

FOLLOW-UP REVIEW REPORT

OF

**DOWNTOWN ACTION TEAM LEASE AND THE DOWNTOWN
ALBUQUERQUE BUSINESS IMPROVEMENT DISTRICT**

REPORT NO. 06-01-106DAT



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

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Accountability in Government Oversight Committee
City of Albuquerque
Albuquerque, New Mexico

Follow-Up: DOWNTOWN ACTION TEAM LEASE AND THE DOWNTOWN
ALBUQUERQUE BUSINESS IMPROVEMENT DISTRICT
06-01-106DAT

FINAL

INTRODUCTION

The Office of Internal Audit and Investigations (OIAI) performed a Follow-up Review of Audit Report No. 01-106DAT, Management of the Downtown Action Team (DAT) Lease and the Downtown Albuquerque Business Improvement District (BID). The purpose of our follow-up was to determine if the audit recommendations had been implemented.

Our review procedures consist of inquiries of City Personnel and review of applicable documentation to assess the status of our audit recommendations. Our review is substantially less in scope than an audit and is focused on ensuring that management has taken meaningful and effective corrective action to our findings and recommendations as required by Governmental Auditing Standards.

Background Information Relating to Audit No. 01-106DAT

The BID was established by a City ordinance, under the authority of state statute. City Ordinance §14-18-1 ROA 1994 (BID Ordinance) appointed the DAT as the management committee of the BID. The DAT was originally formed in 1991 as a nonprofit organization to promote, organize and manage the revitalization of the downtown area.

The BID was formed to provide enhanced services to properties located within the central business district. The BID finances 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 a fee, which is assessed against the property located within the boundaries of the improvement district.

Prior to the adoption of the BID Ordinance, a group of private citizens known as the Downtown Planning Group prepared the “BID Business Plan”, and submitted it to the City Council in May 2000. The BID Ordinance refers to the BID Business Plan that was prepared by this group.

The BID Ordinance requires that DAT:

- Submit an annual budget in accordance with the BID Business Plan to the City Council for its review and approval.
- Submit an annual recommendation to the City Council for the fees to be assessed against the properties that are located in the BID.
- File an annual 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 that is responsible for 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.

In 2001, the DAT Board of Directors combined the accounting and financial reporting activities of the BID and the DAT.

INTRODUCTORY STATEMENT FROM THE CAO:

“The CAO respectfully submits that the DAT, through its Board of Directors has, in the past, communicated clearly to the Administration that the DAT is an organization separate and apart from City government and is not subject to oversight by the Administration. In addition, the DAT, named by ordinance as the management committee of the BID, has communicated clearly to the Administration, that the BID reports only to the City Council. Following the initial audit report, good faith efforts were made by the Administration to attempt implementation of the recommendations; however, the DAT and, indirectly, the BID strongly resisted making any recommended changes. Although there have been some changes in the leadership of the DAT since the beginning of this year, the Administration, frankly, is not hopeful that the repeated recommendations can be obtained. The Administration will consult with the Council about the advisability of amending the BID ordinance to provide more clarity and accountability.”

OIAI determined the following:

RECOMMENDATION NO. 1:

The City had not assigned a specific department or division the responsibility to monitor the activities of the management committee of the BID. The City collected the annual benefit fee amounts paid by property owners in the BID, and remitted these monies to the DAT. The City did very little monitoring to determine if the activities of the DAT were accomplishing the goals stated in the BID Business Plan. Although the BID Ordinance required the submission of certain documents such as an annual budget, annual audited financial statements, and an annual progress report, the BID Ordinance did not specify due dates for this information.

The audit recommended that the Chief Administrative Officer (CAO) assign a department or division the responsibility to monitor the activities of the management committee of the BID. The audit also recommended that the CAO 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; and submit the changes to the City Council for consideration.

The CAO responded to the audit as follows: "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."

ACTIONS TAKEN

The audit recommendations have not been implemented. The City's Chief Financial Officer (CFO) stated that the City identified a contract administrator in the DFAS to monitor the activities of the management committee and the DAT. The former DFAS Director decided that assigning those duties to the contract administrator was inappropriate. The CFO cannot locate documentation that identifies who might have subsequently been assigned this responsibility. There was insufficient transition on this issue, and the recently appointed Director is addressing this situation at this time.

The City's CFO stated that the City asked the Legal Department (Legal) to review the BID Ordinance in light of the audit findings and draft appropriate amendments for the BID Ordinance. Legal did the analysis, but given the perceived resistance from DAT, the legislation was not introduced for Council consideration.

