

**TORRANCE COUNTY, NEW MEXICO'S**

**RESPONSE TO THE NEW MEXICO STATE AUDITOR'S  
EXAMINATION REPORT**

**FROM JANUARY 1, 2007 THROUGH APRIL 30, 2012**

**PRELIMINARY STATEMENT:**

Torrance County pursuant to N.M.S.A. §12-6-5(C) provides the following as its response to the Independent Accountant's Report prepared by the Office of the State Auditor for the State of New Mexico (hereinafter OSA) dated December 30, 2014.<sup>1</sup> It is noted that the examination by the OSA does not provide a legal determination of Torrance County's compliance with New Mexico statute or Torrance County's Purchasing Regulations, but is instead, the opinion(s) of an auditor formed in compliance with standards of the American Institute of Certified Public Accountants. Torrance County is also audited on an annual basis by an independent auditor whose opinions are provided in accordance with the same standards. The OSA report contains opinions and critiques never previously provided to Torrance County regarding internal controls of the County's purchasing operations. To the extent that the OSA report infers that the subject contractor was treated differently than other contractors and vendors dealing with Torrance County, the County refutes that inference and affirmatively states that all procurement during the period subject to review by the OSA was subject to internal controls, including, but not limited to, multiple employees reviewing the procurement and authorizing it. To the extent that the OSA report was meant to provide direction and guidance for Torrance County in its operations, the County appreciates the input and will work with the OSA to implement or revise its policies to prevent even the appearance of any impropriety and states affirmatively that Torrance County has taken action over the past several years to tighten its handling of procurement, including hiring a Purchasing Officer whose primary function within County government is to oversee and manage all procurement by the County.

As a preliminary statement, Torrance County appreciates the effort of the OSA and considers the OSA report constructive and helpful and an aid in going forward with the operation of the County's business and has, in fact, taken many of the steps recommended by the OSA during the three years that this audit was pending. However, due to the unique circumstances under which this audit was conducted, Torrance County believes that certain of the findings and opinions expressed in the report were not supported by information from individuals with the best and most knowledge of the various transactions. This deficiency most likely arises from the fact that the New Mexico Attorney General's office filed criminal charges while this audit was pending, thus circumventing the interviewing of individuals best able to provide necessary information to the OSA, although several key people, including commissioners, the County Fire Marshal, the Deputy County Manager, and others were available for interview but not interviewed. The OSA report focuses on one specific contractor; Torrance County submits that this contractor was not treated differently than other contractors over many years of County business. To the extent that the County's dealings with contractors in general may have lacked oversight sufficient to satisfy the OSA is more a result of a rural County having insufficient funding and personnel to operate on a parallel

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<sup>1</sup> The date of the report is December 30, 2014; however, Torrance County did not receive copies until January 5, 2015.

with counties or state agencies maintaining much higher revenues. For example, many small counties in New Mexico, like Torrance County, do not have an engineer or architect on staff familiar with construction practices and methods and until recently, Torrance County had no specific person designated as the "County Purchasing Agent". As a result, the County historically relied on various individuals, including department heads, commissioners, and others, to observe construction activities to verify that work billed for was actually performed.

## **RESPONSE TO EXECUTIVE SUMMARY**

Initially it is worthwhile to point out that historically Torrance County's procurement was handled by the County Manager's office; in 2000 Torrance County approved Resolution #2000-15 which specifically identified the County Manager's office as the Central Purchasing Office and the "Assistant County Manager" as the Purchasing Agent.<sup>2</sup> The OSA report incorrectly identifies the Deputy County Manager as the Purchasing Agent, but that has never been the case in Torrance County. The County Purchasing Regulations identify the County Manager's Office as the Central Purchasing Office and the Assistant County Manager as the Purchasing Agent, without defining a specific Assistant County Manager to fill that role. At the time the Purchasing Regulations were approved (2000); the Assistant County Manager was the person who now serves in the Manager's office in the capacity of the Comptroller, and while that specific individual has been one of the employees involved in procurement for the County since 2000, she is not the only one, and in the opinion of the County has always performed her job duties in a highly professional and competent manner.

