STATE OF NEW MEXICO
OFFICE OF THE STATE AUDITOR

TORRANCE COUNTY EXAMINATION REPORT
FROM JANUARY 1, 2007 THROUGH APRIL 30, 2012

Hector H. Balderas
State Auditor
December 30, 2014

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State of New Mexico
OFFICE OF THE STATE AUDITOR

Hector H. Balderas
State Auditor

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Independent Accountant's Report

December 30, 2014

County Commissioners
Torrance County
P. O. Box 48
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We have examined County documentation of specific Torrance County payments made to CCS Construction for the period from January 1, 2007 through April 30, 2012 for the purpose of expressing an opinion as to whether:

(a) Torrance County Employees complied with the Governmental Conduct Act;

(b) Torrance County complied with the New Mexico Procurement Code;

(c) Torrance County complied with the Torrance County Purchasing Regulations; and

(d) Torrance County complied with certain sections of state law applicable to public works contracts.

Torrance County employees are responsible for their own compliance with the Government Conduct Act. Torrance County management is responsible for the County's compliance with:

(a) The New Mexico Procurement Code;

(b) Torrance County Purchasing Regulations; and

(c) State law applicable to public works contracts.

Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and accordingly, included examining, on a test basis, evidence regarding:

(a) Whether employees complied with the Governmental Conduct Act;

(b) Whether Torrance County complied with the New Mexico Procurement Code;

(c) Whether Torrance County complied with Torrance County Purchasing Regulations; and

(d) Whether Torrance County complied with certain sections of state law applicable to public works contracts.

We also performed such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on the entity's compliance.

The attached document provides the following information regarding the Torrance County Examination: an executive summary; the scope and methodology of the work performed; schedule of findings and recommendations; and exhibit A, which lists the projects the OSA reviewed.

In our opinion, based on the criteria cited:

(a) The County did not comply with the New Mexico Procurement Code with regard to County purchases from CCS Construction as described in the noncompliance findings;

(b) The County did not comply with the requirements of Torrance County Purchasing Regulations with regard to County purchases from CCS Construction as described in the noncompliance findings; and

(c) The County did not comply with certain sections of state law applicable to public works contracts with regard to County purchases from CCS Construction as described in the noncompliance findings.

Office of the State Auditor

Office of the State Auditor

December 30, 2014

I. EXECUTIVE SUMMARY

On December 29, 2011, the Office of the State Auditor (OSA) received a complaint via the OSA Fraud Hotline alleging a possible conflict of interest, fuel theft, and Procurement Code violations against Torrance County (County). On January 12, 2012, the County Commission (Commission) formally requested that the New Mexico Attorney General's Office (AGO) conduct an investigation related to contracts between the County and CCS Construction. The County awarded multiple contracts to CCS Construction over a number of years to complete various public works projects. On January 23, 2012, the New Mexico State Auditor received a letter from the then Chairwoman of the Commission expressing concerns and requesting an audit regarding the County's contracting practices with CCS Construction.

After a thorough assessment of the allegations involved, the OSA designated the County for a examination on April 2, 2012 related to the County's procurement and contracting practices. That same day, the OSA conducted a site visit at the County and made requests for numerous documents. On June 26, 2012, the OSA sent an engagement letter to the County for the examination as required by attestation standards, but the County did not sign the letter evidencing acceptance of the terms of the engagement until September 5, 2012.

The OSA examined County documentation of specific County payments made to CCS Construction for the period from January 1, 2007 through April 30, 2012 for the purpose of expressing an opinion as to whether the County complied with the Governmental Conduct Act, the New Mexico Procurement Code, County Purchasing Regulations and specific sections of state law applicable to public works contracts. The OSA tested all disbursements (100 percent coverage) for nineteen public works projects paid for by the County to CCS Construction during that time period. The disbursements totaled 51 transactions amounting to $744,708.99. Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

We also performed such other procedures as we considered necessary in the circumstances. For example, the OSA performed procedures related to certain identified risk areas, including whether transactions may have occurred that did not benefit the County, whether the County had adequate policies and procedures in place to safeguard against improper transactions and, if adequate policies and procedures were, in fact in place, whether they were adhered to by the County. The OSA also performed procedures in order to gain an understanding of how the County Manager or other County officials may have processed transactions involving CCS Construction. This examination report contains findings that are the results of our procedures. In our opinion, based on the criteria cited, the County did not comply with the New Mexico Procurement Code, County Purchasing Regulations and certain sections of state law applicable to public works contracts.

Overall, our examination identified a wide range of concerning deficiencies in the County's internal controls related to the public works projects that the County awarded to CCS Construction, which totaled approximately $750,000. In many cases, we found the County violated both the Procurement Code and its own County Purchasing Regulations when procuring these projects and making payments to CCS Construction. Additionally, we noted the County did not have a sound internal control structure that should exist to protect the County from improperly processing payments to private contractors for goods and services. For instance, in

many instances, the County's approval process for disbursements was inconsistent and not properly segregated amongst County employees. As a general observation, approval authority appeared to be heavily centralized with the County Manager. For example, the County Manager, on many occasions, authorized payments to CCS Construction without sufficient documentation that would support significant change orders on the projects awarded to the construction company. Furthermore, many payments to CCS Construction did not have adequate review and approval by the County Finance Department, which put the County at risk of exceeding its budget.

Due to the lack of transparency and the County's failure to follow the Procurement Code or its own Purchasing Regulations, the County's procurement process was highly susceptible to manipulation. In many instances, it appears the County Manager overrode the procurement authority of the Deputy County Manager, who is both the Purchasing Agent and the individual responsible for compliance with the Procurement Code and the County's Purchasing Regulations. Moreover, the lack of transparency and inadequate record keeping by the County during the procurement and disbursement process calls into question whether the County Manager and other County officials acted in the best interest of the County or received the best obtainable price for the public works projects awarded to CCS Construction.

With regard to the examination findings, in multiple instances the County violated the Procurement Code and its own Purchasing Regulations by failing to follow a competitive sealed bid or competitive sealed proposal process for projects ultimately awarded to CCS Construction. As a result, the County paid CCS Construction over $250,000 for projects that did not follow State and County procurement requirements.

Additionally, for all but one public works project awarded to CCS Construction, the County processed and approved invoices submitted by CCS Construction that lacked sufficient detail to justify the costs billed by the contractor. In total, the County paid CCS Construction over $740,000 for invoices that were not descriptive enough to identify what goods or services were provided. In many instances, CCS Construction failed to separate labor costs from the costs of materials in the invoices. We also noted many instances in which invoices were unsigned by the County and/or CCS Construction, yet the County nevertheless paid the full amounts of the invoices. Related to this issue, we discovered two projects in which CCS Construction used subcontractors and appears to have overcharged the County by marking up the cost of goods and services provided by the subcontractors. In these instances, the total amount charged by CCS Construction to the County was $108,636.38; however, the total amount charged by the subcontractors to CCS Construction was only $29,490.

Our test work also revealed the County paid almost $450,000 in change orders to CCS Construction without requiring supporting documentation to justify the additional scope of work changes submitted by CCS Construction. Because of this deficient practice, the County was unable to ensure its payments to CCS Construction were proper, reasonable, necessary, and in the best interest of the County. For example, even though the County entered into a contract with CCS Construction in the amount of $79,781.25 for a County Fire Department addition, the County authorized and paid seven changes orders totaling $179,088.08. The total cost of project to the County was almost $260,000, which exceeded the highest original bid for the project by

more than $100,000. In another example, CCS Construction entered into a contract with the County for $23,206.50 for a building installation. However, over the course of the project, the County Manager approved four change orders totaling approximately $144,000, causing the project's cost to balloon to over $167,000. In yet another instance, the County entered into a contract with CCS Construction for $12,658.63 for a park project. However, after the County approved a change order for approximately $70,000, the cost to the County for the project rose to over $82,000. In all three of these examples, the County failed to receive or ensure adequate documentation from CCS Construction that would support the additional costs.

We also noted many instances in which the County certified the receipt of goods and services from CCS Construction, and made payments to the company, prior to the receipt of goods or services. In certain cases, CCS Construction submitted invoices to the County for payment on projects, even though the company had not yet submitted proposals for those projects. CCS Construction also submitted an invoice on the day of the execution of a construction contract with the County. Furthermore, on more than one occasion, the County disbursed payment to CCS Construction for a prefabricated building that had not yet been received.

Related to this issue, we noted multiple instances in which the County certified the receipt of goods and services from CCS Construction, and paid the company, even though the County never received the goods or services. In one case, the County appeared to pay CCS Construction for a soil test that another vendor had previously performed. Similarly, CCS Construction invoiced the County for a planning and zoning permit and the County paid the invoice. However, we found the County had previously paid for and obtained the same permit. For another project, the County was charged twice for the installation of parking curbs, but paid CCS Construction the full amount of the invoices. Unfortunately, for all of these instances, the OSA was unable to determine how much the County paid for goods or services not received due to the vagueness of the invoices submitted by CCS Construction.

Finally, for certain projects, we found the County violated state law by failing to require CCS Construction to deliver performance and payment bonds on certain public works projects and by failing to ensure that CCS Construction registered with the Labor Relations Division of New Mexico Workforce Solutions Department. Under state law, the County should not have awarded these public works projects to CCS Construction due to the company's noncompliance.

In addition to detailing each of our examination findings, this report also includes numerous recommendations designed to strengthen the County's internal controls, improve transparency in the County's transactions, and reduce risks to the County during the procurement process for goods and services related to public works projects. For instance, we recommend all employees involved in the County purchasing process follow all applicable requirements of the Procurement Code, the County's Purchasing Regulations and provisions of state law applicable to public works contracts. The County should also segregate its procurement duties amongst several County employees in order to reduce the risk of that the County will give preferential treatment or make overpayments to contractors. Further, we strongly recommend that all invoices be properly reviewed and approved by appropriate County personnel before the County processes any payment to a private vendor. The County should also verify that goods or services have been received prior to disbursement, which should include site visits to the public works project

locations when necessary. Furthermore, the County should reject invoices that do not include adequate support for materials and labor or that do not detail adequate support for change orders. Lastly, the County should consider updating its Purchasing Regulations as they have remained unchanged since their enactment in 2000.

As a final note to this summary of the examination's findings and recommendations, on March 28, 2013 the AGO filed a criminal complaint in the Torrance County Magistrate Court against the County Manager and the owner of CCS Construction. Given the severity of these subsequent events and their relation to our examination's scope, we thoroughly evaluated the impact of those events on our test work prior to the OSA's release of the report. On November 26, 2015 the AGO dismissed its complaints against the County Manager and the owner of CCS Construction.

II. SCOPE AND METHODOLOGY

The scope and methodology of the examination consisted of 19 projects that the County entered into with CCS Construction from January 1, 2007 through April 30, 2012. The OSA obtained documents and information from the County, CCS Construction, various subcontractors used by CCS Construction, the New Mexico Environment Department and the New Mexico Attorney General's Office (AGO). The OSA also received a complaint via the OSA's Fraud Hotline. We performed the following procedures:

1. Conducted an initial site visit at the County's office.

2. Interviewed certain employees from the County and obtained information and evidence as it pertained to the examination's scope.

3. Requested an interview with the County Manager through her legal counsel in order to obtain information and evidence as it pertained to the examination's scope. The County Manager's legal counsel declined our interview request; however, they offered the OSA the opportunity to provide written questions to the County Manager, in which she would be consulted by her legal counsel prior to submitting a response.

4. Requested the County's independent public accountant (IPA) who was contracted to perform the County's annual financial audit during fiscal year 2012 to collect information and perform audit procedures in order to obtain evidence as it pertained to the examination's scope.

5. Requested and received the County Manager's work emails sent and received during a certain period of time. We reviewed certain emails to determine whether the emails provided information and evidence as it pertained to the examination's scope.

6. Tested disbursements made by the County to CCS Construction for 19 projects that occurred from January 1, 2007 through April 30, 2012 against certain criteria as identified below. We tested all disbursements during the time period for CCS Construction totaling 51 transactions for an amount of $744,708.99 in disbursements. Test work included determining whether disbursements were made in compliance with certain provisions of the Governmental Conduct Act, the Procurement Code, the County's Purchasing Regulations and certain provisions of state law applicable to public works contracts.

7. Requested transcripts of loan agreements between the New Mexico Finance Authority and the County for the time period of January 1, 2007 through April 30, 2012. Reviewed the transcripts for information and evidence as it pertained to the examination's scope.

8. Requested all records from CCS Construction related to the company's projects for the County between January 1, 2007 and April 30, 2012. Reviewed all records received for information and evidence as it pertained to the examination's scope.

9. Visited sites in the County where work was allegedly performed by CCS Construction pursuant to the projects for which CCS Construction billed and was paid.

10. Interviewed the owner of CCS Construction in order to obtain information and evidence as it pertained to the examination's scope.

11. Reviewed certain information provided by the AGO pertaining to the examination's scope.

12. Reviewed the criminal complaints filed by the AGO on March 28, 2013 against the County Manager and the owner of CCS Construction. Also, reviewed the AGO's Nolle Prosequis filed on November 26, 2014 dismissing its criminal complaints against the County Manager and the owner of CCS Construction.

13. Incorporated the results of the OSA procedures into this report. The OSA included in the report instances of noncompliance, lack of internal controls, improper internal controls, contractual violations or other deficiencies.

III. SCHEDULE OF FINDINGS AND RECOMMENDATIONS

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Finding 01 – The County Failed to Follow a Competitive Sealed Bid or Competitive Sealed Proposal Process

Condition

During our test work and as outlined below, the OSA identified 7 out of 19 projects in which the County failed to follow the competitive sealed bid or competitive sealed proposal process required by the Procurement Code and the County's Purchasing Regulations. The County failed to advertise or issue an invitation for bids or request for proposals containing specifications for these projects, yet the County awarded the projects and disbursed payments to CCS Construction totaling $257,245.49.

Hope Medical Center Cabinet Project

CCS Construction submitted an invoice to the County dated October 30, 2007 in the amount of $19,875.93 for work performed on the Hope Medical Center Cabinet Project. The OSA did not find any evidence that the County issued an invitation for competitive sealed bids or competitive sealed proposals containing specifications for the project. Despite its failure to issue an invitation for bids or an advertisement for prospective bidders, the County received two written bids for this project: one from CCS Construction for $19,875.93 and one from A-Wall Builders for $23,636.25. The OSA did note during our examination procedures that the owner of A-Wall Builders is the father of the owner of CCS Construction.

According to a "Letter to the File" dated October 24, 2007, the County Manager, the County's Maintenance Foreman, and the County's Comptroller made phone calls to vendors to obtain written quotes for the "installation of build-in, new cabinets with anti-bacterial rolled countertops." However, the letter was the only evidence the OSA identified which indicated the County attempted to obtain quotes for the project. Because there was no evidence that the County issued an invitation for bids, there was also no evidence that the County evaluated the bids submitted by CCS Construction and A-Wall Builders based on specific requirements that would have been set forth in an invitation for bids.

District #1 Duran Fire Department Sub-Station Project

Between May 21, 2008 and June 12, 2008, CCS Construction submitted three invoices totaling $76,749.36 to the County for the Duran Sub-Station Project. Hand written on a previous contract the County had in place for the Torreon Fire Department Addition Project were the words "and Duran," indicating that the contract was for both projects. During interviews conducted by the OSA, County staff stated they used the same procurement and contract award for the Duran Sub-Station Project that the County used for the Torreon Fire Department project, pursuant to Section 13-1-129 NMSA 1978 (procurement under existing contracts). The first invoice for the Duran project also contained a handwritten note stating, "Piggyback Torreon CO's," which signified that the County authorized the Duran Sub-Station Project under the Torreon Fire Department Addition Project contract.

In order for the County to meet the requirements set forth by Section 13-1-129 NMSA 1978 to "piggyback" a contract, the specifications of the "piggybacked" contract would have to mirror the specifications set forth in the initial contract, or the contractor must have a current exclusive

or non-exclusive price agreement with the County. Neither one of the aforementioned qualifications set forth in statute were met in this case; therefore, the project should have gone out to bid.

Fire Marshal Office Remodel Project

For the Fire Marshal Office Remodel Project, CCS Construction submitted one invoice to the County dated February 14, 2008 for $15,158.44, which was the entire cost of the project. The OSA did not find any evidence that the County issued an invitation for bids or a sealed bid and proposal advertisement containing specifications for the project.

Despite its failure to issue an invitation for bids or advertisement for prospective bidders, the County did receive three "bid proposals" submitted from January 15, 2008 through January 17, 2008. The first proposal, dated January 15, 2008, was from A-Wall Builders for a total of $10,528.00. The second proposal, dated January 16, 2008, was from OutWest Builders for a total of $11,000.00. The third proposal, dated January 17, 2008, was from CCS Construction for a total of $10,105.63. The County awarded the project to CCS Construction. Because the initial "proposals" for the project exceeded the County's own purchasing threshold of purchases over $10,001, the project should have gone out to bid. Because there was no evidence that the County issued an invitation for bids, there was also no evidence that the County evaluated the bids submitted by the prospective bidders based on specific requirements that would have been set forth in an invitation for bids.

Judicial Building & Esperanza Health Center Grading and Drainage Project

Between October 19, 2010 and November 15, 2010, CCS Construction submitted four invoices totaling $32,032.72 to the County for the Judicial Building & Esperanza Health Center Grading and Drainage Project. The OSA did not find any evidence that the County issued an invitation for competitive sealed bids or competitive sealed proposals containing specifications for the project.

Despite its failure to issue an invitation for bids or advertisement for prospective bidders, the County received three "proposals" from vendors. In August and October 2010, the County received two proposals each from three separate vendors for the Judicial Building & Esperanza Health Center Grading and Drainage Project: Rivercrest Construction's (or RCC, LLC) proposals were in the amounts of $15,070 and $13,500; CCS Construction in the amounts of $9,500 and $7,300; and OutWest Builders in the amounts of $9,000 and $10,000. It is unclear how the County notified these vendors to submit proposals. Furthermore, it appears that because the County failed to issue an invitation for bids, the specifications on the bids for the project were inconsistent. Because the "proposals" did not include the same specifications, the OSA could not determine which of the proposals contained the best obtainable price.

