

September 18, 2012

Mora County Courthouse Complex



Special Audit Report to
State Auditor Office
Project Evaluation

 **GPS Griego Professional Services, LLC**
Certified Public Accountants

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STATE AUDITOR

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Independent Accountant's Report on Applying Agreed-upon Procedures

To Management of Mora County:

We have performed the procedures enumerated below, which were agreed to by Mora County and the State of New Mexico solely to assist you with respect to the accounting records and compliance of the Mora County Courthouse project as of January 2012. Mora County management is responsible for Mora County's accounting records and compliance with State of New Mexico Statutes. 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.

Our procedures are as follows:

1. Perform a review of Mora County's minutes to determine proper authorization and approval process occurred with relation to the County Courthouse construction.
2. Evaluate internal controls as required by State Statute, compliance with laws, regulations, and the provisions of contracts or grant agreements as it affects transactions surrounding the Courthouse renovation and construction project. The evaluation may include:
 - a. Review of cash disbursements, invoices and other supporting documentation related to the project (based on a sample).
 - b. Review vendor listing and transactions for potential risk areas.
 - c. Review the RFP which was related to the project to ensure compliance with State procurement requirements.
 - d. Review of bids and other documents related to the proposal process for the Courthouse.
 - e. Review all contracts and related change orders to ensure compliance with State Statutes.
 - f. Review of contract amendments to verify compliance and proper authorization.
 - g. Review of Capital Asset inventory listing to verify proper recording of capitalization.

Findings related to the procedures performed are identified on the attached pages of this report.

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.

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Independent Accountant's Report on Applying Agreed-upon Procedures

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

GRIEGO PROFESSIONAL SERVICES, LLC

Griego Professional Services, LLC

September 18, 2012

Objective and Scope

<u>Name</u>	<u>Title</u>
Paula A. Garcia	Commissioner
John P. Olivas	Commissioner
Laudente T. Quintana	Commissioner
Thomas Garza	Sheriff
Ida E. Mora	Treasurer
Paul Duran	Assessor
Joanne E. Padilla-Salas	County Clerk
Edward Aragon	Probate Judge

Please note that this report covers several administrations which were in office during the remodel of the Old Courthouse and the construction of the Mora County Courthouse Complex. The roster noted above includes the current administration only. Rosters relating to previous administrations can be obtained at the Mora County Administrative offices.

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Background Information

Mora County is 1,931 square miles in northeast New Mexico filled with the scenic Sangre de Cristo Mountains and high grassy plains. The beautiful County is home to roughly 5,000 people with large ranch operations being the main source of income. Mora County has been known as one of the poorest in the state with high unemployment rates and low income per capita. When the Commission chose to embark on a major public works project in 2004, many residents feared the burden it would bring to the County.

It began at the General Election on November 2, 2004. Voters of Mora County narrowly passed the sale of a General Obligation Bond (GOB) for \$2.65 million for the remodel of the Old County Courthouse. The courthouse was in dire need of a remodel, with roof damage, electrical issues, and the lack of capacity to accommodate the County offices. However, in response to the sale, a formal protest by Mora County taxpayers was submitted on December 30, 2004, claiming the wording on the ballot was misleading and unclear that the bond was to cover the entire cost of the project. Disregarding the protest, the County decided to go forth with the remodel and on May 6, 2005 the County procures a Request for Proposal (RFP) for architectural services. On May 23, 2005 Ortega, Romero, & Rodriquez Architects, LLC (Ortega) submitted their proposal in response to the County's RFP. The County Commission approved the "on-call" contract and the contract was formalized with Ortega on June 14, 2005. Fees associated with the contract would accumulate to \$252,889.

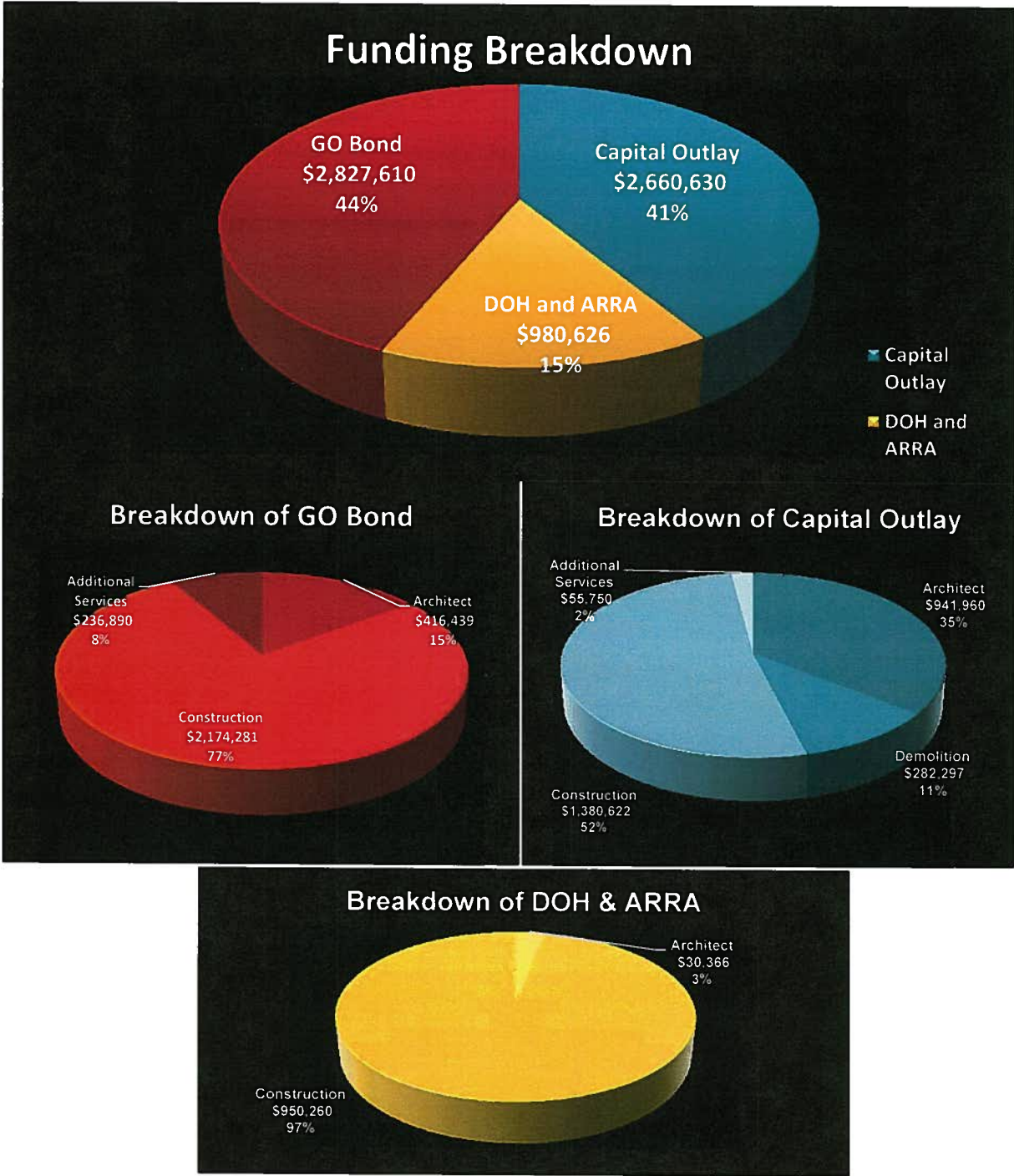
Construction came to a halt on September 8, 2005. The State Fire Marshal examined the building and issued a cease and desist order to evacuate the building because of safety. The current commission scrambled to come up with alternative plan. Money was spent to fix the asbestos problem found in the building and the county attempted to move on with the project. On November 1, 2006 the GOB was passed in the general election for \$2.65 million with the intent of using it for the remodel. The same day a lawsuit was filed to stop work of the Old County Courthouse by Mora Taxpayers on grounds that the bond was intended for the construction of a new courthouse. The County continued to proceed with the remodel and put out a bid for the renovations of the Old County Courthouse on November 17, 2006. On January 2, 2007, the County Commission passed a resolution in favor of proceeding with the new County Courthouse and terminated the remodel of the Old Courthouse. This action occurred prior to a court order from the lawsuit ruling in favor of the taxpayers requiring the County to build a New Courthouse in compliance with the bond issue. The County Commission then approved proceeding with the new Mora County Courthouse Complex on Jan 18, 2007. As a result, the County entered into a new contract with Ortega for architectural services for \$606,850 with a Maximum Allowable Construction Cost (MACC) of \$7.25 million. The remaining \$2.1 million of the GOB was to be spent on the New Courthouse and the difference would be provided from the State from General Fund Appropriations. On April 24, 2009, 2 years after construction on the new Courthouse project began; the Commission

