

**STATE OF NEW MEXICO
OFFICE OF THE STATE AUDITOR**



**SPECIAL AUDIT REPORT
NEW MEXICO CORRECTIONS DEPARTMENT**

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State Auditor
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TABLE OF CONTENTS

I. EXECUTIVE SUMMARY 2

II. BACKGROUND..... 6

A. Context and Procedural History of the Special Audit..... 6

B. Procurement of Goods and Services by NMCD from Omni, HEI and Advantage Asphalt..... 8

1. Small Purchases 8

2. Agency Price Agreements and Statewide Price Agreements 8

3. Emergency Procurements 9

C. The Relationship between NMCD’s Former Facilities Manager and Omni and HEI..... 10

III. SCOPE AND METHODOLOGY 12

IV. FINDINGS RELATED TO OMNI DEVELOPMENT CORPORATION 14

V. FINDINGS RELATED TO ADVANTAGE ASPHALT & SEAL COATING... .. 29

VI. FINDINGS RELATED TO HEI, INC..... 34

VII. REFERRAL OF THE SPECIAL AUDIT REPORT 50

VIII. EXIT CONFERENCE 51

IX. RESPONSE TO THE SPECIAL AUDIT BY THE NEW MEXICO CORRECTIONS DEPARTMENT..... 52

EXHIBITS..... 55

I. EXECUTIVE SUMMARY

On June 15, 2010, the now-former Secretary of New Mexico Corrections Department (NMCD) notified the State Auditor of alleged criminal acts that occurred within the Department. The Secretary provided the notification in accordance with Section 12-6-6 NMSA 1978, which requires that government agencies immediately report to the State Auditor “any violation of a criminal statute in connection with financial affairs.” In his letter, the Secretary expressed that NMCD was concerned about the relationship between NMCD’s former Facilities Manager and certain contract vendors. He stated that there may have been “undisclosed conflicts of interest” and that the former Facilities Manager may have received personal financial gain from her relationships with certain vendors. He also informed the State Auditor that the former Facilities Manager may have shared confidential information with a contract vendor in order to allow the vendor to better compete, and that the former Facilities Manager allegedly threatened NMCD’s external auditor during a meeting with the auditor. The former Facilities Manager, who began her employment at NMCD in 1999, had resigned from the Department in May 2010, approximately one month prior to the notification letter.

The Secretary also informed the State Auditor that NMCD was seeking assistance from the New Mexico Attorney General’s Office (AGO) to conduct the investigation. He also stated that, “[i]f necessary, NMCD would like assistance from the [Office of the State Auditor] OSA to conduct a special audit.” Based on information provided by NMCD and the OSA’s discussions with law enforcement authorities, the OSA determined that a special audit should be conducted. NMCD officials and employees worked diligently throughout the special audit process to cooperate with OSA auditors and respond timely to the auditors’ requests for information and documents.

The scope of the special audit covered NMCD’s transactions involving contract vendors Omni Development Corporation (Omni), Advantage Asphalt and Seal Coating (Advantage Asphalt), and HEI, Inc. (HEI) that occurred from fiscal year ended June 30, 2007 through fiscal year ended June 30, 2010. We tested all disbursements (100 percent coverage) made by NMCD during that time period for each of the three vendors. Those disbursements amounted to the following:

- Omni: 52 transactions for a total \$4,056,950 in disbursements;
- Advantage Asphalt: 4 transactions for a total \$1,199,445 in disbursements; and
- HEI: 228 transactions for a total \$4,226,881 in disbursements.

During our special audit we performed procedures related to certain risk areas, including whether transactions may have occurred that did not benefit NMCD, whether NMCD had adequate policies and procedures in place to safeguard against improper transactions and whether NMCD followed those policies and procedures. We also performed procedures in order to gain an understanding of how the former Facilities

Manager may have impacted NMCD's transactions with Omni, HEI and Advantage Asphalt. This special audit report contains findings that are the results of our procedures.

Overall, our special audit identified a range of concerning deficiencies in NMCD's internal controls that were common among transactions with Omni, Advantage Asphalt and HEI. In many cases, we found that internal controls that should exist to shield NMCD from improper processing of transactions were ineffective or completely nonexistent. We also found that certain transactions were not executed in the best interest of NMCD. Our special audit also revealed that certain price agreements were easily susceptible to manipulation, and certain price agreements did not contain provisions or language sufficient to protect the best interest of NMCD or the State.

Furthermore, it is critical to note that in certain instances it appears the former Facilities Manager played a key role in the exploitation of certain weaknesses in NMCD controls and price agreements. In other instances, we found that the former Facilities Manager overrode proper internal controls implemented by NMCD. What is more, based on our interviews with various current and former NMCD employees, and our review of the former Facilities Manager's emails, we found sufficient basis to conclude that, in certain situations, the former Facilities Manager acted in the best interest of certain vendors and contrary to her official duties as NMCD Facilities Manager. In sum, the former Facilities Manager's actions created the appearance of impropriety and, in certain instances, appeared to benefit certain vendors at the expense of NMCD and the State.

With regard to the special audit's findings, in numerous instances NMCD processed and approved purchase orders and invoices containing unsupported and/or unallowed costs. For certain transactions, NMCD made payments to vendors even though the vendor did not provide detail on the materials purchased and the invoice was not descriptive enough to identify what goods or services were provided. In other instances, NMCD made payments for "contingencies" or "allowances" despite not having any support that detailed what constituted the contingencies or allowances. The amounts paid by NMCD in connection with some of these types of transactions were significant. For instance, in 101 instances for total disbursements of \$1,991,527, the invoices provided by HEI were not descriptive enough to identify the goods or services provided to NMCD. We also noted unsupported and/or unallowed costs paid to Omni in the amount of \$1,294,458. Without being able to determine clearly what materials a vendor purchased and how much materials a vendor utilized for a particular project, this creates the opportunity for vendors to overbill NMCD for costs in violation of contract provisions.

Related to this issue, we noted certain transactions processed under price agreements where the vendors submitted quotes for materials and labor costs that were unsupported. In some cases, vendors submitted multiple quotes for the same project without any justification for the increases or changes in the quotes. For example, Omni submitted two quotes for one project, but when we compared the two quotes we noted that the second quote reflected an increase of more than \$94,000 in materials costs without any justification for the increase. In another instance, HEI submitted three inconsistent quotes for generators. The amount of the quotes increased by \$60,000 from

the first quote to the third quote, but HEI did not provide an explanation for the increase in costs for the generators despite no change in the project's scope. NMCD also failed to request support or any explanation for the increases or changes. Since the vendor did not provide, and NMCD did not request, details on the quote increases or changes, this also creates a risk that vendors may have overbilled NMCD for the actual costs of a particular project.

Our testwork also revealed weaknesses in price agreements that made the agreements easily susceptible to potential manipulation, fraud and abuse. For example, one price agreement did not contain any language restricting the vendor's use of subcontractors, and we only discovered the vendor's use of subcontractors through the former Facilities Manager's emails. The vendor did not provide support to NMCD regarding its use of subcontractors (i.e., pricing, labor costs, certification, etc.) and NMCD has no record of any kind, including subcontractor invoices, or any kind of pricing details on jobs performed either in whole or in part by the subcontractors. Without knowledge of the use of subcontractors, NMCD cannot ascertain whether the vendor adhered to critical elements in the price agreement or whether the subcontractors are properly licensed.

Similarly, through our review of another price agreement, we found that the scope of work for the price agreement did not sufficiently limit the scope of goods or services to be provided or payment terms (price) in a manner that would allow us to determine whether the subsequent, related transactions were within the price agreement's scope. NMCD used the agreement for 84 transactions with HEI amounting to \$1,474,870. Forty-nine out of the 84 transactions, amounting to \$1,331,406, appeared to have been unallowed purchases under the price agreement. Due to the insufficient limitations contained in the price agreement's scope of work, there is a significant risk that additional unallowed purchases have been made by other agencies using the price agreement. Also, the weaknesses of the price agreement increase the risk that vendors are able to exploit those weaknesses in the price agreement by charging for services and goods beyond what is necessary or allowed.

In addition to these troubling findings, we also discovered numerous contract violations, procurement violations and improper accounting practices. In numerous instances we found that there was no evidence that NMCD inspected goods and services prior to making payments to a vendor or the required signature verifying the receipt of goods and services was not on the invoice. In one case we found that a project was improperly awarded to a vendor, and in another case the New Mexico General Services Department (GSD) destroyed price agreement documentation prior to the expiration date for retention of the documents established by administrative rule. For one vendor, we noted that the vendor subcontracted work under specific price agreements without the knowledge of NMCD. In fact, we only discovered the vendor's use of subcontractors through our review of the former Facilities Manager's emails. Moreover, we identified that NMCD was overbilled for certain costs, and one vendor appears to have misrepresented to NMCD the actual costs of certain materials that the vendor purchased and resold to NMCD. For example, documentation suggests that HEI significantly overcharged NMCD more than \$180,000 for the cost of four back-up generators.

Additionally, we noted HEI's documents revealed numerous instances of significant markups on materials sold to NMCD. One markup amounted to 170 percent of the actual cost to HEI for the materials. Certain variances between the price schedules used by the vendor and the vendor's actual costs casts doubt on whether the method of procurement used by the State benefits taxpayers.

As previously mentioned, it appears the former Facilities Manager played a key role in the exploitation of certain weaknesses in NMCD controls and price agreements. In certain instances we found that the former Facilities Manager overrode proper internal controls implemented by NMCD. NMCD placed a heavy reliance on the former Facilities Manager, which contributed to the exploitation of certain weaknesses in NMCD controls and price agreements. For example, the former Facilities Manager consistently failed to request adequate support from vendors throughout each phase of various projects, from the receipt of quotes through review and approval of the invoices. The former Facilities Manager routinely approved for payment insufficiently detailed invoices, even in instances in which she was not physically on-site where the project took place. The former Facilities Manager also concealed information from NMCD that was conveyed to her by the vendors, such as notifications of overpayments made by NMCD and vendors' use of subcontractors. She also communicated confidential NMCD information to the vendors, including internal NMCD and GSD concerns over the quality of work.

Given our special audit's findings, the report also includes numerous recommendations designed to strengthen NMCD's internal controls, improve transparency in NMCD's transactions, address weaknesses in price agreements, and reduce risks to NMCD when procuring goods and services for its facilities. For instance, NMCD should follow proper internal controls to ensure that disbursements are made in accordance with its price agreements. NMCD should establish controls that prevent and detect work from being performed without proper approval. NMCD should also reject vendors' invoices that do not have adequate support for materials or labor, and NMCD should request support for vendors' changes or increases in quotes for projects. NMCD should be familiar with contractual and purchasing requirements, especially those requirements that function as controls over unsupported costs.

Furthermore, NMCD should require NMCD employees who are at the location and physically overseeing projects to approve of the payment based on the quote and invoice detail. NMCD should also seek quotes from other vendors on any price agreement where multiple vendors are listed. This would allow NMCD to obtain a more competitive price and could substantially lower the costs of a project. To the extent possible, NMCD should also request vendors' records and perform a review to determine which prior disbursements are not supported. NMCD should request repayment for any payments made in which the vendors cannot provide complete support.

NMCD should also include specifications for contingencies and bonds in the price agreement, and the contract should clearly define "contingencies," "allowances," and the types of bonds. Disbursements for contingencies and bonds, if deemed necessary, should include proper justification to support the disbursement and the creation of the purchase

order. Moreover, if NMCD chooses to properly encumber for and then allow “contingencies” or “allowances,” NMCD should establish and follow strict guidelines as to how that information is processed and how the payments are approved and disbursed. Transparency related to the expenditure of public funds is harmed if there is not adequate documentation or clear definitions that explain for what purpose money is being disbursed.

All state price agreements, whether statewide or agency specific, should include language that requires that the contractor maintain detailed records pertaining to the services rendered and products delivered. To fix weaknesses related to subcontracting, GSD should establish rules regarding the use of subcontractors under price agreements. In addition to established requirements by GSD, the individual agency using the price agreement should also include and define rules and restrictions related to the use of subcontractors. NMCD, in particular, should develop controls related to the use and detection of subcontractors. Moreover, all price agreements should require that the contractor’s records be subject to inspection by the procuring agency, the New Mexico Department of Finance and Administration (DFA), the State Auditor, and appropriate federal authorities.

As a final note to this summary of the special audit’s findings and recommendations, on April 13, 2011 a federal grand jury indicted NMCD’s former Facilities Manager on bribery charges in connection with work performed by Omni for NMCD. The indictment alleges that between February 2007 and August 2009, the former Facilities Manager solicited and accepted \$237,080 in bribes from Omni in exchange for steering roofing jobs to Omni at numerous NMCD facilities. The indictment alleges that Omni was paid approximately \$4,000,000 for those roofing jobs. On April 27, 2011, the former Facilities Manager pleaded not guilty to the charges.

Since the summer of 2010, the OSA has worked to assist the Federal Bureau of Investigation (FBI) with its investigation and has provided special audit documentation to the FBI. Because certain findings of the special audit indicate that potential criminal violations may have occurred, the OSA will provide this special audit report to the FBI, the U.S. Attorney for the District of New Mexico, and certain state agencies that are charged with the investigation and prosecution of crimes related to financial affairs. Additionally, the OSA will also provide this report to NMCD, the Legislative Finance Committee, the Office of the Governor, DFA and GSD for consideration of the special audit’s findings and recommendations.

II. BACKGROUND

A. Context and Procedural History of the Special Audit

On June 15, 2010, the now-former Secretary of NMCD notified the State Auditor of alleged criminal acts that occurred within the Department. The Secretary provided the notification in accordance with Section 12-6-6 NMSA 1978, which requires that government agencies immediately report to the State Auditor “any violation of a criminal statute in connection with financial affairs.” In his letter, the Secretary expressed that

NMCD was concerned about the relationship between NMCD's former Facilities Manager and certain contract vendors. He stated that there may have been "undisclosed conflicts of interest" and that the former Facilities Manager may have received personal financial gain from her relationships with certain vendors. He also informed the State Auditor that the former Facilities Manager may have shared confidential information with a contract vendor in order to allow the vendor to better compete, and that the former Facilities Manager allegedly threatened NMCD's external auditor during a meeting with the auditor. The former Facilities Manager, who began her employment at NMCD in 1999, had resigned from the Department in May 2010, approximately one month prior to the notification letter. The Secretary also informed the State Auditor that NMCD was seeking assistance from the AGO to conduct the investigation. He also stated that, "[i]f necessary, NMCD would like assistance from the OSA to conduct a special audit."

