

MANAGEMENT AUDIT REPORT

OF THE

CONTRACT ADMINISTRATION

AVIATION DEPARTMENT

REPORT NO. 01-116



**CITY OF ALBUQUERQUE
OFFICE OF INTERNAL AUDIT AND INVESTIGATIONS**



City of Albuquerque
Office of Internal Audit and Investigations
P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

March 30, 2005

Internal Audit Committee
City of Albuquerque
Albuquerque, New Mexico

Audit: Aviation Department
Contract Administration
01-116

FINAL

INTRODUCTION

The Office of Internal Audit performed a review of the Aviation Department's contract administration. The Aviation Department (Aviation) has a group of five employees who are responsible for contract administration. As of March 2004, Aviation records show it administers 218 contracts.

Aviation has contracts with vendors who supply goods and or services to the department. Aviation also administers contracts for contractors that pay concession fees, rentals and other fees to the department.

Fiscal Year (FY) 2003 revenues of \$59.3 million include fees of \$14.7 million from airlines, \$7.4 million from rental car agencies, and \$2.8 million from food and gift shop concessionaires. Aviation received total revenues of \$60.8 million in FY2004. Major sources of FY2004 revenues include fees from airlines of \$15.3 million, rental car agencies \$7.4 million, and food and gift shop concessionaires \$3.4 million.

AUDIT OBJECTIVES

The objectives of our audit were to determine:

- Does Aviation have effective contract administration and management policies and procedures?
- Do vendors and contractors comply with the terms of the contracts?
- Does Aviation have internal controls in place to review receipt, deposit, and accounting for revenues received?
- Is the department in compliance with applicable rules, regulations, and laws?

SCOPE

Our audit did not include an examination of all the functions, transactions and activities related to the management of contracts by Aviation. Our audit testwork was limited to contracts that covered services and revenue from January 2000 through March 2003.

We have based this report on our examination of activities through the completion date of our fieldwork, and it does not reflect events after that date. The audit was conducted in accordance with Government Auditing Standards, except Standard 3.49, requiring an external quality control review.

METHODOLOGY

We judgmentally selected a sample of 11 contracts for review. The largest airline and rental car company contracts were selected; and then other revenue contracts were judgmentally selected, based upon the amount of revenue to Aviation. We reviewed contractor performance to verify compliance with the terms and conditions of the contracts.

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

FINDINGS

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

1. AVIATION SHOULD DEVELOP EFFECTIVE CONTROLS TO ANALYZE THE INCREASE OF COSTS TO DETERMINE IF THE INCREASES ARE NECESSARY.

The Rental Car Shuttle Bus Management and Operation Agreement (Agreement) is an agreement that Aviation has with a Contractor to operate a shuttle bus service that picks up airline passengers at the terminal and takes them to the rental car facility, where the passenger can then obtain a rental car. When a passenger returns a rental car, the Contractor takes the passenger back to the airline terminal. Request for Proposal (RFP) 99-029-SV, was issued to solicit proposals for “rental car shuttle bus operation and management.” The RFP stated that one of the requirements for the RFP evaluation process was that potential Contractors submit “An itemized operating budget for the first contract year including sufficient supporting documentation and detail to demonstrate the basis of the operating budget items.” The Contractors’ estimated cost was a major part of the RFP evaluation process. The Contractor who was awarded the contract submitted an operating budget, for the first contract year, which totaled \$1,996,384.

After the Contractor received the award, it informed Aviation that the first year operating budget would have to be increased. The Contractor sent Aviation a revised first-year operating budget dated January 26, 2000, that totaled \$2,170,902. This was a nine percent increase. Aviation approved the budget increase.

The Contractor’s operating budget continued to increase. A February 2001 letter from the vendor stated:

Enclosed is the final 2002 budget - variance information that you requested. In comparing the original expense budget contained in our proposal to the proposed 2002 expense budget 'Total Expenses' increased by \$460,693 broken down as follows:

Total payroll & benefits increased by \$228,032 because of pay increases compounded over a two fiscal year period, shuttle costs increased by \$231,134 due to the higher costs of purchasing and operating CNG buses versus diesel buses.