Background Information

approved an amendment to the original work order from Ortega that increased the MACC cost to \$12.1 million. At the time, the Commission had only secured \$5 million in funding which was not sufficient for the initially projected cost of \$7.25 million. Once funds became scarce, the Commission decided to build a shell. The shell did not include windows or doors and the county was forced to use \$500,000 in Federal Stimulus funds to install them in fiscal year 2010. The County offices still remain in the temporary portables next to the unfinished Courthouse. The Commission that started this project has since left and a new Commission has been elected to office.

Allocation of Funds

The funding for the Mora County Courthouse Complex was obtained from four main sources; Capital Outlay, General Obligation Bond, Department of Health, and American Recovery & Reinvestment Act. The largest of the three was the GO Bond with 44% of total funding amounting to \$2,827,610. Capital Outlay consisted of 41%, and the combination of DOH and ARRA were equal to 15% of total funding.



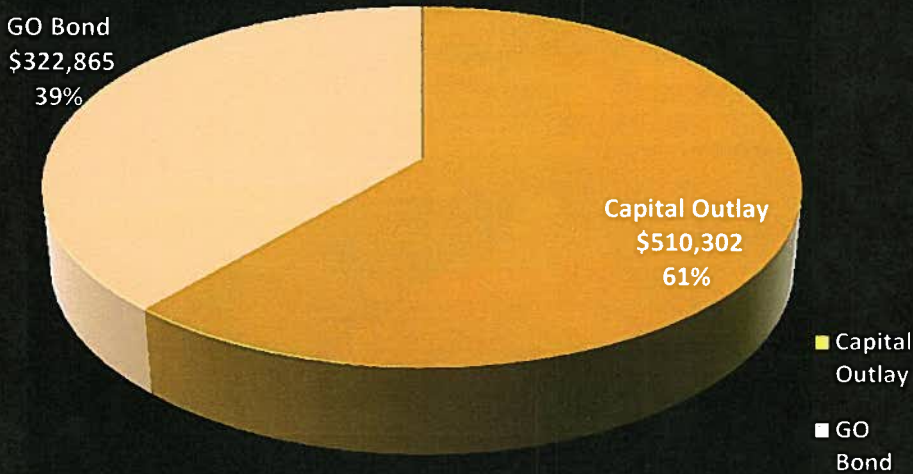
Allocation of Funds

Old Courthouse vs. New Courthouse

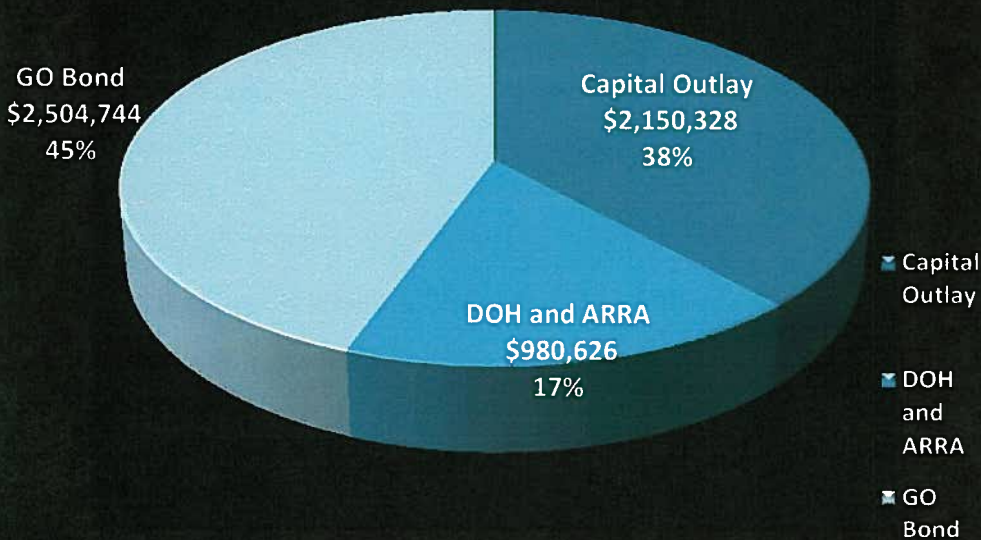
Funding for the remodel of the Old Courthouse included two sources. Capital Outlay was \$510,302, 61% and GO Bond was \$322,865, 39%. The Mora County Courthouse Complex

funding included three sources. The GO Bond was the largest, providing \$2,504,744, 45% of the overall expenditures. Capital Outlay provided \$2,150,328, 38%. DOH and ARRA provided \$980,626, 17% of the overall expenditures.

