

**STATE OF NEW MEXICO
OFFICE OF THE STATE AUDITOR**



**SPECIAL AUDIT REPORT
CITY OF SUNLAND PARK**

**Hector H. Balderas
State Auditor
May 14, 2012**

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I. EXECUTIVE SUMMARY

On February 23, 2012, the Office of the State Auditor (OSA) formally designated the City of Sunland Park (City) for special audit pursuant to the State Auditor's authority under the Audit Act, Sections 12-6-1 through 12-6-14 NMSA 1978. Specifically, Section 12-6-3(C) NMSA 1978 provides that the State Auditor "may cause the financial affairs and transactions of an agency to be audited in whole or in part." The State Auditor made the determination to designate the City for special audit based on the results of several years of special monitoring by OSA auditors of the City's troubling financial condition.

The City's repeated failure to submit timely annual financial audits in accordance with the Audit Act and the Audit Rule, 2.2.2 NMAC, first led the State Auditor to designate the City "at-risk" for fraud, waste and abuse in the fall of 2009. During that time, the OSA received numerous allegations of financial malfeasance at the City. The allegations were reported through the OSA's Fraud Hotline and from concerned constituents. Certain complaints related to violations of purchasing procedures, procurement procedures, nepotism, incorrect water billings and waivers of bills for the City's residential and commercial users. To ensure the complaints were fully reviewed and audited, the OSA referred the issues to the City's independent public accountant (IPA) on January 7, 2010 and requested the IPA consider the allegations during its financial audit test work for the City's 2010 financial audit. The additional testing the IPA conducted, as a consequence of the OSA's referral, resulted in nine additional findings for the City's 2010 financial audit report, including findings for purchase order lack of detail, lack of contract for services and lack of supporting documentation for travel reimbursement.

In conjunction with the results of the IPA's test work, the State Auditor directed OSA staff to conduct a comprehensive risk review of the City's financial audit reports for fiscal years ended June 30, 2008 through June 30, 2010. The review indicated the City is in a complete state of financial disarray. The City failed to submit all three of the audit reports by the State Auditor's required deadlines and it received a disclaimer of opinion on all three reports. The review also revealed numerous findings that exhibited poor fiscal management and a widespread failure to adhere to internal controls within the City. For example, as far back as fiscal year 2002, the City has continued to receive a finding that reveals budget overages in multiple funds. In fiscal year 2010, the City overspent its approved budget by over \$760,000 with expenditure overages in various funds. The City also received findings related to insufficient attention given to accounting and internal controls process, lack of separation of duties, and failure to perform a complete physical inventory of the City's capital assets. In sum, the review revealed that the City has a severe lack of fiscal transparency, which creates extreme risks for fraud and misappropriation of taxpayer funds.

To compound the City's fiscal problems, various City officials and employees were arrested on a range of criminal charges in the days and weeks following the OSA's special audit designation. This created administrative instability and left an overwhelmed City staff to deal with the financial operations of the City. For example, the City's former Mayor Pro-Tem, Daniel Salinas, and the former City Manager, Jaime Aguilera,

were arrested on February 25, 2012 on felony charges of extortion and tampering with evidence related to scheme to force Mayor Pro-Tem Salinas' opponent out of the City's mayoral race. Additionally, as noted in the findings of this report, criminal charges were recently brought against Mr. Salinas and the owners of two companies that were paid monies from the Border Crossing Fund. The findings and charges are associated with invoices submitted to the City that are fraudulent in nature. The cloud of criminal activity surrounding the City's operations has created a vacuum of oversight within the City's top management that only augments the OSA's concerns about the City's finance operations. As of the date of this report, the City is without a Mayor or City Manager.

Given the serious nature of these issues, the OSA performed a special audit of certain budgets, funds, accounts, and transactions of the City for fiscal years 2010 through 2012. The limited scope of the special audit consisted of the certain cash disbursements made from the Border Crossing Fund to certain vendors; the City's interim budgets, final budgets and quarterly financial reports; fund adjustments or transfers submitted by the City to the Local Government Division of the Department of Finance and Administration (LGD-DFA); adjustments to customer utility bills and accounts for fiscal year 2011; cash and investment accounts; capital asset additions, deletions and transfers; travel and per diem expenditures from Border Crossing Fund and Fire Protection Fund for the Mayor, Mayor Pro-Tem, City Manager, Public Information Officer, and all City Councilors; and the City's expenditures and final budgets for the Fire Protection Fund, Camino Real Regional Utility Authority (CRRUA) Fund, Joint Utility Fund and Border Crossing Fund.

During our special audit we performed certain procedures and tested all documentation provided by the City related to the procedures. The procedures included interviewing certain current and former City employees to obtain information and evidence as it pertained to the special audit's scope; determining whether certain disbursements were made in compliance with the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, the City's Purchasing Regulations; determining whether the City adhered to certain provisions of contracts or agreements with the vendors; determining whether the City allowed or approved claims or warrants in excess of the approved budgets, as prohibited by state law; tracing the bank balance on cash reconciliations to the balance per the bank statements; determining whether the City conducted an annual inventory of capital assets as required by state law; determining whether travel and per diem expenditures were made in compliance with the Per Diem and Mileage Act, Sections 10-8-1 through 10-8-8 NMSA 1978, and the City's Travel and Per Diem Reimbursement Policy; and determining whether the City Council and City Clerk complied with the Open Meetings Act, Chapter 10, Article 15 NMSA 1978.

With regard to the special audit's findings, we found certain instances in which the City made cash disbursements from the Border Crossing Fund that did not have adequate documentation and were determined to be made as a result of fraud. Notably, the City's lack of internal controls and oversight over disbursements from the restricted Border Crossing Fund increased the risk that payments would be made for unauthorized or illegal purposes. For numerous transactions, the City Manager, Finance Director and Purchasing Agent failed to request support for costs or certify goods or services were

received before approving payment. The City also made payments without proper authorizing signatures on check request forms, proper supporting documentation or adequate descriptions on invoices. In other instances we found the City consistently failed to adhere to the requirements of the Procurement Code, the City's Purchasing Regulations and terms of RFPs when evaluating proposals and awarding professionals services contracts related to the Border Crossing Fund. We also tested 46 cash disbursements, totaling \$978,050.95, from the City's Border Crossing Fund. For each disbursement we tested, we noted an irregularity or deficiency. For instance, payments were made without purchase orders in place, the City disbursed payments to vendors without a check request form, certain disbursements were not paid in the proper fiscal year, and the City Manager, Finance Director, and Purchasing Agent did not ensure that gross receipts tax was properly identified on the invoices submitted by vendors.

We also found that the Mayor, City Council and management failed to limit City expenditures in excess of approved budget amounts. The City does not have adequate internal controls in place to monitor each department and ensure that the departments are not expending funds in excess of their approved budgets. Since fiscal year 2002, the City has received a finding in its annual financial audit for making expenditures in excess of approved budgeted amounts in violation of state law. The City's failure to implement adequate internal controls and monitor the disbursement of public funds in excess of the City's approved budget increases the risk of budget deficits or unauthorized expenditures.

Our test work also revealed constitutional and statutory violations related to the City's forgiveness of debt related to customer utility bills and accounts. The City Council approved an 80 percent discount to certain utility bills without adequate justification, and we also noted that the Mayor Pro-Tem instructed the City Manager to make adjustments to certain bills regardless of whether the customer was eligible for the City's utility assistance program.

Furthermore, we found that the City's Finance Director did not reconcile certain bank accounts or properly maintain the books and records for certain bank accounts. The City's Finance Director failed to document the purpose for all transfers in or out of each bank account or institute proper accounting controls to protect the City's finances. Untimely or late reconciliations of the City's bank accounts increase the likelihood that misstatements of account balances will occur. Also, there is an increased risk of fraud and that missing funds may go undetected. Similarly, we noted that Finance Director is not properly maintaining the books and records for all investment accounts and reconciliations are not being prepared in a timely manner.

Regarding capital assets, we found the City Council and management continually violated state law by failing to conduct and certify an annual inventory of the City's capital assets. Without proper monitoring and certification by the City Council, there is an increased risk that capital assets will be subject to misappropriation and fraud. Moreover, we found the City did not process certain capital asset additions correctly and failed to maintain proper supporting documentation for certain capital asset additions, which can lead to material misstatements on the City's financial statements. The City also did not maintain proper accounting records for the capital assets, and it did not

maintain proper documentation of the transfer of capital assets from the City to CRRUA. We noted that the City did not provide us a complete, certified, and detailed capital assets listing or a listing of capital assets that were transferred to CRRUA, and we were unable to review the balances of capital assets along with the balances of infrastructure held by the City prior to the transfer.

In addition to these troubling findings, we also found deficiencies and violations of law relating to travel and per diem reimbursements, cash disbursements from the Fire Protection Fund, and the OMA. For example, during our test work of certain travel and per diem expenditures, we noted numerous instances in which travel vouchers were not properly approved before reimbursements were made. We also tested multiple cash disbursements from the City's Fire Protection Fund that did have proper supporting documentation, approvals, review and approval of invoices, and certification that goods and services. With regard to the OMA, we noted certain violations of the OMA related to the required approval and preparation of the City Council's meeting minutes.