In addition, Torrance County had checks in place at all relevant times for procurement. Generally, for an invoice or statement to be paid, it required the approval of the Department Head for whom the work or service was provided; the approval of the County Manager; and finally, review by the Comptroller.

Pursuant to the County Purchasing Regulations in place at all material times, the County Manager's office is charged as the Central Purchasing Office which is the reason that approval authority appeared to be heavily centralized with the County Manager. However, all payments were reviewed by at least three sets of eyes within the County structure prior to payment. More importantly, the County undergoes an annual independent audit and during the relevant time

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<sup>2</sup> Resolution 2000-15:

### 3. Central Purchasing Office

The Torrance County Manager's Office is hereby designated as the Central Purchasing Office. The Assistant County Manager is hereby designated as the Purchasing Agent.

period, the County never received an audit finding regarding the lack of internal controls on construction projects. These annual audits are submitted to the OSA for review and there was never a question raised regarding the County's internal controls.

Multiple persons within the Central Purchasing Office had authority to review and approve the various documents required to issue payment for invoices, depending on who was available on a given day. No one individual by reviewing procurement documents presented overrode other employees' authority by reviewing and approving documents.

The OSA report refers to invoices submitted by the contractor that lacked "sufficient detail" to justify the costs. However, between observations of the work actually performed by either department heads or commissioners and the detail provided by the contractor, the Central Purchasing Office was satisfied that the work invoiced had been performed. The County did not require the contractor to obtain performance bonds, based on the belief that New Mexico statute allowed that waiver for small businesses. The County often did not require bonds from local, known contractors and this practice had preceded the present County Purchasing Office for years. Based on the OSA critique, the County Purchasing Office acknowledges that N.M.S.A. §13-1-186 arguably does not allow for total abatement of bonds.<sup>3</sup> Like many of the provisions of the Procurement Code, there is little to no guidance for purchasing agents required to interpret this language.

Finally, while the state legislature amended and clarified the Governmental Conduct Act in 2012, after the projects in question were completed, that legislation was, at the relevant times, as confusing and subject to misinterpretation as the Procurement Code.

Torrance County's policy regarding procurement and purchasing during the relevant time periods was to have multiple personnel involved in the process and ultimate review by the County Commission. The most experienced procurement employee was the Comptroller, who had formerly been the Assistant County Manager. During this entire time period, there was never a question presented to the County Commission or the County Manager about any of the procurements, as was specified in the County Purchasing Regulations. As a consequence, the County was confident that all procurement was being handled properly.

The County is appreciative of the constructive portions of the OSA report and will endeavor to incorporate the suggestions therein into the County business operations.

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<sup>3</sup> § 13-1-186. Assistance to small business; bid bonds; reduction

The state purchasing agent or central purchasing office may reduce bid bond, performance bond or payment bond requirements authorized by the Procurement Code to encourage procurement from small businesses.

## SCOPE AND METHODOLOGY

Due to the unusual circumstances leading to the OSA audit, several key employees of the County, including the County Manager, the Deputy County Manager, the County Fire Marshal (now Fire Chief), and the 911 Dispatch Director were never interviewed. Several elected officials were scheduled for interviews and then those interviews were cancelled and never rescheduled. Torrance County believes that if these interviews had taken place, the OSA would likely have found information that would have modified its conclusions and provided explanations of many of the issues reported in the audit. In response to the findings of the OSA, the County offers the following:

### **FINDING 01: The County failed to follow a competitive sealed bid or competitive sealed proposal process.**

Hope Medical Cabinet Project. This project was begun under the prior County Manager. The staff at Hope Medical requested the County's assistance to expend a legislative appropriation for replacing cabinets at the facility. As with all legislative appropriations, time is of the essence as they are essentially a "use it or lose it" proposition, and Hope Medical really needed those cabinets replaced. Because of the small scope of the project, Hope personnel reported they were having a hard time finding contractors who were interested in coming to Estancia for this project. Either Hope Medical Staff or the County Purchasing Office obtained two written bids for the project. The owners of the two companies are residents of Estancia where the project is located and they are related but their business operations are completely separate. The Comptroller asked the relatively new County Manager to write a memo to the file documenting that the County couldn't find three contractors to submit a bid and that it would be expedient to have the contractor at issue do the work because he submitted the lowest bid and knew what needed to be done.