The Contractor’s operating budget for the period from July 2002 through June 2003 was \$2,575,050. Aviation approved the budget increase. The department actually paid the Contractor \$2.6 million in FY2003.

There was a \$579,000 (29 percent) increase in operating budgets, from the first year budget (in the RFP) to the Fiscal Year 2003 budget. In March 2003, the

Contractor was issued a revised purchase order for \$15 million, to reflect the five-year period of the contract. At an average of \$3 million per year, the contract will cost the City significantly more than was anticipated during the RFP evaluation process.

According to the Contractor, the two major increases in the final 2002 budget were related to additional payroll costs and a decision by the City to use compressed natural gas (CNG) buses. The Contractor had based its bid on the use of low-polluting diesel buses.

The first amendment to the Agreement, dated August 2002, states, “Not later than January 1 of each and every year throughout the term of this agreement, Contractor shall submit for approval by the Director, the Contractor’s proposed operating budget for the period commencing July 1 during such year and ending June 30 of the following year.” The Agreement states, “Contractor shall not exceed such approved budget without the prior written consent of the Director.”

The Aviation contract administrator provided a copy of the contractor’s proposed FY2004 operating budget. The Contractor’s proposed operating budget for the period from July 2003 through June 2004 was \$2,761,587. This was a \$765,203 (38 percent) increase in operating budgets, from the first year budget in the RFP to the FY2004 budget. Aviation may not have adequate controls in place to analyze the increase of costs to determine if the increases are necessary. Aviation actually paid the contractor \$2.9 million in FY2004.

RECOMMENDATION

Aviation should develop effective controls to analyze the increase of costs to determine if the increases are necessary. One possibility would be to restrict any increases to an appropriate inflation index.

Aviation should analyze the effects on future operating costs prior to making decisions to implement requirements for different technologies, such as the acquisition of CNG buses versus low-polluting diesel buses.

Aviation should ensure that the Contractor does not exceed the approved budget without the prior written consent of the Director

EXECUTIVE RESPONSE FROM AVIATION

“The Aviation Department agrees it will develop effective controls to analyze the increase of costs. In the future, costs will

be reviewed by the Contract Specialist, the Contract Manager, the Fiscal Officer, and Associate Director of Finance.

“In December, 2004 the Aviation Department and the shuttle bus contractor made the decision to replace the current fleet of CNG buses with clean-diesel shuttle buses. Beginning in December 2005, and continuing through December 2006, on a predetermined replacement schedule, the current fleet of CNG buses will be completely replaced with diesel buses.

“In the future, the Aviation Department will ensure that all contracts exceeding the approved budget will have prior written consent from the Director.”

2. AVIATION SHOULD ENSURE THAT ALL COST REIMBURSEMENTS ARE REVIEWED FOR ACCURACY AND CONTRACT COMPLIANCE.

Unallowable Expenses

All of the rental car shuttle bus service Contractor’s “reasonable” operating expenses, including labor, are reimbursed by the City. The Agreement states, “As used herein, ‘operating expense’ means a reasonable expense necessarily incurred by Contractor in performance of this Agreement, as approved in writing by the Director.” The Agreement states, “However, ‘operating expense’ shall not include: entertainment, liquor, gifts or other gratuities; out-of-town travel or out-of-town training expenses;”

The Contractor billed Aviation for \$466 of expenses for a Contractor’s employee to go to a convention in Las Vegas. Additionally, in December 2002, the Contractor billed the City for \$1,103 for a Contractor’s employee attending a training conference. The Agreement specifically prohibits the Contractor from charging Aviation for “out-of-town training expenses.” However, Aviation reimbursed the Contractor for these expenses. Aviation Department personnel may not be thoroughly reviewing the Contractor’s invoices prior to payment, to ensure compliance with the terms of the Agreement.

The Contractor billed the City \$9,338 for hotel, travel, and meal costs associated with the start-up of the shuttle bus service. The Agreement did not make any provision for these types of costs. Aviation Department fiscal personnel informed us that the previous Aviation Director had approved the payment of Contractor travel expenses relating to the start-up process in writing. The contract states, “This agreement may only be amended by written instrument, duly executed by both parties hereto.” Because the Agreement between the City and the Contractor

had been executed by the City's CAO, this modification of the terms of the Agreement should have been approved by the CAO.