Regardless, the project was awarded to CCS Construction, whose "proposal" totaled $16,800. In addition to CCS Construction's proposal, the County Manager authorized one change order on November 15, 2010 for $13,976.10. The total cost of the project was $32,032.72. Because the price of the project exceeded the County's own regulation for purchases over $10,001, the project should have gone out to bid. Because there was no evidence that the County issued an invitation for bids, there was also no evidence that the County evaluated the bids submitted by

the prospective bidders based on specific requirements that would have been set forth in an invitation for bids.

Furthermore, during our review the OSA also noted the first invoice CCS Construction submitted for this project was dated October 19, 2010, one day prior to CCS Construction's written bid, which was dated October 20, 2010.

Estancia Senior Center Parking Lot Project

Between August 9, 2010 and January 27, 2011, CCS Construction submitted six invoices totaling $12,893.12 to the County for the Estancia Senior Center Parking Lot Project. The OSA did not find any evidence that the County issued an invitation for competitive sealed bids or competitive sealed proposals containing specifications for the project. Despite its failure to issue an invitation for bids, the OSA found an email that was sent from the County Manager to Rivercrest Construction (or RCC, LLC) in which the County Manager solicited a quote for the project. Even though the OSA did not find any evidence of the County Manager soliciting a quote from any other company, we noted the County obtained a total of three written quotes from CCS Construction, Rivercrest Construction and A-Wall Builders which were summarized on a Requisition for Purchase form dated July 20, 2010. The Requisition was for a "breezeway, ADA parking and painting at Estancia Senior Center."

CCS Construction's proposal totaled $9,400 and was dated July 19, 2010. RCC, LLC's proposal totaled $9,580 plus tax, was in the format of a RCC handwritten note and appeared to have been sent to the County via fax dated July 19, 2010. A-Wall Builders' proposal was for a total of $10,850 and was not dated. It is unclear how the County solicited a quote from A-Wall Builders and CCS Construction.

Because the cost of the project was $12,893.12, under the County's Purchasing Regulations, the project should have gone out to bid. Because there was no evidence that the County issued an invitation for bids, there was also no evidence that the County evaluated the bids submitted by the prospective bidders based on specific requirements that would have been set forth in an invitation for bids.

District #5 Homestead Estates Fire Department Repair of Doors & Walls Project

Between October 19, 2011 and November 1, 2011, CCS Construction submitted two invoices totaling $17,572.50 to the County for work done at the Homestead Estates Fire Department. The original County Requisition form dated November 1, 2011 was for a total of $4,792.50 and was signed by the Fire Marshal, the County Manager, and the County Comptroller. The OSA did not find any evidence of the County soliciting quotes for this project from any contractor. Therefore, it is not clear how the County obtained a written quote from A-Wall Builders dated September 21, 2011 for $5,100 and a written quote from OutWest Builders dated September 21, 2011 for $5,500.

The County awarded CCS Construction the bid for $4,792.50; however, according to the County, CCS construction failed to submit a written proposal. The OSA did obtain a document from the County submitted by CCS Construction dated October 19, 2011. The document had "Proposal" typed on it, but that was scratched out and "Invoice" was written on it. When the OSA attempted

to clarify the true purpose of this document and requested CCS Construction's original quote or "proposal" for this project, the County stated a quote from CCS Construction "never existed." The OSA later determined that this document was, in fact, an invoice.

Despite the original price agreement, the County Fire Marshal authorized one change order on November 1, 2011 for $13,976.10. Because the price of the project exceeded the County's own regulation for purchases over $10,001, the project should have gone out to bid. Because there was no evidence that the County issued an invitation for bids, there was also no evidence that the County evaluated the bids submitted by the prospective bidders based on specific requirements that would have been set forth in an invitation for bids.

Torreon Park Project

On April 8, 2008, the County executed a contract with CCS Construction for the fixed amount of $12,658.63 for work related to the Torreon Park Project. Between March 31, 2008 and April 9, 2008, CCS Construction submitted two invoices totaling $82,963.42 to the County for the Torreon Park Project. The County failed to procure the work for the project pursuant to a competitive sealed bid or competitive sealed proposal process. The County, however, did obtain three written quotes for the project. It appears that because the County failed to engage in a competitive sealed bid or proposal process, the specifications on the quotes for the project were inconsistent and it is unclear how the contractors obtained the information they required to submit their quotes.

Furthermore, despite the original price agreement, the County Manager authorized one change order originally dated April 2, 2008, but the date had been stricken out and the manual date of "April 9, 08" written in its place. On the change order, there is a handwritten note at the top right side of "Invoice #2 Change Order #1" which states, "Discussed procurement w/ the County Attorney on 4/02/08 – he ok'd! Ja." Due to the amount of the project, the County should have competitively bid the project pursuant to the Procurement Code and the County's own Purchasing Regulations. Because there was no evidence that the County issued a competitive sealed bid or engaged in a competitive sealed proposal process, there was also no evidence that the County evaluated the bids submitted by the prospective bidders based on specific requirements set forth in an invitation for bids or request for proposals.

Criteria

The Procurement Code (Sections 13-1-28 through 13-1-199 NMSA 1978) imposes certain requirements for competitive sealed bids, competitive sealed proposals, small purchases, sole source procurements, emergency procurements and existing contracts.

The Procurement Code imposes the following requirements for competitive sealed bids:

- Section 13-1-103(A) NMSA 1978 requires "[a]n invitation for bids shall be issued and shall include the specifications for the services, construction or items of tangible personal property to be procured, all contractual terms and conditions applicable to the procurement, the location where bids are to be received and the date, time and place of the bid opening;"

- Sections 13-1-104(A) and (C) NMSA 1978 requires an invitation for bids or a notice of invitation for bids "be published not less than ten calendar days prior to the date set forth for the opening of bids . . . at least once in a newspaper of general circulation in the area in which the central purchasing office is located." That section also provides that a "central purchasing office may satisfy the requirement of sending copies of a notice or invitation for bids by distributing the documents to prospective bidders through electronic media."
- Section 13-1-105(A) NMSA 1978 requires that bids "be evaluated based on the requirements set forth in the invitation for bids, which requirements may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose . . . The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids."
- Section 13-1-107 NMSA 1978 requires that bids "be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids."

The Procurement Code imposes the following requirements for competitive sealed proposals:

- Section 13-1-112 NMSA 1978 provides that competitive sealed proposals, including competitive sealed qualifications-based proposals, shall be solicited through a request for proposals that must include: (1) the specifications for the services or items of tangible personal property to be procured; (2) all contractual terms and conditions applicable to the procurement; (3) the form for disclosure of campaign contributions given by prospective contractors to applicable public officials pursuant to Section 13-1-191.1 NMSA 1978; (4) the location where proposals are to be received and the date, time and place where proposals are to be received and reviewed;
- Section 13-1-113 NMSA 1978 requires that requests for proposals be published not less than ten calendar days prior to the date set forth for the opening of bids . . . at least once in a newspaper of general circulation in the area in which the central purchasing office is located;
- Section 13-1-114 provides that the "request for proposals shall state the relative weight to be given to the factors in evaluating proposals;" and
- Sections 13-1-115 and 13-1-117 NMSA 1978 provide that "negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award," and the "award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the state agency or a local public body, taking into consideration the evaluation factors set forth in the request for proposals."

With regard to small purchases, the Procurement Code imposes the following requirements:

- Section 13-1-125(A) NMSA 1978 requires a "central purchasing office" to "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 . . . a local public body or a central purchasing office that has the authority to issue regulations;" and
- Section 13-1-125(C) NMSA 1978 provides that a "a local public body may procure services, construction or items of tangible personal property having a value not exceeding

ten thousand dollars ($10,000) by issuing a direct purchase order to a contractor based upon the best obtainable price."

Torrance County Resolution #2000-15 Purchasing Regulations, adopted by the Torrance County Commission pursuant to the Procurement Code, provides for certain Purchasing Regulations pertaining to small purchases and related matters. The Regulations, specifically Section 3, designate the County Manager's Office as the Central Purchasing Office, and designate the Assistant County Manager as the Purchasing Agent. In Section 4, the Regulations further provide that "The Purchasing Agent is responsible to the Torrance County Manager and to the Torrance County Commission for all procurement activity (purchasing) by and on behalf of Torrance County. The Purchasing Agent shall be responsible for the compliance with these Purchasing Regulations and for compliance with the Procurement Code."

Section 5(e) of the Purchasing Regulations also require the County adhere to the following procedures for purchases $10,001 and over: "Purchases of $10,001.00 or more must be by sealed bid or sealed competitive proposal and conducted pursuant to the Procurement Code. No requests for proposals shall be circulated or published in the newspaper without the prior approval of the Central Purchasing Office. The Purchasing agent shall issue all sealed bid and proposal advertisements. In the event that a department has sought written bids for a purchase between $3,001.00 or $10,000.00 and received bids, two of which were for more than $10,000.00, then, in that event, the purchase shall be made pursuant to competitive bids and shall be published in the newspaper in accordance with the Procurement Code."

In certain cases, the Procurement Code, specifically Section 13-1-129(A) NMSA 1978 allows a central purchasing office to contract for services, construction or items of tangible personal property under existing contracts and without the use of competitive sealed bids or competitive sealed proposals (also known as "piggybacking") if the existing contract is:

- "At a price equal to or less than the contractor's current federal supply contract price (GSA), providing the contractor has indicated in writing a willingness to extend such contractor pricing, terms and conditions to the state agency or local public body and the purchase order adequately identifies the contract relied upon; or
- With a business which has a current exclusive or nonexclusive price agreement with the state purchasing agent or central purchasing office for the item, services or construction meeting the same standards and specifications as the items to be procured if the following conditions are met: (a) the quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement; and (b) the purchase order adequately identifies the price agreement relied upon."

Cause

The County violated the Procurement Code and its own Purchasing Regulations by awarding the aforementioned public works projects to CCS Construction without going through proper procurement processes. Because none of the projects would have fallen under the exceptions of small purchase, sole source procurement, emergency procurement or the proper use of an existing contract, the County should have procured the projects through either a competitive sealed bid or competitive sealed proposal process. The County did neither. Because the County

failed to follow either a competitive sealed bid or competitive sealed proposal, the County also failed to follow the proper process outlined in the Procurement Code for evaluating and awarding the contracts to CCS Construction.

Furthermore, it appears the County Manager overrode the Deputy County Manager's authority as the Purchasing Agent and the individual responsible for compliance with the Procurement Code and County Purchasing Regulations by not requiring competitive sealed bids and competitive sealed proposals for purchases $10,001 and over.

Effect

Risks of fraud increase and transparency is harmed by the County's violations and overrides of the Procurement Code and its own Purchasing Regulations. Furthermore, the County may not have received the best obtainable price for goods and services purchased from CCS Construction. The County has subverted the purpose of the Procurement Code as specified in Section 13-1-129(C) NMSA 1978, which is to "provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity."

Recommendation

We recommend the County require all employees involved in the County purchasing process to follow all applicable requirements of the Procurement Code and the County's Purchasing Regulations. Furthermore, as the Purchasing Agent, the Deputy County Manager should ensure the County is in compliance with the Procurement Code and its own Purchasing Regulations. Also, we recommend the County segregate its procurement duties among several County finance employees in order to reduce the risk that the County will make overpayments or give preferential treatment to contractors.

Moreover, the County may want to update its Purchasing Regulations since the County's Purchasing Regulations were enacted in March 2000 and the Procurement Code has been amended since then.

Finding 02 – The County Failed to Obtain Written Quotes for Certain Purchases Under $10,000

Condition

We noted 2 out of 19 projects in which the County violated its own Purchasing Regulations by failing to obtain three written quotes for purchases under $10,000. The regulations required the County to obtain the "best obtainable price" for the projects after first obtaining three written quotes. The projects are described in detail below.

Dispatch Center Down Spout Project
In October 2010, the County paid CCS Construction a total of $5,318.76 for the Dispatch Center Down Spout Project. The County Requisition for Purchase form states the County obtained three quotes for this project; however, the County obtained oral quotes from the vendors rather than obtaining written quotes from the vendors. The Requisition for Purchase form was signed by the 911 Emergency Services Director and the County Manager.

Mountainair Senior Center Parking Lot Project
From September 30, 2010 through February 9, 2011, the County paid CCS Construction a total of $8,050.32 for the Mountainair Senior Center Project. The County failed to obtain three written quotes for this project. Instead, the County improperly used quotes obtained for a separate project, the Estancia Senior Center Project, to procure CCS Construction for the Mountainair Senior Center Project.

The County Manager signed the County Requisition for Purchase form, dated September 5, 2010, on both the Department Approval line and the County Manager Approval line. The section of the Requisition for Purchase form that should show the three vendor quotes states the following: "This vendor was the low bidder on project for Estancia Center in July (Bids are attached). The Mountainair Center also needs ADA accessibility, so the County is using same bid for Mountainair parking slab." The Requisition for Purchase for the Mountainair Senior Center Project included the purchase of a concrete handicap parking lot for $6,400 and dirt work for $600.

Criteria

The Procurement Code, specifically Section 13-1-125(A) NMSA 1978, provides that a "central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars ($20,000) in accordance with the applicable small purchase rules adopted by the . . . a local public body or a central purchasing office that has the authority to issue regulations."

Furthermore, Section 13-1-125(C) NMSA 1978 states "Notwithstanding the requirements of Subsection A of this section, ... a local public body may procure services, construction or items of tangible personal property having a value not exceeding ten thousand dollars ($10,000) by issuing a direct purchase order to a contractor based upon the best obtainable price."

Torrance County Resolution #2000-15 Purchasing Regulations, adopted by the Torrance County Commission pursuant to the Procurement Code, provides for certain Purchasing Regulations pertaining to small purchases and related matters. The Regulations, specifically Section 3, designate the County Manager's Office as the Central Purchasing Office, and designate the Assistant County Manager as the Purchasing Agent. In Section 4, the Regulations further provide that "The Purchasing Agent is responsible to the Torrance County Manager and to the Torrance County Commission for all procurement activity (purchasing) by and on behalf of Torrance County. The Purchasing Agent shall be responsible for the compliance with these Purchasing Regulations and for compliance with the Procurement Code."

Section 5(d) of the Purchasing Regulations also require the County adhere to the following procedures for purchases between $3,001 & $10,000: "All purchases between $3,001 and $10,000 shall be made at the best obtainable price after having first obtained three written quotes. The written quotes shall be submitted to the Central Purchasing Office and kept on file in the Central Purchasing Office with the requisition form and the other documentation as required by the Central Purchasing Office."

Cause

It appears the County Manager overrode the Deputy County Manager's authority as the Purchasing Agent and the individual responsible for compliance with the County Purchasing Regulations. Therefore, the result was the County's failure to comply with the requirement of *Torrance County Resolution # 2000-15 Purchasing Regulations,* Section 5(d) to obtain three written quotes for purchases costing between $3,001 and $10,000.

Effect

Risks of fraud increase and transparency is harmed by the County's violations and overrides of the Procurement Code and its own Purchasing Regulations. The County has subverted the purpose of the Procurement Code as specified in Section 13-1-129(C) NMSA 1978, which is to "provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity."

Recommendation

We recommend the County require all employees involved in the County purchasing process to follow all applicable requirements of the Procurement Code and the County's Purchasing Regulations. Furthermore, as the Purchasing Agent, the Deputy County Manager should ensure the County is in compliance with the Procurement Code and its own Purchasing Regulations. Also, we recommend the County segregate its procurement duties among several County finance employees in order to reduce the risk that the County will make overpayments or give preferential treatment to contractors.

Moreover, the County may want to update its Purchasing Regulations since the County's Purchasing Regulations were enacted in March 2000 and the Procurement Code has been amended since then.

Finding 03 – The County Failed to Document the Basis of an Emergency Procurement and the Selection of CCS Construction

Condition

The OSA identified 4 out of 19 projects in which the County failed to document its written determination for the basis of an emergency procurement and for the selection of the contractor or vendor, as required by the Procurement Code and the County's Purchasing Regulations. The projects are noted below.

District #3 McIntosh Fire Department Septic System Project
On September 29, 2009, the Fire Marshal and the County Manager signed a County Requisition for Purchase form to procure "Exploratory backhoe work to expose septic tank at District 3 FD" for a total cost of $1,000. The "Vendor Name" on the form was CCS Construction, however, there were no quotes specified in the section of the form where quotes from vendors were supposed to be documented. Rather in that section, the form stated "Emergency Purchase; holding up construction at Dispatch." The County's documentation did not adequately state why an emergency procurement was needed, nor did it provide a justification or explanation as to how CCS Construction was selected. Ultimately CCS Construction submitted an invoice to the County, dated October 6, 2009, in the amount of $983.96. The invoice was paid on October 13, 2009.

District #2 Indian Hills Fire Department Septic Installation Project
Torrance County paid CCS Construction a total of $25,636.38 for the installation of a septic tank and drain for the Indian Hills Fire Department (D2) Septic System. CCS Construction submitted an invoice to the County dated January 26, 2009 for payment of $14,250. The County Manager signed the invoice. Furthermore, there was a handwritten note on the invoice that stated, "Emergency purchase includes both tanks." The invoice contained the following description of the work: "Install additional tank for floor drain; (drain was dumping illegally on ground – red tagged by NMED inspector); Install high water alarm system in floor drain tank and in septic tank; Install interior, exterior electrical conduit and wire. Connect to alarm system and electrical breaker box; Price includes jackhammer and removal of sub-surface rock which inhibits the proper installation of the system."

CCS Construction submitted a second invoice dated February 5, 2009, for $11,386.38 to the County for payment for "Indian Hills Fire District 2 Sub-Station, Completion of Septic System." The County Manager signed the second invoice. The County's documentation did not adequately state why an emergency procurement was needed, nor did it provide a justification or explanation as to how CCS Construction was selected.

Furthermore, when the OSA contacted the New Mexico Environment Department Liquid Waste Bureau (NMEDLWB) to get an explanation of the "red tagged by NMED Inspector" description on the invoice, the NMEDLWB informed us that no record of this violation existed. Rather, the NMEDLWB found an "Application for a Liquid Waste Permit or Registration" that was submitted by York Septic Systems and was approved by NMED on February 4, 2009. This

document evidences an NMED Inspector granted final approval of the installation of the septic tank by J.M., Installer from York Septic on February 4, 2009. The County's lack of documentation justifying an emergency procurement, the nonexistence of the "red tag" by NMED, and the Liquid Waste Permit being issued after the first invoice submitted by CCS Construction, call into question whether the County had an immediate need for services which would have properly justified circumventing normal procurement methods by using an emergency procurement process.

