



Audit Report

**District Inspector General for Audit
Rocky Mountain District**

Oglala Sioux Housing Authority

Pine Ridge, South Dakota

Review of Construction Contractor's Additional Cost and Payment Claim for Project SD 1-36

00-DE-207-1002

March 30, 2000

This Page Intentionally Blank



Audit Report

District Inspector General for Audit Rocky Mountain District

Report: 00-DE-207-1002

Issued: March 30, 2000

**TO: Michael E. Boyd, Acting Director, Northern Plains Office of Native American
Programs,
8API**

Robert C. Gwin

FROM: Robert C. Gwin, District Inspector General for Audit, 8AGA

**SUBJECT: Review of Construction Contractor's Additional Cost and Payment Claim for
Project
SD 1-36
Oglala Sioux Housing Authority
Pine Ridge, South Dakota**

We have concluded a review of the Construction Contractor's additional cost and payment claim of \$534,152 for the Oglala Sioux Housing Authority development project, SD 1-36. Our review dealt with the basis and related facts concerning the additional cost and payment claim by the Construction Contractor, Western Tricon, Inc., of LaPush, Washington, under their construction contract with the Housing Authority.

The Construction Contractor submitted their additional payment claim of \$534,152 to the Authority on February 28, 1999 for additional work and related costs the contractor considered due under their contract with the Authority. The Housing Authority did not review the Contractor's additional cost and payment request because the Contractor did not submit their additional claim within time.

The Construction Contractor's claim of \$534,152 involved 18 cost item categories. We have detailed information about each of the 18 categories in this report.

Within 60 days please furnish to this office, for each recommendation in this report, a status report on: (1) the corrective action taken; (2) the proposed corrective action and the date to be completed; or (3) why action is considered unnecessary. Also please furnish us copies of any correspondence or directive issued because of the audit.

We appreciate the courtesies and assistance extended by officials of Western Tricon, Inc., Oglala Sioux Housing Authority, and the HUD Northern Plains Office of Native American Programs.

Should you have any questions, please contact Ernest Kite, Assistant District Inspector General for Audit, at (303) 672-5452.

Executive Summary

We performed a review of the Western Tricon Inc. (Contractor) payment request of \$534,152 for the Oglala Sioux Housing Authority development project, SD 1-36. Our review dealt with the basis and related facts concerning the Contractor's payment claim under its construction contract with the Housing Authority. We obtained information and documents from the Construction Contractor, the Housing Authority, and other related organizations and entities.

On February 1, 1999, the Construction Contractor requested a final claim payment of \$415,313 from the Oglala Sioux Housing Authority for additional work and related costs the Contractor considered due under their contract with the Authority. On February 11, 1999, the Authority acknowledged the receipt of the Contractor's claim. The Authority asked that the Contractor to provide by February 24, 1999 supporting documentation and costs for the claim since the Authority stated the claim in most instances was not supported by documentation. On February 28, 1999, The Contractor submitted additional data supporting cost overruns and also increased its request for final payment to \$534,152. The Housing Authority reviewed the Contractor's initial request for final payment of \$415,313 and notified the Contractor on April 6, 1999 that the Contractor's claim was denied. The Authority did not consider the additional support data the Contractor provided on February 28 1999 in the increased amount of \$534,152 because the Authority took the position that the additional cost data was not provided on time.

The Construction Contractor's additional payment request of \$534,152 involved 18 cost item categories, 7 of which were included in the Contractor's initial request for final payment and denied by the Authority. We have provided detailed information about each of the 18 additional cost categories in the finding or summary sections of this report.

Our review disclosed that for development project SD 1-36, the Authority overpaid the Oglala Sioux Tribal Employment Rights Office (TERO) fee. The Authority initially paid the TERO fee when the contract was awarded and then paid the TERO fee a second time when the contract was completed. The Authority needs to recover the TERO fee overpayment of \$49,968 from the Oglala Sioux Tribal Employment Rights Office. We are also recommending that the Authority reevaluate its position that the Construction Contractor was responsible for payment of the TERO fee. In our opinion, documentation relating to the contract award process supports the Contractor's expectation that the Authority was responsible for paying the TERO fee.

Project SD 1-36 to be carried out within HUD requirements

Under the provisions of the Annual Contributions Contract with the Department of Housing and Urban Development, the Oglala Sioux Housing Authority (Authority) was funded to construct Mutual Help dwelling units for project SD 1-36 located on the Pine Ridge Indian Reservation in South Dakota

On August 28, 1996, Western Tricon, Inc. of La Push, Washington was awarded the construction contract to build 25 Mutual Help houses for Project SD 1-36 for a lump sum amount of \$2,333,000.

During project construction, the Contractor submitted 23 Periodic Estimates for Partial Payment requests totaling \$2,498,380. The Authority paid all of the requested amounts except for \$77,832 which was withheld from the Contractor's last partial payment on December 24, 1998. The amount the Authority withheld was for a \$49,968 payment for the Oglala Sioux TERO fee and for \$27,864 to pay for miscellaneous construction deficiencies.

On February 1, 1999, Western Tricon, Inc. submitted their initial request for final payment to the Authority for additional work and related costs of \$415,313 (rounded). The Contractor considered these costs allowable and reimbursable under its contract with the Authority. On April 6, 1999, the Oglala Sioux Housing Authority issued their Findings of Fact on the Contractor's initial request for final payment of \$415,313. The Authority denied all 7 claims included in the Contractor's final payment request.

On February 28, 1999, about five weeks before the Authority denied the Contractor's final payment claim, Western Tricon, Inc. submitted, at the request of the Authority, additional cost support data and also increased its payment request for additional work and related costs to \$534,152. The Contractor's revised payment request contained 18 cost item categories which included basically the 7 items claimed in the initial final payment request.

The Authority did not consider the additional cost data and claim items submitted by the Contractor on February 28 when it concluded that the Contractor should not be reimbursed for any additional costs. The Authority's Contracting Officer took the position that the additional information was not submitted on time. As a result, the Authority did not evaluate as part of the Findings of Fact the additional cost support and claim data provided by the Contractor.

Audit objective

The objective of our review was to identify the basis and related facts concerning the additional cost and payment claim request by the Contractor, Western Tricon, Inc.

Tribal Employment Rights Office fee paid twice

The Housing Authority overpaid the Oglala Sioux Tribal Employment Rights Office fee for the development project SD 1-36. On October 24, 1996, at the beginning of project construction, the Authority paid \$45,860 to the Tribal Employment Rights Office for the TERO fee. On December 24, 1998, at the completion of project construction, the Authority for the second time paid a TERO fee in the amount of \$49,968 (rounded) to the Tribal Employment Rights Office. The Authority needs to recover the TERO fee overpayment of \$49,968 from the Oglala Sioux Tribal Employment Rights Office. Such recovery would need to be used for eligible HUD housing program costs.

Authority and Contractor disagree on who should pay fee

A disagreement exists between the Housing Authority and the Construction Contractor on whether the Authority or the Contractor was responsible for paying the TERO fee. The Authority withheld \$49,968 from the Contractor's last payment to pay the TERO fee. Documentation relating to the contract award process supports the Contractor's expectation that the Authority was responsible for paying the 2% TERO fee. We are recommending that the Authority reevaluate all the facts concerning the TERO fee and reconsider whether the Construction Contractor was responsible for payment of the TERO fee.

Auditee Comments

The Housing Authority provide their comments to our draft audit report on March 27, 2000. The Authority agrees that an additional payment of the Tribal Employment Rights Office fee was made and that the Authority has initiated action to reclaim the overpayment. The Authority also stated that they would reevaluate their determination as to whether the Contractor was responsible for paying the Tribal Employment Rights Office fee.

