



**OFFICE OF INSPECTOR GENERAL**  
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**Report of Investigation**

**FILE NO:** 22-0189-C

**SUBJECT MATTER:** Alleged lack of controls, split purchasing, commingling of funds, and misappropriation pertaining to two (2) vendor contracts for a book project as well as an alleged violation of the Anti-Donation clause regarding the MOU for the publishing and distribution of the book.

**STATUS:** FINAL

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**Date of Approval**

**DISTRIBUTION:**

- Honorable Mayor**
- President City Council**
- Chief Administrative Officer**
- City Councilors**
- Director Council Services**
- City Attorney**
- Deputy Chief Administrative Officer**
- Members, Accountability and Government Oversight Committee**
- File**

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## EXECUTIVE SUMMARY

The City of Albuquerque Office of Inspector General conducts investigations, inspections, evaluations, and reviews in accordance with AIG standards.

According to City Ordinance Section 2-17-2, the Inspector General's goals are to (1) Conduct investigations in an efficient, impartial, equitable, and objective manner; (2) Prevent and detect fraud, waste, and abuse in city activities including all city contracts and partnerships; (3) Deter criminal activity through independence in fact and appearance, investigation and interdiction; and (4) Propose ways to increase the city's legal, fiscal and ethical accountability to insure that tax payers' dollars are spent in a manner consistent with the highest standards of local governments.

On October 24, 2022, the Office of Inspector General (OIG) initiated a complaint based on a news article stating a City Councilor stated a recently published book, "City at the Crossroads: The Pandemic, Protests and Public Service in Albuquerque" was a misuse of taxpayer dollars. The news article also stated the proceeds from the book would go to the One Albuquerque Fund (OAF) which may violate the NM Anti-Donation Clause. Subsequent to the initiation of the original complaint, on November 9, 2022, the OIG received a formal request from a City Councilor to look into whether there were any violations of the City's procurement rules regarding split purchases relating to the book and whether there are adequate controls in place to ensure that the public benefit outweighs the private benefit to mitigate the misuse/waste of taxpayer monies. During the course of the investigation, the OIG also received multiple complaints concerning the comingling and misappropriation of taxpayer monies with those of the OAF, citing the book as one example. The OIG determined that the allegations contained elements of potential fraud, waste, or abuse and that it was appropriate for the OIG to conduct a fact-finding investigation. The purpose of the investigation is to gather the facts and evidence concerning the allegations, consistent with providing a conclusion about whether each allegation is substantiated or not substantiated.

As a result of the investigation, the OIG was not able to substantiate that the Department of Arts and Culture (DAC) violated the Purchasing Ordinance regarding the splitting of contracts. The OIG was not able to substantiate the allegation that the MOU between the City and OAF violated the Anti-Donation Clause, Article IX, Section 14. The OIG was not able to substantiate that there was co-mingling of funds between the City and OAF.

The OIG's analysis is sufficient to support the conclusion the evidence substantiates the allegations of misuse or waste of public funds could be substantiated and there were potential violations of the City's Code of Conduct Sections 301.11, 301.12, and 301.13. The OIG uncovered sufficient evidence to substantiate the allegation that the MOU misrepresented the OAF's experience in violation of Code of Code of Conduct Section 301.2, Professional Excellence; the DAC did not retain the records and proposals for the contracts as required by AI No: 1-5 Records Management; additionally, the MOU contained vague language regarding the Administrative Fee allowing the OAF to determine the fee and although the fee could have been disputed, the likelihood that such a dispute would require legal intervention is high.

In addition, the OIG noted three (3) general observations and provided recommendations for improvement.

## ABBREVIATIONS

CITY:	City of Albuquerque
OIG:	Office of Inspector General
E1:	City Contractor/City Employee
DAC:	Department of Arts and Culture
DD:	Former Deputy Director
CPO:	Chief Procurement Officer
OAF:	One Albuquerque Fund
Director:	Department Director
OAF1:	One Albuquerque Fund Development Director
AMF:	Albuquerque Museum Foundation

## INTRODUCTION

The mission of the Office of Inspector General (OIG) is to promote a culture of integrity, accountability, and transparency throughout the City of Albuquerque (City) to safeguard and preserve public trust.

### Allegations

On October 24, 2022, the Office of Inspector General (OIG) initiated a complaint based on a news article which stated a City Councilor had stated a recently published book, “City at the Crossroads: The Pandemic, Protests and Public Service in Albuquerque” was a misuse of taxpayer dollars. The news article also stated that proceeds from the book would go to the One Albuquerque Fund (OAF) which may violate the NM Anti-Donation Clause. The Department of Arts and Culture (DAC) and OAF entered into a Memorandum of Understanding for the publishing and distribution of the book where OAF receives \$2.52 for each book sold. Subsequent to the initiation of the original complaint, on November 9, 2022 the OIG received a formal request from a City Councilor to look into whether there were any violations of the City’s procurement rules regarding split purchases relating to the book and whether there are adequate controls in place to ensure that the public benefit outweighs the private benefit to mitigate the misuse/waste of taxpayer monies. During the course of the investigation, the OIG also received multiple complaints concerning the comingling and misappropriation of taxpayer monies with those of the OAF, citing the book as one example.

### Background

The DAC and City Administration engaged in discussions about how to chronicle the unprecedented times faced by the City and its constituents during the pandemic in the year 2020. There were several discussions on how to document the year and ultimately it was decided to look for a writer who could narrate and research what was going on in the community and what was happening in City government and put the information into a book format. The DAC took the initiative since they had published books before. An Author and Special Project Manager were put under contract to document the City’s response and impact of the Covid-19 public health emergency through the publication of a book.

## SCOPE AND METHODOLOGY

Scope: All activity related to the creation, publishing, and distribution of the book “City at the Crossroads”.

The methodology consisted of:

- Research contracts and MOU
- Request that NMSEC provide an opinion on the Anti-donation clause
- Conduct information-gathering interviews
- Review City policies and procedures
- Review State Statutes
- Review Social Media

This report was developed based on information from interviews, inspections, observations, and the OIG’s review of selected documentation and records that were provided during the course of the investigation.

## INVESTIGATION

### **Allegation 1:**

Alleged violations of Section 5-5-29 and Section 5-5-9(C) of Article 5, Public Purchases related to the procurement and publication of the book titled, “City at the Crossroads: The Pandemic, Protests and Public Service in Albuquerque”.

### **Authority:**

Albuquerque Code of Ordinances; Article 5: Public Purchases and Purchasing Divisions’ Procurement Manual.

