

## **OFFICE OF THE AUDITOR GENERAL**

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### **The Navajo Nation**

#### **A Supplemental Review of the Construction of Crownpoint & Tuba City Judicial/Public Safety Facilities**


**Report No. 14-12  
May 2014**

**Performed by:  
Jeanine Jones, Auditor  
Alfreda Lee, Senior Auditor**



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

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

**FROM** :   
Elizabeth Begay, Auditor General  
**OFFICE OF THE AUDITOR GENERAL**

**DATE** : June 27, 2014

**SUBJECT** : **Supplemental Review - Construction of Crownpoint and Tuba City  
Judicial/Public Safety Facilities**

The Office of the Auditor General herewith transmits Audit Report No. 14-12, A Supplemental Review of the Construction of Crownpoint and Tuba City Judicial/Public Safety Facilities. As directed by the Budget and Finance Committee and Law and Order Committee of the Navajo Nation Council, the Office of the Auditor General has conducted a supplemental review of the construction of Crownpoint and Tuba City Judicial/Public Safety Facilities.

The objective of this supplemental review was to finalize the amount of questioned costs related to the construction of Crownpoint and Tuba City Judicial/Public Safety Facilities.

Finding I: \$17,732 excessive charges on labor, and contractor fees.

Finding II: \$23,133 unapproved expenditures on rates charged to the Department of Corrections that were higher than the contracted amount and/or charges that were not included in the contract.

Finding III: \$43,756 unsupported payments to subcontractors

Finding IV: \$76,273 shortage in Navajo Nation sales tax

Overall, the supplemental review identified questioned costs totaling \$84,621 related to the construction of Crownpoint and Tuba City Judicial/Public Safety Facilities and \$76,273 potential underpayment of Navajo Nation sales tax.

xc: John Billison, Division Director  
**DIVISION OF PUBLIC SAFETY**  
M. Teresa Hopkins, Director of Special Projects  
**JUDICIAL BRANCH**  
Peggy Nakai, Legislative Advisor  
**BUDGET AND FINANCE COMMITTEE**  
Shammie Begay, Legislative Advisor  
**LAW AND ORDER COMMITTEE**  
Chrono

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## INTRODUCTION

The Budget and Finance Committee and Law and Order Committee of the Navajo Nation Council directed the Office of the Auditor General to conduct a supplemental review of the construction of Crownpoint and Tuba City Judicial/Public Safety Facilities. The Committees granted the Department of Corrections, Arcadis, owner representative and Arviso/Okland, construction manager additional time to gather their documentation and address the questioned costs reported in Audit Report No. 14-06, A Performance Audit of the Construction of Judicial/Public Safety Facilities.

### Objective, Scope and Methodology

The objective of this supplemental review was to finalize the amount of questioned costs related to the construction of Crownpoint and Tuba City Judicial/Public Safety Facilities. The supplemental review specifically focused on the questioned costs reported in Audit Report No. 14-06, A Performance Audit of the Construction of Judicial/Public Safety Facilities. To meet our objective, we reviewed additional documentation provided by Arviso/Okland and conducted inquiries with Department of Corrections, Arcadis, Arviso/Okland and the Navajo Nation Department of Justice.

## SUPPLEMENTAL REVIEW RESULTS

### Finding I: \$17,732 Excessive Charges

The initial audit reported questioned costs due to excessive charges on labor, office furnishings, contractor fees, general liability and surety bond, and subguard expenses. Arviso/Okland provided additional documentation subsequent to the release of the audit report. Based on our supplemental review, the questioned cost was reduced to \$17,732 as explained below.

#### Labor Charges

During the supplemental review, Arviso/Okland provided the certified payroll reports to support the labor rate and overtime pay of their workers for the Crownpoint and Tuba City projects. As a result, the supplemental review identified a reduction in the previously reported overpayment for Crownpoint and Tuba City to \$1,540 and \$2,829 respectively. Overall, the excessive labor charges for both projects amounted to \$4,369 based on the additional documentation provided by Arviso/Okland during the supplemental review. Arviso/Okland agreed to credit the Navajo Nation to correct this issue.

#### Office Furnishings

Arviso/Okland provided additional documentation to resolve the excessive office furnishing expenses that was reported in the initial audit. Therefore, this issue has been deemed resolved.

## Contractor Fees

The initial audit reported that Arviso/Okland calculated the 3.5% contractor fee as part of the cost of work and calculated again the contractor fee as part of fees. As a result, the initial audit reported excessive charges on contractor fees due to Arviso/Okland charging fees on already charged fees. During the supplemental review, Arviso/Okland submitted additional pay applications to correct the excessive charges. Nevertheless, \$4,031 for Crownpoint project and \$9,332 for Tuba City project remain unresolved. Overall, the supplemental review calculated \$13,363 overcharges related to contractor fees. Arviso/Okland agreed to credit the Navajo Nation to resolve the overcharges.

