Report
to
The LEGISLATIVE FINANCE COMMITTEE

Department of Cultural Affairs
Selected Capital Outlay Projects
July 15, 2013

Report #13-06

LEGISLATIVE FINANCE COMMITTEE

Representative Luciano "Lucky" Varela, Chairman
Senator John Arthur Smith, Chairman, Vice-Chairman
Senator Sue Wilson Beffort
Senator Pete Campos
Senator Carlos R. Cisneros
Representative William "Bill" J. Gray
Representative Larry A. Larrañaga
Senator Carroll H. Leavell
Senator Howie C. Morales
Senator George K. Munoz
Senator Steven P. Neville
Representative Henry "Kiki" Saavedra
Representative Nick L. Salazar
Representative Edward C. Sandoval
Representative Don L. Tripp
Representative James P. White

DIRECTOR

David Abbey

DEPUTY DIRECTOR FOR PROGRAM EVALUATION

Charles Sallee

PROGRAM EVALUATION TEAM

Jeff Canney, CGFM
Jon R. Courtney, Ph.D.
Valerie Crespin-Trujillo
Jack Evans
Brenda Fresquez, CICA
Pamela Galbraith
Maria D. Griego
Rachel Mercer-Smith
Matthew Pahl
Michael Weinberg, Ed.D.

Representative Luciano "Lucky" Varela
Chairman

Representative William "Bill" J. Gray
Representative Larry A. Larrañaga
Representative Henry "Kiki" Saavedra
Representative Nick L. Salazar
Representative Edward C. Sandoval
Representative Don L. Tripp
Representative James P. White

State of New Mexico

LEGISLATIVE FINANCE COMMITTEE

325 Don Gaspar, Suite 101 • Santa Fe, NM 87501
Phone: (505) 986-4550 • Fax (505) 986-4545

David Abbey
Director

Senator John Arthur Smith
Vice-Chairman

Senator Sue Wilson Beffort
Senator Pete Campos
Senator Carlos R. Cisneros
Senator Carroll H. Leavell
Senator Howie C. Morales
Senator George K. Munoz
Senator Steven P. Neville

July 15, 2013

Ms. Veronica Gonzales, Secretary
Department of Cultural Affairs
407 Galisteo, Suite 260
Santa Fe, NM, 87501

Dear Secretary Gonzales:

On behalf of the Legislative Finance Committee (Committee), I am pleased to transmit the evaluation, *Department of Cultural Affairs, Selected Capital Outlay Projects 2013*. The program evaluation team reviewed four capital outlay projects and programs to determine:

- State funds are being used effectively
- Benefit to the state
- Compliance with law

The report will be presented to the Revenue Stabilization and Tax Policy Committee on July 15, 2013. An exit conference was conducted with the Department of Cultural Affairs on June 4, 2013 to discuss the contents of the report. The Committee would like a plan to address the recommendations within this report within 30 days from the date of the hearing.

I believe this report addresses issues the Committee asked us to review and hope that all participating entities will benefit from our efforts. We very much appreciate the cooperation and assistance we received from your staff.

Sincerely,

David Abbey

David Abbey, Director

Cc: Representative Luciano "Lucky" Varela, Chairman, Legislative Finance Committee
Senator John Arthur Smith, Chairman, Legislative Finance Committee
Senator Carlos Cisneros, Chairman, Revenue Stabilization and Tax Policy Committee
Mr. Hector Balderas, State Auditor, New Mexico Office of the State Auditor
Mr. Keith Gardner, Chief of Staff, Office of the Governor
Dr. Tom Clifford, Secretary, Department of Finance and Administration
Mr. Gary King, Attorney General, Office of the New Mexico Attorney General
Mr. Ed Burckle, Secretary, General Services Department

Table of Contents

Page No.

EXECUTIVE SUMMARY **5**

BACKGROUND INFORMATION **10**

FINDINGS AND RECOMMENDATIONS **12**

The Department Of Cultural Affairs Does Not Use A Credible Statewide Maintenance And Improvement Plan To Address Critical Needs **12**

The Ribera Community Center Capital Outlay Appropriation Was Poorly Managed And Violated The Procurement Code **18**

DCA Does Not Effectively Track New Mexico's Art In Public Places **23**

The Department Of Cultural Affairs Generally Administers The Library Bond Program Effectively, Although Is Slow To Expend Funding **26**

AGENCY RESPONSES **28**

APPENDIX A: Evaluation Objectives, Scope And Methodology **30**

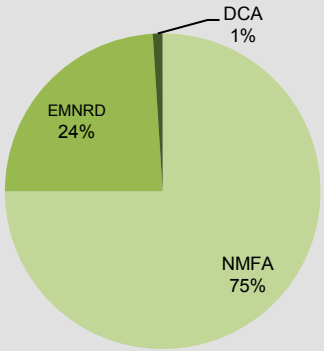
APPENDIX B: 2014 DCA Capital Outlay Request **31**

APPENDIX C: Omni Development Corporation Request for Payment #1 ..... **33**

APPENDIX D: Omni Development Corporation Request for Payment #9 ..... **35**

The dedicated funding to maintain the growing number of DCA properties is inadequate. This requires the agency to request additional capital outlay each year but the request is not reliable.

NM Gov't Gross Receipts Tax Distribution



Source: NMSA

Repair and Improvement Appropriations for Museums and Historic Sites
(in millions)

Year	Amount
2013	$5.5
2012	$0.5
2011	$1.0
2010	$1.1
2009	$1.0
2008	$2.0
2007	$2.2
2006	$2.0
2005	$1.0
Total	**$16.2**
Average	**$1.8**

Source: NMSA

The state's eight museums and eight historic sites provide the public with opportunities for lifelong learning, promote cultural tourism, and are important in protecting New Mexico's cultural heritage for future generations. The facilities' condition and attractiveness are a direct reflection on how the state and local communities regard their importance, and is a consideration as to whether our residents and visitors decide to frequent the facilities. The state capital outlay process provides the Department of Cultural Affairs (DCA) funding for maintaining and improving these facilities as well as other cultural and educational programs.

This evaluation reviewed specific capital outlay appropriations and the funding process in which the DCA repairs and improves our state's museums and historic sites, places art in public buildings, supports our public libraries, and preserves a historic community building.

For maintaining museums and historic sites, more funding is needed. The dedicated revenue source to maintain facilities is one percent of governmental gross receipts taxes. Averaging only $307 thousand per year, this is inadequate to maintain the growing number of properties. The shortfall causes the DCA to request capital outlay appropriations each year, which have averaged $1.8 million. The amount is not consistent or reliable for planning purposes.

The current DCA capital outlay plan is not reliable and is lacking in key areas. DCA does not:

- prioritize needs,
- support expenditures with hard estimates, and
- spend according to the plan.

The evaluation of the Ribera Community Center identified significant weaknesses in the DCA procurement process, highlighting the need for stronger oversight and better project management. The sale of this state-owned property identifies the need for professional appraisals that support fair market value.

The Arts in Public Places (AIPP) program enhances the attractiveness of government and public buildings but the program database cannot produce reliable reports to account for all the artwork or the funding.

The library bond program is administered transparently and accurately with the amounts fairly distributed amongst libraries according to population formulas. Eligible purchases were observed, providing clear benefits to the communities, but the funds should be spent more quickly.

Museum and Historic Site Capital Improvement Fund
(in thousands)

Fund 69100	Annual GRT Revenue	Ending Fund Balance (Reverting)
2007	$284	$1,706
2008	$289	$1,231
2009	$286	$1,222
2010	$307	$1,343
2011	$327	$948
2012	$349	$1,105
Average	$307	$1,259

Source: SHARE

DCA Capital Outlay Request for Repairs:
(in thousands)

Classification of Need	Amount
Control Systems (HVAC)	$1,460
Roof Repairs and Leaks (Risk to collections, buildings, visitors)	$600
Safety Compliance (fire suppression and security compliance)	$1,650
Public Health and Safety	$905
Property Preservation and Stabilization	$3,100
ADA Compliance and Operating Efficiencies	$1,005
General Repairs	$633
Emergency Repairs and General Maintenance	$1,000
Total Repairs	$10,353

Source: DCA

KEY FINDINGS

The DCA does not have a formal capital outlay plan to prioritize critical needs, project accurate revenues and costs, and plan for surpluses or shortfalls. DCA pools all capital funds and spends this as an emergency fund when needed. This reactive approach does not result in the best return on investment. A proactive approach would identify all funding sources available, determine what the most critical needs are, and develop a plan to address any shortfall in funding.

The DCA does not fully utilize the revenue sources intended for museum repairs and improvements but uses the capital outlay request as the primary funding source. The Capital Improvements Fund is the primary dedicated revenue stream intended to support capital improvements at state museums and historic sites. The fund receives revenue from government gross receipts tax, earned when local governments charge customers for services such as garbage collections, wastewater utilities, and vehicle parking. Of the total amount of gross receipts tax, the DCA receives one percent.

Of this one percent received, which was $349 thousand in FY12, the primary use has been debt repayment of approximately $170 thousand per year. The remaining surplus has not been consistently used and has amounted to $1.3 million in funds that, according to the DCA audit, should have reverted but haven't. The DCA used $1 million of these funds to pay off debt in June 2013.

The DCA capital outlay request is not prioritized according to the greatest need and lacks supporting documentation with reliable amounts. The DCA does not have a method to prioritize the critical needs and the result is a critical needs list for $10.4 million with no one need taking priority over the other. Division directors send their capital requests to the facilities manager, who consolidates the needs into the agency's capital outlay request. The cost estimates are not supported by reliable data.

In many cases, the agency requests did not match the division request. At times, the agency included items that the division did not, and in other cases, the agency request did not include what the division requested. This decreases the integrity of the request. In comparing the capital outlay request by proportion, museums appeared to be represented in almost equal amounts.