Old Courthouse Funding



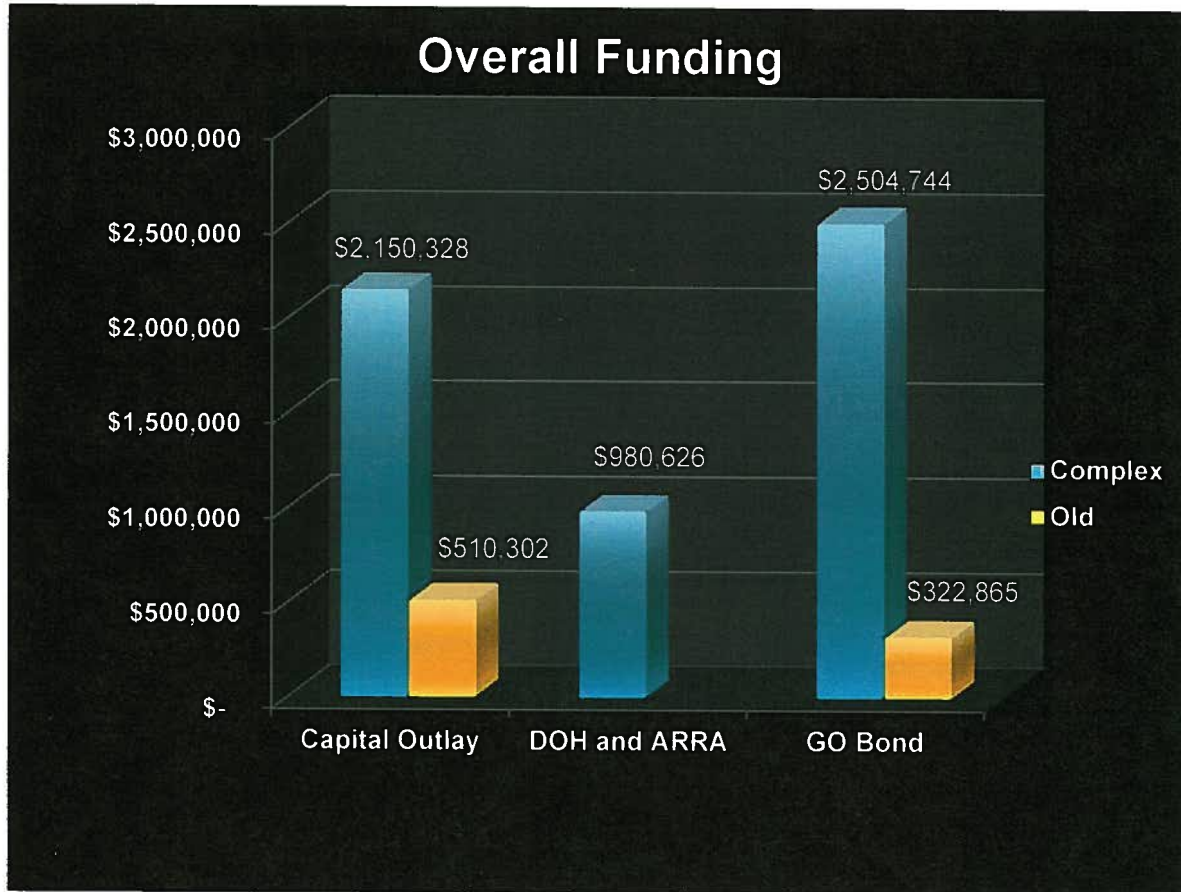
MCCC Funding



Allocation of Funds

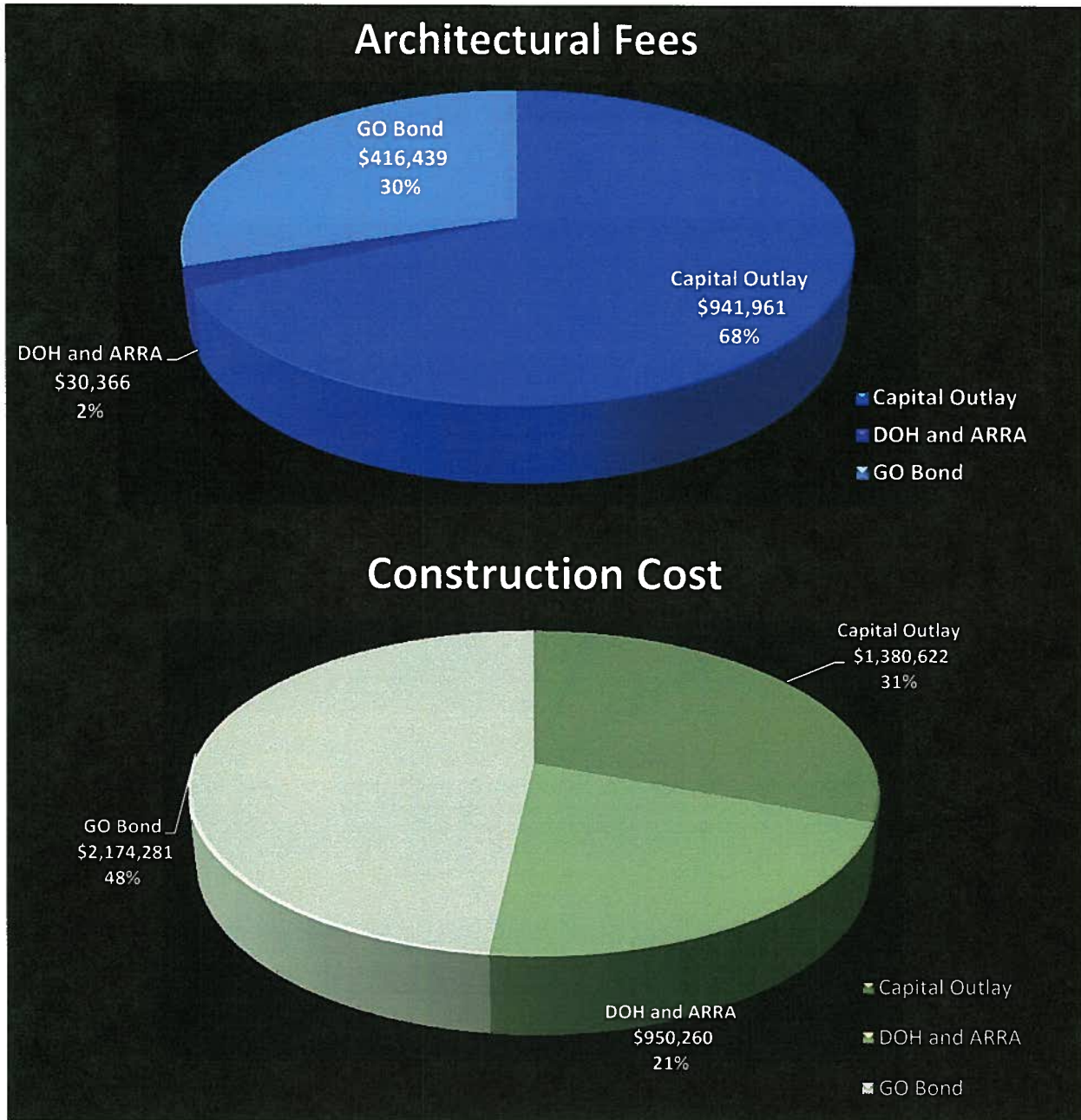
A look at Overall Funding

As shown, the Department of Health and American Recovery and Reinvestment Act only contributed to the construction of the Mora County Courthouse Complex. The Old Courthouse received \$354,416 more from the GO Bond than Capital Outlay. Overall the Old Courthouse received significantly less funding then the new MC Complex due to the suspension of the project.



Architectural Services

Ortega, Romero, & Rodriguez Architects, LLC was the only architectural firm hired to work on construction projects for Mora County during the time period. It should be noted that Ortega also received payments of \$97,000 for the David Cargo Library, \$4,000 for miscellaneous work, \$30,000 for Temporary County Offices, and \$30,000 for Watrous Community Center in fiscal years 2005-2007. These payments were in addition to the \$1,388,765 for the Mora County Courthouse Complex Project. Architectural fees for the Mora County Courthouse Complex made up 21% of the total expenditures for the project. The majority of the fees were funded through State Awards, which were approximately 68%, and totaled \$941,961.