It is not unusual to have difficulty in having contractors look at small projects in remote areas of the County. The time expenditure and travel doesn't justify the amount of the work.

Duran Fire Department. This was a situation where fire funds were going to be lost for the Duran fire station if they were not expended and the Duran Volunteer Fire Department really needed the work done to allow access to the fire station. Because of time concerns, the Manager's office investigated whether this work could be piggy-backed with the Torreon fire station contract. The County Attorney was contacted and advised that if the work requested met the statutory requirements, this work could be piggy-backed on the Torreon contract. He advised the County Purchasing Office that based on the information provided he was of the opinion that piggy backing would be appropriate. The Purchasing Office relied on this opinion in awarding the work.

Fire Marshal Office Remodel. While the County followed the proper process for a job of this type under the Procurement Code, it is correct that the County Purchasing Regulations called for this

job to be bid. In this instance the County regulations are stricter than the state statute and the Purchasing Office should have put the work out for bid. This oversight has been addressed and now that the County has a designated Procurement Director will not recur.

Judicial Building & Esperanza Health Center Grading and Drainage Project. The OSA report incorrectly states that there were not specifications for this project. In fact, the County had obtained a grading and drainage plan from Phil Clark, a civil engineer. The plan was sent to various contractors who submitted proposals based on that plan. The engineer recommended the County use the contractor at issue and the County did so. It is unclear what the OSA is critical of in this instance other than the fact that there was a change order. The change order was issued at the request of the engineer.

Estancia Senior Center Parking Lot Project. The SAO seems to be critical of the fact that this project did not go out to bid; however, there is no requirement under either the Procurement Code or the County's Purchasing Procedures that a project of less than \$10,000.00 go out for a formal bid. The process of obtaining quotes was appropriate. There is no way of knowing prior to work commencing that there may be a need for a change order during construction due to weather conditions, soil variances, and other unknown, or unforeseen circumstances.

District #5 Homestead Estates Fire Department Repair of Doors & Walls Project. Once again, it is unclear what the OSA issue with this project is. There is not a requirement to obtain written quotes and the original project cost was less than \$10,000.00. The County Fire Marshal requested changes in the project after it was begun; the Purchasing Office verified that funds were available and the contractor made those changes. The work performed under the change order was not anticipated at the time the contractor was awarded the project. Torreon Park Project. This project was initiated by the Torreon Land Grant community for improvement of their park. Representative Rhonda King was successful in obtaining an initial legislative appropriation for the project and was attempting to obtain a second, but was unsure whether she would be successful. The Torreon Land Grant, at that time, needed Torrance County to serve as fiscal agent for the appropriation and that was essentially the extent of the County's involvement. Because of the location of the work, Commissioner Candelaria volunteered to inspect the work as it progressed and the County Purchasing Office was essentially out of the loop. The County has been informed that the scope of work described in the initial contract was left deliberately broad because the amount of the final appropriation was unknown. The coordinator for the project was appointed by the Land Grant and she essentially chose the contractor from the original quotes received. During construction the second appropriation was secured which allowed the land grant to proceed with the construction of additional structures. The County Purchasing Office consulted with the County Attorney whether the additional work could be constructed by use of a change order since there was already a contractor on the job and the appropriation had a sunset provision. The County Attorney determined that because of the broad description of the scope of work and the fact that the Procurement Code did not have a limit on change order amounts that the work could proceed by

change order. The Purchasing Office relied on this opinion and authorized the Land Grant to move forward with the additional work.