The Authority also provided us with suggested changes to certain paragraphs in the audit report. We have considered these and have made changes in the final report as we considered appropriate. We have included the Authority's complete written comments to our draft report in Appendix 2.

This Page Intentionally Blank

Table of Contents

Management Memorandum..... i

Executive Summary.....iii

Table of Contentsvii

Introduction..... 1

Finding and Recommendations

 Questionable Oglala Sioux Tribal Employment Rights
 Office Fee of \$49,968 5

Summary Information on Additional Cost and Payment Claim11

Appendices

 1. Schedule of Questioned Costs23

 2. Auditee Comments25

 3. Distribution29

Abbreviations

HUD Department of Housing and Urban Development
TERO Tribal Employment Rights Office

Introduction

Under the provisions of the Annual Contributions Contract with the Department of Housing and Urban Development, the Oglala Sioux Housing Authority, whose name was subsequently changed to the Oglala Sioux (Lakota) Housing, was funded to construct Mutual Help dwelling units on the Pine Ridge Indian Reservation, located in South Dakota. Accordingly, the Oglala Sioux Housing Authority (Authority) was obligated to carry out the project, known as Project SD 1-36, in accordance with HUD requirements.

Project SD 1-36 was to be completed using an independent third party contractor to construct 25 Mutual Help dwelling units. The construction was advertised as a lump sum bid. Under this process, all bidders agreed to perform the requirements specified on the Proposal for Lump Sum Bid for a fixed price. The successful bidder that was to be awarded the contract was obligated to carry out the construction of the units in conformity with provisions of the construction contract and related documents. Changes to the construction contract were to be processed through a formal change order detailing the construction changes to be made and any adjustments in contract price. The Housing Authority's Executive Director was designated as the Contracting Officer for the construction and had overall responsibility for the project.

The Authority used an architect to design and oversee the construction of the units. Both the architect and the Authority were to conduct periodic construction inspections throughout the construction phase. Any identified construction deficiencies were to be resolved with the construction contractor. Provisions of the construction contract detailed procedures to be followed in connection with any construction disputes that might arise.

During the construction, the contractor was to submit Periodic Estimates for Partial Payment to the Authority for processing and payment. Once the construction was complete, the contractor was to submit a final payment request to the Authority for processing.

On August 28, 1996, Western Tricon, Inc. of La Push, Washington was awarded the construction contract for Project SD 1-36 for a lump sum amount of \$2,333,000. On September 9, 1996, the Authority granted a Notice to Proceed to the Contractor. During the construction phase, a total of 10 Change Orders were processed for an increase in the contract amount of \$165,380, resulting in an adjusted total contract amount of \$2,498,380.

During the construction, the Contractor submitted to the Authority a total of 23 Periodic Estimates for Partial Payments requests having a combined total of \$2,498,380. The Authority paid all of the requested amounts except for \$77,832 which was withheld from the last payment. The amount withheld from the December 24, 1998 payment was for a \$49,968 fee to the Oglala Sioux Tribal Employment Rights Office and for \$27,864 to pay for miscellaneous construction deficiencies. The total amount paid to the Contractor was \$2,420,549.

On February 1, 1999, Western Tricon, Inc. submitted to the Authority their request for final payment for additional work and related costs of \$415,313 (rounded). The Contractor believed that they had incurred additional costs under their contract with the Authority and were entitled to additional compensation.

The Contractor's request contained the following 7 additional claims:

1. Tribal Employment Rights Office Fee	\$	49,960
2. Additional Gravel	\$	68,021
3. Additional Waterline	\$	17,504
4. Changes in Framing	\$	19,314
5. Time Delays	\$	133,268
6. Additional Work	\$	39,211
7. Additional Expenditures	\$	<u>88,135</u>
Total	\$	415,313

The Contractor in their February 1, 1999 letter to the Authority asked that the items be resolved and brought to a close by February 25, 1999. On February 11, 1999, the Authority acknowledged the receipt of the Contractor's claim. The Authority asked that the Contractor provide supporting documentation and costs for the claim since the Authority stated the claim in most instances was not supported by documentation. The Authority requested the Contractor furnish the additional supportive material by February 24, 1999. The Contractor was further advised that the Authority would prepare the appropriate findings of fact and would provide notification to the Contractor within 60 days.

On April 6, 1999, the Oglala Sioux Housing Authority issued their Findings of Fact relative to these 7 additional claims. The Oglala Sioux Housing Authority denied all 7 claims.

However before the Authority could issue their Findings of Fact on the initial claim for compensation of the first 7 items, Western Tricon, Inc. send on February 28, 1999 an additional cost and payment claim totaling \$534,152 (rounded) for additional work and related costs that they felt they were entitled under the terms of the construction contract. This additional claim contained 18 cost claims categories which basically included the 7 claims submitted in the Contractor's first request. The sixth and seventh claim items of the first request were general in detail and did not delineate any specific costs related to particular additional services provided. These two items were not restated in the Contractor's additional cost and payment claim. Instead, the Contractor detailed specific additional cost categories for services that the Contractor felt had been provided under the construction contract.

In the Authority's Finding of Fact issued on April 6, 1999 on the initial payment request for the first 7 items, the Authority stated they had received the additional cost and payment claim from Western Tricon, Inc. on March 15, 1999. However, the Authority commented the Contractor's addition claim was not evaluated because it was not received in time. Subsequently, the Construction Contractor has requested the Authority to provide information supporting their April 6, 1999 issued Findings of Fact. The Authority has apprised the Contractor the Authority is not obligated to furnish any supporting documents relating to the Findings of Fact. As such, no supporting information has been provided to the Construction Contractor.

Upon issuance of the Finding of Facts, the Authority did notify the Contractor that the Authority would be willing to meet with the Contractor at the Authority's office to discuss the claims. However, the Contractor wanted the meeting to be held in the HUD offices in Denver. No agreement was reached on the meeting location and no meeting has been held.

Authority officials stated that the miscellaneous construction deficiencies have not been completed by the Construction Contractor. Instead, the Authority has corrected these construction deficiencies themselves.

Audit objective and methodology

The objective of our review was to identify the basis and related facts concerning the February 28, 1999 submitted additional cost and payment claim by the Construction Contractor, Western Tricon, Inc. to the Authority.

We obtained and reviewed documentation furnished from the Oglala Sioux Housing Authority; Western Tricon, Inc.; the Authority's Architect; HUD Northern Plains Office of Native American Programs; the South Dakota State Commission of Engineering, Architectural & Land Surveying Examiners, Indian Health Service, and the Office of Environmental Health and Engineering of the U.S. Department of Health and Human Services. We conducted interviews with officials of these organizations and entities. We also conducted a site visit to one of the 9 construction sites of the project in connection with the second additional claims request from the Contractor. Our review was limited to those transactions relative to our review objective.

Scope

Our audit basically was limited to those transactions identified in the additional cost and payment claim from the Contractor and covered the period from August 1996 through November 1998, and was extended as necessary to fully accomplish our objective. We performed our field work from July 1999 through November 1999. Our review was limited by the amount of documentation and information that was provided by the Construction Contractor, Western Tricon, Inc., the Housing Authority and other relative organizations and entities.

An evaluation of the Authority's overall management controls over its construction contract activity was not part of this review. However, a review of the Authority's management controls over its construction activities will be conducted under a separate subsequent audit.

Generally Accepted Government Auditing Standards

We conducted the audit in accordance with generally accepted government auditing standards except as limited by our scope paragraph above.

