

Accounting & Consulting Group, LLP

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Certified Public Accountants

MCKINLEY COUNTY  
INDEPENDENT ACCOUNTANT'S REPORT  
ON APPLYING AGREED-UPON PROCEDURES  
JANUARY 1, 2005 TO JUNE 30, 2012



MCKINLEY COUNTY  
INDEPENDENT ACCOUNTANT'S REPORT  
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Accounting & Consulting Group, LLP  
Certified Public Accountants

## INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES

Board of County Commissioners of McKinley County  
and New Mexico State Auditor:

We have performed the procedures enumerated below, which were agreed to by the Board of County Commissioners of McKinley County "County" and the New Mexico State Auditor, solely to assist you with respect to the internal controls procedures and disbursements, including those specifically related to Dallago Corporation of McKinley County for the period beginning on January 1, 2005 through June 30, 2012. McKinley County's management is responsible for the County's accounting records. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described below, either for the purpose for which this report has been requested or for any other purpose.

During our procedures, we became aware of an internal investigation related to the scope of the preceding paragraph. Our requests to review the final report from the attorneys were denied. We believe this report was necessary to assist us in gaining an understanding of the dynamics of the facts and circumstances of the relationship and transactions between the County and Dallago Corporation, and potentially may have resulted in reporting additional internal controls deficiencies, including those specifically related to Dallago Corporation of McKinley County for the period beginning on January 1, 2005 through June 30, 2012.

Our procedures disclosed certain findings that are required to be reported under *Government Auditing Standards* and those findings are described in the attached Schedule of Findings.

Following is a list of our procedures and findings. A summary of the findings is contained in the attached Schedule of Findings. **This summary is an integral part of the report and should be read by the reader.**

1. **Procedure:** Determine whether McKinley County complied with the provisions of the New Mexico Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, applicable state procurement regulations, and McKinley County's policies and procedures during McKinley County's procurement of goods and services from Dallago Corporation and any subcontractors associated with the County's contracts with Dallago Corporation. This will include:

- a. Whether McKinley County has adequate, complete documentation on file to substantiate and support that Dallago Corporation was the lowest qualified bidder for the goods and services purchased by McKinley County under the invitation to bid process.

**Finding(s):**

**None noted related to the invitation to bid process. However, did note that the most current Requests for Proposals for plumbing and heating/air conditioning services, which were awarded to Dallago Corporation, are under protest. Also noted that the District Court overturned an award to Dallago Corporation for plumbing service, due to the failure of the County to follow the statutes in the Procurement Code, and ordered the County to reissue a Request for Proposal for those services.**

- b. Whether McKinley County has adequate, complete documentation on file to substantiate and support all of the goods and services provided to McKinley County by Dallago Corporation were received before payments were made.

**Finding(s):**

**The County did have documentation on file before all payments were made to Dallago Corporation. However, as noted in other findings below, from review of this documentation, some transactions did not follow the County's procurement policy in relation to having timely, reasonable, and complete documentation on file before payment was made.**

- c. Whether certain McKinley County employees or officials gave inappropriate or unlawful preferential treatment to the Dallago Corporation during McKinley County's procurement of goods and services from Dallago Corporation and any subcontractors associated with McKinley County's contracts with Dallago Corporation.

**Finding(s):**

**(1) The County did not properly apply the State Procurement Code and New Mexico Administrative Code with respect to the administration and evaluation process related to Request for Proposals #2010-02 for plumbing services, which was awarded to Dallago Corporation.**

**(2) The County paid Dallago Corporation \$20,034.42 in interest related to the late payment of invoices. The determination and calculation of the interest amount was not readily determinable and was in excess of the statutory allowable amount.**

**(3) The County is not properly applying the State Procurement Code, the McKinley County Purchasing Policy and the contract with Dallago Corporation with respect to heating and air conditioning services. The County is purchasing goods that are not on the contract and which are**

in excess of the statutory amount allowed as “small purchases” in the Procurement Code. The County purchased \$50,703.46 for heating/air conditioning units from Dallago Corporation without complying with the Procurement Code and the terms and conditions of the County Purchasing Policy.