Immediately acting on the Secretary's request, the OSA engaged in discussions with high-level NMCD officials regarding the facts and circumstances surrounding the allegations. The OSA also began discussions with investigative authorities that had launched an investigation into the matter. NMCD's now-former Secretary, Deputy Secretary and other NMCD officials responded quickly to the OSA's requests for information and documents. The NMCD provided the OSA a detailed external letter dated June 23, 2010 from NMCD's General Counsel to the New Mexico Chief Deputy Attorney General regarding the allegations against the former Facilities Manager. Additionally, the OSA requested, received and reviewed contract and purchasing information related to particular contracts between NMCD and certain vendors.

Based on the information provided by NMCD and the OSA's discussions with law enforcement authorities, the OSA determined that a special audit should be conducted pursuant to Section 12-6-3(C) NMSA 1978. That section provides that the State Auditor "may cause the financial affairs and transactions of an agency to be audited in whole or in part." In early November 2010, the OSA formally engaged in a special audit of NMCD's transactions involving contract vendors Omni, Advantage Asphalt and HEI. We tested disbursements made by NMCD that occurred fiscal year ended June 30, 2007 through fiscal year ended June 30, 2010. NMCD officials and employees worked diligently throughout the special audit process to cooperate with OSA auditors and respond timely to the auditors' requests for information and documents.

On April 13, 2011, a federal grand jury indicted NMCD's former Facilities Manager on bribery charges in connection with work performed by Omni for NMCD. In general, the indictment alleges that the former Facilities Manager orchestrated a "price agreement" procedure that allowed her to circumvent a competitive bidding process and select a roofing company to perform roofing goods and services for NMCD. The indictment further alleges that between February 2007 and August 2009, the former Facilities Manager solicited and accepted \$237,080 in bribes from Omni in exchange for steering roofing jobs to Omni at numerous NMCD facilities. The indictment alleges that Omni was paid approximately \$4,000,000 for those roofing jobs. On April 27, 2011, the former Facilities Manager pleaded not guilty to the charges. Since the summer of 2010, the OSA has worked to assist the FBI with its investigation and has provided special audit documentation to the FBI.

The following sections of this report detail additional background information, the scope and methodology, findings and referral of the special audit.

B. Procurement of Goods and Services by NMCD from Omni, HEI and Advantage Asphalt

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, and its associated administrative rules govern the procurement of goods, services and construction by state agencies. For the period covered by the scope of the special audit (fiscal year ended June 30, 2007 through fiscal year ended June 30, 2010), NMCD procured certain goods, services and construction for its prison facilities and administrative offices through various types of procurement mechanisms. First, NMCD used small purchases, agency price agreements and statewide price agreements to procure goods and services from Omni. NMCD executed 52 transactions under those types of procurements for a total \$4,056,950 in disbursements. Second, NMCD procured one project through an emergency procurement by using Advantage Asphalt. NMCD executed 4 transactions with Advantage Asphalt for that project for a total \$1,199,445 in disbursements. Finally, NMCD used small purchases, statewide price agreements and emergency procurements to procure goods and services from HEI. NMCD executed 228 transactions with HEI under small purchases, price agreements and emergency procurements for a total \$4,226,881 in disbursements.

This section is intended to provide the reader of this report with general background information applicable to the procurement mechanisms used by NMCD: small purchases, agency price agreements, statewide price agreements, and emergency procurements.

1. Small Purchases

NMCD procured certain goods and services as small purchases from Omni and HEI. According to Section 13-1-125(A) NMSA 1978, “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 adopted by the secretary, a local public body or a central purchasing office that has the authority to issue regulations.” Agencies are not required to follow a competitive sealed bid process for small purchases.

2. Agency Price Agreements and Statewide Price Agreements

NMCD used two types of contracts, agency price agreements and statewide price agreements, to procure goods and services from Omni. NMCD also used a statewide price agreement to procure goods and services from HEI. According to Section 13-1-71 NMSA 1978, a “price agreement” is defined as “a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.”

With regard to agency price agreements, the *Purchasing Guide* published by the State Purchasing Division (SPD) of GSD describes agency price agreements as term contracts which are “issued for *estimated* quantities for specific products or family of products, or services for use by individual state agency agreements and is a type of indefinite quantity, indefinite schedule contract.” An agency may place individual orders for goods and services under an agency price agreement by issuing purchase orders that identify the good or service and the funding. These types of price agreements are generally awarded after a competitive sealed bid process. However, pursuant to Section 13-1-129 NMSA 1978, a state agency may procure goods, services or construction from a business without the use of competitive sealed bids process if the business has a current price agreement and certain conditions are met. First, the price agreement must be for the goods, services or construction that meets the same standards and specifications as the items the agency seeks to procure. Second, the quantity of items purchased by the agency must not exceed the limitation on the quantity of items which may be purchased under the applicable price agreement. Finally, the purchase order issued by the agency must “adequately” identify the price agreement that the agency relies upon for the purchase.

With regard to statewide price agreements, the *Purchasing Guide* explains that SPD “establishes statewide price agreements for commodities or services commonly used *in volume* by state agencies.” These types of agreements are also a type of indefinite quantity and indefinite schedule contracts. An agency may place individual orders for goods and services under an agency price agreement by issuing purchase orders that identify the good or service and the funding. These types of contracts are generally awarded by a competitive sealed bid process and are issued for definite periods of time. Similar to agency price agreements, pursuant to Section 13-1-129 NMSA 1978 a state agency may procure goods, services or construction from a business without the use of competitive sealed bids process if the business has a current price agreement and the aforementioned conditions are met.

3. Emergency Procurements

NMCD used emergency procurements to procure goods and services from Advantage Asphalt and HEI. According to Section 13-1-127 NMSA 1978, the central purchasing office of a state agency may authorize emergency procurements when there exists a threat to public health, welfare, safety or property which requires procurement under “emergency conditions.” Subsection B of Section 13-1-127 NMSA 1978 further defines an “emergency condition” as the following:

“An emergency condition is a situation which creates a threat to public health, welfare or safety such as may arise by reason of floods, fires, epidemics, riots, acts of terrorism, equipment failures or similar events and includes the planning and preparing for an emergency response. The existence of the emergency condition creates an immediate and serious need for services, construction or items of tangible personal property that

cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (1) the functioning of government;
- (2) the preservation or protection of property; or
- (3) the health or safety of any person.”

Emergency procurements are exempt from the competitive sealed bid requirements of the Procurement Code; however, Section 13-1-127 NMSA 1978 requires that emergency procurements “be made with competition as is practicable under the circumstances.”

C. The Relationship between NMCD’s Former Facilities Manager and Omni and HEI

As detailed in the now-former NMCD Secretary’s June 15, 2010 notification letter to the OSA, the NMCD expressed concern about the relationship between NMCD’s former Facilities Manager and certain contract vendors. Based on our interviews with various current and former NMCD employees, and our review of the former Facilities Manager’s emails, we found sufficient basis to conclude that, in certain situations, the former Facilities Manager acted in the best interest of Omni and HEI and contrary to her official duties as NMCD Facilities Manager. The former Facilities Manager’s actions created the appearance of impropriety and, in certain instances, appeared to benefit Omni and HEI at the expense of NMCD and the State. Additionally, during the entire period of the scope of this special audit (fiscal year ended June 30, 2007 through fiscal year ended June 30, 2010), the owner of Omni and the President of HEI routinely and frequently sent emails to the former Facilities Manager and others which were not related to any business purpose. It should be noted that these types of communications were also exchanged prior to the beginning date of this special audit’s scope (fiscal year ended June 30, 2007 through fiscal year ended June 30, 2010).

According to NMCD personnel documents, the former Facilities Manager’s duties and job assignments included the following:

1. Facilitate project management functions for all construction projects for NMCD. The applicable skills for these duties were listed as having project management skills, supervisory skills, general building knowledge and code analysis, and being familiar with security functions of detention facilities;
2. Manage all budgets designated for construction projects complying with contract requirements and state purchasing regulations. Also, allocate funding of federal grant programs for construction projects. The applicable skills for these duties were listed as having complete knowledge and understanding of fiscal management for state and federal appropriated funds;

3. Serve as the Capital Improvement Projects (CIP) liaison for NMCD, which includes managing all CIP projects and producing the five-year plan and CIP submittals. The applicable skills for these duties were listed as having capital project database knowledge associated with finance requirements for successful project implementation; and
4. Provide a comprehensive facility audit for all state facilities, including security audits, preventative maintenance audits and physical plant operations. The applicable skills for these duties were listed as having a complete working knowledge of prison facilities and operations, and a working knowledge of fire and safety issues and security regulations.

Furthermore, based on our interviews of NMCD employees and based on our review of documents in connection with this special audit, the former Facilities Manager also was entrusted with making recommendations for projects to be performed at NMCD facilities as well as making recommendations of vendors to be selected for those projects. Because the former Facilities Manager was the primary employee responsible for those types of recommendations, NMCD relied heavily on the former Facilities Manager to properly recommend the selection of vendors for identified projects. The former Facilities Manager signed for approval the majority of invoices submitted to NMCD by Omni, HEI and Advantage Asphalt.

As described above, in certain instances the former Facilities Manager did not advance NMCD's interest when carrying out her official duties and handling certain matters related to Omni. Based on our review of the former Facilities Manager's emails, it appears that the former Facilities Manager shared information with Omni that gave Omni an unfair advantage when questions were raised about Omni's work at certain NMCD facilities. For example, in one instance, the former Facilities Manager disclosed certain information to Omni in an email despite specific directions from a GSD official that the information remain confidential and not be shared with Omni. In the email, the official questioned aspects of work performed by Omni on an NMCD roofing project. In the email, which the former Facilities Manager received on March 22, 2010, the GSD official explicitly stated: "I did not want the vendor [Omni] included on our state inter-agency emails." Nevertheless, that same day the former Facilities Manager forwarded the email to Omni's owner and stated the following: "I am reading many inaccurate statements by [the GSD official's] response in red, that need to be addressed. Can you please review and comment on your perspective in respect to these allegations please."

In addition, the former Facilities Manager's conduct towards HEI evidenced both the appearance of a conflict of an interest and an actual conflict of interest. According to a number of current and former NMCD employees we separately interviewed, the former Facilities Manager, on a number of different occasions, would ride to a certain NMCD facility with the President of HEI in his vehicle to conduct site reviews of HEI work performed at those facilities. Our review of the former Facilities Manager's emails also revealed a trend similar to that of her treatment of Omni, in which the former Facilities Manager did not advance NMCD's interest when handling certain matters related to HEI. Moreover, another email we reviewed revealed that the former Facilities Manager sought

approval to pay HEI after asking HEI whether it had completed the job, rather than independently verifying on behalf of NMCD that the work was properly performed and complete.

Furthermore, we should note that it appears that HEI received an unfair advantage over other potential vendors due to the influential actions of the former Facilities Manager. Although there were a number of other vendors included on the premise price agreement for electrical services, the former Facilities Manager only ever solicited the services of HEI. There is no evidence that the former Facilities Manager ever solicited quotes from any other approved electrical service contractor under the price agreement.

In sum, based on our interviews with various current and former NMCD employees, and our review of the former Facilities Manager's emails, the former Facilities Manager actions evidenced bias or the appearance of bias towards Omni and HEI, and it appears that Omni and HEI benefited from this relationship at the expense of NMCD and the State.

III. SCOPE AND METHODOLOGY

The scope of the special audit consisted of all NMCD disbursements related to HEI, Omni and Advantage Asphalt that occurred from fiscal year ended June 30, 2007 through fiscal year ended June 30, 2010. We performed the following procedures:

1. Interviewed certain NMCD employees and obtained information and evidence as it pertained to the special audit's scope.
2. Reviewed an external letter dated June 23, 2010 from NMCD's General Counsel to the New Mexico Chief Deputy Attorney General regarding allegations against NMCD's former Facilities Manager. Based on the information in the letter, we identified certain risks, requested documentation from NMCD and developed certain special audit procedures to address those risks.
3. Interviewed NMCD's external auditor of NMCD's fiscal year ended June 30, 2009 financial audit and obtained information and evidence as it pertained to the special audit's scope.
4. Interviewed certain employees at GSD and obtained information and evidence as it pertained to the special audit's scope.
5. Interviewed certain contract vendors that performed work at NMCD or had contact with HEI, Omni, and Advantage Asphalt while performing work at NMCD. We conducted the interviews in order to obtain information and evidence as it pertained to the special audit's scope.
6. Requested interviews with HEI's President, the owner of Omni, the General Manager of Advantage Asphalt and the former NMCD Facilities Manager through their respective legal counsels in order to obtain information and evidence as it pertained to

the special audit's scope. The General Manager of Advantage Asphalt and the former NMCD Facilities Manager denied our interview requests through their respective legal counsels. We were denied an interview with HEI's President through HEI's legal counsel; however, HEI did respond through its legal counsel to our document requests and provided us written responses to certain questions. We never received a response to our request for an interview with Omni's owner.

7. Requested and received the former Facilities Manager's NMCD work emails. NMCD provided approximately 16,468 emails dating from 2005 through the end of the former Facilities Manager's employment at NMCD in May 2010. We reviewed certain emails to determine whether the emails provided information and evidence as it pertained to the special audit's scope.
8. Tested disbursements made by NMCD to the three vendors that occurred from fiscal year ended June 30, 2007 through fiscal year ended June 30, 2010 against certain identified risks related to HEI, Omni and Advantage Asphalt. We tested all disbursements (100 percent coverage) during the time period for each of the three vendors. Those transactions amounted to the following:
 - Omni: 52 transactions for a total \$4,056,950 in disbursements;
 - Advantage Asphalt: 4 transactions for a total \$1,199,445 in disbursements; and
 - HEI: 228 transactions for a total \$4,226,881 in disbursements.
9. Requested and reviewed HEI documents related to statewide price agreement contract #80-000-00-00058 and #81-350-00-04024, and reviewed a small sample of those documents to determine whether costs charged to NMCD were supported.
10. Incorporated the results of the special audit procedures into this report. We included in the report any instances of noncompliance, lack of internal controls, improper internal controls, contractual violations or other deficiencies.

IV. FINDINGS RELATED TO OMNI DEVELOPMENT CORPORATION

Finding 01 – Unsupported and/or Unallowed Costs of \$1,294,458 Paid to Omni

Condition

During our testwork of payments to Omni, we noted contract, procurement, and disbursement violations in the amount of \$1,294,458. This amount relates to 33 violations out of 52 disbursements tested. The following paragraphs describe the violations in detail.

Unallowed and/or Unsupported Costs for Contingencies Totaling \$190,000 Paid to Omni

Under the roofing price agreement ending in 2814, 6 invoices processed and approved by NMCD included purchase order line items for “contingencies” of \$190,000. However, NMCD did not have any support that detailed what constituted the contingencies. For instance, the only detail on the invoice consisted of “contingency \$35,000,” and the quote that NMCD used to encumber the purchase order only read “contingency \$35,000.” See Exhibit C. This is the case for all 6 purchase orders and payments that were disbursed. What exactly these contingency payments were for is unknown. In addition, all the contingencies exceeded 6 ½ percent of the total project cost, which is the limitation on contingencies required by state law. Rather, the contingencies paid to Omni ranged from 11 percent to 19 percent of the total project.