This Page Intentionally Blank

Finding

Questionable Oglala Sioux Tribal Employment Rights Office Fee of \$49,968

In carrying out the development of project SD 1-36, the Housing Authority has paid twice the Tribal Employment Rights Office fee to the Oglala Sioux Tribal Employment Rights Office. The first payment for \$45,860 on October 24, 1996 and at the beginning of the construction of the 25 Mutual Help dwelling units. The second payment of \$49,968 (rounded) was paid on December 24, 1998 to the Tribal Employment Rights Office. This second payment was withheld from the final periodic estimate payment to the Construction Contractor, Western Tricon, Inc. The additional payment of \$49,968 needs to be recovered by the Authority from the Tribal Employment Rights Office. Such recovery would need to be used for eligible HUD program costs.

A disagreement exists between the Housing Authority and the Construction Contractor on whether the Authority or the Contractor should pay the fee. Documentation within the Authority supports both positions on the payment of the fee. The Contractor reclaimed the amount of \$49,968 in their additional cost and payment claim request to the Authority on February 1, 1999. The Authority issued on April 6, 1999 their Findings of Fact concerning the contractor's final request payment. The Authority denied the Construction Contractor's claim. We are recommending that the Authority reevaluate all the facts concerning the fee and reconsider whether the Construction Contractor was responsible for paying the Tribal Employment Rights Office fee. In our opinion, documentation relating to the contract award process supports the Contractor's expectation that the Authority was responsible for paying the TERO fee.

Project SD 1-36 to be built within terms of construction contract and HUD requirements

Under the provisions of Annual Contributions Contract, the Housing Authority in building the 25 Mutual Help homes under project SD 1-36 was to follow HUD requirements and procedures. The Authority had the responsibility to ensure that the development of the project was completed within the provisions of the construction contract and within HUD regulations and requirements. HUD monies were used to fund the development of the project. Any unused development monies would need to be used for eligible HUD program costs.

Project SD 1-36 was to be completed using an independent third party contractor to construct the 25 Mutual Help dwelling units. The construction was advertised as a lump sum bid. Under this process, the

successful construction bidder was obligated to carry out the construction of the project in accordance with the terms and provisions of the construction contract for a specifically approved bid amount. Changes in construction requirements and/or costs were to be approved by specifically authorized construction contract change orders.

Construction Contractor to comply with Tribal Employment Rights Ordinance

On August 28, 1996, the Authority entered into a contract with Western Tricon, Inc. to construct the 25 Mutual Help homes under project SD 1-36 for a lump sum of \$2,333,000. Part of the bidding documents providing special instructions to all bidders relating among other items compliance with the Employment Rights Ordinance of the Oglala Sioux Tribe.

Tribal Employment Rights Office fee paid twice

On October 24, 1996, the Housing Authority paid \$45,860 by check number 1004 to the Oglala Sioux Tribal Employment Rights Office for the TERO fee. This fee was calculated at 2 percent of the original bid of \$2,293,000 from Western Tricon, Inc. At the completion of the project, the Housing Authority withheld \$77,832 from the Construction Contractor's final payment request. This amount included \$49,968 (rounded) for the TERO fee and \$27,864 (rounded) for various uncompleted construction items. On December 24, 1998, the Authority paid by check number 1135 the withheld amount of \$49,968 from the Contractor to the Tribal Employment Rights Office.

Additional fee of \$49,968 needs to be recovered from the Oglala Sioux Tribal Employment Rights Office

The end result is that the Authority has paid the Tribal Employment Rights Office fee twice. One amount of \$45,860 at the time when the construction contract was executed with Western Tricon, Inc., and a second amount of \$49,968 when the construction contractor submitted their final periodic payment request. While we could not identify the reason why the Tribal Employee Rights Office fee was paid twice, the additional payment is not an eligible HUD funded project SD 1-36 cost. In our opinion, the Authority needs to recover the second additional payment of \$49,968 from the Oglala Sioux Tribal Employment Rights Office. Once the additional fee is recovered, the Authority would need to use it for other eligible HUD program costs.

Construction Contractor disagrees with the Authority over who should pay the fee

The Construction Contractor has disagreed with the Housing Authority that the fee is an obligation of the Contractor. This stems from the fact that the Housing Authority withheld \$49,968 from the Construction Contractor's final payment and paid this amount to the Tribe for the Tribal Employment Rights Office fee.

The Contractor's disagreement focuses on the Pre-Bid conference that was held on August 9, 1996 in which the Housing Authority's Development Coordinator stated that the fee would be paid by the Authority. Hand written minutes of the Pre-Construction meeting held on October 8, 1996 indicate the fee would be paid by the Authority. In addition, the Contractor's submission of their Schedule of Amounts for Contract Payments for project SD 1-36 showed a "zero" for the cost line

item on the Tribal Employment Rights Office fee. This schedule was approved by the Authority on October 14, 1996.

On August 27, 1996, one day before the construction contract was awarded to Western Tricon, Inc., the Contractor entered into a compliance agreement with the Tribal Employment Rights Office. This agreement indicates by hand written notation that the TERO fee would be paid by the Housing Authority.

Our review of other bids that were submitted by contractors for the construction of project 1-36 showed that one bidder wrote on their bid the comment that their lump sum bid included all applicable taxes and fees except the 2 percent Tribal Employment Rights Office fee. The statement further indicated the fee was to be paid by the owner as per the pre-bid directive by the owner (Housing Authority) at the August 9, 1996 pre bid meeting.

The TERO fee which was established by Tribal Ordinance 93-07 is a fee that is assessed against any construction contract involving construction work of over \$2,500 on the Pine Ridge Reservation. This fee was established to provide funding to the Tribal Employment Rights Office as well as for certain specific operations of the Oglala Sioux Tribe. The TERO fee is a fix fee that would need to be taken into consideration by any construction bidder if the bidder were to be obligated to pay the TERO fee.

Two of the bidders for the SD 1-36 development project indicated that their bid excluded the TERO fee based upon understanding that the fee would be paid by the Authority. Prudent business practice suggests that a prospective contractor would include in their bid any known fees or fixed cost such as the TERO fee that the contractor would be required to pay. Otherwise, the day the contractor was awarded the contract, the contractor's profit margin would be automatically decreased by the fixed cost amount.

On December 29, 1997, the Oglala Sioux Tribal Council passed Ordinance 97-18 that increased the TERO fee from 2 percent to 4 percent. However, the ordinance specifically stated that the increased fee would not apply to any contracts that previously had been executed. The increased TERO fee would not apply to the SD 1-36 construction contract since the contract was executed on August 28, 1996, over a year before the new TERO ordinance was passed.

The Contractor claimed the \$49,968 as part of their final payment request submitted to the Authority on February 1, 1998. On April 6, 1999, the Authority issued their Findings of Fact on the request from the Contractor for their final payment. This Findings of Fact as signed by the

Authority's Executive Director, who was the contracting officer for the project, stated that the payment request for the fee was denied.

The reason stated in the Findings of Fact was that it was clear that the fee was to be paid by the Contractor. The Contract granted the Authority the right to withhold the amount from the Contractor's payment request and to pay the fee for the Contractor. In addition, the Findings of Fact stated that the Authority officials who were at the pre-bid and pre-construction conferences indicated that the Authority would pay the fee for the Contractor. The statement further added that this was the practice often used by the Authority to ensure the contractor complied with the Tribal Employment Rights Office law and the Authority's contract requirements.

Authority needs to reevaluate whether the Contractor or the Authority is responsible for payment of the fee

The disagreement between the Contractor and the Housing Authority over which one of them was obligated to pay the fee is a matter of dispute that falls under the dispute provisions of the construction contract.

The resolution would be for the Housing Authority to reevaluate its decision taking into consideration all of the facts supporting both party's rational. This would include the fact that two of the construction bidders understood that the TERO fee was to be paid by the Authority which was taken into account when they submitted their construction bid and that the Compliance Agreement with the Tribal Employment Rights Office was noted showing the TERO fee would be paid by the Authority.