### § 5-5-29 PURCHASES OF PROFESSIONAL/TECHNICAL SERVICES.

Purchases of professional/technical services of \$100,000 or less may be made by negotiation and execution of a contract signed by the Chief Procurement Officer, and processed through the Central Purchasing Office. All contracts shall be reviewed for legal sufficiency. The provisions in this article applicable to professional/technical services do not apply to: intergovernmental agreements; social services agreements; or agreements for services that relate directly to a particular purchase of a software license or software subscription. The application of this § 5-5-29 shall be determined by the Chief Procurement Officer in the Standard Operating Procedure interpreting § 5-5-9(C) Purchase Splitting Prohibited, as may be amended.

### 301.3 Standards of Conduct

Employees shall in all instances maintain their conduct at the highest personal and professional standards in order to promote public confidence and trust in the City and public institutions and in a manner that merits the respect and cooperation of co-workers and the community.

### **Evidence:**

Emails  
Interviews

Invoices  
Contracts  
Policies

**Interviews:**

**The following reflects an interview with E1.**

An interview with E1 revealed that E1 was first made aware of the book by the former DAC Deputy Director (DD) who is no longer with the City. The DD called E1 stating there was a desire to chronicle the pandemic and the public health crisis. E1 has a background in book publishing and marketing and the initial call was to get E1's thoughts on putting together a good team for this project. E1 stated they had known DD for about twenty (20) years through previous work experiences due to the fact that DD was also a writer and activist in the community.

The contract took effect in May 2021 along with a supplemental contract that went through June 30, 2022. E1 stated that the process to become a contractor was fairly smooth. DD was the main point of contact with the Director's approval. All the contract documents were approved and E1 was contracted to work on the book, along with other projects as the result of a broadly written scope of service. E1's hourly rate was \$90 with the contract having a specific number of hours which E1 thought was reasonable. E1's hourly rate was based on what E1 was charging other clients at the time. E1 stated that E1 was involved in everything, except for the writing of the book.

When asked if E1 knew anyone in the DAC, E1 stated that E1 had worked with a lot of people in the past including the Director and the DD prior to them working for the City. While employed with a bookstore, E1 did a lot of events collaborations with the DAC, so E1 knew people in the department.

The Author was chosen because the City was looking for someone that could tell the larger story of the City and include the human-interest angle. The Director and the DD felt the Author, given their background, would be able to handle dual objectives of telling the government's side of things and stories from the community. The DD received and shared two different Letters of Interest/Proposals and writing examples with E1 and each submission was from a well-known writer in the community and provided a writing sample.

When asked what prompted the book, E1 believed there was a desire to chronicle the unprecedented time we were living through when Covid first struck. This included seeking out resources and historical accounts and information and finding out there was not a whole lot out there, especially not of an Albuquerque experience. The Mayor wanted to document the unprecedented time as City leaders were scrambling to adapt to the pandemic. The idea was to chronicle this event in case another pandemic happens again. People can go back and look at it as a resource, what was useful, and what wasn't.

When asked if the book provided resources that someone may need or if it was more storytelling, E1 replied that it was more of a narrative account, telling multiple stories on how City departments shifted and changed their practices because everything changed during that time. E1 and the Author discussed overall approaches or themes that they wanted to run throughout book, however, the Author decided who to interview and include. The Author was clear that they wanted it to be as apolitical as possible. E1 stated that the book differed from what was originally planned.

E1 stated that because of the nature of the project, it was a little chaotic. E1 was asked to explain how the project was chaotic. Sometimes it was a little unclear on who was directing. E1 was a contractor at that point. The DD was the City's point of contact and the DD was spread thin. It was difficult to get publishing in place, deadlines were always moving. The Author did their part in writing the book quickly, but determining what the finished product looked like, the development, and the design was very hard to get decisions made as to what was wanted in the final product. A lot of back and forth occurred on what was wanted. The Director and the DD, were trying to make decisions and found it was hard to get decisions made.

The OIG asked if there was a lot more information provided that didn't make it into the book. E1 replied "no", although the book had a lot of additional information added. The goal was to tell the stories and to account for what the government did during the pandemic. E1 said that administrators were keen on trying to get additional information in the book, which was subsequently added as essays, forwards, appendices, and public health orders. E1 stated a lot of the book was not written by the Author. Certain individuals, requested by the Administration, were selected for writing the introduction and forward sections. There were no changes to the author's writings but different direction was provided on unexpected things, such as the book cover. It was a conversation for months. The Director wanted more information on how the departments pivoted and shifted to accommodate the needs during the pandemic, therefore an essay was added. The last parts of the book were added towards the end of the project, including poetry from citizens and the Director's essay.

E1 was asked if there was anything E1 didn't like about the book. E1 stated E1 started feeling that the book became a "kitchen sink" and that the DAC and Administration should stop throwing everything into the book. E1 feared that adding all the information was going to make the book not make sense. E1 stated this was a different approach to book publishing. Usually, a book is planned out in the beginning but this was a different approach.

E1 stated that around June/July 2022 the Director offered E1 a permanent unclassified position because E1's contract was ending June 30, 2022. The Director had been alluding that they wanted to continue working with E1. E1 stated the Director and DD thought the work done on the book was demonstrative of E1's ability to get a project done. The Director had a pretty good sense of E1's professional background and thought it would be a good fit for the department.

E1 stated that the hiring process for E1's unclassified position was a little less informal than other hiring processes that E1 had encountered in the past. E1 stated that almost every job E1 has had in Albuquerque has been obtained in a similar fashion with someone reaching out, and identifying E1 as a good fit for the position. E1 stated that there are not many book publishing jobs in Albuquerque. The DAC just offered E1 the position and that there was no formal interview process. E1 did go through HR orientation. E1's role does not manage anyone in the City. When asked if the position E1 was being hired for existed before, E1 stated "no, it was created".

**The following reflects an interview with the Director.**

An interview with the Director revealed that the idea for the book came from a series of conversations between the DD, the previous CAO, and the Director about how exceptional and crazy the year 2020 was for the city and City Government. The Administration and the DAC were proud of the many City employees and departments pivoting during the pandemic in order to provide services in a new way with health restrictions and wanted to document it. There were different ideas about how to document the events ranging from a video series, to an interactive PDF, to a report on each department, etc. Ultimately it was decided to look around for a writer that could narrate and research what was going on in the community and what was happening in City government and how those things fit together. It was a collaborative decision between the Administration and the DAC to write the book. The Director stated it was an important, exceptional time and the Administration and the Department wanted to capture the moment while people's memories were fresh. The book was about 2020 even though the challenges continued beyond.

The Director stated there were also conversations with the then COO (currently serving as the CAO) and Mayor on how they were going to tell the story and document the time period. City Employees were brainstorming and coming up with ideas on how to continue services to the public. For the Director, this was very fresh and intense and they thought it was important. The Director stated this is what our department does, write lots of books. It was a collaborative idea and the DAC took the initiative.