Overall, throughout the course of our special audit and test work we found a range of significant deficiencies in the City's internal controls over procurement, capital asset acquisition, disposal and inventory, mileage and per diem, revenues and receivables. In many cases, we found that internal controls that should exist to shield the City from improper processing of transactions were ineffective or completely nonexistent. In other cases, we found that internal controls that did exist were not adhered to or simply overridden by the City Council, Mayor, City Manager, the Finance Director or the Purchasing Agent. Both the fiscal actions and inactions of the City Council and these City officials led to various violations of state laws and state regulations, many of which the Secretary of Finance and Administration is charged with enforcing. Accordingly, the special audit report's findings reveal numerous instances of fiscal management of City offices by certain persons that resulted in violations of law. Certain findings also reveal instances of fraudulent misappropriations of public money.

Therefore, based on our special audit's findings, we recommend that the Secretary of DFA take immediate action pursuant to Section 10-5-2 NMSA 1978 and summarily suspend officials of City management who are identified by the findings. We recommend that the Secretary of DFA take charge of those offices, primarily the offices of Finance Director and Purchasing Agent, which have not been vacated. We recommend that the Secretary also closely review the special audit's findings, and conduct further investigation as needed, as those findings may pertain to the suspension of members of the City Council, which is the City's board of finance.

The OSA will refer the findings of the special audit to the appropriate oversight and law enforcement agencies, including the Governor, DFA, the Third Judicial District Attorney, the New Mexico State Police, the Tax Fraud Investigations Division of the Taxation and Revenue Department, the Attorney General, the FBI, the U.S. Attorney for the District of New Mexico, and the Legislative Finance Committee. In cooperation with these agencies, the OSA will continue our efforts to aggressively audit the City's finances and its officials.

II. SCOPE AND METHODOLOGY

The scope of the special audit was limited and consisted of the following items for the City for fiscal years 2010 through 2012, except where noted:

- Cash disbursements made from the Border Crossing Fund to certain vendors in fiscal years 2011 and 2012;
- Interim and final budgets;
- Quarterly financial reports;
- All fund adjustments or transfers submitted by the City to the Local Government Division of the Department of Finance and Administration (LGD-DFA) for approval;
- The City's adjustments to customer utility bills and accounts for fiscal year 2011;
- Cash and investment accounts;
- Capital assets additions, deletions and transfers;
- Travel and per diem expenditures from the Border Crossing Fund and Fire Protection Fund for the Mayor, Mayor Pro-Tem, City Manager, Public Information Officer, and all City Councilors for fiscal years 2011 and 2012; and
- The City's expenditures and final budgets for the Fire Protection Fund, Camino Real Regional Utility Authority (CRRUA) Fund, Joint Utility Fund and Border Crossing Fund.

The OSA planned to include certain payroll items within its special audit scope; however, the City failed to provide our office with certain payroll documents for which we made repeated requests. Those documents included complete payroll and personnel records for the Mayor, Mayor Pro-Tem, City Manager, and the City Councilors; and a separate payroll listing for the active employees before and after the transfer of CRRUA. Due to time constraints, the OSA moved forward with other areas of the special audit's scope. We still have not received the documents requested, and the City has not provided our office an explanation regarding why the requested payroll items could not be produced.

Pursuant to the special audit's scope, we performed the following procedures. The OSA tested all documentation provided by the City related to these procedures:

1. Interviewed certain current and former City employees and obtained information and evidence as it pertained to the special audit's scope;
2. Selected certain sample items from cash disbursements made from the Border Crossing Fund to certain vendors in fiscal years 2011 and 2012, and requested and reviewed those disbursements and any supporting documentation. Test work included determining whether disbursements were made in compliance with the Procurement Code, the City's Purchasing Regulations and whether the City adhered to certain provisions of contracts or agreements with the vendors.

3. Requested and reviewed final budgets and expenditures for the Fire Protection Fund, CRRUA, Joint Utility Fund, and the Border Crossing Fund for fiscal years 2010, 2011 and 2012. Test work included determining whether the City allowed or approved claims or warrants in excess of the approved budgets, as prohibited by Sections 6-6-6 NMSA 1978.
4. Requested and reviewed the City's interim and final budgets for fiscal years 2010, 2011 and 2012. Test work included determining whether the City submitted its interim and final budgets to LGD-DFA by the deadlines required in Section 6-6-2 NMSA 1978. Test work also included whether the expended its budget in accordance with Section 6-6-9 NMSA 1978.
5. Requested and reviewed the City's quarterly financial reports for fiscal years 2010, 2011 and 2012. Test work included determining whether the City submitted its quarterly financial reports to LGD-DFA by the deadline required in Section 6-6-2 NMSA 1978.
6. Requested and reviewed all fund adjustments and transfers the City submitted to LGD-DFA for fiscal years 2010, 2011 and 2012. Test work included determining whether the City Council approved all fund adjustments and transfers.
7. Requested and reviewed adjustments to customer utility bills and accounts for fiscal year 2011. Test work included determining whether the adjustments were made in compliance with Section 3-37-7 NMSA 1978. We also reviewed any supporting documentation that would justify the adjustments made.
8. Requested all bank statements for the City's cash accounts for fiscal years 2010, 2011 and 2012, and we prepared a summary of cash reconciliations for all cash equivalent accounts of the City for each fiscal year. Test work included tracing the bank balance on the reconciliation to the balance per the bank statement, tracing the reconciled book balance to the working trial balance or lead schedule, testing the clerical accuracy of the reconciliation, and scanning the bank reconciliation for significant or unusual reconciling items.
9. Requested all investment bank statements for the City for fiscal years 2010, 2011 and 2012, and prepared reconciliations for all the City's investment accounts for each fiscal year. Test work included performing an analysis of the investment activity for each fiscal year by testing the clerical accuracy, tracing the opening balances to the adjusted prior-year working trial balances, and tracing the ending balances to the current year's working trial balance. We also investigated any unusual reconciling items noted.
10. We requested the City's investment policy, reviewed state and local laws and regulations and other supporting documents related to investments. We performed test work to determine if the City's investments complied with legal and contractual requirements.

11. Requested capital assets disposition packets for the City for fiscal years 2010, 2011 and 2012, and tested dispositions for compliance with certain provisions of Section 13-6-1 NMSA 1978 and Section 2.20.1.18 NMAC. Test work included determining whether the City deleted capital assets from the assets inventory list, whether the City properly disposed of computers by sanitizing all licensed software in accordance with Section 2.2.2.10 (V)(2) NMAC, and whether the City filed a copy of its official property disposition finding and proposed disposition as part of the City Council's minutes.
12. Requested and reviewed the expenditure listing for the Border Crossing Fund from July 1, 2010 through March 2012, which included travel and per diem expenditures. Requested and reviewed travel and per diem requests and expenditures for the Mayor, Mayor Pro-Tem, City Manager, Public Information Officer, and all City Councilors during fiscal years 2011 and 2012. Test work included determining whether travel and per diem expenditures were made in compliance with the Per Diem and Mileage Act, Sections 10-8-1 through 10-8-8 NMSA 1978, and the City's Travel and Per Diem Reimbursement Policy.
13. Requested and reviewed the expenditure listing for the Fire Protection Fund from July 1, 2010 through March 2012. Test work included determining whether the expenditures were made in compliance with the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978. Due to time constraints, we did not request cancelled check copies from the bank.
14. Requested all City Council meeting minutes and resolutions for fiscal years 2010, 2011 and 2012. We did not receive, therefore we did not review, City Council meeting minutes and resolutions from October 5, 2011 to the present. Test work included determining whether the City Council and City Clerk complied with certain provisions of the Open Meetings Act, Chapter 10, Article 15 NMSA 1978.
15. Reviewed the criminal complaints, affidavits for arrest warrants, and warrants for arrest for Daniel Salinas and Jorge I. Angulo filed on April 6, 2012 in the Third Judicial District of New Mexico;
16. Reviewed the criminal complaints, affidavits for arrest warrants, and warrants for arrest for Daniel Salinas and Luis Rene Diaz filed on April 30, 2012 in the Third Judicial District of New Mexico; and
17. Incorporated the results of the special audit procedures into this report. We included in the report any instances of noncompliance, violations of laws or regulations, lack of internal controls, improper internal controls or other deficiencies.

III. FINDINGS RELATED TO PROCUREMENT

Finding 01 – Procurement Code Violations in the Award of Professional Services Contracts Related to the Border Crossing Fund

Condition

During our test work of the City’s professional services contracts for fiscal years 2010, 2011 and 2012, we noted the following deficiencies, violations of the Procurement Code and violations of the City’s Purchasing Regulations in the City’s awards of contracts Javier Ortiz, Medius, Inc. (Medius), and EnviroSystems Management Consultants Inc. (EMC).