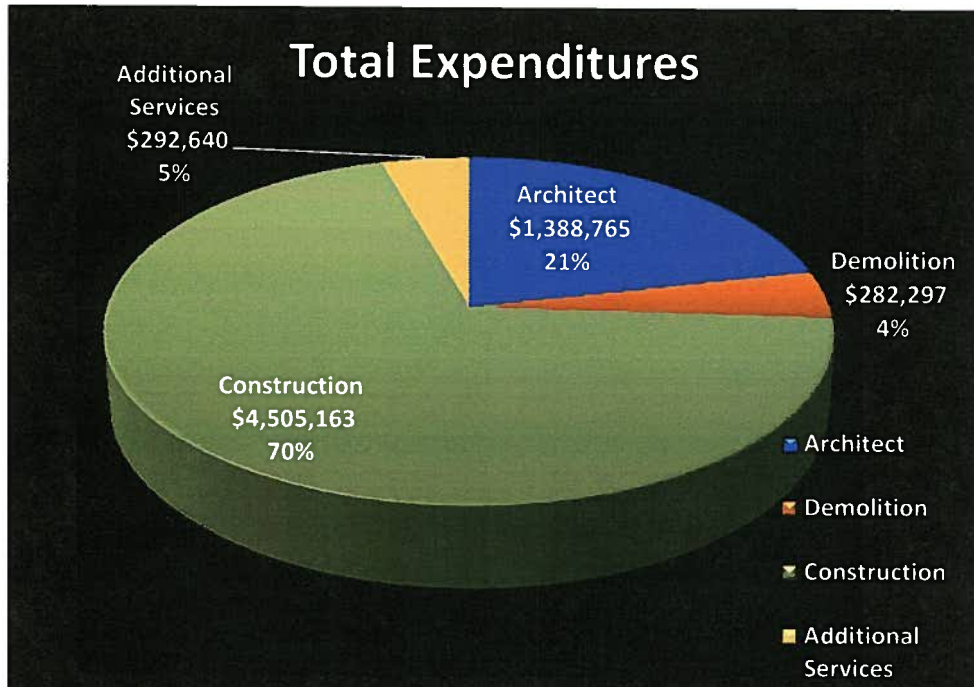


Construction Costs

The largest expenditure for the remodel and MACC was Construction costs accounting for 70% and a total amount of \$4,505,163. Franken Construction was awarded the main contractor for the Mora County Courthouse Complex. Controversy took place after a formal protest by another construction company occurred with accusation of noncompliance during the bid process. They called the attention of other similar projects awarded to Franken Construction after another company's proposal submission was considered "incomplete" due to missing

Allocation of Funds

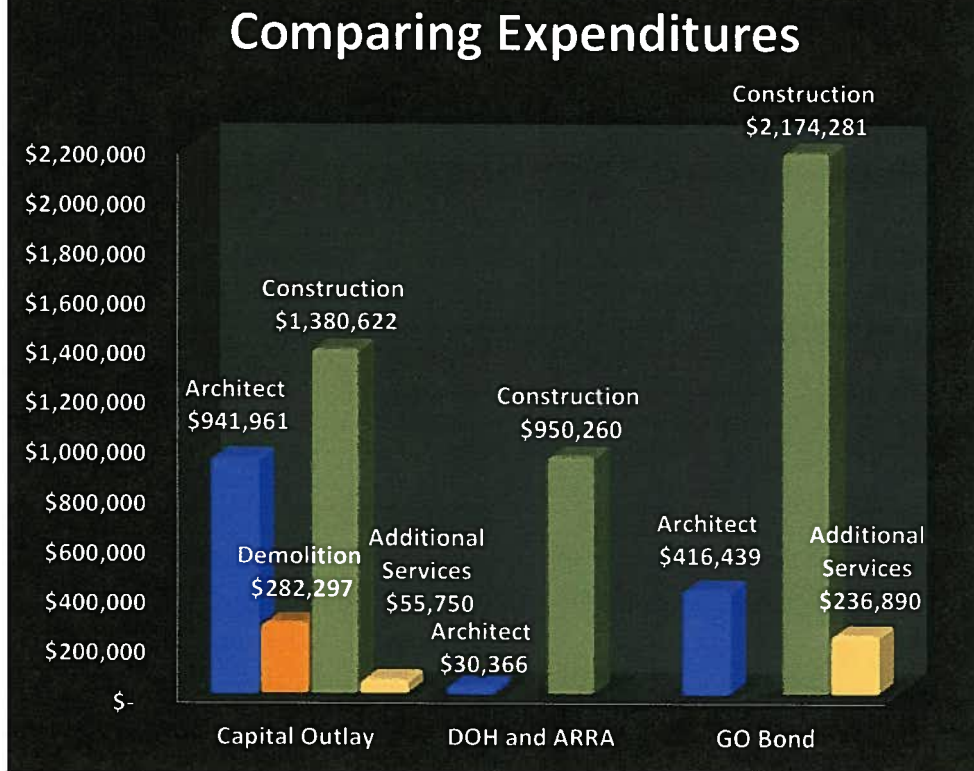
documentation. The packets given to the bidders came from the architect overseeing the proposal project. Proposals awarded to Franken Construction always had the same architect, Ortega, Romero, & Rodriguez Architects, LLC. Construction costs were funded fairly even compared to



architectural fees. Still almost half of Construction costs came from the GO Bond with an amount of \$2,172,281.