**COUNTY RESPONSE TO FINDING 01:**

Torrance County management has addressed most of the OSA's concerns regarding Finding 01. The County's procurement duties are now overseen by a Purchasing Director, who has been on staff since 2013. However internal controls have always been in place regarding purchase orders, payment processing and contracting. A department head must submit a request for a purchase order, which is signed by the Department Head, the County Manager, and the Comptroller. The request is also reviewed by an additional financial analyst to assure budget availability. A purchase order is then entered and issued. When the invoice or statement is presented, the Department Head completes the Accounts Payable form, signs it and submits it to Accounts Payable with the invoice. It is once again checked for budget compliance, a check is issued and that check is added to the Consent Agenda, which is reviewed and acted upon by the County Commission. Annual audits of Torrance County have determined that these internal controls are sufficient for issuing purchase orders and processing payments.

The County disagrees with the blanket assertion that the County violated the Procurement Code and its own Purchasing Regulations without going through proper procurement processes. (See response to each individual project hereinabove.) While there appears to be at least one project that in retrospect should have been put out to bid, most of the projects were handled appropriately. The blanket statement that the County Manager "overrode" the Deputy County Manager's authority as Purchasing Agent is not supported by anything in this finding and appears to have been included for no particular purpose.

The County agrees that transparency is paramount in government actions and that Torrance County endeavors on a daily basis to make all actions of the County as transparent as possible. There is no evidence of any fraud or that the County did not receive the best obtainable price for goods and services from the contractor and, in fact, the County believes that it received both excellent workmanship and fair prices from the contractor on all of the projects set out in Finding 01.

The County is receptive to the recommendation of the SAO that it update its Purchasing Regulations and has made revisions to the Purchasing Regulations and is in the process of considering others to make the process more efficient. The recommendation that the County segregate its procurement duties is confusing and needs more clarification. The procurement duties were segregated during the relevant time period. Now, state law seems to require just the opposite with the directive to employ a Procurement Director. However, as explained above, the County has checks in place and a procedure that requires multiple persons to review each and every purchase.

**FINDING 02. – The County failed to obtain written quotes for certain purchases under \$10,000.00.**

Dispatch Center Down Spout Project. As recognized by the OSA, the County did not violate the Procurement Code in this instance. However, while the County did obtain three quotes for this project, the County agrees that they should have been in writing pursuant to the County Purchasing Regulations. On small projects this sometimes presents a problem because contractors often aren't willing to travel to remote areas to perform the work and certainly don't want to take the time to provide a written quote. However, the County acknowledges this deficiency and has taken corrective measures.

Mountainair Senior Center Parking Lot Project. Since the work was the same as the prior senior center work, the County anticipated that the quotes would be the same as well. However, the County acknowledges that this should have been handled differently and has taken corrective measures.

**COUNTY RESPONSE TO FINDING 02.** The County has addressed this finding. The Purchasing Director employed in 2013 is now responsible for assuring compliance. This is her primary function and as such, she is afforded the time to assure compliance. In addition, the County has made revisions to the Purchasing Regulations to make them more efficient.

**FINDING 03: The County failed to document the basis of an Emergency Procurement and the Selection of CCS Construction.**

The County disputes that it failed to document the basis for these procurements. All of these projects dealt with issues that constituted a threat to public health, welfare, and safety.

District #3 McIntosh Fire Department Septic System Project: The septic system at the fire station in McIntosh was not operating properly causing raw sewage to spill onto the ground. This was brought to the Purchasing Office's attention by the Fire Marshal and because it presented a health and safety issue was dealt with as an emergency. To have done otherwise would have potentially subjected employees and members of the public to have been exposed to raw sewage.

District #2 Indian Hills Fire Department Septic Installation Project: When this project came up, it was discovered that there was a problem with drainage from the existing plumbing in the building that prevented the septic tank installation as designed. The system was retaining water which had become stagnant and potentially compromised the health and safety concerns of employees and the public; it was necessary to expedite the work through an emergency procurement. Septic issues can't be anticipated and must be dealt with immediately. Failure to do so would be a violation of environmental regulations, not to mention irresponsible for exposing humans to raw sewage. The work performed was extensive in order to install the septic system and is detailed in the invoice from the contractor. In fact, one septic tank installer had pulled off the job because he didn't want to dig through the rock involved at the site. York delivered and set the tanks. All other work, including excavation, re-plumbing the drainage and tying the system in was performed by the subject contractor at the County Fire Marshal's request.