Animal Shelter Septic and Leach Field Replacement Project

CCS Construction submitted an invoice dated Monday April 11, 2011 for $5,323.94 for the replacement of the animal shelter septic and leach field. The County Manager signed the invoice. The completed County Receiving & Accounts Payable Report dated Tuesday April 12, 2011 included a note stating, "Septic caved in; discovered leach line was broken, not working and run under new dispatch center. Had to be repaired. Animal Shelter is taking occupancy in a few days. Emergency purchase, per County Manager." Other than the note, the County's documentation did not include a written determination for the basis of the emergency procurement or a justification or explanation as to how CCS Construction was selected.

911 Dispatch Center Emergency Septic Repair

CCS Construction submitted an invoice dated January 24, 2011 to the County for 911 Dispatch Sewer Repair in order to "[e]xcavate and replace sewer line from building cleanouts to septic tank." The amount of the invoice was $1,278.00. There was no County signature on the invoice. The completed County Receiving & Accounts Payable Report, dated January 24, 2011, was signed by the County Manager, and the report described the vendor services as "Emergency repair to septic system at Dispatch-plumbing was backed up early Saturday morning." Aside from the description on the Report, the County's documentation did not state why an emergency procurement was needed, nor did the County provide a justification or explanation as to how CCS Construction was selected.

Criteria

Section 13-1-127(A) provides the following: "The state purchasing agent, a central purchasing office or a designee of either may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, safety or property requiring procurement under emergency conditions; provided that emergency procurements shall be made with competition as is practicable under the circumstances. A written determination of the basis for the emergency procurement and for the selection of the particular contractor or vendor shall be included in the procurement file."

Furthermore, Section 13-1-127(B) states: "An emergency condition is a situation which creates a threat to public health, welfare or safety . . . 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."

Section 13-1-128 NMSA 1978 requires central purchasing offices to "maintain, for a minimum of three years, records of sole source and emergency procurements." The record of each

procurement is a public record and must contain the following information: the contractor's name and address; the amount and term of the contract; a listing of the services, construction or items of tangible personal property procured under the contract; and the justification for the procurement method.

Torrance County Resolution #2000-15 Purchasing Regulations, adopted by the Torrance County Commission pursuant to the Procurement Code, provides for certain Purchasing Regulations pertaining to small purchases and related matters. The Regulations, specifically Section 3, designate the County Manager's Office as the Central Purchasing Office, and designate the Assistant County Manager as the Purchasing Agent. In Section 11, the Regulations provide the following: "An emergency purchase is made only when a threat exists to the public health, safety and general welfare of the residents of Torrance County. No purchase order shall be issued for an emergency purchase without the written approval of the County Manager. In addition, the provisions of the Procurement Code 13-1-127 and 128 NMSA 1978 shall be strictly adhered to."

Cause

The County did not properly document the basis as to why the aforementioned projects created a threat to public health, welfare, safety or property or how CCS Construction was selected.

Effect

The County's failure to document the basis for the emergency procurement and for the selection of CCS Construction lacks transparency and raises questions regarding whether the projects were procured in the most fair and equitable way for all persons involved.

Recommendation

The County should implement proper controls to ensure it is in compliance with the Procurement Code and County Purchasing Regulations as they relate to emergency procurements.

Finding 04 – The County Accepted and Paid Unsupported Costs Submitted by CCS Construction

Condition

For 18 out of 19 projects we tested, we noted multiple instances in which the County accepted and made payments for invoices submitted by CCS Construction that lacked sufficient detail to justify the costs billed to the County by the contractor. The County's payments to CCS Construction for these invoices totaled $743,723.03.

In the invoices, CCS Construction failed to separate labor costs from the costs of materials. With such minimal detail, the OSA could not determine who performed what type of labor, for how long or at what rates. Additionally, the OSA could not determine the prices or quantities of the materials used by CCS Construction. Finally, for two of the projects for which CCS Construction used subcontractors, it appears that CCS Construction overcharged the County by marking up the amount the subcontractors charged CCS Construction to perform the work. Examples of these instances are identified in the following 18 projects:

District #4 Torreon Fire Department Addition Project
On July 25, 2007, the County executed a contract with CCS Construction for the Torreon Fire Department Addition Project. Between July 31, 2007 and January 14, 2008, CCS Construction submitted eleven invoices totaling $258,869.33 to the County for the project. For all eleven invoices, CCS Construction failed to detail itemized information regarding its actual costs for materials, actual rates for labor, or the percentage of completion achieved for the project. Of the eleven invoices submitted, the County Manager signed on the "acceptance" line for nine of the invoices, the Deputy County Manager signed the "acceptance" line on one invoice, and one other invoice was not signed by any County official. Despite the invoices' minimal detail and CCS Construction's failure to itemize costs and rates, the County disbursed the total amount of $258,869.33 to CCS Construction for all the invoices (see Exhibit A, Table 1, for detail regarding the exact invoice descriptions).

Additionally, the OSA found that CCS Construction subcontracted a portion of the work for the Torreon Fire Department Project. The subcontractor, Action Plumbing and Heating, invoiced CCS Construction for $14,260 for work completed at the Torreon Fire Station from the time period of October 12, 2007 through January 4, 2008. The documentation seems to demonstrate that CCS Construction significantly overcharged the County for the cost of the work. Action Plumbing and Heating charged CCS Construction a total of $9,460 to install a bathroom in the "Torreon Tajique Fire Station;" yet, CCS Construction charged the County $40,000 in Change Order 3 to "install bathrooms according to plan." The OSA also found that Action Plumbing and Heating charged CCS Construction a total of $4,800 to "Install Septic System;" however, CCS Construction charged the County $23,000 in Invoice #6/Change Order #5 to "install septic system and water line, [including] permits, water taps, [and] jackhammering."

Another subcontractor, Gustin Electric, submitted and received approval for an Electrical Permit from the Electrical Bureau of the State of New Mexico Construction Industries Division on November 27, 2007 to work on the Torreon Fire Department Project. The OSA was unable to

locate the invoices Gustin Electric submitted to CCS Construction for the project. Nonetheless, CCS Construction bank records show that CCS Construction's owner wrote two checks to Gustin Electric during the time period of December 11, 2007 through January 29, 2008, which indicate CCS Construction paid Gustin Electric for work performed on the Torren Fire Department project. The first check, dated December 11, 2007, was made payable to Gustin Electric in the amount of $7,500 with the description, "Torreon," in the memo line. The second check, dated January 29, 2008, was made payable to Gustin Electric in the amount of $3,500 with the description, "Final Torreon," in the memo line. CCS Construction invoiced the County $20,000 on December 11, 2007 for the following description: "Rough in electrical – completion of doors – rough in plumbing." The OSA could not determine what CCS Construction actually charged for electrical work due to the vagueness of the invoices.

Hope Medical Center Cabinet Project

CCS Construction submitted an invoice to the County dated October 30, 2007 in the amount of $19,875.93 for work performed on the Hope Medical Center Cabinet Project. The invoice lists one amount of $18,500 for the following: "Demo existing cabinets. Install new cabinets. Install anti-bacterial rolled Formica countertops." The invoice did not include any itemization regarding CCS Construction's actual costs for materials and rates for labor. Despite the invoice's minimal detail and CCS Construction's failure to itemize costs and rates, the County disbursed the full amount of $19,875.93 to CCS Construction.

District #1 Duran Fire Department Sub-Station Project

Between May 21, 2008 and June 12, 2008, CCS Construction submitted three invoices to the County totaling $76,749.36 for the Duran Sub-Station Project. All three invoices failed to include itemized information regarding CCS Construction's actual costs for materials, actual rates for labor, or the percentage of completion achieved for the project. The County Manager signed the "acceptance" line on all three invoices. Despite the invoices' minimal detail and CCS Construction's failure to itemize costs and rates, the County disbursed the total amount of $76,749.36 to CCS Construction for all the invoices (see Exhibit A, Table 3 for detail regarding the exact invoice descriptions).

Voting Machine Storage Building Project

Between May 21, 2008 and November 19, 2008, CCS Construction submitted seven invoices to the County totaling $167,239.63 for the Voting Machine Storage Building Project. The County entered into a contract with CCS Construction for the Voting Machine Storage Building on May 21, 2008. For all seven invoices, CCS Construction failed to itemize the actual costs for materials, actual rates for labor and the percentage of completion achieved for the project. The County Manager signed the "acceptance" line on all seven invoices. Despite the invoices' minimal detail and CCS Construction's failure to itemize costs and rates, the County disbursed the full amounts to CCS Construction for each invoice (see Exhibit A, Table 4 for detail regarding the exact invoice descriptions).

Fire Marshal Office Remodel Project

For the Fire Marshal Office Remodel Project, CCS Construction submitted one invoice to the County dated February 14, 2008 for $15,158.44, which was the entire cost of the project. The invoice lacked itemized detail regarding CCS Construction's actual costs for materials and rates

for labor. The County Manager signed the "acceptance" line on the invoice. Despite the invoice's minimal detail and CCS Construction's failure to itemize costs and rates, the County disbursed the full amount to CCS Construction for the invoice (see Exhibit A, Table 5 for detail regarding the exact invoice description).

Administrative Building Break Room Doors Project
CCS Construction submitted one invoice to the County dated April 15, 2009 totaling $3,760.31 to "[c]ut masonry wall in break room and install door." The invoice lacked itemized detail regarding CCS Construction's actual costs for materials and rates for labor. We noted that the County Manager signed the "acceptance" line on the invoice. Despite the invoice's minimal detail and CCS Construction's failure to itemize costs and rates, the County disbursed the full amount to CCS Construction for the invoice.

District #3 McIntosh Fire Department Septic Repair Project
CCS Construction submitted an invoice to the County dated December 23, 2009 for $4,786.88 to "[i]nstall septic and new drain field to existing leach field." The invoice lacked itemized detail regarding CCS Construction's actual costs for materials and actual rates for labor. Despite the invoice's minimal detail and CCS Construction's failure to itemize costs and rates, the County disbursed the full amount of $4,786.88 to CCS Construction.

District #2 Indian Hills Fire Department Septic Installation Project
Between January 26, 2009 and February 5, 2009, CCS Construction submitted two invoices to the County totaling $25,636.38 for the installation of two septic tanks, a drain and two high water alarm systems for the Indian Hills Fire Department (D2) Septic System. For both invoices, CCS Construction failed to itemize the actual costs for materials, actual rates for labor and the percentage of completion achieved for the project. The first invoice, dated January 26, 2009, totaled $14,250. The second invoice, dated February 5, 2009, totaled $11,386.38 for payment for "Indian Hills Fire District 2 Sub-Station, Completion of Septic System." Despite significant deficiencies for both invoices, including minimal detail and failure to itemize costs and rates, the County disbursed the full amounts to CCS Construction for the invoices.

In addition to the lack of information on the CCS Construction invoices, the OSA found an invoice dated February 5, 2009, in the amount of $4,230.00, issued by York Septic Systems to CCS Construction with the following description:

> "Submit New Mexico Environment Department Liquid Waste Permit Application; Install a 1500 Gallon Concrete Wastewater Holding Tank with a High Water Alarm and Risers and Lids; Install a 1250 Gallon Low-Profile Concrete Floor Drain Holding Tank with a High Water Alarm and Risers and Lids; Make all Piping Connections."

Despite York Septic Systems billing CCS Construction for $4,230, CCS Construction billed the County $14,250 on its first invoice for a similar work description. The invoice description of the work performed by CCS Construction was the following:

> "Install additional tank for floor drain; (drain was dumping illegally on ground – red tagged by NMED inspector); Install high water alarm system in floor drain tank and in septic tank; Install interior, exterior electrical conduit and wire. Connect to alarm system and electrical breaker box; Price includes jackhammer and removal of sub-surface rock which inhibits the proper installation of the system."

The second and final invoice CCS Construction submitted to the County for this project had the description, "[c]ompletion of Septic System" and totaled $11,386.38 (which included $908.44 of tax for the first invoice). It is unclear how CCS Construction charged the County $25,636.38 for this project when the subcontractor charged CCS Construction $4,230 for what appears to be similar work. Furthermore, due to the lack of specificity on CCS Construction's last invoice, it is unclear of what specific work and costs were included on the invoice.

Dispatch Center Down Spout Project

On September 30, 2010, CCS Construction submitted an invoice to the County in the amount of $5,318.75 for work done on the Dispatch Center Down Spout Project. The invoice lacked itemized detail regarding CCS Construction's actual costs for materials and rates for labor. There is not a signature of any County official on the "acceptance" line on the invoice. Despite significant deficiencies in the invoice, CCS Construction's failure to itemize costs and rates, and lack of signature accepting the prices in the invoice, the County disbursed the full amount to CCS Construction (see Exhibit A, Table 10, for detail regarding the exact invoice description).

Judicial Building & Esperanza Health Center Grading and Drainage Project

Between October 19, 2010 and November 15, 2010, CCS Construction submitted four invoices totaling $32,032.72 to the County for the Judicial Building & Esperanza Health Center Grading and Drainage Project. For all four invoices, CCS Construction failed to itemize the actual costs for materials, actual rates for labor and the percentage of completion achieved for the project. The County Manager signed all four invoices on the "acceptance" line. Despite the invoices' minimal detail, CCS Construction's failure to itemize costs and rates, and lack of signature accepting the prices in the invoices, the County disbursed the full amounts to CCS Construction for each invoice (see Exhibit A, Table 11, for detail regarding the exact invoice descriptions).

Estancia Senior Center Parking Lot Project

Between August 9, 2010 and January 27, 2011, CCS Construction submitted six invoices totaling $12,893.12 to the County for the Estancia Senior Center Parking Lot Project. For all six invoices, CCS Construction failed to itemize the actual costs for materials, actual rates for labor and the percentage of completion achieved for the project. The County Manager failed to sign the "acceptance" line on all invoices except one. Despite the invoices' minimal detail, CCS Construction's failure to itemize costs and rates, and lack of signature accepting the prices in the invoices, the County disbursed the full amounts to CCS Construction for each invoice (see Exhibit A, Table 12A, for detail regarding the exact invoice descriptions).

Mountainair Senior Center Parking Lot Project

Between September 23, 2010 and January 27, 2011, CCS Construction submitted two invoices totaling $8,050.32 to the County for the Mountainair Senior Center Parking Lot Project. Both

invoices lacked itemization of the actual costs for materials and actual rates for labor. The County Manager failed to sign the "acceptance" line on the last invoice, but signed the first. Despite the invoices' minimal detail, CCS Construction's failure to itemize costs and rates, and lack of signature accepting the prices on the last invoice, the County disbursed the full amounts to CCS Construction for both invoices (see Exhibit A, Table 12B, for detail regarding the exact invoice descriptions).

Animal Shelter Septic and Leach Field Replacement Project

CCS Construction submitted one invoice to the County dated April 11, 2011 totaling $5,323.94 to "[r]eplace septic and leach field" at the County Animal Shelter. The invoice lacked itemized detail regarding CCS Construction's actual costs for materials and rates for labor. We noted that the County Manager signed the "acceptance" line on the invoice. Despite the invoice's minimal detail and CCS Construction's failure to itemize costs and rates, the County disbursed the full amount to CCS Construction for the invoice.

911 Dispatch Center Emergency Septic Repair

CCS Construction submitted one invoice to the County dated January 24, 2011 totaling $1,278.00 to "[e]xcavate and replace sewer line from building cleanouts to septic tank" at the County Dispatch Building. The invoice lacked itemized detail regarding CCS Construction's actual costs for materials and rates for labor. We noted that the County Manager failed to sign the "acceptance" line on the invoice. Despite the invoice's minimal detail, CCS Construction's failure to itemize costs and rates, and lack of signature on the invoice accepting the prices contained in the invoice, the County disbursed the full amount to CCS Construction for the invoice.

District #5 Homestead Estates Fire Department Repair of Doors & Walls

Between October 19, 2011 and November 1, 2011, CCS Construction submitted two invoices totaling $17,572.50 to the County for work done at the Homestead Estates Fire Department. Both invoices lacked itemization regarding the actual costs for materials and actual rates for labor. The "acceptance" line was not signed by any County official on the first invoice, and the County Fire Marshall signed the second invoice. Despite the invoices' minimal detail, CCS Construction's failure to itemize costs and rates, and lack of signature accepting the prices in the first invoice, the County disbursed the full amounts to CCS Construction for both invoices (see Exhibit A, Table 15, for detail regarding the exact invoice descriptions).

Sheriff's Department Evidence Room Door Repair

CCS Construction submitted an invoice to the County dated January 4, 2011 for $250.00 for work performed on the County Sheriff's Department Evidence Room. The invoice lists only one amount of $232.42 for the description, "[r]epair on Evidence Room Door." The invoice does not include any itemization regarding CCS Construction's actual costs for materials and rates for labor. We noted that the County Manager failed to sign the "acceptance" line on the invoice. Despite the invoice's minimal detail, CCS Construction's failure to itemize costs and rates, and lack of signature on the invoice accepting the prices contained in the invoice, the County disbursed the full amount to CCS Construction for the invoice.

District #3 McIntosh Fire Department Drain Repairs Project
Between February 28, 2011 and March 7, 2011, CCS Construction submitted two invoices totaling $5,964.00 to the County for the McIntosh Fire Station Drain Repairs Project. Both invoices lacked itemization regarding the actual costs for materials and actual rates for labor. We noted the County failed to sign the "acceptance" line on both invoices. Despite the invoices' minimal detail, CCS Construction's failure to itemize costs and rates, and lack of signature accepting the prices on the invoices, the County disbursed the full amounts to CCS Construction for both invoices (see Exhibit A, Table 17, for detail regarding the exact invoice descriptions).

Torreon Park Project
Between March 31, 2008 and April 2, 2008, CCS Construction submitted two invoices totaling $82,963.42 to the County for the Torreon Park Project. Both invoices failed to itemize the actual costs for materials and actual rates for labor. We noted the County Manager signed the "acceptance" line on both invoices. Despite the invoices' minimal detail and CCS Construction's failure to itemize costs and rates, the County disbursed the full amounts to CCS Construction for both invoices (see Exhibit A, Table 18, for detail regarding the exact invoice descriptions).