Comparing Expenditures

Additional services made up 5% of the total expenditures. This category accounted for other expected or unexpected cost that occurred during the construction of the Mora County Courthouse Complex. The majority of those services were allocated from the GO Bond.



Demolition expenditures were incurred during the Old Courthouse remodel and were paid strictly out of Capital Outlay. The bar graph illustrates

how each individual source of funding was spent by category. The architect was paid out of

Allocation of Funds

Capital Outlay in the amount of \$941,961 and \$30,366 was funded from the DOH and ARRA awards. Lastly, the GO Bond funded architectural fees in the amount of \$416,439. Construction was the biggest expenditure category for each areas of funding: \$1,380,622 from Capital Outlay, \$950,260 from DOH and ARRA and \$2,174,281 from the GO Bond.

Expenditures	Capital Outlay	DOH and ARRA	GO Bond	Total
Architect	\$941,961	\$30,366	\$416,439	\$1,388,765
Demolition	\$282,297			\$282,297
Construction	\$1,380,622	\$950,260	\$2,174,281	\$4,505,163
Other	\$55,750		\$236,890	\$292,640
Total	\$2,660,630	\$980,626	\$2,827,610	\$6,468,866
Complex	\$2,150,328	\$980,626	\$2,504,744	\$5,635,698
Old	\$510,302		\$322,865	\$833,168
Total	\$2,660,630	\$980,626	\$2,827,610	\$6,468,865

Schedule of Findings

Procedure 1

Review minutes to determine if proper authorization and approval process occurred with relation to the project.

Finding 1:

Criteria

In accordance with NMSA 10-15-1, "The board, commission or other policymaking body shall keep written minutes of all its meetings. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. All minutes are open to public inspection. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present." In addition NMSA 10-15-1H (7), "that portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars (\$2,500) that can be made only from one source and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code [13-1-28 NMSA 1978] are discussed during the contract negotiation process. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting." Minutes should reflect discussion and approval of payments for the Mora County Courthouse Complex as well as any change orders that caused an increase in the expenditures.

Condition

We reviewed the minutes, provided by the County from May 5, 2005 to March 8, 2010 to confirm approval of contracts, payments and other items regarding the remodel of the Old County Courthouse and construction of the new Mora County Courthouse Complex. In violation of State Statute, we found the minutes to be poorly documented and vague. Items documented for discussion would be followed with the comment "discussion followed". No details were obtained, maintained or documented relating to issues and concerns that were presented before the commission for approval or as action items at the board meetings. We noted that payments for construction related expenditures were not discussed or approved during the open meetings as required by NMSA 10-15-1H (7). In addition, no action appeared to be taken on these items at the board meetings. It appeared through our review of expenditure documentation that capital expenditures were approved by signature of checks by the Mora County Board of Commissioners President at the time of expenditures; however, the authorization was not reflected in the minutes as required. State Statutes requires that all documentation presented to the Commission during a commission meeting be retained. The recordings of minutes reviewed by Griego

Schedule of Findings

Professional Services did not appear to properly maintain copies of documents handed out to everyone present at the meeting were not maintained.

Recommendation

The lack of formal board approval of capital expenditures may lead to improper, unauthorized or possible fraudulent transactions occurring. Improper internal controls procedures relating to the authorization of expenditures must be implemented to ensure compliance with State Statutes as well as to mitigate potential risks associated with fraudulent activity, legal litigation and errors or misstatements to the financial statements. We recommend that all expenditures, significant and insignificant, related to a project such as the Mora County Courthouse be discussed, approved, and documented in the Board Minutes in detail. In addition, the County should assign a project manager to all construction to ensure compliance with procurement standards. When issues are discussed by teleconference or email, the discussion should be documented and maintained with other board minutes and a copy of any handouts should remain with the minutes.

Implementation Plan of Corrective Action:

The County agrees with the finding and internal controls have been implemented. The County hired a full-time County Manager who works closely with the County Attorney to monitor and ensure compliance with all applicable laws and regulations. The Commission shall direct the County Manager to work with the County Attorney and an independent accountant to make recommendations to the Commission to strengthen existing internal controls and to develop written policies and procedures for approval by the Commission. This will be completed by March 30, 2013.

Under the current administration, the County Manager serves as Project Manager on construction projects and keeps detailed notes on the projects he manages. The Commission will also request funding to hire a Project Manager dedicated to the Mora County Complex. This request for funds will take place by December 30, 2012.

Additionally, the Commission has requested consultation from several state agencies who have agreed to consult on project management. The Commission directs the County Manager to present all expenditures related to the Mora County Complex to the County Commission for approval. Additionally, minutes of all meetings are recorded by the County Clerk and transcribed. The minutes shall contain a record of any actions taken by the Commission as well as a summary of substantive discussion about actions taken by the Commission. The Commission shall review the minutes and approve them as soon as possible, usually at the next regularly scheduled meeting. Finally, no action is taken by the Commission, unless it is listed as an action item and is voted on by a quorum of the

Schedule of Findings

Commission at an Open Meeting. To address the finding regarding minutes of the County Commission meetings, the Commission will assign the County Clerk and appropriate staff to obtain training to ensure that minutes of Commission meetings are in compliance with state law and the related finding in this audit. This training will take place by April 30, 2013.

Finding 2:

Criteria

According to NMSA 6-6-3, agencies should be, “Every local public body shall: A. keep all the books, records and accounts in their respective offices in the form prescribed by the local government division; B. make all reports as may be required by the local government division; and C. conform to the rules and regulations adopted by the local government division.” In addition, Government Auditing Standards (GAGAS 4.12) indicates that “abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts or circumstances.”

Condition

As noted in the minutes and discussions with County officials, the County did not conform to the rules and provisions set forth in the election process. The County constituents passed an election to finance the building of a new County Courthouse. The County officials decided to re-model the Old Courthouse instead, a decision which was later overturned in court as a result of a protest by citizens. The County did not appear to have a clearly defined mission or goals as officials chose to re-model the former courthouse without taxpayer or legislative approval. In addition, the County did not evaluate or assess the performance of the County Courthouse construction as financing was not available in the amounts needed and the County did not monitor the progress of the project to ensure completion.