Unallowed and/or Unsupported Costs “Overhead/Profit” of \$34,552 Paid to Omni

We also noted one purchase order and related disbursement under the roofing price agreement ending in 2250 for “Overhead/Profit” of \$34,551.57, which amounts to 41% of the entire amount of \$83,415.66 disbursed for that project. Since there is no support for what amount was overhead and what amount was profit, it is unclear how much of the \$34,551.57 was overhead and how much was profit. Regardless, the amount should have never been encumbered, let alone disbursed, since the price agreement requires any overhead or profit to be included in the agreed-upon labor rate in the price agreement contract. Furthermore, on the final invoice related to the \$83,145.66 project, Omni noted, “Invoice #33257R2 was Paid for Material Cost only.” However, invoice #33257R2 included only \$19,891.95 for materials. The remainder of the total payment, \$34,551.57, Omni included as “Overhead/Profit.” See Exhibits A and B.

Unallowed and/or Unsupported Bond Costs of \$39,111 Paid to Omni

Payments for bonds totaling \$39,111 were included in 7 purchase orders and invoices processed and approved by NMCD; however, there is no support that clearly indicates for what type of bonds the payments were made. For instance, the detail on the invoices consisted only of “Bond Cost.” The purchase orders and invoices simply state, “Bond Cost 3% of Total Cost” as support for the costs and payments.

Lack of Supporting Documentation for \$1,030,795 in Material Costs Paid, of which \$860,619 Expended in Violation of Contract

Twenty invoices out of the 52 we tested did not contain any supporting documentation to justify or detail materials costs billed by Omni. In sum, the unsupported purchase orders and invoices for materials costs totaled \$1,030,795, as follows:

- \$860,619 under price agreement ending 2814;
- \$129,015 under price agreement ending 2250;
- \$17,724 under price agreement ending 4026; and
- \$23,436 under price agreement ending 4137.

Furthermore, of the \$1,030,795 disbursed without support, NMCD should not have disbursed \$860,619 in materials costs under the price agreement ending 2814. Materials costs were not included in the price agreement ending 2814 and any disbursement for materials costs violates the terms of the contract.

We did note one invoice documented material costs of \$19,981.95; however, the support was an invoice from a subcontractor to Omni dated October 4, 2007, over 4 months prior to the purchase order date of February 15, 2008. Therefore, Omni must have estimated the exact amount of materials needed prior to an approved purchase order, as Omni claimed the total amount of materials on the invoice it submitted to NMCD.

Criteria

Proper internal controls require the NMCD to adhere to contract terms and conditions and to ensure that unauthorized payments are not processed. The specific price agreement, #80-770-00-02814, that GSD approved only included prices for labor. The terms and conditions specified in contract #80-770-00-02814 did not include any prices for materials, bond costs, contingencies and overhead or profit costs; thus, any disbursement for those items was not allowed by the contract. Furthermore, even if contingencies had been allowed in the price agreement, the amount should not have exceeded 6 ½ percent of the total project cost pursuant to Section 15-3B-11 NMSA 1978.

In addition, according to GSD, any contingencies require approval and adequate support to justify why the contingency was necessary. In anticipation of events that may occur, an agency may encumber funds to be used towards such contingencies. However, if a contingency occurs and the agency must expend the funds encumbered towards a contingency, the invoice must detail what constituted that contingency in terms that are allowed under the price agreement, such as materials and labor. GSD also has indicated that contracts associated with a price agreement should specify all provisions in the original contract, or otherwise be amended prior to any purchase orders and disbursements being made pursuant to such contract. It should be noted that the former Facilities Manager, on behalf of NMCD, helped create the specifications for the contract with this particular vendor. Therefore, it is even more concerning NMCD processed items not included in the contract's terms and conditions.

The price agreement contract #80-770-00-02814 provides that “labor costs shall include all physical work performed by the employees of the contractor, insurance, overhead and profit, and other fees to perform the work, contractors will not be allowed travel, time and mileage to an assignment more than one time without justification an approval of State of new Mexico Facility Manager or designee.” The price agreement contract #71-770-00-02250 includes similar language, providing that “labor costs will include all contractor overhead, profit . . . [and] contractors will not be allowed travel, time and mileage to an assignment more than one time without justification and approval of user agency facilities manager or designee.”

The price agreements (contract # 71-770-00-02250, contract # 803500004137AC, contract # 803500004026AD) specify that the vendor shall submit billings based on actual vendor pricing for associated parts and materials, less percentage of discount, if applicable. Additionally, the contracts require the vendor to provide verification of materials prices and that the vendor used the materials purchased for the project. The contracts also require the vendor to turn over to the owner or agency any unused parts and materials billed to the agency. Furthermore, the contracts require the vendor to provide copies to NMCD of the invoices or receipts for the associated parts and materials showing the vendor and dates of purchase.

In addition, price agreement #80-350-00-04137 was used for concrete services and price agreement #80-350-00-04026 was used for interior partition services. Both price agreements include a percentage discount on parts and materials, and require that the invoices include copies of all purchases for parts and materials, including the vendor and date purchased.

Cause

It appears as though controls over purchase orders and the subsequent disbursements under the price agreements are deficient.

Effect

NMCD violated the contract terms and conditions of the price agreements, which resulted in payments made to Omni in violation of the contract. Additionally, since Omni did not provide detail on the materials purchased, NMCD was unable to clearly distinguish what materials Omni purchased and how much materials Omni utilized for a particular project. Therefore, this creates the opportunity for Omni and other vendors to overbill NMCD for materials costs and there is a significant risk that Omni was unjustly enriched for its work. Finally, transparency related to the expenditure of public funds is harmed if there is not adequate documentation or clear definitions that explain for what purpose the money is being disbursed.

Recommendation

NMCD should follow proper controls to ensure that disbursements are made in accordance with its price agreements. For example, NMCD should reject invoices

submitted without adequate support for materials or labor until adequate support is received.

NMCD should include specifications for contingencies and bonds in the price agreement, and the contract should clearly define “contingencies” and “allowances.” Disbursements for contingencies and bonds, if deemed necessary, should include proper justification to support the disbursement and the creation of the purchase order. Moreover, if NMCD chooses to properly encumber for and then allow “contingencies” or “allowances,” NMCD should establish and follow strict guidelines as to how that information is processed and how the payments are approved and disbursed.

All state price agreements, whether statewide or agency specific, should include language which requires that the contractor maintain detailed records pertaining to the services rendered and products delivered. Moreover, the agreement should require that the contractor’s records be subject to inspection by the procuring agency, DFA, the State Auditor, and appropriate federal authorities.

Finding 02 – Lack of Restrictions Over the Use of Subcontractors Under Price Agreements

Condition

Omni Subcontracted Work Under Price Agreements without NMCD’s Knowledge

The roofing price agreement 80-770-00-02814, which NMCD used to process Omni payments, does not contain any language restricting the use of subcontractors.

We noted that Omni subcontracted work under specific price agreements; however, during our testwork of Omni transactions, we only discovered Omni’s use of subcontractors through our review of the former NMCD Facilities Manager’s work emails. We are unable to ascertain the true number of transactions in which Omni used subcontractors under the price agreements since Omni did not notify NMCD of the use of subcontractors. Omni did not provide support to NMCD regarding its use of subcontractors (i.e., pricing, labor costs, certification, etc.) and, per our discussion with NMCD, the Department does not recall that Omni ever supplied NMCD any kind of support for the use of subcontractors under any price agreements. NMCD has no record of any kind, including subcontractor invoices, or any kind of pricing details on jobs performed either in whole or in part by the subcontractors.

Without knowledge of the use of subcontractors, NMCD cannot ascertain whether Omni adhered to prices and other critical elements in the price agreement. NMCD also cannot determine whether the subcontractors are properly licensed or whether the subcontractors are suspended or debarred from doing state or federal work.

From our review of certain emails, we also noted Omni used AAA Roofing to perform roofing work under Omni’s price agreement. As Omni is the sole provider of roofing services to NMCD under the price agreement, it is concerning that they would subcontract roofing work to another roofing company without NMCD’s knowledge.

Omni Worked as Subcontractors without NMCD Knowledge

From our review of the former NMCD Facilities Manager’s emails, we also noted certain communications that indicated that Omni worked as subcontractors for other vendors under various price agreements. We are unable to ascertain the true number of transactions in which Omni was used without NMCD’s knowledge as subcontractors under other vendors’ price agreements, since it appears that NMCD, with the exception of the former Facilities Manager, was not made aware of such use by the vendors.

Criteria

In order to establish proper controls over the use of subcontractors, price agreements used by any state agency should include language regarding the use of subcontractors. Such contractual language should include proper restrictions, including approval by the agency prior to use of a subcontractor, and guidelines for the use of subcontractors.

Cause

The price agreement failed to include any language restricting subcontractors. It appears as though NMCD was not made aware subcontractors were being used. The former Facilities Manager was aware of the use of subcontractors; however, it does not appear that information was shared with other NMCD officials. It also appears that NMCD does not have any controls in place to detect the use of subcontractors.

Effect

Controls are nonexistent related to the use and detection of subcontractors. Without knowledge of the use of subcontractors, NMCD cannot ascertain whether Omni adhered to prices and other critical elements in the price agreement. NMCD also cannot determine whether the subcontractors are properly licensed or whether the subcontractors are suspended or debarred from doing state or federal work. Therefore, the price agreements may be easily susceptible to manipulation and there is a significant risk that procurement rules will be violated. The procurement process is, in effect, circumvented when subcontractors are used without agency knowledge.

Recommendation

To fix weaknesses related to subcontracting, GSD should establish rules regarding the use of subcontractors under price agreements. In addition to established requirements by GSD, the individual agency using the price agreement should also include and define rules and restrictions related to the use of subcontractors.

Finding 03 – Lack of Support for \$22,777 Increase in Cost

Condition

During our testwork of NMCD payments to Omni, we noted one of the 52 tested transactions lacked support for an increase in the cost per square foot of a roofing project. The increase in costs amounted to \$22,777 for materials and labor.

NMCD received two different quotes from Omni for roofing services. NMCD received the quotes one day apart and NMCD awarded the services to Omni under the more expensive quote it received on the second day. The first quote, dated March 19, 2009, was for roofing services at the Springer Correctional Center, Housing Units 3, 4, 6 & 8 (24,800 total square feet). In our evaluation of the quote's cost breakdown submitted to NMCD by Omni, we noted that Omni miscalculated the total materials and labor costs. The quote indicated materials and labor costs totaling \$49,600; however, upon recalculation, the actual total cost of materials and labor in the quote was \$24,902 for materials and \$8,098 for labor, totaling \$33,000. The result was a \$16,600 overage. In sum, the grand total price Omni quoted NMCD was \$54,504.51 when it should have been \$36,380.43. At the actual cost of \$33,000, the effective cost per square foot was \$1.33 for Omni's first quote. We noted that an Omni employee sent the following email to NMCD's former Facilities Manager on March 19, 2009, the same day Omni submitted its first quote:

“Here is the Springer quote for housing units 3,4,6 & 8. i made changes to the numbers to reflect the change in square footage. If you need the numbers to be higher you can include money for annual inspections. For units 3,4,5,6, & 8 the annual inspections will be \$1375 plus tax. not sure how you do that stuff just thought i would let you know.”

Omni submitted a second quote to NMCD on March 20, 2009, one day after the first quote, for roofing services at the Springer Correctional Center, Housing Units 3, 4, 6, 8 & Laundry/Silk Screening (33,996 total square feet). For this quote, the materials and labor costs totaled \$67,840, which consisted of \$46,772.80 for materials and \$21,067.20 for labor. At the total cost of \$67,840, the effective cost per square foot calculated to \$2.00 for Omni's second quote.

Despite the price per square foot increasing by \$0.67 in the second quote, NMCD nevertheless accepted and processed Omni's second, higher quote without any support for the increase. Since Omni sent the first quote via email only to NMCD's former Facilities Manager, it is unclear whether anyone else at NMCD saw the first, less expensive quote. It is important to note that both quotes Omni submitted included recommendations for annual inspections for 5 years, which equaled the \$1375 indicated in Omni's March 19, 2009 email to NMCD's former Facilities Manager.

As noted in Finding 01, NMCD did not request support for materials charged by Omni prior to disbursing payment to Omni for materials related to this transactions. See Finding 01 for additional detail.

Criteria

All costs should be completely supported before they are approved for payment. NMCD should not approve and encumber in a purchase order any changes to quotes without support.

Proper internal controls require the NMCD to adhere to contract terms and conditions and to ensure that unauthorized payments are not processed. The specific price agreement, #80-770-00-02814, that was approved by GSD only included prices for labor. The terms and conditions specified in contract #80-770-00-02814 did not include any prices for materials; thus, any disbursement for those items was not allowed by the contract.

Cause

The former Facilities Manager accepted Omni's second, more expensive quote without support for the increase in costs. It does not appear that the former Facilities Manager made anyone else at NMCD aware of the price differences between the quotes.

Effect

Since Omni did not provide any support for the materials purchased or the difference in quotes, this creates the risk that Omni overbilled NMCD for materials and other costs. Since no detail on the materials purchased was provided, this creates the opportunity for vendors to overbill NMCD for materials costs in which the NMCD is unable to clearly distinguish what materials Omni purchased and how much materials Omni utilized for a particular project. Additionally, NMCD violated the contract terms and conditions of the above noted contracts which resulted in payments made to vendors in violation of the contract. There is a significant risk that Omni was unjustly enriched for their work. Finally, transparency related to the expenditure of public funds is harmed if there is not adequate documentation for what purpose money is being disbursed.

Recommendation

If inconsistent quotes are received, NMCD should require the vendor to provide complete detailed justification for the quotes. NMCD should also follow proper controls to ensure that disbursements are made in accordance with the contract. For example, invoices that are submitted without adequate support for materials or labor should be rejected by NMCD until adequate support is received.

Finding 04 – Changes in Quotes Without Support or Justification for Changes

Condition

We noted one transaction, out of the 52 tested, processed under price agreement ending 2250 where the materials used and the scope of work appears to have been reduced by Omni, but the quoted price remained unchanged by Omni on two quotes submitted to NMCD. First, Omni submitted a quote to NMCD for work for housing units and installation of roof vents. The quote's detail shows that the work for housing units, installation of 25 roof vents and Eternabond material are included in the material cost of \$54,443.52. One day after it submitted its first quote for this work, Omni submitted a second quote in which it omitted the work for 25 roof vents and Eternabond material, yet the quote remained unchanged at \$54,443.52. There was no support for the change in scope or justification for the change in price. Also, as noted in Finding 01, NMCD did not request support for materials charged by Omni prior to disbursing payment to Omni for materials related to this transactions. See Finding 01 for additional detail.