The Director was asked about the process for hiring the Author and E1. The Director, the DD, and the former CAO put together a list of about eight (8) writers in the community that could do this level of research and write the story well. They were not looking for a report, but a story/narrative. An invitation was sent out to the list of eight (8) to submit a proposal. The Author was selected because they put together a compelling proposal on what the approach would be. E1 also put in a proposal but the Director thought that E1 was a very skilled project manager. A decision was made to hire a project manager that could edit and keep a timeline. E1 had the necessary skillset and was selected as the project manager. The Director stated that the E1 was an independent contractor before coming to the City and stated they knew E1 as they had worked with each other a lot.



When asked if any of the other six (6) invitees sent in a proposal, the Director stated that some did, but not all of them. The Director thinks a total of five (5) proposals were received including the Author and E1. When asked if the proposals could be provided to the OIG, the Director stated that they do not have the proposals, DD received the proposals and DD is no longer with the City. The Director suggested that the proposals are probably in DD's file and it is possible they are still here with the City.

When asked if DD should have kept the documents related to the procurement of the two (2) contracts, the Director stated that they don't have to maintain any records because they can select someone who has the skill set they need. They often just go to someone who has the skillset they need for a contract. The Director claimed this is true for every single division in their department. They don't have a selection process unless it is required for the services. The Director stated that when it comes to Professional/Technical Services contracts (\$100,000 or less), there are no documents because there is no requirement to have any documents. The Director stated there are several examples of other projects where there are no documents when someone was chosen to provide Professional/Technical Services. The Director stated they were following the procurement code which allowed the selection of somebody with the skill set for the work. The Director stated if the purchasing ordinance changes and we have to collect and justify all these things, we will do it, but nowhere does it say we have to do that.

The Director wanted to clarify that when they work with artists and content creators, they don't have to go through a formal RFP or formal procurement process. They stated procurement allows us to choose the person with the best set of skills and experience for projects, unlike other contracts where it requires a competitive bid. The DAC wanted to hire someone who had experience, expertise, and a resume to support the work, not a low-bid process or competitive process. The Director stated they have to follow multiple policies regarding Professional/Technical Services contracts. The DAC does not have any departmental procurement policies. The Director understands the general process. The Director stated, we draft a scope, and work with the contractor on deliverables and timeline to make sure there is agreement. Work on deliverables language. Then a draft typically goes to legal who reviews the contract and once approved, it gets routed. The approvals are based on the contract dollar amount. The Director believes the current Procurement Ordinance and Purchasing policies are very clear and detailed. The Director does not think they have to add anything else. The Director reviews every contract.

The Director reiterated that the Author had over 20 years of experience. The Author has done feature stories with strong narratives based in research and fact. The Director also stated that E1 has worked in books for more than a decade. E1 is a very organized, driven person and the Director knows several people E1 worked with as the editor for their books. The Author has written a lot, but not a book. This required having a good editor, which was what E1 would be. Regarding the unclassified Special Project Manager position, the Director stated that they had a need for a Special Project Manager in the department which was driven by a couple of projects.

The OIG asked if the unclassified position was created for E1? The Director stated “no”, E1 had a lot of experience and the Director recommended E1 because it is an appointed position. When asked if anyone besides E1 was recommended for the position, the Director stated, “no”. The Director stated that E1 did have to interview for the position and E1’s resume had to be reviewed by the executive team and approved by the CAO. It also had to go through the hiring process and be reviewed by central HR, the CAO office and the executive team as an appointed position.

The OIG reached out, via email to the Purchasing Division, Chief Procurement Officer and asked several questions pertaining to the procurement of the two (2) Professional/Technical Service contracts. The Chief Procurement Officer’s email response is as follows:

- Does the Purchasing Division have any information regarding the Author and Procurement Manager contracts, such as how each were chosen, their expertise/training, etc.?
  - We do not, this selection was made internally by the Department of Arts and Culture.
- Does information need to be retained regarding notes from discussions, interviews, resumes, or work plan proposals which would be considered during the hiring process?
  - The Department may or may not have an internal process for the use of the 5-5-29 PT process, but again, that would be internal to the Department. Purchasing does not require a Department to provide records of how it selected contractors under this procurement method. The Department probably is the best source of the records that support the selection of these two vendors.
- Were these contracts consistent with the City’s procurement rules?
  - These contracts, from what I can see on the face of them, complied with the City Purchasing Ordinance. They were approved by City Legal as well.
- The Director stated they received several proposals, should they have kept those proposals internally since they are a public document?
  - Yes

The Finance and Administrative Services Director was asked the following:

- Are there any controls to weigh the public benefit of spending City funds on a project like this?

*As long as the expenditure is under the RFP limit, and not illegal, OMB does not weigh on the benefits of its purpose. This discretion lies with the individual Department Directors per the Ordinance § 5-5-29. The purpose and benefits of any contract are vetted by the Department Director and the CAO/CFO/COO as appropriate. Additionally, OMB does not weigh in on this aspect of contracts, they are only looking at the budget implications.*

**Analysis:**

In April and May of 2021, two (2) separate Professional/Technical Services contracts went into effect with the DAC to document the City’s response and impact of the Covid-19 public health emergency through the publication of a book. The Professional/Technical services contracts were for an Author and a Pandemic Book Project Manager.

The two (2) contracts and supplemental contract amounts are as follows:

Contract One (1): Author

- Contract Term: 04/14/2021 to 12/31/2021(Final approval 04/21/2021)
- Contract Amount: \$42,000 @ \$60 per hour
- Supplement Contract Term: 01/01/2022 to 06/30/2021
- Supplement Contract Amount: \$24,000 @ \$60 per hour
- Total contract amount for the Author was \$66,000.
- Total amount billed by Author was \$44,700.

Contract Two (2): Pandemic Book Project Manager

- Contract Term: 04/14/2021 to 12/31/2021(Final approval 05/03/2021)
- Contract amount: \$32,400 @ \$90 per hour
- Supplement Contract Term: 01/01/2022 to 06/30/2022
- Supplement Contract Term: \$18,000 @ 90 per hour
- Total contract amount for the Pandemic Book Project Manager was \$50,400.
- Total contract amount billed by Pandemic Book Project Manager \$49,950. Invoices detail that \$44,190 was charged to time spent on the book and that \$5,760\*<sup>1</sup> of the contract amount was billed for other projects.

The OIG's review of § 5-5-29 Purchasing Ordinance revealed that Professional/Technical Service contracts could be initiated by the departments without City Council approval if the amount is less than \$100,000 per contract.

The OIG discovered that although the allowable contract price for both contracts is \$116,400, the total actual cost for the two (2) contracts was \$88,890. This does not include the time the E1 has worked on the book as an Unclassified City Employee.

The OIG's review of the contracts revealed both contracts were reviewed and approved by the Purchasing Division, City Legal, the DAC, and the Budget office.

The OIG considered Section 301.3 of the Code of Conduct and found that absent a violation of the procurement code there would be no violation of 301.3.