Recommendation

The County must implement policies and procedures to ensure County missions, goals and objectives are met. County officials and decision makers must utilize necessary resources to ensure compliance with bond issuances and State Statutes.

Schedule of Findings

Implementation Plan of Corrective Action:

The County agrees with the finding. The Commission will assign the County Manager to work closely with the County Attorney to develop and implement policies and procedures to ensure County mission, goals, and objectives are met. The Commission will consult with the County Attorney and bond counsel to ensure compliance with bond issuances and state statutes. Recommendations to the County Commission will be presented for approval by March 30, 2013.

Procedure 2a

Evaluate internal control compliance for cash disbursements, invoices and other supporting documentation related to the project.

Finding 3:

Criteria

The Codification of Statements on Auditing Standards (SAS AU) paragraph 110.03 states that management is responsible for adopting sound accounting policies and for establishing and maintain internal controls that will, among other things, initiate, authorize, record, process and report transactions (as well as events and conditions) consistent with management's assertions. Also, NMSA 6-6-11 states, "It is unlawful for any board of county commissioners, municipal governing body or any local school board, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year, and any indebtedness for any current year which is not paid and cannot be paid, as above provided for, is void."

Condition

In evaluating the County's internal controls over expenditures we found instances where supporting documentation could not be provided and multiple documents were missing including purchase requisitions and invoices. Purchase requisitions that were available for review were not signed and were incomplete. Payment vouchers were not properly filled out and were incomplete with no signatures. Fifty-two cash disbursements were tested through the testwork. Below indicates the exceptions related to the cash disbursements reviewed:

1. 41 of the 52 cash disbursements did not maintain a purchase voucher that was properly completed. Another 5 disbursements did not have a purchase voucher on file.
2. 41 of 52 cash disbursements did not have a signed purchase voucher or purchase requisition.

Schedule of Findings

3. 7 of 52 cash disbursements did not maintain a signed request for payment on file.
4. 4 of 52 cash disbursements did not have supporting documentation such as invoice, purchase requisitions, etc. on file at the County.
5. We noted 1 disbursement in which the check date preceded the grant award.

Recommendation

The County must maintain proper supporting documentation to ensure compliance with State Statutes and internal controls within County financial policies. In addition, the County must implement proper internal control policies and procedures to ensure expenditures are processed in accordance with State Statutes. Expenditures processed in excess of income should be reported to proper authorities as per NMSA 6-6-11, "Any officer of any county, municipality, school district or local school board, who shall issue any certificate or other form of approval of indebtedness separate from the account filed in the first place or who shall at any time use the fund belonging to any current year for any other purpose than paying the current expenses of that year, or who shall violate any of the provisions of this section, is guilty of a misdemeanor."

Implementation Plan of Corrective Action:

The County agrees with the finding. Proper supporting documentation is currently maintained by the County Manager. The Commission will assign the County Manager to work closely with the County Attorney and an independent accountant to develop and implement policies and procedures to improve upon existing internal controls. Included in these policies and procedures will be provisions to ensure compliance with state statutes. This will be completed by March 30, 2013.

Procedure 2b

Evaluate internal control compliance with laws, regulations, and the provisions of contracts for vendor listing and transactions for potential risk areas.

No items noted with regard to this procedure. See findings in other areas.

Procedure 2c

Evaluate County compliance for the RFP which was related to the project to ensure compliance with State procurement regulations with regard to:

- a. Specifications of RFP*
- b. Public notice of RFP*
- c. Evaluating factors*
- d. Awarding of contract*

Finding 4:

Criteria

Section 1.4.1.31(A) of the New Mexico Administrative Code (State Purchasing Regulations – Requests for Proposals) states: “At a minimum, the RFP shall include the specifications for the services or items of tangible personal property to be procured.”

Condition

The County procurement policies and procedures did not include any specific guidance regarding the preparation of RFPs, contracts or contract amendments and only refers to the State Procurement Code for matters not covered in its policy. In accordance with the purposes of the State Procurement Code, the County did not provide for the fair and equitable treatment of all persons involved in the procurement of the Courthouse construction, maximized the purchasing value of public funds appropriated to the County for the project, and provided safeguards for maintaining a procurement system of quality and integrity regarding the Courthouse construction. The actual RFP for the Mora County Courthouse did not include the specification to build or oversee the construction of the building. The County paid the architects and contractors over \$6.5 million of public monies between the re-model and new construction without completion of the project.

Recommendation

The County must ensure that its RFPs fully include all of the specifications for the services order items of tangible personal property to be procured.

Implementation Plan of Corrective Action:

The County agrees with the finding. The Commission will assign the County Manager to coordinate training on the procurement process by Property Control to ensure that the Commission and the County Manager are in compliance with all statutory requirements. This will take place before April 30, 2013. Additionally, the Commission will assign the County Manager to work with the County Attorney to develop appropriate policies and procedures to guide the procurement process. This will be completed by May 30, 2013. The Commission will hire a separate Project Manager dedicated to the Mora County Complex subject to approval of an appropriation by the legislature to secure additional funding. This shall occur on or before May 30, 2013. The Project Manager will follow state statutes with regard to procurement and work closely with advisors from the Administrative Office of the Courts.

Schedule of Findings

Finding 5:

Criteria

Section 13-1-113 NMSA 1978 indicates, “A) An invitation for bids or a notice thereof shall be published not less than ten calendar days prior to the date set forth for the opening of bids; B) Central purchasing offices shall send copies of the notice or invitation for bids involving the expenditure of more than twenty thousand dollars (\$20,000) to those businesses that have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services.”

Condition

Evidence was not maintained to indicate that the county gave proper public notice required. The County did not follow procurement requirements for services in excess of statutory limits.

Recommendation

The County must be active and the primary decision maker when soliciting or awarding a contract. All decisions must be made within Statutory and County guidelines. The County must implement policies and procedures which ensure compliance with State procurement requirements.

Implementation Plan of Corrective Action:

The County agrees with the finding. The Commission will assign the County Manager to work with the County Attorney to develop policies and procedures relating to the procurement process that address the matter of soliciting and awarding of contracts. These policies and procedures will explicitly address the matter of the County Commission as the primary decision maker with regard to contracts. These policies and procedures will be in place by April 30, 2012. The County Commission has asked for and received training from the Attorney General’s Office regarding the Open Meetings Act and the Governmental Conduct Act. Additionally, the County Attorney has provided information and training regarding the Anti-Donation Clause. The County Attorney in coordination with the County Manager will work to ensure that all actions by the Commission regarding procurement be taken in a properly noticed Open Meeting. Additional training will be requested regarding procurement from the Association of Counties.