All of the shuttle buses used by the Contractor are fueled with compressed natural gas. However, the Contractor charged the City for \$2,420 of unleaded fuel and \$134 of diesel fuel in April 2001. The "vehicle description" on these charges was "01 shuttle bus." Since none of the shuttle buses are fueled by unleaded gas or diesel fuel, this may be an incorrect charge that was reimbursed by the City. The Contractor does have one van that uses unleaded fuel. However, it is unlikely that it would have used \$2,420 of unleaded gas in one month. In the future, the City should review invoices to find any inappropriate or incorrectly identified fuel charges.

The Contractor paid its suppliers \$558 in late payment fees. The City then reimbursed the Contractor for these expenses. It does not appear reasonable for the City to reimburse late payment fees incurred by the Contractor. Aviation should not pay for late payment fees caused by the actions of the Contractor.

Vehicle Repair Expenses Caused by Contaminated Fuel

The Contractor sub-contracts the repair and maintenance of the shuttle buses used to transport airline passengers to the rental car facility. In August 2002, the maintenance sub-contractor repaired one of the shuttle buses, and charged \$1,431 for the repair services. The repair order from the maintenance sub-contractor stated that the vehicle had "no power." The invoice from the maintenance sub-contractor stated that the repair work was: "removed and repaired fuel block" and the cause was "contaminated fuel." The City then reimbursed the Contractor for this expense. It does not appear reasonable for the City to reimburse vehicle repair expenses caused by contaminated fuel. The fuel contractor should be responsible for these repair costs. There were additional vehicle repair costs that were apparently caused by contaminated fuel. These included repair costs of \$1,273 in May 2002, \$1,485 in November 2001, \$1,236 in July 2001, and \$1,389 in September 2001.

Aviation Department personnel informed us that the most of fuel for the shuttle buses is obtained from the City's Transit Department. They further stated that there is some contamination in all of this fuel that they obtain from the Transit Department. The auditors asked Aviation Department personnel if they had ever discussed this fuel contamination problem with the Transit Department. They were not able to provide any information regarding this question.

Refundable Deposit

The Contractor entered into a maintenance agreement, for the shuttle buses, with a sub-contractor. The maintenance sub-contractor required that a \$25,000 refundable deposit be made, prior to maintenance being performed on the shuttle buses.

The Contractor paid the maintenance sub-contractor the \$25,000 refundable deposit, and then billed Aviation \$25,000. Aviation then reimbursed the primary Contractor \$25,000. Aviation recorded this \$25,000 reimbursement as an expense in the City's accounting records. Since the deposit is refundable, the correct accounting for this would have been to record it as a \$25,000 deposit. The Aviation Department contract administrator did not know if this \$25,000 charge was allowable under the terms and conditions of the contract.

Good accounting practices require that refundable deposits made by an entity be recorded as an asset. This helps to ensure that the deposit is tracked, and a refund is obtained when allowable. Because of this incorrect accounting, Aviation Department expenses are overstated by \$25,000, and assets are understated by \$25,000.

The Aviation Fiscal Officer stated that he agreed that the deposit should not have flowed through the operating revenue and expenses. He said that every effort will be made to ensure that transactions of this type are correctly classified in the future.

RECOMMENDATION

Aviation should ensure that all cost reimbursements are reviewed for accuracy and contract compliance prior to payment.

Aviation should request repayment from the Contractor for charges that are specifically prohibited by the contract and charges that are not appropriate.

Aviation should ensure that the Transit Department management is made aware of the contaminated fuel issue.

Aviation should determine if the Contractor should have been reimbursed for a deposit. If the amount is not valid under the Agreement, Aviation should request reimbursement from the Contractor. If Aviation determines the payment was appropriate, Aviation should correct the accounting entries to correctly reflect the refundable deposit.

EXECUTIVE RESPONSE FROM AVIATION

“The Aviation Department agrees to ensure cost reimbursements are reviewed for accuracy and compliance. Currently, there are two contract specialists who will administer all contracts, audit cost reimbursements, review accuracy and contract compliance.