Professional Services Contract with Javier Ortiz

We noted various deficiencies, violations of the Procurement Code and violations of the City’s Purchasing Regulations in the City’s award of a contract to Javier Ortiz for the purpose of providing consulting services related to the border crossing project.

Harold Payne, the General Manager of the Sunland Park Racetrack & Casino, in a letter dated July 23, 2009 to Mayor Martin Resendiz, stated the following: “Sunland Park Racetrack & Casino requests that the City of Sunland Park hire Mr. Javier Ortiz to assist in accomplishing the creation of a Sunland Park border crossing.” On September 5, 2009, the City issued a Request for Proposals (RFP) for consulting services “in the fields of conceptual and strategic analysis aimed at facilitating The (sic) City’s decision-making process to secure an international border crossing project . . . in the shortest timeframe and at the lowest cost possible.” The deadline for submission of proposals was September 14, 2009. The RFP indicates that the City would conduct proposal evaluations on September 14, 2009 and would provide a notice of award on September 15, 2009. Javier Ortiz was the only offeror to respond to the RFP.

The RFP provided that proposals “will be reviewed for completeness and compliance with requirements by the Selection Committee, or designee . . . The Selection Committee will review each Offerors proposal.” We did not receive any documentation that indicated the City established a selection committee or that the City’s Central Purchasing Office established an evaluation committee as required by the City’s Purchasing Regulations. Moreover, we did not receive any documentation that indicated that the City completed an evaluation of Ortiz’s proposal as required by the RFP and the Procurement Code. Additionally, we did not receive any documentation that would support or explain why the City or the City’s Purchasing Agent, Neryza Rivera, failed to adhere to these requirements.

At a special meeting of the City Council on September 14, 2009, the City Council approved the award to Mr. Ortiz. The minutes reflect that Purchasing Agent Rivera stated that “[a]n RFP was issued out and only two were asked for but only one replied Mr. Javier Ortiz.” Councilor Daniel Salinas made a motion to approve the award to Mr. Ortiz, and Mayor Pro-Tem Angelica Marquez seconded the motion. The motion carried, but the minutes do not show how the Councilors voted. Purchasing Agent Rivera sent a

“Notice of Award” dated September 15, 2009 to Mr. Ortiz informing him that he had been awarded the contract.

On November 5, 2009, the City entered into a “Consulting Agreement” with Javier Ortiz. The Agreement was signed by Mayor Resendiz and Mr. Ortiz. The Agreement provided that the City will pay Mr. Ortiz \$5,000 per month for consulting services. The duration of the contract was one year, renewable upon agreement by both parties. The City Council approved renewal of the agreement on October 20, 2010, and the minutes for the meeting indicate that Councilor Carmen Rodriguez made a motion for approval and Councilor Annette Diaz seconded the motion. The motion carried, but the minutes do not show how the Councilors voted. The City provided a copy of Javier Ortiz’s Consulting Agreement for November 5, 2009 and November 12, 2011. However, the City did not provide us documentation of a signed and executed extension of the 2010 renewed contract agreement. The total amount awarded to Javier Ortiz was \$240,000.

Professional Services Contract with Medius, Inc. (Medius)

We noted various deficiencies, violations of the Procurement Code and violations of the City’s Purchasing Regulations in the City’s award of a \$1,000,000 contract to Medius for the purpose of providing strategic framework related to the border crossing project.

On January 7, 2011, the Purchasing Agent Rivera emailed an RFP related to the City’s border crossing project to six vendors, four of which had requested the information. The City also published an advertisement in the El Paso Times on January 6, 2011, but the required RFP submission deadline was incorrectly stated as “January 24, 2010” rather than “January 24, 2011.”

Through the RFP, the City sought, in part, a vendor that would determine “the current physical infrastructure and economic capacity for the community” and “develop strategic actions, projects and programs that will guide the local government in its future growth to prepare it to seize future development opportunities.” The RFP provided that the City’s Mayor would appoint an evaluation committee to evaluate the proposals received. The RFP detailed certain factors to be used by the committee when evaluating the proposals, and the relative weight given to each of those factors. The RFP stated that “[a]ll offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP.” Under the “Contract Award” section, the RFP provided that “[a]fter review of the Evaluation Committee Report, the recommendation of the City management and the signed contract, the City will award the Contract . . . The contract shall be awarded to the offeror or offerors whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.”

Medius was the only documented vendor that submitted a proposal in response to the City’s RFP. We did not receive any documentation that indicated Mayor Resendiz appointed an evaluation committee or that the City’s Central Purchasing Office established an evaluation committee as required by the City’s Purchasing Regulations. Moreover, we did not receive any documentation that indicated that the City completed an evaluation of Medius’ proposal as required by the RFP and the Procurement Code.

Additionally, we did not receive any documentation that would support or explain why Mayor Resendiz and the Purchasing Agent Rivera failed to adhere to these requirements.

On January 27, 2011, the City's Finance Director, Helen Gonzalez, signed as the "Department Director" on a Council Action Form for the City Council to consider and take action at its February 2, 2011 meeting to approve negotiations with Medius for the "Strategic Framework for the Border Crossing." The form lacked proper authoritative signatures by Mayor Resendiz and the City Manager, Andrew Morales. The City Council minutes for February 2, 2011 do not include any discussion by the City Council regarding the consideration and approval of negotiations with Medius. The February 2, 2011 minutes were signed by Mayor Resendiz, but not by the City Clerk, Elizabeth Gamez. Despite these minutes having no mention of Medius, we were provided a letter dated February 7, 2011 from Purchasing Agent Rivera to Medius notifying the company that the City had awarded the contract to Medius "at a special City Council meeting which took place on February 2, 2011."

We also were provided a Council Action Form for the City Council to consider and take action at its March 2, 2011 meeting to approve a one-year contract between the City and Medius for the "Strategic Framework of the Border Crossing." The form was incomplete and did not contain any proper authoritative signatures by Mayor Resendiz, City Manager Morales, or Finance Director Gonzalez. The minutes for the City Council's March 2, 2011 meeting indicate that the Council considered and approved the contract with Medius. The minutes state that Mayor Pro-Tem Daniel Salinas made a motion to approve the contract, and Councilor Annette Diaz seconded the motion. The motion carried, but the minutes do not show how the Council members voted. The contract awarded to Medius was for an amount not to exceed \$1,000,000 with an expiration date of June 31, 2012.

At its meeting on September 7, 2011, the City Council approved termination of the Medius contract. However, we were not provided documentation which would support that the City properly terminated contract. Section 4 of the contract stated that "[t]his Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination." We noted that the minutes for the Council's September 7, 2011 meeting show that the City Manager, Jamie Aguilera, recommended termination of the contract because the "contract with Medius, Inc. does not get the City closer to the Presidential permit." City Councilor Carmen Rodriguez made a motion to terminate the contract "immediately," and the motion was seconded by Councilor Angelica Marquez. The motion carried, but the minutes do not show how the Council members voted. Prior to termination of the contract, the City paid Medius \$457,777.80.

As a final note, we were provided a letter dated February 20, 2012 from a law firm to the City's attorney indicating that Medius "hereby agreed to accept the City of Sunland Park's offer of judgment contained in its Answer to Civil Complaint for Breach of Contract by accepting payment of \$87,000 upon delivery of lien waivers from its subcontractors." Also included with the letter was a court document entitled,

“Acceptance of Rule 1-068 NMRA 2012 Offer of Settlement.” As of the date of this report, we have not received documentation that the City has paid the settlement amount.

Professional Services Contract with EnviroSystems Management Consultants Inc. (EMC)

We noted various deficiencies, violations of the Procurement Code and violations of the City’s Purchasing Regulations related to its award of “The Land Port of Entry Professional Services Contract” to EMC for the Sunland Park Port of Entry (SPPOE). The contract was signed on November 3, 2011, and the City’s compensation to EMC as specified by the contract is a total lump sum fee of \$2,400,000.

Although the City executed the contract on November 3, 2011 with EMC for the SPPOE project, the documentation we were provided indicated that the City actually had awarded the project on May 11, 2011 to another company, The Idea Group of Santa Fe (Idea Group). We were not provided documentation to support how the City awarded the project to Idea Group and then executed the contract with EMC. Moreover, we were not provided any documentation related to two RFPs that the City issued prior the RFP which resulted in the award of the contract.

According to the City Council’s minutes from October 5, 2011, the City solicited proposals for the SPPOE project three separate times before the City awarded the contract to EMC. We noted that in the minutes City Manager Jaime Aguilera stated that the City issued an initial RFP but negotiations with the company “were going to start and never happened.” He went on to state that the City issued a second RFP for which EMC was selected as the top candidate, but that the former City Manager, Andrew Moralez, recommended that the City “not deal” with EMC. Finally, City Manager Aguilera stated that the City issued a third RFP and that the City selected the Idea Group. The minutes indicate that EMC competed in the third RFP process. We requested all procurement documentation related to the SPPOE RFP and contract; however, we were not provided any documentation related to the first and second RFPs.

