


**A Performance Audit of the Construction  
of Judicial/Public Safety Facilities**

Audit Report No. 14-06

**M-E-M-O-R-A-N-D-U-M**

**TO** : Delores Greyeyes, Department Manager III  
**DEPARTMENT OF CORRECTIONS**

**FROM** :   
Elizabeth Begay, CIA, CFE  
Auditor General

**DATE** : December 16, 2013

**SUBJECT** : A Performance Audit of the Construction of Judicial/Public  
Safety Facilities

The Office of the Auditor General, in conjunction with external auditor Harshwal & Company LLP, Certified Public Accountants, herewith transmit Report No. 14-06, a Performance Audit of the Construction of Judicial/Public Safety Facilities with findings and recommendations.

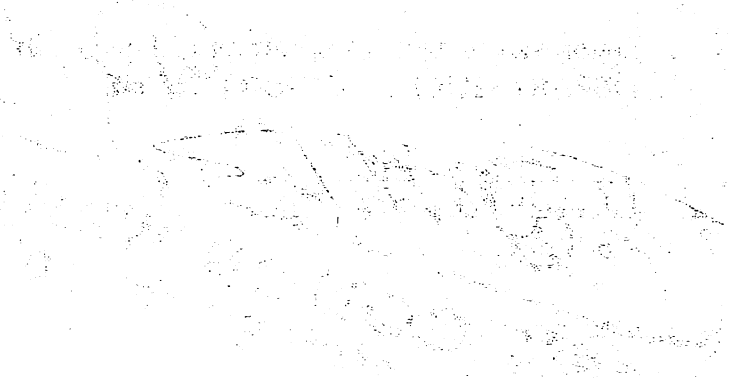
If you have any questions regarding this report, please call our office at (928) 871-6303.

Enclosure

xc: John Billison, Director  
**DIVISION OF PUBLIC SAFETY**  
Sanwar Harshwal, CPA  
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Chrono



2013-2014



1. The first part of the document describes the general objectives and scope of the project. It outlines the key areas of focus and the expected outcomes of the research.

2. The second part of the document details the methodology used for the study. This includes a description of the data collection methods, the analytical techniques employed, and the steps taken to ensure the reliability and validity of the results.

3. The third part of the document presents the results of the study. This section includes a detailed analysis of the data, highlighting the key findings and any trends or patterns observed. It also discusses the implications of these findings for the field of study.

4. The final part of the document provides a conclusion and a discussion of the study's limitations. It summarizes the main findings and offers suggestions for future research. The document also includes a list of references and an appendix with additional data and figures.

**The Navajo Nation**  
**Performance Audit of the Construction of**  
**Judicial/Public Safety Facilities**

**Harshwal & Company LLP**  
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## Executive Summary

### ***Background***

Navajo Nation Design & Engineering Services entered into an agreement with Construction Manager at Risk, Arviso Okland Construction, JV for construction of Navajo Nation Judicial/Public Safety Facilities at Tuba City, Arizona and Crownpoint, New Mexico. The Navajo Nation selected Dyron Murphy Architects as architect and Arcadis as Project Manager or Owner's Representative for these projects.

Arviso Okland Construction JV is the Construction-Manager-at-Risk (CMAR) responsible for pre-construction and construction phase services. The CMAR pre-construction phase services including design participation, cost estimating, value engineering, subcontractor qualification, subcontractor bidding, and development of the Guaranteed Maximum Price (GMP). The CMAR was also responsible for construction phase services, upon appropriation of funds, including coordination and quality of all work put in place for two large district judicial/public safety facilities one to be built in Tuba City, AZ and one in Crownpoint, NM.

Project Manager, Arcadis was responsible to analyze and confirm with Owner the overall objectives of the Navajo Nation Judicial/Public Safety Facilities, confer with Owner regarding goals for Project budget, expenditures, and schedules, and identify project unit design and construction goals, propose a budget, and recommend a project delivery method as basis for formulating and implementing the project.

The Architect, Dyron Murphy will administer the Project, consult with the Owner, research applicable design criteria, including but not limited to the Owner's Design Standards, attend Project meetings, communicate with members of the project team, issue progress reports, certificate for payment of pay application, generally coordinate and cooperate with the Owner's Representative and the Owner in all matters affecting the project.

For the purposes of this narrative the Navajo Division of Public Safety, Department of Corrections and the Judicial Branch represented the Owner shall be referred to as "Navajo Nation."

Construction-Manager-at-Risk (CMAR) was used as the project delivery method for the Tuba City and Crownpoint Judicial Public Safety Facilities. The CMAR selection process was based on qualifications as described below. The CMAR initially entered into a pre-construction Contract following successful negotiation of a pre-construction fee, construction fee, and general condition costs. During the project design phase, a Guaranteed Maximum Price (GMP) was agreed to by the CMAR and the Navajo Nation. A Construction Phase Services Contract was entered into, which included the negotiated construction fee, general conditions and the projected "Cost of Work."

The CMAR selection process was as follows:

- Notice of Request for Qualifications was published. (January 2009)
- A Navajo Nation Selection Committee from the Navajo Division of Public Safety and Judicial reviewed the Statements of Qualifications, prepared a "short-list" of candidates, interviewed the candidates and selected Arviso Okland as the "most highly qualified" firm. (March 2009)
- Navajo Nation assisted by the Project Manager (Arcadis), negotiated a pre-construction Services cost, a construction fee percentage and a general conditions cost with Arviso Okland. (July 2009)

***Background- continued***

- The original Guaranteed Maximum Price (GMP) amount of \$61,812,600 was agreed to for the construction of two proto-typical facilities at Tuba City and Crownpoint. (October 2009)
- The Department of Corrections, with the concurrence of the Attorney General, replaced Design and Engineering Services Department to oversee the project. (August 2010)
- The funding from Key Bank loan and ARRA enabled Navajo Nation to change the scope and construct additional buildings that led to the increased GMP of \$90,937,399.

The CMAR contract consisted of the following documents:

- AIA Document A133 – 2009 Standard Form of Agreement Between Owner and Construction Manager at Risk where the basis of payment is the Cost of Work Plus a Fee with a Guaranteed Maximum Price
- Navajo Nation General Conditions For Construction Contracts
- AIA Document A201 – 2007 General Conditions of the Contract for Construction
- Additions and Deletions Report for AIA Document A201 – 2007
- Certificate of Document’s Authenticity AIA Document D401 – 2003
- Additions and Deletions Report for AIA Document A133 – 2009
- Certification of Document’s Authenticity AIA Document D401 - 2003

The CMAR contract is a “Cost of Work Plus Fee” with a Guaranteed Maximum Price (GMP).

The GMP is the CMAR’s cost for implementing and constructing work as defined in the construction documents as produced by Dyron Murphy Architects (DMA) for Tuba City and Crownpoint Judicial Public Safety Facilities.

The CMAR’s agreed upon and approved “Fee” was 3.5% of the total Cost of Work.

The Cost of Work is defined as “the costs necessarily incurred by the Construction Manager in the proper performance of the Work.” The general categories include the following:

- Wages and salaries of workers directly employed by the CMAR
- Costs paid by the CMAR for taxes, insurance, and bonds
- Subcontractor costs
- Costs of Materials and Equipment, Temporary Facilities and related items
- Rental charges for temporary facilities, machinery, equipment and tools
- Document reproduction, communications, postage, delivery charges
- Travel reimbursement expenses

Payment For Construction Phase Services:

- The CMAR submitted a monthly Application for Payment utilizing form AIA G702 – Application and Certificate for Payment.

***Background- continued***

- This application for payment was submitted monthly to the Architect (DMA), the Project Manager (Arcadis), and Navajo Nation for review and discussion prior to approval.
- Each Application for Payment was based upon the most recent schedule of values submitted by the CMAR in accordance with the Contract Documents.
- The schedule of values allocates the entire GMP price according to the portions of work.
- The monthly application for payment showed a percentage of completion for each portion of work.
- After review and agreement of the Application for Payment by the Architect, Navajo Nation, Project Manager, and CMAR, the Architect certified the Certificates of Payment and forwarded them to the Owner for progress payments.

This process was followed through the completion of the project.

A Certificate of Substantial Completion was issued by the Architect and signed by Navajo Nation on January 11, 2013.

