

FINAL

MANAGEMENT AUDIT REPORT

OF

THE MANAGEMENT OF

THE DOWNTOWN ACTION TEAM LEASE AND THE

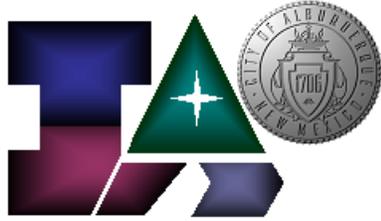
DOWNTOWN ALBUQUERQUE BUSINESS

IMPROVEMENT DISTRICT

REPORT NO. 01-106DAT



CITY OF ALBUQUERQUE
OFFICE OF INTERNAL AUDIT



Internal Audit

City of Albuquerque
P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

August 25, 2004

Internal Audit Committee
City of Albuquerque
Albuquerque, New Mexico

Audit: Management of the Downtown Action Team Lease and the Downtown Albuquerque
Business Improvement District
Citywide
01-106DAT

FINAL

INTRODUCTION

The Office of Internal Audit reviewed the City management of, and vendor compliance with, leases with the Downtown Action Team (DAT). DAT has had several agreements with the City relating to downtown revitalization.

The audit also reviewed the activities of the Downtown Albuquerque Business Improvement District (BID). The BID was established by a City ordinance, under the authority of state statute. The Ordinance appointed the DAT as the management committee of the BID.

Background Information

The Downtown Action Team, Inc. (DAT) is a nonprofit organization “formed to promote, organize and manage the revitalization of the Downtown area of Albuquerque, New Mexico. Any person who has an interest in the City of Albuquerque’s prosperity and a special commitment to the economic well-being and quality of life in the Downtown area may be a member of the organization. DAT serves as the management committee for the Downtown Albuquerque Business Improvement District (BID). . . . In addition to BID, DAT manages activities in connection with the Growers Market, 4th Street Mall, and Studio Arts Tours.” The DAT was originally formed in 1991.

City Ordinance §14-18-1 ROA 1994, established the BID in 2000. Ordinance §14-18-6 appoints DAT as the management committee for the BID. The BID was formed to “. . .provide enhanced services to properties located within the central business district. The BID will finance supplemental services including safety ambassadors and image enhancement programs above and beyond those

currently provided by the City.” The BID is financed by way of an improvement district benefit fee, which is assessed against the real property parcels located within the boundaries of the improvement district. Prior to the adoption of the Ordinance, a Downtown Planning Group of private citizens prepared a “BID Business Plan”, and submitted it to the City Council in May 2000. The ordinance refers to the BID Business Plan that was prepared by this group.

The ordinance requires DAT to submit an annual budget in accordance with the BID Business Plan to the City Council for its review and approval. The ordinance also requires DAT to annually submit a recommendation to the City Council for the benefit fee amounts to be assessed against the properties that are located in the BID. Additionally, the ordinance requires that DAT annually file a report of the improvement district activities for the preceding fiscal year and complete audited financial statements. The BID is budgeted based on the calendar year, with the first year beginning on January 1, 2001.

The BID Business Plan established a “BID Property and Business Owners Committee.” According to the BID Business Plan, this committee “. . . will be charged with developing annual budgets, making assessment rate recommendations, and monitoring the delivery of day-to-day services.” The BID Business Plan further stated that the committee members would represent each geographic area of the BID, and a variety of business and use types.

Some time during 2001, the DAT Board of Directors made a decision to combine the financial affairs of the BID and the DAT. The accounting and financial reporting activities of the DAT and the BID have been combined. According to the DAT President, the City was not consulted prior to combining the financial affairs of the DAT and the BID.

This audit and its conclusions are based on information provided through interviews, tests and reviews of current procedures.

AUDIT OBJECTIVES

The objectives of our audit are to determine:

- Is the City providing oversight of the BID to ensure that its activities comply with the BID Ordinance and approved plans and budgets?
- Is DAT, in its role as the Management Committee of the BID, complying with the terms of the BID Ordinance and approved plans and budgets?
- Is the City managing the contracts with DAT and ensuring that the services are performed in accordance with the contract scope?