FOLLOW-UP RECOMMENDATION

The CAO should assign a specific employee the responsibility to monitor the activities of the management committee (DAT) of the BID. If the City's monitoring of the activities of the management committee of the BID determines any issues of non-compliance with the BID Ordinance, these should be reported to the CAO.

The CAO should consider submitting the proposed revision to the BID Ordinance to the City Council.

RESPONSE FROM THE CAO

"The CAO agrees that the BID, as a special assessment taxing district formed by City ordinance, should be subject to regular monitoring and oversight by the Administration. The CAO will assign the Director of the Department of Finance and Administration, or her delegate, the task of attempting to monitor the activities of the management committee (DAT) of the BID. However, it is not clear if the DAT or BID will cooperate in this effort."

"The CAO will give consideration to the ramifications of attempting a legislative solution to modifying the BID ordinance to add specifics and clarify ambiguities."

RECOMMENDATION NO. 2:

The "Business Plan for the Downtown Albuquerque Business Improvement District," dated May 2000, stated that program management costs were estimated at 12.4% of the BID budget. In BIDs with comparable budgets, management costs typically range from 15% to 20%. However, BID overhead expenses for management employees and indirect program management costs accounted for 35% of the BID 2004 budget. Direct program services accounted 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; as compared to the BID 2003 budget. The DAT submitted an

annual budget for the BID to the City along with the recommendation for the benefit fee to be assessed. Although the BID budgets were submitted to the City, it did not appear that City personnel performed any analysis of the BID budgets to determine their reasonableness and appropriateness. The audit recommended that the CAO assign a division or department the responsibility to review the reasonableness of the overhead expenses that the DAT charges to the BID.

The CAO responded to the audit as follows: “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.”

ACTIONS TAKEN

The audit recommendations have not been implemented. The CFO stated that the reporting cycles were so off-cycle that analysis was after the fact and had little or no meaning. The CFO thought that they were finally to a point where they might be able to perform some analysis with the receipt of next year’s packet of information (the 2005 financial statements, the 2006 report and the 2007 BID budget).

FOLLOW-UP RECOMMENDATION

The CAO should ensure that the employee assigned to monitor the City’s activities with the management committee of the BID should review and report on the reasonableness of the overhead expenses that the DAT charges to the BID.

RESPONSE FROM THE CAO

“The CAO respectfully notes that the reasonableness of an overhead charge is always a matter subject to debate. However, the Director of the Department of Finance and Administration will attempt to review and report on the perceived reasonableness of the overhead expenses charged to the BID by the DAT.”

RECOMMENDATION NO. 3:

After the BID Ordinance was adopted, the DAT Board made a decision to combine the financial affairs of the BID and the DAT. Financial statements were prepared and audited for the single entity. The

City collected the annual benefit fee amounts from the property owners in the BID, and periodically remitted these monies to the DAT. The DAT then deposited these monies into a DAT bank account. Most of the revenues of the DAT were annual benefit fee amounts paid by property owners in the BID. According to the DAT President, the City was not consulted prior to combining the financial affairs of the DAT and the BID nor could the Board minutes be located which authorized the combination.

Additionally, the DAT did not comply with certain provisions of Sections §2-5-1 through §2-5-3 ROA 1994 of the Public Interest Organizations Ordinance. DAT did not comply with the requirement that the meetings must be declared public meetings, and minutes must be kept and open to public inspection. A legal opinion obtained from the City Attorney noted that non compliance with this requirement would invalidate the actions and resolutions of the organization.

The audit recommended that the CAO inform DAT that it must comply with the Public Interest Organizations Ordinance. The audit also recommended that the CAO review the DAT's justification for combining the affairs of the two organizations and determine if it is in the best interest of the BID rate payers.

The CAO responded to the audit as follows: "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."

ACTIONS TAKEN

The audit recommendations have been partially implemented. Our recommendation concerning the combination of financial affairs of the BID and the DAT was not implemented.

The CAO sent a letter to the DAT, dated August 23, 2004, which stated:

Segregation of Books of Account for the DAT and the BID – The DAT, a non-profit organization, and the BID, a special assessment taxing district, are two separate and distinct legal entities. The fact that the DAT serves as the management committee of the BID does not obviate that fundamental fact. Effectively immediately, separate books of account, as well as separate banking accounts, must be established for each legal entity.

Compliance with the Public Interest Organizations Ordinance – A Legal Opinion of the City Attorney’s Office finds that the Downtown Action Team (DAT), as the management committee of the Business Improvement District (BID), is required to comply with the Public Interest Organizations Ordinance, Sections 2-5-1 through 2-5-5 ROA 1994. The City expects your immediate compliance with the ordinance.