With regard to the third RFP that is referenced in the meeting’s minutes, the City issued the RFP for the SPPOE on April 12, 2011. EMC did submit a proposal, but we noted that it was incomplete. First, the proposal was missing the required campaign contribution disclosure form that prospective contractors must submit with their proposals, as required by the Procurement Code. We also noted EMC did not meet four of the seven requirements of the “Letter of Transmittal” that must accompany each proposal, as required by the RFP. The Letter of Transmittal was missing the following items: identification of the name and title of the person authorized by the organization to contractually obligate the organization; identification of the name, title and telephone number of the person authorized to negotiate the contract on behalf of the organization; explicit indication of acceptance of the “Conditions Governing the Procurement” as stated in Section II, Paragraph C.1 of the RFP; and the Letter of Transmittal was not signed by a person authorized to contractually obligate the organization. For the aforementioned reasons, the proposal provided by EMC failed to adhere to the basic requirements of a signed and executable proposal for the SPPOE project.

On May 3, 2011, an evaluation committee consisting of Mayor Resendiz, Purchasing Agent Rivera, and City employee Mariana Chew and one other person we were not able to identify evaluated five companies on the proposals they submitted in response to the RFP. The evaluation score sheets show that EMC consistently scored either last or second to last of the five companies. At a City Council meeting held on May 4, 2011, Purchasing Agent Rivera presented the “[c]onsideration and action to approve a Professional Services contract” with the company that received the highest score for the SPPOE project. However, the meeting minutes state that the City Council postponed the agenda item because “Councilors want all presentations the same day.”

On May 9, 2011, an evaluation committee consisting of Mayor Resendiz, Mayor Pro-Tem Daniel Salinas, Purchasing Agent Rivera and one other person we were not able to identify evaluated the five companies for a second time. The evaluation score sheets indicated that presentations were given by the companies. Once again, EMC consistently scored last or second to last on the five proposals.

On May 10, 2011, at a Special Meeting of the City Council, Purchasing Agent Rivera presented the “[c]onsideration and action to approve a Professional Services contract” with the company that received the highest score for the SPPOE project. According to the minutes from that meeting, Purchasing Agent Rivera informed the Council that evaluations had been completed and that the “highest ranked firm to obtain the Presidential Permit” was Idea Group. Mayor Pro-Tem Salinas made the motion to approve the contract negotiations and Councilor Carmen Rodriguez seconded the motion. The motion carried, but the minutes do not show how the Councilors voted.

On May 11, 2011, Purchasing Agent Rivera sent an award letter to Idea Group which stated, “[p]lease let this serve as the Notice of Award for the RFP#04262011 for Professional Services contract towards the Sunland Park Land Port of Entry.” The letter further stated that “[a]t this moment our city attorney is drafting the contract which we will forward to you as soon as it becomes available.”

We were not provided a contract between the City and Idea Group. Rather, as previously mentioned, we noted that City Manager Aguilera discussed the three separate RFPs at a regular meeting of the City Council on October 5, 2011. The minutes reflect that EMC was awarded the SPPOE project after the City’s second RFP, and the Idea Group was awarded the SSPOE project after the City’s third RFP, which resulted in the award letter dated May 11, 2011 from Purchasing Agent Rivera. According to the minutes, City Manager Aguilera stated that the “Idea Group knew they were selected and the Enviro Systems knew they were selected in the second RFP. Both companies have been asking what the next step that is (sic) getting the contract is (sic).” Additionally, the meeting minutes state the following:

“Mr. Aguilera’s recommendation to the Council is to ask these firms to give us specifics as to what they are going to do for the City and the presidential permit . . . What Mr. Aguilera has done in the past is give the company \$5,000.00 each and ask the company to respond and tell us item by item what it is that they are going to do to get us the presidential

permit, give us the details and give us a fee for every action. The Council must agree to pay these two companies and the city will make a decision as to what firm to award the contract to.”

Councilor Marquez made a motion to move forward with the project. Mayor Pro-Tem Salinas seconded the motion. The minutes indicate that the motion carried by five yes votes and one no vote, but the minutes do not show how the Councilors voted.

We were not provided minutes for City Council meetings after October 5, 2011, or any other documentation, to support how the City ultimately awarded the contract to EMC. The contract between the City and EMC was signed on November 3, 2011 by City Manager Aguilera, EMC’s President Jorge Angulo, and Concha Medina, the “Acting City Clerk.” The contract awarded was for a total lump sum fee of \$2,400,000.

Criteria

Pursuant to the Procurement Code, specifically Sections 13-1-102 and 13-1-125 NMSA 1978, professional services exceeding \$50,000 must be procured by competitive sealed bid.

Pursuant to the City’s Purchasing Regulations, Section 7(E)(1), “[a]n evaluation committee established by the central purchasing office shall evaluate a proposal’s merits as required by the evaluation factors in the RFP.” Additionally, Section G(1) and (2) provide the following: “The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the city, taking into consideration the evaluation factors set forth in the RFP.”

Pursuant to Section 13-1-117(B) NMSA 1978 pertaining to competitive sealed proposals for professional services, “[t]he award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the . . . a local public body, taking into consideration the evaluation factors set forth in the request for proposals.”

Pursuant to Section 13-1-191.1(B) and (C) NMSA 1978, “[a] prospective contractor . . . shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted . . . The form shall be filed with the state agency or local public body as part of the competitive sealed proposal.”

The termination clause in the agreement between Medius and the City provides the following: “This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination.”

Cause

Mayor Resendiz and Purchasing Agent Rivera did not adhere to the requirements of the Procurement Code, the City’s Purchasing Regulations and terms of RFPs when evaluating

proposals and awarding professionals services contracts related to the Border Crossing Fund. The City Council did not adhere to the termination provisions of the City's contract with Medius. The City created confusion by issuing multiple RFPs for services, and the City failed to provide or maintain procurement documentation that would support how certain vendors were awarded contracts.

Effect

Mayor Resendiz and Purchasing Agent Rivera violated the Procurement Code, the City's Purchasing Regulations, and the terms of RFPs during the City's competitive sealed bid process for certain RFPs. By failing to adhere to requirements pertaining to the evaluation of proposals, and by failing to maintain documentation that supports the selection of bidders, there is an increased risk that fraud will occur during the selection process. There is also the risk that the City may select companies that do not meet the qualifications or specifications set forth in the City's RFPs. Additionally, when the City Council does not adhere to contractual provisions of the City's agreements, it subjects the City to legal liability.

Recommendation

The Mayor, the City's Purchasing Agent and City management should strictly adhere to the competitive sealed bid requirements of the Procurement Code and the City's Purchasing Regulations. Furthermore, the City's Purchasing Agent should monitor compliance with the terms and specifications of RFPs issued by the City. The City should disqualify bidders that fail submit the proper documentation and information in response to RFPs. Strong internal controls should be implemented over the evaluation process so that evaluations occur in every instance, and the City's Purchasing Agent should preserve complete documentation that supports the City's evaluation and selection of bidders. Finally, the City Council and City management should closely review provisions of City contracts in order to avoid adverse legal action from its vendors.

Finally, the City Council adopted a resolution that revised the City's procurement requirements for purchases of professional services. The resolution stated that "staff is hereby instructed to amend the City of Sunland Park Procurement Procedures to reflect the changes." While the resolution directed the City staff to amend the City's Purchasing Regulations, we were never provided any documentation that any amendments were made. Therefore, the City's Purchasing Regulations need to be updated and revised to give clear guidance and direction as to how services should be procured.

Finding 02 – Fraud and Deficiencies with Cash Disbursements Found in the City’s Expenditures Related to EnviroSystems Management Consultants, Inc.

Condition

During our test work of cash disbursements for the City’s contract with EnviroSystems Management Consultants, Inc. (EMC) for the Anapra-Sunland Park Land Port of Entry (LPOE) Presidential Permit, we noted two cash disbursements, totaling \$37,162.60, which did not have adequate documentation and were determined to be made as a result of fraud. The City made the disbursements from the Border Crossing Fund. The City entered into the contract with EMC on November 3, 2011.

The City made the first cash disbursement to EMC pursuant to Invoice #11104, dated November 14, 2011, in the amount of \$10,240.72, including gross receipts tax. The “Description” provided on the invoice was the following: “In conformance with Item 2A, ‘Additional Work’ of Agreement November 2, 2011. Saltillo Conference Nov. 17, 2011. Travel expenses: lodging transportation: Presentation Border Legislative Conference.” The cash disbursement related to Invoice #11104 contained a check request form which had been approved by the City Manager, Jaime Aguilera; the City’s Finance Director, Helen Gonzalez; and the City’s Purchasing Agent, Neryza Rivera. There is no documentation indicating that anyone certified that the services were received prior to payment.