Criteria

Torrance County Resolution #2000-15 Purchasing Regulations, adopted by the Torrance County Commission pursuant to the Procurement Code, provides for certain Purchasing Regulations pertaining to small purchases and related matters. The Regulations, specifically Section 3, designate the County Manager's Office as the Central Purchasing Office, and designate the Assistant County Manager as the Purchasing Agent. In Section 4, the Regulations further provide that "The Purchasing Agent is responsible to the Torrance County Manager and to the Torrance County Commission for all procurement activity (purchasing) by and on behalf of Torrance County. The Purchasing Agent shall be responsible for the compliance with these Purchasing Regulations and for compliance with the Procurement Code."

Section 10 of the Purchasing Regulations imposes the following payment requirements: "An itemized invoice or receipt is required for all payments. An 'Accounts Payable & Receiving Report' shall be attached to all invoices submitted for payment."

Furthermore, proper internal controls require that all costs be completely supported before the County approves them for payment.

Cause

The County violated its own Purchasing Regulations by failing to require detailed invoices from CCS Construction before approving payment. It appears that in many instances, the County Manager overrode the Deputy County Manager's authority as the Purchasing Agent and the individual responsible for compliance with the County Purchasing Regulations by signing the majority of the invoices and Receiving and Accounts Payable Reports, which authorized payment to CCS Construction even though the construction company failed to provide itemized invoices. Furthermore, there are a few instances in which the Deputy County Manager also

signed Receiving and Accounts Payable Reports without receiving itemized invoices from CCS Construction.

Effect

Since CCS Construction did not provide itemized invoices, the County is unable to clearly identify what goods and services were provided by CCS Construction. Furthermore, the lack of detail in the invoices creates the opportunity for CCS Construction to overbill the County for its work. Inadequate controls over these aspects of the procurement process increase the risk that CCS Construction improperly charged the County, and there is a significant risk that CCS Construction was unjustly enriched for its work. Finally, transparency related to the expenditure of public funds is harmed if there is not adequate documentation that explains for what purpose the money is being disbursed.

Recommendation

We recommend the County require all employees involved in County purchasing processes to ensure that disbursements are made in accordance with its Purchase Regulations. Furthermore, as the Purchasing Agent, the Deputy County Manager should ensure the County is in compliance its own Purchasing Regulations. We also recommend the County segregate its procurement duties among several County finance employees in order to reduce the risk that the County will make overpayments or give preferential treatment to contractors.

Moreover, the County should consider updating its Purchasing Regulations, which were enacted in March 2000. As part of this update, we recommend that the County revise its Purchasing Regulations to more exactly define what is an "itemized" invoice. The County should explicitly require that invoices that do not include adequate support for materials or labor will be rejected.

The County should be familiar with and follow purchasing regulations and proper controls over purchasing processes, particularly those requirements that function as controls over unsupported costs. The County should closely scrutinize invoices and ensure contractors provide sufficient detail prior to approving disbursements. Invoices that do not provide sufficient detail should be rejected.

Finally, we noted that Article 6 of the construction contracts entered into between the County and CCS Construction for certain projects creates and encourages an environment in which the County does not have adequate communication with a subcontractor. Article 6 states, "the Owner shall communicate with sub-contractors only through the Contractor." The contract language creates an environment in which the County is relying heavily upon the contractor to determine if a subcontractor is properly licensed in accordance with state law, which creates risks that the County will receive subpar work. Additionally, the contractual barrier between the County and subcontractor can also lead to situations in which the contractor takes advantage of the lack of oversight and overcharges the County by significantly marking up goods and services provided by the subcontractor.

Finding 05 - The County Failed to Follow its Purchasing Regulations and Sound Internal Control Practices When it Processed Payments to CCS Construction

Condition

For 15 out of 19 projects the OSA reviewed, we determined that the County often failed to follow its own County Purchasing Regulations as well as sound internal control practices when it processed payments to CCS Construction. In many instances, the approval process was inconsistent and not properly segregated amongst County employees. As a general observation, approval authority appeared to be heavily centralized with the County Manager. Furthermore, payments to CCS Construction did not have adequate review and approval by the Finance Department. Finally, we noted many instances in which invoices did not contain required signatures. The details of these projects are discussed below.

District #4 Torreon Fire Department Addition Project

In multiple instances, the OSA found the County violated its own Purchasing Regulations when processing payments to CCS Construction for the Torreon Fire Department Addition Project. The County executed a contract with CCS Construction on July 25, 2007 for the project.

First, the County issued twelve payments to CCS Construction between July 31, 2007 and January 14, 2008; however CCS Construction submitted only eleven invoices to the County. CCS Construction submitted eleven invoices totaling $258,869.33 to the County for the project. The County made twelve payments to CCS Construction totaling $258,869.33 for this project, but one payment was for taxes that CCS Construction submitted on invoice #2 and #3, but the County paid in a separate payment at a later date. Each invoice had a related Receiving & Accounts Payable Report, and the payment made without its own invoice also has a related Receiving & Accounts Payable Report.

Second, the County was unable to provide the OSA with purchase requisitions or purchase orders related to this project. Because the amount of the project far exceeded the amount of the contract, the County should have issued purchase requisitions for these payments in accordance with County Purchasing Regulations, which require submission of a requisition and issuance of a purchase order. Regardless of the origin of a transaction (i.e. a change order, a new purchase, transactions that exceeded the amount of the original purchase requisition and purchase order, etc.), the transaction was still a purchase of goods and services; therefore, the County should have followed its own Purchasing Regulations by submitting a requisition and issuing a purchase order for each change order.

Third, out of the eleven invoices submitted to the County by CCS Construction, one invoice was not signed by a County official. This invoice was invoice number #1, dated July 31, 2007 for $11,967.19, and it did not have an "acceptance" line for a County official's signature. Signatures by the appropriate County officials indicate the invoices have been properly reviewed and approved. Additionally, the OSA noted the final invoice submitted to the County for this project was not signed by CCS Construction. Invoices submitted by contractors should have proper signatures before they are approved for payment.

Out of the twelve Receiving & Accounts Payable Reports associated with the eleven invoices, ten were signed by the County Manager indicating "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid." One of the Receiving & Accounts Payable Report was certified by the County Manager and the Fire Marshal and one Receiving & Accounts Payable Report was signed by the Deputy County Manager. Out of the twelve Receiving & Accounts Payable Reports, only four were signed by the County Comptroller under the "Reviewed and approved for payment" box.

Hope Medical Center Cabinet Project

We noted that the "acceptance" line on the only invoice submitted by CCS Construction for this project was blank and contained no County employee signature that would indicate proper review and approval of the invoice. The invoice, dated October 30, 2007 for an amount of $19,875.93, was submitted by CCS Construction for work performed on the Hope Medical Center Cabinet Project.

District #1 Duran Fire Department Sub-Station Project

Between May 21, 2008 and June 12, 2008, CCS Construction submitted three invoices totaling $76,749.36 to the County for the Duran Sub-Station Project. First, the County improperly "piggybacked" the Duran Sub-Station Project off of the contract for the Torreon Fire Department Addition Project.

Second, the County was unable to provide the OSA with purchase requisitions or purchase orders related to this project. Because the amount of the project far exceeded the amount of the contract, the County should have issued purchase requisitions for these payments in accordance with County Purchasing Regulations, which require submission of a requisition and issuance of a purchase order. Regardless of the origin of a transaction (i.e. a change order, a new purchase, transactions that exceeded the amount of the original purchase requisition and purchase order, etc.), the transaction was still a purchase of goods and services; therefore, the County should have followed its own Purchasing Regulations. The OSA also noted the invoice "acceptance" line on Invoice #1 was blank and contained no County employee signature that would indicate proper review and approval of the invoice.

Voting Machine Storage Building Project

Between May 21, 2008 and November 19, 2008, CCS Construction submitted seven invoices totaling $167,239.63 to the County for the Voting Machine Storage Building project. The County entered into a contract with CCS Construction for the Voting Machine Storage Building on May 21, 2008. The County was unable to provide the OSA with purchase requisitions or purchase orders related to this project, which are required by the County's Purchasing Regulations. Also, for the change orders that exceeded the amount of the contract, the County should have submitted purchase requisitions and issued purchase orders in accordance with County Purchasing Regulations. Regardless of the origin of the transactions (i.e. a change order, a new purchase, transactions that exceeded the amount of the original purchase requisition and purchase order, etc.), the change orders were still purchases of goods and services; therefore, the County should have followed its own Purchasing Regulations by submitting a requisition and issuing a purchase order for each of the change orders.

Out of the seven invoices submitted to the County by CCS Construction for this project, one invoice was not signed by CCS Construction. Out of the seven Receiving & Accounts Payable Reports associated with the invoices, five were signed by the County Manager indicating "I certify that the above items were checked and received by my department. The purchase is complete and ready to be paid." Two of the Receiving & Accounts Payable Reports had a signature, but the OSA was unable to determine who signed the reports and if that person was a County official with the authority to sign the documents. Out of the seven Receiving & Accounts Payable Reports, only one was signed by the County Comptroller under the "Reviewed and approved for payment" box.

Fire Marshal Office Remodel Project

For the Fire Marshal Office Remodel project, the County failed to fill out the required purchase requisition and purchase order for the only invoice submitted by CCS Construction. The invoice, dated February 14, 2008, was for $15,158.44, which was the entire cost of the project. Additionally, the OSA noted the invoice submitted to the County for this project was not signed by CCS Construction. The Receiving & Accounts Payable Report associated with this invoice was certified by the County Manager; however, the invoice was not signed by the County Comptroller or any other County official under the "Reviewed and approved for payment" box.

Administrative Building Break Room Doors Project

We noted that one invoice and the associated Receiving & Accounts Payable Report for payment of $3,760.31 to CCS Construction for work on this project did not contain all the required signatures and approvals. The invoice, dated April 15, 2009, was for the installation of a break room door at the County Administrative Building. The invoice was not signed by CCS Construction. Additionally, the Receiving & Accounts Payable Report associated with this invoice was certified by the County Manager, but was not signed by the County Comptroller or any other County official under the "Reviewed and approved for payment" box.

District #3 McIntosh Fire Department Septic Repair Project

We noted that one invoice and the associated Receiving & Accounts Payable Report for payment of $4,786.88 to CCS Construction for work on this project did not contain all the required signatures and approvals. The invoice, April 15, 2009, was for work performed at the Torrance County District 3 (McIntosh Fire Department). The invoice was not signed by CCS Construction. Additionally, the Receiving & Accounts Payable Report associated with this invoice was certified by the Deputy County Manager, and was signed by the County Manager's Office Clerk under the "Reviewed and approved for payment" box.

Dispatch Center Down Spout Project

On September 30, 2010 CCS Construction submitted an invoice to the County in the amount of $5,318.75 for work done on the Dispatch Downspouts Project. The OSA noted that, while the County did submit the required purchase requisition and purchase order for this project, both documents were dated October 6, 2010 – six days after the invoice date. The invoice "acceptance" line was blank and contained no County employee signature that would indicate review and approval of the invoice. The OSA also noted the invoice was not signed by CCS Construction. The Receiving & Accounts Payable Report associated with the invoice was certified, but the name was illegible and the OSA was unable to determine if the signature was

that of a County official authorized to sign the document. The Accounts Receiving & Payable Report was signed by the County Manager's Office Clerk under the "Reviewed and approved for payment" box.

Judicial Building & Esperanza Health Center Grading and Drainage Project

Between October 19, 2010 and November 15, 2010, CCS Construction submitted four invoices totaling $32,032.72 to the County for the Judicial Building & Esperanza Health Center Grading and Drainage Project. The OSA found the County failed to fill out the required purchase requisitions and purchase orders for the invoices associated with this project. In addition, two of the four invoices submitted to the County were not signed by CCS Construction. Despite these deficiencies, all four of the Receiving & Accounts Payable Reports associated with the invoices were certified by the County Manager, and all four were signed by the County Manager's Office Clerk under the "Reviewed and approved for payment" box.

Estancia Senior Center Parking Lot Project

Between August 9, 2010 and January 27, 2010, CCS Construction submitted six invoices totaling $12,893.12 to the County for the Estancia Senior Center Parking Lot Project. The County submitted the required purchase requisition and issued the required purchase order for the project in the amount of $10,110.88; however, by the third invoice, the invoices and the payments to CCS Construction for the project had already exceeded the amount of the purchase requisition and purchase order. Therefore, for those invoice amounts that exceeded the amount of the original purchase requisition and purchase order, the County should have submitted an additional purchase requisition and issued another purchase order in accordance with County Purchasing Regulations. Regardless of the origin of the transactions (i.e. a change order, a new purchase, transactions that exceeded the amount of the original purchase requisition and purchase order, etc.), the transactions were still a purchase of goods and services; therefore, the County should have followed its own Purchasing Regulations by submitting a requisition and issuing a purchase order for each of the transactions.

Furthermore, the OSA noted multiple deficiencies related to the County's review and approval of invoices and Receiving & Accounts Payable Reports for the project. Of the six invoices submitted by CCS Construction, the County Manager only signed one invoice on the "acceptance" line. None of the other invoices were signed by any County official. Additionally, only one of the six invoices submitted to the County was signed by CCS Construction. Invoices #4 and #5 were associated with only one Receiving & Accounts Payable Report; therefore, there were only five Receiving & Accounts Payable Reports associated with the project. One of the five Receiving & Accounts Payable Reports was certified by the Deputy County Manager and signed by the County Manager's Office Clerk under the "Reviewed and approved for payment" box. Three of the five Receiving & Accounts Payable Reports were certified by the Deputy County Manager and were not signed by the County Comptroller or any other County official under the "Reviewed and approved for payment" box. The final Receiving & Accounts Payable report was certified by the County Manager and was signed by the County Manager's Office Clerk under the "Reviewed and approved for payment" box.

Mountainair Senior Center Parking Lot Project

Between September 23, 2010 and January 27, 2011, CCS Construction submitted two invoices totaling $8,050.32 to the County for the Mountainair Senior Center Parking Lot Project. The County had filled out the required purchase requisition and produced the required purchase order for the project in the amount of $7,511.88; however, by the second invoice, the invoice and the payment to CCS Construction for the project had already exceeded the amount of the purchase requisition and purchase order. Therefore, for the invoice amount that exceeded the amount of the original purchase requisition and purchase order, the County should have submitted an additional purchase requisition and issued another purchase order in accordance with County Purchasing Regulations. Regardless of the origin of the transactions (i.e. a change order, a new purchase, transactions that exceeded the amount of the original purchase requisition and purchase order, etc.), the transactions were still purchases of goods and services; therefore, the County should have followed its own Purchasing Regulations by submitting a requisition and issuing a purchase order for the transactions.

Furthermore, the OSA noted multiple deficiencies related to the County's review and approval of invoices and Receiving & Accounts Payable Reports for the project. The first invoice "acceptance" line was not signed by CCS Construction, and the second invoice submitted to the County was blank and contained no official County signature that would indicate the invoice was properly reviewed and approved. Moreover, the first Receiving & Accounts Payable Report was certified by the County Manager and was not signed by the County Comptroller or any other County official under the "Reviewed and approved for payment" box. The other Receiving & Accounts Payable report was certified by the County Manager and was signed by the County Manager's Office Clerk under the "Reviewed and approved for payment" box.

District #5 Homestead Estates Fire Department Repair of Doors & Walls

Between October 19, 2011 and November 1, 2011, CCS Construction submitted two invoices totaling $17,572.50 to the County for work done at the Homestead Estates Fire Department. Upon our review, the OSA noted the first invoice for $4,792.50 was dated October 19, 2011, but the Purchase Order was dated November 1, 2011. Furthermore, the first invoice was not signed by CCS Construction, and the "acceptance" line on the invoice was blank and contained no official County signature that would indicate the invoice was properly reviewed and approved. The second invoice submitted to the County was signed by the County Fire Marshal and CCS Construction. Additionally, the OSA noted the first Receiving & Accounts Payable Reports was certified by the Fire Marshal, but was not signed by the County Comptroller or any other County official under the "Reviewed and approved for payment" box. The other Receiving & Accounts Payable report was certified by the Fire Marshal and was signed by the County Manager's Office Clerk under the "Reviewed and approved for payment" box.

Sheriff's Department Evidence Room Door Repair

CCS Construction submitted an invoice to the County dated January 4, 2011 for $250 for work performed on the County Sheriff's Department Evidence Room. The invoice "acceptance" line was blank and contained no official signature of an appropriate County employee that would indicate the invoice was properly reviewed and approved. The OSA also noted the Receiving & Accounts Payable Report associated with the invoice was certified by the Deputy County Manager, and was signed by the County Manager's Office Clerk under the "Reviewed and approved for payment" box.

District #3 McIntosh Fire Department Drain Repairs

Between February 28, 2011 and March 7, 2011, CCS Construction submitted two invoices to the County totaling $5,964 for the McIntosh Fire Station Drain Repairs. The County filled out the required purchase requisition and issued the required purchase order in the amount of $4,047.00 for the project; however, by the second invoice, the invoice and the payment to CSS Construction had exceeded the amount of the purchase requisition and purchase order. For the invoice amounts that exceeded the amount of the original purchase requisition and purchase order, the County should have submitted an additional purchase requisition and issued another purchase order in accordance with County Purchasing Regulations. Regardless of the origin of transactions (i.e. a change order, a new purchase, transactions that exceeded the amount of the original purchase requisition and purchase order, etc.), the transactions were still a purchase of goods and services; therefore, the County should have followed its own Purchasing Regulations by submitting a requisition and issuing a purchase order for each of the transactions.

The OSA also noted deficiencies related to the County's review and approval of invoices and Receiving & Accounts Payable Reports for the project. The first invoice "acceptance" line was blank and contained no official County signature that would indicate the invoice was properly reviewed and approved. Furthermore, the second invoice submitted to the County by CCS Construction was signed by the Fire Marshal, but was not signed by CCS Construction. Additionally, the OSA also noted the first Receiving & Accounts Payable Report was certified by the County Manager "for" the Fire Marshal. The second Receiving & Accounts Payable Report was certified by the Fire Marshal, but neither document was signed by the County Comptroller or any other County official under the "Reviewed and approved for payment" box.