“The Aviation Department believes it would be difficult to determine at this time which expenses may have been verbally approved, but not documented by former directors. Thus, it would not be cost effective to expend further time and effort to investigate. Contract specialists are now aware of this issue.

“When the fuel contamination issue came to the attention of the shuttle bus contractor and the Aviation Department in 2001, steps were immediately taken to correct deficiencies in the CNG fuel dispensing system at the Transit Department. The shuttle bus contractor and Aviation Department staff met with PNM officials to voice concerns regarding the contaminated fuel and to develop a plan to correct the problem. PNM agreed to install a two-stage filtering system that would filter out approximately 98% of the contaminants. Following the installation of this new equipment, the instances of fuel contamination, and the repairs resulting from the contamination, were substantially reduced.

“The Aviation Department agrees to take appropriate action to adjust the accounting entries related to deposits paid by sub-contractors.”

3. AVIATION SHOULD DEVELOP AND IMPLEMENT A PROCESS TO ENSURE THAT IT HAS CURRENT CONTRACTS WITH ALL VENDORS AND LESSEES.

Display Advertising

Aviation has a contract with a vendor for the display advertising concession at the airport. The effective date of this contract was September 1992. The contract was for a five year period, and did not have any provision for extensions. The contract expired in August 1997. Although the contract expired six years ago, Aviation continues to do business with this vendor under the terms of the expired contract, on a month-to-month basis.

The City consistently receives more than \$55,000 a year in revenue from this concession contract. For FY2004, the City received approximately \$240,000 in revenue from this concession contract. Under the terms of the expired contract, the City receives 58 percent of the vendor's gross advertising fees. There has not been an adjustment of this fee structure since the origination of this contract.

The City of Albuquerque, Public Purchases Ordinance (5-5-19) states "The following purchases must be approved by the City Council: . . . Concession contracts expected to generate revenues to the City in excess of \$55,000 over a 12-month period. The Mayor shall provide the expected contract amount of all contracts submitted to Council for approval and of any requested extensions of these contracts."

In Flight Catering Services

In April 1972, the City entered into a contract with a Contractor who provides in-flight catering services for airlines. Under the terms of this contract, the Contractor pays the City a commission of eight percent of its gross sales. During 2002, the Contractor paid the City \$164,000 relating to this contract. The contract term was for a period of 20 years and six months, with one option to renew for an additional five-year period. The contract was renewed for the additional five-year period, which extended the term of the contract to October 1997. Although the contract expired in October of 1997, Aviation continues to do business with this Contractor under the terms of the expired contract, on a month-to-month basis.

In January 1997, the Assistant Aviation Director wrote a memorandum to the Director stating that other airports were receiving a 10 percent commission for the same service. In February 1997, the former Director sent the vendor a letter which stated, "We do not wish to extend the present agreement; however, we are willing to negotiate a new Agreement." There is still not a new contract. Aviation may earn more commission if a new contract was negotiated with the present vendor, or if the contract were placed out to bid.

The contract with this vendor states, "The term 'Gross Receipts' as used in this lease shall mean the price actually received for all food, beverages, and merchandise sold and the charges for all services performed for which a charge is made by Lessee in or upon any part of the Demised Premises, whether for cash or credit (whether collected or not); . . ."

In January 2002, the vendor deducted \$13,000 of uncollectible credit sales from its calculation of gross sales. Aviation should request that the vendor pay the commission on this amount.

The Aviation manager who is responsible for the contract administration stated that he was aware that these contracts had expired. He stated that Aviation did not have a process to monitor the expiration date of contracts, and to ensure that contracts are either renewed or put out to bid when they expire. He also stated that the renewal or putting out to bid of these contracts were not a priority, because there were other contractual issues that were considered more important.

RECOMMENDATION

Aviation should develop and implement a process to ensure that it has current contracts with all vendors and lessees. When contracts expire, Aviation should request the involvement of the Purchasing Department to either renegotiate the contract, or prepare a Request for Bids to result in the issuance of a new contract, as appropriate.

