UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84251 / September 21, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3978 / September 21, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18816

In the Matter of **Primoris Services Corporation** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Primoris Services Corporation ("Primoris" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-And-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

SUMMARY

1. This proceeding concerns Primoris's failure to (i) devise and maintain a sufficient system of internal accounting controls and (ii) adequately evaluate the effectiveness of its Internal Control over Financial Reporting ("ICFR") as of year-end 2014. Due to these control failures, Primoris also failed to make and keep accurate books and records.

2. At the end of 2014, Primoris learned that it had control deficiencies that affected its accounting for contingent cost estimates and subsequently discovered three related contingency accounting errors. In particular, Primoris did not have effective controls in place for contingency accounting, including, for example, controls related to policies and procedures describing how contingencies should be estimated at the outset of a project, adjusted during a project, or how those estimates and adjustments should be documented.

3. This lack of effective controls led to contingency accounting errors on three long-term construction contracts in 2014 and caused Primoris to record revenue related to those projects in the wrong quarters. When it evaluated the effectiveness of its ICFR for the year, however, Primoris failed to properly assess the potential magnitude of the accounting misstatements that *could have* resulted from those control deficiencies because it only considered errors actually identified and did not consider either the total volume of activity, or the entire class of transactions, exposed to the control deficiencies.

4. Specifically, in 2014 Primoris derived the majority of its revenue and a material percentage of its pre-tax income from approximately 1,100 construction projects that used the percentage-of-completion method of accounting and in most instances involved contingent cost estimates. All projects with contingencies were exposed to the control deficiencies. Yet, in its assessment of ICFR, Primoris did not assess the total value or potential misstatement of all these contingencies and, thus, did not evaluate whether it was reasonably possible any contingency accounting errors would be material to the financial statements. Primoris knew or should have known, however, that the value of its contingency estimates was material to its financial statements, and that it should have assessed that fact in its evaluation of ICFR.

5. In determining that its ICFR was effective for 2014, Primoris concluded that certain compensating controls prevented, or would have detected, accounting errors that could have led to a material misstatement in its financial reporting. But, these compensating controls were either not tested in 2014 or not designed to identify errors in contingency accounting. Accordingly, Primoris should not have relied on these compensating controls in its evaluation of ICFR for 2014.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. By failing to properly evaluate its ICFR for 2014, Primoris failed to identify a material weakness in its ICFR for that year, concluding instead that the lack of controls was only a significant deficiency.

7. As a result of the foregoing, Primoris violated Exchange Act Sections 13(b)(2)(A) and (B) and Rule 13a-15(c) thereunder.

RESPONDENT

8. Primoris, a Delaware corporation based in Dallas, Texas, is a holding company that provides a wide range of construction, fabrication, maintenance and engineering services to utilities, municipalities and other customers. Primoris's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its securities trade on the NASDAQ Select Global Market under the symbol "PRIM."

FACTS

Statutory Requirements

9. Section 13(b)(2) of the Exchange Act requires public companies, among other things, to (i) make and keep accurate books and records and (ii) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP. *See* 15 U.S.C. § 78m(b)(2)(A)-(B).

10. Exchange Act Rule 13a-15(a) requires issuers, including Primoris, to maintain ICFR. *See* 17 C.F.R. § 240.13a-15(a). Rule 13a-15(f) defines ICFR as:

> [A] process designed by, or under the supervision of, the issuer's principal executive and principal financial officers, or persons performing similar functions, and effected by the issuer's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles[.] 17 C.F.R. § 240.13a-15(f).

11. Exchange Act Rule 13a-15(c) requires management – with the participation of the principal executive and principal financial officers (or persons performing similar functions) – to evaluate the effectiveness of ICFR as of the end of each fiscal year. *See* 17 C.F.R. § 240.13a-15(c). Under Rule 13a-15(c), management may satisfy its obligation by conducting an evaluation in accordance with interpretive guidance issued by the Commission in Release 34-55929, *Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934* (the "2007 Guidance").

