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Investigative Informative Case Synopsis

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SUBJECT MATTER: Alleged overbilling of independent monitoring contract.

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INVESTIGATOR: M. Santistevan

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Date of Approval

DISTRIBUTION:

Honorable Mayor
President City Council
Chief Administrative Officer
City Councilors
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City Attorney
Department Director
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File

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EXECUTIVE SUMMARY

The Office of Inspector General (OIG) operates following the Association of Inspectors (AIG) standards, as outlined in City Ordinance 2-17-2. The overarching goals include conducting investigations impartially, preventing fraud and abuse, ensuring independence, and enhancing the city's accountability.

As defined in the Inspector General Ordinance §2-17-3, fraud is the knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Waste is the thoughtless or careless expenditure, mismanagement, or abuse of resources to the detriment of the City. Abuse is the use of resources or exercise of authority contrary to rule or policy, or knowingly inconsistent with any established mission or objectives for the resource, or the position held by the person exercising the authority. Abuse does not necessarily involve fraud or illegal acts.

On May 20, 2024, the OIG received a complaint alleging overbilling of the independent monitoring contract to the City based on the DOJ agreement. The allegation further stated that the City paid the overbillings.

The OIG determined that it was appropriate for the OIG to conduct a fact-finding investigation for elements of fraud, waste, or abuse.

The purpose of the investigation was to substantiate or not substantiate fraud, waste, or abuse, through the collection of sufficient evidence, based on the allegations of overbilling and payments on the independent monitoring contract to the City based on the DOJ agreement.

The following is a summary of the OIG's findings with recommendations for improvements intended to enhance accountability and mitigate fraud, waste, or abuse within the City's operations.

Finding:

- According to the agreement and budgets, the City overpaid the Independent Monitor (C1) for each of the following periods by the amounts specified below:

1/20/17 to 1/19/18	\$.04
1/20/18 to 1/19/19	\$ 266,525.68
1/20/19 to 1/19/20	\$ 72,133.00
1/20/23 to 1/19/24	\$ 259,712.37

Recommendations:

- The City should review the invoices and payments with the approved budgets to identify discrepancies and provide support and explanations for deviations.
- Any discrepancies should be resolved through recoupment from C1.
- With all agreements, the City should assign the appropriate personnel to review billings and payments to ensure compliance.

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ABBREVIATIONS

City: City of Albuquerque

A1: City Administrator

A2: City Administrator

A3: City Administrator

A4: City Administrator

C1: Independent Monitor

CASA: Court appointed stipulated agreement

D1: Director

D2: Director

D3: Department Director

D4: Department Director

DOJ: Department of Justice

E1: City Employee

E2: City Employee

E3: City Employee

E4: City Employee

E5: City Employee

E6: City Employee

HR: Human Resource Department

OIG: Office of Inspector General

INTRODUCTION

The Office of Inspector General's (OIG) mission is to promote a culture of integrity, accountability, and transparency throughout the City of Albuquerque to safeguard and preserve public trust. Investigations, inspections, evaluations, and reviews are conducted following AIG Standards.

Complaint

Alleged overbilling and payment of the independent monitoring contract to the City based on the DOJ agreement.

Background

On April 13, 2015, a court-appointed stipulated agreement (CASA) was signed in the United States District Court whereas the Plaintiff, United States of America, and Defendant, City of Albuquerque (collectively, the "Parties"), joined by the court-appointed Independent Monitor entered into this Stipulation Establishing the Independent Monitor's Office and the Payment of Monitoring Expenses to ensure that the Independent Monitor has the support, resources, and independence required to carry out his duties under the Settlement Agreement. Specifically, this Stipulation is intended to establish the terms and conditions of payment for the Independent Monitor's Office in a manner consistent with the Settlement Agreement and promotes transparency in the Independent Monitor's operations and expenses.

- 1) Paragraph 327 of the Settlement Agreement requires that the Parties select an Independent Monitor to assess and report on the City's implementation of the Settlement Agreement. Settlement Agreement~ 327. Section XIII of the Settlement Agreement outlines the Independent Monitor's specific duties, responsibilities, and authority, including conducting compliance reviews and audits; performing outcome assessments; reviewing use of force and misconduct investigations; preparing monitoring reports; providing technical assistance; and assisting the Parties with informal dispute resolution. *See, e.g., id.* ~ 294-309. On January 20, 2015, the Parties notified the Court that they had selected an Independent Monitor.
- 2) On February 19, 2015, following a review of the monitoring application, an in-person meeting, and the January 21, 2015 *amicus* hearing, the Court endorsed the Parties' selection and appointed the Independent Monitor. In its appointment order, the Court instructed the Parties to determine "the terms and conditions of the engagement, including budget, payment, and office space."
- 3) As provided in the February 19, 2015 Order, the term of the Independent Monitor's appointment will commence on January 20, 2015, and will continue for four years, unless terminated prior to the end of the four-year term or extended as outlined in the Settlement Agreement.
- 4) The City agrees to pay the costs and fees of the Independent Monitor. The Independent Monitor is subject to the supervision and orders of the Court and is not a state or local agency or an agent thereof.