Permanent Certificates of Occupancy were issued by the Bureau of Indian Affairs as follows:

Tuba City	
Courts	March 18, 2013
Corrections	May 02, 2013
Law	April 22, 2013
Crownpoint	
All facilities	May 10, 2013



***Background- continued***

**External Funding/Intergovernmental Agreements**

Department of Corrections received funding from ARRA, BIA and Key Bank Loan. Following is the summary of funding sources for the District Judicial Facilities:

Source	Crownpoint	Tuba City
Original Contract amount (excluding pre-con. services)		
ARRA Funding	\$	\$ 33,368,139
Loan	14,725,947	13,315,194
Pre- Construction Services	96,716	306,604
Pre Const. Services as per Contract Mod. No.1		172,339
BIA funding as per Contract Mod. No.3	22,667,960	
Loan Contract Mod. No.4	2,391,124	
BIA funding as per Contract Mod. No.4	185,084	
ARRA funding as per Contract Mod. No.5		2,451,075
Loan as per Contract Mod. No.4	<u>                    </u>	<u>1,257,217</u>
Amended Contract Price (GMP)	\$ <u>40,066,831</u>	\$ <u>50,870,568</u>

*Background- continued*

**Subcontract Costs**

The following is a list of subcontractors with their cost:

Crown Point Project		Tuba City Project	
Subcontractor	Cost	Subcontractor	Cost
ACCENT LANDSCAPE	\$ 236,037	ACB CONSTRUCTION	\$ 158,513
ACCUSTRIPE, INC.	31,000	ACCENT LANDSCAPE	224,796
ALL AMERICAN ENTERPRISES	915,471	AFFORDABLE FIRE	38,508
AMSTEP PRODUCTS	1,061	ALUGLAS, LLC	218,637
ARBON EQUIPMENT CORP.	37,970	AMSTEP PRODUCTS	16,311
ARIZONA REST. SUPPLY	343,385	APODACA WALL SYSTEMS	1,976,719
BILCO COMPANY	10,797	ARVISO OKLAND CONCRETE	2,927,422
BUILDERS SPECIALTY SERVIC	12,179	BUSINESS ENVIRONMENTS	908,760
BUSINESS ENVIRONMENTS	1,424,999	CASE FOUNDATION COMPANY	800,465
COMMERCIAL ENTERPRISES	502,672	COMFORT SYSTEMS USA	5,267,174
D & R TANK	252,285	COMMERCIAL CERAMIC, INC.	210,765
DAYLIGHT SOLUTIONS	94,209	COOKSON DOOR SALES	86,747
DIVISION 10 MATERIALS	34,898	C-PEC	27,829
FLOORSHIELD INC	70,575	DAW CONSTRUCTION GROUP	524,707
HOUGHTON PLASTER, INC.	1,738,188	DEN-MARK SPECIALTY CONST.	367,027
INDUSTRIAL COMMERCIAL	38,918	DOUGLASS COLONEY GROUP	1,118,039
ISEC, INCORPORATED	208,126	EAGLE MOUNTAIN CONST.	4,061,994
MARTIN RAY LAUNDRY SYS.	20,330	EUROPEAN TECHNIQUES	235,497
MATS, INC.	400	FIRE ENGINEERING CO. INC.	492,304
MAVERICK MASONRY	1,687,245	GANADO PAINTING & WALL.	381,657
MBH BUILDERS	39,142	GHD, INC.	215,908
MILLER BONDED, INC	4,573,288	HEITMANN & ASSOCIATES	22,000
MILLER INSULATION & FIREP	72,529	HOWARD ELECTRIC INC.	3,818,824
NELSON FRAMING	155,311	INTERSTATE INTERIORS SYST	95,430
NICHOLS ELECTRIC	3,528,657	JSC CONTRACTING	649,157
NOEL COMPANY	1,745,131	KAMRAN AND COMPANY, INC.	735,596
NORCON OF NEW MEXICO	93,761	NATIONAL SIGN FABRICATORS	81,586
PERIMETER SECURITY SOL.	483,085	NELSON FRAMING	45,320
PREFERRED DOOR COMPANY	59,635	NELSON HOLLAND, INC.	432,003
PROGRESSIVE COMMERCIAL	54,390	NORCON INDUSTRIES	190,733
PROPANE SPECIALTY SERVICES	149,696	NYSTROM BUILDING PROD.	45,444

*Background- continued*

**Subcontract Costs- continued**

ROSE CONTRACTING	3,165,603	OTIS ELEVATOR COMPANY	115,682
S & H STEEL	1,552,463	PACIFIC COAST STEEL	1,128,223
SAN JUAN INSULATION & DRY	1,800,187	PERIMETER SECURITY SOL.	608,107
SAN JUAN SIGNS	99,112	PROGRESSIVE COMMERCIAL	78,868
SEAL-CO., INC.	99,849	S & H STEEL	1,973,814
SIERRA DETENTION SYSTEMS,	3,253,410	SIERRA DETENTION SYSTEMS	4,047,074
STAN'S PRECISION SPECIALT	67,345	SOUND-CRETE CONTRACTORS	179,317
STOCK BUILDING SUPPLY	570,249	SOUTHWEST CONCRETE	170,821
THYSSENKRUPP ELEVATOR	49,125	SUN COUNTRY FLOORS, INC.	351,242
VALLEY FIRE PROTECTION	595,964	SUN VALLEY MASONRY	2,467,595
WESTERN COMMERCIAL GLASS	226,544	T.P. ACOUSTICS, INC.	296,096
		WAUSAU TILE, INC.	10,947
<b>Total</b>	<b><u>\$ 30,095,221</u></b>	<b>Total</b>	<b><u>\$ 37,803,658</u></b>

***Audit Objective***

The performance audit was conducted on the CMAR in construction of the Judicial/Public Safety Facilities. The Primary objectives of this audit were to determine that:

- Costs charged to the Project by Arviso Okland Construction JV are in accordance with the terms and conditions of the Agreement, including labor, materials, equipment, equipment rentals, disposable tools and overhead costs represented value received and were justifiably charged to the Project.
- Payments made to Arviso Okland Construction JV agree to amounts billed to the Judicial Public Safety Facilities, are timely, adequately supported, and do not contain overpayments and/or overcharges.
- To evaluate the cost charged by subcontractor or suppliers and to determine whether the charges are in accordance with the contract.
- To review that the retention is appropriately held and contract terms related to retention are followed.
- Work performed was in accordance with contract stipulations and specifications.

### *Scope And Methodology*

The following procedures were performed:

- Obtained an understanding of the Construction Manager method of operations.
- Obtained information relating to job status, including whether materials charged to the job have been installed and problems that may be useful in other phases of the audit.
- Reviewed Construction Manager's internal control, the size, nature, significance, and location of projects and projects that have unusual features or that appear to be troublesome.
- Conducted tests of the accounting records as well as observed uninstalled materials, work performed to date and Construction Manager owned or rented equipment.
- Interviewed CMAR, Construction Manager at Projects and Correctional Lieutenant regarding the status of the contract, uninstalled materials and significant matters.
- Interviewed the Project Manager to get an understanding of the project.
- Verified the job status by visiting the sites.
- Verified the pay applications with the supporting documents for the expenses incurred.
- Verified the accuracy of the use of machinery cost charged to each site.
- Performed test to verify that the retention amount was properly calculated and retained as per the contract terms.
- Performed tests of the accumulation of costs underlying the submitted invoices, time records, and other supporting documentation.
- Reviewed that the work performed and costs incurred were authorized in writing by the owner.
- Evaluated, whether the costs relate to work within or outside the scope of the contract.
- Evaluated the nature and reasonableness of claimed damages that are attributable to customer-caused delays, errors in specifications.
- Performed expenditure test work to examine designated cost that passed through to the owner under this contract and to determine whether the costs are reimbursable or should be absorbed by the Construction Manager as reimbursable contract costs.
- Reviewed all contract provisions regarding guarantees, contingencies and cancellation or postponement associated with the projects.
- Inquired to verify the cost charged by subcontractors are in accordance with the terms of their contracts and work performed.
- Inquired to ensure that the Construction Manager has not included amounts, not used in measuring performance, in the cost incurred to date and estimated cost to complete.
- Performed tests to ensure that the Construction Manager has properly recorded costs incurred to date by contract.
- Reviewed representations of management and obtained explanations of apparent disparities between estimates and past performance on contracts, experience on other contracts, and information gained in other phases of the audit.