The CFO stated that the DAT responded on September 3, 2004 in writing that they would be reviewing the findings, the directives and the ramifications of both and would respond to the City no later than October 1, 2004. On September 8, 2004, Mayor Chavez received a letter from a property owner in the BID and a member of DAT expressing his personal opinion that the results of the audit and the CAO’s recommendations and requirements conflict with the DAT and BID goals. The DAT did not implement the actions that the CAO required.

FOLLOW-UP RECOMMENDATION

The CAO should consider proposing a requirement, for the annual appropriation legislation that distributes BID fees to the Management Committee of the BID, to mandate the separation of the financial affairs of the BID and the DAT.

RESPONSE FROM THE CAO

“The CAO agrees that the financial affairs of the DAT and the BID should be segregated. At the time of the initial audit, the DAT argued that the incremental cost of maintaining separate bank accounts and accounting records could not be justified and would only reduce funding available to achieve the goals of the BID and DAT. The Administration understands that two separate bank accounts were eventually established, but that the account established for the BID is merely a pass-through account. It is not clear that mandating the separation of the financial affairs of the BID and the DAT in the annual appropriation legislation can be successful in achieving this recommendation.”

RECOMMENDATION NO. 4:

The BID Business Plan, dated May 2000, outlined a number of goals that the BID intended to accomplish. According to the DAT President, there had not been a revised business plan; the original business plan was still in effect. However, the DAT was not following processes that were outlined in

the Plan, regarding to the selection of members of the Property and Business Owners Committee (PBOC).

The audit recommended that the CAO 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 audit recommended that 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.

The CAO responded to the audit as follows: "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."

ACTIONS TAKEN

The audit recommendations have been partially implemented. The CAO sent a letter to the DAT, dated August 23, 2004, which stated:

Revision of BID Business Plan – . . . there have been informal deviations from the May, 2000 BID Business Plan. The Business Plan should be revised to reflect current operations, and submitted to the City Council for their consideration and approval no later than October 4, 2004.

The CFO was not aware that the DAT has ever prepared a separate revised business plan for City Council consideration.

FOLLOW-UP RECOMMENDATION

The CAO should consider proposing a requirement, for the annual appropriation legislation that distributes BID fees to the Management Committee of the BID, to mandate that the DAT prepare a revised business plan for City Council consideration.

RESPONSE FROM THE CAO

"The CAO agrees that the DAT should either revise its business plan to reflect current operations, or change operations to be in compliance with the procedures specified in the business plan. However, it is not clear that mandating the preparation of a revised business plan for City Council

consideration in the annual appropriation legislation can be successful in achieving this recommendation."

RECOMMENDATION NO. 5:

The May 2000 "Business Plan for the Downtown Albuquerque Business Improvement District" stated, "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" 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 stated that 49% of the respondents answered "No" to this question. This potentially indicated a high level of ratepayer dissatisfaction with services that were provided by the BID.

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

The CAO responded to the audit as follows: "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."

ACTIONS TAKEN

The audit recommendations have been partially implemented. The CAO sent a letter to the DAT, dated August 23, 2004, which stated:

"BID Ratepayer Survey Review – Please provide the City with the complete results of the most recent 2003 BID ratepayer survey, including details on how the survey was developed, distributed and compiled."

At a meeting on October 28, 2004, representatives from the DAT/BID agreed to provide the requested information. However, that information has never been provided. The DAT commissioned Research and Polling to conduct a "Downtown Perception Study 2005" in October 2005. An Albuquerque Police Department (APD) representative was allowed to add a few questions to that survey. However, requests for a copy of the survey instrument by the APD representative in October 2005 were declined and, to date, the results have not been provided to the APD representative. Some

survey responses are included in the 2005 Annual Results which were reported by the DAT to the City Council.

FOLLOW-UP RECOMMENDATION

The CAO should request that the DAT provide the City the complete survey results from the "Downtown Perception Study 2005" that was commissioned by DAT in October 2005. The employee assigned to monitor the City's activities with the management committee of the BID should review the complete 2005 survey results. This review should focus on whether the ratepayers' needs are being satisfied by the BID.

RESPONSE FROM THE CAO

"The CAO respectfully notes that the City requested a copy of the complete survey instrument for the "Downtown Perception Study 2005" in October, 2005, and that request was denied. The CAO will again request the complete survey results from the DAT."