5) This Stipulation is intended to effectuate the terms of the Settlement Agreement concerning the payment of the Independent Monitor's costs, fees, and expenses, and will not conflict with any paragraph of the Settlement Agreement.

SCOPE AND METHODOLOGY

Scope:

The stipulated order establishing the independent monitor's office and the payment of monitoring expenses as agreed upon by the City through annual budgets.

The methodology consisted of:

- Obtain and review the stipulated order
- Review Purchasing Ordinance
- Review Code of Conduct
- Obtain and review the contract and any amendments/budgets
- Obtain and review the purchase orders, invoices, and payments
- Request emails
- Conduct inquiries

This report was developed based on the OIG's review of selected documentation and records available during the investigation. In an email dated June 6, 2024, the OIG was advised that City Legal stated there are no other contract documents, amendments, or annual budgets outside of those provided to the OIG. Requests of the Albuquerque Police Department fiscal officer yielded no additional documentation.

INVESTIGATION

Allegations:

Alleged contract overbilling by the Independent Monitor and payment by the City.

Authority:

Article 5 Purchasing Ordinance

Stipulated Order

Contract/Budget between the City and C1

Article 1 Section 5

1.21.2 Retention and Disposition of Public Records

301 Code of Conduct

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Evidence:

News articles

Stipulated Order

2015-2016 Budget

2016-2017 Budget

2017-2018 Budget

2018-2019 Budget

2019 Budget Narrative

2022 Budget Narrative

July 2023-June 2024 Budget Narrative

2024 Budget Narrative

Invoices

Correspondence between C1 and City

Emails

Analysis of Evidence and Policies:

With the initial complaint, a reference was made to a news article entitled “Basic math errors. Faulty statistics. Conclusions that don’t add up.” The OIG reviewed the article, noting that it contained the complaint of overbilling in addition to other allegations.

The OIG reviewed the stipulated order and the complaint and assessed that the OIG’s purview was limited and only extended to portions of the agreement such as payment, budgets, and terms.

The OIG inquired about the contract and purchase orders issued to the Independent Monitor (C1) and was advised that the independent monitor did not have a contract, rather it was a court-stipulated order that set forth the relationship between C1 and the City. The stipulated order was filed with the Court in 2015 and sent through the Council as a receipt be noted. Purchase orders are being released so that the independent monitor can invoice the City to be paid.

In conducting our investigation, the OIG considered the following ordinances and the specified language contained therein.

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Article 5 Public Purchases

Understanding that payments to C1 were part of a stipulated court order, the OIG considered that the stipulated order required the City to hire an independent monitor to provide specified services meeting the settlement agreement with the DOJ. The stipulated order was silent as to the procurement process for the services.

The OIG discovered that the City issued purchase orders to C1 following Article 5 Public Purchases. The OIG reviewed Article 5, noting the following definitions:

Contract or Agreement. Any written agreement for the procurement of goods, services or construction, or for the establishment of a concession, including, but not limited to, a purchase order and incorporated documents.

Contractor. An offeror who has been awarded a contract.

Section 5-5-19 (B) (3) requires that contracts with the New Mexico State Auditor, or other contracts **required by law** be approved by the Mayor rather than the City Council.

The OIG noted that the stipulated order was signed by a former Mayor.

Stipulated Order

The OIG summarized excerpts from the stipulated order used in our analysis.

The parties agreed to a final Four-Year Budget for the first four years of the Settlement Agreement that will neither exceed nor be less than the final Four-Year Budget. The Settlement Agreement will commence on January 20, 2015, and will continue for four years, unless terminated before the end of the term or extended as outlined in the agreement.

Year 1:	\$1,463,589
Year 2:	\$1,457,832
Year 3:	\$ 799,487
Year 4:	<u>\$ 799,607</u>
Total	\$4,520,515

The OIG reviewed correspondence stating that monitoring will continue through June 2025 and may be extended.