***Scope And Methodology- Continued***

- Discussions with the Construction Manager's engineering personnel and Project Managers who are familiar with, and responsible for, the contract in process.
- Reviewed reports of independent architects and engineers, and information received from the Construction Manager that relates to disputes and contingencies.
- Obtained all project related financial or accounting transactions that document owner expenditures. Reconciled the sum of the total payments made to each vendor to the various contract amounts as adjusted by change orders, reviewed itemized payments made to each vendor for each project and vouch a sample of vendor payments to cancelled checks other support, reviewed a sample of invoices paid direct by the owner for services, materials or other costs which may have been the responsibility of the general contractor.
- Examined Construction Manager's job cost detail, reviewed invoices and related material, delivery tickets for job description, delivery address and authorized invoice approvals, appropriate acknowledgement of receipt for use at the site, audited purchases of excessive amounts of material, examined the test and inspection reports.
- Reviewed the policies of the traveling and entertainment claim expenses, verified the payment vouchers and invoices and checked the details of the claim and the purpose.
- Obtained copy of Construction Manager's Performance and Payment Bonds. Verified that the coverage is adequate for the contract amount and that the appropriate personnel from the underwriter sign the power of attorney.
- Determined if the bond coverage has been increased with the increase in contract amount due to change orders.
- Reviewed the contract to determine the type and amount of general liability and other special insurance coverage required to be carried by the Construction Manager. Obtained copies of Insurance Certificates, and determine if coverage is adequate. Also verified that policy period covers the appropriate time period.
- The prime contractor is using Sub Guard (Subcontractor Default Insurance) in lieu of having the subcontractors provide regular Payment and Performance bonds, therefore determined the Construction Manager's actual costs of Sub guard for the project. If the contract provides for reimbursement of Construction Manager's cost, verified the additional hidden profit is not buried in the Sub Guard cost factor used by the Construction Manager to charge job cost.
- Obtained a breakdown of the Construction Manager's equipment rental rates charged to the project and tested to determine whether the equipment rates were billed properly.
- Verified that the rates charged are consistent with those prevailing in the local area.
- Reviewed the minutes of various meetings, Construction Manager's daily logs, engineering field test reports and any other correspondence files.
- Obtained and reviewed the contract with material testing and quality control.
- Visited the construction sites and took a tour of the Judicial Complexes.

### ***Scope And Methodology- Continued***

- Conducted final review of the contract, Construction Manager's billings and confirmed that subcontractors have been paid, prime and subcontractors have provided final release or waiver of lien, all certificates have been received and certified, warranty provisions and training provided was consistent with requirements of contract.
- Verified that all required assets were transferred to owner.
- Traced vouchers and payment data from the department's records to cost ledger detail provided by the Construction Manager, to verify payments received.
- Reviewed the supporting documentation to determine that the expenditures were supported, approved, reasonable and allowable to the contract.
- Assessed the system of management controls, policies, procedures and practices applicable to the administration.
- For completion of project, we inquired whether the buildings were satisfactorily handed over to the owners.

### ***Scope Limitations***

The CMAR did not provide the information when requested for substantial amount of time. We received the information only after the Navajo Nation Office of Ethics and Rules issued the subpoena to the CMAR. The CMAR did not provide full or timely responses to information requests necessary for testing.

We were unable to review the time sheets and daily reports for the equipment usage, as the supporting documents were not provided for review by the CMAR.

We were unable to review and verify the cost incurred related to the subcontractors, as the CMAR did not provide access to payments made to the subcontractors and supporting documentations to substantiate the work performed by CMAR itself, in timely manner.

## **FINDING I: Excessive Charges**

### **Issue: Labor charges**

#### **Condition:**

During our fieldwork, we were provided with 18 Pay Applications for Crownpoint Judicial Complex and 22 for Tuba City Judicial Complex. We selected 9 out of 18 Pay Applications and 11 out of 22 Pay Applications for Crownpoint Judicial Complex and Tuba City Judicial Complex respectively for our review and we noted that labor rates billed for laborers differ from the rate scheduled in the contract. The difference resulted into an overpayment of \$3,668 for Crownpoint project and \$19,283 for Tuba City project.

#### **Criteria:**

"Exhibit G Standard Labor Rates" of contract states the labor rate per week, per hour with overtime applicability of all laborers with the title. The overcharge was for labor rate and overtime period. For instance labor rate for Project General Foreman according to the Exhibit G was \$65 an hour and no overtime allowed, the rate charged for this category was \$75 per hour and was also billed for overtime.

#### **Effect:**

Navajo Nation might have incurred the risk of potential overpayment of \$22,951 with respect to labor charges.

#### **Cause:**

The CMAR did not meet the terms of the contract clauses mentioned in Exhibit G of the original contract. The Navajo Nation understood Exhibit G as estimated labor rate that could change based on prevailing rate during construction.

#### **Recommendation:**

The Navajo Nation Department of Corrections should make sure in the future that the CMAR meets the terms of the contract clauses and that the CMAR should not have authority to change the labor rates without the written approval by the Owner.



**FINDING I: Excessive Charges- continued**

**Issue: Office Furnishings Expenses**

**Condition:**

During our test work, we noted that office furnishing expenses were overcharged by \$756 for Tuba City Judicial Complex.

<b>Tuba City Project</b>		
Pay App #	Description	Amount
3-8	Office Furnishings, April 11 - Sept 11 (\$322 per month)	\$ 1,932
9	Office Furnishings, Oct. 11	<u>1,824</u>
	Total Expenditure charged	<u>3,756</u>
	Expenditure Allowed as per Contract	<u>3,000</u>
	Overcharged	<u>\$ 756</u>

**Criteria:**

"Exhibit E General Conditions Cost for Construction" of contract states that the lump-sum charges for office furnishings will be \$3,000 for each project.

**Effect:**

Navajo Nation might have incurred the risk of potential overpayment.

**Cause:**

The CMAR did not meet the terms of the contract clauses mentioned in Exhibit E of the original contract. The Navajo Nation understood Exhibit E as estimated Office Furnishing rate that could change based on prevailing rate during construction.

**Recommendation:**

The Navajo Nation Department of Corrections should make sure in the future that the CMAR meets the terms of the contract clauses and that the CMAR should not have authority to change the office Furnishing rates without the written approval by the Owner.

**FINDING I: Excessive Charges- continued**

**Issue: Contractor fees**

**Condition:**

During our test work, we noted contractor's fee was not charged in accordance with the provisions of contract and also noted inconsistencies in the charges that resulted in to an overcharge of \$234,624 against the project cost of \$90,070,757, as per the pay applications of Crownpoint and Tuba City Judicial Complexes.

**Crownpoint Project**

Pay App #	As per Attached Cost sheet of Pay Applications				As per Contract terms (3.50% of cost of work)		Discrepancies
	Project Cost	Contractor's fee	NN Tax	Cost of work			
1	\$ 1,567,741	\$ 54,871	\$ 62,710	\$ 1,450,160	\$ 50,756	\$ 4,115	
2	766,091	26,966	29,465	709,660	24,838	2,128	
3	1,204,414	42,545	41,852	1,120,017	39,201	3,344	
4	1,539,796	53,893	61,592	1,424,311	49,851	4,042	
5	2,694,400	93,848	93,628	2,506,924	87,742	6,106	
6	1,827,989	63,980	63,521	1,700,488	59,517	4,463	
7	1,662,070	58,172	57,755	1,546,143	54,115	4,057	
8	2,417,566	84,615	84,008	2,248,943	78,713	5,902	
9	1,941,280	67,945	67,458	1,805,877	63,206	4,739	
10	3,018,096	105,633	104,876	2,807,587	98,266	7,367	
11	2,880,249	100,809	100,086	2,679,354	93,777	7,032	
13	2,584,012	145,162	98,500	2,340,350	81,912	63,250	
14	3,124,015	109,341	99,097	2,915,577	102,045	7,296	
15	2,172,140	76,025	79,520	2,016,595	70,581	5,444	
16	2,384,148	0	75,720	2,308,428	80,795	(80,795)	
17	2,454,239	116,492	89,847	2,247,900	78,677	37,815	
18	2,774,346	97,102	90,020	2,587,224	90,553	6,549	
19	1,120,901	39,232	41,035	1,040,634	36,422	2,810	
20	710,479	25,286	25,695	659,498	23,082	2,204	
22	517,650	18,118	19,910	479,622	16,787	1,331	
23	239,639	8,387	9,217	222,035	7,771	616	
24	180,216	6,308	6,931	166,977	5,844	464	
25	119,069	4,167	4,580	110,322	3,861	306	
<b>Total</b>	<b>\$ 39,900,546</b>	<b>\$ 1,398,897</b>	<b>\$ 1,407,023</b>	<b>\$ 37,094,626</b>	<b>\$ 1,298,312</b>	<b>\$ 100,585</b>	