- Is DAT in compliance with the terms of its contracts?

SCOPE

Our audit did not include an examination of all the functions, transactions and activities related to the City's leases with DAT and the activities of the BID. Our audit testwork was limited to the documentation and other information that was available related to the City and its relationships with the organizations. The audit covered the period from the inception of the leases through the most current documents available; in most cases through December 31, 2003.

The audit was conducted in accordance with Government Auditing Standards, except Standard 3.49, which requires an external quality review.

METHODOLOGY

We identified the risks to the City associated with the lease with DAT that was active in FY2004 and activities of the BID since its inception in January 2001. We examined the controls in place at the City to mitigate risks. This was accomplished through review and analysis of available documents and interviews with key personnel.

We identified the obligations and performance requirements for DAT and BID as specified in the agreement, lease, Ordinances and approved plans and budgets. We verified compliance through examination and analysis of available documents and interviews with key personnel at the City and DAT.

FINDINGS

The following findings concern areas that we believe could be improved by the implementation of the related recommendations.

1. THE CAO SHOULD ASSIGN A DEPARTMENT THE RESPONSIBILITY TO MONITOR THE ACTIVITIES OF THE MANAGEMENT COMMITTEE OF THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT.

The City has not assigned a specific department or division the responsibility to monitor the activities of the management committee of the BID. The City collects the annual benefit fee amounts paid by property owners in the BID, and remits these monies to the DAT. The City does very little monitoring to determine if the activities of the DAT are accomplishing the goals stated in the BID Business Plan. The activities of the BID are crucial to the issue of

downtown revitalization, so it is reasonable that a City department or division would be responsible for overseeing the activities of the management committee of the BID.

Although the BID ordinance requires the submission of certain documents such as an annual budget, annual audited financial statements, and an annual progress report, the ordinance does not specify due dates for this information. If a City department or division is going to monitor the activities of the BID, it needs to receive timely information.

There are potential problem issues that relate to DAT management of the BID, which were not previously identified by the City.

RECOMMENDATION

The CAO should assign a department or division the responsibility to monitor the City's activities with the management committee of the BID.

The CAO should consider preparing a proposed revision to the BID ordinance to specify due dates for the submission of certain documents such as the annual budget, annual audited financial statements, and an annual progress report. The proposed ordinance revision should be submitted to the City Council for consideration.

EXECUTIVE RESPONSE FROM THE CAO

“The contract administrator in the Department of Finance and Administrative Services (DFAS) will be assigned the responsibility of monitoring the management committee of the BID. The contract administrator will coordinate that assignment with the person or division responsible for administering the Master Development Agreement, which is expected to be Albuquerque Development Services in the Planning Department. DFAS will continue to provide accounting support to the Albuquerque Development Services.

“The CAO agrees that the BID ordinance was lacking in specifics when it was originally enacted and will ask the Legal Department to review the ordinance in light of the findings in this audit report for possible amendments for Council consideration.”

2. THE ADMINISTRATION SHOULD REVIEW OVERHEAD EXPENSE CHARGES TO THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT.

The "Business Plan for the Downtown Albuquerque Business Improvement District," dated May 2000, states, "Program Management costs are estimated at 12.4% of the BID budget. In BIDs with comparable budgets, management costs typically range from 15% to 20%."

2001 Operating Budget for the Downtown Albuquerque Business Improvement District

The 2001 Operating Budget for the Downtown Albuquerque Business Improvement District states that "Total Program Management" costs will be \$86,300. The 2001 audited financial statements indicate that the "BID program support" was \$128,231 or 50% higher than budgeted.

The DAT President indicated that a portion of the increase in BID program supports costs was related to the following situation: "Various amounts were expended by DAT to fund the start of BID. These costs were funded by money raised by DAT, not BID assessments. However, there was an allocation of expenses from BID to DAT to cover these costs. In 2001, this amount was \$23,987." The BID 2001 operating budget did not make any mention of the BID reimbursing the DAT for these expenses. A notation on a DAT spreadsheet indicated that the \$23,987 was for operating costs incurred in 2000. Since the DAT and BID were combined into one financial entity in 2001, there does not appear to be justification for charging prior period costs to calendar year 2001 expenses.