Animal Shelter Septic and Leach Field Replacement Project: This emergency situation arose when one of the County's road graders drove over and collapsed into the septic tank at the old dispatch center. When it was uncovered, it was discovered that the leach line had been unmarked, was crushed and actually ran under the footprint of the new dispatch center. Because of the potential for a health and safety risk as well as property loss for the new dispatch center, the Purchasing Office determined this was an emergency situation. The office did consult with the County Attorney's office regarding this matter prior to making the emergency declaration.

911 Dispatch Center Emergency Septic Repair: This was a weekend emergency dealing with backed up sewer lines in the dispatch building. The repair required redesigning some of the pipe work in the new building which had been incorrectly installed and prevented proper flow of sewage.

**COUNTY RESPONSE TO FINDING 03:** The OSA appears to recognize that these were emergency expenditures, but that the County Purchasing Agent failed to provide sufficient and necessary documentation of the emergency. The County Purchasing Office believed at the time that proper documentation had been retained and submitted. The County has implemented proper controls to ensure future compliance and has vested compliance in a dedicated Purchasing Director. All of the above projects were emergency and required immediate attention to protect the health, safety and welfare of the public and County employees and/or County property. The County Purchasing Regulations don't address weekend emergencies when employees of the Central Purchasing Office may not be available to sign a purchase order and will need to be amended, but, emergencies that occur on weekends have to be immediately addressed just like those that occur during the week.

**FINDING 04: The County Accepted and Paid Unsupported Costs Submitted by the Contractor**

**COUNTY RESPONSE TO FINDING 04:** This finding relates to the phrase "sufficient detail" in invoices submitted by the Contractor. This phrase is not defined in statute or in the regulations. The County believes that either its department heads or commissioners were aware of the work being performed and that the invoices were justified or they would not have been approved by the department heads. The County has made and continues to make revisions to the County purchasing regulations to better define the detail required in invoices to the County. In addition, the hiring of a dedicated Procurement Director will allow closer monitoring of each purchase.

Specifically on the projects set out in the OSA report, the County Fire Marshal oversaw the work on the Torreon Fire Department Addition Project, the Duran Fire Department Sub-Station Project, the Fire Marshal Office Remodel Project, the McIntosh Fire Department Septic Repair Project, the Indian Hills Fire Department Septic Installation Project, the Homestead Estates Fire Department Repair of Doors & Walls, and the McIntosh Fire Department Drain Repairs Project. He was never interviewed by the OSA but if he had been, he was the person to provide information requested on

those projects. Additionally, the Hope Medical Center Cabinet Project and Torreon Park Project were overseen by one of the County Commissioners; the Voting Machine Storage Building Project by the County Clerk; the Administrative Building Break Room Door Project by the county maintenance department; the Dispatch Center Projects by the 911 Dispatch Director; and the Sheriff's Evidence Room Project by the evidence officer from the TCSO. The Purchasing Office relied on the review of the work by these departments to verify that the invoiced work had been performed. If the work was performed, payment was made pursuant to the contract using the normal County purchasing process. Because the contracts were for a specified amount as opposed to a cost plus basis, the amount of detail on the invoices was not necessarily relevant. Further, while the OSA report indicates the County Manager "overrode" the Deputy County Manager's authority by signing invoices and Receiving and Accounts Payable Reports, the normal practice of the Purchasing Office during these time periods was that several different employees could review and sign those reports irrespective of who the vendor or contractor was. As previously stated there was no one individual tasked with signing invoices but was instead a procedure involving multiple parties.

The County agrees to update its Purchasing Regulations to define what is an "itemized" invoice as recommended by the OSA. Further the County has hired a dedicated Purchasing Director who will scrutinize invoices for detail.