Also this would need to take into consideration that the Authority paid the initial Tribal Employment Rights Office fee on October 24, 1996. In addition, the amount of \$49,968 that was withheld from the contractor's final request payment and paid to the Tribal Employment Rights Office resulted in an additional payment of the fee. This additional payment needs to be recovered by the Housing Authority from the Tribal Employment Rights Office.

Auditee Comments

The Housing Authority provided their comments to our draft audit report on March 27, 2000. The Authority agrees that an additional payment of the Tribal Employment Rights Office fee was made and that the Authority has initiated action to reclaim the overpayment. The Authority also stated that they would reevaluate their determination as to whether the Contractor was responsible for paying the Tribal Employment Rights Office fee.

Office of Audit Evaluation of Auditee Comments

The Authority indicates they were aware of two payments of the TERO fee had been made to the Tribal Employment Rights Office and that the Authority had apprised the auditors of this fact. This statement is inaccurate because the auditors identified the overpayment of the fee during their review. At no time did the Authority staff or officials mention the extra fee payment. The fact still remains that the TERO fee

was paid twice and recovery of the extra payment needs to be made and used for eligible HUD program costs.

The Authority has agreed to reconsider their determination of whether the Construction Contractor was responsible for paying the TERO fee. The Authority's reevaluation will need to take into consideration all of the related facts concerning the TERO fee. This would include the fact that the Authority's Development Coordinator apprised the bidders at the August 9, 1996 pre-bid conference that the TERO fee would be paid by the Authority. Also, the hand written minutes to the pre-construction meeting stated the fee would be paid by the Authority. Furthermore, the Construction Contractor and one unsuccessful bidder excluded the TERO fee from their construction bid.

Recommendations

We recommend that the Northern Plains Office of Native American Programs provide the necessary guidance and direction to the Housing Authority to:

- 1A. Recover the additional fee of \$49,968 paid by the Authority to the Tribal Employment Rights Office and use the recovered monies for eligible HUD program costs; and
- 1B. Reevaluate all the facts and documents surrounding the payment of the fee to the Tribal Employment Rights Office and reconsider whether the Construction Contractor is responsible for paying the TERO fee.

We also recommend that the Northern Plains Office of Native American Programs obtain evidence from the Housing Authority that:

- 1C. The additional fee payment to the Tribal Employment Rights Office has been recovered and used for authorized HUD program costs, and
- 1D. The Authority has reevaluated all the facts and documents applicable to the payment of the TERO fee and reconsidered whether the Construction Contractor or the Authority is responsible to pay the TERO fee.

This Page Intentionally Blank

Summary Information on Additional Cost and Payment Claim

Information we obtained on the 18 additional cost and payment claim submitted by the Construction Contractor on February 28, 1999 is summarized below by individual item. This summary is based upon the information and documentation that was provided to us by the Construction Contractor, Western Tricon, Inc., the Housing Authority and other related organizations and entities..

1. **INSTRUCTED THE TRIBAL EMPLOYMENT RIGHTS OFFICE FEE WOULD BE PAID BY THE HOUSING AUTHORITY \$49,960**

This item is discussed in the Finding Section.

2. **ADDITIONAL GRAVEL PLACED ON THE PROJECT \$68,832**

Under provisions of Instructions to Bidders for the construction of Project SD 1-36, each bidder was required to examine specifications, drawings, and instructions of the contract. Failure to do so was at the bidder's risk. These same provisions also required the bidder to request an interpretation or explanation of the solicitation and drawings at least seven days before the scheduled bid opening. Records indicate the Contractor began corresponding with the Authority concerning amounts of gravel needed on driveways and roads 32 days after the bid opening.

Under provisions of Special Instructions to Bidders for the construction of Project SD 1-36, each bidder acknowledges having visited the sites and familiarized themselves with the construction specifications. According to the Authority, the Contractor did not visit the sites, carefully examine the plans and specifications, or attend the Pre-Bid Meeting to ask questions about the plans and specifications before being awarded the contract.

Under provisions to Civil Drawings of the contract related to quantities, the Contractor needed to field verify all quantities because they were estimated amounts. Civil Drawings related to quantities of gravel needed for driveways, turnarounds, and roads for the construction project were revised twice resulting in a final estimate of 5,424.44 cubic yards or 7,051 tons of gravel.

Change Order Number 1 was approved by the Contractor and the Authority. This Change Order reduced the depth of gravel to be placed on driveways and roads and also allowed an adjustment of \$18.00 per ton for any variation in quantities from the base amount. Change Order Number 4 as approved by the Contractor and the Authority addressed gravel needed for the cutting of roads not shown on plans or outside the start and stop limits of the project. This Change Order did not effect the 4,200 cubic yards of gravel specified in Change Order Number 1.

The Contractor has indicated it placed an additional 3,779 tons of gravel on the project which should be compensated at the rate of \$18.00 per ton as specified in Change Order Number 1. The Contractor provided invoices which lists a total weight of 9,111 tons of gravel. The Contractor also provided their Civil Drawing indicating quantities of gravel needed for the project. Although the quantities of gravel calculated by the Contractor indicates cubic yards of gravel estimated for an individual turnaround, driveway, and road, the contractor did not specify the location of the roads and did not include the amounts of gravel for items not listed on the revised Civil Drawing for the project. In addition, amounts of gravel specified in the Contractors Civil Drawing do not reconcile with the 9,111 tons of gravel listed on the invoices.

The Contractor's claim for additional gravel cost reimbursement was submitted to the Authority as part of the Contractor's final payment request. The Authority issued their Finding of Fact on the claim and denied this additional cost. The Authority stated they could not determine where the Contractor placed the additional gravel on the project. We asked the Contractor to provide us with documentation that supported the location of the roads and to identify how many cubic yards of gravel was actually placed on each driveway, turnaround, and road. However, the Contractor did not provide the documentation we requested.

**3. ADDITIONAL WATERLINE PLACED AT THE PROJECT PORCUPINE SITE
\$18,044**

In their original request for final contract payment, the Contractor included additional costs for placing 2,852 lineal feet of waterline at the Porcupine Site of the project. The Contractor later revised their original request and indicate they placed 2,872 lineal feet of waterline at the Porcupine Site.

According to the Authority, the Contractor claimed it was not obligated under the contract to do a portion of the waterlines at the Sundance Site of the project because they were identified on the drawings as being outside the limits of the project. The Authority agreed with the Contractor to process Change Order Numbers 1 and 4 so as not to jeopardize the project.

Change Order Number 1 only addressed off-site waterlines. This Change Order estimated the off-site waterlines to be approximately 3,500 lineal feet and allowed an adjustment of \$10 per lineal foot. Change Order Number 4 also addressed off-site waterlines. It allowed an adjustment of \$17 per lineal foot to be added to the \$10 per lineal foot already specified in Change Order Number 1. Change Order Number 4 added \$59,500 to the contract for installation of off-site waterlines estimated to be approximately 3,500 lineal feet out of the start and stop limits of applicable plans to the project. Both Change Orders specified the length of the off-site waterlines would be verified by the Indian Health Service. In addition, Change Order Number 4 specified that it was the final resolution of all issues raised up to its issuance date.

According to the Indian Health Service, the Contractor installed off-site waterlines at the Porcupine and the Sundance sites. The Indian Health Service indicated the Contractor placed 1,312 lineal feet of waterline at the Porcupine Site. Of that total, 1,002 lineal feet of the waterline is on-site and 310 lineal feet of waterline is off-site. The Indian Health Service indicated the Contractor placed 3,224 lineal feet of waterline at the Sundance Site. Of that total, 340 lineal feet of the waterline is on-site and 2,884 lineal feet of waterline is off-site. Based upon inspections completed by the Indian Health

Service, the total amount of off-site waterlines installed by the Contractor on the project equals 3,194 lineal feet.