The DCA does not spend appropriations according to the request and lacks transparency. Once the appropriation amounts are known, the DCA leadership determines how the money will be spent. The process lacks transparency, as the evaluation criteria does not provide a weighting system or method to determine priorities. A comparison of the FY11 request and FY11 expenditures identified that 42 percent of reported expenses were not on the request suggesting they were not planned. In FY11, this equates to $580 thousand in expenditures that were incurred but not on the FY11 request.

Summary of procurement findings for Ribera Community Center:

- No contract with defined deliverables
- No change orders
- Limited labor and materials documentation
- Sub-contracted 100 percent of the work
- State paid for ineligible expenses
- Twenty percent mark-up for overhead and profit

Changes in Expenditures without Change Orders
(in thousands)

Description of Work	Dollar change	Percent Change
Drawings & Specs	$2.5	3%
New Roof/Structure	-$210.8	-100%
Archaeological Studies	-$5.5	-100%
Asbestos Abatement	-$3.8	-3%
Foundation and Stabilization	$150.1	250%
New Electrical	$57.5	383%
Water Well Upgrade	$0.3	6%
Underground Storage Tank Removal	$9.0	100%
Total	$0	

Source: Omni Development Corporation

The Ribera Community Center capital outlay appropriation was poorly managed and violated procurement code. The state appropriated $600 thousand in 2007 to plan, design, construct, renovate, and preserve the Ribera School in San Miguel County. Los Pueblos Community Council (Los Pueblos) is the current owner of the property, and is a private non-profit formed for the purpose of revitalizing the old, abandoned school house in the community of Ribera. The facility is nearly completed and is planned to be used as a community center.

In October 2012, the Ribera Community Center was sold for $39 thousand after the state spent nearly $600 thousand. After the appropriation was expended, the DCA sold the property for financial and policy reasons. An appraisal was completed, with the hypothetical condition that assumed the property was a vacant and unimproved lot. The Department of Taxation and Revenue reported that the appraisal was credible, appropriate, not misleading, and reasonably supported the value of $39,000. The State Board of Finance approved the sale based on the appraised value of a vacant lot, however the value of the improvements were not considered in the sale.

The General Services Department statewide price agreement included a contractor convicted of embezzlement. Using the statewide price agreement, the DCA selected Omni Development Corporation and paid the company $593 thousand for miscellaneous carpentry services. The owner of Omni Development pleaded guilty in November 2009 to embezzling more than $312 thousand from the Santo Domingo Pueblo between 2003 and 2004. Embezzlement is cause for debarment from state contracts under state law. Omni is the same firm involved in the criminal investigation of the Correction Department's ex-facility manager alleging that Omni paid $237 thousand in bribes in connection with receiving $4 million in contracts.

The DCA violated procurement code in administering the Ribera appropriation. The DCA improperly utilized a statewide price-agreement, which allowed the DCA to avoid competitive bids for services. Omni Development Inc. was selected from the General Services Department (GSD) price agreement to provide carpentry services at predetermined labor rates. According to the State Purchasing Division, the DCA use of the price agreement was inappropriate on multiple levels. For example, the miscellaneous carpentry price agreement only covers labor rates and is not intended for services required for the Ribera project, such as drawings, archaeological studies, asbestos abatement, foundation work, electrical infrastructure, and water well upgrade. The project had no contract with defined deliverables, no change orders, all of the work was sub-contracted, with overhead and profit increasing expenses by 20 percent.

More than $210 thousand in construction changes resulted in the state not receiving what was expected, such as a roof. No change orders were identified in the project even though they amounted to 35 percent of the total project cost. Documentation of labor hours, materials, and approvals, which would normally be included in changes to a contract, were not provided.

AIPP Permanent Collection
(in thousands)

Location:	Count of Pieces	Sum of Value
Bataan building	45	$608
On Loan	25	$384
Storage Facility	2	$34
Grand Total	72	$1,025

Source: DCA

No statutory limit exists for the administrative expenditures from the AIPP fund.

Library General Obligation Bond Appropriations
(in millions)

Fiscal Year	Amount
2008	$3.0
2008	$2.0
2010	$2.0
2010	$1.0
2012	$3.0
2012	$0.7
	$11.7

Source: NMSA

DCA does not effectively track New Mexico's Art In Public Places (AIPP). Since 1986, the state has appropriated more than $19.7 million to provide art in public places**.** To date, the AIPP program has spent $11.4 million to place more than three thousand pieces of art in all 33 counties in New Mexico.

The AIPP database is fragmented and does not produce reliable reports. DCA has used three separate databases since 1987 when the program began. The databases are undergoing a complete overhaul expected to be completed by June of 2013. Reliable reports were not available to identify all of the inventory or all of the funding. The database upgrade is being performed in-house without a formal IT plan. The AIPP database is not included in the agency IT plan for FY13 or for FY14.

The DCA's auxiliary fund lacks accountability and transparency. The DCA considers any surplus AIPP amounts remaining after a project's completion, as well as certain reauthorized funds, as auxiliary funds. While auxiliary funds are not mentioned in statute, they are mentioned in the New Mexico Administrative Code, but not defined. Auxiliary funds are comingled with the other AIPP funds.

The artwork owned by the DCA are not identified in the agency's financial audit. The primary use of auxiliary funds is to purchase the permanent collection of art, owned by the DCA, and available for loan to public buildings. The total inventory of 72 pieces, most of which is displayed at the Bataan Building in Santa Fe, is valued at $1 million but is not accounted for in the agency's financial audit and creates an internal control risk.

The Department of Cultural Affairs generally administers the Library Bond Program effectively, although is slow to expend funding. The library bond program has received $11.7 million from state appropriations and voter-approved general obligation bonds since 2008.

While the bond program complies with laws and regulations, the funds should be spent more expeditiously. In the two years from May 2011 until May 2013, only eleven percent of statewide public libraries and one percent of tribal libraries FY10 amounts were spent. A DCA rule requires an unnecessary 120 day administrative delay for spending down the funds.

The library bond program is administered transparently and benefits local and tribal communities. Typical expenditures observed were books, magazine and newspaper subscriptions, and computer and related equipment. Samples of grants were observed to be executed according to law and regulation, with amounts fairly distributed according to population.

The Jemez Pueblo Library site visit identified all equipment purchased by the bond program, but not all networking equipment was functional. The Pueblo purchased $15 thousand of networking equipment more than a year ago, but were only 80 percent installed. The library has since reported that the equipment became operational in May 2013.

KEY RECOMMENDATIONS

The Department of Cultural Affairs should:

- Develop a workable capital outlay plan for prioritizing repairs and improvements that would reliably project revenues and expenditures, and plan for any deficits or surpluses.
- Conduct a statewide facility condition assessment of all buildings and property under its jurisdiction to determine the most critical needs for repairs and maintenance.
- Follow procurement code and require competitive bids for construction projects and professional services.
- Maintain inventory control for all artwork procured with public funds.
- Prepare an IT plan for the AIPP database and any new IT project, prior to beginning the work.
- Reconcile the AIPP database against SHARE balances.
- Reconcile the comingled auxiliary funds within SHARE.
- Revise NMAC 4.5.7(B) to require a Library Bond encumbrance within ten business days after bond sale notice from the Board of Finance.

The General Services Department should:

- Expeditiously follow the state debarment policy to prevent expending state money to known corrupt businesses and individuals.
- Notify the Attorney General's Office to enforce consequences for agencies, individuals, and businesses found in violation of procurement code.

The Legislature should:

- Identify a reliable and adequate funding source for museums and historic sites.
- Consider removing the DCA statutory exemption from the General Services Department oversight of facilities.
- Define limits for maximum administrative costs to be charged against the AIPP fund.

The Board of Finance should:

- Consider the value of improvements in valuing property for disposal.

BACKGROUND INFORMATION

The Department of Cultural Affairs (DCA) and the state of New Mexico, has a vast infrastructure comprised of eight museums, eight historic sites, and additional culturally significant properties. Over the past eight years, from 2005 through 2013, the state has funded $10.8 million to renovate and improve museums, historic sites, and statewide facilities for the DCA.

Created in 2004 by the New Mexico Legislature, the DCA represents New Mexico's dedication to preserving and celebrating the cultural integrity and diversity of our state. Among its primary functions is the management of the largest state-sponsored museum system in the country. New Mexico's eight state-run museums are located across the state and include:

- New Mexico History Museum/Palace of the Governors
- New Mexico Museum of Art
- Museum of International Folk Art
- Museum of Indian Arts and Culture
- New Mexico Museum of Space History
- New Mexico Museum of Natural History and Science
- New Mexico Farm & Ranch Heritage Museum and
- National Hispanic Cultural Center

Another primary function of the DCA is responsibility for eight state historic sites:

- Coronado Historic Site
- Jemez Historic Site
- Lincoln Historic Site
- Fort Selden Historic Site
- Bosque Redondo Memorial at Fort Sumner Historic Site
- El Camino Real Historic Trail Site
- Fort Stanton Historic Site and
- Taylor Reynolds Barela Mesilla Historic Site

Additional divisions of the Department support the unique cultural, historic, and artistic heritage of the state as well as the operations of the Department:

- New Mexico State Library
- New Mexico Arts
- Archaeological Division
- Historic Preservation Division
- Museum Resources Division, and
- Administrative Services Division

The DCA is one of the few executive agencies that are statutorily excluded from the Property Control Act, Section 15-3B NMSA 1978, which requires the General Services Department to maintain and improve all state buildings and facilities.

NEW MEXICO'S STATE MUSEUM AND HISTORIC SITE LOCATIONS

Note: Monuments were renamed historic sites in the Laws of 2013 (SB70).
Not represented in this map are Ft. Stanton and Taylor Reynolds Barela Mesilla Historic Site

THE DEPARTMENT OF CULTURAL AFFAIRS DOES NOT USE A CREDIBLE STATEWIDE MAINTENANCE AND IMPROVEMENT PLAN TO ADDRESS CRITICAL NEEDS

The state appropriated $16.2 million since 2005, to renovate and improve museums and historic sites statewide. The DCA maintains 190 buildings and structures statewide, totaling more than 1.2 million square feet of space. These buildings include eight museums, eight historic sites, and additional cultural and historical structures such as the Los Luceros property. After an 18-month vacancy, the DCA hired a professional engineer as the new facilities manager in March of 2012, to oversee the maintenance and improvements of the buildings. The facilities manager has begun the process of inventorying properties and assessing conditions. This important process is in the infancy stage. Each museum and historic site also employ maintenance staff that oversee daily maintenance, repairs, and improvements. Many of the DCA repairs require specialists in cultural restoration, for historically significant structures such as kivas.