With regard to Article 6 of the construction contracts regarding direct communication between the County and subcontractors on County jobs, the County has been informed that this is an issue of privity of contract and that most AIA approved contracts contain such a provision. The County contracts with the prime contractor, who in turn subcontracts portions of the work as necessary. The County's point of contact is the contractor who is charged with the responsibility of directing the subcontractors.

**FINDING 05: The County failed to follow its Purchasing Regulations and sound internal control practices when it processed payments to the contractor.**

**COUNTY RESPONSE TO FINDING 05:** As explained earlier, all purchase orders are reviewed by at least three different individuals prior to being included on the consent agenda for the Commission to consider payment. The County has used this process for years and has never been questioned about it or received an audit finding about it. To the extent this finding criticizes payments being made on contracts without a purchase requisition, this has been standard County procedure. When a contract is in existence, the County pays according to the terms of the contract, not on purchase requisitions. If the Commission wishes to change this procedure, the Purchasing Office will do so, but the county does not feel this is an area of concern considering the checks in place and the addition of the Purchasing Director.

The District #4 Torreon Fire Department Addition Project was bid and awarded prior to the present County Manager's tenure. As explained earlier if a project was awarded by contract, the County

paid pursuant to the terms of the contract, not by purchase requisition. Once again, with the employment of a dedicated Procurement Director, this process will not be a future problem. With regard to signatures on the Accounts Payable form, this form is required for every invoice payment, whether it's a utility bill, an invoice for tangible goods or for construction work, and should be "signed by the elected official in charge of the department or their designated agent". The County agrees with the OSA that all AP forms should be signed as required by the Purchasing Procedures and if not signed by the elected official or their designated agent, payment should not be issued by the Comptroller. The Duran Fire Department "piggy-back" issue has previously been discussed. The Purchasing Office relied on advice from the County Attorney in this instance. Since this was a contract, there were no purchase requisitions as explained earlier.

The Voting Machine Storage Building was a contract so there were no purchase requisitions. This was consistent with the practice of the County at the time. The County accepts the need to and has revised its policy with regard to contracts and change orders. All Receiving & Accounts Payable Reports require the signature of the elected official or designated agent before checks are issued. In the event the proper signature is not present, the Comptroller will normally not issue payment. The County has addressed and corrected this issue.

Fire Marshal Office Remodel – this was a contract matter and there was no payment requisition. Further there is no County requirement that the contractor sign the invoice. However, the Receiving & Accounts Payable Report was signed and while normally the Comptroller signs the "Reviewed and approved for payment" box; prior to issuing a check, it was not a requirement under the County Purchasing Regulations. The County has addressed and corrected this issue.

Administrative Building Break Room – The Receiving & Accounts Payable Report was properly signed although the Comptroller did not sign the review box prior to issuing a check. The County has addressed and corrected this issue.

McIntosh Fire Department Septic – There does not appear to be an issue with how this invoice was handled. The OSA report states the contractor did not sign the invoice, but as previously stated, this is not required.

Dispatch Center Down Spout – the illegible signature on the Receiving & Accounts Payable Report appears to be the signature of an authorized employee of the Dispatch Center. This could have been easily determined if OSA had asked. Various employees of the County Purchasing Office would at times sign the Receiving & Accounts Payable Report including the employee who signed this one.

Judicial Building & Esperanza Health Center Grading and Drainage – this was a contract so there were no purchase requisitions as per County procedures. It appears that all documents were properly signed and submitted for payment.

Estancia and Mountainair Senior Center Parking Lot – the County understands the OSA position on an additional purchase requisition and issuance of purchase orders. Signatures are required on the forms prior to checks being issued. While it is not a requirement that the Comptroller sign these forms, normally she does and a better practice would require that signature. The County has addressed this issue with the hiring of the Purchasing Director and proposed revisions to the Purchasing Regulations.

Homestead Estates Fire Department – The initial Receiving & Accounts Payable report was signed by the County Fire Marshal as per County Purchasing Regulations. Once again, while it is not a requirement that the Comptroller sign these forms, normally she does and a better practice would require that signature. It appears the second R&AP Report was processed correctly.