Similarly, we also noted another instance out of the 52 tested in which Omni submitted two different quotes for a guard shack foundation project and there was no documentation to justify the increase in price. Omni submitted the first quote on October 2, 2007 and quoted NMCD a price of \$7,450 for the work. Approximately two months later, on November 30, 2007, Omni submitted a quote for the identical scope of work, but increased the price to \$9,450. There was no documentation to justify the increase in price nor does it appear that Omni modified the scope of work. Omni ultimately invoiced NMCD for \$9,450 and NMCD paid the full amount.

Criteria

All costs should be completely supported before they are approved for payment. NMCD should not approve and encumber in a purchase order any changes to quotes without support.

Proper internal controls require the NMCD to adhere to contract terms and conditions and to ensure that unauthorized payments are not processed.

The price agreement approved by GSD (contract # 71-770-00-02250) specifies that the contractor shall submit billings based on actual contractor pricing for associated parts and materials, less percentage of discount, if applicable. Additionally, the contract requires the contractor to provide verification of materials prices and that materials purchased were used for the project. The contract also requires the contractor to turn over any unused parts and materials billed to the agency to the owner or agency for which the contractor provided the work. Furthermore, the contract requires the contractor to provide copies to NMCD of the invoices or receipts for the associated parts and materials showing vendor and dates of purchase.

Cause

NMCD failed to request support for charges prior to disbursing payment for the work.

Effect

Since Omni did not provide any support for the materials purchased or the difference in quotes, this creates the risk that Omni overbilled NMCD for materials and other costs. Also, NMCD is unable to clearly distinguish what materials Omni purchased and how much materials Omni utilized for a particular project. There is a significant risk that Omni was unjustly enriched for their work. Finally, transparency related to the expenditure of public funds is harmed if there is not adequate documentation or clear definitions of for what purpose money is being disbursed.

Recommendation

If inconsistent quotes are received, NMCD should require the vendor to provide complete detailed justification for the quotes. Furthermore, NMCD should follow proper controls to ensure that disbursements are made in accordance with the contract. For example, invoices that are submitted without adequate support for materials or labor should be rejected by NMCD until adequate support is received.

Finding 05 –Entire Job Subcontracted and Lack of Support for Charges

Condition

We noted one transaction out of the 52 tested in which the total project was subcontracted. The price agreement, contract #72-770-00-02292, was for the demolition and new construction of 10 office spaces. The total price paid to Omni was \$100,252.

As evidenced in Exhibit H, Omni indicated that it subcontracted 100 percent of the project. In addition, on July 6, 2007, one day after Omni submitted the first invoice to NMCD of \$85,214.78 for the project, Omni sent a memo to NMCD in which Omni stated that it is “not able to provide receipts/invoices” related to the project. None of the four invoices submitted by Omni and paid by NMCD under the project included any detail of costs of materials or labor. Without NMCD requiring support, it is impossible to determine compliance with the price agreement specifications.

Criteria

Proper internal controls require the NMCD to adhere to contract terms and conditions and to ensure it does not process unauthorized payments. Price agreement #72-770-00-02292, used for office space construction, omitted any language regarding the use of subcontractors.

All costs should be completely supported before they are approved for payment.

Cause

NMCD failed to require support for charges, such as material and labor costs, prior to disbursing payment to Omni.

Effect

Payments may have been made to Omni in violation of the contract. Additionally, since Omni provided no detail on the subcontractor, this creates the opportunity for vendors to overbill NMCD for costs in which the NMCD is unable to clearly distinguish what was purchased and how much Omni utilized for a particular project. There is a significant risk that Omni was unjustly enriched for their work. Finally, transparency related to the expenditure of public funds is harmed if there is not adequate documentation or clear definitions of for what purpose money is being disbursed.

Recommendation

NMCD should ensure that proper controls are followed to ensure that disbursements are made in accordance with the contract. Subcontractors that are approved for use should be required to submit the same documentation as the primary vendor.

Finding 06 – Unsupported Costs Contained in Quotes and Amounts Subsequently Disbursed

Condition

During our testwork of payments made to Omni, we noted that Omni submitted three separate quotes for a job to be performed at the Penitentiary of New Mexico in Santa Fe. As noted in the table below, Omni submitted the first quote on April 7, 2009. The quote consisted of materials costs of \$59,795.25, labor costs of \$50,898.00, bond costs of \$3,320.80, and contingencies of \$35,000, for a grand total of \$156,070.74. Omni submitted a second, revised quote on April 28, 2009. The second quote consisted of materials costs of \$98,116.05 and labor costs of \$ 50,898.00, for a grand total of \$158,513.70. Lastly, Omni submitted a third, revised quote on April 28, 2009. The third quote consisted of materials costs of \$79,369.25 and labor costs of \$66,324.00, for a grand total of \$154,981.19. NMCD selected Omni’s third quote.

Although the third quote that was used appears to be lower than the previous two quotes Omni submitted, it appears that the \$35,000 contingency from Omni’s first quote was re-allocated to materials and labor costs in Omni’s third quote. However, the scope of work never changed at any point during Omni’s submission of the three quotes. In addition, NMCD also paid out the materials costs without any detail of support. See Exhibits I, J and K for detail of the scope of work.

<i>Elements of Quote</i>	1st Quote (not used)	2nd Quote (not used)	3rd Quote (Approved and Used)
<u>Date Submitted</u>	4/7/09	4/28/09	4/28/09
<u>Materials Costs</u>	\$ 59,795.25	\$ 98,116.05	\$ 79,369.25
<u>Labor Costs</u>	50,898.00	50,898.00	66,324.00
<u>Total Material/Labor</u>	110,693.25 <i>(Exhibit I)</i>	149,014.05 <i>(Exhibit J)</i>	145,693.25 <i>(Exhibit K)</i>
<u>Bond Costs</u>	3,320.80		
<u>Contingency</u>	35,000.00		
<u>Tax</u>	7,056.69	9,499.65	9,287.94
<u>Grand Total</u>	\$ 156,070.74	\$ 158,513.70	\$ 154,981.19

We also noted another similar transaction in which Omni submitted two separate quotes for a job to be performed at the Central New Mexico Correctional Facility. As noted in the table below, Omni’s first quote, dated March 19, 2009, consisted of materials costs totaling \$94,595.20, labor costs of \$80,204.80, bond costs of \$5,244, and contingencies of \$30,000. Omni submitted a second, revised quote on May 22, 2009. The second quote consisted of materials costs of \$189,476.20 and labor costs of \$80,204.80. NMCD ultimately selected the second quote and paid Omni the total \$285,861.86. In addition, NMCD also paid out the materials costs without any detail of support. It appears that the contingency of \$30,000 from the first quote and the bond costs were re-allocated to materials costs in the second quote. However, the scope of work in the first quote was based on 18,400 square feet of work, and the second quote was for 17,900 square feet of work, a reduction of 500 square feet.

<i>Elements of Quote</i>	1st Quote (not used)	2nd Quote (Approved and Used)
<u>Date of Quote</u>	3/19/09	5/22/09
<u>Materials Costs</u>	\$ 94,595.20	\$ 189,476.20
<u>Labor Costs</u>	80,204.80	80,204.80
<u>Total Material/Labor</u>	174,800.00	269,681.20
<u>Bond Costs</u>	5,244.00	
<u>Contingency</u>	30,000.00	
<u>Tax</u>	12,602.64	16,180.86
<u>Grand Total</u>	\$ 222,646.64	\$ 285,861.86

Criteria

All costs should be completely supported before NMCD approves them for payment. Any changes to quotes without support should not be approved or encumbered in a purchase order.

In addition, proper internal controls require the NMCD to adhere to contract terms and conditions and to ensure that unauthorized payments are not processed. The specific price agreement, #80-770-00-02814, approved by GSD only included prices for labor. The terms and conditions specified in contract #80-770-00-02814 did not include any prices for materials, bond costs, contingencies and overhead or profit costs; thus, any disbursement for those items was not allowed by the contract.

Cause

It is unknown why NMCD processed quotes without requesting support. NMCD failed to request support for charges, such as material and labor costs, before disbursing payments.

Effect

If inconsistent quotes are received, NMCD should require the vendor to provide complete detailed justification for the quotes. Furthermore, NMCD should follow proper controls to ensure that disbursements are made in accordance with the contract. NMCD has violated the contract terms and conditions of the above noted contracts which resulted in payments made to vendors in violation of the contract. Additionally, since no details on the materials purchased or quote changes were provided, this creates the opportunity for vendors to overbill NMCD for materials costs in which the NMCD is unable to clearly distinguish what materials Omni purchased and how much materials Omni utilized for a particular project. There is a significant risk that Omni was unjustly enriched for their work. Also, transparency related to the expenditure of public funds is harmed if there is not adequate documentation or clear definitions of for what purpose money is being disbursed.

Recommendation

If inconsistent quotes are received, NMCD should require complete detailed justification from the vendor. NMCD should follow proper controls to ensure that disbursements are made in accordance with the contract. For example, invoices that are submitted without adequate support for materials or labor should be rejected by NMCD until adequate support is received.

Finding 07 – Work Done in the Amount of \$40,647 Prior to Purchase Order

Condition

We noted one voucher out of 52 tested where NMCD allowed Omni to perform \$40,647 in work prior to having a purchase order in place. According to documents we reviewed, Omni was contracted to perform roofing work on an NMCD building for which an approved purchase order existed. However, Omni actually performed the work on the wrong building, which was a project that was not formally approved through a purchase order. NMCD agreed to pay Omni for the work done without a purchase order and NMCD subsequently issued a purchase order to pay for the work Omni already performed. Had NMCD properly procured the work, it would have fallen under the price agreement ending in 2814. We noted that NMCD properly disclosed the violation to DFA prior to this special audit.

Criteria

Section 6-5-3 NMSA 1978 provides the following: “Before any vouchers or purchase orders are issued or contracts are entered into involving the expenditure of public funds by a state agency, the authority for the proposed expenditure shall be determined by the division and the state agency.” In order to comply with this statute, NMCD must have an approved purchase order in place prior to any vendor performing work. Additionally, the price agreement requires that all work performed requires a purchase order be issued prior to the commencement of any work to be performed. Specifically, the price agreement states that absolutely no mobilization shall begin until the contractor has an official signed purchase order from the agency. The purchase order serves as the official notice to the contractor that the contractor may proceed with the work.

Cause

Omni proceeded with the work without an approved purchase order, and NMCD agreed to pay Omni for the work performed even though the work was not properly procured.

Effect

NMCD violated the contract terms and conditions of the above noted contract which resulted in payments made to vendors in violation of the contract. Controls over purchasing are weakened when NMCD allows work to be performed without a purchase order.

Recommendation

NMCD should establish controls that prevent and detect work being performed without proper approval (i.e., approved purchase order). NMCD should also strictly enforce the requirement that “absolutely no mobilization shall begin until the contractor has an official signed purchase order from the agency”.

V. FINDINGS RELATED TO ADVANTAGE ASPHALT & SEAL COATING

Finding 08 – Improper Project Award and Unsupported Payments

Background and Vendor Bid Detail

NMCD published a request for proposals in March 2009 for an emergency procurement for a water and wastewater project at the Central New Mexico Corrections Facility (CNMCF) in Los Lunas. NMCD awarded the project to Advantage Asphalt.

The bid awarded to Advantage Asphalt defined the bid into two bid lots. Bid lot one amounted to \$606,499.03, including gross receipts tax. Of the total for that bid lot, two utility allowances, one for \$10,000 and one for \$20,000, were included. The second bid lot amounted to \$346,606.86, including gross receipts tax and a \$20,000 utility relocation allowance. In total, Advantage Asphalt bid \$953,105.89 to perform work on the project. In addition to the bid amount of \$953,105.89, NMCD encumbered an additional \$39,328 under the same purchase order for water and sewer connections fees to be paid by Advantage Asphalt to the Village of Los Lunas. In total, according to the bid and connections fees, NMCD should have paid Advantage Asphalt no more than \$992,433.89.

During our testwork of payments related to the emergency procurement, we noted a bid award violation and a lack of supporting detail and documentation over certain payments NMCD made to Advantage Asphalt.

Condition

Bid Improperly Accepted and Awarded

The invitation to bid for the emergency project clearly stated the following:

“Bid proposal – may be submitted by fax to . . . NMCD State Facilities Manager at (505) 827-8904 or hand delivered to New Mexico Corrections Department (NMCD), Or emailed direct to [NMCD State Facilities Manager], **no later than (Monday, March 30th at 3:00 pm)**. Bid package shall contain Bid Form, pages 1-6 and subcontractors listing for the plans and specifications provided. Submittal after this date and time will render your bid **VOID** and considered non-responsive.”

NMCD received three bids related to the emergency project at Los Lunas. Advantage Asphalt submitted its bid package on March 30, 2009 at 3:13 p.m., after the 3:00 deadline specified in the invitation to bid; however, no documentation existed related to the actual cost detail of the bid. In fact, Advantage Asphalt sent the required bid form that contained the detail of \$953,105.89 via fax to NMCD on April 1, 2009, one day after required deadline specified in the invitation to bid. NMCD should have rendered Advantage Asphalt’s bid void and considered it non-responsive since Advantage Asphalt failed to meet the required March 30, 2009 3:00 p.m. deadline and submitted an incomplete bid.

NMCD received the two other bids from Sparling Co. and Python Construction, respectively, on March 30, 2009. Sparling Co. submitted its bid 23 minutes after the required 3:00 p.m. deadline. It was the second highest bid at \$959,900.22, and NMCD should have rendered the bid void and considered it non-responsive. Python Construction submitted the third and highest bid, but it was the only bid that was submitted by the required deadline. Python submitted its bid at 2:05 p.m. on March 30, 2009. Despite receiving only one bid that met the strict deadline in the invitation to bid, NMCD nevertheless accepted Advantage Asphalt's bid which was submitted late and incomplete.

It is important to note that the invitation to bid directed potential bidders to send their responses directly to the NMCD's former Facilities Manager. Based on our inquiries to NMCD, there is no documentation that any other NMCD employee received or reviewed the bids, other than the former Facilities Manager.

Advantage Asphalt Overbilled NMCD by \$47,822.79

Based on testwork performed, we found Advantage Asphalt overbilled NMCD by \$47,822.79. According to our review of documents for the project, there was a variance between what Advantage Asphalt invoiced NMCD in the amount of \$47,822.79 and what was detailed as support for those charges. The variance is made up of \$2,826.70 of tax incorrectly charged and \$44,996.09 of unsupported costs. On June 16, 2009, the General Manager of Advantage Asphalt emailed the former Facilities Manager to notify her of the tax overbilling. The next day, in an email dated June 17, 2009, the General Manager informed the former Facilities Manager of the total overbilled amount of \$47,822.79. That same day, the former Facilities Manager responded via email to Advantage Asphalt's notification of overbilling by only stating via email, "Call me please." Furthermore, the Accounts Payable Clerk from NMCD's Los Lunas Facility also notified the former Facilities Manager of the overpayment to the vendor on June 18, 2009. The former Facilities Manager responded to the clerk's notification by stating, "Thanks!"