Aviation should ensure that City Council approval is obtained if the contract is expected to generate more than \$55,000 a year.

Aviation should ensure that the vendor pays commissions on all sales, as required by the contract.

EXECUTIVE RESPONSE FROM AVIATION

“The Aviation Department agrees it would be appropriate to involve the Purchasing Department when a contract with a vendor is close to expiration and a new contract for goods or services needs to be negotiated, or a Request for Bids needs to be issued. Currently, the Department has a full-time Senior Buyer who has the responsibility for developing and monitoring contracts for goods and services.”

“The Aviation Department agrees to obtain the approval from City Council involving all contracts that generate more than \$55,000 a year.”

“The Aviation Department agrees to ensure that vendors pay commissions on all sales as required by the contract.”

4. AVIATION SHOULD ENFORCE CONTRACT TERMS THAT REQUIRE VENDORS TO PROVIDE ANNUAL STATEMENTS WHICH CERTIFY THAT ALL OF THE REQUIRED FEES HAVE BEEN PAID TO THE CITY

The following general issues were noted with the requirement for revenue statements:

- A reference in some contracts to a “certified” statement is confusing. There is no accounting term that matches that description. Financial statements are audited, compiled or reviewed by Certified Public Accountants. Contractual language should make reference to one of these terms.
- Aviation is not receiving financial statements from certain vendors that are required by the contract. The department is not following up when the required financial statements have not been received.

The following are specific examples of contract issues:

Hotel WG

The City’s lease with Hotel WG states, “Lessee shall also furnish the City annually, covering each annual rental period hereunder, an annual statement, covering all business transacted by Lessee upon which the City is entitled to a percentage rent as provided herein, . . . All annual statements shall be certified by Lessee’s firm of certified public accountants, which firm shall be nationally recognized.”

Aviation personnel informed us that even though the original lease calls for annual reports, the airport has not enforced this provision for several years. They stated that the requirement was overlooked at the time of one of the changes in owners or operators of the hotel.

In-flight catering services

The contract with the vendor who provides in-flight catering services to the airlines also has a requirement for certified revenue statements. As of April 2003, the vendor had not yet provided the required the required certified statement for calendar year 2001.

Because Aviation did not enforce this contractual requirement, it does not have the assurance provided for by the terms of the contract, that the Lessee paid the City all of the monies that it was contractually required.

Gift shop concession

The City's agreement with vendor who operated a gift shop concession requires the Lessee to transmit to Aviation a statement of its gross revenues and percentage rentals due for the previous calendar year. The statements are required by the contract to be audited by the vendor's certified public accountants.

The statements that the vendor has provided have not been audited. For example, the statement submitted by the vendor's certified public accountant in 2000 states, "Because the agreed-upon procedures described above do not constitute an audit, we do not express an opinion on (the vendor's) financial statements for any elements, accounts, or items thereof. . . .Had we performed additional procedures, other matters might have come to our attention that would have been reported to you."

Food and beverage leases

The "Food and Beverage Lease" between the City and a coffee vendor at the airport states, "Beginning one year after the commencement of this agreement, Tenant shall transmit to Aviation a statement of its Gross Revenues and Percentage Rentals due for the previous calendar year. Such statements shall be prepared by Tenant's certified public accountants in accordance with Generally Accepted Accounting Principles."

The tenant submitted financial statements to Aviation, in March 2001. The statements the CPA stated, "A compilation is limited to presenting in the form of financial statements information that is the representation of management. I have not audited or reviewed the accompanying statement and, accordingly, do not express an opinion or any other form of assurance on it." This vendor has been submitting unaudited financial statements since 1997.

All of the other food and beverage leases at the airport contain identical language. Consequently, the other food and beverage vendors are under no contractual requirement to submit audited financial statements to Aviation.

Aviation contract management personnel were not familiar with the terms and conditions of the contracts that they were administering, and were not taking action to ensure that the vendors complied with the contracts.

RECOMMENDATION

Aviation should enforce contract terms that require vendors to provide annual statements that certify that all of the required fees have been paid to the City.

