract was executed between Stone’s and CWF, approved by the project engineer, Jack Dalrymple.

The progression of the assignment clause in LICRAT’s contract with Stone’s Backhoe is problematic. The original RFP that was released on September 16, 2009 included a “Section 13. SUBLETTING, ASSIGNMENT AND TRANSFER” clause which stated in part “Therefore, except as provided in the proposal, subletting, assignment or transfer of any work, without prior written authorization of the TRUST is expressly prohibited.” Authority for assignment of the contract at this point in time is with the TRUST and consistent with 61 O.S. § 120.

Jack Dalrymple submitted a draft of the re-worked RFP to Mark Osborn, LICRAT Chairman; Jim Thompson, LICRAT Trust Member and Angela Hughes, DEQ on January 30, 2010. This draft also included the exact language of the September 16, 2009 RFP as noted above. Specifically that assignment of the contract is only by “...authorization of the TRUST”.

When the final RFP is released on February 24, 2010 the contract now contains the following language as it relates to assignment, “Therefore, except as provided in the proposal, subletting, assignment or transfer of any work, without prior written authorization of the TRUST engineer is expressly prohibited.”

The RFP and subsequently Stone’s contract with LICRAT now had a clause giving the project engineer, Jack Dalrymple, authority to approve contract assignments. Assigning of the contract from Stone’s to Vision/CWF was completed on April 30th.
This contract clause directly conflicts with state law which requires a contract assignment to be by written consent of the governing body through a resolution. We could find no discussion, written consent or resolution by the board approving this assignment. This contract assignment appears to be invalid under Oklahoma law.

It should also be noted that one of the reasons given for assignment of the contract between Stone’s and CWF was that Stone’s could not obtain appropriate bonding. However, on the date of the contract assignment, April 30, 2010, CWF had not yet obtained bonding. Their bond agreement was not signed until May 3, 2010. (The issue of bonding is addressed in Concern J.)
Concern D  Is there any evidence of an illegal conflict of interest between the entity awarded the winning bid and any Trustee of the public trust or its chief administrative officer contrary to 61 O.S. 2001, § 114?

There was no evidence of an illegal conflict of interest as such conflicts are defined in 61 O.S. 2001, § 114.

There are several personal relationships and business contacts that exist between the parties involved in the LICRAT Property Clearance Project. A complete understanding of these relationships could possibly enhance the readers understanding of the events surrounding the bid and award process.

In fact, some of these relationships could possibly provide an unfair advantage in the bid process; however, they do not appear to be a violation of this statute and as such we have directed our response to this Concern to be that no evidence of illegal conflicts exists.

Specifically, we did not find evidence that any “Trustee” or the “chief administrative officer” had any direct or indirect interest in the contract with Stone’s Backhoe Dozer & Trucking or Vision Construction/CWF Enterprises.
Concern E  Is there any evidence of any unlawful disclosure(s) by any person contrary to 61 O.S. Supp. 2006, § 116?

There is evidence that a possible unlawful disclosure of material fact occurred between Jack Dalrymple and Stone’s Backhoe Dozer & Trucking in the preparation of Stone’s bid.

The statute referenced above conveys that it is unlawful to possess information which is to be contained in a bid notice of a public agency, for use in preparing a bid in advance of the date on which said bid notice is to be made equally and uniformly known to all prospective bidders.

Jack Dalrymple submitted a proposal to become the Project Manager for the upcoming Trust Property Clearance Project. His proposal was dated November 6, 2009, with a Professional Services contract signed on December 17, 2009. Dalrymple’s proposal incorporated Quality Control stipulations that would be required of the prospective contractor who would eventually be awarded the Trust Property Clearance Project bid.

Detailed portions of Dalrymple’s proposal were subsequently included in the Quality Control Plan submitted by Stone’s Backhoe as part of his bid package submitted on March 17, 2010. These circumstances give the appearance that this specific Quality Control information was by some means provided to Stone’s Backhoe and Vision Construction in advance, aiding in his receiving the award of the Project bid.