Despite the notifications to the NMCD's former Facilities Manager by both Advantage Asphalt and the Los Lunas Facility, there is no record or support that indicates Advantage Asphalt has repaid NMCD for the overbilling. In addition, there is no record that the former Facilities Manager, who was notified of the overbilling, informed anyone at NMCD about the overbilling.

Lack of Support to Substantiate Payments Disbursed for Costs of \$397,455.52

In addition to the unsupported overbilling of \$47,822.79, we noted a lack of support for \$397,445.52 in invoice charges that NMCD paid to Advantage Asphalt. In addition, we noted that Advantage Asphalt invoiced NMCD for \$207,010.97 prior to an approved purchase order increase.

Advantage Asphalt submitted a total of four invoices related to this project. The first invoice, submitted by Advantage Asphalt on April 13, 2009, was for an amount of \$438,895.28 for "bid lot two" work, which was \$92,288.42 more than its original bid amount submitted to NMCD for the work. There is no support for the overage, yet NMCD disbursed the full amount to Advantage Asphalt on April 17, 2009. Moreover,

the purchase order line item for bid lot two was set up for \$346,606.86, and payments to Advantage Asphalt should not have exceeded that amount.

On April 24, 2009, ten days after the first invoice date, Advantage Asphalt submitted a second invoice for \$107,187.50. The second invoice does not indicate which bid lot to which it relates, and the only detail the invoice provides was the following: “Los Lunas Correctional Facility – Change Order #1, Redirect Pipe through plant fields, Trench and Backfill to plant fields to their original state, inkind.” However, such work is not specified in the bid, nor is it adequately detailed in the invoice in a manner that would allow NMCD to understand exactly what type of services were performed and what materials were used. Coincidentally, as evidenced in Advantage Asphalt’s payment application 1, the first invoice also included a charge of \$100,000 for “Change Order no. 1 Extra Pipe.” It appears as though Advantage Asphalt billed NMCD twice for the \$100,000 change order for pipe. Furthermore, per discussion with the external architect on the job, who was not affiliated with Advantage Asphalt, there is no support that justifies why Advantage Asphalt ordered any extra pipe for the project. The detail support provided by Advantage Asphalt to the CNMCF business office does not include any support for the \$107,187.50. In fact, Advantage Asphalt’s documents only provide detail of \$159,188.18 in change orders (including tax); yet, Advantage Asphalt invoiced \$207,010.97 in change orders. In sum, the variance between what Advantage Asphalt detailed versus what Advantage Asphalt actually billed NMCD is \$47,822.79 – the exact amount Advantage Asphalt informed NMCD it overbilled.

Advantage Asphalt submitted a third invoice on May 6, 2009 in the amount of \$336,046.65. Included in this invoice is a line item for \$70,000, entitled “Allowance.” Advantage Asphalt submitted the fourth and final invoice on May 20, 2009 in the amount of \$317,315.43. Also included in this invoice is a line item for \$100,800, entitled “Allowance.” There was no support for what comprised the total \$178,000 (pre-tax) in “allowances” invoiced by Advantage Asphalt. There also was no definition or description found for “allowance” other than the bid, which included a “utility relation allowance” for \$50,000.

All four invoices from Advantage Asphalt were submitted to NMCD prior to NMCD’s change order to increase the original purchase order by \$207,010.97.

See the table on the following page for a summary of invoices and overbilling.

Total Bid + Connection Fees (with tax)	Date of Invoice	Amount of Invoice and disbursement	Questionable Portion of Invoice (with tax)
\$992,433.89	4/13/2009	\$ 438,895.28	\$ 107,187.50 (extra pipe)
	4/24/2009	107,187.50	107,187.50 (extra pipe)
	5/6/2009	336,046.65	75,033.00 (allowance)
	5/20/2009	<u>317,315.43</u>	108,047.52(allowance)
	<u>Total Disbursement</u>	<u>\$ 1,199,444.86</u>	<u>\$ 397,455.52</u>
PO Change Order Date	6/1/2009 <i>(After all invoices submitted)</i>		
PO Change Order Amount (increase)	\$ 207,010.97		
Total Cost per Advantage Documents	\$1,154,448.77		
Amount Overbilled <i>(Billed – Detail for charges)</i> \$47,822.79		Additional Questionable charges \$397,455.52	
	<u>Total Unsupported Charges</u>	<u>\$445,278.31</u>	

Criteria

The request for proposal set the bid proposal due date as no later than Monday, March 30th at 3:00 p.m., and specified that submittal after that date and time would render the bid void. Proper segregation of duties requires that electronic bids be opened, or received, publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids in order to preserve the authenticity of bids received.

Section 6-5-3 NMSA 1978 provides the following: “Before any vouchers or purchase orders are issued or contracts are entered into involving the expenditure of public funds by a state agency, the authority for the proposed expenditure shall be determined by the division and the state agency.” In order to comply with this statute, NMCD must have an approved purchase order in place prior to any vendor performing work. Section 6-5-8 NMSA 1978 provides the following: “All purchase vouchers for goods and services, other than personnel, shall be accompanied by supporting invoices and documentation required by the division.” According to Section 13-1-140 NMSA 1978, NMCD could have, and should have, required the vendor to submit cost or pricing data before the change order of \$207,010.97 was executed.

Cause

Apparent weaknesses exist in NMCD’s internal controls over the electronic bid process, purchase orders and the related disbursements. These weaknesses allowed for a bid to be accepted improperly and for change orders and invoices to be processed without a full

review. In addition, it appears as though there was an override of bid requirements by NMCD's former Facilities Manager. It also appears weaknesses exist in the transmission of complete documentation from NMCD facilities to NMCD's central office.

Effect

NMCD likely paid \$445,278.31 for goods and services it never received. Additionally, Advantage Asphalt potentially improperly billed NMCD and subsequently received state funds. The bid process was violated and one vendor gained an advantage over other vendors when NMCD improperly awarded the project. The overall effect of the violations is a heightened risk for fraud and abuse.

Recommendation

NMCD should follow proper controls to ensure that disbursements are made in accordance with the contract. Prior to NMCD's approval, disbursements should include the proper justification to support the disbursement. Moreover, if an agency chooses to properly encumber for and allow "allowances," the agency should impose strict guidelines regarding how that information is processed and how "allowances" are to be approved and disbursed.

Anytime bids are received, one or more witness should be present during the time of receipt and opening. NMCD should also adhere to deadlines imposed in invitations to bid.

VI. FINDINGS RELATED TO HEI, INC.

Finding 09 – Violation by GSD of Record Retention Requirements and NMCD’s Failure to Consider Federal Contract Requirements

Condition

In violation of required records retention schedules, GSD destroyed the premise price agreement #40-000-00-00045 Request for Proposal (RFP) and HEI’s response to that RFP. The expiration of the electrical services premise price agreement was March 31, 2008. By administrative rule, the expiration date for retention of those documents is March 31, 2014.

Additionally, NMCD made certain disbursements not allowed by the price agreement. Furthermore, according to NMCD, it was not aware of federal contracting requirements when it used the price agreement. NMCD used this agreement for 84 total transactions amounting to \$1,474,870. NMCD used federal funds of \$449,401 for two disbursements procured under the price agreement. Of the \$449,401, NMCD paid \$184,409 for door panel upgrades and \$264,992 for the installation of a stun fence. NMCD should not have processed either of the disbursements made with federal funds under the price agreement, as those types of goods and services appear to be outside of the scope of the agreement. See Finding 10 below for additional detail.

Because GSD destroyed the contract, it is impossible to determine if NMCD complied with federal standards and regulations relating to the use of those federal funds. Certain elements are required to be included in the contract when using the federal funds. For instance, there is no support that a cost analysis was performed prior to accepting HEI’s bid, or thereafter. The criteria below detail the federal contract language and requirements.

Criteria

The retention rule set forth by NMAC Section 1.15.4.307 requires documents to be kept for six years *after* termination of the contract.

Federal award funds used under the Catalog of Federal Domestic Assistance (CFDA) #16.586 requires procurement according to Department of Justice purchasing requirements. Under those requirements, specifically section 66.36 of 28 Code of Federal Regulations (CFR), procurement of goods and services by noncompetitive proposal is allowed, but only when award of the contract is infeasible under sealed or competitive bids. In addition, NMCD was required to take the necessary steps to assure that minority firms, women’s business enterprise, and labor surplus area firms are used when possible. This required the procuring grantee to include those types of firms on the solicitation list. Furthermore, the use of the federal funds required that NMCD include enough qualified sources to ensure maximum open and free competition and NMCD was not to preclude potential bidders from qualifying during the solicitation period. Cost analysis is required by NMCD in connection with every procurement action, per section

70.45 of 28 CFR. Section 70.43 of 28 CFR reiterates the requirement that all procurement transactions be conducted in a manner to provide, to the maximum extent practical, open and free competition.

Appendix A to Part 70 of 28 CFR requires eight federal contract provisions, if applicable, be included in NMCD's contract provision awarding the federal funds. The six of the eight provisions that apply to the NMCD award are as follows; Equal Employment Opportunity (Executive Order No. 11246), Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c), Contract Work Hours and Safety Standards Act (40 U.S.C. 372-333), Clean Air Act (42 U.S.C. 7401 et seq.), Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), and Debarment and Suspension (Executive Order No. 12549 and 12689).

Cause

GSD indicated the files were mistakenly destroyed before the required retention period.

According to NMCD, it was unaware of the federal contracting requirements when procuring with federal funds under a State of New Mexico price agreement.

Effect

GSD failed to abide by the retention policy and, as a result, the related transactions between NMCD and HEI are not open and transparent. Additionally, without the contract documentation, the related transactions between other state agencies and HEI under the price agreement during that time are not open and transparent. The absence of the original contract and HEI's response to that contract also prohibits review by the auditor for compliance with federal and state procurement requirements and specific contract provisions.

NMCD failed to follow federal requirements to solicit any other potential bidders to ensure maximum free and open competition. Noncompliance with federal requirements may jeopardize future federal funding.

Recommendation

All government agencies should strictly adhere to and enforce record retention schedules. Any agency using a GSD price agreement for the expenditure of federal funds should ensure compliance with federal contract regulations. Prior to procurement, the agency should closely examine the price agreement contract and the original RFP used to award vendors under the price agreement to ensure federal procurement requirements are followed and to make certain that required federal contractual language is contained in the price agreement. GSD should also ensure that any agency using GSD price agreements are aware of federal procurement requirements when procuring with federal funds.

Finding 10 – Weaknesses in Premise Distribution Price Agreements and NMCD’s Unallowed Purchases Under Certain Agreements

Condition

Prior to March 31, 2008, state agencies were able to utilize GSD’s premise distribution price agreement #40-000-00-00045 for communication wiring services. NMCD used the agreement for 84 transactions with HEI amounting to \$1,474,870. Forty-nine out of the 84 transactions, amounting to \$1,331,406, appear to have been unallowed purchases under the price agreement.

For the time period covered by the scope of this special audit, NMCD used the price agreement to purchase certain items containing equipment. However, it appears that the following equipment purchases were not incidental to the services allowed by the agreement; therefore, they do not appear to be correspond with the price agreement’s specifications:

- Seven transactions totaling \$81,177 for fire suppression systems;
- Eight transactions totaling \$371,159 for perimeter and stun fencing;
- Seven transactions totaling \$167,600 for security camera and video upgrades;
- Three transactions totaling \$83,183 for intercom equipment;
- Three transactions totaling \$2,370 for printer supplies;
- Five transactions totaling \$5,148 for badges;
- Four transactions totaling \$179,483 for DVRs;
- Seven transactions totaling \$237,488 for security lighting upgrades;
- Four transactions totaling \$19,389 for an entry traffic gate; and
- One transaction of \$184,409 for cell door control repair.

In 84 instances, the scope of work for the price agreement #40-000-00-00045 is vague and does not sufficiently limit the scope of goods or services to be provided or payment terms (price) in a manner that would allow us to determine that the subsequent, related transactions were within the price agreement’s scope.

Criteria

Price agreement #40-000-00-00045 allows NMCD to procure goods or services for telephone and computer system wiring, communications components, wire, cable, connectors and other components that agencies may require to maintain or enhance current systems. The premise agreement further defines allowed wiring as “communications, but will include all low voltage connections such as used for paging and public address systems, environmental and intrusion alarms, fire and security systems, and other special purpose requirements.”

Cause

NMCD did not exercise proper review prior to procuring items and disbursing payments under the price agreement. In addition, the agreement drafted by GSD does not contain sufficient limitations or guidelines regarding the scope of work.

Effect

NMCD improperly processed items in a manner that effectively circumvented competitive procurement requirements and may have resulted in a higher cost to NMCD. Due to the insufficient limitations contained in the price agreement's scope of work, there is a significant risk that additional unallowed purchases have been made by other agencies using the price agreement. Also, the weaknesses of the price agreement increase the risk that vendors are able to exploit those weaknesses in the price agreement by charging for services and goods beyond what is necessary.

Recommendation

Prior to approval of these types of transactions, NMCD should compare the purchase order to the price agreement specifications and requirements to ensure that the procurement and disbursement is reasonable and allowed under the price agreement. Price agreements should also contain sufficient language that defines goods and services to be provided so that the agency may clearly determine what types of goods and services fit the established scope.

Finding 11 – Lack of Restrictions Over the Use of Subcontractors Under Price Agreements

Condition

The price agreement #81-350-00-04024 does not contain any language restricting the use of subcontractors.

HEI Subcontracted Work Under Price Agreements without NMCD’s Knowledge and Prior to an Approved Purchase Order

We noted that HEI subcontracted work under price agreement #81-350-00-04024 without the knowledge of NMCD and prior to an approved purchase order. During our testwork of HEI transactions, we only discovered HEI’s use of subcontractors through our review of the former Facilities Manager’s NMCD emails. HEI did not provide support to NMCD regarding any use of subcontractors (i.e., pricing, labor costs, certification, etc). Per our discussion with NMCD, they do not recall that HEI ever supplied NMCD any kind of support for subcontractors who worked under any price agreement with HEI. NMCD has no record of any kind, including subcontractor invoices, or any kind of pricing details on jobs performed either in whole or in part by the subcontractors. We are unable to ascertain the true number of transactions in which subcontractors were used under price agreements since NMCD was not made aware of the use of subcontractors by HEI.