- (4) The County paid Dallago Corporation \$27,414.15 for goods and/or services without an invoice being duly processed and authorized.
- (5) McKinley County purchased internal seals for fire training tanks from Dallago Corporation, in the amount of \$8,659.30, that was not on the plumbing contract and was not in compliance with the County Purchasing Policy. McKinley County purchased culverts and related installation services for the Hasler Valley Road from Dallago Corporation, in the amount of \$54,059.13, that was not on the plumbing contract and was not in compliance with the Procurement Code.

**General Comment:** It should be noted that McKinley County’s average expenditures with Dallago Corporation from July 1, 2000 through December 31, 2004 were approximately \$25,000.00 per year. McKinley County’s average expenditures with Dallago Corporation from January 1, 2005 through June 30, 2012 were approximately \$259,000.00 per year. Commissioner Dallago assumed office on January 1, 2005.

2. **Procedure:** Any violations of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978, occurred during McKinley County’s procurement of goods and services from Dallago Corporation and any subcontractors associated with McKinley County’s contracts with Dallago Corporation.

**Findings:**

- (1) Dallago Corporation performed plumbing services regarding the Crownpoint Fire Department Re-Build Sewer System Project amounting to \$23,924.96 prior to the issuance of a Purchase Order by McKinley County. This work was not included in the contractual agreement. Management did not consider this work to be an Emergency Purchase. No Invitation to Bid was issued pursuant to the Procurement Code.
- (2) McKinley County and Dallago Corporation executed a contract renewal for heating/air conditioning professional services beyond the allowable statutory period of four years. The contract was executed by the Procurement Agent/Buyer and Dallago Corporation without approval of the County Commission. This contract was an hourly fee-based contract.

(3) Dallago Corporation installed a duplex lift station and billed McKinley County in November 2011 in the amount of \$55,226.56, pursuant to RFP 2010-12. This RFP was overturned by a Court Order in September 2011 by the 11<sup>th</sup> Judicial District Court. In the ruling, the Court ordered the RFP be reissued, because of various procurement code violations. This purchase was not in accordance with the Procurement Code.

3. **Procedure:** McKinley County has proper internal controls established and in place over procurement transactions and whether those controls are being followed.

McKinley County's internal controls, in the area of procurement transactions appear to be adequately designed based upon the results of our procedures. However, during the performance of our procedures, we found that these controls are not being followed or that they are being overridden by the Commission, management and/or staff.

Supporting this conclusion are the following findings:

Findings:

- (1) The County is not properly applying the State Procurement Code with respect to the issuance and administration of Invitations for Bid and Request for Proposals by not including the 5% New Mexico Preference.
- (2) The County is not properly applying the State Procurement Code with respect to the issuance and administration of Invitations for Bid and Request for Proposals by not providing written "Notices of Award" to the bidders or proposers.
- (3) The County is not properly applying the State Procurement Code with respect to the issuance and administration of Invitations for Bid and Request for Proposals by not issuing Requests for Qualifications related to competitive sealed qualifications-based proposals for architects and engineers on applicable local public works projects.
- (4) The County lacks proper "Tone from the Top", and does not maintain proper oversight or monitoring with regard to the County's procurement activities. The County does not have procedures in place to monitor and mitigate the risk for fraud, misappropriation of assets and the misstatement of financial statements and reports.
- (5) The County has not reviewed their policies to ensure procurement policies are clearly defined, understandable, and do not conflict with other policies.

4. **Procedure:** Whether McKinley County followed the policies and procedures regarding conflicts of interest and related-party transactions during the procurement of goods and services from Dallago Corporation and any subcontractors associated with McKinley County's contracts with Dallago Corporation.

**Findings:**

**We were unable to perform procedures over the County's policies and procedures governing conflicts of interest and related party transactions during the procurement of goods and services, as the County has no formal policies in place. As noted below, the County has not updated there procurement and conflict of interest policies to ensure compliance and conformity with State Statutes**

We were not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion on the accounting records. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of McKinley County and the New Mexico State Auditor and is not intended to be and should not be used by anyone other than those specified parties.