Aviation should ensure that:

- References in contracts should clearly identify whether the required financial statements should be audited, compiled or reviewed by Certified Public Accountants. Contractual language should make reference to one of these terms.
- Aviation should follow up when the required financial statements have not been received.

EXECUTIVE RESPONSE FROM AVIATION

“The Aviation Department has now implemented a property management system that has the ability to track due dates for annual reports for those concession agreements that require them. The Aviation Department has developed a policy to send out reminder notices at least sixty days prior to the due date to those concessionaires who are required to submit an annual report.

“The Aviation Department now has a CPA on staff who has the responsibility to provide guidance to the Aviation Department staff in relation to contract compliance issues, and to provide language which may clarify or re-state provisions within the current leases and agreements.

“The Aviation Department agrees to implement a procedure and designate staff members as points of contact for the submittal of Annual Reports.”

5. AVIATION SHOULD ENSURE THAT ITS CONTRACT ADMINISTRATORS ARE THOROUGHLY FAMILIAR WITH ALL OF THE TERMS AND CONDITIONS OF THE CONTRACTS THAT THEY MANAGE.

Aviation contract administrators are not thoroughly familiar with all of the terms and conditions of the contracts that they manage. This can cause disputes with vendors and a loss of revenue to the City.

Hotel lease

The Airport Hotel Ground Lease began on November 10, 1969, and expires on September 30, 2010. The Airport Hotel Ground Lease between the hotel and Aviation states:

Minimum Rent. . . . The City and Lessee agree that the minimum rent payable hereunder shall be increased or decreased from \$19,180 on an annual basis beginning with the lease year commencing on January 1, 1975, in proportion to the increase or decrease in the ‘All Items Index of Consumer Prices’, as that index is published by the U.S. Department of Labor

The basic index figure for the purpose hereof shall be the all items, consumer price index for the month of October, 1973. If the index figure for the month of October, 1974, is higher or lower than the index figure for October, 1973, then the minimum rent due for the year beginning on January 1, 1975, shall be raised or lowered in proportion to the change in the index

Such calculations and adjustments to the minimum rent shall be made each year during the term hereof

According to the United States Department of Labor, the “Consumer Price Index - All Items” the 1973 amount of \$19,180 would be equivalent in 2004 to \$79,398, based upon the change in the Consumer Price Index.

Aviation Department personnel informed us that the Wyndham Garden Hotel is currently being charged annual “minimum rent” of \$67,968. The hotel has not correctly calculated the minimum rent which is due to the City. The Aviation contract administrator who managed this contract was not thoroughly familiar with the terms and conditions of the contract that specified how minimum rent is to be calculated.

Gift shop concession contracts

Aviation had gift shop concession contracts with three different vendors, prior to the new contracts which came into effect in late 2002. In calendar year 2000, Aviation received \$1,073,922 in revenue from these three vendors. Each of these concession contracts had the following requirement:

“That Lessee shall certify annually that at least 50% of all operational expenditures went to local suppliers, vendors and sub-lessees, partnerships or corporations. Lessee shall submit with said certification an annual report reasonably detailing said local operational expenditures.”

The Aviation contract administrator stated that the department had never required any of the three vendors to comply with this contractual requirement, although the contracts had been in effect since 1991. The Aviation contract administrator was not aware of this requirement in these contracts. After the inquiry by the auditor, the contract administrator asked the three vendors for this information. This caused a dispute/disagreement with at least one of the three vendors. It is very difficult to try to enforce a contract provision years after the contract went into effect. Aviation Department personnel were not even sure what the purpose of this contract requirement was.

RECOMMENDATION

Aviation should ensure that its contract administrators are thoroughly familiar with all of the terms and conditions of the contracts that they manage.

If Aviation determines that a contract clause is unenforceable, or does not have a purpose, it should work with the vendor to delete the clause.

EXECUTIVE RESPONSE FROM AVIATION

***“The Aviation Department is currently reorganizing the Contract and Administration section. The contract specialists will become familiar with all terms and conditions of contracts administered by the Department.*”**

“The Aviation Department has drafted a new Retail Concession Agreement that has eliminated unenforceable contract clauses.”