Through our review of the former Facilities Manager’s emails, we noted communications that indicated HEI subcontracted wiring work that NMCD awarded to HEI under the price agreement. In one email, we noted that HEI subcontracted the wiring work to GDI Global, and GDI Global performed all of the work before NMCD even issued a purchase order. However, it does not appear that anyone at NMCD, other than the former Facilities Manager, was made aware that HEI was using a subcontractor under the price agreement. Additionally, we noted an email between GDI Global and HEI in which the President of HEI stated to an employee of GDI Global, “I have been the one pushing the deal here for hundreds of thousands of dollars of business for your company will [sic] little sales out of pocket and this is how it is done.” It raises the question of whether HEI had an arrangement with subcontractors to use HEI’s price agreement.

HEI Worked as Subcontractors without NMCD Knowledge

Through our review of the former Facilities Manager’s emails, we also noted certain communications that indicated that HEI worked as subcontractors for other vendors under various price agreements. We are unable to ascertain the true number of transactions in which HEI was used without NMCD’s knowledge as a subcontractor under other vendors’ price agreements, since it appears that NMCD, with the exception of the former Facilities Manager, was not made aware of the use of subcontractors by HEI.

Criteria

In order to establish proper controls over the use of subcontractors, price agreements used by any state agency should include language regarding the use of subcontractors. Such

contractual language should include proper restrictions, including approval by the agency prior to use of a subcontractor, and guidelines for the use of subcontractors.

Cause

The price agreement failed to include any language restricting subcontractors. It appears as though NMCD was not made aware subcontractors were being used. The former Facilities Manager was aware of the use of subcontractors; however, it does not appear that information was shared with other NMCD officials. It also appears that NMCD does not have any controls in place to detect the use of subcontractors.

Effect

The price agreements appear to be easily susceptible to manipulation. The use of subcontractors is not easily detected and the procurement process is, in effect, circumvented when subcontractors are used without agency knowledge. Without knowledge of the use of subcontractors, NMCD cannot ascertain whether prices and other critical elements in the price agreement are being adhered to since a subcontractor is doing the work. NMCD also cannot determine proper licensing or whether the subcontractor is suspended or debarred from doing state or federal work.

Recommendation

GSD and NMCD should consider further defining rules and requirements for the use of subcontractors under price agreements. To fix weaknesses related to subcontracting, it may be best if GSD establish rules regarding the use of subcontractors under price agreements. In addition to established requirements by GSD, the individual agency using the price agreement should also include and define rules and restrictions related to the use of subcontractors.

Finding 12 – Procurement Violations and Unallowed and Unsupported Costs of Approximately \$2 Million

Condition

We noted procurement violations in the following instances out of the 228 transactions tested:

- In 101 instances for total disbursements of \$1,991,527 the invoices from HEI were not descriptive enough to identify the goods or services provided to NMCD. For example, an invoice would simply indicate “labor” or “materials” and the dollar amount charged by HEI. With such minimal detail, we cannot determine who performed what type of labor, for how long or at what rate. The invoices fail to support that the labor rates charged by HEI agree to those set by the price agreement. We also cannot determine what type of materials HEI included in the invoices, the cost of each item and quantity billed by HEI, or whether they agree with the price agreement provisions (i.e., 0% discount on materials).
- In one instance, an HEI submitted an invoice under price agreement ending 45AG for \$5,000 and included only “Maintenance on Surveillance Equipment” as the description. There is nothing that identifies what portions of the \$5,000 were for labor or materials costs; yet the amount was paid in full by NMCD without verification of accurate labor rates and materials costs according to the price agreement.
- In one instance, the HEI proposal and the correlating purchase order indicate that “exact cost estimate not feasible,” yet HEI billed for and received the exact amount of the estimate of \$6,000. There was no support included with the invoice that would indicate the costs charged were actual amounts and not the estimate originally used by NMCD to establish the purchase order.
- In one instance, for the amount of \$12,595, three valid quotes were not obtained.

Criteria

Proper internal controls require NMCD to adhere to contract terms and conditions and to ensure that unauthorized and unallowed payments are not processed. The terms and conditions specified in contract #81-350-00-04024 require that the vendor invoice include copies of all purchases for parts and materials, including vendor and date purchased. The price agreement also specifies that HEI shall charge for materials at cost.

In addition, invoices should be processed only when they adequately detail all costs, such as labor costs and the hours and rates that relate to that charge. Pursuant to Section 1.4.1.51 NMAC, no fewer than three written price quotations are required for certain threshold amounts not exceeding \$20,000.

Cause

NMCD failed to request support for charges prior to disbursing payments to the vendor and failed to obtain the required amount of price quotes. In addition, NMCD failed to compare the allowable costs contained in the price agreement to the invoice from the vendor. The controls over transactions processed under price agreements are inadequate.

Effect

NMCD has a lack of support for payments disbursed, which prevents them from ensuring proper and reasonable payment for goods and services. Inadequate controls increase the risk of improper charges by vendors.

Recommendation

NMCD should be familiar with contractual and purchasing requirements, especially those requirements that function as controls over unsupported costs. NMCD should also ensure invoices contain enough detail support prior to disbursing payment to the vendor. Any invoice that fails to include sufficient cost detail should be rejected.

Finding 13 – Improper Accounting Practices Amongst HEI Transactions

Condition

Out of 228 transactions tested, we noted the following instances in which NMCD did not follow proper accounting practices:

- In 40 instances for total disbursements of \$193,970, there was no evidence that NMCD inspected goods and services prior to making payment to HEI.
- In seven instances for total disbursements of \$978,361, NMCD accepted goods and services at a location other than the facility where the goods were to be used or the services were to be performed. NMCD's former Facilities Manager predominately signed for the acceptance of goods and services, but the former Facilities Manager was rarely ever on-site according to various current and former NMCD employees.
- In 45 instances for total disbursements of \$190,739, the required signature verifying the receipt of goods and services was not on the invoice.
- There is no record that NMCD ever solicited other vendors for a quote on any of the projects awarded to HEI pursuant to three price agreements. Ten other vendors are included in the premise distribution systems agreement #80-000-00-00058 and six other vendors were included in the premise distribution systems agreement #40-000-00-00045. Three other vendors are included on the miscellaneous electrical services price agreement #81-350-00-04024. Two of the three other vendors' established prices demonstrate lower labor rates than HEI and discounts on materials purchased, whereas HEI was to provide materials at cost. For the time period covered by the scope of this special audit, NMCD used HEI under price agreement #81-350-00-04024 for 65 transactions amounting to \$2,108,025; price agreement #80-000-00-00058 for 58 transactions amounting to \$212,369; and price agreement #40-000-00-00045 for 84 transactions amounting to \$1,474,870.

Criteria

Proper accounting practices require NMCD to select the most economical option and appropriately process payments. NMCD personnel who actually receive the goods and services should verify that the goods and services were received. In order to obtain the most economical cost, other vendors on the price agreements should have been solicited.

Cause

NMCD's controls over approving payments are weak. It is unknown why NMCD did not solicit quotes from other vendors approved on the price agreements.

Effect

NMCD has accepted goods and services without adequate documentation. Inadequate controls increase the risk of improper charges by vendors.

Recommendation

NMCD should strengthen controls over the documentation related to attesting to goods and services received. NMCD should also solicit other vendors approved on the price agreements in order to obtain the best price.

Finding 14 – Lack of Support for and Significant Markup on Generator Purchase in the Amount of \$232,666

Condition

NMCD paid \$649,846 for four back-up generators placed into service at NMCD's central office buildings in Santa Fe in May 2009. Documentation suggests that HEI significantly overcharged NMCD for the cost of the generators. Wagner Power Systems sold the four generators to HEI at a cost of \$367,735; yet, HEI invoiced NMCD \$600,401 for the generators, which HEI billed as "materials". See Exhibits F and G. Therefore, HEI's markup of the generators it charged to NMCD is 39 percent. Furthermore, on April 30, 2009, HEI emailed the former Facilities Manager the "generator breakout cost" that totaled \$420,150. See Exhibit G. Not only does that amount fail to support the \$600,401 charged in "materials" costs, it also amounts to \$52,415 more than the actual cost of the generators.

In addition to these discrepancies, after a review of HEI's documents, we noted HEI had the same invoices from Wagner, totaling \$367,735 in cost for the four generators purchased for NMCD. The invoices from Wagner to HEI reveal a "shipped date" for the generators that took place after HEI invoiced NMCD for 50 percent of materials costs and labor costs. Therefore, it appears as though HEI billed NMCD for the generators before Wagner even shipped them. The detail job report included by HEI contained \$423,243.18 in materials costs and \$43,521.95 in labor costs, for a total of \$466,765.13. Total gross billings on the HEI detailed report was \$646,801, which was \$180,035.87 more than listed on HEI's own detail report.

Inconsistent Quotes – Higher Amount Accepted

HEI submitted three bid proposals dated February 24, 2009. The description and scope of work in each of the three quotes HEI submitted is the same. Two of the three quotes are for a total of \$599,846. However, one quote includes a \$10,000 "contingency fund" and \$540,401 in "material" costs (see Exhibit D), and the other quote does not contain a "contingency," but includes total material costs of \$550,401 (see Exhibit E), which is \$10,000 more than the other quote. The third quote, for a total of \$649,846, is the quote that NMCD ultimately accepted. The third quote was for \$60,000 more in material costs than the first quote (see Exhibit F). HEI did not provide an explanation for the increase in cost, despite having not changed the project's scope or definition.

During NMCD's 2009 annual financial audit, the external auditor questioned the \$50,000 increase in cost between the quote with material costs of \$550,401 and the quote for \$649,846. The response given by NMCD's former Facilities Manager indicated the increase was due to a contingency needed for any cost overruns. The former Facilities Manager also indicated that the "contingency" of \$50,000 was used for expedited shipping and labor, fuel costs and an extended three-year maintenance agreement for servicing the generators. However, NMCD did not provide actual support for the \$50,000 increase that NMCD paid to HEI.

Criteria

Proper internal controls require NMCD to adhere to contract terms and conditions and to ensure that unauthorized and unallowed payments are not processed. The terms and conditions specified in contract #81-350-00-04024 require that the vendor invoice include copies of all purchases for parts and materials, including vendor and date purchased. The price agreement also specifies that HEI shall charge for materials at cost.

All costs should be completely supported before they are approved for payment. NMCD should not approve and encumber in a purchase order any changes to quotes without support.

In addition, according to GSD, any contingencies require approval and adequate support to justify why the contingency was necessary. In anticipation of events that may occur, an agency may encumber funds to be used towards such contingencies. However, if a contingency occurs and the agency must expend the funds encumbered towards a contingency, the invoice must detail what constituted that contingency in terms that are allowed under the price agreement, such as materials and labor.

Cause

HEI appears to have misrepresented the actual costs invoiced to NMCD. NMCD failed to request support for materials charges prior to disbursing payment to the vendor. Furthermore, as in the majority of HEI transactions with NMCD, other vendors were not solicited on the project to provide a quote.

Effect

NMCD has likely paid upwards of 40 percent more than necessary on this project, and part of the payments to HEI may represent payment made without goods and services being rendered. HEI appears to have violated the terms of the price agreement and may have fraudulently billed NMCD. In addition, a more economical project may have been available from other vendors on the price agreement.

Recommendation

NMCD should seek quotes from other vendors on any price agreement where multiple vendors are listed. This would allow NMCD to obtain a more competitive price and could have substantially lowered the cost of the project. Additionally, if inconsistent quotes are received, NMCD should require complete detailed justification from the vendor. NMCD should be familiar with contractual requirements, especially those requirements that function as controls over unsupported costs, such as requiring the vendor to provide support for materials costs when submitting invoices to NMCD.

Finding 15 – HEI’s Failure to Support Charges

Condition

We reviewed a small sample of HEI documents related to amounts invoiced to NMCD within this special audit’s scope. In one example, HEI invoiced NMCD \$281,921.38 on June 29, 2009 for a door control system at the Western New Mexico Correctional Facility. All the detail the HEI invoice contained was charges for materials of \$261,087.90 and labor of \$20,833.48. The breakout of materials and labor is the same breakout provided on the quote submitted from HEI and accepted by NMCD. However, HEI’s own documents only support charges of \$197,781.69 in materials costs for that project. HEI’s detail list of materials costs included \$170,829.00 paid to an out-of-state subcontractor. The documentation was insufficient and did not allow us to determine the composition of those charges. In addition, the total of \$177,205.83 is questionable as 98 percent of the materials costs receipts are dated after HEI invoiced NMCD for the entire job.

Additionally, also contained in the \$197,781.69 of materials costs are \$4,880.88 in hotel charges; however, the hotel stays took place after HEI invoiced NMCD for the job. The total amount HEI detailed as labor was \$77,719.96, which is \$54,311.56 more than HEI charged in the invoices to NMCD. It appears, therefore, as though HEI improperly charged the extra labor to NMCD as materials. Moreover, the HEI detailed job report only details \$275,519.27 in total charges, which consists of \$197,781.69 in materials and \$77,719.96 in labor and \$17.62 in other; yet, the detail report indicates “gross billings” of \$284,496.30, which is \$1,492.29 less than the amount invoiced to and paid by NMCD. Given that the total paid to HEI was \$285,988.59, there remains a lack of detail in HEI records for \$10,469.32.

We also compared a bid proposal provided to NMCD by HEI to another bid proposal we found while reviewing documents provided to us by HEI. The proposal related to the same door control system noted above. Upon our review, it appears that the subcontractor, Engineering Control Systems (ECS), provided the original proposal to HEI. In the original proposal, which was on ECS letterhead, ECS provided a brief synopsis of ECS company background along with an explanation of what ECS’s role and deliverables would be in the project. However, in the proposal HEI submitted to NMCD, all of the information that ECS had provided HEI was deleted from the proposal, and there was no other indication in the proposal that ECS would provide any goods, services or deliverables. Additionally, ECS’s logo had been deleted from the letterhead, and it appears as though HEI attempted to conceal the fact that ECS was a subcontractor on the project. Included in HEI documents were invoices from ECS to HEI for at least \$170,829 for subcontractor work on that job.

We also noted that HEI charged NMCD \$10,036.85 in September 2008 for troubleshooting an alarm and paging system. According to the invoice, the service date for the work was August 12, 2008. HEI’s detail job report for this job only included \$532.28 in labor, which shows the work was performed on September 14, 2008 and January 25, 2009, which are dates after the service date shown on HEI’s invoice to

NMCD. There was no support in the documents provided by HEI to support the \$10,036.58 charged to NMCD.

During our review of a small sample of HEI documents, we noted that HEI purchased a DVR from a supplier for \$9,528.10 and later invoiced NMCD \$11,887.95 for the DVR, which is a 25 percent markup on materials costs. HEI sold the DVR to NMCD under price agreement #81-350-00-4024. The price agreement did not provide for a markup on materials. On page 11 of the price agreement, it provides the following: “Contractor shall submit billings, based on *actual contractor costs* for materials, less any applicable percentage for discounts.” Additionally, page 12 of the price agreement provides the following: “When billing, the Contractor shall provide copies of the invoices for the associated parts and materials used in the project, showing the vendor and the dates of purchase.” As clearly stated in the price agreement, HEI is to charge for materials *at cost* and provide copies of all purchases for materials to NMCD.