**Finding-Allegation 1:**

The evidence shows the services provided were by two (2) separate contractors and each Professional/Technical Services contract was below the \$100,000 threshold permitted by the Ordinance. The OIG was not able to substantiate that the DAC violated the Purchasing Ordinance regarding the splitting of contracts.

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<sup>1</sup> \*NOTE: The Project Managers contract included wording to include other work requested by DAC.

**Allegation 2:**

Alleged violation of the Anti-Donation Clause because the MOU between the DAC and OAF allowed the OAF to retain proceeds from the sales of books.

**Authority:**

Article IX, Section 14 New Mexico Constitution  
MOU between the DAC and the One Albuquerque Fund  
Informal Advisory opinion from State Ethics Commission

**Evidence:**

Draft MOU with AMF  
MOU with OAF  
Interviews  
Informal Advisory opinion from State Ethics Commission

**Interviews:**

The following reflects an interview with the Albuquerque Museum Foundation (AMF) Director.

The OIG contacted the AMF to inquire about the initial MOU being offered to AMF. The OIG asked why AMF decided not to partner with DAC on the project.

AMF replied: “Because the book was to be published with a print-on-demand arrangement, DAC asked the AMF to assist with the logistics and essentially serve as the book's fiscal agent. The AMF has a decades-long history of paying for and publishing exhibit catalogs for the Museum, so initially these seemed like it might be a good fit. But they quickly saw this arrangement would be a departure for them, because it didn't really involve the Museum in any way (other than providing the opportunity to sell it in the Museum's store, which we operate). DAC presented AMF with a draft MOU to consider and sign. It was presented to the board leadership for consideration. Upon review and discussion, however, it was agreed that the AMF's participation in the book was not appropriate, as it simply fell outside the scope of the mission to raise money and awareness for the Museum. The only mission is to support the Albuquerque Museum -- so we informed the DAC thusly, and all discussions about our possible participation stopped.”

**The OIG communicated with OAF’s Development Director (OAF1) and several questions were asked regarding the MOU.**

- Can you describe the prior experience OAF has in printing and publishing books as stated in the Memorandum of Understanding?
  - *None, all books are printed and published by IngramSpark.*
- Can you detail the process on how the books are sold from initial order to delivery?
  - *All sales and delivery of the books are handled by IngramSpark, we have no role in that process.*

- Please provide proceeds that OAF has received from the sale of “City at the Crossroads”.
  - As of January 30, 2023, \$55.44
- Has OAF published and printed any other books for the City of Albuquerque? If so, provide titles of books.
  - *No.*
- Besides the initial Invoice to the City dated 10/19/22 for the amount of \$8,378.63, has the City received any additional invoices for payment?
  - *No.*
- Any other pertinent information related to the Memorandum of Understanding and the publication and printing of the book.
  - *None*

**The following reflects an interview with the Director.**

An interview with the Director revealed that the OAF was chosen because of their Mission alignment. The reason they are a nonprofit associated with the City is to promote the city and support initiatives that are directly related to the City. The books that have been done in DAC are often done with a support organization. It is common to work with one of the nonprofits whose mission is to support the City on our books. OAF was not the original choice, that was the Museum Foundation, but they did not feel it was missioned aligned because it was not art.

The OIG asked if OAF had prior knowledge in the distribution of the book, the Director stated the actual distribution was done through IngramSpark, the online publishing company. The OAF is not actually getting a box of books and mailing orders etc. IngramSpark does all that. None of the foundations the DAC works with have experience in distributing books. The OIG asked what other books OAF has assisted with, the Director stated “none to this point”. The Director did not remember if the MOU stated they had prior experience.

The OIG asked what the Director’s role in fulfilling the MOU and the Director stated that OAF’s primary role was to make sure this book was available for the long run. “If we had simply printed and distributed in City, they may not be available after that time. If we work with OAF and they have a contract with a print on demand service then the book can be available in perpetuity which could be five (5) years to ten (10) years. To the DAC it is more beneficial than just trying to guess how many books to print”. The OIG asked why the City could not do it and the reply was that maintaining a contract with IngramSpark is a lot more complicated for the City to ensure it can be available long term. “Could the City have done it, yes. Would it have been as efficient, no. For us we are trying to get the work done and make it accessible to the community. Also, non-profits promote them through their own channels. The book is meant to be a resource. Working with nonprofits is just common.”

**The following reflects an interview with E1.**

An interview with the E1 revealed that the OAF set up a publishing account through IngramSpark to print hard copies of the book. IngramSpark is responsible for book publication and OAF was the facilitator. E1 stated that OAF receives about \$2 per book. As of April 26, 2023, approximately one hundred (100) books have been sold. Did the City expect for the book to sell? “Great question, the City is not a bookseller.” E1 did not think the book was made to make money. It was more about documenting the pandemic experience and having a book that could exist as long as we have it in print. E1 was not expecting any financial gain. E1 does not believe OAF was either. The DAC could not enter into a contract with IngramSpark because IngramSpark requires getting into legal agreements with Amazon, Apple, and one other. E1 would love not to have a co-publisher. It makes it easier. The benefit of IngramSpark is that anyone in the world can access and print on demand.

E1 is set up as a secondary person on account with IngramSpark. OAF purchased a first printing of approximately five hundred (500) books. The books are in E1’s office, some are in the museum shop, and two (2) to three (3) copies are in City libraries. Anyone who has asked for a book has gotten one at no cost. E1 does not remember if OAF or E1 pressed the button to order books, but they communicated about it.

**The following reflects a conversation with the New Mexico State Ethics Commission.**

The New Mexico State Ethics Commission (NMSEC) was contacted and asked if the MOU between the DAC and OAF violates Article IX, Section 14 of the New Mexico Constitution. The NMSEC agreed to review the documents and stated they would process an informal opinion.

The information opinion received from the NMSEC’s response to the question was “No.” “As with its decision to commission the book, by entering the MOU, the City was “actuated by a spirit of self-interest” and contracted with the Fund to distribute the book, both generally and specifically to audiences that the City hoped to target.”

**Analysis:**

The OIG reviewed the proposed MOU between the DAC and AMF, the originally selected partner for the publishing and distribution of the book. One of AMF’s responsibilities under the MOU was that eighty-five (85) percent of the proceeds were to be donated to OAF with AMF retaining fifteen (15) percent of the proceeds. A review of the proposed MOU between the DAC and AMF revealed that it was the intent of the City that the OAF would be the main beneficiary of the book proceeds.

AMF declined to enter into the MOU with the DAC because it was agreed that the Foundation's participation in the book was not appropriate, as it simply fell outside the scope of their mission to raise money and awareness for the Museum.

Subsequent to AMF declining to enter into the proposed MOU with the DAC, the DAC initiated an MOU with OAF which is a 501(c)(3) tax-exempt nonprofit created for the benefit of the City.