6. AVIATION SHOULD ENSURE THAT THE REMOVAL OF UNDERGROUND FUEL STORAGE TANKS WAS PROPERLY PERFORMED.

Aviation built a new rental car facility, which opened in March 2001. As a result of this, the rental car companies vacated their old facilities. In May 2000, Aviation sent a letter to all rental car companies, which stated, “Tenant shall file for a permanent closure of their fueling facility with the UST Bureau of NMED and remove and properly dispose of all above and underground storage tanks. Tenant shall be responsible for remediation of contamination, if any, as a result of their fueling operations, and shall provide Aviation with a report certifying that the site is free of hazardous materials.”

Aviation could not provide copies of these certifications from the rental car companies. Underground fuel storage tanks can cause significant environmental problems, if any leaks occur.

In October 2001, Aviation sent the largest rental car company a letter which stated that this company, “. . . did cause the removal of the underground fuel storage tank on its premises. However, the New Mexico Underground Storage Tank Bureau has not certified its lawful removal to the City.” The letter referred to the 1968 contract with this company that required that the site be returned to the City “. . . in as good condition as the same existed at the commencement of its occupancy. . . .”

RECOMMENDATION

Aviation should ensure that it obtains reports certifying that the underground fuel storage tank sites are free of hazardous materials.

EXECUTIVE RESPONSE FROM AVIATION

“The Aviation Department agrees to obtain reports certifying that underground fuel storage tank sites are free of hazardous materials, or to certify the sites themselves through other scheduled projects.”

7. AVIATION SHOULD ADJUST THE GENERAL AVIATION TENANT’S CONTRACT ESCALATION PROVISION.

We selected an agreement, dated November 1980, with the major tenant in the general aviation area of the airport to review. This tenant provides flying services to the general public.

The 1980 agreement with this tenant states, “The Lessor and Lessee agree that the rent payable hereunder shall be increased or decreased beginning with the lease year commencing on December 1, 1985, and, thereafter, on the 1st day of each third year thereafter. If the calculations for any year result in an adjustment of less than \$50.00, then the adjustment shall not be made for that year. Such increase or decrease shall be based on a determination of the actual operating costs for the South General Aviation Area.”

Aviation has never made an adjustment to the rent in the 22-year period the contract has been in effect. According to a November 1999 Aviation Department memorandum, “A cost center for the South General Aviation Area has not been established to enable the department to capture such costs.” Consequently, the department does not have the information necessary to determine if “actual operating costs” have increased, which would support any changes in the rent costs.

This memorandum also stated, “While this escalation provision has yet to be exercised, the current language does not lend itself to making an adjustment without costs being identified.” Although Aviation identified this problem, the agreement was never amended to change the escalation provision to a format that would be easier to implement. The 1980 agreement has been amended seven times because of other reasons.

Since 1980, the inflation rate, as measured by the consumer price index, has risen 118 percent. However, the tenant is still paying a rental rate that was established 22 years ago. Aviation should consider seeking an adjustment of the contract’s escalation provision.

This issue was also identified in a Federal Aviation Administration (FAA) report issued in 1998. According to Aviation Department personnel, this report stated that Aviation had not activated the escalation provisions in the three general aviation tenant leases. The FAA indicated that these findings required action, and stated that adjustments to aeronautical lease rates should be based on a recognized economic index. Aviation Department personnel informed us that the City’s response stated that Aviation would establish procedures to ensure that lease rates are reviewed periodically based on what is allowed in the current lease language. It further stated that a review of all leases would be initiated and those leases that allow for escalation clauses would be enforced. However, the City’s response apparently did not address the FAA’s recommendation that adjustments to aeronautical lease rates should be based on a recognized economic index.

The tenant also sells aviation fuel and lubricants. The 1980 agreement states, “The Lessee covenants and agrees to pay to Lessor as rent hereunder . . . the

following sums: . . . “An amount . . . equal to four cents (\$.04) for each gallon of aviation fuel and five cents (\$.05) for each quart of oil or other lubricant delivered to the Lessee during the preceding calendar month.

In 1989, the commission fee on each gallon of aviation fuel was raised to five cents per gallon. The fee has not been raised since. The commission fee on lubricants has never been raised. Since 1989, the inflation rate, as measured by the consumer price index, has risen 45 percent. Aviation should consider adjusting the commission fees on aviation fuel and lubricants.