Finally, it is important to highlight certain transactions between NMCD and HEI under price agreement #80-000-00-00058. Under this price agreement, HEI used the Equipment and Services Schedule (ESS) pricing for the materials. The price agreement does not contain any prohibitions relating to markups on materials. Nevertheless, our review of HEI’s documentation revealed a significant variance between HEI’s actual costs for the materials and HEI’s pricing for the materials contained in the ESS. For example, HEI sold proxy IT cards and adhesive back PVC cards to NMCD according to the ESS prices for the materials; however, the ESS prices for the materials, which HEI invoiced to NMCD and NMCD subsequently paid, represent a 154.93% markup from HEI’s actual costs for the materials. Page 12 of the price agreement provides that “All equipment and labor pricing must include all delivery charges, travel charges and training charges anticipated for the work being bid,” but HEI’s documentation does not contain support for the \$1,036.18 variance. HEI also sold a DVR and cameras to NMCD according to the ESS prices for the materials. The ESS prices for the materials, which HEI invoiced to NMCD and NMCD subsequently paid, represent a 49.39% markup from HEI’s actual costs for the materials. HEI’s documentation does not contain support for the \$3,629.91 variance. Lastly, HEI sold adhesive back PVC cards, ribbon and proxy IT cards to NMCD under price agreement #80-000-00-00058 and used the ESS pricing for the materials. The ESS prices for the materials, which HEI invoiced to NMCD and NMCD subsequently paid, represent a 170.58% markup from HEI’s actual costs for the materials. Again, HEI’s documentation does not contain support for the \$1,446.82 variance. The table below illustrates the variances for these materials.

While procurement under price agreement #80-000-00-00058 was based on ESS pricing, and HEI invoiced NMCD according to the ESS, the variance between the ESS pricing and the vendor’s actual costs casts doubt on whether the State’s use of this method of procurement benefits taxpayers.

Description	Cost to HEI Inc.	Sold to DOC by HEI Inc.	Variance	Markup
DVR	\$ 9,528.10	\$ 11,887.95	\$ 2,359.85	24.77%
Proxy IT Cards	\$ 576.00			
Adhesive Back PVC Cards	\$ 92.82			
Total	\$ 668.82	\$ 1,705.00	\$ 1,036.18	154.93%
DVR and Cameras	\$ 1,145.13			
Cable Speaker	\$ 319.35			
LCD Monitor	\$ 186.98			
Power Supply PTC Outlets	\$ 58.94			
DVR and Cameras	\$ 5,093.33			
DVR and Cameras	\$ 545.63			
Total	\$ 7,349.36	\$ 10,979.27	\$ 3,629.91	49.39%
Adhesive Back PVC Cards & Ribbon	\$ 305.18			
Proxy IT Cards	\$ 543.00			
Total	\$ 848.18	\$ 2,295.00	\$ 1,446.82	170.58%

Criteria

Proper internal controls require NMCD to adhere to contract terms and conditions and to ensure that unauthorized and unallowed payments are not processed. The terms and conditions specified in contract #81-350-00-04024 require that the vendor invoice include copies of all purchases for parts and materials, including vendor and date purchased. The price agreement also specifies that HEI shall charge for materials at cost. NMCD should verify receipt of goods and services prior to making payment.

Cause

HEI appears to have misrepresented the actual costs invoiced to NMCD for certain materials and labor. NMCD failed to request support for material charges prior to disbursing payment to the vendor. Furthermore, as in the majority of HEI transactions with NMCD, other vendors were not solicited on the project to provide a quote. NMCD also did not verify receipt of goods and services prior to making payment.

Effect

NMCD has likely paid more than allowed and more than necessary on a number of transactions. Part of the payments to HEI may represent payments made without goods being received or services being rendered. HEI appears to have violated the terms of price agreement #81-350-00-04024 and may have fraudulently billed NMCD. In addition, more economical projects may have been available from other vendors on the price agreement. NMCD also may have paid for goods and services before they were actually received.

Without knowledge of the use of subcontractors, NMCD cannot ascertain whether HEI adhered to prices and other critical elements in the price agreement. NMCD also cannot

determine whether the subcontractors are properly licensed or whether the subcontractors are suspended or debarred from doing state or federal work. Therefore, the price agreements may be easily susceptible to manipulation and there is a significant risk that procurement rules will be violated. The procurement process is, in effect, circumvented when subcontractors are used without agency knowledge.

Recommendation

NMCD should be familiar with contractual requirements, especially those requirements that function as controls over unsupported costs. NMCD should require vendors to submit support for charges that adequately detail the composition of the charges, such as costs and quantities of materials, and labor rates and hours. Furthermore, NMCD should require an NMCD employee or employees, who are at the location and physically overseeing the project, to approve of the payment based on the invoice detail. NMCD should also seek quotes and proposals from other vendors on any price agreement where multiple vendors are listed. This would allow NMCD to obtain a more competitive price and could have substantially lowered the cost of the project. NMCD should request HEI records and perform a review to determine which prior disbursements are not supported. NMCD should request repayment for payments made in which vendors cannot provide complete support.

VII. REFERRAL OF THE SPECIAL AUDIT REPORT

The findings of this special audit indicate that potential criminal violations may have occurred. Those violations are the following:

1. Violations of the Procurement Code, Section 13-1-199 NMSA 1978;
2. Violations of the Governmental Conduct Act, Section 10-16-17 NMSA 1978;
3. Fraud, Section 30-16-6 NMSA 1978;
4. Tampering with public records, Section 30-26-1 NMSA 1978;
5. Paying or receiving public money for services not rendered, Section 30-23-2 NMSA 1978; and
6. Making or permitting false public voucher, Section 30-23-3 NMSA 1978.

Because certain findings of the special audit indicate that potential criminal violations may have occurred, pursuant to the Audit Act, Section 12-6-6 NMSA 1978, the OSA will provide this special audit report to the FBI and the U.S. Attorney for the District of New Mexico. Since the summer of 2010, the OSA has worked to assist the FBI with its investigation and has provided special audit documentation to the FBI. Additionally, the OSA will provide the following state agencies that are charged with the investigation and prosecution of crimes related to financial affairs:

1. New Mexico Attorney General;
2. First Judicial District Attorney of New Mexico; and
3. Tax Fraud Investigations Division, New Mexico Taxation and Revenue Department.

The OSA will also provide this report to the following oversight agencies for consideration of the special audit's findings and recommendations:

1. The Legislative Finance Committee;
2. The Office of the Governor;
3. New Mexico Department of Finance and Administration; and
4. New Mexico General Services Department.

Finally, when conducting the NMCD's financial audit for fiscal year ending June 30, 2011, the OSA will follow-up on the status of certain findings contained in this special audit report.

VIII. EXIT CONFERENCE

An exit conference to discuss the contents of the report was held at the New Mexico Corrections Department in Santa Fe, New Mexico on Thursday, May 19, 2011 and attended by the following:

New Mexico Corrections Department:

Lupe Martinez, Secretary

Jolene Gonzales, Deputy Secretary

Jim Brewster, General Counsel

Tim Oakeley, Acting Chief Information Officer, Information Technology Division

Raphael Torres, Financial Management Bureau Chief

Bryan Maestas, Accounting Manager

Albert Montano, Procurement Manager

Office of the State Auditor Personnel:

Carla Martinez, CPA, Deputy State Auditor

Evan Blackstone, General Counsel

Natalie Cordova, Audit Supervisor

Shawna Owens, Investigator

Amanda Rael, Auditor/Investigator

**IX. RESPONSE TO THE SPECIAL AUDIT BY THE NEW MEXICO
CORRECTIONS DEPARTMENT**

NMCD chose to provide a written response to this special audit report. That response is included on the following pages. It is important to note that NMCD's response represents NMCD's views and not those of the OSA. The OSA did not audit NMCD's response and, accordingly, we express no opinion on it.

STATE OF NEW MEXICO
CORRECTIONS DEPARTMENT
Central Office Administration: 4337 State Road 14, Santa Fe, New Mexico 87508
Post Office Box 27116, Santa Fe, NM 87502-0116
Main Number (505) 827-8600 Fax (505) 827-8533
www.corrections.state.nm.us

Susana Martinez, Governor
John Sanchez, Lt. Governor

Lupe Martinez
Secretary of Corrections (505) 827-8884
Jolene M. Gonzales
Deputy Secretary of Administration/CFO (505) 827-8667



Administrative Services	(505) 827-8601
Adult Prisons	(505) 827-8767
Corrections Industries	(505) 827-8597
General Counsel	(505) 827-8698
Information Technology	(505) 827-8713
Probation and Parole	(505) 827-8830
Reentry & Prison Reform	(505) 827-8541
Training Academy	(505) 827-8900

June 3, 2011

CORRECTIONS DEPARTMENT'S RESPONSE TO THE SPECIAL AUDIT

This Special Audit is a direct result of the Corrections Department's (Department or NMCD) actions. When internal Department suspicions regarding the former Facilities Manager arose over two years ago, the Department took steps to address the concerns and asked the external financial auditors for a review of transactions with Omni and HEI in FY2009. The review resulted in audit findings in the Department's FY2009 annual financial audit. To address the findings, the Department instituted some additional controls and staff continued to review transactions. It became evident that external assistance was required to address potential concerns of the suspected misuse of public funds. The concerns were reported to both the State Auditor and Attorney General in June 2010. The Department then requested an audit to examine the situation.

The Special Audit indicates the cause of certain findings appear to stem from the inappropriate and allegedly illegal conduct of its former Facilities Manager. (Note: The former Facilities Manager resigned from NMCD in May 2010.) The new administration fired this employee from state government shortly after taking office in 2011. The Governor has also signed an executive order that prohibits state contracting with companies engaged in corrupt activities. Additionally, the Department has taken steps to address the concerns raised in the audit, including ensuring that state laws, rules, regulations, policies, and procedures are understood and adhered to and continuing to investigate reports of any wrong-doing, report any suspicions, and notify the appropriate authorities in the event of criminal wrong-doing.

Most importantly, the NMCD believes that a significant amount of taxpayer money was improperly expended, not allowed or lacked support as a result of the former Facilities Manager's activities, in excess of \$1 million paid to three different companies. This administration has already begun evaluating the most effective ways to seek recovery of these funds and will see the recovery process through to the end; the taxpayers of New Mexico deserve nothing less.

In addition to several directives issued by previous NMCD managers relating to the importance of staff members familiarizing themselves with and following the State Procurement Code, the new administration seeks to continue the implementation of internal controls and oversight measures that will be vital to ensuring that similar problems do not occur again. These continued and additional controls are as follows:

- Remind staff at all levels to be open and report any wrongdoing, fraud, and/or abuse as well as being accountable for all resources appropriated and all assets procured by the Department.
- Continue oversight with business office fiscal staff, and continue annual trainings for financial staff to provide updates on accounting/procurement controls and processes; stress to employees to report suspicions of any kind, make recommendations for tighter controls for accountability as necessary, and issue directives when required.
- Require sufficient justification specifying the need for the contingency or encumbrance.
- Require detailed justification to support any change order increases to purchase orders.
- Require additional reviews and signatures to certify the receipt and payment of goods and services
- Refine the review of purchase order requests to ensure that they are in compliance with terms and conditions of price agreements and contracts, including proper billing of labor and materials.
- Perform spot check of purchase requests that are based on quotes. The Financial Management Bureau (FMB) staff of the Administrative Services Division (ASD) is randomly selecting purchase order requests and calling the vendors listed on quote sheets to verify the validity of the quotes.
- Advise ASD/FMB staff and put into practice safeguards to prevent someone from trying to force the processing of procurement transactions.
- Continue to stress that staff inspect and ensure all goods and/or services are being received prior to disbursing funds to vendors.
- Review NMCD internal controls periodically to reassess risks and make adjustments accordingly.
- Perform annual policy reviews to update policies, procedures and processes.

The Department recognizes the importance of ensuring public funds are spent in accordance with the New Mexico Procurement Code and all other laws, rules, and regulations pertaining to procurement transactions. The Department will continue to strive to improve its internal processes as necessary. At various meetings/trainings, management has expressed to staff to be open and report any wrongdoing, fraud, and/or abuse as well as being accountable of all resources appropriated and all assets procured by the Department.

This administration has set clear expectations of accountability and ethical behavior that all employees must uphold. Furthermore, this administration will work with the appropriate entities to ensure safeguards are in place and will do everything possible to ensure these violations do not happen again.

Sincerely,



Lupe Martinez
Secretary of Corrections

EXHIBITS

Exhibit A

Anthony Moya
83 Canada Del Rancho
Santa Fe, NM 87508

OMNI Development Corporation (505) 424-3565 INVOICE

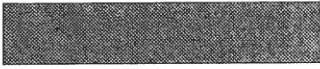
33257R2

Customer				Misc	
Name	Penitentiary of New Mexico			Date	3/4/2008
Address	P.O. Box 1059				
City	Santa Fe	State	NM	ZIP	87504
Phone	505-827-8705			Attn	Laurie Chapman
				FOB	Kitchen Case
					Worker Areas

Qty	Description	Unit Price	TOTAL
	Roofing Service at Corrections Department - PNM North Facility Level VI Kitchen Case Worker Areas Units 1,2 & 3		
1	Material Cost	\$ 19,891.95	\$ 19,891.95
1	Overhead/Profit	\$ 34,551.57	\$ 34,551.57
SubTotal			\$ 54,443.52
Shipping			
Tax Rate(s)			
TOTAL			\$ 54,443.52

PO No. 77000-0804000484

OMNI Dvlp Vendor No. - 0000042791



Your Business is Appreciated

Exhibit B

Anthony Moya
83 Canada Del Rancho
Santa Fe, NM 87508

OMNI Development Corporation (505) 424-3565 INVOICE

33272R

Customer			
Name	Penitentiary of New Mexico		
Address	P.O. Box 1059		
City	Santa Fe	State	NM ZIP 87504
Phone	505-827-8705		

Misc	
Date	4/29/2008
Attn	Laurie Chapman
FOB	Kitchen Case Worker Areas

Qty	Description	Unit Price	TOTAL
	Roofing Service at Corrections Department - PNM North Facility Level VI Kitchen Case Worker Areas Units 1,2 & 3 FINAL INVOICE - 100% COMPLETE <u>Labor Cost:</u>		
1	Journeyman @ \$44.65/hr. X 80 hrs	\$ 3,572.00	\$ 3,572.00
1	Exper.Appre. @ \$33.95/hr X 80 hrs.	\$ 2,716.00	\$ 2,716.00
8	Laborer @ 26.95/hr X 80 hrs.	\$ 2,156.00	\$ 17,248.00
Invoice #33257R2 \$54,443.52 was Paid for Material Cost only			

SubTotal \$ 23,536.00

Shipping \$ 5,166.14

Tax Rate(s)

\$ 5,166.14

TOTAL \$ 28,702.14

PO No. 77000-0804000484

OMNI Dvlp Vendor No. - 0000042791

Tax is based on Total Job Cost \$77,979.52 @ 6.625%

I certify that the original invoice has been lost or destroyed and cannot be located. A true copy of a valid original invoice is being provided; the accounts, records have been checked and no part of the invoice has been previously paid.