*Accounting & Consulting Group, L.L.P.*

Accounting & Consulting Group, LLP  
Certified Public Accountants  
Albuquerque, New Mexico

August 31, 2012

**State of New Mexico**  
McKinley County  
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*Condition:* The County is not properly applying the State Procurement Code with respect to the issuance and administration of Invitations for Bid and Request for Proposals by not providing written “notices of award” to the bidders or proposers.

*Criteria:* NMAC 1.4.1.24(H), states that “Written notice of award shall be sent to the successful bidder.” NMAC 1.4.1.43 states that “The procurement manager shall promptly provide all offerors who submitted proposals written notice of the award.”

*Effect:* Not properly notifying the bidders and proposers of the award could be grounds for formal protests by the unsuccessful bidder(s) or proposer(s) and potential litigation resulting from any damages.

*Cause:* The County Purchasing Department does not follow the rules promulgated in the New Mexico Administrative Code (NMAC) due to a lack of knowledge of the regulations.

*Auditors’ Recommendations:* The County should implement policies pertaining to the application of the New Mexico Procurement Code and Regulations. In addition, the procurement staff should be provided with formal training related to the New Mexico Procurement Code and applicable regulations.



**State of New Mexico**  
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*Condition:* The County is not properly applying the State Procurement Code with respect to the issuance and administration of Invitations for Bid and Request for Proposals by not including the 5% New Mexico Preference.

*Criteria:* Section 13-1-21(B) NMSA 1978 states that “When a public body makes a purchase using a formal bid process, the public body shall deem a bid submitted by a resident business to be five percent lower than the bid actually submitted.” Section 13-1-21(C)(1) NMSA 1978 states that “When a public body makes a purchase using a formal request for proposals process, five percent of the total weight of all of the factors used in evaluating the proposals shall be awarded to a resident business based on the resident business possessing a valid resident business certificate.”

*Effect:* Not properly evaluating bids and proposals, taking into consideration the 5% New Mexico preference, could result in the protest and potential overturning of the awards and potential litigation against the County.

*Cause:* The County Purchasing Department does not follow the rules promulgated in the New Mexico Procurement Code due to a lack of knowledge of the statutes.

*Auditors’ Recommendations:* The County should implement policies pertaining to the application of the New Mexico Procurement Code and Regulations. In addition, the procurement staff should be provided with formal training related to the New Mexico Procurement Code and applicable regulations.

**State of New Mexico**  
McKinley County  
Schedule of Findings  
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*Condition:* The County is not properly applying the State Procurement Code with respect to the issuance and administration of Invitations for Bid and Request for Proposals by not issuing Requests for Qualifications related to competitive sealed qualifications-based proposals for architects and engineers on applicable local public works projects.

*Criteria:* Section 13-1-120(A) NMSA 1978 states that “For each proposed state public works project, local public works project or construction management contract, the architect, engineer...selection committee ... shall evaluate statements of qualifications and performance data...” Section 13-1-66.1 NMSA 1978 defines a local public works project as “...costing fifty thousand dollars (\$50,000) or more...”

*Effect:* Not properly issuing a Request for Qualifications for the architectural or engineering services on applicable public works projects could lead to the protest and possible overturning of awards to construction projects.

*Cause:* The County Purchasing Department does not follow the rules promulgated in the New Mexico Procurement Code due to a lack of knowledge of the statutes.

*Auditors’ Recommendations:* The County should implement policies pertaining to the application of the New Mexico Procurement Code and Regulations. In addition, the procurement staff should be provided with formal training related to the New Mexico Procurement Code and applicable regulations.