Torreon Park Project

Between March 31, 2008 and April 2, 2008, CCS Construction submitted two invoices totaling $82,963.42 to the County for the McIntosh Fire Station Drain Repairs. However, the construction contract entered into between the County and CCS Construction on this project was dated April 8, 2008. Additionally, the County Manager signed the "acceptance" line on Invoice #2 for the additional amount of $65,320.17. The County was unable to provide the OSA with the required purchase requisitions or purchase orders related to this project.

Also, because the amount of the change order associated with this project far exceeded the amount of the contract, the County should have submitted a purchase requisition and issued a purchase order associated with these payments in accordance with County Purchasing Regulations. Regardless of the origin of transactions (i.e. a change order, a new purchase, transactions that exceeded the amount of the original purchase requisition and purchase order, etc.), the transactions were still purchases of goods and services; therefore, the County should have followed its own Purchasing Regulations by submitting a requisition and issuing a purchase order for the transactions.

Finally, the invoice "acceptance" lines were both signed by the County Manager, and the second invoice was signed by a person who was not a County employee. The County Receiving & Accounts Payable Report related to the initial invoice and the change order was signed by the County Manager and indicated "I certify that the above items were checked and received by my

department. The purchase is complete and ready to be paid." The Report was also signed by the County Comptroller under the "Reviewed and approved for payment" box.

Criteria

Torrance County Resolution #2000-15 Purchasing Regulations, adopted by the Torrance County Commission pursuant to the Procurement Code, provides for certain Purchasing Regulations pertaining to small purchases and related matters. The Regulations, specifically Section 3, designate the County Manager's Office as the Central Purchasing Office, and designate the Assistant County Manager as the Purchasing Agent. In Section 4, the Regulations further provide that "The Purchasing Agent is responsible to the Torrance County Manager and to the Torrance County Commission for all procurement activity (purchasing) by and on behalf of Torrance County. The Purchasing Agent shall be responsible for the compliance with these Purchasing Regulations and for compliance with the Procurement Code."

Section 2 of the County Purchasing Regulations define a "purchase" as "the total of all goods or services being bought at one time."

Section 5(a) of the County Purchasing Regulations imposes the following requirements for requisitions:

- "The first step in the purchasing process shall be the submission of a completed requisition form by the department initiating the purchase. All requisition forms shall be signed by the elected official in charge of the department or another person designated in writing by the head of the department."
- "All information requested on the requisition form shall be complete. The Central Purchasing Office may reject and return to the department initiating the request any requisition form that does not include all the information required by the Central Purchasing Office. From time to time the Central Purchasing Office may revise and reissue requisition forms and other paperwork used in connection with the purchasing process."

Section 7 of the County Purchasing Regulations requires that "the Central Purchasing Office shall issue all purchase orders. The Central Purchasing Office shall set forth a schedule of accepting requisitions for purchase. Requisitions for purchase exceeding a budgeted line item will not be accepted, until the line item in question is amended. Prior to issuing the purchase order the Purchasing Office will review and ascertain that all requests conform to the Purchasing Regulations adopted by Torrance County. The issuance of a Purchase Order by the Central Purchasing Office constitutes a certification by that office that all paper work is complete in connection with the purchase and that the purchase is being made in compliance with the Procurement Code and these Regulations. In the event the Central Purchasing Office determines not to approve a Requisition and not to issue a Purchase Order, it may submit the matter to the County Manager for his/her review, and at the discretion of the County Manager, the matter may be submitted to the County Commission. However, this shall be done prior to issuance of a Purchase Order. All issued Purchase Orders shall bear the signature of the Purchasing Agent or the County Manager. The issuance of a Purchase Order by the Central Purchasing Office

constitutes a certification by that office that all paper work is being made in compliance with the Procurement Code and these Regulations."

Section 10 of the County Purchasing Regulations provides "[a]n itemized invoice or receipt is required for all payments. The Central Purchasing Office will not accept a statement in lieu of an invoice or receipt. An "Accounts Payable & Receiving Report" shall be attached to all invoices submitted for payment."

Section 13 of the County Purchasing Regulations provides that "Department Heads or their designee shall remain current with their department's accounts and invoices. It is the Department head or their designee's responsibility to assure all departmental purchases conform to theses purchasing regulations."

Section 14 of the County Purchasing Regulations impose "Consequences for Non-Compliance." Specifically, that section provides that a "purchase order will not be issued until all appropriate forms have been completed and reviewed. If purchases are made without first obtaining a purchase order, then that purchase may become the liability of the person placing the order."

With regard to the Volunteer Fire Departments, Section 15 of the County Purchasing Regulations provides the following: "The County Fire Marshal for their recommendation prior to the issuance of a purchase order must review all Torrance County Volunteer Fire Department's purchase requisitions."

The County Purchasing Regulations also state: "Under state law the county cannot pay non-conforming purchases and no vendor can sue the county unless there is a valid written contract. Therefore, non-conforming purchases may be the liability of the person placing the order."

Additionally, the Receiving & Accounts Payable Report has a signature block to be signed and dated by someone in the Finance Department who has reviewed the item for payment.

Moreover, sound internal controls require the County to follow its Purchasing Regulations and have proper review and segregation of duties to ensure the County does not process unauthorized payments.

Cause

At various stages of these projects and for numerous invoices submitted by CCS Construction, the County violated its own Purchasing Regulations by approving payments to CCS Construction without the proper issuance and approval of purchase requisition forms or purchases. In many instances, it appears the County Manager overrode the Deputy County Manager's authority as the Purchasing Agent, and the individual responsible for compliance with the County Purchasing Regulations, by signing the majority of the invoices and Receiving & Accounts Payable Reports authorizing payments to CCS Construction. Additionally, most of the projects lacked the Department Head's signature on a completed requisition form, which allowed the County Manager to make procurement and budget decisions without input from the respective Department Heads.

Furthermore, there are also instances of the Deputy County Manager signing Receiving & Accounts Payable Reports without the proper requisition form or purchase order being in place. The County also did not consistently require a County Finance Department official to sign and date the signature block on the Receiving & Accounts Payable Report, or a County official signing the invoices submitted by CCS Construction.

Effect

County personnel circumvented County Purchasing Regulations and failed to adhere to sound internal controls for processing payments of public funds to a private contractor. The County's failure to obtain required signatures from the vendor and proper County officials on all invoices before approving payments increases the risks of financial fraud, waste and abuse. Additionally, the County's failure to ensure review and approval of invoices by the County Finance Department may result in the County exceeding its budget on its purchases. This lack of oversight results in unauthorized payments to vendors and puts the County at risk of financial fraud, waste and abuse. Finally, according to the Purchasing Regulations, County employees who place orders without the proper completion and review of all appropriate forms may be liable for the purchases.

Recommendation

The County must implement strong internal controls that ensure compliance with County Purchasing Regulations in order to prevent unauthorized payments to vendors. All invoices and reports must be properly reviewed and approved by appropriate County personnel before the County processes payments to private contractors. The County should also implement sound internal controls that properly segregate purchasing duties among County employees so that the County's purchasing authority is not overly centralized with the County Manager.

Moreover, the County may want to update its Purchasing Regulations since the County's Purchasing Regulations were enacted in March 2000 and the Procurement Code has been amended since then. The OSA also noted that the County exempted contracts for professional services from its Purchasing Regulations. This exemption is not consistent with the Procurement Code and significantly increases the risk that the County will be victimized by financial fraud, waste and abuse.

Additionally, the County Commissioners used to approve a list of checks issued by the County at each of their bi-weekly meetings. However, at the County Commission's March 9, 2011 meeting, the Commission approved a request by the County Manager to modify the frequency of the County paying its bills from bi-weekly to weekly. Because the County Commission only meets every two weeks, the Commission no longer has the ability to review checks prior to the checks being mailed out to a vendor by the County Manager's office. Without the governing authority's review and approval of payments, the risks of fraud, waste, and abuse increase. Therefore, the County should improve its internal controls over the issuance of checks by ensuring that warrants are reviewed and approved by the County Commission prior to issuance.

Finding 06 –The County Failed to Require Documentation from CCS Construction to Support Change Orders

Condition

For 9 of the 19 projects the OSA reviewed, we found the County paid CCS Construction $447,203 for additional work the contractor billed as change orders to the original scope of work for each of the project's contracts. The County paid these amounts without requiring CCS Construction to submit supporting documentation that would justify the additional costs. Below is a description of each of the projects we identified.

District #4 Torreon Fire Department Addition Project
On July 5, 2007 the County issued an invitation for bids for the Torreon Fire Station Addition Project. The County received five bids for the project: Top Notch Construction in the amount of $142,750; Shiver Construction in the amount of $137,338; B & R Construction, Inc. in the amount of $118,055.89; Magnum Steel Buildings, Inc. in the amount of $114,734.96; and CCS Construction in the amount of $79,781.25.

As documented in minutes of the July 25, 2007 meeting of the County Commissioners, the County Controller asked the Commissioners to award the bid for the Torreon Fire Department addition to CCS Construction, who had the lowest bid in the amount of $79,781.25. The Commissioners voted to award the contract to CCS Construction, and the meeting minutes indicate that the related construction contract was prepared by the County Attorney and was approved and signed by the Commissioners.

Even though CCS Construction originally bid the work at $79,781.25, the County approved seven change orders submitted by CCS Construction for the project totaling $179,088.08. The County Manager approved six change orders and signed the related Receiving & Accounts Payable Reports authorizing payment to the vendor for $153,840.27 for work on the project. The remaining change order for $25,247.81 and the related Receiving & Accounts Payable Report were signed by the Deputy County Manager. Article 7 of the construction contract entered into between the County and CCS Construction for this project provides the following: "A Change Order is any change to the original plans and/or specifications. All change orders need to be agreed upon in writing, including cost, additional time considerations, approximate dates when the work will begin and be completed, a legal description of the location where the work will be done and signed by both parties. Additional time needed to complete change orders shall be taken into consideration in the project complete date."

For all of the aforementioned change orders for this project, the OSA was unable to locate any documentation signed by the County and CCS Construction indicating the "cost, additional time considerations, approximate dates when the work will begin and be completed, a legal description of the location of where the work will be done" as required by Article 7 of the construction contract. Despite this apparent lack of supporting documentation that was required by the contract and would justify approximately $179,000 in additional costs for the project, the County paid all the change orders in full.

Voting Machine Storage Building Project
On April 7, 2008, the County issued an invitation for bids for the Voting Machine Storage Building Project. The County received two bids: Ultimate Construction Co. in the amount of $38,720.00 (excluding gross receipts tax) and CCS Construction in the amount of $21,600.00 (excluding gross receipts tax). At its April 23, 2008 meeting, the County Commissioners approved the bid award for the construction of the Voting Machine Storage Building to CCS Construction, with the lowest bid of $23,206.50. The related contract was signed on May 21, 2008 by the County and CCS Construction.

Even though CCS Construction originally bid the work at $23,206.50, over the course of the project, the County Manager approved four change orders totaling $144,033.13. The project ended up costing the County $167,239.63. The County Manager signed the related Receiving & Accounts Payable Reports authorizing payments to CCS Construction.

Article 7 of the construction contract entered into between the County and CCS Construction for this project states, "A Change Order is any change to the original plans and/or specifications. All change orders need to be agreed upon in writing, including cost, additional time considerations, approximate dates when the work will begin and be completed, a legal description of the location where the work will be done and signed by both parties. Additional time needed to complete change orders shall be taken into consideration in the project complete date."

The OSA was unable to locate any documentation signed by the County and CCS Construction indicating the "cost, additional time considerations, approximate dates when the work will begin and be completed, a legal description of the location of where the work will be done" was provided for any of the aforementioned change orders as required by Article 7 of the construction contract. Despite this apparent lack of supporting documentation that was required by the contract and would justify approximately $120,000 in additional costs for the project, the County paid all the change orders in full.

Fire Marshal Office Remodel Project
In mid-January 2008, the County received three bids for the Fire Marshal Office Remodel Project: OutWest Builders in the amount of $11,000; A-Wall Builders in the amount of $10,528; and CCS Construction in the amount of $10,105.63. The County selected CCS Construction as the lowest bidder at $10,105.63. The scope of work CCS Construction prepared for the bid was to "[f]rame partition walls; Sheet rock, tape and texture; Paint walls; Install door with lock."

CCS Construction submitted an invoice dated February 14, 2008 to the County for the identical scope of work cited in the contractor's bid ("Frame partition walls; Sheet rock, tape and texture; Paint walls; Install door with lock") and billed the County $9,500 for the work. Additionally, the invoice billed the County $2,750 to "[r]un electrical for new office; Re-route electrical for meeting room," and $2,000 to "[f]rame sheetrock, tape and texture; Install drop ceiling in storage room; Fix all electrical." The total amount of the invoice was $15,158.44, which was $5,052.81 more than the bid submitted by CCS Construction for the project. The County Manager approved the invoice and the Receiving & Accounts Payable Report in the amount of $15,158.44. There was not an approved change order for the additional work CCS Construction added to its invoice,

and the County disbursed the full amount to CCS Construction despite the lack of supporting documentation from the contractor that would justify the additional costs for the project.

Judicial Building & Esperanza Health Center Grading and Drainage Project

In August and October 2010, the County received two proposals each from three separate vendors for the Judicial Building & Esperanza Health Center Grading and Drainage Project: Rivercrest Construction's (or RCC, LLC) proposals were in the amounts of $15,070 and $13,500; CCS Construction in the amounts of $9,500 and $7,300; and OutWest Builders in the amounts of $9,000 and $10,000. The proposals did not include gross receipts tax. The County selected CCS Construction.

In October 2010 and November 2010, the County paid CCS Construction a total of four invoices in the amount of $32,034.72 for this project even though its initial proposals equaled $16,800, excluding gross receipts tax. An invoice titled "Change Order #1" in the amount of $13,976.10, dated November 15, 2010, was signed by the County Manager on the "acceptance" line. The completed County Receiving & Accounts Payable Report form, dated November 15, 2010, was signed by the County Manager. The County did not produce evidence that it requested the additional work prior to paying CCS Construction for the change order, and the County disbursed the full amounts to CCS Construction despite the lack of supporting documentation from the contractor that would justify the additional costs for the project.

Estancia Senior Center Parking Lot Project

In July 2010, the County received three bids for the Estancia Senior Center Project: A-Wall Builders in the amount of $10,850; Rivercrest Construction (or RCC, LLC) in the amount of $9,580; and CCS Construction in the amount of $9,400. The bids did not include gross receipts tax. The County awarded the project to CCS Construction.

The County paid CCS Construction a total of $12,893.12 for the project during the months of August and September 2010 and January 2011. In addition to the amount contained in the bid submitted by CCS Construction, the County paid CCS Construction $2,793.76 in change orders and duplicate charges. The invoice for the change order was signed by the County Manager and the Receiving and Accounts Payable Report was signed by the Deputy County Manager. Additionally, the invoice containing the duplicate charge for the installation of parking curbs was not signed by a County official, but the Receiving & Accounts Payable Report was signed by the County Manager. The OSA did not locate documentation in which the County requested the additional scope of work or provided an explanation for the duplicate charge, and the County disbursed the full amounts to CCS Construction despite the lack of supporting documentation from the contractor that would justify the additional costs for the project.

Mountainair Senior Center Parking Lot

The County failed to obtain three written quotes for this project. Instead, the County improperly used quotes obtained for a separate project, the Estancia Senior Center Project, to procure CCS Construction for the Mountainair Senior Center Project. As a result, the County issued a Requisition for Purchase, dated September 20, 2010, for $7,511.88 for CCS Construction to provide a "77'x21'concrete handicap parking at Mountainair Sr. Center; Dirt Work; GRT." CCS Construction submitted an invoice to the County, dated September 23, 2010, in the amount of

$7,511.88 for the work described in the Requisition for Purchase. Then CCS Construction submitted an invoice to the County, dated January 27, 2011, in the amount of $538.44 to "Drill and anchor parking curbs at Mountainair Senior Citizen Facility." The OSA did not locate documentation in which the County requested the additional scope of work, and the County disbursed the full amounts to CCS Construction despite the lack of supporting documentation from the contractor that would justify the additional costs for the project.

District #5 Homestead Estates Fire Department Repair of Doors and Walls Project

The OSA was able to locate two proposals, both dated September 21, 2011, submitted to the County for the project: one proposal from OutWest Builders in the amount of $5,500, and the other proposal from A-Wall Builders in the amount of $5,100. The County awarded the project to CCS Construction in the amount of $4,792.50, but we were not provided documentation that CCS Construction submitted a proposal for the project.

The scope of work on the Requisition for Purchase for this project, which was awarded to CCS Construction, was for the following work: "Patch insulation; install 26 gauge metal on west wall; Replace entry door." The total amount on the requisition form was $4,792.50.

CCS Construction submitted an invoice to the County, dated October 19, 2011, for $4,792.50. The description of the invoice was the exact description contained in the Requisition for Purchase. The invoice was not signed by a County official, but the Receiving & Accounts Payable Report was signed by the Fire Marshall. In addition to the invoice dated October 19, 2011, CCS Construction submitted a change order to the County dated November 1, 2011 and for an amount of $12,780. The description on the change order read, "[i]nstall 2 tube style radiant heaters. Install 1 programmable line voltage thermostat. Install all necessary gas and electrical connections." The Fire Marshall signed both the invoice and the Receiving & Accounts Payable Report related to the change order. The OSA did not locate documentation in which the County requested the additional scope of work, and the County disbursed the full amounts to CCS Construction despite the lack of supporting documentation from the contractor that would justify the additional costs for the project.

District #3 McIntosh Fire Department Drain Repairs Project

The County received three bids, on or about February 28, 2011, for the District #3 McIntosh Fire Department Drain Repairs Project: A-Wall Builders in the amount of $4,500; Bob's Plumbing in the amount of $4,300; and CCS Construction in the amount of $4,047. The County awarded the project to CCS Construction.

CCS Construction submitted an invoice dated February 28, 2011 to the County in the amount of $4,047.00 for the initial scope of work proposed. The invoice was not signed by a County official, but the Receiving & Accounts Payable Report was signed by the County Manager on behalf of the Fire Marshall. CCS Construction subsequently submitted a change order dated March 7, 2011 to the County in the amount of $1,917 for "[d]irt work; Septic tank markers; Pipe repair." The Fire Marshall signed both the invoice and the Receiving & Accounts Payable Report related to the change order. The County did not provide documentation justifying the additional scope of work, and the County disbursed the full amount to CCS Construction despite the lack of

supporting documentation from the contractor that would justify the additional costs for the project.