Finding 6:

Criteria

13-1-114 NMSA 1978 states the request for proposals shall state the relative weight to be given to the factors in evaluating proposals.

Condition

In our review of the RFP for the construction contract for the Mora County Courthouse Complex, six companies responded to the bid. Documentation available showed bids for Lumar, MSR, and RVC were missing the same Fair Practice Act Form in their packets, while Blue Sky was missing multiple forms. Franken and Longhorn appeared to be the only bidders with complete packets with Longhorn being the highest bid out of all six companies. Lumar, MSR, RVC, and Blue Sky were stated as non-responsive due to missing forms which made Franken the only choice for the award due to Longhorn's high bid. The following day, Lumar advised the County of a formal protest believing they had a responsive bid. The reason for their disqualification, along with the rest of the bidders was incomplete and lacking forms. The forms came from the Spec. Books given to them by Ortega, Romero, and Rodriguez Architects. The letter mentions a similar situation occurring in June 2006 with the David Cargo Library, with a similar incident of missing documents and the bid being awarded to Franken. Lumar requested that the County reject all bids and ask for a re-bid. The County ignored the protest and awarded the project to Franken Construction.

Each individual bids document was examined and recalculated to ensure the accuracy of the spreadsheets. It was found that Franken's total \$4,010,500 on their bid form was incorrect. The total should have been \$4,199,696 which did not make Franken the lowest bidder out of the six companies.

Recommendation

The County must ensure compliance with 13-1-114 NMSA 1978 and ensure relative weight to be given to the factors in evaluating proposals. The County can accomplish this goal through active participation and knowledge of the RFP process. Active participation can be achieved through the assignment of a project manager by the County. A project manager will ensure the County's best interests are met and ensure the project's compliance with State Statutes and regulations.

Schedule of Findings

Implementation Plan of Corrective Action:

The County agrees with the finding. The Commission will assign the County Manager to work with the County Attorney and conduct training for the Commission and staff on state requirements relating to procurement. The Commission will also assign the County Manager to work with the County Attorney in developing policies and procedures for approval by the Commission that will ensure compliance with state law. These policies and procedures will be completed by April 30, 2013.

Finding 7:

Criteria

For proper internal control, it is a prudent business practice not to solicit or accept any bid or proposal from a person who directly or indirectly participated in the preparation of specifications on which the competitive bidding was held. In accordance with Section 10-16-13 NMSA 1978, "no state agency or local government shall accept a bid or proposal from a person who directly participated in the preparation of the specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency shall exercise due diligence to ensure compliance with this section."

Condition

There was an inherent conflict of interest with Ortega, Romero, & Rodriguez Architects, LLC and they had an unfair advantage during the bidding process since the contractor drafted the RFP it ultimately bid on and was awarded. The county did not oversee the award process and Ortega handled all documents and evaluations. The contractor had an unfair advantage during the bidding process since the County did not involve itself fully in the award process which was initialized and awarded primarily by the architectural firm that assisted in setting the RFP requirements.

Recommendation

The County must not award contracts to a contractor without the involvement of a County project manager and or assistance from State agencies awarding funds to the County. To avoid any conflict of interest in the future, the County should develop and implement a procurement policy that disallows the practice of using the architectural firm as the County's primary awarding decision maker.

Schedule of Findings

Implementation Plan of Corrective Action:

The County agrees with the finding. The Commission will assign the County Manager to work with the County Attorney and conduct training for the Commission and staff on state requirements relating to procurement. The Commission will also assign the County Manager to work with the County Attorney in developing policies and procedures for approval by the Commission that will ensure compliance with state law. These policies and procedures will be completed by April 30, 2013.

Procedure 2d

Evaluate state statute compliance with bids and other documents related to the proposal process for the project.

Finding 8:

Criteria

Section 13-1-107 NMSA 1978 states “bids shall be opened publicly in the presence of one or more witnesses at the time and place. The amount of each bid and each bid item, if appropriate, and such other relevant information as may be specified by the state purchasing agent or a central purchasing office, together with the name of each bidder, shall be recorded, and the record and each bid shall be open to public inspection.”

Condition

The County could not provide the original sealed time-stamped envelope in which the proposal was received. The County also did not document the opening of the proposals with respect to witnesses present, date, time, and place.

Recommendation

The County must develop policies and procedures that incorporate State Statutory requirements. The State procurement rules are very specific and provide detailed guidance relating to purchases; including construction.

Implementation Plan of Corrective Action:

The County agrees with the finding. The Commission will assign the County Manager to work with the County Attorney and conduct training for the Commission and staff on state requirements relating to procurement. The Commission will also assign the County Manager to work with the County Attorney in developing policies and procedures for approval by the Commission that will ensure compliance with state law. These policies and procedures will be completed by April 30, 2013.

Schedule of Findings

Procedure 2e

Examine all contracts and related change orders to ensure compliance with State statutes.

Finding 9:

Criteria

Pursuant to the Procurement Code, “The purposes of the Procurement Code are to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity” Section 13-1-29(C) NMSA 1978.

Condition

The County’s RFP for the project was for architectural services for the remodel of the Old County Courthouse. After the County was forced to stop construction on the remodel their only choice was to build the Mora County Courthouse Complex. This new project was a change in scope, specifications, and compensation for the services. The county did not issue another RFP. They extended their original contract that did not have a provision that allowed for a significant change in the scope of work and compensation.

Recommendation

The County should ensure that its RFPs fully include all of the specifications for the services order items of tangible personal property to be procured. Unless the RFP and contract have specifications and provisions that allow for a significant change in the scope work and compensation to the contractor, the County should not amend its contracts for these purposes. Instead, the County should issue another request for bids or proposals. As long as the scope of work is not completely changed, the County should clearly include provisions in its contracts allowing for specific changes in the scope of work, compensation to the contractor, or other amendments.

The County should implement sound internal controls to ensure compliance with the State Procurement Code. The County should provide better oversight over its employees during the preparation of RFP’s, the selection of qualified businesses, and the preparation and approval of purchasing contracts and contract amendments.

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Implementation Plan of Corrective Action:

The County agrees with the finding. The Commission will assign the County Manager to work with the County Attorney and conduct training for the Commission and staff on state requirements relating to procurement. The Commission will also assign the County Manager to work with the County Attorney in developing policies and procedures for approval by the Commission that will ensure compliance with state law. These policies and procedures will be completed by April 30, 2013.