Contract/Annual Budgets

The OIG reviewed invoices and payments and compared them to the first four-year budget outlined in the stipulated order. The results are listed below:

DOJ and City agreement with Public Management

Resources, Inc.

January 20, 2015 to January 19, 2019

Period	Total approved budget	Amount billed	Amount paid	Over/(Under) Budget
1/20/2015 to 1/19/2016	\$ 1,463,589.00	\$ 1,463,589.00	\$ 1,463,589.00	\$ -
1/20/2016 to 1/19/2017	\$ 1,457,832.00	\$ 1,457,832.00	\$ 1,457,832.00	\$ -
1/20/2017 to 1/19/2018	\$ 799,487.00	\$ 799,487.04	\$ 799,487.04	\$ 0.04
1/20/2018 to 1/19/2019	\$ 799,607.00	\$ 1,066,132.68	\$ 1,066,132.68	\$ 266,525.68
Subtotal	\$ 4,520,515.00	\$ 4,787,040.72	\$ 4,787,040.72	\$ 266,525.72

The OIG's investigation revealed that the billings and payments agreed to the total budget for the first two years (January 20, 2015 to January 19, 2017).

From January 20, 2017 to January 19, 2018, the City was billed and paid for services in excess of the annual budget per the stipulated order by \$0.04.

From January 20, 2018 to January 19, 2019, the City was billed and paid for services over the annual budget per the stipulated order by \$266,525.68.

The total approved budget for the four years was \$4,520,515 and the stipulated order included a clause requiring C1 to be paid no more and no less than the approved total four-year budget.

A newly elected Mayor took office in January 2018 resulting in a transition in the City's administration and a change in Administrators, Directors, and Managers. This transition may have had an impact on the oversight of the Stipulated Agreement, resulting in the discrepancies that began with the agreement period of January 20, 2018.

The OIG reviewed the available subsequent years' approved budget narratives agreed upon by the City and C1. The following table reveals what the OIG discovered. It is important to note that the approved budget narratives for January 20, 2020 to January 19, 2022, were not provided by City personnel resulting in the OIG's inability to accurately determine net discrepancies.

Period	Total approved budget	Amount billed	Amount paid	Over/(Under) Budget
1/20/2019 to 1/19/2020	\$ 1,529,923.00	\$1,602,056.00	\$1,602,056.00	\$ 72,133.00
1/20/2020 to 1/19/2021	Not provided	\$1,602,051.00	\$1,602,051.00	Unknown
1/20/2021 to 1/19/2022	Not provided	\$1,335,042.50	\$1,335,042.50	Unknown
1/20/2022 to 1/19/2023	\$ 1,602,051.00	\$1,602,051.00	\$1,602,051.00	\$ -
1/20/2023 to 1/19/2024	\$ 1,096,225.00	\$1,355,937.37	\$1,355,937.37	\$ 259,712.37
1/20/2024 to 1/19/2025	\$ 850,496.64	\$ 669,294.56	\$ 669,294.56	\$ (181,202.08)

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From January 20, 2019 to January 19, 2020, the City was billed and paid for services in excess of the annual budget per the stipulated order by \$72,133.00.

The OIG could not compare the annual budget to the actual billings and payments for January 20, 2020 to January 19, 2022 due to the City staff being unable to locate and provide the approved annual budgets.

The OIG's investigation revealed that the billings and payments agreed to the total budget for January 20, 2022 to January 19, 2023.

From January 20, 2023 to January 19, 2024, the City was billed and paid for services in excess of the annual budget per the stipulated order by \$259,712.37.

The OIG's schedule reflects that the amount budgeted for January 20, 2024 to January 19, 2025 is \$850,496.64 and that the City has been billed \$669,294.56 for services through September 20, 2024. The budget narrative states the contract will be billed monthly at \$70,784.72.

Technical Services	Total approved budget	Amount billed	Amount paid	Over/(Under) Budget
1/20/15-1/19/20xx	\$ 100,000.00	\$ 53,537.50	\$ 53,537.50	\$ (46,462.50)

The OIG also identified that the stipulated order included an additional \$100,000 for technical services and the tables above did not include invoices specific to the technical services contract, referred to EFIT. Through October 24, 2024, the City was billed and paid for technical services totaling \$53,537.50.

The OIG obtained a signed but undated correspondence to C1 from a Former Chief Administrative Officer (A1) emphasizing the need for a reduction in compensation for the Independent Monitor based on the City's assertion of a reduced workload for the Monitor due to the City reaching operational compliance of 80% of the paragraphs under the CASA. If the Independent Monitor agreed to the terms, the City would initiate payments of \$80,000 per month beginning June 1, 2023. The memo stated that the rate would be subject to further reduction, in the future, as the Monitor's workload was further reduced.