According to the Affidavit for Arrest Warrant supporting criminal charges against Daniel Salinas filed on April 6, 2012, this first cash disbursement was made as a result of fraud. The Affidavit states that Jorge Angulo, the owner of EMC, provided \$250.00 per day to certain City officials as per diem for the XXIV Conferencia Legislativa Fronteriza, which was held on November 17 through November 19, 2011 in Saltillo, Coahuila de Zaragoza, Mexico. The officials included the Mayor Pro-Tem, Daniel Salinas; the City’s Public Information Officer, Arturo Alba; and the City Manager, Jaime Aguilera. See Finding 23 for additional travel and per diem detail regarding this trip. The expenses paid for included “meals, travel, lodging and ‘night life.’” The affidavit further states the following:

“The ‘night life’ included alcohol and strip clubs for the entire group and prostitutes for Mr. Alba and Mr. Salinas. Mr. Alba advised that in order to get around the per diem set by the City of Sunland Park and the State of New Mexico that Mr. Salinas had arranged for a “pyramid scheme” with Mr. Angulo. Mr. Alba further advised that this “pyramid scheme” was such that Mr. Angulo would provide the group with money and pay for their expenses and, in exchange, he would invoice the City of Sunland Park through EnviroSystems which, in turn, would be paid back to Mr. Angulo through the border crossing fund.”

The City made the second cash disbursement pursuant to Invoice #11106, dated December 21, 2011, in the amount of \$26,921.88, including gross receipts tax. The “Description” provided on the invoice was the following: “In conformance with Item

2A, 'Additional Work' of Agreement November 2, 2011. Sunland (sic) Park – Anapra LPOE Promotional Video.” Pursuant to Section 2A of the contract, the scope of services EMC was to provide the City related to the Presidential Permit Application included the following language: “[a]dditional work will be budgeted and funded outside the contract amount for this Agreement at lump sums, hourly rates and/or per diem expenses.” We noted that the City’s cash disbursement related to Invoice #11106 did not include a check request form with the proper authorized signatures. However, the documentation for the second invoice did contain an open purchase order with Purchasing Agent Rivera’s signature certifying receipt of the services rendered.

According to the Affidavit for Arrest Warrant supporting criminal charges against Daniel Salinas filed on April 6, 2012, this second cash disbursement also was made as a result of fraud. The Affidavit states that the owner of EMC was to pay for three videos: a campaign video for Mr. Salinas, a border crossing project video and a promotional video for EMC. The Affidavit further states that “the Daniel Salinas campaign video would be paid for utilizing the “pyramid scheme” wherein [the owner of EMC] would pay for it, invoice the City of Sunland Park through Envirosystems, and then be reimbursed by the City of Sunland Park.” These charges were paid by the City from the Border Crossing Fund. Although the third video was never created, the affidavit states that EMC paid \$13,000 to a media company for the campaign video and the border crossing project video.

With regard to the criminal charges, on April 6, 2012 criminal complaints were filed in the Third Judicial District Court against Jorge I. Angulo, President of EMC and Daniel Salinas, the City’s Mayor Pro-Tem. The criminal complaint against Mr. Angulo showed one count of “Fraud, (Over \$20,000),” once count of “Conspiracy to Commit Fraud (Over \$20,000),” one count of “Fraud (Over \$2500) (sic)” one count of “Conspiracy to Commit Fraud (Over \$2,500),” two counts of “Marking (sic) or Permitting False Public Vouchers,” and two counts of “Conspiracy to Commit Making or Permitting False Public Vouchers.” The criminal complaint against Mr. Salinas showed one count of “Fraud, (Over \$20,000),” one count of “Conspiracy to Commit Fraud (Over \$20,000),” one count of “Fraud (Over \$2500) (sic)” one count of “Conspiracy to Commit Fraud (Over \$2,500),” two counts of “Marking (sic) or Permitting False Public Vouchers,” two counts of “Conspiracy to Commit Making or Permitting False Public Vouchers,” two counts of “Soliciting an Illegal Kickback,” two counts of “Receiving an Illegal Kickback,” two counts of “Conspiracy to Commit Soliciting and/or Receiving an Illegal Kickback,” two counts of “Violation of Ethical Principles of Public Service” and two counts of “Prohibited Official Act for Personal Financial Interest.”

Criteria

Section 13-1-158 NMSA 1978(A) provides the following: “No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications.”

All costs should be completely supported before the City approves them for payment. In addition, invoices should be processed only when they adequately detail all costs. Furthermore, pursuant to the AICPA *Audit and Accounting Guide for State and Local Governments*, AAG-SLV 13.08, “[m]anagement is responsible for the design and implementation of programs and controls to prevent and detect fraud; management's knowledge of any fraud or suspected fraud affecting the entity involving management, employees who have significant roles in internal control, and others where the fraud could have a material effect on the financial statements; and management's knowledge of any allegations of fraud or suspected fraud affecting the entity.”

Section 13-1-196 NMSA 1978 provides that “[a]ny person, firm or corporation that knowingly violates any provision of the Procurement Code is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each procurement in violation of any provision of the Procurement Code.” Additionally, Section 13-1-197 NMSA 1978 provides that “[a]n amount equal to the value of anything transferred or received in violation of the provisions of the Procurement Code by a transferor and transferee may be imposed as a civil penalty upon both the transferor and transferee.”

Section 30-16-6(E) NMSA 1978 provides the following: “Whoever commits fraud when the value of the property misappropriated or taken is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a third degree felony.”

Section 30-23-3 NMSA 1978 provides the following: “Making or permitting false public voucher consists of knowingly, intentionally or willfully making, causing to be made or permitting to be made, a false material statement or forged signature upon any public voucher, or invoice supporting a public voucher, with intent that the voucher or invoice shall be relied upon for the expenditure of public money. Whoever commits making or permitting false public voucher is guilty of a fourth degree felony.”

Section 10-16-3(D) NMSA 1978 provides the following: “No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.”

Section 10-16-4(A) NMSA 1978 provides the following: “It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.”

Section 10-16-3(A) NMSA 1978 provides the following: “A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and

resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.”

Cause

According to the Affidavit for Arrest Warrant supporting criminal charges against Daniel Salinas filed on April 6, 2012, Mayor Pro-Tem Salinas arranged for a scheme with the owner of EMC in which money from the Border Crossing Fund would be used to reimburse the owner of EMC for expenses related to alcohol and strip clubs, prostitutes for Public Information Officer Alba and Mayor Pro-Tem Salinas, and the cost of a campaign video for Mayor Pro-Tem Salinas.

Additionally, City Manager Aguilera, Finance Director Gonzalez and Purchasing Agent Rivera failed to request support and justification for costs before approving payment. Purchasing Agent Rivera also appears to have improperly certified that services provided by EMC were actually received. Mayor Pro-Tem Salinas and City Manager Aguilera took advantage of the lack of internal controls over the procurement and payments. Altogether, this collective lack of oversight and internal controls increased the risk of fraud.

Effect

The City violated the Procurement Code by failing to certify receipt of services and approving payments. The City has a lack of support for payments disbursed, which prevents them from ensuring proper and reasonable payment for goods and services. Inadequate controls increase the risk of improper charges by vendors. As a result, the City was subject to fraud and disbursed payments in which the funds were used for purposes other than the border crossing project.

Recommendation

The City Council and management should implement strong internal controls over the procurement of services, review of invoices, certification of goods and services, and disbursements. At a minimum, the City should issue purchase orders prior to making payments for goods and services. Agreements with vendors should not contain vague and ambiguous language, which increases the risk that payments may be made for unauthorized or illegal purposes. The City should also require vendors to submit support for charges that adequately detail the composition of the charges and the services provided. The City Manager, Finance Director and Purchasing Agent should ensure this documentation is submitted and question the vendor about costs if no support is provided.

Finding 03 – Deficiencies and Violations of Law Related to the Disbursement of Border Crossing Fund Monies to the Diaz Consulting Firm

Condition

During our test work of cash disbursements for the City's Border Crossing Fund, we tested the City's procurement documentation related to the disbursements paid to the Diaz Consulting Firm (Diaz) for professional services. We noted that the City did not properly procure the professional services and the City's cash disbursements to Diaz did not contain adequate supporting documentation. We also noted that one cash disbursement paid by the City was the result of fraudulent invoice for services submitted by Diaz.

First, the City procured Diaz's services in violation of the City's purchasing regulations and the Procurement Code. The total amount paid to Diaz by the City was \$14,425, but we did not note any documentation that indicated that the City's Purchasing Department procured the services according to the "best obtainable price." In fact, according to the City's Purchasing Agent, Neryza Rivera, she received an invoice for Diaz's services and asked the City Manager, Jaime Aguilera, whether the services would exceed \$10,000. The letter, from Rene Diaz, the owner of Diaz, to the City Manager, Jaime Aguilera, was dated December 13, 2011, the same date as Diaz's initial invoice to the City. The letter stated the following:

"The Diaz Consulting firm, acting on behalf of the City of Sunland Park has reviewed all correspondence and reservations emanating from the US-Mexico Department of Border Affairs relating to a *Presidential Permit* for a new international border crossing. We have identified six (6) areas of concern that will need to be satisfactorily addressed and resolved before the City of Sunland Park can successfully proceed with the process of applying for a *Presidential Permit* . . . The Diaz Consulting Firm in our capacity as a private sector advocate for the City of Sunland Park will provide a pro-active approach in our efforts to resolve the six (6) issues previously identified."