Torreon Park Project

The County received two proposals each, dated March 31, 2008, from two separate vendors: American Fence Co. in the amount of $16,800 and $6,000; Fence USA in the amount of $12,660 and $5,975. The OSA did not find a bid for CCS Construction, but through discussion with the County determined that CCS Construction submitted "a bid" in the amount of $11,900 and $6,000." The "bid" was titled "Invoice #1" and had an original date of March 31, 2008, which was stricken through and had a handwritten date of "April 9, 08." The bids did not include gross receipts tax. The County awarded the project to CCS Construction and entered into a construction contract with CCS Construction in the amount of $12,658.63.

Even though CCS Construction originally bid the work at $12,658.63, the County approved a change order for approximately $70,000 in additional costs, causing the project to cost a total of $82,963.42. CCS Construction submitted an invoice to the County, dated April 9, 2008, in the amount of $11,900. In addition, CCS Construction submitted a change order to the County, with the same date as the invoice, in the amount of $71,063.42. The change order contained $885.06 of tax related to the invoice of $11,900, but the remaining portion was related to an expanded scope of work. The County Manager signed both invoices and the related Receiving & Accounts Payable Report.

Article 7 of the construction contract entered into between the County and CCS Construction for this project states the following: "A Change Order is any change to the original plans and/or specifications. All change orders need to be agreed upon in writing, including cost, additional time considerations, approximate dates when the work will begin and be completed, a legal description of the location where the work will be done and signed by both parties. Additional time needed to complete change orders shall be taken into consideration in the project complete date." However, the OSA was unable to locate any documentation signed by the County and CCS Construction indicating the "cost, additional time considerations, approximate dates when the work will begin and be completed, a legal description of the location of where the work will be done" was provided for any of the aforementioned change orders as required by Article 7 of the construction contract. Despite this apparent lack of supporting documentation that was required by the contract and would justify approximately $70,000 in additional costs for the project, the County paid the change order in full.

Criteria

The Procurement Code, specifically Section 13-1-38 NMSA 1978, defines "change order" as "a written order signed and issued by a procurement officer directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order with or without the consent of the contractor."

"Specification" is defined in Section 13-1-89 NMSA 1978 of the Procurement Code as "a description of the physical or functional characteristics or of the nature of items of tangible personal property, services or construction. 'Specification' may include a description of any

requirement for inspecting or testing, or for preparing items of tangible personal property, services or construction for delivery."

Additionally, Section 13-1-158(A) NMSA 1978, provides, "[n]o warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code."

Proper internal controls require the County to adhere to contracts terms and conditions to ensure unauthorized payments are not processed. Article 7 of the construction contracts entered into between the County and CCS Construction for the Torreon Fire Department Addition Project, the Voting Machine Storage Project and the Torreon Park Project stated: "A Change Order is any change to the original plans and/or specifications. All change orders need to be agreed upon in writing, including cost, additional time considerations, approximate dates when the work will begin and be completed, a legal description of the location where the work will be done and signed by both parties. Additional time needed to complete change orders shall be taken into consideration in the project complete date."

All costs should be completely supported before the County approves them for payment. Change orders without supporting information or adequate detail should not be approved for payment. Proper internal controls also require the County to follow its Purchasing Regulations and have proper review and segregation of duties to ensure it does not process unauthorized payments.

Torrance County Resolution #2000-15 Purchasing Regulations, adopted by the Torrance County Commission pursuant to the Procurement Code. The Regulations, specifically Section 3, designate the County Manager's Office as the Central Purchasing Office, and designate the Assistant County Manager as the Purchasing Agent. In Section 4, the Regulations further provide that "The Purchasing Agent is responsible to the Torrance County Manager and to the Torrance County Commission for all procurement activity (purchasing) by and on behalf of Torrance County. The Purchasing Agent shall be responsible for the compliance with these Purchasing Regulations and for compliance with the Procurement Code."

Section 2 of the County Purchasing Regulations define a "purchase" as "the total of all goods or services being bought at one time." Sections 5(d) and (e) of the Purchasing Regulations require the following for purchases of defined amounts:

- All purchases between $3,001 and $10,000 "shall be made at the best obtainable price after having first obtained three written quotes;" and
- All purchases of $10,001 or more "must be by sealed bid or sealed competitive proposal and conducted pursuant to the Procurement Code."

Section 7 of the County's Purchasing Regulations provides that "the Central Purchasing Office shall issue all purchase orders. The issuance of a Purchase Order by the Central Purchasing Office constitutes a certification by that office that all paper work is being made in compliance with the Procurement Code and these Regulations."

Section 10 of the County's Purchasing Regulations provides "[a]n itemized invoice or receipt is required for all payments. The Central Purchasing Office will not accept a statement in lieu of an invoice or receipt. An "Accounts Payable & Receiving Report" shall be attached to all invoices submitted for payment."

Section 13 of the County's Purchasing Regulations provides that "Department Heads or their designee shall remain current with their department's accounts and invoices. It is the Department head or their designee's responsibility to assure all departmental purchases conform to theses purchasing regulations."

Cause

The County's controls over change orders and subsequent disbursements are deficient. The County disbursed payments to CCS Construction without ensuring compliance with contractual and purchasing requirements that the contractor submit supporting information and documentation to justify change orders. Furthermore, the County did not document that change orders met specifications for the projects prior to payment.

Moreover, it appears the County Manager overrode the Deputy County Manager's authority as the Purchasing Agent when the County Manager approved change orders for significant amounts without supporting documentation from CCS Construction that would justify the additional costs. In certain cases, those change orders exceeded the highest bid or proposal given to the County on the respective projects.

Effect

The County does not have adequate supporting documentation for payments disbursed to CCS Construction for change orders that significantly exceeded the original bids and proposals submitted by vendors, which prevents the County and the public from ensuring the County made proper and reasonable payments to CCS Construction. Additionally, the County violated the contract terms and conditions of the construction contracts entered into with CCS Construction on specific projects. This resulted in inappropriate payments to CCS Construction. Inadequate controls over these aspects of the procurement process harm transparency and increase the risk that CCS Construction improperly charged the County.

Furthermore, by accepting the change orders submitted by CCS Construction, the County violated the Procurement Code by effectively modifying the specifications of the invitations for bids issued by the County on several projects.

Risks of fraud increase due the County's violations and overrides of the Procurement Code and its own Purchasing Regulations. The County has subverted the purpose of the Procurement Code as specified in Section 13-1-129(C) NMSA 1978, which is to "provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity."

Recommendation

The County should be familiar with and follow contractual requirements, purchasing regulations and proper controls over purchasing processes, particularly those requirements that function as controls over unsupported costs. The County should closely monitor change orders and ensure contractors provide sufficient detail and supporting documentation prior to approving disbursements. The County should also implement adequate controls to ensure compliance with its construction contracts. Change orders that do not provide adequate justification for additional costs should be rejected in order to ensure the County is receiving the best obtainable price.

The County should ensure that change orders meet specifications so that vendors are not allowed to significantly modify the specifications of projects. Lastly, the County should segregate its procurement duties among several County finance employees in order to reduce the risk that the County will make overpayments or give preferential treatment to contractors.

Finding 07 – The County Improperly Certified the Receipt of Goods and Services from CCS Construction

Condition

During our test work, we noted 7 out of 19 projects in which the County violated the Procurement Code by improperly certifying the receipt of goods and services from CCS Construction in advance of actually receiving the good and services. We also noted 3 out of 19 projects in which the County violated the Procurement Code by improperly certifying the receipt of goods and services from CCS Construction, but CCS Construction never provided the goods and services. In all instances, the County paid CCS Construction the full amount of the invoices after certifying that the goods and services were received. The details are listed below for each project.

The County Improperly Certified the Receipt of Goods and Services in Advance of Actually Receiving the Goods and Services

District #4 Torreon Fire Department Addition Project

We noted multiple instances related to the District #4 Torreon Fire Department Addition Project in which the County certified and paid for the receipt of goods and services from CCS Construction, but the evidence we reviewed indicated the County had not yet received the goods or services at the time of certification and payment.

On July 25, 2007, the County awarded and signed a contract with CCS Construction for the District #4 Torreon Fire Department Addition Project. Just six days later, on July 31, 2007, CCS Construction submitted Invoice #1 in the amount of $11,967.19 to the County for "15% of contract for purchase of building." On August 1, 2007, the County Manager signed the Receiving & Accounts Payable Report and indicated, "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid." On August 8, 2007, the County paid CCS Construction for Invoice #1 in the amount of $11,967.19. It is unclear how the County could have authorized payment for a pre-fabricated building that had not yet been received.

We also noted one instance where the County certified and paid CCS Construction for electrical work on the project, but the evidence suggests that the electrical work was not performed until months later. On September 18, 2007, CCS Construction submitted Invoice #3/Change Order #2 to the County in the amount of $13,756.61. The invoice was for the following work: "4 – 12'X14' Insulated overhead doors with openers. All electrical upgrades included." The County Manager signed the invoice/change order. On September 24, 2007, the County Manager also signed the Receiving & Accounts Payable Report and indicated, "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid." On September 26, 2007, the County paid CCS Construction $12,800.00 for the project (the difference between the invoice/change order and the payment received was gross receipts taxes, which the County paid CCS Construction in a subsequent payment). However, upon our review of the documentation, the OSA discovered that the subcontractor, Gustin Electric, which CCS Construction used for electrical work on the project, did not apply for and receive an Electrical

Permit for the "Torreon Fire Department" until November 27, 2007. Furthermore, CCS Construction wrote two checks to Gustin Electric for "Torreon" or "Final Torreon" work, and the dates and amounts on the checks were December 11, 2007 and February 1, 2008 for $7,500 and $3,500, respectively. Therefore, it appears that the County certified receipt of the electrical work in September 2007 even though the subcontractor did not even obtain the Electrical Permit to perform the work until November 2007, and CCS Construction did not pay the subcontractor for the work until December 2007 and February 2008.

We also noted another instance in which the County certified the receipt of goods and services from CCS Construction, but CCS Construction did not receive a quote from the subcontractor to perform the work until one week later. On September 26, 2007, CCS Construction submitted Invoice #4/Change Order #3 to the County in the amount of $42,989.40. The description on the invoice/change order was the following: "Install bathrooms according to plan. CCS will provide fixtures. Price does not include: washer, dryer and septic system." The County Manager signed the invoice/change order. On September 27, 2007, the County Manager signed the Receiving & Accounts Payable Report and indicated, "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid." On October 10, 2007, the County disbursed the full amount of the invoice to CCS Construction $42,989.40. However, Action Plumbing and Heating, the subcontractor used by CCS Construction for the project, provided the following quote, dated October 1, 2007, to CCS Construction in the amount of $9,460.00 for installation of the bathrooms and septic system for the project:

> Furnish and Install Water and Sewage system for Torreon-Tajique Fire Station. This consists of a women and men bathroom, one toilet, one lavatory, and one 36" fiberglass shower unit in each bathroom. Also, one 30 gallon electric water heater and rough in for stackable washer and dryer. Fixtures will be American Standard, Moen or equal. Water to be pex piping and sewage to be Sch 40 PVC.

Based upon our review of the documents, the OSA was unable to determine how the County certified and paid CCS Construction for the receipt of these goods and services when CCS Construction had not yet received a quote from the subcontractor until one week after CCS Construction submitted an invoice to the County charging it for installation of the bathrooms.

In addition to this discrepancy, the New Mexico Environment Department (NMED) did not approve the installation of the bathrooms at the Torreon Fire Station until December 19, 2007. Moreover, the subcontractor who installed the bathrooms at the Torreon Fire Station did not submit its final invoice to CCS Construction until January 1, 2008. Since NMED did not approve the work until December 19, 2007, and CCS Construction did not receive a final invoice for the subcontractor's work until January 1, 2008, the evidence strongly suggests that the County Manager improperly certified the receipt of these goods and services from CCS Construction when she signed Invoice #4/Change Order #3 and the County's Receiving & Accounts Payable Report on September 27, 2007. The County Manager's certification resulted in the County disbursing $42,989 to CCS Construction.

In another instance, CCS Construction submitted Invoice #5/Change Order #4, dated October 9, 2007, in the amount of $9,135.25 for the following work: "Upgrade florescent lighting to low

sulfur lighting. Upgrade forced air heating system to radiant heat." The County Manager signed the invoice/change order. On October 9, 2007, the County Manager signed the Receiving & Accounts Payable Report and indicated, "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid." The County disbursed the full amount of the invoice to CCS Construction on October 24, 2007. As previously discussed, the Electrical Permit for this project was not approved by NMED until November 2007, and the electrical subcontractor was paid in December 2007 and February 2008. Furthermore, another subcontractor used by CCS Construction on the project, Romero's Heating & Cooling, LLC, submitted an invoice to CCS Construction on December 13, 2007 for the following work: "HVAC SYSTEM CONTRACT, UNIT HEATERS, EXHAUST FANS, HVAC EQUIPMENT CONTROLS, Equipment Rental." CCS Construction paid the subcontractor on the invoice on January 3, 2008. Since the contractor did not bill CCS Construction for completion of the heating system work on the project until December 2007, and the Electrical Permit was not approved until November 2007, it is doubtful that the County Manager could have certified receipt of these good and services in October 2007 when she approved Invoice #5/Change Order #4.

Similarly, we noted another instance for the Torreon Fire Department Addition Project in which the County certified the receipt of goods and services from CCS Construction, but the evidence suggests that CCS Construction's subcontractor had not completed the work at the time CCS Construction billed the County. On October 24, 2007, CCS Construction submitted Invoice #6/Change Order #5 to the County in the amount of $24,710.63 for the following work: "Install septic system. Install water line. Includes permits, water taps and jack hammering." The County Manager signed the invoice/change order. On November 6, 2007, the County Manager signed the Receiving & Accounts Payable Report and indicated, "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid." On November 14, 2007, the County disbursed the full amount of the invoice to CCS Construction. However, upon the OSA's review of the documentation, we discovered that CCS Construction's subcontractor did not invoice CCS Construction for installation of the septic system for the project until December 2007. On December 19, 2007, Action Plumbing & Heating invoiced CCS Construction $4,000.00 to "Install Septic System." CCS Construction paid the subcontractor for the invoice on December 20, 2007. It is unclear how the County Manager could have certified that the County had received the goods and services from CCS Construction in October 2007 when she approved payment to CCS Construction for Invoice #6/Change Order #5 in the amount of $24,710.63.

Lastly, we noted another similar instance in which the County certified the receipt of goods and services from CCS Construction, but CCS Construction's subcontractor had not yet received a permit to perform the work. In Invoice #9/Change Order #7, dated December 11, 2007, CCS Construction billed the County $34,380.00 for the following work: "Remove wall, overhead door and main door. Frame new wall, sheet rock, stucco and install new main door. Install gas lines." The County Manger signed the invoice/change order. On December 11, 2007, the County Manager signed the Receiving & Accounts Payable Report and indicated, "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid." On December 19, 2008, the County disbursed the full amount of the invoice/change order to CCS Construction. However, it was not until December 17, 2007 that CCS

Construction's subcontractor, Action Plumbing & Heating, received a Mechanical Permit for "...CERTIFICATE OF APPROVAL GAS YARD LINE OTHER GAS." Therefore, the evidence suggests that the County Manager improperly certified the receipt of the installation of gas lines from CCS Construction when the Mechanical Permit for those gas lines was not granted until six days later.

Voting Machine Storage Building

On April 23, 2008, the County Commission awarded CCS Construction a contract for the County Voting Machine Storage Building, which was for the construction of a "pre-engineered metal building." The contract was signed on May 21, 2008, and on the very same day, CCS Construction submitted an invoice to the County in the amount of $9,000 for "Progress payment for building retainer." The County Manager signed the invoice. The next day, on May 22, 2008, the County Manager signed the Receiving & Accounts Payable Report and indicated, "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid." The County disbursed the full amount of the "progress payment" to CCS Construction on May 28, 2008. Based upon the description on the invoice and that CCS Construction submitted the invoice on the same day the contract for the project was signed, it is questionable how the County Manager could have certified the receipt of goods or services from CCS Construction for the project.

Furthermore, CCS Construction submitted the Voting Machine Storage Building Invoice #3/Change Order #2, dated September 15, 2008, to the County in the amount of $88,562.25. The invoice /change order included work to "[i]nstall electrical and heating." However, the Electrical Permit for the building work was not issued until three days later, September 18, 2008, which was also one day after the County Manager signed the Receiving and Accounts Payable Report. The Receiving & Accounts Payable Report had a list of items received, including "[i]nstall electrical and heating." Furthermore, on the Report the County Manager indicated, "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid." Again, given the Electrical Permit for the work was issued subsequent to the County Manager's certification, it is doubtful that the County Manager could have certified the installation of electrical and heating goods and services was complete.

District #2 Indian Hills Fire Department Septic Installation Project

For this project, we noted that the County certified receipt of goods and services from CCS Construction prior to the issuance of an NMED permit to a subcontractor to perform the work. CCS Construction submitted an invoice to the County, dated January 26, 2009, in the amount of $14,250. The invoice contained the following description of the work performed:

> Install additional tank for floor drain; (drain was dumping illegally on ground – red tagged by NMED inspector); Install high water alarm system in floor drain tank and in septic tank; Install interior, exterior electrical conduit and wire. Connect to alarm system and electrical breaker box; Price includes jackhammer and removal of sub-surface rock which inhibits the proper installation of the system.

There was also a hand-written note on the invoice that stated, "Emergency purchase includes both tanks." The County Manager signed the invoice. On January 27, 2009, the County Manager

signed the Receiving & Accounts Payable Report for the invoice. Next to the County Manager's signature on the invoice was the Fire Marshal's name, written in the same handwriting. The description on the Report stated, "Invoice #1, Septic Installation; District 2 Fire Station." Furthermore, the Report stated, "I certify that the above items were checked and received by the department. This purchase is complete and ready to be paid."