While the DCA is not funded at a consistent amount, the average capital outlay funding per year is $1.8 million although $10.4 is requested for critically needed repairs and maintenance for FY14.

Table 1. DCA Capital Outlay Request and Appropriations for Facility Improvements

(in millions)

FY	DCA Request	Appropriation
06	$6.8	$1.0
07	$7.8	$2.0
08	$8.1	$2.2
09	$7.1	$2.0
10	$8.4	$1.0
11	$7.6	$1.0
12	$7.8	$1.0
13	$9.4	$0.5
14	$10.4	$5.5
		$16.2

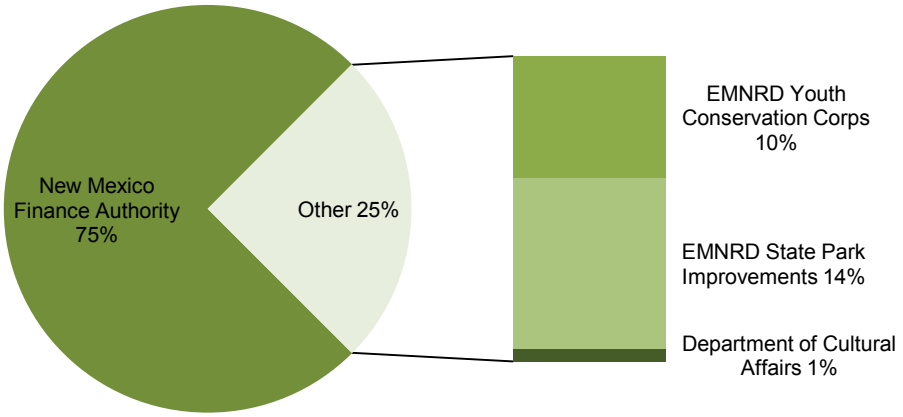
Source: DCA

The DCA does not have a formal capital outlay plan to prioritize critical needs, project accurate revenues and costs, and plan for surpluses or shortfalls. DCA's policy is to pool all available capital outlay funds and use these as emergency funds, expended at the direction of the facilities manager and DCA leadership when emergencies occur. According to the DCA, this approach provides the agency with flexibility to address emergencies in years of minimal capital outlay funding such as FY13. In years when more funding is available, a proactive approach is needed to make the best use of the funds. This proactive approach would maximize available revenue, assess the facility condition of buildings to determine the most critical needs, and develop a plan to address any shortfall in funds.

The DCA does not fully use the revenue sources intended for museum repairs and improvements but uses the capital outlay request as the primary funding source. The DCA Capital Improvements Fund is the primary dedicated revenue stream intended to support capital improvements at state museums and historic sites. The fund is supported by government gross receipts tax, which is distributed at 75 percent to the New Mexico Finance Authority (NMFA), 24 percent to the Energy, Minerals, and Natural Resource Department (EMNRD), and one percent to the DCA. The state imposes this governmental gross receipts tax of five percent on state and local

government revenue. Examples include tax revenues earned from refuse collection, sewage services, and parking rents for vehicles, boats and aircraft.

Chart 1. Distribution of Governmental Gross Receipts Tax
Section 7-1-6.38 NMSA 1978



Source: NMSA

With an improving economy, the gross receipts tax has increased at an average of 6.9 percent in the last three years resulting in an increase from $286 thousand in FY09 to $349 thousand in FY12. This one percent allocation from gross receipts tax is not considered adequate for maintaining museum and historic site infrastructure. A more predictable and adequate funding amount would allow DCA to discontinue the practice of requesting capital outlay funds every year.

The Department of Cultural Affairs holds $1.3 million in fund balance, which is intended for museum and historic site capital improvements, and is at risk of reverting. The DCA receives, on average, approximately $307 thousand in gross receipts tax revenue per year into the Capital Improvements Fund. According to the FY12 financial audit, this is a reverting fund. The primary use of the fund serves to repay a 2003 New Mexico Finance Authority (NMFA) loan of $2.3 million to design, renovate, and improve state museums and historic sites. After paying annual debt service of $170 thousand for the NMFA loan, the $137 thousand per year *surplus* has accumulated to total $1.3 million in fund balance. Although this was identified as a reverting fund in the DCA audit, the monies have not reverted.

Table 2. DCA Capital Improvement Fund
(in thousands)

Fund 69100	Annual GRT Revenue	Annual Debt Svc	Annual Surplus	Ending Fund Balance (Reverting)
2007	$284	$153	$131	$1,706
2008	$289	$170	$119	$1,231
2009	$286	$170	$116	$1,222
2010	$307	$170	$138	$1,343
2011	$327	$170	$157	$948
2012	$349	$168	$182	$1,105
2013				$1,259

Source: SHARE

To avoid reverting the funds at the end of FY13, DCA spent $1 million of the $1.3 million balance towards debt reduction in June 2013. With the debt almost paid in full, DCA will gain full future use of the gross receipts tax revenue for capital improvements and avoid $300 thousand in interest and fee expense.

Also deposited into the Capital Improvement Fund was $5.8 million from a 2003 bond sale to fund infrastructure improvements and develop permanent exhibits. A balance of $5,000 from the 2003 bond sale remains unspent, held at the NMFA account.

The DCA capital outlay request is not prioritized according to the greatest need and lacks supporting documentation with reliable amounts. According to the agency's capital outlay policy, the agency evaluation criteria are not identified in priority order because the agency must maintain flexibility to accommodate different needs. Division directors send the capital needs to the facilities manager, who consolidates the needs into the capital outlay request. The division requests are organized according to five classifications to develop the DCA Infrastructure Capital Improvement Plan (ICIP) request.

Table 3. DCA Capital Outlay Request (ICIP) FY14
(in thousands)

Priority:	Project Title:	Need	Minimum Amount
1	Repairs and Maintenance	Critical	$10,353
2	Cultural Facilities Completion	Critical	$3,200
3	Equipment	Critical	$2,680
4	Exhibit Upgrades	Critical	$1,005
5	DCA Expansions, Acquisitions, and Planning	Necessary	$300
	Total		**$17,538**

Source: ICIP

The DCA repairs and maintenance request is categorized into eight need categories but does not identify critical needs. The DCA request provided to the legislature includes the same needs with the same amounts, but in a different format than the DFA request. This report is organized by eight categories of need, rather than by division, but no one category receives any additional importance over the other in selecting which museum or historic site receives funding.

Table 4. DCA FY14 Capital Outlay Request for Repairs and Maintenance:
(in thousands)

	Classification of Need	Amount
1	Control Systems (HVAC)	$1,460
2	Roof Repairs and Leaks (Risk to collections, buildings, visitors	$600
3	Safety Compliance (fire suppression and security compliance)	$1,650
4	Public Health and Safety	$905
5	Property Preservation and Stabilization	$3,100
6	ADA Compliance and Operating Efficiencies	$1,005
7	General Repairs	$633
8	Emergency Repairs and General Maintenance	$1,000
	Total Repairs	**$10,353**

Source: DCA

The DCA capital outlay request is not supported with reliable estimates. For example, the request to install storm water drainage for Museum Hill was for $700 thousand but the estimate only supported $48.5 thousand for storm water drain expenses. No other estimates were provided to support the request. Other examples include the Hewitt House alarm system for $300 thousand and the Museum of International Folk Art fire suppression for $600 thousand. DCA does not have supporting documents for these estimates.

Many of the agency requests were not supported by the division request. In many cases, the division directors' requests did not match the agency capital request. For example, approximately $1.3 million in capital outlay items were included in the agency request but were not supported in the Farm and Ranch Heritage Museum documentation.

Table 5. Amounts Requested by DCA for Farm & Ranch Museum but not Requested by Division
(in thousands)

ADA Doors	$300
Door Hardware	$120
Security Cameras	$300
Intercom System	$50
Plumbing	$100
Replace Floors	$100
Refinish Wood	$95
Carpet	$100
Drainage	$75
Concrete Floors	$80
Total	**$1,320**

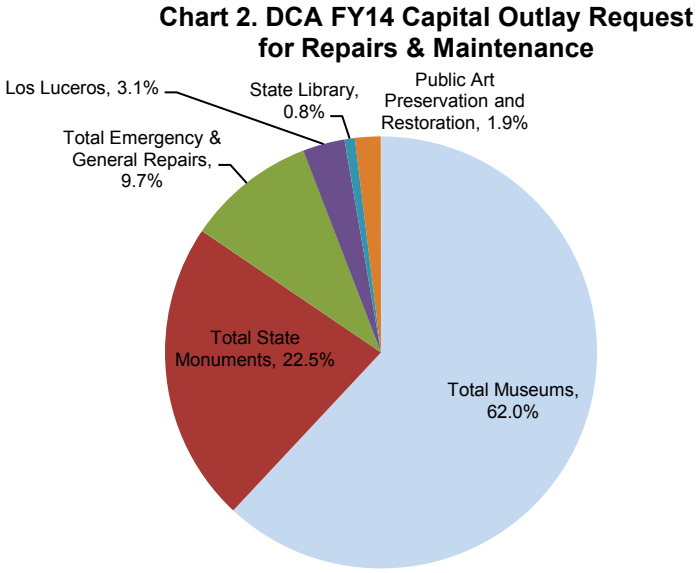
Source: DCA capital outlay request

Many of the requests from the divisions are not represented in the agency request. The FY14 capital requests submitted by divisions identified many needs that could have been priorities but were not included in the agency request. One example is the fire hazard at the museum resources exhibits workshop which uses paints, solvents, and adhesives. This workshop supports activities such as woodworking, gas and electronic welding. The outdated fire alarm system is not functional and was requested as a priority. This is one of the very few division requests identified as a priority but was not budgeted until FY15 in the five-year plan.