In addition, the initial audit found that the contractor fee was calculated on top of the Navajo Nation sales tax, resulting in additional overcharges. Arviso/Okland claims that the Navajo Nation sales tax is part of the cost of work, thus the sales tax was included in calculating the 3.5% contractor fee. To resolve this issue, the Office of the Auditor General obtained advice from the Navajo Nation Department of Justice. According to Department of Justice, the AIA agreements and the Navajo Nation Supplemental General Conditions for Construction Contracts do not specifically address the calculation of contractor fees in relation to Navajo Nation sales tax. Therefore, the Department of Justice recommends that Arviso/Okland's inclusion of the Navajo Nation sales tax in the calculation of contractor fees not be found to be a questionable cost.

## General Liability Insurance and Surety Bond

The initial audit reported excessive charges of general liability insurance and surety bond. Arviso/Okland claimed the overcharge was due to the builder's risk premium was added to the general liability insurance and surety bond expense. Arviso/Okland stated the builder's risk policy was purchased at the request of the Department of Corrections. During the supplemental review, the Department of Corrections provided documentation that Arviso/Okland was indeed requested to purchase the builder's risk policy although industry practice does not require the general contractor to purchase such policy. The documentation provided by the Department of Corrections was deemed acceptable, thus this issue is resolved.

## Subguard

The initial audit reported excessive charges related to subguard. During the supplemental review, Arviso/Okland submitted additional pay applications that corrected the overcharges. Therefore, this issue is deemed resolved.

## **Finding II: \$23,133 Unapproved Expenditures**

The initial audit reported unapproved expenditures due to Arviso/Okland charged rates that were higher than the rate agreed per contract or rates that were not included in the contract. During the supplemental review, Arviso/Okland provided explanations on certain expenditures that they deemed appropriate per contract. Although the questioned charges were not explicitly stated in the schedule of rates, the Department of Corrections and its owner's representative Arcadis deemed the questioned charges reasonable and within the

supplemental general conditions of the contract. As a result, the unapproved expenditures of approximately \$120,000 reported in the initial audit were reduced to \$23,133. Arviso/Okland agreed to credit the Navajo Nation to correct this issue.

**Finding III: \$43,756 Unsupported Costs**

The initial audit reported lack of documentation to support payments to subcontractors. For this supplemental review, Arviso/Okland provided the following documents: 1) subcontractors contract/purchase order, 2) release of claims, 3) bank statements, 4) check register, and 5) canceled checks. Based on the review of documentation, we identified \$13,754 unsupported costs for Crownpoint project and \$8,026 for Tuba City project.

In addition, we identified \$21,976 discounts given by the subcontractors to Arviso/Okland for the Tuba City project. The discounts were for the subcontractors getting paid in advance of the Navajo Nation payment. Arviso/Okland did not reflect the discounts in the pay applications submitted to the Department of Corrections. Discounts from subcontractors generally should be reflected as a reduction in the cost of work and pass on to the owner. Therefore, the \$21,976 discounts were deemed questioned costs. Overall, \$43,756 subcontractor payments remain questionable. Arviso/Okland agreed to credit the Navajo Nation to resolve this issue.

**Finding IV: \$76,273 Potential Underpayment of Navajo Nation Sales Tax**

The initial audit reported shortage in charging Navajo Nation sales tax. During the supplemental review, Arviso/Okland submitted pay applications that showed additional payments of Navajo Nation sales tax. Nevertheless, potential underpayment of sales tax remains unresolved. This issue will be referred to the Office of Navajo Tax Commission for further review.

**CONCLUSION**

The supplemental review identified questioned costs amounting to \$84,621 related to the construction of Crownpoint and Tuba City Judicial/Public Safety Facilities. Table 2 lists the summary of questioned costs by type of finding. The questioned costs are exclusive of potential underpayment of Navajo Nation sales tax that will be referred to the Office of Navajo Tax Commission for further review.

**Table 2: Summary of Questioned Costs**

<u>Type of Finding</u>	<u>Amount</u>
Excessive Charges	\$17,732
Unapproved Expenditures	23,133
Unsupported Costs	43,756
Total	\$84,621

## **Recommendations:**

1. The Department of Corrections should claim credit from Arviso/Okland on the questioned costs identified in the supplemental review.
2. For future construction projects, the Department of Corrections and its owner's representative should ensure:
  - a) Labor rates are in accordance with the contract.
  - b) Contractor fee is calculated correctly.
  - c) Changes to the schedule of rates included as exhibit to the contract is formally approved.
  - d) All payments have supporting documents.
  - e) Navajo Nation sales tax is calculated correctly.
3. Department of Corrections should work with the Department of Justice on the formal policy in calculating contractor fees and Navajo Nation sales tax.
4. The Department of Corrections should work with the Department of Justice in developing its own construction contract form specifically designed to protect the interests of the Navajo Nation.
5. The Department of Corrections should work with the Office of Navajo Tax Commission to audit the sales tax due from Arviso/Okland related to the Crownpoint and Tuba City construction project.