The other bidders submitted “quality control” plans or procedures as part of their bid packets, attempting to address the RFP’s “quality control” requirement; none of these plans included the language of Dalrymple’s November 6, 2009 contract proposal.
Concern F  

Is there any evidence that the successful bidder knowingly provided misstatements of existing or past material fact(s) to the Public Trust in support of its bid for the award of the contract, 21 O.S. 2001, §1541.1 and 1541.2?

We found no evidence that the successful bidder, Stone's Backhoe Dozer and Trucking knowingly provided misstatements in their representations to the Trust in obtaining the Property Improvement Clearance Project bid.
Concern G

Is there any evidence that two (2) or more persons agreed to take, and thereafter undertook, any action or make any representation to the Public Trust calculated to impair, obstruct or defeat the Public Trust in its lawful function of awarding the contract to the lowest and best bidder, 21 O.S. 2001, §424?

There is evidence that the Project Manager, the winning contractor and the Quality Control subcontractor took action and made misrepresentations that could have impaired the Trust from awarding the Property Improvement Clearance Project to the lowest and best bidder.

The Property Improvement Clearance Project Request for Proposal was presented for bids on February 24, 2010. This proposal included specific and detailed Quality Control specifications not previously required for a ‘Demolition Contract’. The bids presented were scored based on a “Quality Control Grading Score Sheet” with the requirements so specifically defined that the bid proposals submitted by all potential bidders except Stone’s Backhoe, Dozer & Trucking, were considered to be unresponsive.

Additionally, the Quality Control plan submitted by Stone’s was a confidentially protected document of Vision Construction and included specific details that were part of Project Manager Jack Dalrymple’s proposed employment contract, before the bid proposal was written or presented to the public. The inclusion of this predetermined information appeared to be an effort to exclude all bidders except Stone’s.

In fact, in an email written by Chris White, the owner of Vision Construction, the specific comment was made that, “The only reason we were awarded this contract was because of the quality control manual that we prepared for the project. We were the only contractor that turned in a qualifying quality control plan.” Additionally, the use of “we” in this statement gives the appearance of pre-calculation in the use of Stone’s and a “quality control plan” to obtain the bid for the project.

The bid awarded to Stone’s Backhoe was the highest bidder at $2,100,000, thus giving evidence that the parties involved undertook actions to impair the Public Trust Board in their award of the lowest bidder. Also, the project was assigned to Vision Construction by Jack Dalrymple, without Board approval, thus further obstructing the Board in their lawful function.
Concern H

Is there any evidence that the awarding of the contract was influenced in any way by the promise or transfer of something of value or gift to a public official or employee 21 O.S. 2001, §§ 381 & 382, 21 O.S. 2001, § 341 (First), or 74 O.S. 2001, § 3401 et seq.?

The statutes referenced in this Concern define bribery, embezzlement and kickbacks. We found no direct evidence that the transactions and activities incurred under the Property Improvement Clearance Project would meet the criteria defined in these statutes.

In view of the totality of circumstances and the significant amount of evidence accumulated, it appears the March 2010 demolition contract was possibly directed to a preferred contractor and a subsequent preferred assignee by LICRAT’s project manager. Part of the circumstances includes the tacit approval of this process by at least the board chairman (the admitted close personal friend of the project manager, Jack Dalrymple) who signed the original contract for LICRAT.

However, our review of the bank records of both the contractor (Stone) and the subsequent assignee of the contract (CWF/Vision) did not reveal any direct payments to, or the supplying of other apparent benefits to, any LICRAT board member or “a public official or employee” that would seem to meet the definitions described in the above statutes.
Concern I  

Is there any evidence of an Open Meeting violation by the LICRAT Trustees in the awarding of the contract, 25 O.S. 2001, § 314?

Yes there is evidence that LICRAT violated the Oklahoma Open Meetings Act in the awarding of their contract by failing to properly post notice, or conduct any public meeting at which the contract bids received by the Trust were analyzed, considered, discussed or acted upon.

In an email from Jack Dalrymple to Dr. Mark Osborn, Chairman of the Trust Board, dated March 25, 2010, it was communicated that LICRAT’s Property Clearance Committee had conducted an extensive review of bid proposal documents and based upon that evaluation had selected Stone’s Backhoe as the winning contractor.