According to the Authority, the Contractor did not submit adequate documentation which supported its claim of placing 2,852 lineal feet of waterline at the Porcupine Site of the project. As part of the Authority's Findings of Fact relating to the initial final payment request from the contractor on this matter, the Authority denied this claim. The denial was based upon a mutual agreement between the Authority and the Contractor which adjusted the construction of the off-site waterline so it would connect to a rural waterline rather than to a water tower. The adjustment resulted in a reduced number of feet of waterline to be installed by the Contractor. While Change Order Number 8 was prepared to reflect this change, it was not processed and approved by the Authority. In addition, the Authority indicated the mutual agreement of both parties would not affect the contract price. The Authority further stated that the ultimate estimated length of waterline installed at the Porcupine Site was less than the amount specified in the Change Orders for which the Contractor had been paid.

We asked the Contractor to provide us with documentation that supported the length of the on-site and off-site waterlines installed at the Porcupine Site. However, the Contractor did not provide the documentation we requested.

4. ADDITIONAL BLOCKING IN THE FLOOR AND THE ROOF TO INCLUDE FRAMING AT VENTS AND FIXTURES \$2,450

In their original request for final contract payment, the Contractor included additional costs of \$19,314 for blocking in the floor and roof to include framing at vents and fixtures. In the Contractor's additional cost and payment request dated February 28, 1999, the Contractor revised the amount requested to \$2,450.

Under provisions to Technical Specifications of the contract, the Contractor was required to provide blocking behind all surface mounted installations. Under provisions to Architectural Drawings of the contract, blocking was specified in all roof and floor framing plans. According to the Authority, their inspectors requested blocking around any penetrations in the roof and the floor. This request occurred at the beginning of the framing process and did not require any additional blocking beyond that specified in the contract. The Contractor completed the necessary work. No Change Order was executed by the Contractor and the Authority in connection with this work.

As part of the Authority's Findings of Fact relating to the contractor's final payment request, the Authority stated the claim lacked supporting documentation and was not provided timely. In addition, blocking was requested from the beginning of the framing process, and was specifically required in the construction contract and plans.

We asked the Contractor to provide us with documentation to support their claim for additional costs. However, the Contractor did not provide the documentation we requested.

5. **DELAYS CAUSED BY THE AUTHORITY REFUSING TO ANSWER REQUESTS FOR INFORMATION AND DELAYS FORCING THE CONTRACTOR INTO HARSH WINTER CONDITIONS \$173,000**

In their original request for final contract payment, the Contractor included additional costs of \$133,268 for delays caused by the Authority refusing to answer information requests or take appropriate actions which forced them into harsh winter conditions. The Contractor's additional costs and payment claim dated February 28, 1999 changed the claim amount to \$173,000.

Under provisions to General Conditions of the contract related to inspection of work, an Authority may conduct routine inspections of the construction site but the inspections are not to delay the construction work. However, the contractor must correct deficiencies found without charge to the Authority.

According to the Contractor, the Authority did not perform timely inspections, did not recognize changes identified by inspections that were completed, failed to issue written directives as required, and failed to provide missing design information. According to the Authority, their inspections were timely and many of the items contained in the Contractors claim were waived by executed Change Orders. Change Order Number 4 addressed issues associated with site layouts, plans, specifications, and schedule of values for work to be performed. In addition, this Change Order specified that it was the final resolution of all issues raised up to its issuance date.

Under provisions to General Conditions of the contract related to delays, an adjustment is allowed for any increase in cost of performance due to work delayed for an unreasonable period of time by an act of the Contracting Officer in the administration of the contract or failing to act within the time period specified. However, no adjustment is to be made if the delay would have occurred anyway due to other causes. According to the Contractor, they did not receive a response or reply to 9 Requests for Information. Documentation indicates the Contractor received a timely response to 5 of the 9 Requests for Information in question. The remaining 4 Requests for Information were addressed but it could not be determined when the Contractor received that information.

Under provisions to General Conditions of the contract related to weather, the Contractor must successfully perform the work regardless of uncertainties of weather without additional expense to the Authority. The Contractor was granted a 126 day time extension for bad weather associated with extended periods of rain, snow, sleet, and freezing temperatures.

In the Authority's Finding of Fact relating to the final payment request for additional compensation, the Authority stated the Contractor did not provide specific documentation to support their claim or provide an explanation of how they arrived at the damages sought.

We asked the Contractor to provide us with documentation that supported this claim for additional costs. However, the Contractor did not provide the documentation we requested.

6. **INSTRUCTED TO COMPACT THE BACKFILL OF FOUNDATION WALLS IN EIGHT INCH LIFTS \$10,813**

Under provisions to Technical Specifications of the contract related to the backfill of foundation walls, the Contractor was required to compact the fill materials in continuous layers not exceeding 6 inches loose depth. According to the Authority, the Contractor was identified as not compacting the soil around the foundation walls of the dwelling structures.

The Authority informed us the Contractor was given the option of placing an additional 2 inches of soil on top of the existing 6 inches of soil for a total of 8 inches of soil and then compact it. Otherwise, the Contractor needed to compact the soil according to the Technical Specifications of the contract. The Contractor elected to add the additional 2 inches of soil and then compact it. According to the Authority, the option given to and taken by the Contractor should have cost less money. There was no Change Order approved by the Contractor or the Authority in connection with this work. In addition, the Contractor did not include additional costs associated with the backfill of foundation walls in their final payment request to the Authority.

Even without processing a formal Change Order with the Authority, the Contractor is claiming an additional contract cost of \$10,812.50 for this work. We asked the Contractor to provide us with documentation to support this claim for additional costs. However, the Contractor did not provide the documentation we requested.

7. **ADDITIONAL FINISHING COMPLETED ON INTERIOR AND EXTERIOR BASEMENT WALLS \$15,000**

Under provisions to Technical Specifications of the contract related to concrete work, an Authority is allowed to instruct a contractor to repair or replace concrete not properly placed which results in defects. Under provisions to General Conditions of the contract related to acceptance of work, the Contractor shall, without charge, replace or correct work found by the Authority not to conform to contract requirements. According to the Authority, the Contractor was identified as not completing a second pour into the mold, on top of the first pour into the same mold, in a timely manner. This resulted in excessive concrete sticking out between the seams of the molds in the dwelling structures.

The Contractor was instructed by the Authority to sand down the excessive concrete sticking out between the seams of the molds in the basement walls of the dwelling structures. Visual observation indicates the Contractor completed this work.

No Change Order was executed by the Contractor and the Authority in connection with the corrective work. In addition, the Contractor did not include additional costs associated with additional finishing completed on interior and exterior basement walls in their final payment request to the Authority.

We asked the Contractor to provide us with documentation to support this claim for additional \$15,000 in costs. However, the Contractor did not provide the documentation we requested.

8. PLACING STRONG BACKS ON TRUSSES IN LIVING ROOMS AND DINING ROOMS \$650

Under provisions to Technical Specifications of the contract related to rough carpentry, the Contractor was required to install 2X6 strong backs and windbracing in all roof system framing per the truss manufacturer's recommendations. Under provisions to Architectural Drawings of the contract, 2X6 strong backs are shown on both 3 and 4 bedroom roof framing plans.

According to the Authority, the Contractor was not required to place a strong back on trusses in living rooms and dining rooms beyond that specified in the construction contract. Trusses are located in the attic. Therefore, we were not able to verify if the Contractor completed this work.

No Change Order was executed by the Contractor and the Authority in connection with this work. In addition, the Contractor did not include additional costs associated with placing strong backs on trusses in living rooms and dining rooms in their final payment request to the Authority.