**State of New Mexico**  
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*Condition:* The County did not properly apply the State Procurement Code and the New Mexico Administrative Code with respect to the administration and evaluation process related to Request for Proposals # 2010-02 for plumbing services, which was awarded to Dallago Corporation in the following manner:

1. The County did not follow the requirements of the RFP, including the length of the proposals and the attachment of the fee schedules.
2. The County did not strictly adhere to the New Mexico Administrative Code, including the required number of evaluation committee members and the requirement that the members possess “expertise in the technical requirements of the project, construction design and contracting.”
3. The County did not ensure that the evaluation committee members consider the “fee estimate” as a primary issue in evaluating the RFP.

The County has spent \$190,622.86 on this hourly fee-based contract as of the date of this report.

*Criteria:* NMAC 1.4.38(B) states that “...management shall appoint an evaluation committee prior to the due date for receipt of proposals. The size of the committee should be manageable and include both user and technical support representatives.” NMAC 1.4.43(A) states that “An award shall be made to the responsible offeror whose proposal is most advantageous to a state agency, taking into consideration the evaluation factors set forth in the RFP.”

*Effect:* Not properly administering and evaluating proposals resulting from a Request for Proposals could lead to the protest and possible overturning of awards for services.

*Cause:* The County Purchasing Department does not follow the rules promulgated in the New Mexico Procurement Code due to a lack of knowledge of the statutes.

*Auditors’ Recommendations:* The County should implement policies pertaining to the application of the New Mexico Procurement Code and Regulations. In addition, the procurement staff should be provided with formal training related to the New Mexico Procurement Code and applicable regulations. Particular attention should be given to those Invitations for Bid and Requests for Proposals that include individuals and/or entities that have a potential conflict of interest and/or are related parties.

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*Condition:* The County is not properly applying the State Procurement Code, the McKinley County Purchasing Policy and the contract with Dallago Corporation with respect to heating and air conditioning services. The County is purchasing goods that are not on the contract and which are in excess of the statutory amount allowed as “small purchases” in the Procurement Code. The County purchased \$50,703.46 for heating/air conditioning units from Dallago Corporation without complying with the Procurement Code and the terms and conditions of the County Purchasing Policy.

*Criteria:* Section 13-1-125, NMSA 1978 states that “A central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars (\$20,000) in accordance with applicable small purchase regulations adopted by ...a local public body.... The McKinley County Purchasing Policy states in 2.7.4 that purchases between \$5,000 and \$9,999 will be made when at least three (3) written quotes are obtained and states in 2.7.5 that purchases exceeding \$10,000 require formal bid procedures as stated in Chapter 13, NMSA 1978.

*Effect:* Not properly purchasing goods and services from a vendor, such as Dallago Corporation, is a violation of State statutes and County Policy and could lead to potential litigation and State sanctions.

*Cause:* The County Purchasing Department does not follow the rules promulgated in the New Mexico Procurement Code and the County Purchasing Policy due to a lack of knowledge of the statutes and rules.

*Auditors’ Recommendations:* The County should implement policies pertaining to the application of the New Mexico Procurement Code, Regulations and County Policy pertaining to purchasing. In addition, the procurement staff should be provided with formal training related to the New Mexico Procurement Code, the applicable regulations and the County Purchasing Policy.

**State of New Mexico**  
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*Condition:* The County paid Dallago Corporation \$20,034.42 in interest related to the late payment of invoices. The determination and calculation of the interest amount was not readily determinable and was in excess of the statutory allowable amount.

*Criteria:* Section 13-1-158, NMSA 1978 states that "...upon certification by the central purchasing office or the using agency that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the contractor within thirty days of the date of certification....After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one-half percent per month".

*Effect:* Not properly applying the New Mexico Statutes pertaining to late payment charges to a vendor, such as Dallago Corporation, is a violation of said statutes and could lead to potential litigation and State sanctions.

*Cause:* The County Purchasing Department does not follow the rules promulgated in the New Mexico Procurement Code due to a lack of knowledge of the statutes and rules.

*Auditors' Recommendations:* The County should implement policies pertaining to the application of the New Mexico Procurement Code, Regulations and County Policy pertaining to purchasing. In addition, the procurement staff should be provided with formal training related to the New Mexico Procurement Code, the applicable regulations and the County Purchasing Policy.