BID Annual 2002 Budget

The "BID Annual 2002 Budget" indicates that "Management - Personnel" costs are 20% of the budget and indirect "Program Costs" are 13% of the budget. As a result, it appears that 33% of the BID budget is indirect program costs, and 67% of the budget is direct program services for Safe & Clean and Image Enhancement.

The DAT President provided the following information about the program management costs:

"In the BID Annual 2002 Budget, management – personnel costs were 20% of the budget. In the business plan, executive and administrative assistant salaries were allocated to other areas. In the BID annual budget, these salaries were all in the management-personnel category. If the full salaries were listed in the business plan management cost category, it would have been 22% of the BID budget."

The budget that was a part of the 2000 business plan directly allocated 25% of the President's salary and 50% of the Administrative Assistant's salary to Safe and Clean and

25% of the President's salary and 50% of the Administrative Assistant's salary to Image Enhancement. Another 25% of the President's salary was allocated to BID Program Support. Additionally, in 2000, only 10 months of rent was included in the BID budget. In subsequent years, 100% of the President's salary and 12 months of rent was charged to BID Program Support.

It appears that the "Business Plan for the Downtown Albuquerque Business Improvement District", dated May 2000, understated the BID overhead expenses. The business plan stated, "Program Management costs are estimated at 12.4% of the BID budget." This apparently was not a realistic projection.

BID Annual 2003 Budget

The combined 2003 BID budgeted direct costs for Safe and Clean and Image Enhancement were \$438,953. The total BID 2003 budget was \$652,657. Therefore, direct program costs accounted for 67% of the BID 2003 budget. Overhead costs consisting of management employees and indirect program management costs accounted for 33% of the BID 2003 budget.

BID Annual 2004 Budget

BID overhead expenses for management employees and indirect program management costs account for 35% of the BID 2004 budget. This is an increase from the BID 2003 Annual Budget. Direct program services account for only 65% of the BID 2004 budget. Management salaries increased by approximately \$17,000 in the 2004 budget, and program costs increased by more than \$14,000. The 2004 budget does not provide sufficient detail to determine which specific expenditure categories increased. Program costs are budgeted as a lump sum.

The DAT submits an annual budget for the BID to the City along with the recommendation for the benefit fee to be assessed. Although the BID budgets are submitted to the City, it does not appear that City personnel have compared the budgets to the BID Business Plan.

RECOMMENDATION

The CAO should assign a division or department the responsibility to review the reasonableness of the overhead expenses that the DAT charges to the BID.

EXECUTIVE RESPONSE FROM THE CAO

“The CAO agrees that deviations between budgeted and actual amounts should be analyzed when the differences are significant. The CAO does not necessarily agree that analysis of a 2000 business plan against a current year budget would necessarily be the best use of scarce City staff time. Analysis of significant differences between budgeted and actual amounts would be an appropriate task for the contract administrator.”

3. THE CAO SHOULD INFORM DAT THAT IT MUST COMPLY WITH THE PUBLIC INTEREST ORGANIZATIONS ORDINANCE.

The Combination of the Financial Affairs of the BID and the DAT.

After the City Ordinance §14-18-1 ROA 1994 was adopted, the DAT Board made a decision to combine the financial affairs of the BID and the DAT. Financial statements are prepared and audited for the single entity.

The City collects the annual benefit fee amounts from the property owners in the BID, and periodically remits these monies to the DAT. The DAT then deposits these monies into a DAT bank account. Most of the revenues of the DAT are annual benefit fee amounts paid by property owners in the BID. According to DAT audited financial statements, support and revenue sources were as follows:

Support & Revenue Sources	2001	2002
BID Assessments	\$636,206	\$648,862
Contributions	44,932	88,141
Service & property contributions	31,455	57,180
Grants	-	54,389
Insurance claim	-	25,000
Interest	11,478	1,553
Growers Market	4,670	11,854
Membership Dues	2,240	260
4 th Street Mall	790	327
Other Income	90	7,749
TOTAL	\$731,861	\$895,315

According to the DAT President, the City was not consulted prior to combining the financial affairs of the DAT and the BID. We requested copies of the DAT board minutes from the meeting at which the DAT Board approved combining of the financial affairs of DAT and BID. The DAT President informed the auditors that DAT could not locate minutes from the

DAT board meeting or from the DAT Executive Committee meeting at which the board approved combining the financial affairs of the two organizations.