The letter identified the six "areas of concern" and indicated that Diaz had already begun the process of facilitating the necessary input and expertise for the border crossing project by a variety of officials. However, the terms of the letter are vague and ambiguous. The letter does not clearly indicate the cost, terms and specific scope of the services Diaz was to provide to the City. The letter stated, "[a]s we proceed through this process on a month to month basis, the Diaz Consulting Firm will provide the City of Sunland Park a detailed account of our activities, incurred costs and the progress we have achieved." From this language, there is no limitation on the amounts Diaz would charge the City for its services or how the charges would be assessed. As detailed further below, the purchasing documentation we were provided did not contain a "detailed account of [Diaz's] activities, incurred costs and the progress [Diaz has] achieved."

In total, the City made three cash disbursements without a purchase order for three Diaz invoices totaling \$9,426.25. It was only after these payments were made that the City

issued a purchase order signed by Purchasing Agent Rivera on February 6, 2012 – the same date as the fourth and final invoice from Diaz in the amount \$4,998.75. The total amount the City paid to Diaz was \$14,425.

As previously mentioned, the initial invoice Diaz submitted to the City, in the amount of \$862.50, was dated December 13, 2011, which was the same day as Diaz's letter to City Manager Aguilera. The invoice only indicated the services provided were for "Marketing and Analysis" in the amount of 7.5 hours at \$115 per hour. The second invoice, dated three days later, December 16, 2011, indicated the services provided were for "Analysis." The invoice charged the City \$3,565 for 23 hours of work at an increased rate of \$155 per hour. There was no documentation provided by the City that indicated the City's management or Finance Department staff questioned either the work performed or the reason for the change in the hourly rate. There also was no documentation that indicated that the City required support for the increased rate. The third invoice was dated January 4, 2012 in the amount of \$4,998.75 for 32 hours of work at \$155 per hour. For all three invoices, City Manager Aguilera, Purchasing Agent Rivera and the City's Finance Director, Helen Gonzalez, approved a check request form. Additionally, on all three check request forms, Purchasing Agent Rivera indicated that no purchase order was requested or issued.

We found that the fourth and final invoice submitted by Diaz was a result of fraud and was not for services related to the border crossing project. Notably, the City issued a purchase order and a purchase requisition form for the invoice. However, unlike the previous three invoices, a check request form was not provided to us. The invoice was dated February 6, 2012 for \$4,998.75, and the invoice indicated the service provided was "Analysis." The City issued an open purchase order in the amount of \$10,000 with the description, "ADDITIONAL BORDER CROSSING CONSULTING SERVICES AND ANALYSIS AS NEEDED." Additionally, Purchasing Agent Rivera signed the purchase order on February 6, 2012 acknowledging receipt of the services, and the purchase order certified that "THE PURCHASES AND/OR SERVICES HEREON REQUESTED ARE NECESSARY TO PROPERLY CONDUCT THE ACTIVITIES OF THIS DEPARTMENT AND ARE APPROVED FOR PURCHASE." The City also provided a purchase requisition form which stated that the purpose and justification of the purchase was "to effectively obtain presidential permit." The requisition was signed by City Manager Aguilera, Finance Director Gonzalez and Purchasing Agent Rivera.

Based on our interview with City Manager Aguilera, and according to the Affidavit for Arrest Warrant supporting criminal charges filed in the Third Judicial District Court on April 30, 2012 against Rene Diaz and Mayor Pro-Tem Daniel Salinas, we noted the fourth invoice submitted by Diaz was not for services relating to "analysis" under Diaz's contract. Mr. Salinas asked Mr. Diaz for money to pay a private investigator for a video for a private investigation used to extort Mayor Pro-Tem Salinas' opponent in the City's mayoral election. In order to come up with the money, the Mr. Diaz submitted an invoice to the City in an amount under \$5,000 so that the invoice would not have to go through the City Council for approval. We did receive City Council Resolution No. 2011-39 which the Council adopted on September 7, 2011. The Resolution requires that City finance staff provide the City Council with a monthly report of all City expenditures over \$5,000. On

February 6, 2012, Mr. Diaz submitted an invoice to the City in the amount of \$4,998.75. This invoice had a purchase order and purchase requisition attached, as described above.

The criminal complaint against Mr. Diaz showed one count of “Extortion”, one count of “Conspiracy to Commit Extortion”, one count of “Fraud (Over \$2500)” (sic), one count of “Conspiracy to Commit Fraud (Over \$2,500)”, one count of “Marking (sic) or Permitting False Public Vouchers”, and one count of “Conspiracy to Commit Making or Permitting False Public Vouchers”. The criminal complaint against Mayor Pro-Tem Salinas showed one count of “Fraud (Over \$2500)” (sic), one count of “Conspiracy to Commit Fraud (Over \$2500)”, one count of “Marking (sic) or Permitting False Public Vouchers”, one count of “Conspiracy to Commit Making or Permitting False Public Vouchers”, one count of “Soliciting an Illegal Kickback”, one count of “Receiving an Illegal Kickback”, one count of “Conspiracy to Commit Soliciting and/or Receiving an Illegal Kickback”, two counts of “Violation of Ethical Principles of Public Service”.

Criteria

Pursuant to Section 13-1-125 NMSA 1978, “a central purchasing office may procure professional services having a value not exceeding fifty thousand dollars (\$50,000), excluding applicable state and local gross receipts taxes, in accordance with professional services procurement regulations promulgated by . . . a central purchasing office with the authority to issue regulations.” In July 2010, the City Council approved a resolution that adopted the following limits and requirements for the procurement of professional services: 1) “small purchases” between \$0 and \$10,000 must be procured according to the “best obtainable price” and 2) “major purchases” of \$50,001 or more require “formal RFP.”

Good accounting practices require a purchase order be issued as a cash and budget control prior to making purchases of goods or services. Purchase authorization and budgetary control should be executed by a responsible person at the department level and finance department level who has authority to approve the purchase. Pursuant to Section 13-1-77 NMSA 1978, a “purchase order” is “the document issued by the state purchasing agent or a central purchasing office that directs a contractor to deliver items of tangible personal property, services or construction.”

Section 13-1-158(A) NMSA 1978 provides the following: “No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications.” Additionally, the City’s Purchasing Regulations, Section 13(B), provides that “[p]ayment shall be made when the central purchasing office or using agency acknowledges that services, construction or items of personal property have been received and meet specifications.”

All costs should be completely supported before the City approves the invoice for payment. Invoices should be processed only when the invoice includes adequate detail of all costs. Furthermore, pursuant to the American Institute of Certified Public

Accountants (AICPA) *Audit and Accounting Guide for State and Local Governments*, AAG-SLV 13.08, “[m]anagement is responsible for the design and implementation of programs and controls to prevent and detect fraud; management's knowledge of any fraud or suspected fraud affecting the entity involving management, employees who have significant roles in internal control, and others where the fraud could have a material effect on the financial statements; and management's knowledge of any allegations of fraud or suspected fraud affecting the entity.”

Section 13-1-196 NMSA 1978 provides that “[a]ny person, firm or corporation that knowingly violates any provision of the Procurement Code is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each procurement in violation of any provision of the Procurement Code.” Additionally, Section 13-1-197 NMSA 1978 provides that “[a]n amount equal to the value of anything transferred or received in violation of the provisions of the Procurement Code by a transferor and transferee may be imposed as a civil penalty upon both the transferor and transferee.”

Section 30-16-6 NMSA 1978 provides the following: “Fraud consists of the intentional misappropriation or taking of anything of value that belongs to another by means of fraudulent conduct, practices or representations . . . Whoever commits fraud when the value of the property misappropriated or taken is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a third degree felony.”

Section 30-23-3 NMSA 1978 provides the following: “Making or permitting false public voucher consists of knowingly, intentionally or willfully making, causing to be made or permitting to be made, a false material statement or forged signature upon any public voucher, or invoice supporting a public voucher, with intent that the voucher or invoice shall be relied upon for the expenditure of public money. Whoever commits making or permitting false public voucher is guilty of a fourth degree felony.”

Section 10-16-3(A) NMSA 1978 provides the following: “A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.”

Section 10-16-3(D) NMSA 1978 provides the following: “No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.”

Section 10-16-4(A) NMSA 1978 provides the following: “It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a

fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.”

Cause

According to the Affidavit for Arrest Warrant supporting criminal charges filed in the Third Judicial District Court on April 30, 2012 against the Rene Diaz and Mayor Pro-Tem Salinas, a scheme was arranged whereby Mr. Diaz submitted a fraudulent invoice to the City. We found that the invoice submitted was for reimbursement costs for a video for a private investigation used to extort Mayor Pro-Tem Salinas’ opponent in the City’s mayoral election. City Manager Aguilera knew of this scheme.