The Farm & Ranch Heritage Museum FY14 request included $100 thousand for security lighting in the parking lot but is absent from the five year DCA plan. According to the division request, tens of thousands of visitors attend evening events and the current inadequate lighting represents a high-risk liability situation for health and safety. As detailed in the previous table 5, more than $1.3 million was requested by the agency for this museum, but does not include the security lights.

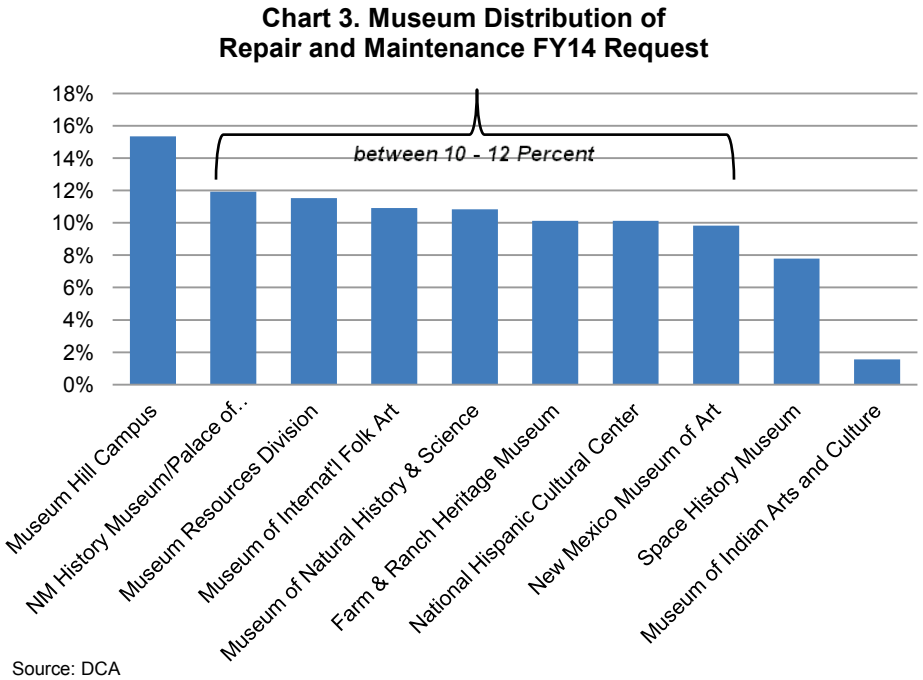
The Jemez historic site's Kiva is closed to the public, although funding was requested for the past six years. The FY14 division request for the Jemez Historic site includes $30 thousand for the repair and stabilization of the kiva roof. Because the roof is unstable and is at risk of collapsing, the kiva has been closed to the public. While the agency identified $80 thousand to repair this kiva on the agency's capital outlay request in each of the past six years', the kiva still remains closed.

The DCA request appears to represent museums equally, rather than by need. The total DCA agency request identified that the majority of the request supports museums, followed by historic sites, emergency reserve, Los Luceros, Public Art Restoration and the State Library.



Source: DCA

For the FY14 request, most of the museums requested proportionately similar amounts. The majority of the museums receive an almost equal request distribution between ten and twelve percent of the total, with the exceptions of the Museum Hill Campus receiving 15 percent, and the Space History Museum receiving 7.8 percent, and Museum of Indian Arts and Culture receiving 1.6 percent, of museum funding.



Source: DCA

The DCA does not spend according to its request and lacks transparency. Once the agency is certain of the capital outlay appropriation, the facilities manager and DCA leadership determine how to spend the money. Although the evaluation criteria is not weighted or prioritized, by policy, the secretary reserves between $500 thousand and $1.5 million for emergency repairs. When appropriations have been less than $1.5 million, the DCA held all the funds in one account and spent as needed.

While some relationship exists between the amount requested for capital outlay for a project and the amount actually spent, 42 percent of reported expenses in FY11 were not on the request suggesting they were not planned.

Table 6. FY11 DCA Capital Expenditures Absent from FY11 Capital Request
(in thousands)

Expenditure Description	Amount
MOIFA fire suppression system, Bartlett Wing	$60
Udall Building, water harvest; drainage	$25
Milner Plaza stucco bancos	$25
MIAC Museum HVAC	$60
Archaeology Center infrastructure improvements	$100
Ft Seldon public restroom renovation	$60
Museum of Natural History Education Wing infrastructure improvements	$200
Los Luceros Casa Grande & River House renovations	$50
Total	**$580**

Source: FY14 DCA request

The DCA accounting process does not consistently identify spending by project, limiting analysis of where money was spent. DCA tracks expenditures by vendor, not by museum or historic site. This level of detail would increase the transparency for the DCA and provide better reports to stakeholders.

Recommendations

The Department of Cultural Affairs should:

- Develop a workable capital outlay plan for prioritizing repairs and improvements that would reliably project revenues and expenditures, and plan for any deficits or surpluses.
- Conduct statewide facility condition assessments of all buildings and property under its jurisdiction to determine the most critical needs for repairs and maintenance.
- Develop a repair and maintenance priority list to identify those properties with the most critical needs.
- Project reliable cost of repairs and improvements, based on estimates.
- Improve accounting of expenditures tracked by division and property, such as museum or historic site.

The Legislature should:

- Identify a reliable and adequate funding source for museums and historic sites.
- Consider removing the DCA statutory exemption from the General Services Department oversight of facilities.

THE RIBERA COMMUNITY CENTER CAPITAL OUTLAY APPROPRIATION WAS POORLY MANAGED AND VIOLATED THE PROCUREMENT CODE

The state appropriated $600 thousand in 2007 to plan, design, construct, renovate, and preserve the Ribera School in San Miguel County. Los Pueblos Community Council (Los Pueblos) is a non-profit formed to revitalize an old, abandoned school house in the northern New Mexico community of Ribera. The facility is nearly completed and according to Los Pueblos, will be used as a community center to reverse the trends of unemployment, substance abuse, poverty, deteriorating infrastructure, and youth migration out of the community.

The Ribera Cultural Center was owned by the West Las Vegas School District until 2009 when title was transferred to Los Pueblos. Originally built by the Catholic Church in the late 1800s, it served as a pre-school through eighth grade until the late 1960s when a consolidated school was built for the entire Valley. The building was last used for Head Start classes from 1976-1978. Since then, the 6,395 square foot Old Ribera School House sat abandoned and decaying for almost thirty years.

In 2006, Los Pueblos received non-profit status from the IRS and was structured as a private foundation. Los Pueblos later received private donations, three federal grants, and one state appropriation, totaling $1.7 million.

Table 7. Funding Sources for Renovating the Ribera Cultural Center
(in thousands)

Date	Source	Grantee	Amount
2006	Private donations	Los Pueblos Communities Council	$33
2007	State Appropriation	Local Govt. Division of DFA	$593
2008	USDA Grant	Los Pueblos Communities Council	$22
2009	HUD Grant	Los Pueblos Communities Council	$235
2009	HUD Grant	Los Pueblos Communities Council	$855
	Total		**$1,739**

Source: Los Pueblos Communities Council

Los Pueblos gave the property to the state in 2009. While the 2007 state general fund appropriation for $600 thousand was originally the responsibility of the Local Government Division of the Department of Finance and Administration (DFA), the Department of Cultural Affairs accepted responsibility of the appropriation and the property by signing a memorandum of understanding (MOU) with DFA and a quitclaim deed with Los Pueblos. While the DCA did not specifically request this property, the law allows them to acquire cultural properties through gifts. The law also provides that the DCA administer these cultural properties. The warranty deed was executed November 2009, which legally transferred title to the state.

After the state spent nearly $600 thousand, the Ribera Community Center was sold for $39 thousand. After construction of phase-one was completed, the DCA sold the property for financial and policy reasons. The DCA contracted for an appraisal of the property, which included the hypothetical condition that assumed the property were a vacant and unimproved lot. A hypothetical condition is defined as 'contrary to fact' and is common in the appraisal industry. The appraised value was determined to be $39 thousand. The Taxation and Revenue Department (TRD) reported that the appraisal, with the hypothetical condition, was credible, appropriate, not misleading, and reasonably supported the value of $39 thousand.

The State Board of Finance approved the sale, despite questions over violating the anti-donation clause of the state constitution. According to the Board of Finance (BOF) meeting minutes from September 2012, a concern regarding the anti-donation clause in the state constitution was raised. The clause states, "neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly… make any donation to or in aid of any person, association or public or private corporation."

The BOF questioned whether $600 thousand of improvements were made to the structure, if the property sold for only $39 thousand. The BOF meeting minutes further expressed reliance on the appraisal valuation and the TRD concurrence for the appraisal. The appraisal indicated that the $39 thousand was adequate consideration for vacant land. While the appraisal did not appear unreasonable, the sale was unreasonable based on the hypothetical condition and the value of the improvements. A vote was taken at the BOF meeting and the sale was approved by a vote of 3-2. At the meeting, the Secretary of DFA suggested this project be forwarded to the Attorney General's Office for review.