Even though the County certified the receipt of these goods and services on January 27, 2009, we found that on January 29, 2009, the NMED received an "Application for a Liquid Waste Permit or Registration" for "Torrance County District #2 Fire Department." The application, submitted by York Septic Systems, was approved by the NMED on February 4, 2009 – eight days after the County Manager certified that the goods and services had been received from CCS Construction. Moreover, York Septic Systems' final invoice to CCS Construction for the work was dated February 5, 2009, and included the following description: "1/27/2009- Submit New Mexico Environment Department Liquid Waste Permit Application $195.00; 2/5/2009- Install a 1500 Gallon Concrete Wastewater Holding Tank with a High Water Alarm and Risers and Lids; Install a 1250 Gallon Low-profile Concrete Floor Drain Holding Tank with a High Water Alarm and Risers and Lids; Make all Piping Connections $4,035.00." The total amount of the invoice was $4,230.

The timing of the permit application, permit approval and final invoice from York Septic Systems to CCS Construction calls into question whether the work was actually completed at the time CCS Construction billed the County for that work. Therefore, it is doubtful that the County Manager could have certified that goods and services related to CCS Construction's septic installation were received at the time she approved the invoice and Receiving & Accounts Payable Report in the amount of $14,250.

Judicial Building & Esperanza Health Center Grading and Drainage Project

CCS Construction submitted two proposals to the County, dated October 20, 2010, for the Judicial Building & Esperanza Health Center Grading and Drainage Project. Proposal #1 in the amount of $9,500 (plus taxes) stated, "Grading and removal on south side of Judicial building. Grading and expansion of retention pond on North side of Esperanza Health Center." Proposal #2 in the amount of $7,300 (plus taxes) stated, "Cut and patch approximately 96' of asphalt. Install 100' of 8" PVC pipe with storm drain and grate; Install rip rap. Both proposals included the statement, "40% of contract upon acceptance of proposal." The County Manager signed both proposals.

In an invoice dated October 19, 2010, which was one day before the date on the proposals discussed above, CCS Construction charged the County an amount of $6,720 for "40% of Proposal # 1 & 2." The County Manager signed the County Receiving & Accounts Payable Report, dated October 20, 2010, for the invoice. The Report stated, "40% of Proposal 1; 40% of Proposal 2" and contained the language, "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid." Based on a handwritten note on the Receiving & Accounts Payable Report, the County disbursed $6,720 to CCS Construction on October 27, 2010.

Given that CCS Construction's invoice for the work was dated before two differing "proposals" for construction work were submitted to the County, and the County Manager certified the receipt of the goods and services on the same day the proposals were submitted, the evidence strongly suggests that the County improperly certified and paid for the receipt of goods and services from CCS Construction. Moreover, the $6,720 paid by the County was charged to an account containing federal funds intended for use for the Esperanza Health Clinic.

Estancia Senior Center Parking Lot Project

CCS Construction submitted a winning proposal, dated July 19, 2010, to the County for the Estancia Senior Center. The proposal totaled $9,400 and included work for the "[i]nstallation of 4 parking curbs." Between the months of August and September 2010, CCS Construction submitted four invoices for work on the project in the amount of $12,355.31. The last of the four invoices stated, "[c]ompletion of project." Three of the invoices were not signed by a County official, but one was signed by the County Manager. The Deputy County Manager signed all of the Receiving & Accounts Payable Reports and indicated, "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid."

The OSA noted that after CCS Construction's fourth invoice, in which it indicated that it had completed the project, CCS Construction submitted another invoice to the County in the amount of $537.81. The invoice, dated January 27, 2011, stated it was for work to "[d]rill and anchor parking curbs at Estancia Senior Citizen Facility." The invoice was not signed by a County Official, but the County Manager signed the Receiving & Accounts Payable Report on January 31, 2011 and indicated, "I certify that the above items were checked and received by my department. The purchase is complete and ready to be paid." On February 9, 2011 the County disbursed the full amount of the invoice to CCS Construction.

Prior to the invoice dated January 27, 2011, CCS Construction collected full payment from the County for completion of the project and installation of the parking curbs, which was included in the original price of the bid. Therefore, it is questionable how the Deputy County Manager could have properly certified the receipt of good and services, and ultimately CCS Construction's "completion of the project," on the four original invoices. The OSA also questions why the County paid an additional cost of $537.81 for the installation of the parking curbs when clearly that was already included in CCS Construction's original proposal for the project.

Animal Shelter Septic and Leach Field Replacement Project

CCS Construction submitted an April 11, 2011 invoice to the County for $5,323.94 to "[r]eplace [the] septic and leach field" for the County Animal Shelter. The County Manager signed the invoice. The related County Receiving & Accounts Payable Report, also dated Monday April 11, 2011, included the description, "[i]nstall new Septic and Leach Line at TCAS (Old Dispatch Bldg)." The Report also stated that it was an "[e]mergency purchase, per County Manager," and a note was attached to the Report which indicated the following: "Here it is in full. He'll be finished by Wed. Thx – Financial Analyst." The Report also indicated, "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid."

The County issued the related check to CCS Construction for $5,323.94 on Tuesday, April 12, 2011, which was one day before the note on the Report indicated the work would be completed. It is questionable how the County Manager could have properly certified the receipt of goods and services from CCS Construction on the exact same day CCS Construction submitted its invoice, particularly the note on the Receiving & Accounts Payable Report indicated that CCS would not finish the work until two days later.

Moreover, on April 12, 2011, the NMED received an "Application for a Liquid Waste Permit or Registration" from CCS Construction for the County's Animal Shelter Septic and Leach Field Replacement Project. The date of the application was one day after the County's receipt of CCS Construction's invoice, and the same day the County disbursed payment to CCS Construction for the work. This further calls into doubt how the County Manager could have properly certified the receipt of goods and services related to the septic installation.

Torreon Park Project

On April 8, 2008, the County entered into a contract with CCS Construction for the Torreon playground, including "fencing, equipment and other structures." Just one day after execution of the contract, CCS Construction submitted Invoice #1 to the County in the amount of $11,900 to "Install 540 X 6' chain link fence; Install 3 gates…; Remove existing fence; Tractor work."

The original date on Invoice #1 was March 31, 2008. However, someone had struck through that date and handwrote the date of "April 9, 08" on the invoice. The County Manager signed the invoice. Additionally, CCS Construction submitted Invoice #2/Change Order #1 for the project in the amount of $71,063.42. Similar to the first invoice, Invoice #2/Change Order #1 had an original date of April 2, 2008 but someone struck through that date and handwrote the date of "April 9, 08." Also, at the top of the change order there was a handwritten note which stated, "Discussed procurement w/ Dennis on 4/02/08 – he ok'd! Ja." The invoice/change order billed the County for work to install a steel shade structure with a concrete slab and barbeque grill, install a concrete basketball court and fill dirt. The change order also included the taxes for Invoice #1. The County Manager also signed the invoice/change order.

On April 9, 2008, the County Manager signed the County Receiving & Accounts Payable Report authorizing the County to pay CCS Construction for Invoice #1 and Invoice #2/Change Order #1. Included on the Report was the statement, "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid." On April 10, 2008, the County issued the related check to CCS Construction for $82,963.42 ($11,900 + $71,063.42).

It is highly doubtful that CCS Construction would have had time to install fencing, install a shade structure with a concrete slab, and install a basketball court within two days of the signing of the contract and one day of the County's acceptance of CCS Construction's invoice and change order. Furthermore, the invoice and change order had initial dates that preceded the signing of the contract, and the handwritten note on the change order indicates that discussions regarding procurement of the project also occurred prior to the signing the contract. Therefore, it appears either the County allowed CCS Construction to begin work on the project before the contract was signed, or the County improperly certified and paid for the receipt of goods and

services from CCS Construction that the County had not yet received at the time of certification and payment.

The County Certified the Receipt of Goods and Services from CCS Construction Even Though the County Never Received the Goods and Services

Voting Machine Building Project

For this project, we found that CCS Construction billed the County for a soil test, and the County certified and paid for the receipt of the soil test, even though it appears the contractor likely never performed the test as discussed below. We also found that the County obtained a planning and zoning permit, but weeks later certified and paid for the receipt of a planning and zoning permit obtained by CCS Construction.

In "Change Order #1" dated July 7, 2008, CCS Construction billed the County $32,231.25 (including taxes) for "[d]irt work and compaction; Soil Tests; Elevation certificate and survey; Planning and zoning permit." The County Manager signed the Receiving & Accounts Payable Report on July 7, 2008. The Report contained the statement "I certify that the above items were checked and received by the department. This purchase is complete and ready to be paid." On July 9, 2008, the County disbursed the full amount of the change order to CCS Construction.

However, CCS Construction likely never performed a soil test as indicated in its change order. In response to the OSA's request for a copy of the soil testing report that CCS Construction should have prepared for the Voting Machine Building Project, the County responded that the "Contractor didn't provide the County a copy." Additionally, a different vendor previously performed a soil test on the building site. According to the May 23, 2007 County Commission meeting minutes, the County Safety Officer presented a consulting agreement for Environment Engineering Services to test for soil contamination at the County Road Department site. The County Commission approved the action. On May 23, 2007, Daniel B. Stephens and Associates, Inc. (DBS&A) executed an agreement with the County for DBS&A to conduct certain corrective action at a petroleum site owned by the County. On September 28, 2007, the Senior Hydrogeologist from DBS&A sent the results of a soil testing report to the NMED that he performed on the County Maintenance Yard. Upon inquiry, the OSA determined the Voting Machine Building is on the same property as the County Road Department site, where the work was conducted by DBS&A.

Therefore, it appears CCS Construction billed for soil test work that the contractor never performed. Due to the lack of specificity in the change order, the OSA was unable to determine how much CCS Construction actually charged the County for the soil test.

Also, as discussed above in Change Order #1 CCS Construction charged the County for a planning and zoning permit. However, the OSA discovered that on April 2, 2008, the County Manager had applied for a planning and zoning permit, and paid $200 to the Town of Estancia for the permit. The permit was approved and became effective May 5, 2008. Although the OSA was unable to determine how much CCS Construction charged the County for the planning and zoning permit due to the lack of specificity in the change order, it appears the County certified

and paid for the receipt of a planning and zoning permit that the County had already obtained weeks prior to the change order.

Judicial Building & Esperanza Health Center Grading and Drainage Project
The OSA found CCS Construction charged the County for certain goods and services for this project, and the County certified and paid for the receipt of those goods and services, but during our site visit to the project location we could not confirm that CCS Construction actually performed the work.

CCS Construction submitted Change Order #1 to the County, dated November 15, 2010, for the following work on the Judicial Building & Esperanza Health Center Grading and Drainage Project:

> Excavate, place and finish 250 sq. ft. of concrete at Southwest Retention Pond; move base coarse and build road for trash dumpster; Remove and expand South pond; place rip rap where soil has eroded from building; Grade and remove dirt for proper drainage on North side of the building; Remove debris and clean North pond.

The County Manager signed the change order, which was for an amount of $13,976.10. The County Manager signed the related Receiving & Accounts Payable Report on November 15, 2010, the same day as the date on the invoice. The Report also contained the following language: "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid." The County disbursed $13,976.10 to CCS Construction on November 24, 2010.

As part of our examination procedures, OSA staff performed a site visit of the Judicial Building and the Esperanza Health Center in Estancia, New Mexico. OSA staff could not locate the 250 square feet of concrete CCS Construction described it placed and finished "at southwest retention pond." The OSA also could not locate concrete placed and finished for retention ponds on the southwest side of the Esperanza Health Center or any other side of the building. There was something that resembled a dirt retention pond on the southwest side of the building, but there was not concrete at the pond. The OSA also confirmed during interviews that CCS Construction did not perform concrete work in the immediate vicinity of the retention pond on the southwest side of the building. Additionally, OSA auditors observed what appeared to be a large patch of dirt in front of the trash dumpster; however, there was no asphalt on the "built road" as CCS Construction indicated in its invoice. Therefore, based upon our interviews and observations, it appears CCS Construction billed the County for goods and services that were not received on this project, and the County improperly certified and paid for the receipt of those goods and services.

District #5 Homestead Estates Fire Department Repair of Doors & Walls
We found that the County certified and paid for a replacement door for this project, but OSA staff was told during an interview with the County Fire Marshal that the door was never replaced.

CCS Construction submitted an invoice to the County, dated October 19, 2011, for $4,792.50 to "[p]atch insulation; Install 26 gauge metal liner on west wall; Remove and replace main entry door with steel jam and door." The invoice initially had the description, "Proposal," but someone had struck through the word "Proposal" and handwrote "Invoice" on the document. On October 31, 2011, the Fire Marshall signed the "Torrance County Requisition For Purchase Fire Departments" form, and on November 1, 2011, the County Manager and Controller signed the same requisition form for a total of $4,792.50. The description on the requisition form was the following: "Patch insulation; install 26 gauge metal on west wall; Replace entry door; Tax." The same day, the County issued a purchase order for the project in the amount of $4,792.50. On November 8, 2011, the County Fire Marshal signed the County Receiving & Accounts Payable Report in the amount of $4,792.50 for "work on District 5 Substation." The Report also stated, "I certify that the above items were checked and received by my department. This purchase is complete and ready to be paid." On November 8, 2011, the County issued a check to CCS Construction in the amount of $4,792.50.

During an interview with the County Fire Marshall, OSA staff was informed that the door had never been replaced. Due to the lack of specificity in the invoice, the OSA was unable to determine how much CCS Construction charged the County for the door. Nevertheless, it appears the County improperly certified and paid for goods and services it never received for this project.

Criteria

"Specification" is defined in Section 13-1-89 NMSA 1978 of the Procurement Code as "a description of the physical or functional characteristics or of the nature of items of tangible personal property, services or construction. 'Specification' may include a description of any requirement for inspecting or testing, or for preparing items of tangible personal property, services or construction for delivery."

The Procurement Code imposes certain duties on the County to inspect and certify the receipt of goods and services prior to making payment to a contractor. Section 13-1-157 NMSA 1978 provides the following: "The using agency is responsible for inspecting and accepting or rejecting deliveries. The using agency shall determine whether the quantity is as specified in the purchase order or contract and whether the quality conforms to the specifications referred to or included in the purchase order or contract. If inspection reveals that the delivery does not conform to the quantity or quality specified in the purchase order or contract, the using agency shall immediately notify the central purchasing office . . . If the delivery does conform to the quantity and quality specified in the purchase order or contract, the using agency shall certify to the central purchasing office that delivery has been completed and is satisfactory."

Additionally, Section 13-1-158(A) NMSA 1978, provides, "[n]o warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code."

Federal regulations impose certain restrictions on the use of federal funds. Office of Management and Budget, Title 2 Code of Federal Regulations (CFR) Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87) establishes principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and other agreements with state and local governments and federally-recognized Indian tribal governments. To be allowable under federal awards, costs must meet certain criteria. Among those criteria, the costs must be authorized or not prohibited under the state of local laws or regulations; be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the government unit.

Cause

The County Manager and other County officials failed to verify the receipt of goods and services from CCS Construction prior to approving payments. Additionally, it appears CCS Construction misrepresented the completion of certain work and the delivery of goods and services related to numerous projects.

Effect

The County violated the Procurement Code by improperly certifying the receipt of goods and services. As a result, the County disbursed payments to CCS Construction before the goods and services were actually received. In other cases, the County disbursed payments to CCS Construction without goods being received or services being rendered by CCS Construction. In many cases, CCS Construction appears to have fraudulently billed the County. These violations of the Procurement Code heighten risks for fraud and abuse, and the County appears to have paid for projects that may not have been completed to specification.

With regard to the Judicial Building and Esperanza Health Center Grading and Drainage Project, the County appears to be in violation of OMB Circular A-87 which could result in the $6,720 that was paid in advance being a disallowed cost. This could result in the County having to repay the federal government for the potential disallowed cost.

Recommendation

The County should establish adequate controls over the certification of receipt of goods and services from contractors in order to prevent contractors from being paid prior to goods and services being provided. The County should not make payments to contractors without properly verifying the invoice detail is accurate and the work has been completed in accordance with the contract, proposal or quote. Appropriate County employees should visit the project location and physically verify the receipt of goods and services based on the contractor's invoice detail. The County should request repayment for payments made in which contractors cannot provide complete support for the work performed. Furthermore, the policies and procedures implemented by the County should ensure that federal funds are not at risk due to Procurement Code violations of this nature.

Finding 08 – CCS Construction Failed to Deliver Performance and Payment Bonds for Certain Contracts

Condition

For certain construction contracts between the County and CCS Construction, we found that CCS Construction failed to deliver performance and payment bonds to the County as required by state law. Pursuant to state law, the County should have rejected CCS Construction's bids for the projects due to CCS Construction's failure to deliver the required bonds. However, the County still selected CCS Construction for the construction projects. The construction projects are noted below.

District #4 Torreon Fire Department Addition Project
On July 25, 2007, the County Commission approved a contract between the County and CCS Construction for the Torreon Fire Department Addition Project in the amount of $79,781. CCS Construction did not deliver the required performance, payment and labor bonds for the public works project to the County. In response to our request to the County for documentation of the bonds, the County Manager's office replied that the bonds were "not required by the bid."

District #1 Duran Fire Department Sub-Station Project
The County used the identical contract that the County Commission approved on July 25, 2007 for the Torreon Fire Department Addition Project to procure goods and services from CCS Construction for the Duran Fire Department Sub-State Project. The contract was originally written and executed for the Torreon Fire Station; however, the County added the description, "& Duran," to the face of the contract and used the contract for the Duran project. The County paid CCS Construction a total of $76,749 for work performed on the Duran Fire Department Sub-Station Project from May 2008 through June 2008. In response to our request to the County for documentation of the required performance, payment and labor bonds, the County Manager's office responded that the documentation "never existed."

Voting Machine Storage Building
The County entered into a contract with CCS Construction on May 21, 2008 for a fixed amount of $23,206.50 for work on the Voting Machine Storage Building Project. However, because of a change order submitted by the contractor dated September 15, 2008, the County issued a check in the amount of $88,562.25 to CCS Construction for work on the Voting Machine Storage Building. In response to our request to the County for documentation of required performance and payment bonds for the project, the County Manager's office replied that the bonds were "not required by the bid."

Torreon Park Project
The County entered into a contract with CCS Construction on April 8, 2008 for a fixed amount of $12,658 for work on the Torreon Park Project. However, because of a change order submitted by the contractor initially dated April 2, 2008, but stricken out to read "April 9, 08", the County issued a check to CCS Construction for a total of $82,963.42 for work on the Torreon Park Project. We did not find evidence that CCS Construction delivered the required performance and payment bond to the County for the project.