**State of New Mexico**  
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*Condition:* The County paid Dallago Corporation \$27,414.15 for goods and/or services without an invoice being duly processed and authorized.

*Criteria:* Section 13-1-158(A), NMSA 1978 states that “No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications...”

*Effect:* Not properly applying the New Mexico Statutes pertaining payments to a vendor, such as Dallago Corporation, without obtaining an invoice and its proper authorization for payment, is a violation of State statutes and could lead to potential litigation and State sanctions.

*Cause:* The County Purchasing Department does not follow the rules promulgated in the New Mexico Procurement Code due to a lack of knowledge of the statutes and rules.

*Auditors' Recommendations:* The County should implement policies pertaining to the application of the New Mexico Procurement Code, Regulations and County Policy pertaining to purchasing. In addition, the procurement staff should be provided with formal training related to the New Mexico Procurement Code, the applicable regulations and the County Purchasing Policy.

**State of New Mexico**  
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*Condition:* Dallago Corporation performed plumbing services regarding the Crownpoint Fire Department Re-Build Sewer System Project amounting to \$23,924.96 prior to the issuance of a Purchase Order by McKinley County. This work was not included in the contractual agreement. Management did not consider this work to be an Emergency Purchase. No Invitation to Bid was issued pursuant to the Procurement Code.

*Criteria:* Section 13-1-169, NMSA 1978 states that “All using agency requests for procurement shall contain a statement of need and the general characteristics of the item, construction or service desired...” Section 13-1-102 states that “All procurement shall be achieved by competitive sealed bid..., except procurement achieved pursuant to the following sections of the Procurement Code...Competitive Sealed Proposals; ...Small Purchases;...Sole Source Procurement;...Emergency Procurement;...Existing Contracts...” Section 10-16-4 Governmental Conduct Act states that “It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer’s or employee’s financial interest or financial position.”

*Effect:* Not properly applying the New Mexico Statutes pertaining payments to a vendor, such as Dallago Corporation, without complying with applicable State Statutes, is a violation of said statutes and could lead to potential litigation and State sanctions. Non-compliance with the Governmental Conduct Act could lead to criminal actions being brought against the elected official and the employee.

*Cause:* Dallago began work on the Crownpoint Fire Department Re-Build Sewer System Project without proper authorization. The County Purchasing Department did not follow the rules promulgated in the New Mexico Procurement Code due to a lack of knowledge of the statutes and rules.

*Auditors’ Recommendations:* The County should implement policies pertaining to the application of the Governmental Conduct Act, the New Mexico Procurement Code, Regulations and County Policy pertaining to purchasing. In addition, the procurement staff should be provided with formal training related to the New Mexico Procurement Code, the applicable regulations and the County Purchasing Policy and the Elected Officials should be provided with training on the Governmental Conduct Act.

**State of New Mexico**  
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*Condition:* McKinley County and Dallago Corporation executed a contract renewal for heating/air conditioning professional services beyond the allowable statutory period of four years. The contract was executed by the Procurement Agent/Buyer and Dallago Corporation without approval of the County Commission. The County has spent \$107,190.87 on this hourly fee-based contract as of May 25, 2012, the date the unallowable extended contract ended.

*Criteria:* Section 13-1-150(B), NMSA 1978 states that “A contract for professional services may not exceed four years, including all extensions and renewals...” There are five exceptions to this statute. Heating/air conditioning professional services is not among them. Governmental Conduct Act 10-16-7 states that “A state agency shall not enter into a contract for services, construction or items of tangible personal property with a public officer or ...with a business in which the public officer...has a substantial interest...unless the contract is awarded pursuant to the Procurement Code...”

*Effect:* Not properly applying the New Mexico Statutes pertaining to contracting with a vendor, such as Dallago Corporation, without complying with applicable State Statutes, is a violation of said statutes and could lead to potential litigation and State sanctions.