Table 8. Timeline for Ribera Cultural Center Renovation

Date	Description
7/1/2007	General Fund appropriation from State of New Mexico for $600 thousand to the DFA Local Govt. Division for the Ribera school
4/28/2008	US Housing & Urban Development grant for $235 thousand awarded to the Los Pueblos Community Council
5/23/2008	Memorandum of Understanding between DFA and DCA to transfer responsibility to DCA for $600 thousand appropriation to improve the Ribera Cultural Center
9/16/2009	Purchase Order with Omni completed by Dept of Cultural Affairs (DCA)
11/5/2009	Title is gifted from Los Pueblos Communities Council to DCA with first right of refusal in event of state selling the property
11/23/2009	Los Pueblos receives US Housing and Urban Development grant for $855 thousand (Los Pueblos does not own the property)
5/19/2010	Design work begins for payment request #1 state funds
3/22/2011	Construction ends with payment request #9 state funds
9/18/2012	DCA requests and Board of Finance votes 3-2 approving the sale of state property to Los Pueblos Community Council non-profit for $39 thousand
10/16/2012	DCA Quitclaims to Los Pueblos Community Council for $39 thousand
10/22/2012	Board of Finance signs off on the final sale agreement dated 10/11/12

Source: DCA

Using a statewide price agreement, DCA contracted with a company convicted of embezzlement. From the list of vendors from the statewide price agreement, DCA selected the Omni Development Corporation. The owner of Omni Development, pleaded guilty in March 2009 to embezzling more than $312 thousand from the Santo Domingo Pueblo between 2003 and 2004. Embezzlement is cause for debarment from state contracts under state law. On June 11, 2011, the state purchasing agent cancelled six price agreements with Omni Development Corporation, more than two years after Omni's owner pleaded guilty to embezzlement. Omni is the same firm involved in the criminal investigation of the Corrections Department's ex-facility manager, alleging Omni paid $237 thousand in bribes in connection with receiving $4 million in contracts. The 18 month sentence, resulting from the 2009 guilty plea, was reduced after providing evidence to federal prosecutors regarding the Corrections Department case.

Table 9. Omni Development Corporation

Date	Description
3/11/2009	Plea agreement filed by Omni's owner for embezzling $312 thousand from Santo Domingo Pueblo /Pueblo Gas Inc./Dream Catcher Consulting Corp in 2003-2004
9/16/2009	Purchase Order with Omni completed by Dept of Cultural Affairs (DCA)
4/13/2011	Federal grand jury indicts NM Corrections Dept facility manager on bribery charges in connection with $4 million in contracts with Omni Development
5/19/2011	Executive Order 2011-030 directing state purchasing agent to suspend or disallow public contracts with companies that betray public trust
6/11/2012	State Purchasing Division cancels six statewide price agreements
6/11/2012	Omni is debarred from state procurement until 6/10/15

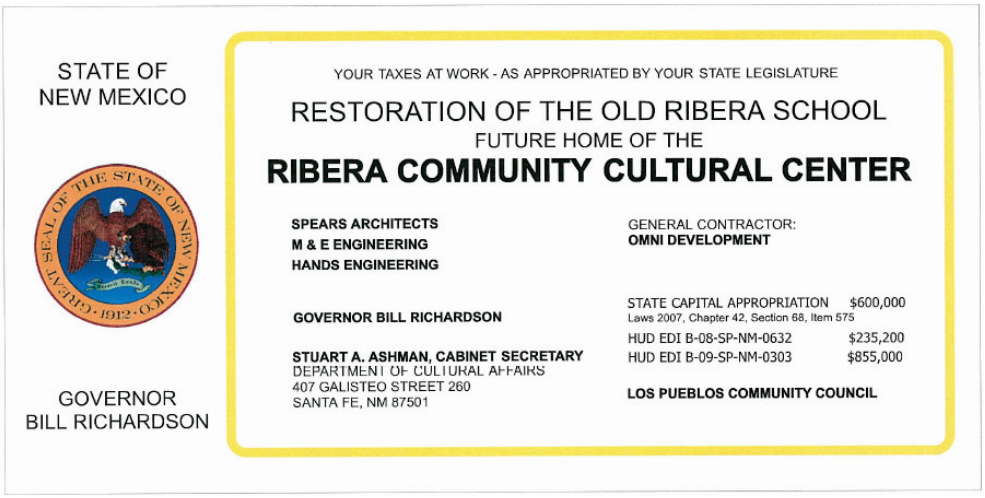
Source: FBI press release, State Purchasing Division

The DCA violated procurement code in administering the Ribera Cultural Center. Omni Development Inc. was selected from the GSD price agreement to provide carpentry services. The improper use of the price agreement allowed the DCA to select a vendor to do the work without requiring competitive proposals from multiple vendors, which would obtain the most cost effective price for the state. As a result, no contract with defined deliverables existed, large changes in expenditures occurred, all of the work was sub-contracted, ineligible expenses were paid, and overhead and profit added 20 percent to the bill.

According to the State Purchasing Division, the DCA should have requested proposals and selected from competitive bids. A description of the work included:

- drawings and specifications,
- bonds, permits and mobilization,
- new roof and structure,
- archaeological studies,
- asbestos abatement and lead removal,
- foundation work,
- new electric infrastructure, and
- water well upgrade.

Signage at the Ribera construction site:



More than $210 thousand in construction changes resulted in the state not receiving what was expected. No change orders were produced for the project even though they amounted to 35 percent of the total project cost. During the course of construction, the values identified on the architect's 'application for payment' changed considerably, with the state not receiving what the architect's application for payments listed. Documentation of labor hours, materials, and approvals, which would normally be included in changes to a contract, were not provided. Table 10 for example, shows more than $210 thousand was identified to install a new roof. Over the course of six months, that amount was reduced to zero as other costs increased. Although changes in work were documented in meeting minutes, very little detail was documented such as labor hours and materials. Table 10 closely resembles the applications for payment which suggest that a contract existed. A contract did not exist and the roof was not installed. The first and last 'applications for payment' #1 and #9 are included as Appendix C and D.

Table 10. Application for Payment from Omni Development

Item No.	Description of Work	Pmt Application #1 Contract Value 5/19/10	Pmt Application #9 Contract Value 3/22/11	Dollar change	Percent Change
1	Drawings & Specs	$96,200	$98,700	$2,500	3%
2	Bonds, Permits, Mobilization	$25,000	$25,000	$0	0%
3	New Roof/Structure	$210,762	$0	-$210,762	-100%
4	Archaeological Studies	$5,500	$0	-$5,500	-100%
5	Asbestos Abatement Lead Removal	$140,000	$136,200	-$3,800	-3%
6	Foundation/Stabilization	$60,000	$210,083	$150,083	250%
7	New Electrical	$15,000	$72,505	$57,505	383%
8	Water Well Upgrade	$5,000	$5,313	$313	6%
9	Underground Storage Tank Removal	$0	$9,000	$9,000	100%
10	NMGRT @ 6.375%	$35,538	$36,199	$661	2%
	Total	**$593,000**	**$592,999**		

Source: Omni Development Corporation

The Ribera Community Center incurred inappropriate costs which should have been rejected. The state incurred more than $9 thousand for the removal of an underground storage tank filled with heating oil, which prior environmental reviews certified did not exist. The M&E engineer reported that approximately 1,400 gallons of heating oil was found in the tank. According to the Phase I environmental review, conducted by M&E Environmental, no such UST existed. The donation agreement from Los Pueblos dated May 26, 2009 also stated no such UST existed.

The DCA invoices included $25 thousand in bonds, permits, and mobilization, which were identified in the price agreement to be paid by the contractor, but were paid by the state. In addition, Omni Development charged 10 percent overhead as well as 10 percent profit on subcontractor work which should not have been paid.

Recommendations:

The Department of Cultural Affairs should:

- Follow procurement code and require competitive bids for construction projects and professional services.
- Hold contractors accountable for deliverables as agreed. When deliverables and prices must be materially changed from the agreement, written change orders should be required.
- Install policies and procedures to require construction related disbursements to be approved by the facilities manager who is also a professional engineer or consider engaging the services of the General Services Department's Property Control Division.

The General Services Procurement Division should:

- Expeditiously follow the state debarment policy to prevent expending state money to known corrupt businesses and individuals.
- Notify the Attorney General's Office to enforce consequences for agencies, individuals, and businesses found in violation of procurement code.

The Board of Finance should:

- Consider the value of improvements in valuing property for disposal.

DCA DOES NOT EFFECTIVELY TRACK NEW MEXICO'S ART IN PUBLIC PLACES.

Since 1986, the state has appropriated more than $19.7 million to provide art in public places. The Art in Public Places Act (AIPP) enacted in 1986, sets aside a portion of the appropriations for capital expenditures for the acquisition or commissioning of works of art to be used in, upon or around public buildings. The Act requires all agencies to allocate one percent or $200 thousand, whichever is less, of the amount appropriated for new construction or renovation exceeding $100 thousand dollars. The allocation of money shall be used for the acquisition and installation of works of art for the new building or renovation. The law excludes maintenance plants, correctional facilities, and warehouses. To date, the AIPP program has spent $11.4 million to place more than 3,000 pieces of art in all 33 counties in New Mexico.

The AIPP program does not initiate a project until construction is near completion, which can be up to three years or more. This usually results in a delay between the date of the appropriation, the construction completion, and the procurement and installation of the public artwork. When multiple appropriations are combined to complete one facility, the AIPP and owner agency staff normally delays the artwork procurement until the final appropriation is expended to procure a single and more significant public art project instead of several small projects.

The AIPP database is fragmented and does not produce reliable reports. DCA has used three separate databases since the inception of the AIPP Program and has migrated data from numerous external sources. The databases are undergoing a complete overhaul expected to be completed by June of 2013. Reliable reports were not available to identify the entire inventory or all of the funding.

The database upgrade is being performed in-house without a formal IT plan. Considered a standard practice for most IT projects, this plan would include items such as a needs assessment, cost and time projections, as well as deliverables. The migration of multiple databases promises to integrate the project management side of the program with the financial side. The AIPP database is not included in the agency IT plan for FY13 or for FY14.

The DCA's auxiliary fund lacks accountability and transparency. New Mexico statute provides that any money remaining in the AIPP fund at the end of each fiscal year shall not revert but shall remain in fund to implement the purposes of the Art in Public Places Act. The DCA considers any surplus amounts remaining after a project's completion as 'auxiliary funds'. For reauthorized appropriations, if the original appropriation was subject to the AIPP, then the reauthorized amount remains subject to AIPP allocation, but the one percent shall be placed in the auxiliary fund. While auxiliary funds are not in statute, they are mentioned in the New Mexico Administrative Code, but not defined. The auxiliary funds are co-mingled with the other AIPP funds.