**FINDING I: Excessive Charges- continued**

**Issue: Contractor fees- continued**

<b>Tuba City Project</b>							
Pay App #	<u>As per Attached Cost sheet of Pay Applications</u>				As per Contract terms (3.50% of cost of work)		Discrepancies
	Project Cost	Contractor's fee	NN Tax	Cost of work			
1	\$ 2,037,851	\$ 71,325	\$ 78,379	\$ 1,888,147	\$ 66,085	\$ 5,240	
2	460,442	16,115	17,709	426,618	14,931	1,184	
3	732,267	26,773	26,336	679,157	23,770	3,003	
4	1,352,277	47,337	52,019	1,252,921	43,852	3,485	
5	1,980,296	69,310	76,165	1,834,821	64,219	5,091	
6	1,264,625	44,715	48,639	1,171,271	40,994	3,721	
7	2,015,381	70,939	70,033	1,874,409	65,604	5,335	
8	2,780,798	102,789	115,407	2,562,602	89,691	13,098	
9	2,089,814	72,062	72,619	1,945,133	68,080	3,982	
10	2,053,689	71,879	71,364	1,910,446	66,866	5,013	
11	2,414,270	84,499	83,894	2,245,877	78,606	5,893	
12	2,167,480	75,862	75,318	2,016,300	70,571	5,291	
13	2,873,070	100,557	94,577	2,677,936	93,728	6,829	
15	2,885,249	0	109,859	2,775,390	97,139	(97,139)	
16	2,640,763	0	100,550	2,540,213	88,907	(88,907)	
17	3,008,832	300,188	122,025	2,586,619	90,532	209,656	
18	2,985,996	104,510	113,695	2,767,791	96,873	7,637	
19	2,739,451	95,290	100,228	2,543,933	89,038	6,252	
20	2,473,015	86,556	90,534	2,295,925	80,357	6,199	
21	2,352,674	82,344	86,129	2,184,201	76,447	5,897	
22	2,698,586	94,451	98,792	2,505,343	87,687	6,764	
23	1,662,592	58,191	60,866	1,543,535	54,024	4,167	
24	1,252,316	43,831	45,845	1,162,640	40,692	3,139	
26	510,814	17,878	19,647	473,289	16,565	1,313	
27	454,149	15,895	17,467	420,787	14,728	1,167	
28	234,823	8,219	9,032	217,572	7,615	604	
29	48,692	1,704	1,873	45,115	1,579	125	
<b>Total</b>	<b>\$ 50,170,212</b>	<b>\$ 1,763,219</b>	<b>\$ 1,859,001</b>	<b>\$ 46,547,991</b>	<b>\$ 1,629,180</b>	<b>\$ 134,039</b>	

**Criteria:**

As per Article 5.1.1 of contract between Navajo Nation and Construction Manager, "Construction Manager's fee will be 3.5% of cost of work". The Construction Manager's pay request cost sheet included 3.5% of contractor fee as a part of cost of work. Contractor fees was again calculated resulting into charging fees on fees.

**FINDING I: Excessive Charges- continued**

**Issue: Contractor fees- continued**

**Effect:**

The Navajo Nation Department of Corrections might have been overcharged \$234,624.

**Cause:**

The Project Manager failed to provide oversight in ensuring the terms of the contract relating to contractor fees.

The Navajo Nation Department of Corrections may not have adequate resources to ensure the correct calculation of the contractor fees.

**Recommendation:**

The Project Manager and the Department of Corrections should be held responsible for the miscalculated contractor fees. Adequate training should be provided to the personnel at Navajo Nation Department of Corrections to obtain the skill sets to properly calculate contractor fees.

**FINDING I: Excessive Charges- continued**

**Issue: General Liability Insurance and Surety Bond**

**Condition:**

During our test work, we noted that the compliance requirement for General Liability Insurance and Surety Bond were not followed in accordance with the provisions of contract with the Construction Manager. As a result there was an overcharge in General Liability Insurance and Surety Bond by \$107,099 in Crownpoint Judicial Complex and \$12,604 for Tuba City Judicial Complex as per the funding of the two projects. Also, we have not been provided the proof of expenditure incurred for the Bonds and General Liability Insurance.

	<u>Total Adjusted GMP</u>	<u>According to contract terms</u>	<u>As per Pay applications</u>	<u>Discrepancies</u>
Crownpoint Project	\$ 39,970,115	\$ 699,477	\$ 806,576	\$ 107,099
Tuba City Project	<u>50,563,964</u>	<u>884,869</u>	<u>897,473</u>	<u>12,604</u>
Total Both Projects	<u>\$ 90,534,079</u>	<u>\$ 1,584,346</u>	<u>\$ 1,704,049</u>	<u>\$ 119,703</u>

As per original contract Article 6.6.1 ----"Owner agrees to pay the Construction Manager a fixed combined percentage of 1.75% of the Total Adjusted Guaranteed Maximum Price for commercial liability insurance premium and Payment and performance bond premium as specified in this Agreement and in the General Conditions to this Agreement." The original contract price (GMP) is \$39,970,115 for Crownpoint Judicial Complex. The General Liability Insurance cost as per this clause should be \$699,477 (1.75% of \$39,970,115). Navajo Nation Department of Corrections was charged \$806,576 for General Liability Insurance, which is an overcharge of \$107,099 for Crownpoint Judicial Complex.

Additionally, modification # 3 of Crownpoint Judicial Complex has a document by Arviso Okland named GMP Divisional Estimate Summary. This summary gives the line item cost for the GMP in three columns being Original GMP, modifications amount and the total. The line item for General Liability Insurance and Bond shows a distribution of 1.75% into 0.97% & 0.78% respectively. Considering this calculation the Navajo Nation Department of Corrections is overcharged by \$3,920 for General Liability Insurance and by \$103,179 in Surety Bond, for Crownpoint Judicial Complex resulting into total overcharge of \$107,099. Navajo Nation Department of Corrections is charged over for General Liability Insurance and Surety Bond regardless of the percentage calculation showed in the contract or in the summary details of the modification.

**Criteria:**

As per Article 6.6.1 of contract agreed between Navajo Nation and Construction Manager "Owner agrees to pay the Construction Manager a fixed combined percentage of 1.75% of the Total Adjusted Guaranteed Maximum Price for commercial liability insurance premium and Payment and performance bond premium as specified in this Agreement and in the General Conditions to this Agreement."

**Effect:**

Navajo Nation was overcharged \$119,703 in General Liability Insurance and Surety Bond by the CMAR.

**FINDING I: Excessive Charges- continued**

**Issue: General Liability Insurance and Surety Bond- Continued**

**Cause:**

The Project Manager did not perform the task as required by the contract in ensuring the correct amount of General Liability Insurance and Surety Bond was billed to the Navajo Nation.

The Department of Corrections relied on the Project Manager to verify that the General Liability Insurance and Surety Bond is properly billed. In addition, there was a group review performed on the General Liability Insurance and Surety Bond calculation and the group did not detect excessive charges.

**Recommendation:**

The Project Manager should perform the task as required by the contract. The Department of Corrections may rely on the Project Manager, however they should also calculate the General Liability Insurance and Surety Bond expenses to ensure accuracy. In addition the group that performed the review should make sure that the calculations are correct.

**FINDING I: Excessive Charges- continued**

**Issue: Subguard**

**Condition:**

During our test work, we noted that the expenditure related to Subguard was not charged in accordance with the provisions of contract. Subguard was overcharged by \$41,232 for Crownpoint Judicial Complex and \$43,946 for Tuba City Judicial Complex.

	<u>Total Sub-contractors costs to date</u>	<u>According to Contract terms</u>	<u>As per pay applications</u>	<u>Discrepancies</u>
Crownpoint Project	\$ 30,095,221	\$ 451,428	\$ 492,660	\$ 41,232
Tuba City Project	<u>37,803,658</u>	<u>567,055</u>	<u>611,001</u>	<u>43,946</u>
Total Both Projects	<u>\$ 67,898,879</u>	<u>\$ 1,018,483</u>	<u>\$ 1,103,661</u>	<u>\$ 85,178</u>

**Criteria:**

As per Article 6.3 of contract between Navajo Nation and Construction Manager, "Payments made by the Construction Manager to subcontractors in accordance with the requirements of the subcontracts plus Subguard subcontractor default Insurance at a premium rate of 1.5% of gross subcontract values".

**Effect:**

Navajo Nation was overcharged by \$85,178.

**Cause:**

The CMAR did not calculate the sub guard expenses in accordance to the requirement of the Contract clause. The CMAR failed to provide information in time, during the audit process.

The Project Manager and Department of Corrections did not ensure that the subguard expenses was calculated in accordance with the contract clause.

