



State of New Mexico Office of the State Auditor

CONSTITUENT SERVICES
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March 14, 2022

Via E-mail

Hon. Gerald Matherly
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Otero County Commission
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Hon. Vickie Marquardt
Otero County Commission
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**Re: Letter of Concern
Potential Violations at Otero County**

Dear County Commissioners:

The Office of the State Auditor (OSA) conducted fact-finding regarding allegations we received reporting that Otero County ("County") may have misspent government funds for the purpose of an 'audit' of the County's 2020 General Election. It is the OSA's understanding that the County engaged a private company to 'audit' the results of the County's 2020 general election results. It has also been reported to the OSA that representatives of the contractor EchoMail, Inc. ("Contractor") may be making false claims to County citizens and engaging in improper actions, which, if true, could subject the County to potential costly civil litigation.

The OSA requested specific information and documentation from the County regarding the County's purchasing policies, as well as the contract between the vendor and the County. Through our fact-finding procedures, review of documents received from the County, and review of public meetings regarding the procurement, the OSA has identified concerns and potential violations we want to bring to your attention, as the OSA seeks to deter waste and abuse in government.

The OSA has noted, as detailed below, the County is deficient in their ability to properly oversee the compliance of contractual agreements and further lacks proper oversight policies for contract compliance. Additionally, from our review, it appears the County Commissioners may have abused their power in approving the County's contract with the vendor for an 'election audit' that was not in the best interests of constituents and seemingly purely political grandstanding. The stated purpose and methodology of the 'audit' gives the appearance of the entire affair simply being a careless and extravagant waste of public funds, which does not appear to serve any useful purpose to the taxpayers of Otero County.

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Contract Oversight Deficiencies

Since fiscal year 2020, the County has had an annual audit finding related to a lack of policies for contract oversight, indicating the County has not been effectively managing contract compliance. The County's Independent Public Accountant (IPA) has noted in the audit report that without appropriate policies and procedures in place to require and ensure appropriate oversight of contractual agreements entered into by the County there is an increased risk to County resources and services, including potential for waste, fraud, and abuse.

Additionally, in our review of the contract that the County entered into with EchoMail, Inc., the Contractor was to "perform [a] door-to-door canvass of [the] Otero County voter registration database" to determine its accuracy. Under the guidance of Echomail, Inc., the canvassing would be performed by volunteers calling themselves "New Mexico Audit Force". Based on statements made to Commissioners, these volunteers would in no way represent themselves as County employees to County residents that they were interviewing. However, additional concerns brought to our attention suggest that it appears volunteer canvassers at the direction of the contractor are falsely representing themselves as employed by the County. The OSA has concerns of potential liability for the County in connection with alleged civil rights violations of its citizens.

Governmental Conduct Act

Our review also found the County Commissioners may have violated the Governmental Conduct Act (GCA), specifically, NMSA 1978, Section 10-16-3, regarding the requirement to treat the position as a public trust. We noted in our review there were no specific or articulable facts provided by Commissioners to support any allegation that fraud may have occurred in an election which fell under the jurisdiction of the County as part of the 2020 general election. However, second and third hand statements were made regarding allegations of potential fraud occurring outside of the County's jurisdiction, in other states, which were ultimately deemed without merit. Our review found that no supporting facts or documents were presented by the County or the Commission to support the Commission's procurement and contracting of these services was a direct result of any alleged fraud having occurred within the County's jurisdiction.

As a result, it appears that the County Commission failed to treat their government position as a public trust and instead used the powers and resources of their public office to waste public resources in pursuit of private interests concerning unsubstantiated claims of widespread election fraud, and failed to advance the public interest in the County by entering into a contractual agreement with a private company to look for fraud within the County's general election despite the County's results.

New Mexico's GCA provides guidance to those trusted to serve the public interest by establishing parameters for ethical and legal conduct and holds all government actors to equally high standards. The OSA encourages the County ensure compliance with the GCA, including by implementing and adhering to policies and procedures that encourage high standards of ethical and legal conduct, as well as transparency and accountability.

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Otero County Purchasing Policy and Personnel Policy

Based on our review of the documents provided by the County, as well as review of County Commission meeting video from January 13, 2022, it appears that while the County attempted to follow their policy regarding the procurement of professional services, the County Commissioners may have violated the County's own purchasing policy, specifically Section 1.1, User Applicability, by failing to conduct the purchasing function for this particular contract, "in a manner above reproach, with complete impartiality and without preferential treatment." An impartial perspective seemingly would have deemed such an expenditure unnecessary under the circumstances and considering the County's 2020 general election results.

The OSA noted in reviewing the January 13, 2022, County Commission meeting the County Attorney, RB Nichols, informed the Commission he had "reservations" related to this 'audit'. Not only did he voice his concerns related to the legality of the 'audit', but Attorney Nichols also voiced his concern regarding the additional administrative burden and cost to the County Clerk's office. He noted that the Clerk's office will need to make redactions and hand-scan around 6,000 absentee ballots and envelopes in addition to their statutorily mandated duties. He questioned if the Clerk's office would have staff available, but also what the associated overtime costs to the County might be. The concern of "taxpayer value" was also noted by Attorney Nichols stating that as part of the contract, EchoMail would be comparing signatures of absentee ballots to voter registrations, however, as Attorney Nichols noted, "New Mexico does not require signature verification ... so why would we be looking at that?"

The County Clerk, Robyn Holmes, also stated in the January 13, 2022, County Commission meeting that her office conducts "three audits" after the election to confirm that the vote count is accurate. She did not note any inaccuracies regarding the 2020 general election in Otero County. In addition, the OSA also reviewed the New Mexico Secretary of State Agreed Upon Procedures Report on the *Evaluation of the Accuracy of Voting Machine Tabulators used for the 2020 General Election Held on November 3, 2020 (Voting System Check)* ("Report"). Otero County, Precinct 27, was included in this report. Our review noted that in the three (3) contests tested in the County as part of that audit, the error rate between hand-counting and machine counting ballots was so low, that no additional testing was needed.

The OSA is expressing our concern regarding these matters to urge County management and those responsible for governance to proactively address the issues noted. The OSA appreciates your attention to this matter and respectfully requests the County provide a response within fifteen (15) calendar days a detailed corrective action plan establishing what actions the County has taken or plans to take to address these issues.

Additionally, as always, OSA's staff is available and ready to assist you in any way you may require.

Thank you.

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Respectfully,



Shawn P. Beck, CFE

Special Investigations Director

cc: Ms. Pamela Heltner, County Manager (pheltner@co.otero.nm.us)
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