RECOMMENDATION

Aviation should adjust the General Aviation tenant’s contract escalation provision, to change it to be based on a recognized economic index, as recommended by the FAA.

Aviation should consider raising the commission fees on aviation fuel and lubricants.

EXECUTIVE RESPONSE FROM AVIATION

“As part of an FY/06 \$9.1 million capital improvement project to rebuild the FBO aircraft parking ramp areas, the FBOs will be required to fund a portion of the project, as well as enter into negotiations with the Aviation Department to modify certain portions of their existing Agreements to reflect current market rentals rates, additional reporting requirements and escalation provisions.

“The Aviation Department will periodically solicit information from other airports in our region regarding fuel flowage and lubricant sales fees to compare to the fees the Aviation Department charges the FBOs. When the information received provides strong justification for an increase in the fees for the FBOs at the Sunport, the Aviation Department will exercise its rights under the terms of the renegotiated Agreements.”

8. MISCELLANEOUS FINDINGS

The following findings do not require responses. However, action to improve these areas should be considered as additional ways to more properly administer contracts.

A. Reimbursement by the City for Equipment Purchases by the Vendor

The rental car shuttle contractor billed the City for \$8,372 of furniture, computer and telephone system purchases. The contractor purchased telephone systems for \$2,668 in 2002. It also purchased computers and related equipment costing \$4,216. Section 6.b of the contract states, "As used herein, 'equipment and vehicles' means any equipment or vehicle required to perform under this Agreement and which has a useful life of at least three (3) years and a cost of \$1,000 or more, and such other equipment as the Director may specify or approve in writing."

Although the agreement defines equipment as costing \$1,000 or more, it does not specify who owns the equipment such as furniture, computers, and telephone systems; and what the disposition of this equipment will be when the agreement is terminated. Aviation should resolve who retains ownership of equipment when the agreement is terminated.

B. Reporting of Accidents

The agreement with the rental car shuttle contractor requires that the "Contractor shall also make weekly reports detailing any damage, whether major or minor, to any vehicle in a form acceptable to the Director." This was changed to a monthly report in the First Supplemental Agreement, dated August 2002. Aviation never provided any written guidance to the contractor regarding what was an "acceptable" form to report this information to the department. According to Aviation contract administrator, the Contractor has reported three accidents to the department, during the period of operations.

However, the records of the maintenance sub-contractor indicate that there were two accidents that were not reported to the City. There is a sub-contractor repair order, dated May 21, 2001, for \$1,300 of repairs to a vehicle. The repair order states that the cause was that the "driver damaged" the vehicle; and the work was done to "replace/repair accident damage."

There was another unreported minor accident involving a shuttle bus and a car parked in a lot near the airport. The shuttle bus contractor included a \$105 charge for repairs to a car that was damaged in a minor accident in its May 2002 reimbursement request. Aviation paid this charge. Aviation should ensure that the contractor submits accident reports as required by the agreement.

EXECUTIVE RESPONSE FROM AVIATION

“Reimbursement by the City for equipment purchases by vendors

“The shuttle bus contractor is preparing a letter stating that all furniture, computers, telephone systems and other necessary equipment purchased by it during the term of the Agreement, where such purchases were reimbursed by the City, is the property of the City, and will remain the property of the City after expiration or earlier termination of the Agreement

“Reporting of accidents

“Correspondence is currently being drafted by the City to the shuttle bus contractor which will emphasize that portion of the Agreement requiring the contractor to make monthly accident and vehicle damage reports, and further instructing the contractor to make such reports in a written form.”

CONCLUSION

Aviation controls over the management of contract should be strengthened. The department receives \$60.8 million in revenues, the management and enforcement of contracts should be a priority.

We appreciate the assistance and cooperation of Aviation Department personnel during the audit.

Senior Auditor

Principal Auditor

APPROVED:

APPROVED FOR PUBLICATION:

Carmen L. Kavelman, CPA, CISA, CGAP
Acting Director

Chairman, Accountability in
Government Oversight Committee