The OIG was not provided any evidence reflecting that C1 accepted the terms of the agreement for the reduction in compensation to begin on June 1, 2023. The OIG's analysis of the invoices after June 1, 2023, did reflect a reduced billing, did not reflect the lower monthly rate recommended by the City

The OIG reviewed another correspondence, signed and dated May 1, 2024, from the Chief Administrative Officer (A2) emphasizing the need for a reduction in compensation for the Independent Monitor based on the City's assertion of a reduced workload for the Monitor due to the City self-monitoring policy development and training. Additionally, the City requested that the Independent Monitor consider utilizing the Independent Monitors contracted by the City for self-monitoring. If the Independent Monitor agreed to the terms, the City would initiate payments of \$64,000 per month beginning June 1, 2024. The memo stated that the rate would be subject to further reduction, in the future, as the Monitor's workload was further reduced.

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C1's responded to the May 1, 2024 correspondence as follows:

Dear A2,

Attached please find the monitoring team's budget narrative. As you will note, there is a 22.4% decrease in our budget from last year. We acknowledge that additional paragraphs have been placed into self-assessment by the City and we have reduced our budget in line with the amount of time required by the monitors to review pertinent data. We do note, however, that the majority of remaining paragraphs under monitorship involve case reviews, such as IA Investigations (Force and Professional Standards), CPOA Investigations, the Force Review Board, and Discipline cases. These types of case reviews require increased time to review all of the information, including review of all related video.

The majority of our budget is devoted to completing case file reviews. During IMR-19, we reviewed 96 complete case files. The City asked us to review additional FRB cases during this period, which we did.

With regards to the request to start the new budget year on June 151(sic), we note that our 2023-2024 budget was divided into 12 installments, beginning on July 1, 2023. We were asked to begin the new budget on that date to correspond to the City's fiscal year, which we agreed to do. This leaves us with the question as to how the City would like to address our final payment for the 2023-2024 budget year, if the new budget year were to begin on June 1, 2024.

We appreciate the thoughts behind your suggestion that the Independent Monitoring Team utilize the three monitors that work for the City of Albuquerque. However, it would be the antithesis of an Independent Monitoring Team to use City employees to make compliance findings. Therefore, we will continue to use our own independent experts to assess compliance.

Our budget requirements are not far from your suggested rate. Please note that most of the remaining paragraphs require complete and thorough case reviews which are work and time intensive activities, explaining why our budget needs differ slightly, as not all paragraphs in the CASA require the same amount of time commitment from the monitors as others. In short, the easy compliance work has been done. The difficult work is virtually all that remains.

Please note that we have shared this budget information with [REDACTED] at DOJ.

Thank you.

C1

The OIG's analysis of the invoices after June 1, 2024, reflected billings at a lower rate, however, it was higher than the rate requested by the City.

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The OIG's investigation revealed that while the stipulated order defined the operating budget period, as January 20, 20XX to January 19, 20XX, for the duration of the agreement, the City modified the operating budget period to align with its fiscal year in July 2023 which was acknowledged in the above correspondence as being agreed to by both parties.

Period	Total approved budget	Amount billed	Amount paid	Over/(Under) Budget
1/20/2015 to 1/19/2016	\$ 1,463,589.00	\$ 1,463,589.00	\$ 1,463,589.00	\$ -
1/20/2016 to 1/19/2017	\$ 1,457,832.00	\$ 1,457,832.00	\$ 1,457,832.00	\$ -
1/20/2017 to 1/19/2018	\$ 799,487.00	\$ 799,487.04	\$ 799,487.04	\$ 0.04
1/20/2018 to 1/19/2019	\$ 799,607.00	\$ 1,066,132.68	\$ 1,066,132.68	\$ 266,525.68
Subtotal	\$ 4,520,515.00	\$ 4,787,040.72	\$ 4,787,040.72	\$ 266,525.72

Period	Total approved budget	Amount billed	Amount paid	Over/(Under) Budget
1/20/2019 to 1/19/2020	\$ 1,529,923.00	\$ 1,602,056.00	\$ 1,602,056.00	\$ 72,133.00
1/20/2020 to 1/19/2021	Not provided	\$ 1,602,051.00	\$ 1,602,051.00	Unknown
1/20/2021 to 1/19/2022	Not provided	\$ 1,335,042.50	\$ 1,335,042.50	Unknown
1/20/2022 to 1/19/2023	\$ 1,602,051.00	\$ 1,602,051.00	\$ 1,602,051.00	\$ -
1/20/2023 to 6/30/2023	Not provided	\$ 716,472.81	\$ 716,472.81	Unknown
7/1/2023 to 6/30/2024	\$ 1,096,225.00	\$ 1,096,224.96	\$ 1,096,224.96	\$ (0.04)
7/1/2024 to 9/30/2024	\$ 850,496.64	\$ 212,534.16	\$ 212,534.16	\$ (637,962.48)

The change in the operating budget period and the lack of supporting documentation resulted in the OIG's inability to compare the approved budget to the amounts billed and paid to C1.