The OIG's review of the MOU reflects that the City agreed to give the profit from the sale of each book in the amount of \$2.52 per book to OAF for facilitating a contract with IngramSpark to print, publish, and distribute the book. The MOU states the OAF would receive proceeds from the book sales after all administrative costs have been paid. The OIG's review of the invoice revealed that the City paid all of the administrative costs in addition to providing a \$250 fee to the OAF.

The OIG's investigation revealed the OAF did contract with IngramSpark to print, publish and distribute the book through online vendors on demand.

As of June 9, 2023, ninety-one (91) books have been sold and OAF has received \$229.32.

According to an interview with E1, "Anyone who has asked for a book has gotten one at no cost." The OIG did not request nor did it receive an opinion from the NMSCE regarding the City purchasing the books and then giving them away as it did not pertain to the MOU or to OAF retaining proceeds. The Director stated that approximately 150 books from the first batch of printed books remain and to date, the copies that were distributed went to: individuals who were interviewed, included, and/or named in the book; city employees; members of the media and book reviewers (local and national); professors at UNM and other universities; and students/interns involved with the City of Albuquerque.

**Finding-Allegation2:**

Based on the informal opinion of the NMSEC regarding whether the MOU between the City of Albuquerque and the One Albuquerque Fund violates the Anti-Donation Clause, Article IX, Section 14, the OIG is not able to substantiate the allegation.

**Allegation 3:**

Alleged co-mingling funds between City and OAF

**Authority:**

Governmental Accounting Standards Board (GASB)

**Evidence:**

IRS

Financial Statements

**Analysis:**

The OIG's investigation revealed the OAF is a separate tax-exempt nonprofit organization authorized by the Internal Revenue Service under code section 501 (c)(3). The City's Mayor has the power to appoint the members of OAF's governing board; therefore, the City has the potential to impose its will on the OAF. The OAF is presented as a blended component unit in the fund financial statements of the City of Albuquerque as required by GASB's 14, 80, and 90.

OAF monies are to be identified and separated by the City and accounted for independently from City monies. The OIG's investigation revealed that although the OAF is included in the City's financial statements, the OAF is its own fund.

**Finding-Allegation 3:**

The OIG was not able to substantiate that there was co-mingling of funds between the City and OAF.

**Allegation 4:** Alleged misuse or waste of taxpayer dollars for the book project "City at the Crossroads".

**Authority:**

City of Albuquerque's Personnel Rules and Regulations, §301.11 City Funds

Employees are personally accountable for City money over which they have possession or control. All employees who are in control of City funds must maintain accurate and current records of all such funds. Employees must comply with all policies, practices, and procedures promulgated by the Department of Finance and Administrative Services and approved by the Chief Administrative Officer and in accordance with Generally Accepted Accounting Principles regarding the receipt, recording, and disbursement of public monies.

City of Albuquerque's Personnel Rules and Regulations, §301.12 City Property

Employees are responsible for preventing loss, damage, abuse, misuse, or theft of City property or property entrusted to the City including, but not limited to: artifacts, vehicles, equipment, tools, supplies, and City records. All City property should be used only for City business. City property may not be used for personal gain or profit.

City of Albuquerque's Personnel Rules and Regulations, §301.13 City Records and Accounting

All City records, including reports, vouchers, requisitions, payroll, and personnel records must be prepared factually and accurately. It is the personal obligation of the employee completing such records as well as the supervisor to ensure that such records are accurate and comply with federal, state, and City record-keeping and accounting requirements.

**Evidence:**

- MOU between DAC and OAF
- IngramSpark Agreement
- Interviews
- IngramSpark invoice
- Contractor payments

**Interviews:**

The Director stated maintaining an agreement with IngramSpark is a lot more complicated for the City to ensure it can be available long term. Working with nonprofits is just common. Could the City have done it, "yes". Would it have been as efficient, "no".

E1 stated that the DAC could not facilitate the book publishing through IngramSpark because this requires getting into legal agreements with Amazon, Apple and one other online service.



**Analysis:**

The OIG reviewed the MOU between the DAC and OAF noting a partnership in the printing, publishing and distribution of the book through IngramSpark which is an online service where books can be purchased in quantities or on demand through online vendors. The question of whether or not this was misuse of public funds is predicated upon whether the DAC, on behalf of the City, could have entered into agreements without the assistance of the OAF.

The OIG reviewed the IngramSpark agreement with OAF, noting that it contained multiple legal agreements with Amazon and Apple.

Based on the interview with the Director, the DAC, on behalf of the City, could have entered into these agreements on their own but it would not have been as efficient. Given this statement, the administrative cost as well as the profits would not have been relinquished to the OAF.

Based on the interview with E1 and a review of the agreement, multiple agreements were required to be signed with other companies.

The OIG analyzed the invoices and services provided by the OAF, the total project cost as well as the number of books sold. The results of our analysis are as follows:

The OIG's review of the OAF invoice revealed that the City paid the OAF a total of \$8,378.63. The OAF invoice outlined the following services and costs.

Book Design	\$ 1,500.00
Cover Design	\$ 500.00
Printing Batch 1	\$ 850.11
Printing Batch 2	\$ 5,278.52
Administration Fees	<u>\$ 250.00</u>
Total Invoice:	\$ 8,378.63

The OIG was unable to locate any other payments made to the OAF for the book.

The OIG calculated the total cost of the project plus five hundred ninety-eight (598) books based on the contracts with the writer, the project manager and the OAF invoice to be \$97,268.63.

The OIG inquired about the number of books sold and was advised by the E1 that ninety-one (91) books were sold, to members of the general public, with a fair market price of \$19.99 each, totaling \$1,819.09.

The City paid the OAF for the printing of five hundred ninety-eight (598) books at a total cost of \$6,128.63, not including the administrative fee or design costs. This results in an average cost of \$10.25 per book.

Discussions with E1, revealed that ten (10) of the five hundred ninety-eight (598) books were sold to the Museum at a cost of \$10.00 per book, totaling \$100.00. Given that the average cost of the five hundred ninety-eight (598) books purchased by the City was \$10.25 per book, it would appear that there was a loss on the sale of the books to the Museum of \$.25 per book for a total of \$2.50. The OIG was advised that the \$100 sale to the Museum would be reflected in the DAC's general fund.

The OIG considered the total costs of the project to the total book sales to derive a total cost per book. The project cost per book purchased \$141.17 is calculated as the total cost of \$97,268.63 divided by six hundred eighty-nine (689)<sup>2</sup> books. If the City does not sell the remaining books, the total project cost is \$97,168.63 (97,268.63-100.00), thus making the project cost per book purchased \$141.03.