We asked the Contractor to provide us with documentation to support this claim for the additional costs. However, the Contractor did not provide the documentation we requested.

9. BASEMENT FLOORS BEING CAULKED IN EXCESS OF THE REQUIREMENTS SPECIFIED IN CHANGE ORDER NUMBER 10 \$6,360

Under provisions to Technical Specifications of the contract related to concrete work, the Contractor was required to extend a thick joint filler from the bottom of a slab to within ¼ inch of the finished slab surface. Under provisions to Architectural Drawings of the contract, a ½ inch expansion joint existed between the basement wall and the basement floor. Change Order Number 10 added \$6,115 to the contract for the caulking of basement floor slabs.

According to the Authority, the Contractor did not want to bring the caulking up next to the basement floor as required in the Technical Specifications to the contract and that Change Order Number 10 was not approved. However, while the Change Order was not signed by the appropriate parties, the increase in construction costs associated with this Change Order was included in the Contractor's Periodic Estimate for Partial Payment Number 22. As a result, the Contractor was paid \$6,115 for this Change Order.

In submitting the Contractor's additional cost and payment claim dated February 28, 1999, the Contractor did not provide documentation to support the cost incurred in excess of the requirements specified in Change Order Number 10.

We asked the Contractor to provide us with documentation to support this claim for additional costs. However, the Contractor did not provide the documentation we requested.

10. ADDITION OF TRUSS CLIPS AND DRYWALL STOPS \$4,988

Under provisions to Technical Specifications of the contract related to miscellaneous metals, the Contractor was required to use Simpson Connections/Strong-Ties or an approved equal of appropriate configuration for securing all trusses and rafters to top plates. Also required was the

use of Simpson joist hangers and hold-downs or an approved equal. Change Order Number 3 added \$2,500 to the contract for the addition of truss clips to interior walls and truss junctures.

The Authority informed us that the Contractor was given the option of using a Simpson Clip (truss clip) or a 2X4 for the drywall stops. The Contractor elected to use the Simpson Clip for the drywall stops. Change Order Number 3 was approved by the Contractor and the Authority and accordingly the Contractor was reimbursed for this work.

The Contractor did not include any support for this additional \$4,988 claim in his February 28, 1999 additional cost and payment claim to the Authority. We asked the Contractor to provide us with documentation to support this claim for additional costs. However, the Contractor did not provide the documentation we requested.

11. INSTRUCTED TO COMPLETE WORK RELATED TO LINES AND LEVELS BEYOND THE REQUIREMENTS SPECIFIED IN CHANGE ORDER NUMBER 4 \$10,491

Under provisions to Technical Specifications of the contract related to field engineering, the Contractor was required to establish lines and levels for lots, buildings, and utilities. In addition, the Contractor was to provide and pay for field engineering services required for the project. Under provisions to General Conditions of the contract related to a contractors responsibility for work, the Contractor was required to lay out the work from base lines, levels, and measurements of all work executed under the contract. Change Order Number 4 was executed by the Contractor and the Authority and it released the Contractor from the lines, levels, and dimensions shown on the original plans for the project. This Change Order stated that changes in lines, levels, and dimensions would not include resurveying. This Change Order did not provide for a change in the cost of the construction contract. In addition, it stated that it was a final resolution of all issues raised up to its issuance date.

The Authority informed us that the Contractor disputed some of the elevations stated in the plans. The Contractor elected to bring in their own surveyor to validate the elevations. According to the Authority, there should be no charge for resurveying because that responsibility rests with the Contractor under the terms of the contract. In addition, the Contractor did not provide in their February 28, 1999 additional cost and payment claim any supporting documents for the additional cost of \$10,491 associated with completing work related to lines and levels beyond the requirements specified in Change Order Number 4.

We asked the Contractor to provide us with documentation to support their claim for additional costs. However, the Contractor did not provide the documentation we requested.

12. INSTRUCTED TO CHANGE THE EXTERIOR TRIM AT CORNERS \$750

Under provisions to Architectural Drawings of the contract, the siding was to be flush with the composite trim at the outside corners and caulking was to be applied at the joint between the siding and the composite trim at the outside corners.

The Authority informed us the Contractor was given the option of placing the outside corner trim over the siding and then caulking it. This option eliminated the requirement to have the siding be

flush with the outside corner trim as specified in the plans. The Contractor elected to place the outside corner trim over the siding and then caulk it.

According to the Authority, the option given to and taken by the Contractor should not have resulted in additional costs. No Change Order was executed for this work. In addition, the Contractor did not include additional costs associated with changing the exterior trim at corners in their final payment request to the Authority.

We asked the Contractor to provide us with documentation to support this claim for additional costs. However, the Contractor did not provide the documentation we requested.

13. INTERFERENCE DELAYS AND DISRUPTION DELAYS \$15,570

In their original request for final contract payment, the Contractor claimed additional costs of \$88,135 for interference delays and disruption delays. In their February 28, 1999 additional cost and payment claim, the Contractor revised their original request and reduce this additional cost to \$15,570.

In the Authority's Finding of Fact for this claim, they denied the claim basically because the Contractor did not provide specific documentation to support the claim. In addition, the Authority considered it to be a duplication of other claims submitted by the Contractor.

We asked the Contractor to provide us with documentation that supported this claim for additional costs. The Contractor did provide us with various documents dated November 26, 1997. Only one of these documents specifically addressed interference delays and disruption delays. However, it did not identify the additional costs incurred as a result of the interference delays and disruption delays. Information furnished by the Contractor indicated that other documents dated September 19, 1997, November 8, 1997, February 12, 1998, and March 3, 1998 would support their claim of additional costs. Even though requested, the Contractor did not provide these documents to us.

14. FORCED PURCHASE OF A WATER BOOSTER PUMP \$35,306

Under the provisions to Technical Specifications of the contract related to the Water Booster Pumping Station, the Contractor was required to furnish the Water Booster Pump. The Schedule of Amounts for Project Number SD 1-36, prepared by the Contractor and approved by the Authority's Architect and the Authority, did not specifically list a Water Booster Pump under the Water Distribution System or anywhere else on the Schedule. According to the Contractor, they did install a Water Booster Pump at the Sundance Site for the project.

Change Order Number 4 was executed that added \$59,500 to the contract for all waterlines, appurtenances, valves, pump station, and fittings necessary to complete the off-site waterlines indicated on the plans out of the start and stop limits of the project. In addition, the Change Order number 4 stated that it was the final resolution of all issues raised up to the issuance date.

When the Contractor submitted their final payment request claim, the Contractor did not include any additional costs associated with the purchase of a Water Booster Pump. However, the Contractor did include a \$35,306 claim for a Water Booster Pump in their February 28, 1999 additional cost and payment claim to the Authority.

We asked the Contractor to provide us with documentation to support their \$35,306 additional claim. The Contractor did provide us with an internally generated Vendor Card that indicated the cost of the Water Booster Pump. However, the Contractor did not provide us with any other documents to show payment was actually made or how the cost was in excess of the provisions of the construction contract.

15. THE AUTHORITY REQUESTED A STORAGE FACILITY BE MADE AVAILABLE FOR LOCAL SUBCONTRACTORS \$23,367

Under provisions to General Conditions of the contract related to storing materials off-site, the Contractor would be required to enter into an agreement with the Authority prior to storing any materials off-site. Also, the cost of the off-site storage would be borne by the Contractor. There was no Change Order executed that addressed reimbursement to the Contractor for any off-site storage.

We asked the Contractor to provide us with documentation to support their \$23,367 claim for off-site storage. The Contractor provided us with a document that showed the Authority inquired about the establishment of a construction yard. However, this document does not indicate the Authority specifically directed or requested the Contractor to establish a construction or storage yard. Also, the Contractor provided us with three internally generated Vendor Cards that indicated the cost of off-site storage; but no supporting documents were provided to show what payments were actually made and how the Contractor's claim was in excess of the provisions of the construction contract. In addition, the Contractor did not include additional costs associated with the off-site storage in their final payment request to the Authority.