Additionally, City Manager Aguilera, Finance Director Gonzalez and Purchasing Agent Rivera failed to request support and justification for increases in costs before approving payment. Due to Purchasing Agent Rivera’s failure to issue a purchase order, there was no written direction to the contractor about the services to be provided at a certain cost. City Manager Aguilera, Finance Director Gonzalez and Purchasing Agent Rivera also appear to have improperly certified that services provided by Diaz were actually received. City Manager Aguilera, Finance Director Gonzalez and Purchasing Agent Rivera did not request Diaz’s “detailed account” of activities, costs and progress achieved. Mayor Pro-Tem Salinas and City Manager Aguilera took advantage of the City’s lack of internal controls over the procurement and payments related to Diaz. Altogether, this collective lack of oversight and internal controls significantly increased the risk of fraud.

Effect

The City violated its own purchasing regulations and the Procurement Code when procuring Diaz’s services, certifying receipt of services and approving payments. The City’s lack of internal controls and oversight over disbursements from the restricted Border Crossing Fund increases the risk that payments will be made for unauthorized or illegal purposes. Without an executed contract with clearly defined terms, there is also a lack of transparency and control over the services to be provided. As a result, the City disbursed payments in which the funds were used for purposes other than the border crossing project.

Recommendation

The City Council and management should implement strong internal controls over the procurement of services, review and approval of invoices, certification of receipt of goods and services, and cash disbursements. At a minimum, the City should issue purchase orders prior to making payments for goods and services. Formal agreements that the City executes with vendors who provide professional services should not contain vague and ambiguous language. The City should also require vendors to submit support for charges that adequately detail the composition of the charges and the services provided. The City Manager, Finance Director and Purchasing Agent should ensure this documentation is submitted and question the vendor about costs if no support is provided. Additionally, the City should request support for any unjustified increases in costs.

Finally, the City Council adopted a resolution that revised the City's procurement requirements for purchases of professional services. The resolution stated that "staff is hereby instructed to amend the City of Sunland Park Procurement Procedures to reflect the changes." While the resolution directed the City staff to amend the City's Purchasing Regulations, we were never provided any documentation that any amendments were made. Therefore, the City's Purchasing Regulations need to be updated and revised to give clear guidance and direction as to how services should be procured.

Finding 04 –Violations of the Procurement Code and Deficiencies Related to the Procurement of Legal Services

Condition

During our test work of the City's professional services contracts, we noted the City violated the Procurement Code and the City's Purchasing Regulations when procuring legal services provided by the Coppler Law Firm, P.C. (Coppler).

The City's Mayor, Martin Resendiz, and the City Council violated the Procurement Code and the City's Purchasing Regulations by failing to seek competitive sealed bids when hiring Coppler as the City Attorney. Pursuant to Section 3-12-4 NMSA 1978, the "governing body" of a municipality may "provide for the office of an attorney." As determined by the governing body, the position may be filled by an independent contractor or City employee. Coppler functioned as an independent contractor, but the City never procured his services through a formal bid process. The City paid Coppler a total of \$481,378.86 in legal fees, from general and restricted funds, during fiscal years 2010, 2011 and 2012.

According to the City Council's meeting minutes for January 30, 2009, Mayor Resendiz "presented the name of Frank Coppler for City Attorney" for the City Council's "[c]onsideration and action to approve the submission of names of individuals who shall fill the appointive positions for the municipality and the names of individuals who shall be employed by the municipality as per State Statue (sic) (3-11-5 NMSA 1978)." Upon a motion made by Councilor Daniel Salinas, and seconded by Councilor Jessica Avila, the City Council approved Coppler. The other City Councilor present via telephone at the meeting was Angelica Marquez; however, the minutes do not indicate how Councilor Marquez voted. Mayor Pro-Tem Elizabeth Martinez, and Councilors Yvette Cortez and Gabriela Buso were absent.

That same day, the City entered into a professional services agreement with Coppler, which was signed by Mayor Resendiz, Mr. Coppler and the City Clerk, Elizabeth Gamez. Although the City Council approved Coppler's appointment, Section 4 of the agreement provides the following: "Attorney, their agents, officers and employees, are independent contractors, performing services for the City, and are not employees of the City. Attorney, their agents, officers and employees, shall not accrue leave, retirement, insurance, bonding or use of city vehicles or any other benefits afforded to employees of the City as a result of this Agreement." The agreement does not set a compensation limit, but provides that legal services are to be paid "at the rate of \$140.00 per hour, plus the applicable gross receipts taxes, long distance toll charges, facsimile charges, mileage and expenses, copying, deposition and filing fees."

As additional evidence that Coppler was not an employee of the City, the agreement provides that Coppler may, with prior approval of the Mayor, "subcontract portions of the services to be performed under this Agreement to lawyers located in Dona Ana County . . . In these cases, such designated lawyers will bill the City directly with a copy to the Attorney who, prior to payment, will review [the invoice] and note agreement or

disagreement with the reasonableness of the charges.” The agreement was effective February 1, 2009 and terminates on February 1, 2013. Included in the termination clause is the following: “Such written notice of termination shall be made to other party at any time between March 15th and April 15th of the year such party desires termination. In the event of such a termination notice, this Agreement shall terminate on July 1st following such notice.”

The City Council’s January 30, 2009 meeting minutes relating to the Council’s approval of Coppler do not reflect any discussion about whether the position would be filled by an independent contractor or a City employee. The minutes also do not contain any discussion about the professional services agreement executed between the City and Coppler. However, given that the agreement treated Coppler as an independent contractor, and that the City has ultimately paid Coppler \$481,378.86 in legal fees from fiscal years 2010 through 2012, the City was required to procure those professional services in accordance with the competitive sealed bid requirements of the Procurement Code and the City’s Purchasing Regulations.

During our test work of professional services agreements, we also noted that the City entered into a professional services agreement dated June 14, 2011 for legal services with Cervantes Law Firm, P.C (Cervantes). The agreement was signed by Mayor Resendiz, Joseph Cervantes and City Clerk Gamez. The agreement did not set a compensation limit, but stated that “the City agrees to the Attorney at the rate of \$150.00 per hour, plus the applicable gross receipts taxes, long distance telephone charges, facsimile charges, mileage and expenses, copying, deposition and filing fees.” The City Council’s meeting minutes reflect that the agreement was never approved by the City Council prior to execution of the agreement, that Cervantes’ name was never offered to the City Council for the City Attorney position, and that the City Council terminated the agreement at a special meeting on July 13, 2011. Ultimately, the City paid Cervantes \$6,593 in fees during fiscal year 2012. The City did not seek competitive bids prior to securing legal services from Cervantes; however, given the total amount expended, the procurement is considered a small purchase. We did not note any documentation that indicated that the City procured the services according to the “best obtainable price,” which is required for this monetary amount.

Criteria

Pursuant to Section 3-12-4 NMSA 1978, the “governing body” of a municipality may “provide for the office of an attorney.” Section 3-11-5 NMSA 1978 provides that “[a]t the organizational meeting of the governing body . . . the mayor shall submit, for confirmation by the governing body, the names of persons who shall fill the appointive offices of the municipality and the names of persons who shall be employed by the municipality.” That section further provides the following: “If the governing body fails to confirm any person as an appointive official or employee of the municipality, the mayor at the next regular meeting of the governing body shall submit the name of another person to fill the appointed office or to be employed by the municipality.”

Pursuant to the Procurement Code, specifically Sections 13-1-102 and 13-1-125 NMSA 1978, professional services exceeding \$50,000 must be procured by competitive sealed bid. Pursuant to Section 13-1-76 NMSA 1978, “professional services” include the “services of . . . lawyer . . . and other persons or businesses providing similar professional services, which may be designated as such by a determination issued by the state purchasing agent or a central purchasing office.”

Pursuant to the City’s Purchasing Regulations, Section 14.4 (prior to July 2010), purchases over \$20,000 “must be made by the City Council prior to issuance of a purchase order . . . All purchases exceeding \$20,000 require – formal bid procedures as specified by State regulations and shall be processed and executed by the Purchasing Department, through said procedures.”

In July 2010 the City Council approved a resolution that adopted the following limits and requirements for the procurement of professional services: 1) “small purchases” between \$0 and \$10,000 must be procured according to the “best obtainable price” and 2) “major purchases” of \$50,001 or more require “formal RFP.”

Cause

Mayor Resendiz entered into a contract with Coppler, and the City Council approved the appointment of Coppler, without a competitive sealed bid procurement process. Mayor Resendiz also entered into an agreement with Cervantes which did not receive City Council approval prior to entering into the agreement. It also appeared that the City did not seek the best obtainable price before procuring the services. The City’s agreements with both law firms were signed by Mayor Resendiz and City Clerk Gamez.

Effect

Mayor Resendiz, the City Council, and City Clerk Gamez violated the Procurement Code and the City’s Purchasing Regulations. Without compensation limits on its professional services agreements, there is an increased risk that the City will have expenditures in excess of available funds or approved budgets. By failing to follow competitive sealed bid procurement requirements, there is also an increased risk that the City will be subject to fraud, waste or abuse.