The City sold ninety-one (91) books to the public. While members of the general public are likely to have contrary opinions regarding the procurement of "City at the Crossroads", one could argue that the cost to the taxpayers does not outweigh the benefit of such a book. This can be countered by another stating that the value of documenting such a historical event is intangible. Given the financial analysis above, there might be reasonable disagreement regarding whether the City's expenditures for the book project were a reasonable use of public funds. The OIG considered whether it is reasonable to believe, that in the event of another pandemic, someone would seek out and read a book of anecdotal stories as a guide of how to navigate such a crisis. Obligating the taxpayer's monies to fund a book that promotes the administrative achievements during the pandemic and where a calculated value may never be known appears to be waste.

**Finding Allegation 4:**

The OIG's analysis is sufficient to support the conclusion the evidence substantiates the allegations of misuse or waste of public funds could be substantiated and there were potential violations of the City's Code of Conduct Sections 301.11, 301.12, and 301.13.

**Management's Response:**

*DAC strongly objects to the OIG equating "misuse or waste" with "profit." It is an inaccurate, misleading, oversimplification of this investigation. The OIG provides opinion and commentary related to issues of policy, but does not provide clear or objective evidence to substantiate the allegation of misuse or waste of public funds.*

- 1. The OIG does not present any evidence (beyond saying that the book hasn't been profitable and sharing their own short book review) that there was any waste or misuse or abuse of purchasing related to this project.*
- 2. DAC did not create and print the book in order to sell it (this was explained during the course of this investigation). DAC sought to make it available for purchase online and in local book stores in order to ensure it could be available to a wide audience. The copies*

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<sup>2</sup> Originally purchased 598 books and 91 books were sold through IngramSpark to total 689 books printed.

*that were paid for by DAC were intended to be given away or shared in public spaces. In addition, this book and this project have a much longer life than this investigation. The book will continue to be available in libraries and online/on demand printing. The limited number of books printed in 2022 are not the only lasting product of this project. The book will also be available as a downloadable PDF, and the dozens of community interviews will be preserved and available to researchers in the future like many other projects in our public archives.*

3. *DCA is not an enterprise fund. The core work and essential projects across the Department of Arts & Culture rarely make a profit. For example, libraries, museums, BioPark, theatres, public-private partnership with Explora, free Summerfest events, Twinkle Light parade, Public Access Studio and programming, ABQTodo, public art, special event permitting – these divisions do not make a profit. They do bring in revenue, but all operations are offset by operational funding from the General Fund each year. Each day, across DAC there are events, performances, workshops, exhibits, archives, conservation programs, and other projects such as books, posters, public art, etc. that are funded with public dollars which do not “make a profit” or break even. Furthermore, we do not measure the impact of these efforts in financial revenue. There are even more examples across City government of programs that do not make a profit – from parks, open spaces, animal shelters, meals for seniors, afterschool programs at community centers, etc.*
4. *There are also a wide variety of opinions on these efforts. Not everyone agrees on which books should be in libraries. Not everyone agrees on which traveling exhibits should be presented at museums or which items should be accessioned and cared for in their collections. Not everyone agrees on which plants should be included at the Botanic Gardens or which bands should play at Summerfest. Government is built for public service and not for generating profit. How our public funds are allocated is an issue of policy – the responsibility of policy makers. How much we entrust daily operations and programmatic decisions to the professionals in municipal departments is also an issue of policy – the responsibility of policy makers. These are questions beyond the duties of the OIG.*
5. *DAC unequivocally disagrees with the OIG’s subjective assertion that this book is a collection of “anecdotal stories .... that promotes the administrative achievements during the pandemic.” In fact, this is a book about an unprecedented time in our collective history. This book (and the research that led to it) document, preserve, and share the stories of our city through the voices of individuals - business owners, first-responders, healthcare workers, volunteers, city workers, and city leaders. Documenting, persevering, and sharing our collective histories is one of many things that the Department of Arts & Culture does every day in many different ways. The purpose of this book was not to promote administrative achievements – rather it was to promote the voices of Albuquerque, document the range of unprecedented stories and events in 2020, and preserve experiences of everyday people and those in public service. To this end, we hired a highly-regarded, experienced, professional journalist to research and write the book which is a skilled, balanced, and thoughtful reflection on 2020 in Albuquerque.*

6. *This book project is not exceptional for DAC, in fact it is one of many book projects completed by DAC during this administration. Other book projects include: One Albuquerque: 100 Albuquerque Poets with Albuquerque Library Foundation; Poet Laureate Book Series with UNM Press (four volumes to date, one in process); Open-Hearted Horizon: An Albuquerque Poetry Anthology with UNM Press, to be released in February 2024; Wit, Humor and Satire from Albuquerque Museum; Dreams Unreal with UNM Press; and Journey West: Danny Lyon from Albuquerque Museum.*

**Subsequent Matter 1:**

The language in Memorandum of Understanding (MOU) allegedly misrepresented the experience of OAF related to book publishing and distribution through the following two (2) statements.

**WHEREAS**, OAF has experience and interest in printing and publishing books related to the City of Albuquerque and its history, and

**WHEREAS**, OAF has knowledge of distribution of book, and

**Authority:**

Code of Conduct Section 301.2 Professional Excellence: 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.

**Evidence:**

MOU between DAC and OAF

Interviews

**Interviews:**

The OIG inquired with a representative of the OAF to obtain clarification of the OAF’s experience and the following are the questions and responses:

- Can you describe the prior experience OAF has in printing and publishing books as stated in the Memorandum of Understanding? *None, all books are printed and published by IngramSpark.*
- Has OAF published and printed any other books for the City of Albuquerque? If so, provide titles of books. *“No”.*

In addition to the information obtained during the interview with the Director, an email was sent to the OIG after the original interview providing the following clarifying statement.

“Based on your questions, I revisited the MOU and saw that a Whereas clause did reference the experience of the One Albuquerque Fund with previous book projects, and as I stated in my interview this is the first book project that they have pursued in partnership with us. Unfortunately, that clause was carried forward from other MOUs for other book projects with other support organizations, such as the Library

Foundation, and it was left in this MOU although it should have been deleted in this case.”

**Analysis:**

The OIG’s review of MOU as taken in conjunction with the interviews revealed there are two (2) statements in the MOU with OAF that result in a concern of misrepresentation.

The first statement emphatically states that the OAF had prior experience printing and publishing books but interviews and statements reveal that this was not accurate. Interviews and statements also revealed the OAF had never printed and published other books for the City.

The OIG considered the proposed MOU between the DAC and AMF and concluded that it contained the same language. If the DAC copied the MOU and changed the names it is possible that it could have been an oversight.

**Finding-Subsequent Matter 1:**

The evidence obtained was sufficient to substantiate the allegation that the MOU misrepresented the experience of OAF.

**Recommendation:**

The DAC should implement a policy for quality review to ensure that official documents contain true and accurate statements.