Article XIII of the DAT Bylaws, states, "DAT shall keep complete books and records of account and shall keep minutes of the proceedings of its Board of Directors. . . . Any books, records, and minutes may be in written form or any other form capable of being converted into written form within a reasonable time."

Sections §2-5-1 through §2-5-3 ROA 1994 of the City Ordinance on "Public Interest Organizations" states:

"Any nonprofit organization in the city which receives funds appropriated by the city . . . is hereby declared to be vested with a public interest and subject to the provisions of this article. . . .

"All meetings of a quorum of members of the governing body of an organization described in §2-5-1 above are declared to be public meetings open to the public at all times

"Any such meetings at which the discussion or adoption of any proposed resolution for formal action occurs, and at which a majority or quorum of the governing body of the organization is in attendance, shall be held only after reasonable notice to the public. . . . Such minutes as may reasonably be required by the organization shall be recorded and be open to the public inspection."

We requested a Legal Opinion as to the applicability of the Public Interest Organizations Ordinance to DAT as the management committee of the BID. The Legal Department's opinion stated, "While both organizations are required to comply with the provisions of Sections 2-5-1 through 2-5-5 ROA 1994, both organizations may have a separate agenda for items of business not involving funds appropriated by the city and the discussion of such items by the governing body need not be at a meeting open to the public. The penalty for not complying with this ordinance is that all actions or resolutions of the organization are invalid."

DAT did not comply with the City ordinance requirement that the meetings must be declared public meetings, and minutes must be kept and open to public inspection. Therefore, the decision by the DAT to combine the financial affairs of the DAT and the BID is invalid.

RECOMMENDATION

The CAO should inform DAT that it must comply with the Public Interest Organizations Ordinance.

The CAO should review the DAT's justification for combining the affairs of the two organizations and determine if it is in the best interest of the Business Improvement Districts rate payers.

EXECUTIVE RESPONSE FROM THE CAO

"The CAO will notify the DAT in writing that it must comply with the Public Interest Organizations ordinance.

"The CAO sees no justification for combining the affairs of the DAT, a non-profit organization, and the BID, a special assessment taxing district. The CAO will notify the DAT in writing that separate books of account must be maintained for each organization and each must separately report."

4. THE CAO SHOULD REQUEST THAT DAT PREPARE A PLAN TO BRING THE MANAGEMENT OF THE BID INTO COMPLIANCE WITH THE APPROVED BID BUSINESS PLAN.

The BID Business Plan, dated May 2000, outlines a number of goals that the BID intended to accomplish. According to the DAT President, there has not been a revised business plan; the original business plan is still in effect. The BID Business Plan outlines the process for nominating members of the Property and Business Owners Committee (PBOC).

"The BID Property and Business Owners Committee will create a nominating sub-committee consisting of at least one representative from each geographic area. . . . The nominating sub-committee will seek nominations from throughout the BID, including an annual solicitation of interest to all ratepayers. Based upon the selection criteria outlined in this plan, the nominating sub-committee will develop a recommended slate and submit it to the BID Property and Business Owners Committee for review and endorsement."

We asked the DAT President to provide a list of the current members of the nominating sub-committee, and an explanation of how this membership composition meets the requirements stated in the business plan. We also requested that the DAT provide information regarding the "annual solicitation of interest to all ratepayers."

The DAT President informed us that ". . . the process of nominating new members has been managed between the PBOC co-chairs and myself. We have not conducted a formal

nominating committee to date. The reality is that participation by the property owners has been difficult to maintain.”

