



**Comptroller General
of the United States**

Washington, D.C. 20548

B-236146.2

March 20, 1990

The Honorable Mike Synar
Chairman, Environment, Energy and
Natural Resources Subcommittee
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

This opinion responds to your letter dated March 8, 1990, concerning a contract for auditing and reconciliation services the Bureau of Indian Affairs (BIA) is currently negotiating to comply with a proviso in BIA's appropriation for fiscal year 1990, Pub. L. No. 101-121, 103 Stat. 701, 714 (1989). For the reasons set forth below, we conclude that BIA will not satisfy the conditions in the proviso if it uses the same contractor to perform both the audit and reconciliation of Indian trust funds and the required "independent" certification of the reconciliation.

BACKGROUND

As you know, in September 1988, BIA entered into a contract with Security Pacific National Bank (Security Pacific) for various accounting and financial management services to assist BIA in fulfilling its managerial and fiduciary responsibilities as trustee of Indian trust funds. As a practical matter, the contract cannot be implemented until BIA transfers the monies in the Indian trust fund accounts to Security Pacific. BIA's annual appropriation for fiscal year 1990 prohibits BIA from transferring Indian trust funds to Security Pacific until certain conditions have been satisfied:

"Provided further, That none of the funds in this Act shall be used by the Bureau of Indian Affairs to transfer funds under a contract with any third party for the management of tribal or individual Indian trust funds until the funds held in trust for such tribe or individual have been audited and reconciled to the earliest possible date, the results of such reconciliation have been certified by an independent party as the most

complete reconciliation of such funds possible,
and the tribe or individual has been provided with
an accounting of such funds. . . ." (Emphasis
added.)

Pub. L. No. 101-121, 103 Stat. 701, 714 (1987).

Your office has advised us, and BIA has informally confirmed, that BIA intends to award one contract for auditing and reconciliation services that "will satisfy the statutory requirements for the initial audit and reconciliation and the required subsequent certification by an independent party."

ANALYSIS

We conclude that BIA would not satisfy the statutory requirements if the same contractor that audits and reconciles the accounts also certifies the reconciliation to be the most complete reconciliation possible. The statutory language explicitly requires that an "independent party" certify the results of the reconciliation. The very structure of the sentence makes relatively clear that Congress used "independent" to mean a party that is independent of whoever performed the initial audit and reconciliation.

The legislative history of the proviso confirms our conclusion. Specifically, the report of the conference committee contains the following directive to BIA regarding implementation of the provision in question.

"The managers direct that the Bureau take steps to address the concerns raised over account reconciliation of trust funds. The Bureau should take all possible steps to reconcile accounts to the maximum extent possible, and an independent party should review the Bureau's reconciliation efforts and certify that no further reconciliation can be achieved before such accounts are transferred under the contract."

H.R. Rep. No. 264, 101st Cong., 1st Sess. 32 (1989).

The just quoted legislative history clearly contemplates that a second entity, independent of BIA or a BIA contractor, would certify the completeness of the initial audit and reconciliation of the trust fund accounts. To construe "independent" otherwise would, in our opinion, render largely meaningless the purpose of the requirement for a certification by an independent party.

Congress's evident purpose is to obtain, to the greatest extent possible, reliable baseline balances in the various accounts. To achieve this purpose, Congress mandated an independent review of the initial audit and reconciliation and required that the trust beneficiaries be given an opportunity to review the results of the certified audit and reconciliation of their respective accounts. Merging the performance of the audit and reconciliation with the certification would eliminate a significant part of the assurance Congress is seeking with respect to the accuracy and adequacy of the audit and reconciliation of these accounts.

Accordingly, unless and until a party independent of the party performing the initial audit and reconciliation certifies that the reconciliation is as complete as possible, no trust fund monies can be transferred to Security Pacific.

Sincerely yours,

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General
of the United States