City Officials should review the matter and determine the appropriate action for violations of the Code of Conduct.

**Management’s Response:**

*DAC acknowledges and agrees that this was an inadvertent mistake by the Department. The Director openly acknowledged this mistake to the OIG during the course of the investigation. However, it was not an effort to misrepresent. The mistake was made unintentionally as staff relied on a previous MOU as a template for this one.*

**Subsequent Matter 2:**

The DAC did not retain official City documentation in accordance with the City’s Records Retention policy regarding the procurement process related to the book or to hiring.

**Authority:**

1.21.2 NMAC 1  
TITLE 1 GENERAL GOVERNMENT ADMINISTRATION  
CHAPTER 21 FUNCTIONAL RECORDS RETENTION AND DISPOSITION SCHEDULES (FRRDS)  
PART 2 RETENTION AND DISPOSITION OF PUBLIC RECORDS

1.21.2.346 BIDS, PROPOSALS AND QUOTES:

- A. Category: Financial and accounting – procurement.
- B. Description: Bids, quotes and proposals and related records.
- C. Retention: destroy three years from date file closed.

1.21.2.604 GOODS AND SERVICES:

- A. Category: Legal and judiciary - contract management
- B. Description: Records related to contracting of goods and services.
- C. Retention: destroy six years from date file closed

**AI 1-5** Records Management:

V. Retention and Disposition of City Records

Except as otherwise required by federal or state law, regulation, or contract, the retention periods for general records common to and maintained by all City departments, agencies, and offices shall be in accordance with the FRRDS codified in the New Mexico Administrative Code at NMAC 1.21.2.1 to 943, as recommended by the Committee on September 19, 2019, and approved by the Chief Administrative Officer on October 6, 2019.

**Evidence:**

Interviews  
State Statutes  
City Administrative Instruction

**Interviews:**

In an interview with the Director, the Director stated selecting contractors for Professional/Technical Services Contracts does not require any specific process. The procurement regulations allow departments to select contractors with the necessary experience and skills that match the project or initiative. The DAC did not retain notes from DAC's discussions, interviews, resumes, or work plan proposals which they considered when they selected the contractor for the project.

The Purchasing Division, Chief Procurement Officer was asked: If DAC received several proposals for Professional/Technical Service contracts should DAC maintain those proposals internally as they are a public document? The Chief Procurement Office replied "yes".

**Analysis:**

The OIG requested copies of the proposals received for the two (2) contracted positions for review. The DAC replied that there were no proposal documents on file.

The OIG requested E1 to provide a copy of the proposal submitted to DAC. E1 replied the E1 did not have documents that were responsive to our request for a proposal for the work done as a contractor.

The OIG reviewed the Records Retention Ordinance as well as NMAC and found that it requires proposals and related documents are required to be retained for a minimum of three (3) years.

The OIG inquired with the Purchasing Divisions Chief Procurement Officer regarding the procurement procedures for Professional/Technical contracts specific to the DAC. The Chief Procurement Officer was asked: If the DAC received several proposals for Professional/Technical Service contracts should the DAC maintain those proposals internally as they are public documents? The Chief procurement Office replied "yes".

**Finding-Subsequent Matter 2:**

The lack of documentation and interviews provide sufficient, conclusive evidence for the OIG to substantiate that the DAC did not retain the records and proposals for the contracts as required by AI No: 1-5 Records Management, which adopts the records retention standards described in 1.21.2.346 NMAC and 1.21.2.604 NMAC.

**Recommendation:**

The DAC should retain all information related to the procurement of Professional/Technical Service Contracts as they are public documents and their retention is required by AI 1-5.

The Purchasing Division should consider adding wording to the Professional/Technical Services portion of the Procurement Manual for record retention as it pertains to AI NO: 1-5 Records Management.

**Management's Response:**

*We strongly disagree with this finding and recommendation which is presented without the OIG specifying which records were missing.*

*As requested in prior responses, the OIG should provide sufficient information for the administration and the appropriate department to respond. Here, the OIG does not provide sufficient information. The OIG does not identify what documents are required, but missing. Without such information, Management cannot respond to the OIG's accusations. Management also disputes that it failed to comply with the City's records retention policies.*

*DAC did follow all procurement rules and policies as well as record retention rules and policies related to Professional/Technical Services contracts.*

*DAC did follow all procurement rules and policies as well as record retention rules and policies related to hiring decisions regarding unclassified positions.*

*DAC absolutely did retain required documents (purchasing documents, MOU, contracts, invoices, etc.) and produced them for the OIG.*

*There are important distinctions between records, communications, work products, and project documents. DAC retained and provided records in compliance with records policies and retention schedule of the City. We see no evidence or explanation of how DAC is deficient in this area except that the OIG would prefer to see more documentation beyond what is required by purchasing and record rules and regulations.*

*During the course of this eight-month investigation, the OIG asked repeatedly (via email and during in-person interviews) for records, documents and communications that it wanted to see and review. In fact, there are examples of staff in DAC and Purchasing providing the same records to the OIG more than once between December 2022 and June 2023. In some cases, documents that the OIG wanted to see had never existed.*

*It is unjustified and unreasonable to issue findings and subsequent recommendations that contradict the approved City of Albuquerque policies regarding the retention of project documents, communications, or work products. It is also unjustified and unreasonable issue*

*findings and subsequent recommendations in this investigation simply because the OIG does not agree with the current policies regarding PTS contracts, hiring processes, and records retention which have been thoroughly reviewed, vetted, approved, and disseminated.*

**Subsequent Matter 3:**

The MOU contains vague language regarding the Administrative fee and does not provide for an explicitly stated or calculated amount.

**Evidence:**

Emails  
MOU

**Analysis:**

In an email dated October 19, 2022, E1 is telling OAF what line item expenses to include in their invoice to the City. Along with that information, E1 states, as per the MOU, “if you’d like to include a reasonable Administrative Fee for your time with all this, feel free to add that, as well”.

The OIG reviewed the MOU noting the City agrees to reimburse OAF for all expenses associated with the design and printing of City at the Crossroads, plus a reasonable administrative fee to OAF for their efforts. Without an amount explicitly stated or an amount that can be calculated from the sales or costs, the OAF could have invoiced the City for any amount of administrative fee and although the amount could have been disputed, the likelihood that such a dispute would require legal intervention is high.

**Finding-Subsequent Matter 3:**

The evidence obtained by the OIG was sufficient to support the conclusion that the MOU contained vague language regarding the Administrative Fee and did not explicitly limit Administrative Fees, which may have required legal intervention to resolve.

**Recommendation:**

The City and its Departments should ensure that any administrative fee is clearly stated in future MOU’s.