We could find no evidence that this extensive review of the bid documents and the subsequent awarding of the contract had ever been included on a LICRAT meeting agenda, discussed in any open meeting, or documented in Trust minutes.

Additionally, DT Specialized Services, Inc, the low bidder on the March 2010 Project, filed a lawsuit in the District Court of Ottawa County. The Court did rule that LICRAT had violated the Oklahoma Open Meetings Act. An ‘Order and Judgment’ dated May 5, 2010 declared that the Trust bidding process was invalid and the contract with Stone’s void. The Court further ordered that LICRAT rebid the project.

At the conclusion of this lawsuit DT Specialized Services, Inc. sued in District Court for payment of legal fees. The Court rendered a judgment against LICRAT, ordering the Trust to pay $10,429.40 in attorney fees to DT Specialized Services, Inc.

If so, has the District Attorney taken any action in regard to that event?

We found no evidence that the District Attorney of Ottawa County has taken any action in regard to the Trust’s violation of the Oklahoma Open Meeting Act.

Additionally, in April 2009 the Trust had previously been sued in the District Court of Ottawa County, for violations of the Oklahoma Open Meeting Act and found in violation of such. No action was taken by the District Attorney in regard to this event.

It should also be noted that the District Attorney of Ottawa County was a LICRAT Board Member from September 2004 – July 2006.
Additional Concerns

As previously mentioned, Concerns A through I detailed above are in response to the specific questions addressed in the Attorney General’s 74 O.S. 2001, § 18f request letter. During our evaluation of these concerns we also become aware of other issues that we felt were matters of interest that needed to be reported. These additional concerns are noted below.

Concern J LICRAT entered into a contract with Stone’s Backhoe, Dozer & Trucking for the Property Improvement Clearance Project without Stone’s being properly bonded. Stone’s was then allowed to proceed with demolition work without having provided the required bonding.

61 O.S. § 103(A), states in part, “No work shall be commenced until a written contract is executed and all required bonds and insurance have been provided by the contractor to the awarding public agency.”

Additionally, the LICRAT contract stated, “The contractor shall execute and file good and sufficient performance and statutory payment bonds in an amount equal to the contract amount with the Trust to insure the proper and prompt completion of the work in accordance with the provisions of the contract and the contract bid proposal.”

On April 9, 2010, a Notice to Proceed was issued by the Trust allowing Stone’s to begin work on the demolition project. The notice acknowledged, “That bonding is expected to be delivered to the Contract Facilitator within a reasonable time frame. Until those bonds are delivered, the undersigned have agreed that there will be no payments on work performed.” The contractor should not have been authorized to proceed without bonding in place.

Additionally, as detailed in “Concern C” previously, Stone’s subsequently assigned the contract to CWF/Vision who was also not bonded at the date of assignment.
Concern K  The $366,282.56 lawsuit settlement paid from LICRAT to Vision Construction was paid out of federal stimulus monies, specifically from 'American Recovery and Reinvestment Act' funds. This payment appears to be in violation of Federal award guidelines as they are defined below.

Federal OMB Circular A-87 states in part, "Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal award or written instructions by the awarding agency authorizing in advance such payments."

Payment of the LICRAT lawsuit settlement to Vision, which resulted from the Trust' violations of State law, appears to be an unallowable cost under OMB Circular A-87.
LAWSUITS

CV-10-24
DT Specialized Services, Inc. vs. Lead-Impacted Communities Relocation Assistance Trust

Summary: DT sued LICRAT claiming violation of the Open Records Act and the Competitive Bidding Act. Court found in favor of DT, determined bid to be void and ordered LICRAT to rebid.

CJ-10-127
Vision Construction and Project Management, Inc and CWF Enterprises, Inc. vs. LICRAT

Summary: Vision sued for work completed under the now void Property Clearance Project. Amount requested $366,282.57.

CJ-10-224
Abatement Systems, Inc. vs. LICRAT

Summary: Abatement Systems sued LICRAT for payment of $100,000 for work completed under the now void Property Clearance Project.

CIV-12-462-R

Summary: Billy Freeman was the original complainant who brought the LICRAT information to Tom Coburn’s office’s attention and began the process of the LICRAT 18f investigation.