## **CLIENT RESPONSE**





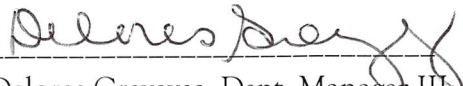
# THE NAVAJO NATION

BEN SHELLY  
PRESIDENT

## MEMORANDUM

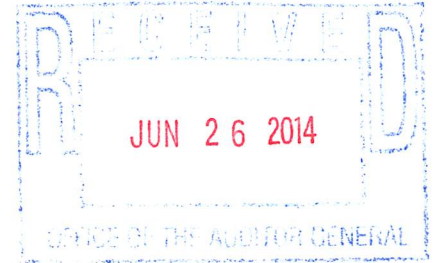
REX LEE JIM  
VICE-PRESIDENT

TO : Elizabeth Begay, Auditor General  
Office of the Auditor General

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

DATE : June 26, 2014

SUBJECT : **Client Response to Supplemental Review  
Construction of Crownpoint & Tuba City Judicial/Public Safety Facilities**



The Navajo Department of Corrections (NDOC) herewith transmits our response to Supplemental Review of Audit Report No. 14-12.

Following our final review meeting on June 4, 2014 attended by representatives from the Office of the Auditor General, Arviso Okland JV Construction the construction manager at risk and ARCADIS the project manager for the Tuba City and Crownpoint Judicial Public Safety Center, and the hearing before the Law & Order Committee on June 9, 2014 DOC states the following:

Finding I: NDOC will claim credit and agrees that \$17,732 will be subtracted from the eligible costs for final payment to ARVISO Okland JV Construction.

Finding II: NDOC will claim credit and agrees that \$23,133 will be subtracted from the eligible costs for final payment to ARVISO Okland JV Construction.

Finding III: NDOC will claim credit and agrees that \$43,756 will be subtracted from the eligible costs for final payment to ARVISO Okland JV Construction.

NDOC will reconcile these claims thru the final Arviso Okland payment applications for Tuba City and Crownpoint by August 15, 2014. There is currently \$295,147.35 held in retention for Tuba City and \$333,571.01 held in retention for Crownpoint pending final closure of the Audit Report.

The Navajo Department of Corrections and project manager have taken these findings and recommendations and applied them to the current Chinle Judicial Public Safety Center and will incorporate them in any future projects.

This concludes my response to the Supplemental Review of the Construction of Crownpoint & Tuba City Judicial/Public Safety Facilities.

If you should have any questions please direct them to my attention at 871-7555.

CONCURRENCE

 AED 6/26/14  
\_\_\_\_\_  
John Billison, Executive Director  
DIVISION OF PUBLIC SAFETY

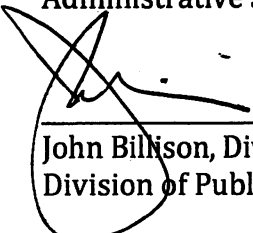
cc: John Billison, Executive Director, NDPS  
Juanita Begay, Principal Accountant, NDOC  
file



**DIVISION of PUBLIC SAFETY**  
*Office of the Division Director*

**MEMORANDUM**

TO : Herbert Tsosie, III, Program Supervisor II  
Administrative Support/NDPS

FROM :  6/23/2014  
John Billison, Division Director  
Division of Public Safety

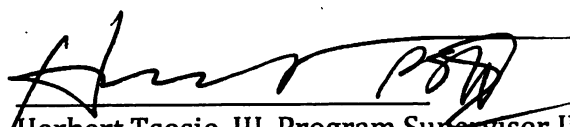
DATE : June 23, 2014

SUBJECT : **DELEGATION OF AUTHORITY**

Effective, Monday, June 23, 2014 beginning at 8:00am and ending on Friday, June 27, 2014 at 5:00pm, you are hereby delegated the authority to act in the capacity of the Division Director for Navajo Division of Public Safety. You are given the authority to administer, oversee, and monitor all tasks in the duties and responsibilities associated with the Division of Public Safety.

If you have questions, please call 871-6581.

**ACKNOWLEDGEMENT:**

 6/23/14  
Herbert Tsosie, III, Program Supervisor II  
Division of Public Safety