16. AUTHORITY FAILED TO PROVIDE POWER COMPANIES WITH REQUIRED INFORMATION IN ORDER TO OBTAIN UTILITY EASMENTS \$5,830

Under provisions to General Conditions of the contract related to the contractors responsibility for work, the Contractor was required to furnish all necessary water, heat, light, and power not made available by the Authority. Under provisions to General Conditions of the contract related to the availability and use of utility services, the Contractor was required to install, maintain, and pay for all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. No Change Order was executed to address the Authority reimbursement to the Contractor for providing any temporary electrical service. In addition, the Contractor did not include additional costs associated with providing temporary electrical service at the Sundance Site and Wakpamni Site of the project in their final payment request to the Authority.

The Authority did issue documentation prior to the bid for this project which indicated all required utility services were available. In addition, the Contractor corresponded with the Authority about the need to resolve the utility easement problem with the Nebraska Public Power District at the Sundance and Wakpamni sites of the project.

According to the Authority, the Nebraska Public Power District only serviced the Sundance and the Wakpamni sites of the project. Lacreek Electrical Association, Inc. provided electrical service to the remaining 7 construction sites of the project. The Authority informed us the Contractor could have deployed their work force to the 7 construction sites that did have electrical service while

waiting for electrical service to be installed at the Sundance and Wakpamni sites. The Authority believes the Contractor was responsible for providing temporary electrical service at the Sundance and Wakpamni sites under the terms of the contract.

We asked the Contractor to provide us with documentation to support their \$5,830 claim for additional costs. The Contractor did provide us with fax transmissions to the Authority informing them of the need to resolve the utility easement problem at the Sundance and Wakpamni sites. However, this documentation doesn't address or support any additional costs associated with electrical service delays at those construction sites. In addition, the Contractor did not provide us with other documentation to justify their claim.

17. EMPLOYMENT OF AN ARCHITECT AND ENGINEERING FIRM TO ASSIST IN TECHNICAL DIRECTION AND CLARIFICATIONS \$6,700

Under provisions to General Conditions of the contract related to changes, an equitable adjustment is allowed for any increased cost reasonably incurred by the Contractor in attempting to comply with defective specifications for which the Authority is responsible. Also, under provisions to General Conditions of the contract related to specifications and drawings for construction, the Contractor was required to notify the Contracting Officer of any discrepancies in the figures, drawings, or specifications who shall then make a determination in writing.

The Contractor did notified the Authority about discrepancies in the specifications to the plans in writing. Also, the Architect apprised the Authority the plans did not meet existing building codes and construction details were not accurate. Accordingly, the Authority issued a revised set of plans for Project SD 1-36. Change Order Number 1 was then executed and incorporated all revisions to the site plans made by the Architect. Subsequently, Change Order Number 4 was also executed increasing the contract amount by \$135,000 as well as addressing site layouts, plans, specifications, and schedule of values to date. However, this Change Order did not specifically address reimbursement for Architectural and Engineering services to correct defective specifications in the plans. This Change Order stated it was the final resolution of all issues raised up to the issuance date. In addition, the Contractor did not include additional costs associated with employing an Architect and Engineering Firm to assist in technical direction and clarifications in their final payment request to the Authority.

18. LEGAL FEES PAID TO AN ATTORNEY \$8,210

Under provisions to General Conditions of the contract related to site investigation and conditions affecting work, an Authority assumes no responsibility for any conclusions or interpretations made by the contractor based on information made available by the Indian Housing Authority. Change Order Number 1 was executed and addressed revisions to site plans by both the Architect and the Engineer. Change Order Number 4 was executed and made an increase in the contract amount by \$135,000 based on revisions to site layouts, plans, specifications, and schedule of values for work to performed. This Change Order stated it was the final resolution of all issues raised up to its issuance date. In addition, the Contractor did not include additional costs associated with legal services in their final payment request to the Authority.

We asked the Contractor to provide us with documentation to support this claim for additional costs. The Contractor did provide us with invoices that indicated they incurred \$8,105 in legal fees.

Examination of these invoices indicate legal services were for legal obligations of Engineers, damages attributable to bad plans, drafting a complaint against the Engineer of the project, non-payment by the Authority on monthly pay requests, and legal work dealing with the Oglala Sioux Tribal Court.

The invoices did not provided sufficient detail to evaluate whether the legal services relating to the legal obligations of engineers and damages attributable to bad plans were covered by the approved Change Order Numbers 1 and 4. Authority records indicate the Contractor did receive compensation from the Authority on their monthly pay requests. Although some of these payments may have taken longer to process than desired, the Contractor was eventually compensated on their monthly pay requests. Information on the legal invoice relating to the Oglala Sioux Tribal Court was insufficient to show how the services were applicable to provisions of the construction contract.

The invoices submitted by the Contractor indicate they only paid \$3,333 of the \$8,104 claimed, leaving a balance due of \$6,034. One invoice was annotated with a note indicating a payment of \$5,987 was made by check number 6307 on February 28, 1997. However, the contractor did not furnish any evidence to support that payment.

This Page Intentionally Blank

Appendices

Appendix 1

Summary of Questioned Costs

Finding	Description	Amount (1)
1	Questionable Oglala Sioux Tribal Employment Rights Office Fee	\$ 49,968

(1) Questioned Costs include unnecessary costs which are those that are not generally recognized as ordinary, prudent, relevant, and/or necessary within established practices.

This Page Intentionally Blank

Appendix 2

Auditee Comments



Oglala Sioux (Lakota) Housing

East Hwy. 18 - PO Box C
Pine Ridge, SD 57770
March 27, 2000

MAILED AND FAXED TO: 303-672-5006

Mr. Robert C. Gwin
Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
Office of Inspector General, Rocky Mountain
633 17th Street, North Tower, 14th Floor
Denver, Colorado 80208-3607

Re: Draft Audit Report on the
Construction Contractor's
Claims (SD 1-36)

Dear Mr. Gwin:

We have received your draft audit report and appreciate the invitation to provide comments. Except in one matter the report, by its omissions of findings, concurs that the Housing Authority's determinations on Western Tricon's contract claims were correct, proper and adequately founded. We are pleased and appreciative. In the document accompanying this letter we have provided some requested text changes to your report that we believe provide additional clarification of several key facts. We hope you can make these modifications. If any of these proposed modifications are not acceptable we would request that they merely be noted for the record.

As to the one Contractor claim that is questioned (who is to be responsible for the TERO fee cost) the Housing Authority continues to believe that under the contract the Contractor was legally responsible for these costs. However, if your finding calling for the Authority to reevaluate and reconsider this issue remains in the final report, we will as suggested re-review our determination on this matter. We cannot however pre-determine now if such a reevaluation would result in a change in our determination.

The only other comment we wish to make involves the double payment to the Tribal TERO Office that is noted in the report. Though this issue does not relate to the Contractor's claims, we understand the reason for your addressing it in this audit. We agree that the double payment was incorrectly made and in fact it was the Authority that both identified this mistake prior to your audit and brought it to the attention of your staff. The Authority is in the process of recovering this \$49,938.00 and we expect to have reclaimed the entire amount within eighteen months. We only ask that these facts, which were not reported in your draft audit, be incorporated into your report either as our comments or, as outlined in the attachment, by your modifying the report text.