The artwork owned by the DCA is not identified in the agency's financial audit. The primary use of auxiliary funds is to purchase art, which is then owned by the DCA, and used as a permanent collection of artwork to be loaned to public buildings. The total inventory of 72 pieces, valued at $1 million, is not accounted for in the annual financial audit and creates an internal control risk.

Table 11. AIPP Permanent Collection Locations
(in thousands)

Location:	Count of Artworks	Sum of Value:
Bataan building	45	$608
On Loan	25	$383
Storage Facility	2	$33
Grand Total	**72**	**$1,025**

Source: DCA

The AIPP process generally appears to be conducted transparently and accurately. For example, a four-member regional buying committee conducted the selection and purchase of the artwork *Touch the Earth* for the Farm and Ranch Heritage Museum. Three appropriations totaling $2.6 million contributed one percent each, or $26 thousand, for the purchase. As the piece was purchased for $22 thousand, the remaining $4 thousand surplus was considered auxiliary funds.

Table 12. AIPP Purchase of Touch the Earth at the Farm and Ranch Heritage Museum

	State Appropriation	AIPP 1%	Purpose of Appropriation
	$141,900	$1,419	To plan, design, construct and equip a greenhouse at the New Mexico Farm and Ranch Heritage Museum
	$1,000,000	$10,000	To construct and improve the outdoor exhibits and facilities, including relocating a historic Lincoln county bridge and constructing livestock barns, a greenhouse and a wagon barn, at the New Mexico Farm and Ranch Heritage Museum
	$1,500,000	$15,000	To plan, design, renovate, construct and equip the New Mexico Farm and Ranch Heritage Museum
Total	**$2,641,900**	**$26,419**	Touch the Earth purchased for $22 thousand with the remaining $2.4 thousand considered auxiliary funds

Source: DCA

A public meeting was held by the regional selection committee to review approximately 483 works of art from 191 finalists. A final score sheet with Touch the Earth listed for $22 thousand was confirmed, with all four members initialing their approval. While the advertised price for the piece was $19 thousand, this may not include delivery and installation. The notice of acceptance was provided by the DCA. No proof of payment was available in the file.

The selected AIPP artwork in Silver City was accounted for, well maintained, and secure. Silver City was selected to confirm AIPP artworks were in the locations identified by the AIPP data. Of the 13 pieces identified in the DCA database, all 13 pieces were confirmed and secure. Accompanied by the New Mexico Arts Commissioner from Silver City, numerous locations were visited at the Western New Mexico University and the Gila Regional Medical Center and confirmed the pieces were publicly visible, secure, and properly identified as purchased by the AIPP program with taxpayer funds.

The AIPP is understaffed but has adequate funds to support more oversight. The program has a staff manager, one recently hired business operational specialist position, and one vacant business operational specialist, resulting in a 33 percent vacancy rate. The program could benefit from a registrar to track the 3,000 existing AIPP pieces and the 76 permanent pieces owned by DCA.

The DCA does not fully utilize the AIPP fund for administrative expenses which would support filling vacancies. The AIPP fund provides that administrative expenses could be charged against the fund. According to SHARE reports, payroll expenses have not been incurred in the past seven years. The DCA could use this fund to support salaries for staff vacancies. The statute and administrative code do not state a maximum allowable amount for administrative expenses which is considered a risk for abuse.

Recommendations:

The DCA should:

- Maintain inventory control for all artwork procured with public funds.
- Prepare an IT plan for the AIPP database and any new IT project, prior to beginning the work.
- Reconcile the AIPP database against SHARE balances.
- Reconcile the comingled auxiliary funds within SHARE.
- Segregate auxiliary funds with a unique accounting string within SHARE.
- Define the auxiliary fund within the NMAC to include the eligible uses of the fund.

The Legislature should:

- Define limits to the amount of administrative costs eligible to be charged against the AIPP fund.

THE DEPARTMENT OF CULTURAL AFFAIRS GENERALLY ADMINISTERS THE LIBRARY BOND PROGRAM EFFECTIVELY, ALTHOUGH IS SLOW TO EXPEND FUNDING.

The library bond program has received $11.7 million from state-appropriated and voter-approved general obligation bonds since 2008. Every two years, the legislature decides whether to appropriate funding for local public and tribal libraries. For FY08, FY10, and FY12, the state appropriated $5 million, $3 million, and $3.7 million, respectively. The appropriations can be expended for library books, equipment, and resources for statewide public libraries and tribal libraries. In FY10 and FY12, tribal libraries could also use funding for construction. This program is administered by the staff at the state library.

Table 13. General Obligation Appropriations for Statewide and Tribal Libraries
(in millions)

FY	Description	Amount
2008	Books, Equipment and Library Resources for Public Libraries Statewide	$3.0
2008	Books, Equipment and Library Resources for Tribal Libraries Statewide	$2.0
2010	Books, Equipment and Library Resources for Public Libraries Statewide	$2.0
2010	Books, Equipment and Planning, Designing and Constructing Capital Improvements for Tribal Libraries Statewide	$1.0
2012	Equipment and Supplemental Library Resource Acquisitions for Non-tribal Public Libraries Statewide.	$3.0
2012	Equipment and Supplemental Library Resource Acquisitions, and for Planning, Designing and Constructing Capital Improvements for Tribal Public Libraries Statewide.	$0.7
	Total	**$11.7**

Source: NMSA

While the bond program complies with laws and regulations, the funds should be spent more expeditiously. In the two years from May 2011 until May 2013, only eleven percent of statewide public library funds were spent, and less than one percent of tribal libraries FY10 amounts were spent. The state library staff reported 23 percent of public library funds and 14 percent of tribal library funds have been spent, but have not yet been recorded as paid in SHARE.

Similar to other capital outlay appropriations, the program reimburses local governments expenditures. The bond program has a few additional administrative procedures that cause delays. For example, the law to appropriate the funding is approved in March, but the vote is not decided until the general elections in November. The bonds sell in May of the following year, which is when the allowable term begins.

A DCA rule requires an unnecessary 120 day administrative delay for spending down the funds. The NMAC 4.5.8.7(B) and 4.5.8.8(A) requires the purchase order must be approved 120 days after the grant agreement is signed. This process does not comply with the 2010 Manual of Model Accounting Practices (MAP) provided by the DFA Financial Control Division. The MAP requires a purchase order must be approved before contracting with the vendor. In the case of the Cuba 2010 library grant, the purchase order was approved two years after the grant was executed.

The library bond program is administered transparently and benefits local and tribal communities. Expenditures include books, magazine and newspaper subscriptions, and computer and related equipment. Grants appear to be executed according to law and regulation, with amounts fairly distributed according to population. At private, non-profit libraries, state library staff made grants to a public entity to avoid violating the state's anti-donation clause. For example, at the Glenwood Library in Catron County, the county acts as fiscal agent under a memorandum of understanding.

At the Jemez Pueblo Library, all equipment purchased by the bond program existed, but not all networking equipment was functional. General obligation bond money was used to purchase 25 computers, networking equipment, and one flat screen TV. The networking equipment and software, which included a router, switch, firewall and wireless access, were only 80 percent installed but were purchased in April 2012. Library staff have since reported that the networking equipment is operational as of the end of May 2013.

Recommendations:

The Department of Cultural Affairs should:

- Revise NMAC 4.5.7(B) to require an encumbrance within ten business days after bond sale notice from the Board of Finance.
- Revise NMAC 4.5.7(B) to substitute the definition of 'authorized expenditure period' with 'the grant execution date' and add a new definition.
- Remove the purchase order language from grant agreements and include a signature from the DCA official authorized to obligate the state and agency.

Department of Cultural Affairs
State of New Mexico

Susana Martinez
Governor

Veronica Gonzales
Secretary

June 26, 2013

New Mexico
History Museum/
Palace of the Governors

NM Museum of Art

Museum of International
Folk Art

Museum of Indian
Arts and Culture/
Lab of Anthropology

Museum of Natural
History & Science

Museum of
Space History

Farm & Ranch
Heritage Museum

National Hispanic
Cultural Center

New Mexico
State Historic Sites

Archaeology Division

New Mexico
State Library

New Mexico Arts

New Mexico Historic
Preservation Division

Museum Resources

Administrative Services

Mr. David Abbey, Director
Legislative Finance Committee
325 Don Gaspar, Suite 101
Santa Fe, NM 87501

Dear Mr. Abbey:

Thank you for the opportunity to respond to the Legislative Finance Committee performance audit regarding DCA's capital outlay and facilities management process. Although there are many findings in the report that DCA does not concur with, we do agree with many of the recommendations and will take steps to implement improvements where appropriate. I will provide a detailed response to both "findings" and "recommendations" in a separate document upon completion of a more detailed analysis.

Since I was appointed to the Department of Cultural Affairs, I have taken significant steps to improve our facilities management, including the following:

- We immediately halted unfunded expansions which had a lack of planning and funding, reversing course on the acquisition of the Hubbard Museum in Ruidoso and the Spencer Theater in Alto, and beginning the process of divesting DCA of the Ribera Schoolhouse property in Rio Arriba county.
- I launched a search for a professional Facilities Manager, which resulted in the hiring of a licensed civil engineer with over 30 years' experience in managing public projects.
- We have initiated a formal relationship with Property Control Division to assist in the management of large construction projects to ensure that procurement procedures in DCA are properly adhered to in the future. One of my first directives to our new Facilities Manager was to develop a condition assessment index for all DCA properties and equipment.
- Our Facilities Manager immediately toured and continues to conduct ongoing site visits to all DCA facilities across the state to assess condition and need.
- We have conducted database and IT systems research and have met with Property Control and DFA Local Governments Division to review their systems. We are developing our own in-house condition assessment database utilizing best practices learned from our research and site evaluations.
- Last year, during the preparation of our five-year plan, I identified DCA's risk of loss and exposure for the collections held on behalf of the state (approximately $450 million), facilities and structures (approximately $200 million), and potential

loss of earned revenues (indeterminate value) resulting from facility closures due to emergency repair situations and loss of rentals due to unattractive facilities and grounds conditions.