*Cause:* Dallago Corporation and the former Procurement Agent/Buyer entered into an agreement without complying with the State Statutes. The County Purchasing Department did not follow the rules promulgated in the New Mexico Procurement Code due to a lack of knowledge of the statutes and rules.

*Auditors' Recommendations:* The County should implement policies pertaining to the application of the Governmental Conduct Act, the New Mexico Procurement Code, Regulations and County Policy pertaining to purchasing. In addition, the procurement staff should be provided with formal training related to the New Mexico Procurement Code, the applicable regulations and the County Purchasing Policy and the Elected Officials should be provided with training on the Governmental Conduct Act.



**State of New Mexico**  
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*Condition:* Dallago Corporation installed a duplex lift station and billed McKinley County in November 2011 in the amount of \$55,226.56, pursuant to RFP 2010-12. This RFP was overturned by a Court Order in September 2011 by the 11<sup>th</sup> Judicial District Court. In the ruling, the Court ordered the RFP be reissued, because of various procurement code violations. Among the Court's orders were the following:

1. Require strict compliance with the requirements of the RFP, including the length of the proposals and the attachment of the fee schedules.
2. Strictly adhere to the New Mexico Administrative Code, including the required number of evaluation committee members and the requirement that the members possess "expertise in the technical requirements of the project, construction design and contracting."
3. Ensure committee members consider the "fee estimate" as a primary issue in evaluating the RFP.

*Criteria:* Section 13-1-102 NMSA 1978 states that "All procurement shall be achieved by competitive sealed bid pursuant to Sections 13-1-103 through 13-1-110 NMSA 1978, except procurement achieved pursuant to the following sections of the Procurement Code...Section 13-1-125 NMSA 1978, small purchases..." Section 13-1-125(A), NMSA 1978 states that "A central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars (\$20,000) in accordance with the applicable small purchase regulations...". Governmental Conduct Act 10-16-4 states that "It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position."

*Effect:* Not properly applying the New Mexico Statutes pertaining to contracting with a vendor, such as Dallago Corporation, without complying with applicable State Statutes, is a violation of said statutes and could lead to potential litigation and State sanctions.

*Cause:* Dallago Corporation should have not commenced work on this project or should have ceased work on this project once the District Court ruled that the RFP for plumbing services was voidable. Also, McKinley County should not have paid for these services.

*Auditors' Recommendations:* The County should implement policies pertaining to the application of the Governmental Conduct Act, the New Mexico Procurement Code, and County Policy pertaining to purchasing. In addition, the procurement staff should be provided with formal training related to the New Mexico Procurement Code, the applicable regulations and the County Purchasing Policy and the Elected Officials should be provided with training on the Governmental Conduct Act.

**State of New Mexico**  
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*Condition:* McKinley County purchased internal seals for fire training tanks from Dallago Corporation, in the amount of \$8,659.30, that was not on the plumbing contract and was not in compliance with the County Purchasing Policy. McKinley County purchased culverts and related installation services for the Hasler Valley Road from Dallago Corporation, in the amount of \$54,059.13, that was not on the plumbing contract was not in compliance with the Procurement Code.

*Criteria:* Section 13-1-102 NMSA 1978 states that “All procurement shall be achieved by competitive sealed bid pursuant to Sections 13-1-103 through 13-1-110 NMSA 1978, except procurement achieved pursuant to the following sections of the Procurement Code:..Section 13-1-125 NMSA 1978, small purchases...” Section 13-1-125(A), NMSA 1978 states that “A central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars (\$20,000) in accordance with the applicable small purchase regulations...”

*Effect:* Not properly applying the County Purchasing Policy and the New Mexico Statutes pertaining to contracting with a vendor, such as Dallago Corporation, without complying with applicable State Statutes, is a violation of said statutes and could lead to potential litigation and State sanctions.

*Cause:* McKinley County and Dallago Corporation executed the purchase of goods and services without complying with the terms of the plumbing contract and the State Procurement Code.