**Management’s Response:**

*DAC acknowledges that the language could have been clearer, and will use revised language in any future MOUs. For the record, \$250 in total was paid to OAF in administrative fees related to this book project.*

## **General Observations**

**Observation 1:**

During the procurement of E1’s contract and hiring as an unclassified employee, there is evidence of possible favoritism and conflict of interest. In interviews with E1 and the Director, they both acknowledged the relationships E1 had with the Director and DD for many years.



**Consideration:**

There are no documents regarding the hiring process and there could be a perception that E1 was hired because of E1's affiliation to the Director and DD.

On July 16, 2022 the project manager was hired as an unclassified employee with the DAC where they continued working on the book project as well as other duties assigned.

**Recommendations:**

The DAC should provide training on favoritism and conflicts of interest as it applies to several City Ordinances to ensure DAC employees receive knowledge on favoritism and conflicts of interest and how to mitigate each. Anyone attending training should be required to sign an acknowledgment and those documents should be retained.

**Management's response:**

1. *DAC strongly disagrees with the consideration above. There are documents – all necessary documents - regarding the hiring of E1. E1 was hired for an unclassified position and the request for hire memo was submitted and retained in accordance with HR rules and regulations. The offer letter was issued and retained. This hire (like every hire) was reviewed by and approved by Budget, Central HR, DAC, and the CAO.*
2. *E1 was hired to lead major, multi-year initiatives for the Department. As DAC explained during this investigation, the primary projects associated with E1's responsibilities are wholly separate from and completely unrelated to the book project.*
3. *It is unprofessional for the OIG to imply that there was a conflict of interest or favoritism (without any evidence) simply because the Director and E1 acknowledged openly that they had worked together and coordinated on various projects, across many years, in the course of their individual professional capacities. E1 is not/was not a close friend or a family member or a previous employee of the Director. Neither the previous Deputy Director nor the current Deputy Director had a role in recommending or approving the hire of E1 nor were they interviewed for this investigation and so should not even be referenced here.*

*E1 is a highly accomplished, well-respected professional with demonstrated, exceptional, project management expertise in a variety of settings. The Director has worked in leadership and volunteer positions (receiving a number of professional awards and honors) in arts, culture and education in public and private sector settings for more than 30 years in Albuquerque. The Director has hundreds of long-standing "affiliations" with individuals as the result of her long and active career. This OIG recommendation implies that the only way for the Director to avoid "perceptions" of favoritism or accusations conflicts of interest would be to ensure that no one hired into the 405 staff positions the Department of Arts & Culture has any past or present affiliation with the Director. This would preclude hiring anyone who was an employee, volunteer, docent, contracted artist, presenter or student in a summer youth program at the NHCC between 2002 to 2013 (hundreds of talented people); anyone who worked for the NM Department of Cultural Affairs from 2002 to 2014; anyone who worked for many of the largest and oldest arts nonprofits in Albuquerque as the Director served on multiple boards and working committees before her tenure as Director; anyone who worked with Harwood Art Center or Escuela del Sol; and the list could go on.*

4. *Since the OIG offers no evidence of favoritism in this case beyond subjective speculation, and definitely no evidence that favoritism is an issue across DAC, the City disagrees with*

*the recommendation that DAC develop a department-wide training on this topic. In addition, in order to maintain consistency for all city employees, HR Department and the Employee Training Center are primarily responsible for developing and leading training to City employees on City processes, Code of Conduct, and human resources procedures.*

**Observation 2:**

The City does not have sufficient controls in place regarding the broad range in which Professional/Technical contracts for less than \$100,000 can be used and there is no way to ensure the benefit associated with the spending of taxpayer dollars outweighs the costs.

**Recommendations:**

The Purchasing Division should review the current policy regarding Professional/Technical contracts for less than \$100,000 and consider updating the policy to ensure controls are in place to ensure taxpayer dollars are being spent for a legitimate City purpose and benefit.

**Management's response:**

*Observation 2 and recommendations are vague and subjective because they do not provide any specifics on the lack of controls, if any, that were identified by the IG. That said, the City's policy on controls for financial responsibility is set forth Administrative Instruction 2-20. Control of city expenditures occurs through the budgetary process established through state law and City Charter. The Administrative Instruction provides: "All employees with budgetary control over a Program or Project must accomplish their tasks within the approved budget. All expenditure decisions must be made within that framework. It is unacceptable for an employee with budgetary control to spend in excess of the appropriated budget. Employees such as fiscal managers and human resource coordinators who may lack direct control, but serve in a direct advisory capacity for expenditure decisions, shall provide management with the best information available. If the manager fails to act in a financially prudent manner upon receipt of the advice, the fiscal manager and/or human resource coordinator shall report to the manager's supervisor. This process will be repeated at ascending levels of management until appropriate resolution is reached. If necessary, after following this procedure, if he/she still believes corrections have not been made, he/she should report directly to the City Budget Officer."*

*Internal controls require continuous review and testing for effectiveness and in that regard, the City does have processes in place that result in periodic changes to procedures and policies. For example, purchasing and DTI vetted several software programs and decided to move forward with DocuSign's comprehensive contracting system, Contract Lifecycle Management (CLM). We have just completed the build/implementation/user acceptance testing phase for Professional/Technical contracts, and anticipate rolling out Citywide training on the live product soon. CLM adds a number of controls to the process, and Departments will be required to use CLM for their Professional/Technical contracting needs. First, an intake form replaces the requisition and starts off the whole contracting process in one place. The Chief Procurement Officer reviews the purchase at the initial phase, rather than at the end of the process when the contract is ready for signature. All Professional/Technical contracts that exceed \$55,000 route directly to the CAO first, for his approval before moving into the workflow. The Director, Fiscal Managers, DFAS Risk, and Department and Purchasing City Legal, are all in the workflow and can comment on and revise contracts as needed. The system also has functionality that allows the contract to be sent from the system directly to the vendor for review and approval. After all of the approvals, CLM pushes the contract to DocuSign envelopes and the contract is executed. The clear workflow*

*ensures accountability and transparency of the approval process. CLM also has enhanced reporting and dashboard capacity for help in auditing and other compliance reviews.*

**Observation 3:**

The OIG's investigation identified an internal control risk through which the City could move governmental funds, through contracts, checks, transfers, etc. to the OAF, an entity controlled by the City. The funds could be used for expenditures or projects not allowable or that the City could or would not otherwise engage in.

**Recommendation:**

The City should perform a risk assessment for the OAF funds and implement internal controls to mitigate the identified risks. Specifically, implementing a control where any transfer of funds from the City's governmental funds to the OAF would require Council approval could mitigate this risk.

**Management's response:**

*The City already uses contracts, operating agreements, MOUs, and invoices to manage any public funds to and from non-profit partners and non-profit contactors. These internal controls were and are in place and were followed in this instance which is why there were invoices, contracts, and MOUs available during this investigation for OIG to review, investigate, and critique.*