**Recommendation:**

The Navajo Nation should implement process to review the expenses related to subguard in pay applications billed by the CMAR. We further recommend that the Project Manager on this job and Navajo Nation Department of Corrections should ensure that the calculations related to subguard expenses are correct.

## **FINDING II: Unapproved Expenditures**

### **Issue: Expenditure Charged Without Approval**

#### **Condition:**

During our test work we noted that the unapproved cost of \$71,797 was charged for Crownpoint Judicial Complex and \$48,961 for Tuba City Judicial Complex. Examples of overcharges were for telephone lines, cell phones charges, subsistence, maintenance of truck, purchase of Vela System and supporting documentation for change orders to subcontracts.

#### **Criteria:**

Article 13.0 of contract state that "Any amendments, alterations, change orders, modifications, increase in payment, or changes whatsoever to any provision of contract shall be made only by a duly approved writing, deemed a modification, that shall be signed by the parties."

#### **Effect:**

Payment of unapproved expenditure could mean that Navajo Nation Department of Corrections might have paid more than they needed to. Considering this unapproved cost is from 50% of the pay applications tested, Navajo Nation Department of Corrections may have paid over \$120,758.

#### **Cause:**

The Contractor may have decided to bill for the cost that was not the part of the original contract. The Navajo Nation Department of Corrections and Project Manager on this job did not perform the approval process as required by the contract.

#### **Recommendation:**

The Construction Manager should retain necessary documentation to adequately support all changes to the contract.

The Navajo Nation Department of Corrections should implement procedures to monitor adherence to the change order process by its contractors, and should formally approve any changes to the rates listed in a rate schedule included as an exhibit to the contract.



### **FINDING III: Unsupported Costs/Documents**

#### **Issue: Supporting Related to the Subcontractors**

##### **Condition:**

During our expenditure test work and review of pay applications, we noted lack of documents to support the subcontractors pay request amount. The Construction Manager did not provide access to the change orders and payments made to subcontractors to evaluate the subcontractor charges and liabilities. There were 42 subcontractors for Crownpoint and 43 subcontractors for Tuba City. They were paid \$30,095,221 for Crownpoint Judicial Complex and \$37,803,658 for Tuba City Judicial Complex.

##### **Criteria:**

Article 6 section 6.11 of contract states that "The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation, supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law."

##### **Effect:**

Navajo Nation Department of Corrections was not able to review the payments made to the subcontractors totaling \$67,898,879.

##### **Cause:**

The CMAR did not provide the information related to subcontractors payments. Nevertheless, the Project Manager and the Department of Corrections approved to process the payments.

##### **Recommendation:**

The Project Manager and Navajo Nation Department of Corrections should not approve the payments without proper supporting documentation.

## **FINDING IV: Internal Control Procedures**

### **Issue: Procurement, Debarment or Suspension**

#### **Condition:**

During our fieldwork, we noted that the Construction Manager did not perform procedures to make sure whether the subcontractors are debarred or suspended.

#### **Criteria:**

As per clauses in Parts 9 and 52 of the Federal Acquisition Regulation (the “FAR”) so as to make Federal contractors responsible for ensuring that subcontractors at all tiers are not on the Excluded Parties System List (the “EPSL”), e.g., they are not suspended or debarred. Failure to complete thorough vetting of subcontractors to make sure they are not debarred, suspended, or proposed for debarment, and to provide notice where appropriate to the contracting officer, could result in a violation of the False Statements Act, subjecting the contractor to criminal and civil liability, as well as suspension and debarment. Accordingly, all contractors and subcontractors should ensure that their internal controls adequately address this requirement.

#### **Effect:**

The Navajo Nation Department of Corrections did not comply with the procurement, debarment and suspension compliance requirement of FAR and OMB Circular A-133. The Navajo Nation Department of Corrections may have incurred higher cost on the work performed by the subcontractors.

#### **Cause:**

The CMAR was not aware of the OMB Circular A-133 requirements on procurement, debarment and suspension on subcontractors.

#### **Recommendation:**

The Project Manager and the Navajo Nation Department of Corrections should ensure that OMB Circular A-133 regulations are followed by the CMAR on its subcontractors.

**FINDING IV: Internal Control Procedures- Continued**

**Issue: Subcontractors Pay Requests**

**Condition:**

During our test work we noted that pay requests amounting to \$2,972,011 for Tuba City Judicial Complex were not notarized to assure that the expenditures were correctly charged by the subcontractors.

**Criteria:**

In accordance with the Internal Control procedures followed by the Construction Manager, the pay requests submitted by the subcontractors must be adequately supported and notarized.

**Effect:**

The Project Manager and the Navajo Nation Department of Corrections could not provide assurance that the subcontractors pay requests were verified.

**Cause:**

The CMAR has failed to comply with its own Internal Controls.

**Recommendation:**

The CMAR should follow their Internal Control procedures.

**FINDING IV: Internal Control Procedures- Continued**

**Issue: Retention**

**Condition:**

During our test work, we noted that on Pay Application number 22 & 23 for Crownpoint Judicial Complex, the retention was retained less by \$36,408 and on Pay Application number 01 & 02, it was over retained by \$9,217. For Tuba City Judicial Complex it was less retained by \$46,392 in Pay Application 26 & 27, while over retained by \$29,924 in Pay Application 01 through 06. Such inconsistencies were noted throughout the Pay Applications process, thus resulted into overall shortfall of \$82,800 in retention for both projects.

**Crownpoint Project**

Pay App #	As per Pay Applications			Retention	Retention as per contract	Discrepancies
	Project Cost	NN Tax	Project cost after deducting Tax			
1	\$ 1,567,741	\$ 62,710	\$ 1,505,031	\$ 156,774	\$ 150,503	\$ 6,271
2	766,091	29,465	736,626	76,609	73,663	2,946
22	517,650	19,910	497,740	0	24,887	(24,887)
23	\$ 239,639	\$ 9,217	\$ 230,422	\$ 0	\$ 11,521	\$ (11,521)

**Tuba City Project**

Pay App #	As per Pay Applications			Retention	Retention as per contract	Discrepancies
	Project Cost	NN Tax	Project cost after deducting Tax			
1	\$ 2,037,851	\$ 78,379	\$ 1,959,472	\$ 203,785	\$ 195,947	\$ 7,838
2	460,442	17,709	442,733	46,044	44,273	1,771
3	732,267	26,336	705,931	73,226	70,593	2,633
4	1,352,277	52,019	1,300,258	135,228	130,026	5,202
5	1,980,296	76,165	1,904,131	198,030	190,413	7,617
6	1,264,625	48,639	1,215,986	126,462	121,599	4,863
26	510,814	19,647	491,167	0	24,558	(24,558)
27	\$ 454,149	\$ 17,467	\$ 436,682	\$ 0	\$ 21,834	\$ (21,834)

**Criteria:**

As per Article 18.0 of contract agreed between Navajo Nation and Construction Manager, "Navajo Nation shall withhold 10% of the payment due under each invoice submitted to the Navajo Nation, as a Retainage amount, and subject to approval by the Owner the Construction Manager may request the Retainage be reduced to 5% upon completion of 50% of the work".

**Effect:**

The inconsistencies in retention calculation led to no financial recourse available for Construction Manager's non-performance. Navajo Nation Department of Corrections did not follow the compliance with the contract.

**FINDING IV: Internal Control Procedures- Continued**

**Issue: Retention- Continued**

**Cause:**

The Project Manager did not ensure that the retention was properly calculated.

The Navajo Nation Department of Corrections may not have adequate resources to address the proper calculation of retention.

**Recommendation:**

The Project Manager and Navajo Nation Department of Corrections should calculate the retention as required by the contract, prior to approval.

**FINDING IV: Internal Control Procedures- Continued**

**Issue: Navajo Nation Tax**

**Condition:**

During our test work, we noted shortages in charging Navajo Nation tax by \$128,692 for Crownpoint Judicial Complex and \$68,087 for Tuba City Judicial Complex.