DCA's Capital Outlay Repair Process: The five-year plan submitted by DCA prioritizes all capital outlay repair needs department-wide across five years, based on reducing the risk to the state – due to theft, vandalism, fire, property deterioration, injury, and potential loss in earned admissions and rental revenues. We do not prioritize requested projects within each year, because given the small percentage of repairs funded by the Legislature (approximately 13% of the request annually, since 2004) we can not adhere to a plan developed for ten times the available budget. Instead, individual projects are prioritized by DCA once total repair funding is known each year. A sustainable source of funding would enable DCA to plan for repairs in advance rather than continuously requesting large sums from the Legislature which are subject to other factors during the legislative process each session.

Ribera Schoolhouse: Selling Ribera Schoolhouse was the best course of action for the State of New Mexico, in order to divest ourselves of an economic burden for which the state did not have funding and which was not sustainable. The cost to the state would have been significantly higher if we had continued improving the structure and had attempted to cover operating costs for programs without a statewide mission. At the time of sale, although it is true that the state had invested $600.0 to stabilize deteriorating walls of the historic structure and to remove an asbestos laden roof, the structure DCA was charged with had no floor, roof, windows, or doors, and several of its walls were incomplete. These conditions resulted in an appraised value of only $39.0, for a property which would require over a million more in improvements to become operable. DCA sold the property for its appraised value.

Art in Public Places (AIPP). The AIPP program serves a valuable role in New Mexico, beautifying public spaces and stimulating a critical sector of New Mexico's market. Our state is recognized throughout the country for arts and culture, and this program ensures that art is placed in public buildings statewide, not only urban centers. The state's public art collection is tracked in the same way that museum collections are tracked; which is, they are listed and reported to Risk Management for purposes of risk coverage to the state, but not listed as assets on the department's inventory. The LFC audit confirms that upon spot checking randomly selected AIPP artworks, each piece was in its proper location. Although there have been problems with the AIPP database for the better part of a year, the newly updated database system is expected to be complete by summer's end. This will enable the department to produce complex reports in a timely fashion.

Library General Obligation Bonds The GO Bond program has significant support across the state and provides library materials at all public and tribal libraries. DCA's transparent process for allocating the funds garners statewide support from the library community. DCA will continue to work with DFA towards any improvements that might further expedite the process for expenditure of GO Bond funds, while at the same time ensuring financial protections are in place.

In closing, I wish to thank you for your attention to the DCA's cultural facilities and programs, and for the opportunity to respond to the report. A more detailed response to the report's "findings" and "recommendations" will be provided under separate cover, upon completion of a more thorough review of the audit report.

Respectfully,

Veronica N. Gonzales
Cabinet Secretary

APPENDIX A: Evaluation Objectives, Scope And Methodology

Evaluation Objectives.

- State funds are being used effectively
- Benefit to the state
- Compliance with law

Scope and Methodology.

- Review laws, statues and rules
- Review department policies and procedures
- Review procurement process
- Assess risk and review internal controls
- Conduct site visits where applicable

Evaluation Team.
Jeff Canney, Program Evaluator

Authority for Evaluation. LFC is authorized under the provisions of Section 2-5-3 NMSA 1978 to examine laws governing the finances and operations of departments, agencies, and institutions of New Mexico and all of its political subdivisions; the effects of laws on the proper functioning of these governmental units; and the policies and costs. LFC is also authorized to make recommendations for change to the Legislature. In furtherance of its statutory responsibility, LFC may conduct inquiries into specific transactions affecting the operating policies and cost of governmental units and their compliance with state laws.

Exit Conferences. The contents of this report were discussed with the Department of Cultural Affairs on 6/12/13.

Report Distribution. This report is intended for the information of the Office of the Governor; Department of Cultural Affairs; Department of Finance and Administration; General Services Department; Office of the Attorney General; Office of the State Auditor; and the Legislative Finance Committee. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Charles Sallee
Deputy Director for Program Evaluation

DRAFT DCA 5 Year Capital Outlay Plan
2013 Session Preliminary Planning Document

revised 11/13/2012

ICIP Priority #		2013 Session Request BFY 2014	2014 Session Request BFY 2015	2015 Session Request BFY 2016	2016 Session Request BFY 2017	2017 Session Request BFY 2018	2011 Special Funded BFY 2012	2012 Session Funded BFY 2013
1	**Statewide Repairs & Maintenance of DCA-Wide Cultural Assets**							
1-a	**Environmental Climate Control** Reduce Risk to collections and facility closures	1,460.0	1,000.0	455.0	255.0	175.0	460.4	0.0
1-b	**Roof Repairs** Prevent damage to collections, deterioration of structures, hazardous public areas	600.0	20.0	255.0	20.0	20.0	269.7	0.0
1-c	**Safety Compliance: Fire Suppression & Security Systems** Protection from fire, theft, vandalism	1,650.0	1,000.0	850.0	190.0	300.0	2.0	0.0
1-d	**Health and Safety Hazards** Address hazards to ensure well-being of visiting public	905.0	890.0	955.0	970.0	20.0	41.0	0.0
1-e	**Property Preservation & Stabilization** Preservation & stabilization of historic structures and cultural sites	3,100.0	2,240.0	1,625.0	1,110.0	495.0	33.3	0.0
1-f	**ADA Compliance & Operating Efficiencies** Ensure public accessibility & improve operating efficiencies	1,005.0	1,705.0	730.0	575.0	350.0	0.0	0.0
1-g	**General Repairs** Avoid escalating costs of deferred maintenance through delayed repairs	633.0	445.0	380.0	240.0	420.0	83.8	0.0
1-h	**Emergency Repairs and Maintenance** Emergency repairs & maintenance not yet identified which arise during the course of operation.	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	109.8	500.0
	Total	**10,353.0**	**8,300.0**	**6,250.0**	**4,360.0**	**2,780.0**	**1,000.0**	**500.0**
2	**Cultural Facilities -- Project Completion**							
2-a	**Archaeology Ctr:** shelving, matching Save Americas Treasures grant	350.0	500.0	500.0				
2-b	**MNH&S** Education Wing completion: plan, design, construct, FF&E	1,050.0						
2-c	**Bosque Redondo** St. Monument Ph II Exhibit - Pln, Dsgn, Constr	500.0						
2-d	**FRHM,** Complete Exhibits Masterplan Ph 1 & 2: Outdoor Exhibits & Venues	450.0						
	FRHM Complete Exhibits Masterplan Ph 3 Plan, Design, Constr		600.0	600.0				
	FRHM Complete Exhibits Masterplan Ph 4 (Demo Arena) Plan, Design, Constr				850.0	150.0		
2-e	**NHCC** Landscape/Improvements to Campus	400.0	200.0	200.0	200.0			
2-e	**NHCC** Education Complex Interior completion	200.0						
2-e	**NHCC** Signage for Campus	150.0						
2-f	**Ft Selden,** completion of property ownership acquisition agreements	100.0						
	Total	**3,200.0**	**1,300.0**	**1,300.0**	**1,050.0**	**150.0**	**0.0**	**0.0**
3	**Equipment**							
3-a	**Space History Museum** IMAX Theater equipment	750.0	750.0					
3-b	**MRD,** Conservation Lab & Exhibitions Equipment	130.0						
3-c	**NHCC:** Performing Arts Ctr Equipment	300.0	225.0	225.0	225.0	225.0		
3-d	**HPD:** ARMS Compactor Shelving (Archeological Records System files)	150.0						
3-e	**MNH&S:** Planetarium Projector Conversion to Digital/3D	750.0	750.0					
3-f	**DCA-Wide** IT Equipment Upgrades/Infrastructure	200.0	200.0	200.0	200.0	200.0		

DRAFT DCA 5 Year Capital Outlay Plan

2013 Session Preliminary Planning Document

revised 11/13/2012

ICIP Priority #		2013 Session Request BFY 2014	2014 Session Request BFY 2015	2015 Session Request BFY 2016	2016 Session Request BFY 2017	2017 Session Request BFY 2018	2011 Special Funded BFY 2012	2012 Session Funded BFY 2013
3	**Equipment, continued**							
3-g	**NMHM/POG:** Fray Angelico Chavez Library Photo Archives Compactor Shelving	150.0						
3-g	**NMHM:** AV System Equip Upgrade	250.0		350.0				
	Total	**2,680.0**	**1,925.0**	**775.0**	**425.0**	**425.0**	**0.0**	**0.0**
4	**Exhibit Upgrades**							
4-a	**State Monuments** Exhibit Renovations and Preservation of Historic Ruins	300.0	300.0	300.0	300.0	300.0		
4-b	**Space History Museum** Exhibit upgrades	500.0	500.0	500.0				
4-c	**DCA-Wide Exhibitions** - Technological Renovations - design, construct, install	125.0	125.0	125.0	125.0	125.0		
4-d	**MRD:** Museum Van Outreach Exhibitions, design, purchase, construct, install (1 van)	30.0	30.0	30.0	30.0	30.0		
4-e	**MoA:** Educational Space and Café, feasibility plan	50.0						
	MIAC: Core Exhibition (Here,Now Always) Renovation - Pln, Dsgn, Constr		500.0					
	NMHM POG NE Gallery Upgrades (Iberian Collection)		150.0					
	NHCC Visual Arts Ctr Renovations, Remodel Entrance & Upgrade Collections Storage		350.0					
	MNH&S Paleozoic Hall & exhibit renovation; plan, design construct					1,500.0		
	FRHM Main Gallery Renovations, Pln, Dsgn, Constr				1,000.0	1,000.0		
	Total	**1,005.0**	**1,955.0**	**955.0**	**1,455.0**	**2,955.0**	**0.0**	**0.0**
5	**Expansions/Acquisitions/Planning**							
5-a	**Santa Fe Museums Masterplan:** Develop SF Campus Masterplan, including 599 Campus, Downtown, Museum Hill, Halpin, Collections, Exhibits & Conservation for MoA, MOIFA, NMHM, MIAC, OAS, Monuments, HPD/ARMS	300.0						
	Museum 599 - Collections Facility, design, construct, FF&E			2,000.0	2,000.0			
	Museum 599 Archaeological Center Collections Expansion, design, construct, FF&E			2,400.0				
	Museum 599 Archaeological Records Management System (HPD/ARMS), design, construct, FF&E					2,000.0		
	NMHM/POG Collections Expansion		125.0	1,000.0				
	Laboratory of Anthropology: Pln, Dsgn, Constr, FF&E				300.0	1,000.0		
	Conservation Lab, 599 Campus, plan, design, construct, FF&E				300.0	1,000.0		
	MOIFA: Textile Ctr, Pln, Dsgn, Constr, Equip				300.0	1,000.0		
	MoA: New Wing Addition, Plan		300.0	3,000.0				
	MNH&S Traveling Exhibit Hall, plan, design, construct, FF&E		250.0	3,000.0	3,000.0			
	NHCC Annex - Design & Construction			350.0	2,000.0	2,000.0		
	Total	**300.0**	**675.0**	**11,750.0**	**7,900.0**	**7,000.0**	**0.0**	**0.0**
	Grand Total	**17,538.0**	**14,155.0**	**21,030.0**	**15,190.0**	**13,310.0**	**1,000.0**	**500.0**