RECOMMENDATION NO. 6:

Article IX of the DAT Bylaws stated, "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." DAT had 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. 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 was not a provision in the BID Ordinance that required DAT to disclose related party transactions prior to entering in them or to obtain pre-approval for related party transactions business deals.

The audit recommended that the CAO prepare and submit to the City Council for approval a proposed revision to the BID Ordinance that prohibits DAT from entering into related party transactions without first obtaining City approval.

The CAO responded to the audit as follows: "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."

ACTIONS TAKEN

The audit recommendation has not been implemented. The City's CFO stated that the City asked Legal to review the BID Ordinance in light of the audit findings and draft appropriate amendments for the BID Ordinance. Legal did the analysis, but given the perceived resistance from DAT, the legislation was not introduced for Council consideration. The DAT established a special committee to review proposed transactions with related parties.

FOLLOW-UP RECOMMENDATION

The CAO should consider proposing a requirement, for the annual appropriation legislation that distributes BID fees to the Management Committee of the BID, to require the reporting to, and approval by, the City of related party transactions.

RESPONSE FROM THE CAO

"The CAO respectfully notes that it is not clear that requiring the reporting to, and approval by, the City of related party transactions in the annual appropriation legislation can be successful in achieving this recommendation. Appropriate monitoring and oversight of the activities of the special assessment taxing district was not included in the original enabling ordinance; attempting to add those types of provisions through an appropriating resolution may be subject to challenge. Inclusion of appropriate monitoring and oversight provisions may have to wait until the sunset review of the enabling ordinance."

RECOMMENDATION NO. 7:

In July 1999, the City and the DAT entered into an agreement for the lease of the 4th Street Mall to the DAT. Section 10 of the lease stated, "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." The Parks and Recreation Department, which administered the lease, could not locate a copy of the 2002 Annual Summary, which the DAT was required to submit to the City. 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 had previously committed to the City to provide this report in January of each year. The Parks and Recreation Department had not enforced this contract requirement. At the time of the audit, the Director of the City's Parks and Recreation Department was the mother of the DAT President. Although she was not the Director of the Parks and Recreation Department when the lease was signed, there was an apparent conflict of interest at the time of the audit.

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

The CAO responded to the audit as follows: "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."

ACTIONS TAKEN

The audit recommendations have been partially implemented. The CFO stated that the DAT contract/lease was transferred to the Department of Finance and Administration, to the attention of the Director in August 2004. The Director subsequently retired in December, 2005 and they have been unable to find any files specifically addressed to the administration of the contract/lease so they are unable to provide any detailed information at this time.

The Director of the Parks and Recreation Department was transferred in November, 2004 to another department so the perceived potential conflict of interest was eliminated. The CFO stated that the administration will work with the Directors of both departments to make a determination if responsibility for monitoring should remain in DFAS or be transferred back to the Parks and Recreation Department.

FOLLOW-UP RECOMMENDATION

The CFO should ensure that the contract requirements of the 4th Street Mall lease are enforced.

RESPONSE FROM THE CAO

“The CAO agrees that the contract provisions of the 4th Street Mall lease should be enforced and will direct the CFO to ensure that a single department is charged with that task.”

CONCLUSION

The City has partially implemented four of the seven recommendations noted in the initial audit report. Three recommendations have not been implemented. The CAO should:

- Assign a specific employee the responsibility to monitor the activities of the management committee of the BID.
- Consider submitting the proposed revision to the BID Ordinance to City Council.
- Ensure that the monitoring employee reviews and reports on the reasonableness of the overhead expenses that the DAT charges to the BID.
- Request that the DAT provide the City the complete survey results from the “Downtown Perception Study 2005” that was commissioned by DAT in October 2005. The City’s monitoring employee should review the complete survey results, and focus on whether the ratepayers’ needs are being satisfied by the BID.
- Prepare and submit to City Council for approval a proposed revision to the BID Ordinance prohibiting DAT from entering into related party transactions without obtaining City Council approval.
- Ensure that the contract requirements of the 4th Street Mall lease are enforced.
- The CAO should consider proposing requirements, for the annual appropriation legislation that distributes BID fees to the Management Committee of the BID:
 - To mandate the separation of the financial affairs of the BID and the DAT.
 - To mandate that the DAT prepare a revised business plan for City Council consideration.
 - To require the reporting to, and approval by, the City of related party transactions.

We will continue to monitor the City’s progress toward implementing the open items. We recommend that an additional formal follow-up be performed. We appreciate the assistance and cooperation of the CFO and the Department of Finance and Administration personnel during the audit.

Principal Auditor

REVIEWED:

Audit Supervisor

APPROVED:

APPROVED FOR PUBLICATION:

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