Sheriff’s Department Evidence Room Door Repair – This appears to have been processed correctly. There is not a requirement that the “invoice” be signed by a County employee.

District #3 McIntosh Fire Department Drain Repairs – The County Purchasing Regulations require the department head to sign the R&AP report but the other signatures set out in the report are not a requirement. However, the County acknowledges that the process should be consistent and the Comptroller should sign or have another authorized person sign prior to issuing a check.

Torreón Park Project – this project has been explained previously in this response. The County was the fiscal agent and the non-County person who signed the second invoice was the Land Grant’s representative. It appears that all other signatures, including the Comptroller’s signature, were present, however, the County acknowledges that the process should be consistent and has taken appropriate action to rectify the process.

The County accepts the recommendation of the OSA that the approval process for invoices and payment should be consistent. The County has addressed this issue and has hired a Purchasing Director to ensure that consistency. The County Commission has designated a commissioner to review the list of checks issued by the County on a weekly basis. In addition, all commissioners can review the list of checks during the week. The weekly payment policy was instituted to save the County late fees on some contractual payments.

**Finding 06 – The County failed to Require Documentation from the contractor to Support Change Orders.**

**COUNTY RESPONSE TO FINDING 06:** On projects where there is not an engineer or architect involved on behalf of the County, the County Purchasing Office generally relies on the department head overseeing the project to determine the need and efficacy of change orders. All change orders are discussed at length between the department head, the contractor, and the Purchasing Office to determine the need and the ability to pay for the change order. On projects where there is an

architect or engineer involved, the County traditionally relies on their professional advice to determine the need for a change order and whether the cost is appropriate. In the specific instances referred to in the OSA report, the change order work was generally requested by the department head (or land grant representative); was performed in a workmanlike manner after being discussed with the department head (or the land grant representative); and was paid. The County Purchasing Office had controls and checks in place regarding purchasing and procurement as set out above. Even with the addition of a dedicated Purchasing Director, all requests for payment are reviewed by multiple parties within the Central Purchasing Office prior to payment. The change orders for all of the specified projects in this finding were handled as set out above.

The County does not have an engineer or architect on staff and many of the smaller project budgets do not allow for the employment of such a professional. The County agrees with the OSA recommendation that change orders should be closely monitored and that contractors should provide sufficient detail and supporting documentation prior to approving disbursements, but historically, the County Purchasing Office has had to rely on department heads for this. The County has attempted to address this by employing a Purchasing Director and will investigate other possibilities to obtain the expertise needed to address this finding.

The County accepts the recommendations of the OSA and has employed a Purchasing Director whose responsibility will be to monitor contractual requirements, purchasing regulations and proper controls over purchasing processes. She is required to closely monitor change orders and ensure that contractors provide sufficient detail and supporting documentation prior to approving disbursements and will reject inadequate change orders.

All change orders must meet specifications and vendors are not allowed to modify specifications of projects.

**Finding 07 – The County Improperly Certified the Receipt of Goods and Services from the contractor.**

**COUNTY RESPONSE TO FINDING 07** – The County Purchasing Office is satisfied that all goods and services paid for were in fact received in a workmanlike manner. The County has historically paid contractors on certain jobs a “mobilization” fee up front and has been advised that is standard in the construction industry. The County acknowledges that this payment should be set out in the contract documents and has taken steps to remediate that deficiency. In addition, there have been instances where the County Purchasing Office authorized payments for down payment of a pre-fabricated building. In the other instances cited in the OSA report, the County Purchasing Office relied on the department head to verify that the work had indeed been performed and believes that is the case. It is possible that the paperwork did not track the actual work on a day to day basis due to weekends, holidays or weather related delays. Specifically on the Torreon Fire Department project, the Indian Hills Fire Department project, the Homestead Fire Department, and the McIntosh Fire Department projects, the County Fire Marshal was responsible for verifying

work performed prior to payment being issued. He did so on a regular basis. The County Purchasing Office relied on the Fire Marshal for these projects. For the Voting Machine Storage Building, the County Clerk and the County Road Department were responsible for verifying that work had been accomplished prior to payment. They would do so prior to submitting invoices to the County Purchasing Office. The Torreon Park Project was supervised by the Land Grant representative with one of the County Commissioners verifying work was complete. Because of the remote location of this project, as well as others, it was necessary for the County Purchasing Office to rely on their inspections of work performed.