Your Business is Appreciated

Sandra G. Arzola

Exhibit C

56439

Anthony Moya
83 Canada Del Rancho
Santa Fe, NM 87508

OMNI Development Corporation

INVOICE

33433

Customer			
Name	Central NM Correctional Facility		
Address	PO Drawer 1328		
City	Los Lunas	State	NM ZIP 875031
Phone			

Misc	
Date	5/19/2009
Attn	Laurie Chapman
FOB	CNMCF BUR
	Phase III

Qty	Description	Unit Price	TOTAL
	CNMCF BUR Housing Units: 4A,4B,5A,5B Phase III		
1	Labor Cost	\$ 100,256.00	\$ 100,256.00
1	Contingency	\$ 35,000.00	\$ 35,000.00

Roofing project

I certify that: the original invoice has been lost or destroyed and cannot be located; a true copy of a valid original invoice is being provided; the accounting records have been checked and no part of the invoice has been previously paid.

[Signature]

SubTotal \$ 135,256.00

Tax \$ 8,115.36

TOTAL \$ 143,371.36

PO # 77000-0905000504
OMNI Dvlp Vendor No. - 0000042791

Your Business is Appreciated

Exhibit D

HEI Inc.
3800 Vassar NE
Albuquerque, NM
880-1819 Fax 837-1516

BID PROPOSAL SHEET

DATE: 2/24/2009
TO: Laurie Chapman
Corrections Department State of NM

PROJECT DESCRIPTION: Corrections Dept. Admin Bldg Emergency Generator Installations

Quote as per Price Agreement Number : 81-350-00-04024

HEI is pleased to provide you with the following Quote as requested.

QUOTE #1: Installation of four emergency generators, transfer switches with associated wiring as required for Bldg. A, Academy Bldg, Dormitories & Gym/Kitchen. Generators to be as follows.

Building A: 650 KW 480 volt 3 phase generator - Generator Delivery Time is 2-3 weeks ARO.

Dormitory Building: 250 KW 208 volt 3 phase generator - Generator Delivery Time 6-8 weeks ARO.

Gym/Kitchen: 300 KW 480 volt 3 phase generator - Generator Delivery Time 8-10 weeks ARO.

Training Academy: 300 KW 480 volt 3 phase generator - Generator Delivery Time 8-10 weeks ARO.

All Transfer Switches are on 6-8 week delivery schedule ARO.

This quote excludes Diesel Fuel Costs.

Total Material Costs:	\$540,401.00
400 - Zone 2 Journeyman Regular Hrs @ \$58.00 ea.	\$23,200.00
206 - Zone 2 Apprentices Regular Hrs @ \$39.40 ea.	\$8,116.40
92 - Zone 2 Laborer Regular Hrs @ \$36.90 ea.	\$3,394.80
120 - Zone 2 Journeyman after 5:00 Hrs @ \$76.40 ea.	\$9,168.00
50 - Zone 2 Apprentice after 5:00 Hrs @ \$50.40 ea.	\$2,520.00
Total Labor Costs per Zone 2:	\$46,400.00
Tax on Labor @ 6.5625%:	\$3,045.00
TOTAL PRICE FOR OPTION #1:	\$589,846.00
Contingency Fund:	\$10,000.00
TOTAL BID PRICE:	\$599,846.00

PLEASE NOTE THAT HEI MUST RECEIVE A WRITTEN NOTICE TO PROCEED OR P.O. BY 3-6-09 IN ORDER TO MEET THE SCHEDULE THAT IS BEING SUBMITTED AS AN ATTACHMENT TO THIS PROPOSAL.

Please contact Ralph Evans if you have any questions regarding this proposal.

Sincerely,

Exhibit E

HEI Inc.
3800 Vassar NE
Albuquerque, NM
880-1819 Fax 837-1516

BID PROPOSAL SHEET

DATE: 2/24/2009

TO: Laurie Chapman
Corrections Department State of NM

PROJECT DESCRIPTION: Corrections Dept. Admin Bldg Emergency Generator Installations

Quote as per Price Agreement Number : 81-350-00-04024

HEI is pleased to provide you with the following Quote as requested.

QUOTE #1: Installation of four emergency generators, transfer switches with associated wiring as required for Bldg. A, Academy Bldg, Dormitories & Gym/Kitchen. Generators to be as follows.

Building A: 650 KW 480 volt 3 phase generator - Generator Delivery Time is 2-3 weeks ARO.

Dormitory Building: 250 KW 208 volt 3 phase generator - Generator Delivery Time 6-8 weeks ARO.

Gym/Kitchen: 300 KW 480 volt 3 phase generator - Generator Delivery Time 8-10 weeks ARO.

Training Academy: 300 KW 480 volt 3 phase generator - Generator Delivery Time 8-10 weeks ARO.

All Transfer Switches are on 6-8 week delivery schedule ARO.

This quote excludes Diesel Fuel Costs.

Total Material Costs:	\$550,401.00
400 - Zone 2 Journeyman Regular Hrs @ \$58.00 ea.	\$23,200.00
206 - Zone 2 Apprentice Regular Hrs @ \$39.40 ea.	\$8,116.40
92 - Zone 2 Laborer Regular Hrs @ \$36.90 ea.	\$3,394.80
120 - Zone 2 Journeyman after 5:00 Hrs @ \$76.40 ea.	\$9,168.00
50 - Zone 2 Apprentice after 5:00 Hrs @ \$50.40 ea.	\$2,520.00
Total Labor Costs per Zone 2:	\$46,400.00
Tax on Labor @ 6.5625%:	\$3,045.00
TOTAL PRICE FOR OPTION #1:	\$599,846.00

PLEASE NOTE THAT HEI MUST RECEIVE A WRITTEN NOTICE TO PROCEED OR P.O. BY 3-6-09 IN ORDER TO MEET THE SCHEDULE THAT IS BEING SUBMITTED AS AN ATTACHMENT TO THIS PROPOSAL.

Please contact Ralph Evans if you have any questions regarding this proposal.

Sincerely,

Ralph Evans

Exhibit F

HEI Inc.
3800 Vassar NE
Albuquerque, NM
880-1819 Fax 837-1516

BID PROPOSAL SHEET

DATE: 2/24/2009
TO: Laurie Chapman
Corrections Department State of NM

*ok
L.C.*

PROJECT DESCRIPTION: Corrections Dept. Admin Bldg Emergency Generator Installations

Quote as per Price Agreement Number : 81-350-00-04024

HEI is pleased to provide you with the following Quote as requested.

QUOTE #1: Installation of four emergency generators, transfer switches with associated wiring as required for Bldg. A, Academy Bldg, Dormitories & Gym/Kitchen. Generators to be as follows.

Building A: 650 KW 480 volt 3 phase generator - Generator Delivery Time is 2-3 weeks ARO.

Dormitory Building: 250 KW 208 volt 3 phase generator - Generator Delivery Time 6-8 weeks ARO.

Gym/Kitchen: 300 KW 480 volt 3 phase generator - Generator Delivery Time 8-10 weeks ARO.

Training Academy: 300 KW 480 volt 3 phase generator - Generator Delivery Time 8-10 weeks ARO.

All Transfer Switches are on 6-8 week delivery schedule ARO.

This quote excludes Diesel Fuel Costs.

Total Material Costs:	\$600,401.00
400 - Zone 2 Journeyman Regular Hrs @ \$58.00 ea.	\$23,200.00 ✓
206 - Zone 2 Apprentice Regular Hrs @ \$39.40 ea.	\$8,116.40
92 - Zone 2 Laborer Regular Hrs @ \$36.90 ea.	\$3,394.80
120 - Zone 2 Journeyman after 5:00 Hrs @ \$76.40 ea.	\$9,168.00
50 - Zone 2 Apprentice after 5:00 Hrs @ \$50.40 ea.	\$2,520.00
Total Labor Costs per Zone 2:	\$46,400.00
Tax on Labor @ 6.5625%:	\$3,045.00
TOTAL PRICE FOR OPTION #1:	\$649,846.00

PLEASE NOTE THAT HEI MUST RECEIVE A WRITTEN NOTICE TO PROCEED OR P.O. BY 3-6-09 IN ORDER TO MEET THE SCHEDULE THAT IS BEING SUBMITTED AS AN ATTACHMENT TO THIS PROPOSAL.

Please contact Ralph Evans if you have any questions regarding this proposal.

Sincerely,

Ralph Evans

Exhibit G

From: Ralph Evans [<mailto:ralph@heinm.com>]
Sent: Thursday, April 30, 2009 9:18 AM
To: Chapman, Laurie, NMCD
Subject: Generator Cost Breakout

Laurie,

As per your request the following are the cost breakouts for the Generators:

Building A: Generator & Transfer Switch - \$156,800.00
Building B: Generator & Transfer Switch - \$91,425.00
Gym Bldg: Generator & Transfer Switch - \$91,425.00
Dormitory: Generator & Transfer Switch - \$80,500.00

Sincerely,

Ralph Evans

This inbound email has been scanned by the MessageLabs Email Security System.

Exhibit H

OMNI DEVELOPMENT

DATE: 7/7/2007

FROM: ANTHONY MOYA GENERAL CONTRACTOR – LICENCE NUMBER 89934

ATTN: LAURIE CHAPMAN

RE: DEPARTMENT OF CORRECTIONS – DEMOLITION & CONSTRUCTION OF TEN (10)
NEW OFFICE SPACES

OMNI Development Corporation is a General Contractor, as is most cases a general contractor subcontracts most the work. The scope of work with the Department of Corrections has been subcontracted 100%. Therefore, OMNI Development Corporation is not able to provide receipts/invoices.

However, we have listed the subcontractors used by OMNI Development Corporation:

- Allied Electric – Electrical Work
- Plaza Lathe & Plaster – Drywall Work
- Tim Vigil – Metal Frame Work
- Fairway Inc. – Wood Doors & Metal Frame & Hardware
- Tim Vigil – Drop Ceiling and Ceiling Tiles
- Dan's Painting – Painting
- On the Wall Cabinets – Coffee Bar Cabinets & Book Shelves

p. 2

6022522973

JUL 07 09:39a user

OMNI DEVELOPMENT

DATE: 04/07/2009

FROM: ANTHONY MOYA GENERAL CONTRACTOR - LICENSE NUMBER 89934

ATTN: MICHAEL RODRIGUEZ

RE: ROOFING PROJECT - PNM MRU TORCH DOWN BUR RESORATION

po 540

I am pleased to make the following proposal for Roofing services at the Penitentiary of New Mexico Level II:

Admin, kitchen, control area.

Proposal includes:

1. Remove ballast and tear off existing EPDM roof
2. Replace damaged or wet insulation with like material with prior approval from PCD
3. Remove wall cap and reinstall after roofing material wraps parapet
4. Mechanically attach 1/2" OSB Plywood to metal deck on top of insulation
5. Install new Built-Up (torch-down modified bitumen or BRAI) roof. There will be an application of 1 "hot-mop" with Type IV Roofing Asphalt (Hot Tar) then covered with a Modified Granular Type I Torch-Down (SPEC 2PNN-W 2 PLY Heat Welded) cap sheet compound (A granulated fiberglass surface)
6. Reseal all roof penetrations and mechanical units per manufacturers recommendations
7. Disposal of waste is responsibility of the contractor
8. 10 year NDL Warranty included in pricing
9. All work should take approximately 3 weeks to complete
10. Please see break-down on page 3

Total Price: \$110,693.25

1225 Parkway Drive Suite B
Santa Fe, NM 87507
(O)505-424-3565 (F)505-424-3586

Exhibit J

O M N I D E V E L O P M E N T

DATE: 04/28/2009
FROM: ANTHONY MOYA GENERAL CONTRACTOR - LICENSE NUMBER 89934
ATTN: LAURIE CHAPMAN
RE: ROOFING PROJECT - PNM MRU TORCH DOWN BUR RESORATION

*Revised 4-28-09
p0540*

I am pleased to make the following proposal for Roofing services at the Penitentiary of New Mexico Level II:

Admin, kitchen, control area.

Proposal includes:

1. Remove ballast and tear off existing EPDM roof
2. Replace damaged or wet insulation with like material with prior approval from PCD
3. Remove wall cap and reinstall after roofing material wraps parapet
4. Mechanically attach 1/2" OSB Plywood to metal deck on top of insulation
5. Install new Built-Up (torch-down modified bitumen or BRAI) roof. There will be an application of 1 "hot-mop" with a Type IV Roofing Asphalt (Hot Tar) then covered with a Modified Granular Type I Torch-Down(SPEC 2PNN-W 2 PLY Heat Welded) cap sheet compound (A granulated fiberglass surface)
6. Reseal all roof penetrations and mechanical units per manufacturers recommendations
7. Disposal of waste is responsibility of the contractor
8. 10 year NDL Warranty included in pricing
9. All work should take approximately 3 weeks to complete
10. Please see break-down on page 3

Total Price: \$149,014.65 + Tax

1225 Parkway Drive Suite B
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Exhibit K

O M N I D E V E L O P M E N T

DATE: 04/28/2009
FROM: ANTHONY MOYA GENERAL CONTRACTOR – LICENSE NUMBER 89934
ATTN: LAURIE CHAPMAN
RE: ROOFING PROJECT – PNM MRU TORCH DOWN BUR RESORATION

I am pleased to make the following proposal for Roofing services at the Penitentiary of New Mexico Level II:

Admin, kitchen, control area.

Proposal includes:

1. Remove ballast and tear off existing EPDM roof
2. Replace damaged or wet insulation with like material with prior approval from PCD
3. Remove wall cap and reinstall after roofing material wraps parapet
4. Mechanically attach ½” OSB Plywood to metal deck on top of insulation
5. Install new Built-Up (torch-down modified bitumen or BRAI) roof. There will be an application of 1 “hot-mop” with a Type IV Roofing Asphalt (Hot Tar) then covered with a Modified Granular Type I Torch-Down(SPEC 2PNN-W 2 PLY Heat Welded) cap sheet compound (A granulated fiberglass surface)
6. Reseal all roof penetrations and mechanical units per manufacturers recommendations
7. Disposal of waste is responsibility of the contractor
8. 10 year NDL Warranty included in pricing
9. All work should take approximately 3 weeks to complete
10. Please see break-down on page 3

Total Price: \$145,693.25 + Tax

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