RECOMMENDATION

The CAO should request that DAT prepare a plan to bring the management of the BID into compliance with the approved BID Business Plan. Or as an alternative, the CAO could allow the DAT to revise the Business Plan to reflect current operations, and submit the revised Business Plan to the City Council for approval.

EXECUTIVE RESPONSE FROM THE CAO

“If the quote from the DAT President is accurate, it would appear to be more appropriate to direct the DAT to prepare a revised business plan for City Council consideration. The CAO will request that the DAT take that action.”

5. THE CAO SHOULD REQUIRE DAT TO PROVIDE THE CITY WITH COMPLETE RESULTS OF THE BID RATEPAYER SURVEYS.

Annual Survey of BID Ratepayers

The "Business Plan for the Downtown Albuquerque Business Improvement District", dated May 2000, states, "Annual Budget Review Process: . . . The budget review process **will include an annual survey** of ratepayers to determine ratepayer satisfaction with existing services and priorities for new or improved services."

The "Property & Business Owners Annual Survey 2003" results indicate that the majority of respondents believe that Downtown is cleaner, safer and has a better image. However, 51% responded that they have not an increase in business and traffic since the BID was implemented in February 2001. The survey asked the following question about the "2003 approved allocation of funds for the Business Improvement District":

“Do these allocations meet your business or property’s needs?”

The survey results state that 49% of the respondents answered “No” to this question. This may indicate a high level of ratepayer dissatisfaction with services that are provided by the BID.

We asked the DAT President if the DAT made any changes in its operations or funding allocations to address the concerns of the respondents who answered "No" to this survey question. The DAT President indicated that her interpretation of the 49% negative response to the survey question meant that property and business owners wanted more of the budget allocated to marketing efforts. A second question on the survey asked if the respondents were in agreement with reducing the allocation to Clean and Safe and increasing the allocation to Image Enhancement activities. 63% percent of respondents answered "yes" to this question. The survey also asked for suggestions about how the allocation could be improved. DAT did not include the responses in its tabulation of results.

Additionally, the auditors are not able to determine if the 49% negative response to the survey question is solely concerns about the BID's marketing efforts, or if there are other issues that ratepayers are dissatisfied about. In the 2003 BID annual progress report that the DAT submitted to the City Council in November 2003, the DAT did not mention the fact that 49% of the survey respondents indicated that the allocation of BID funds did not meet their business or property's needs.

RECOMMENDATION

The CAO should require DAT to provide the city with complete results of the bid ratepayer surveys. City personnel should review the survey results to determine if ratepayers' needs are being satisfied by the BID.

EXECUTIVE RESPONSE FROM THE CAO

"The CAO could request the complete results of the BID ratepayer survey. However, there might be more effective ways to determine if ratepayers needs are being satisfied currently including, but not limited to, a general meeting for the purpose of obtaining ratepayer input or another survey, depending on when the 2003 survey was completed."

6. THE CAO SHOULD REVIEW DAT PROCEDURES TO ENSURE THAT RELATED PARTY TRANSACTIONS ARE SUBJECT TO PROPER SCRUTINY.

Article IX of the DAT Bylaws states, "DAT is a non-profit, tax-exempt organization, and shall not afford pecuniary gain, incidentally or otherwise, to its members." According to Note H to the DAT December 31, 2002, financial statements, "DAT purchased \$19,037 of products and services from a company owned by a member of the board of directors." A related party transaction is a business deal in which an entity makes a payment to a different business entity; and there are individual(s) who are officers and/or directors in both business entities.

These types of transactions are disclosed in financial statements because they are generally considered to lack the “arms-length” or un-biased characteristic, which is normal in typical business transactions.

There is currently no provision in the BID Ordinance that requires DAT to disclose related party transactions prior to entering in them or to obtain pre-approval for related party transactions business deals. DAT has not complied with its own Bylaws; therefore, it may be in the best interests of the BID ratepayers for the City to impose and enforce restrictions on DAT related party transactions.

RECOMMENDATION

The CAO should prepare a proposed revision to the BID Ordinance that prohibits DAT from entering into related party transactions without first obtaining City approval. The proposed Ordinance revision should be submitted to the City Council for approval.