**Crownpoint Project**

<u>As per Attached Cost sheet of Pay Applications</u>									
Pay App #	Project Cost	Contractor's fee	NN Tax	Cost of work	Contractor's Fee as per contract	Cost of work including contractor's fee as per contract	NN tax as per contract	Discrepancies	
1	\$ 1,567,741	\$ 54,871	\$ 62,710	\$ 1,450,160	\$ 50,756	\$ 1,500,916	\$ 60,037	\$	2,673
2	766,091	26,966	29,465	709,660	24,838	734,498	29,380		85
3	1,204,414	42,545	41,852	1,120,017	39,201	1,159,218	46,369		(4,517)
4	1,539,796	53,893	61,592	1,424,311	49,851	1,474,162	58,966		2,626
5	2,694,400	93,848	93,628	2,506,924	87,742	2,594,666	103,787		(10,159)
6	1,827,989	63,980	63,521	1,700,488	59,517	1,760,005	70,400		(6,879)
7	1,662,070	58,172	57,755	1,546,143	54,115	1,600,258	64,010		(6,255)
8	2,417,566	84,615	84,008	2,248,943	78,713	2,327,656	93,106		(9,098)
9	1,941,280	67,945	67,458	1,805,877	63,206	1,869,083	74,763		(7,305)
10	3,018,096	105,633	104,876	2,807,587	98,266	2,905,853	116,234		(11,358)
11	2,880,249	100,809	100,086	2,679,354	93,777	2,773,131	110,925		(10,839)
13	2,584,012	145,162	98,500	2,340,350	81,912	2,422,262	96,890		1,610
14	3,124,015	109,341	99,097	2,915,577	102,045	3,017,622	120,705		(21,608)
15	2,172,140	76,025	79,520	2,016,595	70,581	2,087,176	83,487		(3,967)
16	2,384,148	0	75,720	2,308,428	80,795	2,389,223	95,569		(19,849)
17	2,454,239	116,492	89,847	2,247,900	78,677	2,326,577	93,063		(3,216)
18	2,774,346	97,102	90,020	2,587,224	90,553	2,677,777	107,111		(17,091)
19	1,120,901	39,232	41,035	1,040,634	36,422	1,077,056	43,082		(2,047)
20	710,479	25,286	25,695	659,498	23,082	682,580	27,303		(1,608)
22	517,650	18,118	19,910	479,622	16,787	496,409	19,856		54
23	239,639	8,387	9,217	222,035	7,771	229,806	9,192		25
24	180,216	6,308	6,931	166,977	5,844	172,821	6,913		18
25	119,069	4,167	4,580	110,322	3,861	114,183	4,567		13
<b>Total</b>	<b>\$ 39,900,546</b>	<b>\$ 1,398,897</b>	<b>\$ 1,407,023</b>	<b>\$ 37,094,626</b>	<b>\$ 1,298,312</b>	<b>\$ 38,392,938</b>	<b>\$ 1,535,715</b>	<b>\$</b>	<b>(128,692)</b>

**FINDING IV: Internal Control Procedures- Continued**

**Issue: Navajo Nation Tax- Continued**

**Tuba City Project**

<u>As per Attached Cost sheet of Pay Applications</u>								
Pay App #	Project Cost	Contractor's fee	NN Tax	Cost of work	Contractor's Fee as per contract	Cost of work including contractor's fee as per contract	NN tax as per contract	Discrepancies
1	\$ 2,037,851	\$ 71,325	\$ 78,379	\$ 1,888,147	\$ 66,085	\$ 1,954,232	\$ 78,169	\$ 210
2	460,442	16,115	17,709	426,618	14,931	441,549	17,662	47
3	732,267	26,773	26,336	679,157	23,770	702,927	28,117	(1,781)
4	1,352,277	47,337	52,019	1,252,921	43,852	1,296,773	51,871	148
5	1,980,296	69,310	76,165	1,834,821	64,219	1,899,040	75,962	203
6	1,264,625	44,715	48,639	1,171,271	40,994	1,212,265	48,491	148
7	2,015,381	70,939	70,033	1,874,409	65,604	1,940,013	77,601	(7,568)
8	2,780,798	102,789	115,407	2,562,602	89,691	2,652,293	106,092	9,315
9	2,089,814	72,062	72,619	1,945,133	68,080	2,013,213	80,529	(7,910)
10	2,053,689	71,879	71,364	1,910,446	66,866	1,977,312	79,092	(7,728)
11	2,414,270	84,499	83,894	2,245,877	78,606	2,324,483	92,979	(9,085)
12	2,167,480	75,862	75,318	2,016,300	70,571	2,086,871	83,475	(8,157)
13	2,873,070	100,557	94,577	2,677,936	93,728	2,771,664	110,867	(16,290)
15	2,885,249	0	109,859	2,775,390	97,139	2,872,529	114,901	(5,042)
16	2,640,763	0	100,550	2,540,213	88,907	2,629,120	105,165	(4,615)
17	3,008,832	300,188	122,025	2,586,619	90,532	2,677,151	107,086	14,939
18	2,985,996	104,510	113,695	2,767,791	96,873	2,864,664	114,587	(892)
19	2,739,451	95,290	100,228	2,543,933	89,038	2,632,971	105,319	(5,091)
20	2,473,015	86,556	90,534	2,295,925	80,357	2,376,282	95,051	(4,517)
21	2,352,674	82,344	86,129	2,184,201	76,447	2,260,648	90,426	(4,297)
22	2,698,586	94,451	98,792	2,505,343	87,687	2,593,030	103,721	(4,929)
23	1,662,592	58,191	60,866	1,543,535	54,024	1,597,559	63,902	(3,036)
24	1,252,316	43,831	45,845	1,162,640	40,692	1,203,332	48,133	(2,288)
26	510,814	17,878	19,647	473,289	16,565	489,854	19,594	53
27	454,149	15,895	17,467	420,787	14,728	435,515	17,421	46
28	234,823	8,219	9,032	217,572	7,615	225,187	9,007	25
29	48,692	1,704	1,873	45,115	1,579	46,694	1,868	5
<b>Total</b>	<b>\$50,170,212</b>	<b>\$ 1,763,219</b>	<b>\$1,859,001</b>	<b>\$46,547,991</b>	<b>\$ 1,629,180</b>	<b>\$ 48,177,171</b>	<b>\$ 1,927,088</b>	<b>\$ (68,087)</b>

**Criteria:**

As per contract agreed between Navajo Nation and Construction Manager, "NN tax will be levied at the rate of 4% for work performed on Nation per invoice".

**Effect:**

Navajo Nation Department of Corrections did not accurately charge Navajo Nation Tax of approximately \$196,779.

**FINDING IV: Internal Control Procedures- Continued**

**Issue: Navajo Nation Tax- Continued**

**Cause:**

The CMAR did not calculate the Navajo Nation Tax as per stipulations agreed in contract and also, the Project Manager and the Navajo Nation Department of Corrections did not properly review the Navajo Nation Tax calculations.

**Recommendation:**

The Project Manager and the Navajo Nation Department of Corrections should implement proper procedure for the review and approval of the Navajo Nation Tax calculation.



**FINDING IV: Internal Control Procedures- Continued**

**Issue: Pay Applications Review Process**

**Condition:**

During our fieldwork, we noted that Navajo Nation Department of Corrections does not have a formal process or written policies and procedures to review the pay application submitted by CMAR.

**Criteria:**

Policies and procedures provide for a method to verify that expenditures claimed in pay applications are supported, approved, reasonable and allowable to the contract.

**Effect:**

The CMAR overcharged the Navajo Nation and did not follow the contract terms. We calculated \$583,970 in questioned costs. In addition we were not able to verify the \$67,898,879 cost incurred by the subcontractors.

**Cause:**

The Navajo Nation Department of Correction and Project Manager did not perform proper review of the pay applications.

**Recommendation:**

The CMAR, Project Manager and the Department of Corrections should be held liable for the overcharge to the Navajo Nation.

**FINDING IV: Internal Control Procedures- Continued**

**Issue: Navajo Nation Corrections Department Personnel Skill set**

**Condition:**

During our fieldwork, we noted that Navajo Nation Department of Corrections personnel do not have adequate experience and training to provide oversight to such large construction projects.

**Criteria:**

A sound management system dictates that the Navajo Nation Department of Corrections should have adequately skilled and trained personnel to provide oversight to large construction projects.

**Effect:**

The pay applications were not reviewed and approved in effective manner by the Project Manager and Department of Corrections staff.

**Cause:**

The Navajo Nation Department of Corrections does not have adequate resources to train their personnel.

**Recommendation:**

We recommend that the Navajo Nation Department of Corrections should allocate resources to train their personnel.

