



State of New Mexico
OFFICE OF THE STATE AUDITOR

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State Auditor Balderas' Special Audit Reveals Certain Contractors Overbilled the Corrections Department and Misrepresented Actual Costs of Construction Projects

Corrections Department Paid At Least \$3.7 Million in Unsupported Costs; State Auditor Critical of Ineffective and Completely Nonexistent Controls over Procurement

(Santa Fe, NM)--Today, State Auditor Hector Balderas released a special audit of the New Mexico Corrections Department (NMCD). The findings revealed numerous contract violations, procurement violations and improper accounting practices related to NMCD's use of contract vendors Omni Development Corporation, Advantage Asphalt Seal and Coating, and HEI, Inc. for work at NMCD's prison facilities across the state. Balderas' office began the special audit in 2010 after the now-former Secretary of NMCD reported to the State Auditor allegations of misconduct, procurement violations and potential conflicts of interest by NMCD's former Facilities Manager, who resigned from NMCD in 2010. Allegations pertaining to questionable transactions were also reported on the Auditor's Fraud Hotline.

The special audit found that certain contractors overbilled NMCD and misrepresented the actual costs of certain construction projects. Additionally, the special audit revealed that certain vendors appeared to receive preferential treatment during NMCD's procurement of certain projects for its facilities. Overall, the special audit found that NMCD's oversight controls related to its transactions with Omni, Advantage Asphalt and HEI were ineffective or completely nonexistent.

Balderas expressed his concern that NMCD's lack of procurement protections created a high risk environment for abusive overbilling and preferential treatment towards certain vendors. "During this fiscal crisis, I am appalled that New Mexico's taxpayers were victimized and that adequate protections did not exist to prevent these abuses from occurring," Balderas said.

For example, Balderas' auditors found that HEI significantly overcharged NMCD more than \$180,000 for the cost of four backup generators. The special audit also found that HEI's own documents revealed numerous instances of significant markups on materials sold to NMCD, including one markup amounting to 164 percent of the actual cost to HEI

for the materials. Furthermore, auditors identified that NMCD improperly awarded a project to Advantage Asphalt, and auditors noted that NMCD paid nearly \$450,000 for goods and services related to the project without documentation that NMCD ever received those goods and services. In addition, auditors found NMCD processed approximately \$146,000 in increases in quotes for materials and labor costs from Omni without support or justification for the increases. Since NMCD did not request details for the quote changes, there is a significant risk that NMCD was overbilled. Finally, auditors did not find any record that NMCD ever solicited other vendors for a quote on any of the projects awarded to HEI under three separate price agreements. A total of 19 other vendors were included under those three agreements, and for the time period covered by the scope of the special audit (fiscal years 2007 through 2010), NMCD paid HEI approximately \$3.8 million under the agreements.

The special audit also found that NMCD's former Facilities Manager, who was recently indicted by a federal grand jury on bribery charges in connection with work performed by Omni for NMCD, appeared to play a key role in exploiting certain weaknesses in NMCD's procurement practices. The audit found that the former Facilities Manager's actions created the appearance of impropriety and, in certain instances, appeared to benefit certain vendors at the expense of NMCD and the State. In some cases, the former Facilities Manager failed to act in the best interest of NMCD and the State by concealing critical information from NMCD that was conveyed to her by the vendors.

"The Corrections Department relied heavily on her to properly execute transactions with Omni, Advantage Asphalt and HEI," Balderas added. "It appears she took advantage of that environment to override the Department's controls for the benefit of certain contractors."

Balderas' auditors reviewed nearly \$9.5 million in payments made by NMCD to Omni, Advantage Asphalt and HEI between fiscal years 2007 through 2010 under certain price agreements and contracts. Major findings of the audit include:

- NMCD paid at least \$3.7 million in unsupported costs to the three contractors. For these payments, auditors found that the invoices were not descriptive enough to determine what goods and services NMCD received, or that the contract did not allow NMCD to pay for the goods and services. These payments include:
 - \$1,294,458 in unsupported costs to Omni, including \$860,619 in payments for materials costs even though materials costs were not included in the price agreement, and payments of \$190,000 for "contingencies" without any support that detailed what constituted the contingencies; and
 - Approximately \$2 million in payments to HEI where the invoices were not descriptive enough to identify the goods or services provided to NMCD, including \$1,331,406 in payments to HEI under one price agreement for equipment purchases that appeared to be unallowed by the price agreement's terms;

- Advantage Asphalt overbilled NMCD \$48,000 for one project. Advantage Asphalt notified NMCD's former Facilities Manager of the overbilling, but there is no record that NMCD was repaid for the overbilling;
- NMCD made payments totaling \$193,970 to HEI for certain goods and services, but auditors found no evidence that NMCD inspected the goods and services prior to making payment;
- HEI charged NMCD \$10,036.85 for services and indicated on the invoice that the services occurred on August 12, 2008, but auditors found that HEI's own records show that HEI performed the work on September 14, 2008 and January 25, 2009 and only incurred labor costs of \$532.28 for the services. HEI did not provide auditors any records that supported the remaining charges invoiced to NMCD;
- The New Mexico General Services Department violated record retention requirements by destroying a premise price agreement and HEI's response to the RFP for the agreement; and
- HEI subcontracted work under one price agreement without NMCD's approval, which was required by the price agreement.

Balderas underscored the proactive and cooperative approach NMCD took in responding to his auditors' requests for information and documents. He also recognized the Department's actions to improve oversight over its use of private contractors. However, he also stressed that the audit findings call attention to serious weaknesses in price agreements used by numerous state agencies.

"I commend Corrections Department officials for self-reporting the allegations and seeking assistance to address government misconduct within their own agency," Balderas noted. "The Department has been receptive to the audit's recommendations on how to reduce risks to taxpayer dollars and strengthen protections related to its procurement processes.

"But the audit findings also highlight weaknesses that may exist in the procurement practices of other government agencies," he added. "I will recommend additional audits of other state agencies that focus on the risk areas identified by the special audit. I look forward to working with the Governor to protect public assets and pursue recovery of public funds."

Balderas' staff worked with the Federal Bureau of Investigation throughout the course of the special audit and provided federal agents special audit documentation. Because the special audit indicates that potential criminal violations may have occurred, Balderas stated that his office has referred the report to the FBI, the U.S. Attorney for the District of New Mexico, and other state law enforcement agencies. Balderas also will refer the report to the Governor, the Legislative Finance Committee, and other state oversight agencies.

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