12. Item 308 of Regulation S-K requires management to provide an annual report that contains its assessment of the effectiveness of ICFR and any material weakness in ICFR. Under Item 308, "[m]anagement is not permitted to conclude that the registrant's [ICFR] is effective if there are one or more material weaknesses in the registrant's [ICFR]." 17 C.F.R. § 229.308.

13. Item 308 of Regulation S-K instructs that the "registrant must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the registrant's [ICFR]".

14. Rule 1-02(a)(4) of Regulation S-X defines categories of ICFR deficiencies based on the severity, as follows:

- A "material weakness" is a "deficiency, or a combination of deficiencies, in [ICFR] such that there is a reasonable possibility that a material misstatement of the registrant's annual or interim financial statements will not be prevented or detected on a timely basis." (emphasis added).

- A "significant deficiency" is a "deficiency, or a combination of deficiencies, in [ICFR] that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of the registrant's financial reporting." *Id.*

15. Item 308(a)(3) of Regulation S-K requires public companies such as Primoris to annually provide a report of management that discloses material weaknesses that have been identified by management.

Primoris's Control Deficiencies

16. In 2014, Primoris used the percentage-of-completion method of accounting for revenue recognition for its fixed-price contracts and identified this method as a significant accounting policy in its Form 10-K. In the percentage-of-completion method, issuers calculate their estimated revenues earned using estimates for the value of their contracts and the total costs expected for those contracts. In estimating the costs associated with its long-term construction projects, Primoris often included a "contingency" for the risks inherently associated with those projects. Contingencies include, for example, unanticipated costs caused by weather delays, third-party design errors, subcontractor performance, or supplier delays. As a project progresses, and the risk of unanticipated costs decreases, contingency cost expectations should be reduced, which would result in an increase in the percent complete and an increase in revenue for the project. Primoris's calculation of, and decisions to adjust, contingency estimates, therefore, had a significant impact on its revenue recognition, including whether, and when, it recognized profits on its construction projects that used the percentage-of-completion method of accounting.

17. Despite the potential impact contingencies had on its ability to accurately recognize revenue, Primoris did not have written policies or procedures describing how contingencies should be estimated at the outset of a project, adjusted during a project, or how those estimates and adjustments should be documented. Nor did Primoris have written policies or procedures describing how to determine when contingencies should be changed throughout a project.

18. Primoris also did not sufficiently document its process for evaluating the specific risks contained in its initial contingency estimates for a project. Nor did it adequately document whether those risks continued to exist throughout a project and, if so, the likelihood that such a

risk would come to fruition. More generally, Primoris did not create adequate documentation to support or justify its contingency determinations or document the reasons for changes it made to those contingencies, including when it released contingencies.

Accounting and Books and Records Errors Caused by the Control Deficiencies

19. In March 2015, Primoris learned it had three accounting errors related to contingencies in its West Construction Services Segment ("WCSS") that led to that segment's failure to reduce contingent cost expectations and recognize revenue and profits in the appropriate quarter.

20. First, Primoris determined that WCSS received a payment and completion notice in the last week of December 2013, which should have caused it to close the project, reduce the remaining contingent cost expectations to zero, and recognize revenue and profits of approximately $359,000 in the fourth quarter of 2013. However, Primoris did not reduce the contingent cost expectations or recognize the revenue and profits until the first quarter of 2014.

21. Second, on another WCSS project, Primoris reduced the contingent cost expectations and recorded revenue and profits of approximately $808,000 in the first quarter of 2014. But, that project was completed and paid in the second quarter of 2013, and Primoris determined that it should have reduced the contingent cost expectations and recorded the revenue and profits no later than the fourth quarter of 2013.

22. Finally, on a third WCSS project, Primoris determined that it prematurely reduced the contingent cost expectations to zero in the third quarter of 2014 instead of the fourth quarter, which caused it to record approximately $178,000 of excess revenue and profits in the wrong quarter.