**FINDING IV: Internal Control Procedures- Continued**

**Issue: CMAR Contract Negotiations**

**Condition:**

During our review process we noted that the rates specified in Exhibit E, G and H were not negotiated properly. The rates stated in Exhibit E, G and H of the contract executed during October of 2009, are way above the prevailing market prices then. The following discrepancies were found while comparing the negotiated labor rates in the contract with labor rate statistics provided by Bureau of Labor Statistics(BLS), Department of Labor:

<u>Designation</u>	<u>Negotiated in Contract</u>	<u>Rates as per BLS</u>	<u>Discrepancies ( Negotiated rates over BLS rates by)</u>	
			<u>Amount</u>	<u>(%)</u>
Project Manager	\$ 80.00	\$ 44.85	\$ 35.15	78
Project Engineer	\$ 52.00	\$ 39.03	\$ 12.97	33
Project Accountant	\$ 50.00	\$ 16.71	\$ 33.29	199
Project Clerk	\$ 42.00	\$ 12.66	\$ 29.34	232
Carpenter	\$ 38.85	\$ 20.98	\$ 17.87	85
Laborer	\$ 26.25	\$ 15.96	\$ 10.29	64
Cement Masons	\$ 38.85	\$ 18.95	\$ 19.90	105
Operator	\$ 47.25	\$ 21.24	\$ 26.01	122

**Criteria:**

Prevailing market rates should be used in negotiating the contract rates.

**Effect:**

The Navajo Nation Department of Corrections ended up paying higher rates than the prevailing market rates.

**Cause:**

Department of Corrections was not part of the negotiation process when the rate was agreed upon by DES and CMAR.

**Recommendation:**

We recommend that the Navajo Nation should established procedures to verify the prevailing market rates prior to entering into such large construction project contracts.

**Summary of Questioned Costs Related to CMAR**

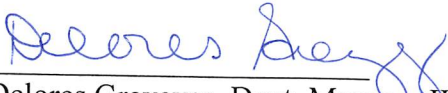
<u>Type of Findings</u>	<u>Crownpoint</u>	<u>Tuba City</u>
Expenses Overcharged	\$ 252,584	\$ 210,628
Unapproved Expenditures	<u>71,797</u>	<u>48,961</u>
Total	<u>324,381</u>	<u>259,589</u>

**Navajo Nation Department of Corrections  
Response to  
Performance Audit of the Construction of  
Judicial/Public Safety Facilities**



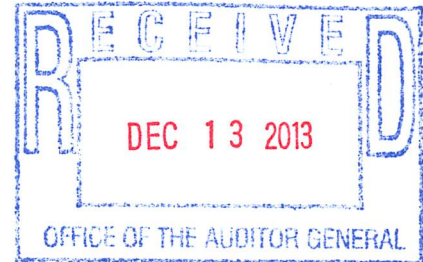
MEMORANDUM

TO : Elizabeth Begay, CIA, CFE, Auditor General  
Navajo Nation, Legislative Branch

FROM :   
Delores Greyeyes, Dept. Manager III  
Department of Corrections

DATE : December 13, 2013

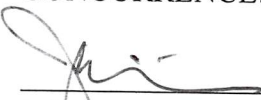
SUBJECT : Response to the Performance Audit of the  
Construction of Judicial/Public Safety Facilities



Please find attached the Navajo Nation Department of Corrections report in response to “The Navajo Nation Performance Audit of the Construction of Judicial/Public Safety Facilities” as conducted by Harshwal & Company LLP.

On December 3, 2013, the Department of Corrections (DOC) requested of the Auditor General an extension of five days from December 13, 2013 to December 20, 2013 for DOC to respond to the final audit report. The reason for the extension request was that for the entire week of December 2<sup>nd</sup>, DOC staff was attending required training out of state and were not available to begin working on the response. Our request was denied. Therefore, this response to the final audit report is the result of five days preparation rather than the ten-days allowed by 12 N.N.C. 7(A).

CONCURRENCE:

  
12/13/2013  
John Billison, Director  
DIVISION OF PUBLIC SAFETY

Attachment s

cc: John Billison, Director, Division of Public Safety  
Regina Holyan, Senior Attorney, Navajo Department of Justice  
file

**Navajo Nation Department of Corrections  
Response to  
Performance Audit of the Construction of Judicial/Public Safety Facilities**



December 13, 2013

**Finding I:  
Excessive Charges**

**Issue: Labor Charges**

The Construction Manager at Risk contract with the Navajo Nation included an exhibit which specified the wage rates to be charged for the project and is entitled "Standard Labor Rates" Exhibit G of the contract. Payment applications were aligned with these labor rates. Arviso-Okland cost included overtime when overtime was recorded. These overtime costs were included in the monthly payment applications.

In all but one case, the audit finding did not recognize the overtime payment as it compared the total wage cost divided by the hours worked and compared this calculation to the standard wage rate for a particular worker.

After reviewing the pay applications again, we concur with the audit finding in one instance. A calculation error occurred when an Arviso Okland employee was paid time and a half for overtime and should only have been paid regular wage rate for overtime. This resulted in an overbilling of \$1,540.07 at Crownpoint. There were no overcharges at Tuba City.

**Response to Issue: Of the \$22,951 in the audit finding, \$21,410.93 was properly paid for overtime work per the contract. The audit finding did not recognize the time and a half rate for overtime work. The \$1,540.07 amount will be reconciled in the final pay application.**

**Issue: Office Furnishing Expenses**

The audit finding concerns the Contractor's billings for General Conditions cost for the project. The Contractors General Conditions Cost is a part of the Guaranteed Maximum Price and is identified in Exhibit E of the contract.

On the monthly pay applications the Contractor's budget line items for office furnishings and phones were billed together. These two items, while identified separately in the General Conditions, were billed together under office furnishings.

The General Conditions line item cost for site office furnishings (\$3,000) and office site telephone Equipment (\$1,500) add to \$4,500. Per the audit finding the contractor billed a total of \$3,756 which is \$744 less than the amount for these two line item costs.

For future payment applications, the CMAR will show these as separate line items on the schedule of values.

**Response to Issue: This information was discussed with and given to the auditors. There was no overcharge of \$756 for the reasons listed above.**

**Issue: Contractor Fees**

Article 6.6.2 of the contract states that taxes are a "cost of work." The contractor's fee is determined by taking 3.5% of the "cost of work." The audit finding subtracts taxes from the cost of work in their calculation and this is incorrect.

The final contractor fee is as follows:

	Crownpoint	Tuba City
Total cost of the project:	\$39,970,115	\$50,391,626
Contractor Fee:	-\$1,351,646	-\$1,704,065
Cost of Work:	\$38,618,469	\$48,687,561
Contractor Fee @ 3.5%	1,351,646	\$1,704,065

**Response to Issue: The Navajo Nation was not overcharged \$234,624 for the Contractor's fee for the reasons listed above.**

**Issue: General Liability Insurance and Surety Bond**

Article 6.6.1 states that the contractor may charge up to 1.75% of the total guaranteed maximum price for general liability Insurance, payment and performance bonds.



Total cost of the project:	Crownpoint \$39,970,115	Tuba City \$50,391,626
Fixed Combined Rate @ 1.75%	\$669,477	\$881,853

The audit finding shows a discrepancy of \$119,703 per the payment applications. The audit finding does not account for the fact that a Builder's Risk Policy was purchased for the project in the amount of \$188,412 and included in the monthly pay applications.

Builders Risk	Crownpoint \$104,124	Tuba City \$84,288
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The monthly payment application items for General Liability Insurance, Performance Bonds, and Builder's Risk insurance were all billed together on one line. Builder's Risk was an additional cost procured by CMAR at the request of the Owner during the course of construction.

Lesson learned- For future payment applications, the CMAR will show these as separate line items on the schedule of values.

**Response to Issue: There was no overpayment of \$119,703 for the reasons listed above.**

**Issue: Subguard**

The audit finding states that there is an overcharge of \$41,232 at Crownpoint and \$43,946 at Tuba City for Subguard Insurance. Article 6.3 of the contract states the contractor may charge 1.5% of the gross value of subcontracts.

This is an initial estimate at the beginning of the project and becomes a progressive calculation throughout the course of construction because of the varying costs for subcontractors. This is adjusted at the end of the project thru the final billing. This has been completed at Tuba City and the last pay application indicates a Subguard Insurance cost of \$567,055 and is in agreement with the audit finding.

**Response to Issue: The Subguard Insurance amount for Tuba City is correct. The Subguard Insurance cost is being reconciled for the Crownpoint project and an adjustment will be reflected on the final payment.**

**Finding II:  
Unapproved Expenditures**

**Issue: Expenditure Charge Without Approval**

The audit finding references Article 13 of the Navajo Nation General Conditions For Construction Contracts and interprets that there was \$71,797 in unapproved cost that were charged to the project by the contractor. The Article states that ...any amendments, addendums, alterations, change orders, modifications, increase in payment, or changes to any provision of the contract shall be made only by a duly approved writing, deemed a modification...