Regarding the certification on the Accounts Payable Report that is generally signed after the department head has inspected the work. The form is required to process payment without exception.

With regard to the payment for work performed on the Judicial & Esperanza Health Center Grading and Drainage Project from CDBG funding, the County Purchasing Office obtained permission from the Department of Finance Administration to include drainage work at both buildings which are located on the same plat of land. The County has documentation of this. During construction, drainage requirements were cut from the initial construction projects for both buildings. This had numerous adverse effects on both buildings, as well as the surrounding property. The parking lots flooded, water settled against both buildings which threatened the foundations, leading the County Purchasing Office to request and receive permission to add this scope of work to the CDBG for Esperanza. In addition, the County Purchasing Office was informed that all work was complete and performed in a workmanlike manner.

The County Purchasing Office understands that there were two separate soil tests for the Voter Machine Storage building. The first was unrelated to the construction and was a test for potential spillage of underground fuel tanks. The second was required prior to construction because the building was located in a flood zone. These were completely different situations.

The County Purchasing Office, relying on information from department heads or commissioners, is of the opinion that all goods and services were received when payment was made. The County Purchasing Office has taken steps to insure that contracts include mobilization charges prior to advance payments being made. The County Purchasing Office acknowledges that policies and procedures are in place to ensure that federal funds are not at risk on County projects and in fact, has documentation to that effect.

The County agrees with the recommendations of the OSA that certification that the work billed for has been accomplished. As stated, the County believes that it had proper checks in place to ensure this, but in addition, has taken steps to tighten its Purchasing Regulations and hired a Purchasing Director to further ensure compliance.

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

**COUNTY RESPONSE TO FINDING 08:** Torrance County acknowledges the advice and recommendation from the OSA in this finding. The County has for years operated under the belief that N.M.S.A. §13-1-186 allowed the waiver of the bonding requirement to assist small businesses. Annual audits have never issued a finding in this regard to call the County's attention to the issue, leading the County Purchasing Office to believe that there may be some confusion regarding this statute even among auditors. The Torreon Fire Department project was awarded prior to the current County Manager being hired and the bond requirement was waived by the Commission. The County Purchasing Office operated with the understanding that this was appropriate. The County Purchasing Office has now instituted proper controls to ensure compliance with §13-4-18. Further the State of New Mexico has now developed criteria and the requirement of a Purchasing Directors, which has aided the awareness of local governments of the many rules and regulations in this area. Torrance County has employed a Purchasing Director since 2013.

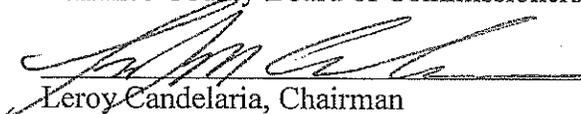
**Finding 09 – CCS Construction Failed to Register with the Department of Workforce Solutions as Required by State Law.**

**COUNTY RESPONSE TO FINDING 09:** The County acknowledges that it should have required proof of registration from the contractor. Once again, this is an error that preceded the current County Manager, and the County has taken initiative to implement controls to ensure future compliance. There has been no finding in prior annual audits regarding this issue to bring the matter to the attention of the County Purchasing Office.

**SUMMARY**

Torrance County respectfully offers the explanation and detail listed above. As you can see, many of the findings or issues raised could have been dealt with by interviews of the primary personnel. However, the Commission understands that the charges filed by the former Attorney General made a normal audit somewhat problematic. The Commission remains willing to cooperate and make staff available for further interview on these issues to resolve any ongoing concerns the SAO may have. The Commission hereby requests amendment to the audit to incorporate the explanations provided above.

Torrance County Board of Commissioners

  
Leroy Candelaria, Chairman