*Auditors' Recommendations:* The County should implement policies pertaining to the application of the Governmental Conduct Act, the New Mexico Procurement Code, Regulations and County Policy pertaining to purchasing. In addition, the procurement staff should be provided with formal training related to the New Mexico Procurement Code, the applicable regulations and the County Purchasing Policy and the Elected Officials should be provided with training on the Governmental Conduct Act.

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*Condition:* The County does not maintain proper oversight or monitoring with regard to the County's procurement activities. The County does not have procedures in place to monitor and mitigate the risk for fraud, misappropriation of assets and the misstatement of financial statements and reports.

During our agreed upon procedures, we noted the following internal control deficiencies:

1. Insufficient controls over the purchases of goods and services from Dallago Corporation.
2. Insufficient controls over the application and execution of the Procurement Code and the related New Mexico Administrative Code pertaining to the purchase of goods and services.
3. Lack of proper "Tone from the Top" regarding County purchasing policies and state law and regulations related to the procurement of goods and services from Dallago Corporation.

*Criteria:* NMAC 6.20.2.11 states:

- A. Every County shall establish and maintain an internal control structure to provide management with reasonable assurance that assets are safe-guarded against loss from unauthorized use or disposition, that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of general purpose financial statements in accordance with GAAP, and that state and federal programs are managed in compliance with applicable laws and regulations. The internal control structure shall include written administrative controls (rules, procedures and practices, and policies that affect the organization) and accounting controls (activity cycles, financial statement captions, accounting applications, including computer systems) that are in accordance with GAAP.
- B. Each County shall develop, establish and maintain a structure of internal accounting controls and written procedures to provide for segregation of duties, a system of authorization and recording procedures, and sound accounting practices in performance of duties and functions. The duties to be segregated are the authorization to execute a transaction, recording the transaction, and custody of assets involved in the transaction.
  - (1) County management must ensure that protection of the public trust is a major focus when granting the authorization to execute business of the County.
  - (2) Employees handling significant amounts of cash must be adequately bonded. Access to assets is permitted only in accordance with County authorization.

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- (3) Receipts, checks or warrants, purchase orders, and vouchers shall be sequentially pre-numbered.
  - (4) The County shall have proper safeguards to protect unused checks and other pre-numbered forms, undeposited cash and other receipts, and facsimile signature plates.
  - (5) Transactions are to be recorded as necessary to permit preparation of financial statements in conformity with GAAP. In addition, Counties shall establish any other criteria applicable to such statements to maintain accountability for assets.
  - (6) Counties shall conduct independent checks on performance and proper valuation of recorded amounts, such as clerical checks, reconciliations, comparison of assets with recorded accountability, computer-programmed controls, management review of reports that summarize the detail of account balances, and user review of computer generated reports.
- C. An internal control structure is required to demonstrate the County's ability to record, process, summarize and report financial data consistent with the following financial statement assertions:
- (1) Rights and ownership;
  - (2) Existence and occurrence;
  - (3) Valuation and allocations;
  - (4) Completeness; and,
  - (5) Presentation and disclosure.
- D. The internal control structure shall demonstrate that the County identifies applicable laws and regulations, and that procedures are designed to provide reasonable assurance that the County complies with those laws and regulations. Internal control procedures shall be established, implemented and documented through County correspondence, manuals, training, and other additional methods. Appropriate internal control procedures shall be adopted by the local board within a County to safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency, and encourage adherence to prescribed managerial policies. The internal control structure shall address all County transactions.

*Effect:* Because certain internal controls have weaknesses in design, key controls are not in place to properly safeguard assets and prevent or detect misstatements within the areas mentioned above.

*Cause:* The County has not taken steps to ensure that key controls are in place to prevent and detect errors or fraud.