We do not interpret these expenses as an application of Article 13. The expenses do not contribute to a change in the guaranteed maximum price alter the project in scope or time. We interpret these expenses as following Article 3.3 of the General Conditions of the Construction Contract to the "Standard Form of Agreement Between Owner and Construction Manager." The contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures for coordinating all portions of work. The contractor submitted proper documentation and each expense was reviewed and approved through the monthly pay application process as a legitimate cost.

**Response to Issue: We believe the criteria used for this finding is incorrect for the reasons listed above.**

**Finding III  
Unsupported Costs/Documents**

**Issue: Supporting Related to the Subcontractors**

The audit finding states that the contractor did not maintain documents to support subcontractor pay request. The contractor did not provide access to the subcontractor payment documents.

The auditor was invited and attended a two day meeting at the Contractor's office on September 19 and 20, 2013 for the purposes of reviewing the draft audit report and the review of any documents the auditor wished to review.

Subcontractor pay application documents were also compared to other Navajo Nation projects and found to be similar and satisfactory for payment purposes.

All subcontractor pay applications including back-up documents were included in each pay application. These documents were reviewed, revised if required and subsequently approved by the project manager, Navajo Department of Corrections, certified by the Architect and paid through the Navajo Division of Finance.

**Response to Issue: The Navajo Nation and consultant team was able to review the \$67,898,879 in subcontractor pay applications that were submitted through the monthly contractor pay application process.**

## **Finding IV**

### **Internal Control Procedures**

#### **Issue: Procurement, Debarment or Suspension**

The audit finding states that the Construction Manager did not perform procedures to make sure whether the subcontractors are debarred or suspended.

The Construction Manager provided a Navajo Nation Debarment Form in conjunction with their contract. As such, the Navajo Nation had a contract with the Construction Manager and not their subcontractors. To the best of our knowledge, all procurement regulations of the Navajo Nation and requirements of the contract were followed. The construction manager requested recent financial statements from their subcontractors and performed a risk assessment to determine financial strength and solvency before finalizing contracts. Subcontractors are required to provide: financial statements for the two most recently ended fiscal years and Current fiscal year-to-date interim financial statements. The construction manager did not have any Subcontractors default on their subcontract.

**Response to Issue: We interpreted that the requirements of the contract were carried out.**

#### **Issue: Subcontractors Pay Requests**

The audit finding states that \$2,972,011 in subcontractor pay applications were not notarized.

There is nothing in the contract between Navajo Nation and the Construction Manager that requires notarization of subcontractor pay applications. The notarization process is more of a "custom, habit and tradition" practice than a requirement.

All subcontractor pay applications including back-up documents were included in each pay application. These documents were reviewed, revised if required and subsequently approved by the project manager, Navajo Department of Corrections, certified by the Architect and paid through the Navajo Division of Finance.

**Response to Issue: We disagree with the "effect" of the finding that Navajo Department of Corrections could not provide assurance that the subcontractor pay requests were verified for the above reasons.**

#### **Issue: Retention**

The audit finding "effect" states that there were inconsistencies in the retention calculation and led to no financial recourse available for Construction Manager's non performance.

Initially, construction manager held retention on Navajo taxes in their pay applications. Ultimately, through meetings with Navajo Division of Finance and the Navajo Tax Commission the Navajo Department of Corrections was instructed not to hold retention on Navajo taxes. Therefore, the monthly calculations for retention were not exactly equal to the 10% and 5%

requirement. The discrepancies in audit finding are related to this issue. At no time during the contract was the Navajo Nation at risk for non performance by the construction manager as there was both significant retention held and a payment and performance bond was in effect for the project.

**Response to Issue: The construction manager, project manager, Navajo Department of Corrections and architect approved the retention calculation as directed by the Division of Finance and the Navajo Tax Commission.**

**Issue: Navajo Nation Tax**

The audit finding states that a shortage of Navajo Tax was charged in the amount of \$128,692 for Crownpoint and \$68,087 at Tuba City thru pay applications 25 at Crownpoint and 29 at Tuba City.

Article 10.2 “Withholding and remittance” of the Navajo Nation Supplemental General Conditions for Construction Contracts states that the Navajo Nation shall withhold 4% of each construction manager’s monthly pay application.

Navajo Nation Tax is calculated at a 4% rate on the monthly pay application amount minus the tax amount because taxing the entire monthly pay application at 4% effectively taxes the tax.

These two differing calculations process create the discrepancies. And also relate to the preceding issue of “retention.”

The final Navajo Tax calculation for the projects is as follows:

$$\text{Project Cost} - \text{Tax} = \text{Cost to be taxed @4\%} = \text{Tax}$$

Tuba City (Pay App No. 30) - \$50,391,626 - \$1,938,139 = \$48,453,487 \* 4% = \$1,938,139

Crownpoint (Pay App No. 26) - \$39,970,115 - \$1,550,513 = \$38,419,602 \* 4% = \$1,536,784

**Response to Issue: We are in agreement that there are discrepancies in the amount of Navajo Tax calculations but do not agree with the calculated amounts listed in the finding. However, these discrepancies will be reconciled in the final pay applications per the preceding calculation.**

**Issue: Pay Applications Review Process**

The audit finding states that the Navajo Department of Corrections does not have a formal process to review pay applications submitted by the construction manager.

The Navajo Department of Correction, project manager and architect followed the pay application procedures identified in the contract with the construction manager. In addition, a “Tuba City & Crownpoint Monthly Pay Application and Back-up Documents” Procedures Document was instituted and utilized for the payment applications. This document was given to the auditor.

A pay application meeting was conducted monthly and attended by the construction manager, project manager Navajo Department of Corrections official and the architect. Every supporting document for the payment application was reviewed or disapproved prior to the completion of the final approved pay application.

The auditor was invited and attended a two day meeting at the Contractor’s office on September 19 and 20, 2013 for the purposes of reviewing the draft audit report and the review of any documents the auditor wished to review.

**Response to Issue: We disagree with the Condition, Criteria, Effect and Cause of the finding for the above reasons.**

**Issue: Navajo Nation Corrections Department Personnel Skill Set**

The audit finding states that the Navajo Department of Corrections personnel do not have adequate experience to provide oversight of such large construction projects.

While this issue does not pertain to any of the objectives of the audit and is essentially a subjective statement by the auditor, we respond by saying the projects were finished in a quality fashion, on time and under budget. See pictures of the completed projects in the attachments.

To substantiate this statement we offer the response from the project manager for the Federal Department of Justice who states;

"Thanks for the update.

The Justice Center looks amazing and I really want to extend my gratitude to you, the rest of the team and really to everyone involved for the very hard work and dedication it took to make this unique and challenging project a great success. The entire project team is top notch and I want everyone to know that we will continue to sing every ones praises to DOJ/BIA whenever we can. Thanks again to everyone for the excellent work and for making ALPHA's involvement on this project really easy and enjoyable."

**Response to Issue: The Navajo Department of Corrections was not set up to conduct major construction projects. However, the Department in conjunction with the judicial branch and our consulting team did provide proper oversight for the project. Otherwise the largest construction project in the Nation's history would never have been completed in a quality fashion, on time and under budget.**

### **Issue: CMAR Contract Negotiations**

The audit finding states that the labor rates in the contract were improperly negotiated.

The wage rates were determined by the Federal Prevailing Davis Bacon Wage rates for the area in which the two project sites are located. The Bureau of Labor Statistic (BLS) is not a comparison rate. Those hourly wage rates for positions not covered by Davis Bacon are comparable with other projects constructed in northeast Arizona and Western New Mexico.

Exhibit F Standard Labor Rates include taxes, insurance, health insurance for employee and family, contributions, assessments and benefits required by law or collective bargaining agreements, and for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacation, retirement plans, training costs and safety incentives. These rates are commensurate with rates charged on similar construction projects in the area.

**Response to Issue: The audit report does not use proper comparison labor wage rates.**

In summary, the Navajo Department of Corrections and their project team find \$1,540.07 in labor overcharges and \$2,040 in telecommunication overcharges. This totals \$3,580.71 on the \$90,361,741 cost of the project.

This represents a 0.00004% potential error rate or four - one hundred thousandth of a percent.

There remains over \$500,000 held in retention on the project and the construction manager will reconcile these overages in their final billing to arrive at an error rate of 0%.

Lastly, it is important to note that the construction manager spent \$140,000 over the contractual guaranteed maximum (GMP) cost of \$90,361,741 and is at risk and not eligible for payment of any expenses over the GMP.