The OIG's review of emails between Administrators indicated some concern that the City Council was asking questions about C1's contract which is the product of a stipulated court order. One email expressed concern about what staff may have told the City Council.

Article 1 Section 5

The OIG reviewed Article 1 Section 5 which provides the following language explicitly granting the Council the right to keep informed on certain matters of a serious nature.

"The City Council recognizes that, while the City Attorney must have maximum freedom in dealing with ordinary cases involving the city, the City Council must keep informed about the settlement of cases of a serious nature, whether for financial or policy reasons. There are also cases of sufficient non-monetary importance to the city, that they should not be settled without City Council approval."

1.21.2 Retention and Disposition of Public Records

This investigation revealed relevant information required to be retained was not provided by the City raising concerns about the City's compliance regarding records retention. This prompted the OIG to review 1.21.2 Records Retention Policy.

The City of Albuquerque utilizes the New Mexico Administrative Code 1.21.2 Records Retention policy. Section 1.21.2.301 on Accounts Payable requires that records relating to accounts payable including, but not limited to, purchasing and reimbursements be retained for six years from the date the audit report is released. Section 1.21.2.326 states that records related to the request, recommendation, and approved annual budget are permanent and should be transferred to archives when no longer needed for reference. Section 1.21.2.347 states that records related to the management of vendors should be retained for three years from the date the file is closed. Section 1.21.2.604 states that records related to the contracting of goods and services be retained for six years from the date the file is closed. Section 1.21.2.606 states that records related to settlements of contract or agreement disputes should be retained for fourteen years from the date the file is closed.

301 Code of Conduct

The non-compliance with laws and regulations results in violations of the following sections of the Code of Conduct.

Section 301.2 Professional Excellence states "Employees are encouraged to strive for personal and professional excellence as a means of keeping current on relevant issues and administering the public's business with professional competence, efficiency, and effectiveness."

Section 301.9 states "No employee shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification, appointment or investigation, or in any manner commit any fraud, conceal any wrongdoing or knowingly withhold information about wrongdoing in connection with employment with the City or in connection with the work-related conduct of any City employee."

The evidence obtained provides a reasonable basis for substantiating the allegation of overpayment of the independent monitoring contract for some of the contract years.

FINDINGS, SUBSEQUENT MATTERS AND RECOMMENDATIONS

Allegation:

Alleged overbilling and payment of the independent monitoring contract to the City based on the DOJ agreement.

Findings:

Condition: According to the agreement and budgets, the City overpaid the C1 for each of the following periods by the amounts specified below:

1/20/17 to 1/19/18	\$.04
1/20/18 to 1/19/19	\$ 266,525.68
1/20/19 to 1/19/20	\$ 72,133.00
1/20/23 to 1/19/24	\$ 259,712.37

Criteria: The stipulated order between the City, C1, and the DOJ.

Cause: In January 2018, the transition in administration may have resulted in a lack of knowledge, oversight, and monitoring that was not addressed or remedied in subsequent years.

Effect: Overpayment of contract based on the agreed-upon annual budget resulting in the waste of taxpayer monies.

Recommendations: The City should review the invoices and payments with the approved budgets to identify discrepancies and provide support and explanations for deviations.

Any discrepancies should be resolved through recoupment from C1.

With all agreements, the City should assign the appropriate personnel to review billings and payments to ensure compliance.

Management's Response:

Subsequent Matter:

Condition: The City did not retain and could not provide relevant supporting documentation for the agreement and subsequent budgets.

Criteria: 1.21.2 Retention and Disposition of Public Records

Cause: Unknown

Effect: Improper records retention results in a lack of transparency and in an inability to properly review or audit the specified process.

Recommendations: The City should conduct a search for all documentation related to the CASA and compile a master copy of those documents to be maintained in one location.

The City should conduct an internal audit of its record retention processes to ensure compliance with the New Mexico Administrative Code 1.21.2 Records retention policy.