EXECUTIVE RESPONSE FROM THE CAO

“The CAO notes that DAT, as a non-profit, tax-exempt organization under Section 501(c)(6), presumably, of the Internal Revenue Code, puts its non-profit, tax-exempt status at risk when it engages in related party transactions that provide a pecuniary gain to its members.

“In conjunction with the Legal Department review of the BID ordinance mentioned in Finding 12, the issue of related party transactions will also be considered.”

7. THE CAO SHOULD REASSIGN RESPONSIBILITY FOR THE 4TH STREET MALL LEASE BETWEEN THE CITY AND THE DOWNTOWN ACTION TEAM.

In July 1999, the City and the DAT entered into an agreement for the lease of the 4th Street Mall to the DAT. This leases states that the DAT shall “manage, promote, use per Section 4A, and develop the premises as a pedestrian friendly, retail, commercial and entertainment district.”

Section 10 of the lease states, "For the purpose of keeping the City and the general public informed as to the status and uses made of the 4th street mall premises, and coincident with Lessee's providing the City with the required annual financial reports, lessee shall provide to the City an Annual Activities and Improvements Summary, on each anniversary date of this lease."

In July 2000, the Parks and Recreation Department Director sent a letter to the DAT. This letter reminded the DAT of various lease requirements, and stated "Pages 6 – 10 requires that DAT submit an annual summary of activities and improvements." In July 2000, the DAT sent a letter to the CAO and the Parks and Recreation Department Director which stated, "... the City can expect both an Annual Summary of Activities and Improvements, as well as Annual Financial Statements, in January of each succeeding year of the lease."

The Parks and Recreation Department provided us with a copy of the Annual Summary of Activities and Improvements for 2001. However, the Parks and Recreation Department could not locate a copy of the 2002 Annual Summary. Additionally, the Parks and Recreation Department informed us that as of April 2004, they had not yet received the Annual Summary for 2003. The DAT previously committed to the City to provide this report in January of each year. The Parks and Recreation Department has not enforced this contract requirement.

The Director of the City's Parks and Recreation Department is the mother of the DAT President. Although she was not the Director of the Parks and Recreation Department at the time the lease was signed, there is now an apparent conflict of interest. Responsibility for administration and monitoring of the 4th Street Mall lease should be assigned to another City department.

RECOMMENDATION

The CAO should reassign responsibility for the 4th Street Mall lease between the DAT and the City to another City department. The assigned department should enforce the requirements of the 4th Street Mall lease, including the required annual reports.

EXECUTIVE RESPONSE FROM THE CAO

"The CAO agrees that it would be more efficient for the contract administrator in DFAS to assume responsibility for monitoring the 4th Street Mall lease."

CONCLUSION

The City should improve its administration and monitoring of the agreements and contracts with HDIC and DAT. Required reports and other documents have not all be submitted to the City when required. The Task Force should clarify the language in the Master Development Agreement to ensure that the City's interest in the various projects is better protected. The CAO should ensure that the City is monitoring the activities of the DAT to ensure that BID ratepayer needs are met.

We appreciate the assistance and cooperation of the City personnel during the audit.

EXECUTIVE COMMENT FROM THE CAO

“It came to the attention of the CAO shortly after Albuquerque Development Services was transferred to the Planning Department from the Family and Community Services Department that some degree of fiscal intervention was necessary. The Directors of the Planning and Finance and Administrative Services Departments were asked to work collaboratively to seek solutions and to provide assistance where needed.

“In addition, during the preparation of the FY/05 operating budget, it was determined that the City would benefit from the addition of a contract administrator within the Department of Finance and Administrative Services. The City receives a wide variety of services through contracts, some with substantial and material fiscal impacts. That position was funded by the City Council and a person was hired in July, 2004. It is very probable that at least one additional contract administrator will be identified as a necessary position to provide proper monitoring and oversight of City contracts.”

Principal Auditor

REVIEWED AND APPROVED:

APPROVED FOR PUBLICATION:

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