Criteria

Section 13-4-18 NMSA 1978 requires certain bonds or security be delivered for construction contracts in excess of $25,000. Specifically, Section 13-4-18(A) NMSA 1978 provides the following: "When a construction contract is awarded in excess of twenty-five thousand dollars ($25,000), the following bonds or security shall be delivered to the state agency or local public body and shall become binding on the parties upon the execution of the contract. If a contractor fails to deliver the required performance and payment bonds, the contractor's bid shall be rejected."

Good accounting practices require proper internal controls for the purpose of monitoring all costs associated with public works projects. Proper internal controls safeguard the County and ensure the County is in compliance with state law requirements pertaining to performance and payment bonds for construction contracts.

Cause

The County did not reject the CCS Construction bid for the Torreon Fire Department Addition Project and Duran Fire Department Sub-Station Project based on the contractor's failure to submit a construction contract performance and payment bond for construction contracts in excess of $25,000 as required by Section 13-4-18 NMSA 1978. Instead, Torrance County awarded CCS Construction the public works contracts in violation of statute.

In the case of the Voting Machine Building Project and the Torreon Park Project, the County failed to include all the known costs of the job in the initial procurement, thus avoiding the $25,000 contract threshold that required the contractor to submit the bond to the County.

It appears the County Manager was aware of the bonding requirements. Per review of a March 7, 2012 email titled, "RE: Procurement Question," which was sent by the County Manager to the County's Attorney, the County Manager stated, "Thanks for your help. I don't worry about the bonding when we have local contractors. I know that's a liability, but it helps them and it helps us. When I have contractors that we don't have a relationship with, that's when it becomes bothersome to me."

Effect

The County is in violation of state law and would assume the liability from a failure of the contractor to perform their contractual obligation from a construction contract without the required bonding. Such bonds are intended for the protection of material, laborers and the public.

Recommendation

We recommend that the County implement proper controls to ensure compliance with the requirements of Section 13-4-18 NMSA 1978. The County should also reject the bid of any contractor that fails to deliver the required performance and payment bonds. Additionally, we recommend that the County update its Purchasing Regulations, which were enacted in March

2000, to be consistent with the Procurement Code and in a manner that would ensure compliance with all procurement requirements, including state law and the County's own policies and procedures.

Finding 09 – CCS Construction Failed to Register with the Department of Workforce Solutions as Required by State Law

Condition

For 2 out of 19 projects we tested, we found that CCS Construction failed to register with the Labor Relations Division of the New Mexico Workforce Solutions Department (NMWSD) as required by statute for public works projects greater than $50,000. Furthermore, the County should not have accepted CCS Construction's bids nor awarded these projects to CCS Construction under state law.

District #4 Torreon Fire Department Addition Project

On July 5, 2007 the County issued an invitation for bids for the Torreon Fire Station Addition Project. The County received five bids for the project: 1) B & R Construction, Inc. in the amount of $118,055.89; 2) CCS Construction in the amount of $79,781.25; 3) Shiver Construction in the amount of $137,338.00; 4) Magnum Steel Buildings, Inc. in the amount of $114,734.96; and 5) Top Notch Construction in the amount of $142,750.00. As documented in minutes of the July 25, 2007 meeting of the County Commissioners, the County Controller asked the Commissioners to award the bid for the Torreon Fire Department Addition Project to CCS Construction, who had the lowest bid in the amount of $79,781.25. Per our inquiry to the NMWSD, there is no indication that CCS Construction registered with the Labor Relations Division as required under state law. Consequently, the County should have not have accepted the bid from CCS Construction or awarded the project to CCS Construction.

District #1 Duran Fire Department Sub-station Project

Between May 2008 and June 2008, CCS Construction submitted three invoices totaling $76,749.36 to the County for the Duran Sub-Station Project. Hand written on a previous contract the County had in place for the Torreon Fire Department Addition Project was "and Duran," indicating that the contract was for both projects. Furthermore, during County staff interviews, the OSA determined the County procured CCS Construction using the same bid CCS Construction submitted for the Torreon Fire Department Addition Project noted above. Per our inquiry to the NMWSD, there is no indication that CCS Construction registered with the Labor Relations Division as required by state law. Consequently, the County should not have accepted the bid from CCS Construction or awarded the Duran Fire Department Substation Project to CCS Construction.

Criteria

The Public Works Minimum Wage Act, specifically Section 13-4-13.1(A) NMSA 1978, provides that a contractor who submits "a bid valued at more than fifty thousand dollars ($50,000) in order to respond to a request for proposals or to be considered for award of any portion of a public works project greater than fifty thousand dollars ($50,000) for a public works project that is subject to the Public Works Minimum Wage Act" shall register with the Labor Relations Division of the NMWSD.

Additionally, Section 13-4-13.1(B) NMSA 1978 provides that a "political subdivision of the state shall not accept a bid on a public works project subject to the Public Works Minimum Wage Act from a prime contractor that does not provide proof of required registration for itself."

The Public Works Minimum Wage Act, specifically Section13-1-105(A) NMSA 1978, provides that "a bid submitted by a prime contractor that was not registered as required by Section 13-4-13.1 NMSA 1978 shall not be considered for award."

Cause

CCS Construction did not register with the Labor Relations Divisions of the NMWSD for the two projects discussed above. Furthermore, the County did not request proof of the required registration from CCS Construction when they bid on the projects.

Effect

Because CCS Construction failed to register with the Labor Relations Division of the NMWSD for County projects greater than $50,000, the County unlawfully accepted CCS Construction's bids for the projects. As a result, the County awarded the Torreon Fire Department Addition Project and the Duran Sub-Station Project to a nonresponsive bidder, CCS Construction, in violation of the Procurement Code.

Recommendation

The County should implement proper controls to ensure they are not accepting bids and awarding public works projects to vendors who have not properly registered with the NMWSD.

IV. EXHIBIT A

Table 1: District #4 Torreon Fire Department Addition – Project 1

Date	Document Type	Description	Amount
7/31/2007	Invoice #1	Total amount of contract 15% of contract for purchase of building	$11,967.19
9/18/2007	Invoice # 2 - Change order # 1	Saw cut and remove 60' of concrete from existing approach. Excavate and re-route 120' of phone line. Excavate and re-route existing gas lines. Dirt work – Excavate and remove for drainage. Installation of ballards at door openings. (contractor included tax of $1,868.38 but County did not pay it until 9/27/2007)	$25,000.00
9/18/2007	Invoice # 3 - Change order # 2	4 - 12'x14' Insulated overhead doors with openers. All electrical upgrades included (contractor included tax of $956.61 but County did not pay it until 9/27/2007)	$12,800.00
9/27/2007	No invoice	Tax for Invoices # 2 and #3	$2,824.99
9/26/2007	Invoice #4 - Change order # 3	Install bathrooms according to plan. CCS will provide all fixtures. Price does not include: washer, dryer and septic system. Tax **Total**	$40,000.00 $2,989.40 **$42,989.40**
10/9/2007	Invoice #5 - Change order # 4	Upgrade florescent lighting to low sulfur lighting. Upgrade forced air heating system to radiant heat. Tax **Total**	$8,500.00 $635.25 **$9,135.25**
10/24/2007	Invoice #6 - Change order # 5	Install septic system. Install water line. Includes permits, water taps and jack hammering Tax **Total**	$23,000.00 $1,710.63 **$24,710.63**

11/6/2007	Invoice # 7 - Change order # 6	Excavate, form and finish outside concrete aprons. Concrete to be 3000 psi placed 6" thick with air and fiber mesh Tax (tax amount not itemized on invoice) **Total**	$23,500.00 $1,747.81 **$25,247.81**
11/26/2007	Invoice # 8	Progress payment Completion of concrete and metal building	$33,907.03
12/11/2007	Invoice # 9 – Change order # 7	Remove wall, overhead door and man door. Frame new wall, sheet rock, stucco and install new man door. Install gas lines Tax **Total**	$32,000.00 $2,380.00 **$34,380.00**
12/11/2007	Invoice # 10	Progress payment Rough in electrical. Completion of doors. Rough in plumbing.	$20,000.00
1/14/2008	Invoice (no invoice number)	Exterior lights Completion of Project (remainder on contract) **Total**	$2,000.00 $13,907.03 **$15,907.03**
		Total	$258,869.33

Table 2: Hope Medical Center Cabinet Project

Date	Document Type	Description	Amount
10/30/2007	Invoice (no invoice number)	Demo existing cabinets. Install new cabinets. Install anti-bacterial rolled Formica countertops. Tax Total	$18,500.00 $1,375.93
		Total	$19,875.93

Table 3: District #1 Duran Fire Department Sub-station – Project 3

Date	Document Type	Description	Amount
5/21/2008	Invoice (no invoice number)	Progress payment Remainder on contract due upon completion.	$30,316.87
6/2/2008	Change Order # 1	Excavation Install Water Tap Install Water Line Install frost free hose bib All dirt work, materials and permits included. Tax **Total**	$15,000.00 $1,115.62 **$16,115.62**
6/12/2008	Invoice # 2 (no invoice number)	Completion of project.	$30,316.87
		Total	$76,749.36

Table 4: Voting Machine Storage Building – Project 4

Date	Document Type	Description	Amount
5/21/2008	Invoice (no invoice number)	Progress Payment for building retainer	$9,000
7/7/2008	Invoice (no invoice number) Change order # 1	Dirt work and compaction. Soil tests. Elevation certificate and survey. Planning and zoning permit Tax **Total**	$30,000 $2,231.25 **$32,231.25**
9/15/2008	Invoice # 3 Change order # 2	Install electrical and heating Install 6'- 26 gauge pro-panel perimeter fence around road dept. yard. Excavation of all ditches and line spots included. This bid does not include cost of Central NM cost for utility to property. Torrance County responsible for acquiring all necessary paper work with EMW Gas Association. This invoice does not include tax.	$88,562.25
10/8/2008	Invoice (no invoice number)	Original contract amount Completion of metal building Remainder on original contract	$14,206.50
11/3/2008	Invoice (no invoice number) This work is "Change Order related" but there is no "Change Order" number on Invoice	Tax on change order # 2	$6,586.82
11/10/2008	Invoice (no invoice number) Change order # 3	Completion of radiant heaters.	$9,000.00
11/19/2008	Invoice (no invoice number) This work is "Change Order	Completion of gates Final payment of Change order #3	$7,652.81

	related" but there is no "Change Order" number on Invoice		
		Total	$167,239.63

Table 5: Fire Marshal Office Remodel – Project 5

Date	Document Type	Description	Amount
2/14/2008	Invoice (no invoice number)	Frame partition walls	$9,500.00
		Sheet rock, tape and texture	
		Paint walls	
		Install door with lock	
		Run electrical for new office	$2,750.00
		Re-route electrical for meeting room	
		Frame, sheetrock, tape and texture	$2,000.00
		Install drop ceiling in storage room	
		Fix all electrical	
		Tax	$908.44
		Total	$15,158.44

Table 6: Administrative Building Break Room Doors – Project 6

Date	Document Type	Description	Amount
4/15/09	Invoice (no invoice number)	Cut masonry wall in break room and install door.	$3,500.00
		Tax	$260.31
		Total	$3,760.31

Table 7: District #3 McIntosh Fire Department Septic Repair – Project 7

Date	Document Type	Description	Amount
12/23/2009	Invoice (no invoice number)	Install septic and new drain field to existing leach field.	$4,500.00
		Tax	$286.88
		Total	$4,786.88

Table 8: District #3 McIntosh Fire Department Septic System – Project 8

Date	Document Type	Description	Amount
10/6/2009	Invoice (no invoice number)	4.5 hours of excavation for locating septic system	$675.00
		Trip Charge	$250.00
		Tax	$58.96
		Total	$983.96

Table 9: District #2 Indian Hills Fire Department Septic Installation – Project 9

Date	Document Type	Description	Amount
1/26/2009	Invoice Change order #1	Install additional tank for floor drain. (drain was dumping illegally on ground – red tagged by NMED inspector) Install high water alarm system in floor drain tank and in septic tank. Install interior, exterior electrical conduit and wire. Connect to alarm system and electrical breaker box. Price includes jackhammer and removal of sub-surface rock which inhibits the proper installation of the system. Tax not included	$14,250.00
2/5/2009	Invoice (no invoice number)	Completion of septic system Tax on Change order #1 Tax on this invoice **Total**	$9,850.00 $908.44 $627.94 **$11,386.38**
		Total	$25,636.38

Table 10: Dispatch Center Down Spout – Project 10

Date	Document Type	Description	Amount
9/30/2010	Invoice (no invoice number)	Cut and remove concrete under gutter downspouts. Pour new concrete sloped to drain. Extend downspouts. Add 4 metal diamond plate covers over gutters. Tax	$5,000.00 $318.75
		Total	$5,318.75

Table 11: Judicial Building & Esperanza Health Center Grading and Drainage – Project 11

Date	Document Type	Description	Amount
10/19/2010	Invoice (no invoice number)	40 % of proposal #1 & 2	
		Proposal #1	$3,800.00
		Proposal #2	$2,920.00
		Total invoice amount	**$6,720.00**
11/3/2010	Proposal # 1	Grading and removal on south side of Judicial building.	$9,500.00
	Invoice (no invoice number)	Grading and expansion of retention pond on North side of Esperanza Health Center.	
		40% of contract upon acceptance of proposal	($3,800.00)
		Tax on Contract	$706.56
		Total	**$6,406.56**
11/2/2010	Proposal #2	Cut and patch approximately 96' of asphalt.	$7,300.00
	Invoice (no invoice number)	Install 100' of 8" PVC pipe with storm drain and grate	
		Install rip rap.	
		40% of contract upon acceptance of proposal.	($2,920.00)
		Tax on contract.	$552.06
		Total	**$4,932.06**
11/15/2010	Change Order # 1	Excavate, place and finish 250 sq. ft. of concrete at Southwest Retention Pond.	$13,976.10
		Move basecoarse and build road for trash dumpster.	
		Remove and expand South pond. Place rip rap where soil has eroded from building.	
		Grade and remove dirt for proper drainage on North side of the building.	
		Remove debris and clean North pond.	
		Tax included.	
		Total	$32,034.72

Table 12A: Estancia Senior Center Parking Lot – Project 12A

Date	Document Type	Description	Amount
8/9/2010	Invoice (no invoice number)	40% of original contract for materials and labor.	$3,760.00
8/18/2010	Invoice (no invoice number)	Saw cut and removal of 1600' sq. feet chip seal asphalt	$2,100.00
8/24/2010	Invoice (no invoice number)	Completion of concrete parking lot.	$4,000.00
9/7/2010	Invoice (no invoice number)	Completion of project	$1,640.00
9/7/2010	Invoice (no invoice number)	Original amount of contract Change order (Tax on the above invoices)	$855.31
1/27/2011	Invoice (no invoice number)	Drill and anchor parking curbs at Estancia Senior Citizen Facility. Note: This is a duplicate payment as determined by the quote CCS originally submitted Tax **Total**	$500.00 $37.81 **$537.81**
		Total	$12,893.12

Table 12B: Mountainair Senior Center Parking Lot – Project 12B

Date	Document Type	Description	Amount
9/23/2010	Invoice (no invoice number)	Form, place and finish 77 X 21 concrete handicap parking space. Dirt work Tax **Total**	$6,400.00 $600.00 $511.88 **$7,511.88**
1/27/2011	Invoice (no invoice number)	Drill and anchor parking curbs at Mountainair Senior Citizen Facility. Tax Total	$500.00 $38.44 **$538.44**
		Total	$8,050.32

Table 13: Animal Shelter Septic and Leach Field Replacement – Project 13

Date	Document Type	Description	Amount
4/11/2011	Invoice (no invoice number)	Replace septic and leach field.	$4,999.00
		Tax	$324.94
		Total	$5,323.94

Table 14: 911 Dispatch Center Emergency Septic Repair – Project 14

Date	Document Type	Description	Amount
1/24/2011	Invoice (no invoice number)	Excavate and replace sewer line from building cleanouts to septic tank	$1,200.00
		Tax	$78.00
		Total	$1,278.00

Table 15: District #5 Homestead Estates Fire Department Repair of Doors and Walls - Project 15

Date	Document Type	Description	Amount
10/19/2011	Invoice (no invoice number)	Patch Insulation Install 26 gauge metal liner on west wall. Remove and replace main entry door with steel jam and door. Tax **Total**	$4,500.00 $292.50 **$4,792.50**
11/1/2011	Invoice Change Order #1	Install 2 tube style radiant heaters. Install 1 programmable like voltage thermostat. Install all necessary gas and electrical connections. Tax **Total**	$12,000.00 $780.00 **$12,780.00**
		Total	$17,572.50

Table 16: Sheriff's Department Evidence Room Door Repair - Project 16

Date	Document Type	Description	Amount
1/4/2011	Invoice (no invoice number)	Repair on Evidence Room Door	$232.42
		Tax	$17.57
		Total	$268.01
		(Adjusted total and amount paid)	**$250.00**

Table 17: District #3 McIntosh Fire Department Drain Repairs - Project 17

Date	Document Type	Description	Amount
2/28/2011	Invoice (no invoice number)	Install 120 ft. of gravel drain field system. Tax **Total**	$3,800.00 $247.00 **$4,047.00**
3/7/2011	Change Order Invoice (no invoice number)	Dirt work Septic tank markers Pipe repair Tax **Total**	$1,800.00 $117.00 **$1,917.00**
		Total	$5,964.00

Table 18: Torreon Park Project – Project 18

Date	Document Type	Description	Amount
3/31/2008 (stricken out to read 4/9/2008)		Bid #1: Install 540 x 6' chain link fence Install 3 gates >1 @ 4x6' >2 @ 3x 6' Remove existing fence. Tractor work. Bid # 2: 260 X 6' fence Remove existing fence. Tractor work. $ 6,000.00 Total amount for Bid # 1 & 2 $17,900.00 Total	$11,900.00
			$11,900.00
4/2/2008 (stricken out to read 4/9/2008)	Invoice # 2 Change order # 1	Install 12 X 20' steel shade structure with concrete slab and BBQ Grill. Install 40 X 80' concrete basketball court County to supply fill dirt Tax Tax for first invoice **Total**	$65,320.17 $4,858.19 $885.06 **$71,063.42**
		Total	$82,963.42