23. As a result of these errors, Primoris failed to accurately make and keep books and records regarding the contingencies associated with long-term construction projects and, thus, the company's revenues.

Primoris's Failure to Properly Evaluate ICFR

24. Primoris conducted an internal investigation of its contingency accounting practices in 2014 and identified a number of concerning email communications among division level executives, project controls managers, and others in the WCSS. Specifically, the emails used terms such as "cushion," "cookie jars," and "sandbagging" when referring to contingencies on WCSS projects.

25. Despite learning of the control deficiencies and accounting errors described above, in its assessment of ICFR for 2014 Primoris failed to properly assess the potential magnitude of the accounting errors it identified. Primoris only considered the specific accounting errors it identified; it did not consider either the total volume of activity, or the entire class of transactions, exposed to the control deficiencies.

26. In 2014, Primoris had approximately 1,100 construction projects that used the percentage-of-completion method of accounting and in most instances involved contingent cost

estimates. All of these projects with contingent cost estimates were exposed to the control deficiencies. Yet, in its assessment of ICFR, Primoris did not assess the total value or potential misstatement of all these contingencies and, thus, did not evaluate whether it was reasonably possible any contingency accounting errors would be material to the financial statements. Primoris was aware of certain information, however, that indicated its contingency estimates were material to its financial statements and that should have prompted it to properly assess the potential magnitude of any accounting errors that *could have* resulted from the control deficiencies.

27. For the 2014 year-end audit, Primoris prepared a summary for its auditors of 35 of its largest construction projects. These jobs accounted for approximately 50% of the company's 2014 revenue, included contingency estimates, and were primarily accounted for using the percentage-of-completion method. According to the summary, the contingencies for these projects were valued at approximately $17.9 million, which was approximately 17.5% of Primoris's pre-tax income for the year. Although Primoris knew or should have known after preparing this summary that the value of its contingency estimates was material to the financial statements, Primoris did not consider that fact when assessing the control deficiencies.

28. Primoris concluded that it had a significant deficiency in its ICFR related to contingency accounting, but that it did not have a material weakness in its ICFR for 2014 because it believed that certain compensating controls would have prevented or detected a material misstatement in its financial statements. But, these compensating controls were either not tested in 2014 or not designed to identify errors in contingency cost accounting. Accordingly, Primoris should not have relied on them to conclude that its ICFR was effective.

29. Moreover, as Primoris knew when it evaluated its ICFR for 2014, several individuals who sent and received the concerning emails (described above in paragraph 24) were also responsible for providing the information used in the compensating controls.

30. Finally, despite the requirements of Item 308 of Regulation S-K noted above, Primoris also failed to generate or maintain documentation providing reasonable support for its assessment of ICFR.

31. For the reasons described above, Primoris failed to properly evaluate its ICFR for 2014 and, in doing so, failed to conclude that it had a material weakness in ICFR for that year.

VIOLATIONS

32. As a result of the conduct described above, Primoris violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

33. As a result of the conduct described above, Primoris violated Section 13(b)(2)(B) of the Exchange Act, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles.

34. As a result of the conduct described above, Primoris violated Rule 13a-15(c) of the Exchange Act, which requires a company to evaluate the effectiveness of its system of ICFR.

PRIMORIS'S REMEDIAL ACTS

35. At the end of 2014, Primoris began initiating a series of changes and improvements aimed at enhancing its ICFR, including the standardization of financial accounting processes and systems across segments and recently-acquired divisions. Over the next three years, Primoris also undertook other steps to enhance its control environment and remediate the deficiencies, including the establishment of formal contingency documentation and management policies**.**

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Primoris's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Primoris cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rule 13a-15(c) thereunder.

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $200,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Primoris Services Corporation as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street N.E., Washington, DC 20549-8549.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary