

**SECOND FOLLOW-UP OF  
CITY MANAGEMENT OF THE DOWNTOWN ACTION TEAM  
LEASE AND THE DOWNTOWN ALBUQUERQUE  
BUSINESS IMPROVEMENT DISTRICT**

**REPORT NO. 08-01-106F2**



**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**

May 14, 2008

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

Second Follow-Up: CITY MANAGEMENT OF THE DOWNTOWN ACTION TEAM LEASE  
AND THE DOWNTOWN ALBUQUERQUE BUSINESS  
IMPROVEMENT DISTRICT  
08-01-106F2

**FINAL**

INTRODUCTION

The Office of Internal Audit and Investigations (OIAI) performed a second follow-up of Audit No. 01-106DAT, Management of the Downtown Action Team (DAT) Lease and the Downtown Albuquerque Business Improvement District (BID), which was issued August 25, 2004. OIAI issued the first follow-up report on August 30, 2006. The purpose of our follow-up is to report on the progress made by the City in addressing our findings and recommendations.

Background Information for 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 financed supplemental services including safety ambassadors and image enhancement programs above and beyond those provided by the City. The BID was financed by way of a fee, which was 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 referred to the BID Business Plan that was prepared by this group. The BID Ordinance required 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 was budgeted based on the calendar year, with the first year beginning on January 1, 2001.

The BID Business Plan established a Property and Business Owners Committee (PBOC) that was 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.

The Chief Administrative Officer (CAO) provided the following introductory statement in the first follow-up:

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.

#### SCOPE, OBJECTIVES, AND METHODOLOGY

Our follow-up procedures consist of interviews of City Personnel and review and verification of applicable documentation to assess the status of our audit recommendations. Our follow-up is substantially less in scope than an audit. Our objective is to ensure management has taken meaningful and effective corrective action in regards to our findings and recommendations. We conducted this performance audit in accordance with generally accepted government auditing

standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of the follow-up did not include an examination of all the functions and activities related to management of the DAT Lease and the BID. We limited our scope to actions taken to address our audit recommendations from the period of August 30, 2006, the date of the first follow-up, to March 31, 2008.

RECOMMENDATION NO. 1:

The City did not assign 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 funds 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, it did not specify due dates for this information.

The audit recommended the CAO:

- Assign a department or division the responsibility to monitor the activities of the management committee of the BID.
- 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 that the contract administrator in the Department of Finance and Administrative Services (DFAS) would be assigned the responsibility of monitoring the management committee of the BID. The contract administrator would coordinate that assignment with the person or division responsible for administering the Master Development Agreement, which was expected to be Albuquerque Development Services in the Planning Department. DFAS would continue to provide accounting support to Albuquerque Development Services. The CAO agreed that the BID Ordinance was lacking in specifics when it was originally enacted would ask the Legal Department to review the ordinance in light of the findings in the audit report for possible amendments for Council consideration.

### Action Taken - First Follow-Up

The audit recommendations were not implemented. The City identified a contract administrator in 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 Chief Financial Officer (CFO) could not locate documentation identifying who might have subsequently been assigned this responsibility. There was insufficient transition on this issue, and the recently appointed Director was addressing this situation at that time. The City's CFO 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 due to the perceived resistance from DAT, the legislation was not introduced for Council consideration.

The follow-up recommended the CAO:

- 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 noncompliance with the BID Ordinance, the CAO should be notified.
- Consider submitting the proposed BID Ordinance revision to the City Council.

The CAO responded and agreed 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 would assign the Director of DFAS, or her delegate, the task of attempting to monitor the activities of the management committee (DAT) of the BID. However, it was not clear if the DAT or BID would cooperate in this effort. The CAO would give consideration to the ramifications of attempting a legislative solution to modifying the BID ordinance to add specifics and clarify ambiguities.

### Action Taken - Second Follow-Up

See Conclusion.

### RECOMMENDATION NO. 2:

The Business Plan for the BID, dated May 2000, stated that program management costs were estimated at 12.4 percent of the BID budget. In BIDs with comparable budgets, management costs typically range from 15 percent to 20 percent.

However, BID overhead expenses for management employees and indirect program management costs accounted for 35 percent of the BID 2004 budget. Direct program services accounted for only 65 percent 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 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 and agreed that deviations between budgeted and actual amounts should be analyzed when the differences are significant. The CAO did not necessarily agree that analysis of a 2000 business plan against a current year budget would 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.

#### Action Taken - First Follow-up

The audit recommendation was not 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).

The follow-up recommended the CAO ensure that the employee assigned to monitor the City's activities with the management committee of the BID review and report on the reasonableness of the overhead expenses that the DAT charges to the BID.

The CAO responded that he respectfully noted that the reasonableness of an overhead charge was always a matter subject to debate. However, the Director of DFAS would attempt to review and report on the perceived reasonableness of the overhead expenses charged to the BID by the DAT.

#### Action Taken – Second Follow-Up

See Conclusion.

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 funds to the DAT. The DAT deposited the funds to its 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 the City Ordinance on Public Interest Organizations. 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. 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 the CAO:

- Inform DAT that it must comply with the Public Interest Organizations Ordinance.
- Review 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 that he would notify the DAT in writing that it must comply with the Public Interest Organizations Ordinance. The CAO saw no justification for combining the affairs of the DAT, a non-profit organization, and the BID, a special assessment taxing district. The CAO would notify the DAT in writing that separate books of account must be maintained for each organization and each must separately report.

Action Taken - First Follow-up

The audit recommendations were partially implemented. The 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 nonprofit 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 251 through 255 ROA 1994. The City expects your immediate compliance with the ordinance.

The DAT responded in a letter on September 3, 2004 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 conflicted with the DAT and BID goals. The DAT did not implement the actions that the CAO required.

The follow-up recommended the CAO consider proposing a requirement, for the annual appropriation legislation that distributed BID fees to the Management Committee of the BID, to mandate the separation of the financial affairs of the BID and the DAT.

The CAO responded and agreed that the financial affairs of the DAT and the BID should be separated. 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 understood that two separate bank accounts were eventually established, but that the account established for the BID was merely a pass-through account. It was not clear that mandating the separation of the financial affairs of the BID and the DAT in the annual appropriation legislation could be successful in achieving this recommendation.

#### Action Taken – Second Follow-Up

See Conclusion.

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 BID Business Plan, relating to the selection of members of the PBOC.

OIAI 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 met the requirements stated in the business plan. 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 property owners has been difficult to maintain."

The audit recommended 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 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 that if the quote from the DAT President was accurate, it would appear to be more appropriate to direct the DAT to prepare a revised business plan for City Council consideration. The CAO would request DAT take that action.

Action Taken - First Follow-up

The audit recommendations were 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 ever prepared a separate revised business plan for City Council consideration.

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

The CAO responded and agreed 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 was not clear that mandating the preparation of a revised business plan for City Council consideration in the annual appropriation legislation could be successful in achieving this recommendation.

Action Taken – Second Follow-Up

See Conclusion.

RECOMMENDATION NO. 5:

The May 2000 Business Plan for BID stated the annual budget review process would include an annual survey of ratepayers to determine their satisfaction with existing services and priorities for new or improved services.

The 2003 Property and Business Owners Annual Survey asked the following question about the 2003 approved allocation of funds for the BID: 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:

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

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

Action Taken - First Follow-up

The audit recommendation was 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 was never provided. The DAT commissioned Research and Polling to conduct a Downtown Perception Study 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 were included in the 2005 Annual Results which were reported by the DAT to the City Council.

The follow-up recommended the CAO request the DAT to provide the City with the complete survey results from the Downtown Perception Study 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 were being satisfied by the BID.

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

Action Taken – Second Follow-Up

See Conclusion.

RECOMMENDATION NO. 6:

Article IX of the DAT Bylaws stated DAT is a non-profit, tax-exempt organization, and should not afford monetary 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 did not comply with its own Bylaws. 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 prohibited DAT from entering into related party transactions without first obtaining City approval.

The CAO responded and noted that DAT, as a non-profit, tax exempt organization under Section 501 (c)(6), presumable, of the Internal Revenue Code, put its non-profit, tax exempt-status at risk when it engaged in related party transactions that provide pecuniary gain to its members. In conjunction with the Legal Department review of the BID Ordinance, the issue of related party transactions would be considered.

#### Action Taken - First Follow-up

The audit recommendation was not 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.

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

The CAO responded and respectfully noted that it was not clear that requiring the reporting to, and approval by, the City of related party transactions in the annual appropriation legislation could 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.

#### Action Taken – Second Follow-Up

See Conclusion.

RECOMMENDATION NO. 7:

In July 1999, the City and the DAT entered into an agreement for the lease of the 4<sup>th</sup> 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 (PRD), which administered the lease, could not locate a copy of the 2002 Annual Summary, which the DAT was required to submit to the City. PRD informed OIAI that as of April 2004, they had not yet received the Annual Summary for 2003. The DAT had previously agreed to provide this report in January of each year. PRD did not enforce this contract requirement. At the time of the audit, the Director of PRD was the mother of the DAT President. Although she was not the Director of PRD when the lease was signed, there was an apparent conflict of interest at the time of the audit.

The audit recommended the CAO 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.

The CAO responded and agreed it would be more efficient for the contract administrator in DFAS to assume responsibility for monitoring the 4<sup>th</sup> Street Mall lease.

Action Taken - First Follow-up

The audit recommendations were partially implemented. The CFO stated that the DAT contract/lease was transferred to DFAS, to the attention of the Director in August 2004. The Director subsequently retired in December, 2005. DFAS had been unable to find any files specifically addressed to the administration of the contract/lease; so the department was unable to provide any detailed information. The Director of PRD was transferred in November, 2004 to another department so the perceived potential conflict of interest was eliminated. The CFO stated that the administration would work with the directors of both departments to make a determination if responsibility for monitoring should remain in DFAS or be transferred back to PRD.

The follow-up recommended the CFO ensure the contract requirements of the 4th Street Mall lease are enforced.

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

Action Taken – Second Follow-Up

See Conclusion.

CONCLUSION

OIAI met with the CFO and DFAS Director and determined no progress had been made on implementing the recommendations. The BID Ordinance requires that DAT submit annual budgets, recommendations for fee assessments and annual reports to the City Council. The CFO and the DFAS Director believe that the City Council rather than the CAO is responsible for ensuring that the DAT meet the requirements of the BID Ordinance.

SECOND FOLLOW-UP RECOMMENDATION

The City Council and the CAO should reach agreement on the responsibility for ensuring the DAT lease and BID Ordinance requirements are accomplished.

RESPONSE FROM CAO

***“Per City ordinance, the responsibility for ensuring ordinance requirements are accomplished rests with the City Council. Per Article 18: Downtown Albuquerque Business Improvement District, and specifically, 14-18-6 (C), (E) and (F), the Council is to receive a budget for review and approval, a recommendation for the benefit fee amounts, and a report of activities, annually. 14-18-7 (C) requires Council approval of the annual budget, assessment of the annual benefit fee, and approval of the annual report of the management committee to assure compliance with the Business Improvement District plan.*”**

***“Although none of these reports or approvals are directed to the CAO, the Department of Finance and Administrative Services has assigned the Convention and Tourism Contract Compliance Manager to facilitate a meeting between City Administrative and Council staff and the Downtown Action Team. A meeting has been scheduled for Tuesday, May 6, with the Downtown Action Team, Council Services, the City’s Legal Department, the Director of the Department of Finance and Administrative Services, and the Convention and Tourism Contract Compliance Manager.”***

RESPONSE FROM COUNCIL SERVICES DEPARTMENT

***“As the audit and follow-up reports have indicated, the oversight of DAT and the BID Ordinance has presented a variety of problems over the years. However, the problems with oversight do not appear to be due to which entity (Council or Administration) is responsible for implementing the ordinance and overseeing DAT.***

***“The Council Office is in full agreement with the OIAI recommendation that an agreement should be reached regarding the responsibility for ensuring the DAT lease and BID Ordinance requirements are accomplished. Though the conclusion in the Second Follow-Up Audit Report causes concern because it appears to lean toward placing the responsibility for oversight solely with the Council, the Council Services Director will be attending a meeting called by the DFAS Director to address the issues raised in the audit reports and to reach the end recommended by the OIAI.”***

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Principal Auditor

REVIEWED:

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Audit Manager

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Internal Auditor

APPROVED:

APPROVED FOR PUBLICATION:

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Carmen Kavelman, CPA, CISA, CGAP  
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Chairperson, Accountability in Government  
Oversight Committee