APPENDIX C: Omni Development Corporation Request for Payment #1

CONTRACTOR'S APPLICATION for PAYMENT

PAGE 1 OF 2 PAGES

CAP702 SUMMARY PAGE

Application No.: 1
Application Date: 6/10/2010
Period To: 5/31/2010
Contract Date: 9/16/2009
Architect Project#: A08087

Distribution to:
- [x] OWNER
- [x] ARCHITECT
- [ ] CONTRACTOR
- [ ] CONSTRUCTION MGR

TO:
Department of Cultural Affairs
725 Camino Lejo
Santa Fe, NM 87501

PROJECT:
50500-0000012509

FROM CONTRACTOR:
Omni Development Corporation
1202 Parkway Drive, Suite B
Santa Fe, NM 87507
(505)424-3565

VIA ARCHITECT:
M & E Engineering
1222 Luisa Street, Suite B
Santa Fe, NM 87505
(505)983-2389

CONTRACT FOR:
Construction of Ribera Community Center

1. Original Contract Sum			593,000.00
2. Change Order Summary	ADDITIONS	DEDUCTIONS	
Total changes approved in previous months by Owner	0.00	0.00	
Total approved this Month	0.00	0.00	
TOTALS	0.00	0.00	
	Net Change by Change Orders		0.00
3. CONTRACT SUM TO DATE (Line 1+ - 2)			593,000.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on CAP703)			30,810.46
5. RETAINAGE: a. 0.00 % of Completed Work (Columns D + E on CAP703)		0.00	
b. 0.00 % of Stored Material (Column F on CAP703)		0.00	
Total Retainage (Line 5a + 5b or Total in Column I of CAP703)			0.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total)			30,810.46
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)			0.00
8. CURRENT PAYMENT DUE			30,810.46
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)			562,189.54

Contractor Certification:

(Signature)

Date: 6/19/2010 State of:
County of:

Subscribed and sworn to before me this 19 day of May, 2010
Notary Public:
My Commission expires: 3/28/11

ARCHITECT'S CERTIFICATION:
The Architect's signature here certifies that, based on their own observations, the Contract Documents and the information contained herein, the document accurately reflects the work completed in this Application for Payment.
The Architect also certifies the Contractor is entitled to the amount certified for payment.

AMOUNT CERTIFIED:

(Architect's Signature) Date May 19, 2010

OK 5.20.10

Software by: PBM Software Systems, Inc. 1-800-803-4343 Copyright 2007 ©

APPLICATION FOR PAYMENT - CONTINUATION SHEET

CAP703 Page 2 of 2 Pages

From:
Omni Development Corporation
1202 Parkway Drive, Suite B
Santa Fe, NM 87507
(505)424-3565

To:
Department of Cultural Affairs
725 Camino Lejo
Santa Fe, NM 87501

Project:
50500-0000012509

Application No: 1
Application Date: 5/19/2010
Period To: 5/31/2010
Contract Date: 9/16/2009
Architects Project#:
A08097

A Item No	B Description of Work	C Contract Value	D Work Completed: From Previous Application (D + E)	E Work Completed: This Period	F Materials Presently Stored (Not In D or E)	G Total Completed and Stored To Date (D+E+F)	% (G / C)	H Balance To Finish (C - G)	I Retainage (If Variable Rate)
1	Drawings & Specifications	95,200.00	0.00	26,464.00	0.00	26,464.00	28	69,736.00	0.00
2	Bonds,Permits,Mobilization	25,000.00	0.00	2,500.00	0.00	2,500.00	10	22,500.00	0.00
3	New Roof/Structure	210,762.00	0.00	0.00	0.00	0.00	0	210,762.00	0.00
4	Archaeological Studies	5,500.00	0.00	0.00	0.00	0.00	0	5,500.00	0.00
5	Asbestos Abatement Lead Remova	140,000.00	0.00	0.00	0.00	0.00	0	140,000.00	0.00
6	Foundation/Stabilization	60,000.00	0.00	0.00	0.00	0.00	0	60,000.00	0.00
7	New Electrical	15,000.00	0.00	0.00	0.00	0.00	0	15,000.00	0.00
8	Water Well Upgrade	5,000.00	0.00	0.00	0.00	0.00	0	5,000.00	0.00
9	NMGRT @6.375%	35,538.00	0.00	1,846.46	0.00	1,846.46	5	33,691.54	0.00
		593,000.00	0.00	30,810.46	0.00	30,810.46	5	562,189.54	0.00

Software by: PEM Software Systems, Inc. 1-800-803-1315 Copyright 2007 ©

CONTRACTOR'S APPLICATION for PAYMENT

PAGE 1 OF 2 PAGES

CAP702 SUMMARY PAGE

Application No.: 9
Application Date: 3/23/2011
Period To: 3/22/2011
Contract Date: 9/16/2009
Architect Project#: A08097

Distribution to:
- [x] OWNER
- [x] ARCHITECT
- [ ] CONTRACTOR
- [ ] CONSTRUCTION MGR

TO:
Department of Cultural Affairs
725 Camino Lejo
Santa Fe, NM 87501
Phone:(505)660-2793

PROJECT:
60600-000C012509

FROM CONTRACTOR:
Omni Development Corporation
1202 Parkway Drive, Suite B
Santa Fe, NM 87507
(505)424-3565

VIA ARCHITECT:
M & E Engineering
1222 Luisa Street, Suite B
Santa Fe, NM 87505
(505)983-2399

CONTRACT FOR:
Construction of Ribera Community Center

1. Original Contract Sum			593,000.00
2. Change Order Summary	ADDITIONS	DEDUCTIONS	
Total changes approved in previous months by Owner	0.00	0.00	
Total approved this Month	0.00	0.00	
TOTALS	0.00	0.00	
Net Change by Change Orders			0.00
3. CONTRACT SUM TO DATE (Line 1+ - 2)			593,000.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on CAP703)			593,000.00
5. RETAINAGE: a. 0.00 % of Completed Work (Column D + E on CAP703)		0.00	
b. 0.00 % of Stored Material (Column F on CAP703)		0.00	
Total Retainage (Line 5a + 5b or Total in Column I of CAP703)			0.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total)			593,000.00
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)			570,610.49
8. CURRENT PAYMENT DUE			22,389.51
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)			0.00

Contractor Certification:

(Signature)
Date: 3/23/2011 State of:
County of:

Subscribed and sworn to before me this 24 day of March
Notary Public: Rene Ann Romero
My Commission expires: 2/25/2015

ARCHITECT'S CERTIFICATION:
The Architect's signature here certifies that, based on their own observations the Contract Documents and the information contained herein, this document accurately reflects the work completed in this Application for Payment.
The Architect also certifies the Contractor is entitled to the amount certified for payment.

AMOUNT CERTIFIED: $ 22,389.51

(Architects Signature)
Date: 3-28-11

OK to Pay
4/1/11

APPLICATION FOR PAYMENT - CONTINUATION SHEET

CAP703 Page 2 of 2 Pages

From:
Omni Development Corporation
1202 Parkway Drive, Suite B
Santa Fe, NM 87507
(505)424-3565

To:
Department of Cultural Affairs
725 Camino Lejo
Santa Fe, NM 87501
Phone:(505)660-2793

Project:
50500-0000012509

Application No: 9
Application Date: 3/23/2011
Period To: 3/22/2011
Contract Date: 9/16/2009
Architects Project#:
A08097

A Item No	B Description of Work	C Contract Value	D Work Completed From Previous Application (D + E)	E Work Completed This Period	F Materials Presently Stored (Not In D or E)	G Total Completed and Stored To Date (D+E+F)	% (G / C)	H Balance To Finish (C - G)	I Retainage (If Variable Rate)
1	Drawings & Specifications	98,700.00	96,726.00	1,974.00	0.00	98,700.00	100	0.00	0.00
2	Bonds,Permits,Mobilization	25,000.00	25,000.00	0.00	0.00	25,000.00	100	0.00	0.00
3	New Roof/Structure	0.00	0.00	0.00	0.00	0.00	0	0.00	0.00
4	Asbestos Abatement Lead Remova	136,199.63	136,199.63	0.00	0.00	136,199.63	100	0.00	0.00
5	Foundation/Stabilization	210,082.91	205,881.25	4,201.66	0.00	210,082.91	100	0.00	0.00
6	New Electrical	72,505.64	58,004.51	14,501.13	0.00	72,505.64	100	0.00	0.00
7	Water Well Upgrade	5,313.00	5,313.00	0.00	0.00	5,313.00	100	0.00	0.00
8	UST Removal	9,000.00	9,000.00	0.00	0.00	9,000.00	100	0.00	0.00
9	NMGRT @ 6.50%	36,198.82	34,486.10	1,712.72	0.00	36,198.82	100	0.00	0.00
		593,000.00	570,610.49	22,389.51	0.00	593,000.00	100	0.00	0.00

Software by: PEM Software Systems, Inc. 1-800-803-1315 Copyright 2007 ©