Procedure 2f

Evaluate internal control compliance with laws, regulations, and the provisions of contracts for contract amendments to verify proper authorization

Finding 10:

Criteria

According to Section 13-1-158 NMSA, Payments for purchases:

“A. 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.”

“B. Unless otherwise agreed upon by the parties or unless otherwise specified in the invitation for bids, request for proposals or other solicitation, within fifteen days from the date the central purchasing office or using agency receives written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site and received, the central purchasing office or using agency shall issue a written certification of complete or partial acceptance or rejection of the services, construction or items of tangible personal property.”

Section 6 of the subject contract states : “Invoices/Payments: Incremental payments, based on a pre-determined payment schedule to be set by the Contractor and the County Manager, shall be paid upon a detailed billing approved by the County Manager and at least one Commissioner.”

Condition

The County did not certify that the goods and services were received prior to paying the contractors a total of \$6,468,866. All of the invoices paid by the County were detail on an excel spreadsheet with numbers and percentages; however, no descriptions of the services performed. There was no evidence on the invoices that anyone from the County approved or examined the invoices to insure services had been provided or percentage of completion was accurate. The only signature located on the invoice was an architect from

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Ortega, Romero, & Rodriquez Architects, LLC. The County's only approval was noted by signature on the processed check.

Recommendation

The County must review the invoices and request detailed supporting documentation from the contractors as needed to thoroughly verify, document and certify that the services were received before any payments are made to a contractor. The County should develop and implement procurement policies and procedures to communicate the requirements of Section 13-1-158 NMSA 1978 to its employees and the County Commission as well as fully comply with the State Procurement Code. The County must provide better oversight over its employees during the approval of invoices and related payments.

A Project Manager should be utilized to oversee this and other large projects. This position may be filled internally or through a contract agreement. The main focus of this position would be to monitor contract progress, vendor invoices, and payments on the behalf of the County. In this case, the County relied solely on Ortega, the contracted architectural firm, to monitor the project on behalf of the County. This appears to have been a conflict of interest as the firm was being paid under the contracts as well as monitoring duties for the County. It is unknown if this contributed to the dramatic increase in construction and architectural fees and construction costs.

Implementation Plan of Corrective Action:

The County agrees with the finding. The County Manager will closely monitor all projects and keep the Commission informed regarding the status of all projects as part of the monthly County Manager Report. The County Attorney, along with the Association of Counties will conduct a training regarding the requirements of Section 13-1-158 NMSA 1978 for the Commission and any employees necessary to ensure compliance.

Procedure 2g

Evaluate internal control compliance with laws, regulations, and the provisions of contracts for Capital asset inventory listing to verify proper recording of capitalization

Finding 11:

Criteria

According to NMSA 12-6-10, "The governing authority of each agency shall, at the end of each fiscal year, conduct a physical inventory of movable chattels and equipment costing more than five thousand dollars (\$5,000) and under the control of the governing authority. This inventory shall include all movable chattels and equipment procured through the capital program fund under Section 15-3B-16 NMSA 1978, which are

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assigned to the agency designated by the director of the property control division of the general services department as the user agency. The inventory shall list the chattels and equipment and the date and cost of acquisition. No agency shall be required to list any item costing five thousand dollars (\$5,000) or less. Upon completion, the inventory shall be certified by the governing authority as to correctness. Each agency shall maintain one copy in its files.” The County capital asset listing should also include all non-movable items such as buildings and the costs associated with the building and or construction of the building must be capitalized to ensure accountability of the County’s assets is accurate.

Condition

It appears that the County is maintaining a capital asset listing in accordance with State Statutes and the County is able to properly report its capital assets in the County’s annual financial statements. It does not appear, however, that the County has certified its annual physical inventory.

Recommendation

The County must continue its maintenance of capital assets and depreciation listing. In addition, the County should implement a policy and procedure to ensure the physical annual inventory is certified and maintained in the County’s records.

Implementation Plan of Corrective Action:

The County agrees with the finding. The County Manager will implement a policy and procedure regarding physical annual inventory in accordance with state law.

Other Matters Noted:

Finding 12:

Criteria

Proper internal controls and compliance with State Procurement does not allow for goods and services to be authorized in excess of budgeted or funded appropriations pursuant to Section 6-6-6 NMSA 1978, “When any budget for a local public body has been approved and received by a local public body, it is binding upon all officials and governing authorities, and no governing authority or official shall allow or approve claims in excess thereof, and no official shall pay any check or warrant in excess thereof, and the allowances or claims or checks or warrants so allowed or paid shall be a liability against the officials so allowing or paying those claims or checks or warrants, and recovery for the excess amounts so allowed or paid may be had against the bondsmen of those officials.”

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Condition

Initial GOB issuances maintained the GOB was issued and secured for the purpose of designing, constructing and improving a courthouse. A formal protest by Mora County taxpayers was submitted due to the misleading wording that the bond was to cover the entire cost of the project. The protest was later taken to court. Despite the unclear outcome, the County proceeded with the remodel of the Old County Courthouse and utilized \$252,889 of the GOB during that time. A Court Order was later issued to stop the remodel and demolish the Old County Courthouse and proceed with the new Mora County Courthouse Complex. The demolition was an additional \$69,976 for a total of \$322,865 from the GOB used on the Old County Courthouse. The County's decision to remodel the Old Courthouse was a violation of the original bond issuance.

The initial proposal approved by the County commission was for an estimated cost of \$7.25 million. This was \$1.25 million in excess of the funding acquired for the project at the time. We noted instances in which expenditures were processed and paid prior to the grant being award to the County; i.e. an "anticipated" grant was utilized and payment was processed prior to actual funding authorization. As a result, the County violated Section 6-6-6 NMSA 1978.

Recommendation

The County must not anticipate funding and process expenditures prior to the awarding of funding from the State of New Mexico or other source. The County must implement policies and procedures to insure compliance with bond covenants and funding requirements. The expenditure of funds prior to appropriation is a direct violation of State Statute and may result in exposure to potential liabilities and litigation relating to the funding and excess expenditures.

Implementation Plan of Corrective Action:

The County agrees with the finding. The Commission will assign the County Manager to work closely with the County Attorney and an independent accountant to develop and implement policies and procedures to improve upon existing internal controls, including the requirement under state law that no funds shall be expended in excess of available funds. Included in these policies and procedures will be provisions to ensure compliance with state statutes. This will be completed by March 30, 2013.

The County Commission will assign the County Manager to consult with bond counsel to determine whether bond covenants have been met by December 30, 2012. Additionally, the Commission will assign the County Manager to work with the County Attorney and bond counsel to develop policies and procedures to adhere to bond covenants by March 30, 2013.