Please note that the Authority has recognized that a breakdown occurred in our procedures allowing this double payment to be made. The authorization and instruction to make this second payment was incorrectly given and there was a failure to insure that the payment had not already been made. Though we are pleased that our staff was subsequently able to detect this mistake, we recognize that the error should never have occurred. We are therefore reviewing our practices to determine what additional procedures should be followed to insure that such a mistake does not occur again.

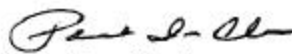
The Authority carefully addressed and considered Western Tricon's claims from the start and rendered its decisions only after examining contract terms, governing law and pertinent facts. We are reassured by your audit that our contract management claims procedure and decision making on this project were proper. Western Tricon was a difficult contractor and the Authority went through a lot in both administering this contract and evaluating Western Tricon's post construction claims.

Mr. Robert C. Gwin
March 27, 2000
Page 2

The Authority would appreciate it if your office could provide an explanation of the comment made in the report regarding you performing an additional audit. This is stated at the end of the draft report's Introduction (page 3). The Authority had understood that the designated scope of the current audit was our construction project SD 1-36 and the claims of Western Tricon. Your draft now indicates for the first time that "a review of the Authority's management controls over its construction activities will be conducted under a separate subsequent audit". The Authority would appreciate an explanation of this new audit including the reasons for it and its scope.

Allow us to close by noting that your audit staff was most polite and proper during this review. Please extend a thank you to them from the Authority.

Sincerely,



Paul Iron Cloud
Chief Executive Officer



Francis (Sonny) Ruff
Chairman of the Board

Enclosure

**Authority Requested Revisions to Audit Report
Or
Alternative Authority Comments
(Oglala Sioux (Lakota) Housing Authority Audit (00-DE-207-1002))**

Cover Memorandum

(Paragraph Two). Please correct that the Contractor's Claim was originally \$415,321.63 and submitted on February 8, 1999. Please also state that the second claim was then increased to \$534,152.00, dated February 28, 1999 and was received by the Housing Authority on March 15.

Executive Summary

(Paragraph Two). Please correct by replacing this paragraph with the following:

The Authority received on February 8, 1999 Contractor claims amounting to \$415,321.63 for additional work that the Contractor considered due under their contract with the Authority. On February 11, 1999 the Authority in writing acknowledged receipt, requested additional documentation be presented by February 24, and agreed to render a decision on the claims within 60 days. In reply, on that same date, the Contractor notified the Authority in writing that it would not provide additional documentation to its claims. As the Authority was finalizing its claim it received unexpectedly on March 15, additional claims and documentation from the Contractor amounting to a new total of \$534,152.00. The Housing Authority did not review the Contractor's additional cost and payment request because the Contractor did not submit their additional claims and documentation within time. On April 6, 1999 the Authority concluded its Findings of Fact and on April 7 denied all of the contractor's claims in a letter to the Contractor.

(Paragraph Twelve). Please modify this paragraph as follows to correctly summarize the TERO fee matters and how it has been handled by the Housing Authority to date:

During our review the Authority informed us that it had discovered after it issued its Findings of Fact that it had overpaid the Oglala Sioux Tribal Employment Rights Office (TERO) and that it is currently recovering this TERO fee overpayment of \$49,968.00 from the Oglala Sioux Tribal Employment Rights by correctly setting off this overpayment against TERO payments that are both owed on other projects and to be paid by the Authority. Authorization and instructions had been incorrectly given at the Housing Authority to pay the TERO fee along with other payments to the Contract, back on December 23, 1998 without verifying that the payment had not already been made.

Introduction

(Paragraph Seven). Please note that the original claim was dated February 1, 1999 but not received until February 8.

(Paragraph Ten). Please correct that the second claim was dated February 28, 1999 but not received by the Authority until March 15.

Findings

(Paragraph Seven, as in our Previous Response to Paragraph Twelve of the Executive Summary). Please correct this finding by replacing everything after the second sentence until “the additional payment is an eligible...” with the following:

...the Authority discovered the overpayment after it concluded its findings. In contacted the tribal TERO office and was advised that it had no financial ability at that time to repay this overpayment. The Authority however has begun to recover this money by offsetting this overpayment against TWRO payments owed on other currently ongoing projects. The Authority anticipates this to be completed within the next eighteen months. The Authority advised and made us aware of the overpayment during our audit. The reason for the overpayment was that authorization and instruction had been incorrectly given to pay the TERO on December 23, 1998. There was a failure to insure that the payment had not already been made...

Appendix 3

Distribution

Oglala Sioux Housing Authority
 Secretary's Representative, 8AS (2)
 Acting Director, Northern Plains Office of Native American Programs, 8API, (2)
 Deputy Assistant Secretary for Native American Programs, 8APINW, , Room 4126
 Assistant Secretary for Public and Indian Housing, P, Room 4100
 Deputy Secretary, SD, Room 10100
 Chief of Staff, S, Room 10000
 Assistant Secretary for Administration, A, Room 10100
 Deputy Chief of Staff, S, Room 10226
 Deputy Chief of Staff for Operations, S, Room 10226
 Deputy Chief of Staff for Programs and Policy, S, Room 10226
 Assistant Secretary for Congressional and Intergovernmental Relations, J, Room 10120
 Senior Advisor to the Secretary, Office of Public Affairs, S, Room 10132
 Deputy Assistant Secretary for Public Affairs, W, Room 10222
 Counselor to the Secretary, S, Room 10234
 General Counsel, C, Room 10214
 Deputy General Counsel, CB, Room 10220
 Office of Policy Development and Research, R, Room 8100
 Assistant Deputy Secretary for Field Policy and Management, SDF, Room 7106
 Director, Office of Department Operations and Coordination, I, Room 2124
 Chief Procurement Officer, N, Room 5184
 Chief Information Officer, Q, Room 3152
 Chief Financial Officer, F, Room 2202
 Deputy Chief Financial Officer for Operations, FF, Room 10166
 Director, Office of Budget, FO, Room 3270
 Director, Enforcement Center, V, 200 Portals Building
 Director, Real Estate Assessment Center, X, 1280 Maryland Ave., SW, Suite 800
 Departmental Audit Liaison Officer, FM, Room 2206
 Headquarters Audit Liaison Officer, Public and Indian Housing, PF, Room P8202
 Field Audit Liaison Officer, 6AF, (2)
 Director of Scheduling and Advance, AL, Room 10158
 Assistant Deputy Secretary for Field Policy and Management, SDF, Room 7108 (2)
 Special Assistant to the Deputy Secretary for Program Management, SD, Room 10100
 Acquisitions Librarian, Library, AS, Room 8141
 Inspector General, G, Room 8256
 The Honorable Fred Thompson, Chairman, Committee on Governmental Affairs, 340 Dirksen Senate
 Office Building, United States Senate, Washington, DC 20510

The Honorable Joseph Lieberman, Ranking Member, Committee on Governmental Affairs, 706 Hart Senate Office Building, United States Senate, Washington, DC 20510

Honorable Dan Burton, Chairman, Committee on Governmental Reform, 2185 Rayburn Bldg., House of Representatives, Washington, DC 20515

Henry A. Waxman, Ranking Member, Committee on Governmental Reform, 2204 Rayburn Bldg., House of Representatives, Washington, DC 20515

Ms. Cindy Fogleman, Subcommittee on Oversight and Investigations, Room 212, O'Neil House Office Building, Washington, DC 20515

Director, Housing and Community Development Issue Area, United States General Accounting Office, 441 G Street, NW, Room 2474, Washington, DC 20548 (Attention: Judy England-Joseph)

Deputy Staff Director, Counsel, Subcommittee on Criminal Justice, Drug Policy and Urban Resources, B373 Rayburn House Office Building, Washington, DC 20515

Steve Redburn, Chief, Housing Branch, Office of Management and Budget, 725 17th Street, NW, Room 9226, New Executive Office Building, Washington, DC 20503