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*Auditors' Recommendations:* The County should consider the following:

- Enact and implement policies and procedures pertaining to related party transactions and conflicts of interest.
- Form an audit committee that includes outside financial experts.
- Engage an independent consultant to assist with governance issues, duties and responsibilities.
- Conduct formal training for the Commission and the management team regarding organizational and application internal controls. The training should emphasize a basic understanding of the responsibility of each party as it relates to internal control.
- Conduct formal training for the management team and staff pertaining to the application of the Purchasing Policy and State of New Mexico procurement laws and regulations.
- Evaluate and hold employees accountable for the execution and implementation of the County Purchasing Policy and State procurement laws and regulations.
- Conduct formal training on fraud for all employees and Elected Officials, including Commissioners.
- Establish a whistleblower policy that is consistent with State law and conduct formal training for all employees.
- Establish a formal monitoring policy regarding high risk areas in internal control.

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*Condition:* The County does not have updated and accurate procurement and conflict of interest policies as follows:

- The County's Purchasing Policy Section 2.7.5 "Purchases exceeding \$10,000" and Section 2.10 "Procurement of professional services" are not updated to current guidelines, and are not clearly written to identify which types of procurement are applicable under each policy.
- The County does not have a formal conflict of interest policy and the sections in the County's employee manual that relate to conflicts of interest do not include all requirements of the Governmental Conduct Act related to conflicts of interest and prohibited acts by officials.

*Criteria:* County Procurement Policy Section 2.7.5 of the County's procurement regulations states all purchases exceeding \$10,000 should require formal bid procedures and legal advertisement as stated in Chapter 13, New Mexico State Statutes.

County Procurement Policy Section 2.10 Procurement of Professional Services states that "All professional services having a value not exceeding thirty thousand dollars (\$30,000) will be procured at the best-negotiated price excluding applicable state and local gross receipts taxes. This section excludes services of architects, archeologists, engineers, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers, engineers or surveyors which must be procured by procurement regulations promulgated by the Department of Finance and Administration, General Services Department, or central purchasing office. Ref: Section 13-1-76 & 13-1-125, NMSA 1978"

Section 10-16-3 NMSA 1978 states that "Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office of public services".

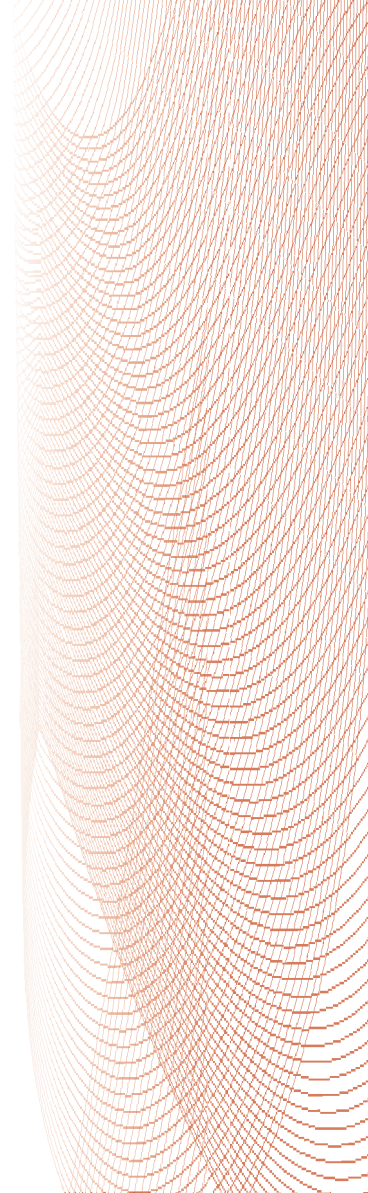
Section 10-16-4 NMSA 1978 states that "A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest.

**State of New Mexico**  
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*Effect:* Having ambiguous or unclear procurement and conflict of interest policies heightens the risk of noncompliance with State Statutes and the risk of management override and abuse. The County and/or one of its commissioners may have violated both the procurement policies and the Government Conduct Act.

*Cause:* The County has not reviewed their policies to ensure procurement policies are clearly defined, understandable, and do not conflict with other policies. Also, the County has not updated their procurement and conflict of interest policies to ensure compliance and conformity with State Statutes.

*Auditors' Recommendations:* The County should update their policies to coincide with State Statutes and the Governmental Conduct Act, and ensure that policies are clearly defined, understandable, and complete.



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