Recommendation

The City Council, Mayor and management should implement strong internal controls to ensure compliance with the Procurement Code and the City’s Purchasing Regulations when procuring professional services contracts. The City’s Purchasing Agent should also monitor all procurement of professional services for compliance with applicable laws and regulations. If the City Council chooses to fill the position of City attorney by an independent contractor, it should seek legal services through a competitive bid process if the fees will exceed \$50,000. The City should also revise its contracts to include compensation limits to ensure expenditures are properly controlled.

Finally, the City Council adopted a resolution that revised the City's procurement requirements for purchases of professional services. The resolution stated that "staff is hereby instructed to amend the City of Sunland Park Procurement Procedures to reflect the changes." While the resolution directed the City staff to amend the City's Purchasing Regulations, we were never provided any documentation that any amendments were made. Therefore, the City's Purchasing Regulations need to be updated and revised to give clear guidance and direction as to how services should be procured.

Finding 05 – Deficiencies with Procurement and Cash Disbursements Related to New Mexico Community Capital, Inc.

Condition

During our test work, we found deficiencies with the City's procurement and certain cash disbursements related to the City's Professional Economic Development Services Agreement with New Mexico Community Capital, Inc. (NMCC) entered into on October 20, 2010.

First, we noted that the City did not follow proper procurement procedures when procuring NMCC's services. The total contract award was for \$50,000; therefore, the procurement of the professional services was considered a small purchase. At this dollar threshold, the City is required to demonstrate the best obtainable price. We were not provided any documentation that indicated that the City's Purchasing Department procured the services according to the "best obtainable price." Additionally, the City Clerk, Elizabeth Gamez, did not sign the contract. The contract was only signed by the Mayor, Martin Resendiz, and the vendor.

Second, during our test work of cash disbursements from the Border Crossing Fund, we noted that seven cash disbursements, totaling \$50,000, paid to NMCC did not have adequate documentation. The City paid all seven disbursements from the Border Crossing Fund during fiscal year 2011. The City did not prepare a purchase order for the expenditure of the funds, and authorizing signatures of the City Manager, Andrew Morales, and Purchasing Agent, Neryza Rivera, are missing from certain check request forms. All the forms are signed by the Department Head, Linda Vasquez, and the Finance Director, Helen Gonzalez, except for one form in which there was an illegible signature for the Finance Director. The descriptions of services on the invoices are vague, only stating, "Professional Economic Development Services Agreement. Border and Small Business Development." The contract provided for equal installment payments; therefore, the amounts charged on each of the seven invoices are exactly the same amounts of \$7,142.86. There is no documentation indicating that any one from the City inquired as to the actual services being rendered. There was no documentation provided that indicated anyone certified that the services were received prior to payment.

Criteria

Good accounting practices require a purchase order be issued as a cash and budget control prior to making purchases. Purchase authorization and budgetary control should be executed by a responsible person at the department level and finance department level who has authority to approve the purchase. Pursuant to Section 13-1-77 NMSA 1978, a "purchase order" is "the document issued by the state purchasing agent or a central purchasing office that directs a contractor to deliver items of tangible personal property, services or construction."

In July 2010, the City Council approved a resolution that adopted the following limits and requirements for the procurement of professional services: 1) "small purchases"

between \$0 and \$10,000 must be procured according to the “best obtainable price” and 2) “major purchases” of \$50,001 or more require “formal RFP.”

Section 13-1-158 NMSA 1978(A) provides the following: “No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications.”

All costs should be completely supported before the City approves them for payment. Invoices should be processed only when they adequately detail all costs.

Cause

It appears City Manager Moralez, Finance Director Gonzalez and Purchasing Agent Rivera failed to request support for costs before approving payments from the Border Crossing Fund. The City made payments to a vendor without proper authorizing signatures on check request forms, proper supporting documentation or adequate descriptions on invoices. Due to the failure to issue a purchase order, there was no written direction to the contractor about the services to be provided at a certain cost. There is no evidence that the City obtained services at the best obtainable price. It is also unclear what services were provided to the City.

Effect

The City violated the Procurement Code by failing to certify receipt of services prior to approving payments. The lack of internal controls over properly approving invoices and oversight of cash payments to vendors puts the City at risk for significant fraud, waste and abuse. The lack of support for payments by cash disbursements also prevents the City from ensuring proper and reasonable payment for goods and services. Inadequate controls increase the risk of improper charges by vendors. Altogether, this collective lack of oversight and internal controls significantly increases the risk of fraud.

Recommendation

The City Council and management should implement strong internal controls over the procurement of services, review and approval of invoices, certification of receipt of goods and services, and cash disbursements. The City should maintain documentation that supports services were procured at the best obtainable price, and the City should issue purchase orders prior to making payments for goods and services. Formal agreements that the City executes with vendors who provide professional services should not contain vague and ambiguous language. The City should also require vendors to submit support for charges that adequately detail the composition of the charges and the services provided. The City Manager, Finance Director and Purchasing Agent should ensure this documentation is submitted and question the vendor about costs if no support is provided. Finally, the City Council adopted a resolution that revised the City’s procurement requirements for purchases of professional services. The resolution stated

that “staff is hereby instructed to amend the City of Sunland Park Procurement Procedures to reflect the changes.” While the resolution directed the City staff to amend the City’s Purchasing Regulations, we were never provided any documentation that any amendments were made. Therefore, the City’s Purchasing Regulations need to be updated and revised to give clear guidance and direction as to how services should be procured.

Finding 06 – Invoices for Certain Vendors Did Not Include Gross Receipts Tax as a Separate Amount

Condition

During our test work of City's expenditures for fiscal years 2010, 2011 and 2012, we identified four vendors that did not include gross receipts taxes as a separate amount on the invoices they submitted to the City. The amounts paid by the City pursuant to those invoices totaled \$506,647.26. The vendors were Javier Ortiz, New Mexico Community Capital, Inc., Medius, Inc. and Diaz Consulting. Of the four vendors, Javier Ortiz and Medius, Inc. were procured by competitive sealed bids. We were provided documentation that Medius remitted gross receipts taxes to the New Mexico Taxation and Revenue Department (TRD).

Criteria

Section 7-9-5 NMSA 1978 provides the following: "To prevent evasion of gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in business are subject to the gross receipts tax." Pursuant to Section 7-9-3.5 NMSA 1978, "gross receipts" is defined as "the total amount of money or the value of other consideration received from... selling services performed outside New Mexico, the product of which is initially used in New Mexico, or from performing services in New Mexico."

Pursuant to Section 13-1-108 NMSA 1978, for contracts solicited by competitive sealed bids, "[t]he applicable gross receipts tax or applicable local option tax shall be shown as a separate amount on each billing or request for payment made under the contract."

Cause

City Manager Jaime Aguilera, Finance Director Helen Gonzales, and Purchasing Agent Neryza Rivera did not ensure that gross receipts tax was properly identified on the invoices being submitted by vendors for payment.

Effect

Gross receipts taxes may not be getting properly remitted to TRD.

Recommendation

The City should ensure that applicable gross receipts taxes are included on vendor invoices as required by statute. Also, it helps ensure that gross receipts taxes will be remitted to the proper authority. The City should not approve payment for invoices that do not show gross receipts tax as a separate amount.

Finding 07 – Cash Disbursement Irregularities Related to the Border Crossing Fund

Condition

We tested 46 cash disbursements, totaling \$978,050.95, from the City’s Border Crossing Fund. We noted numerous disbursement irregularities, as follows:

- 46 cash disbursements tested, totaling \$978,050.95, did not have a complete voucher packet. The voucher packet did not have one or more of the following items: payment voucher/check request, invoice or approved purchase order;
- 46 cash disbursements tested, totaling \$978,050.95, did not indicate that the invoice was cancelled. For example, the City did not mark them “paid” or note the date paid and check number;
- 36 disbursements tested, totaling \$506,647.26, did not appear to include gross receipts tax. The vendors’ invoices did not include gross receipts tax as a separate amount on the invoices they submitted to the City. See Finding 06 for additional detail regarding this issue;
- 30 disbursements tested, totaling \$793,492.84, did not include a signature to certify the request for payment was true and correct;
- 25 disbursements tested, totaling \$293,922.56, did not indicate that goods or services were received prior to payment;
- 24 disbursements tested, totaling \$690,064.22, did not have a payment voucher or check request forms included in the voucher packet;
- 22 disbursements tested, totaling \$278,922.56, did not have an active purchase order prior to the disbursement of cash;
- 12 disbursements tested, totaling \$206,238.23, did not include sufficient detail to determine which contract or agreement to which a purchase order or invoice was related;
- 7 disbursements tested, totaling \$421,599.82, of which \$118,427.85 appeared to be for services that were outside the scope of the executed contract(s);
- 5 disbursements tested, totaling \$311,754.32, had a different remittance address on the invoice than the check;
- 4 disbursements tested, totaling \$20,414.50, were not recorded in the correct fiscal period;
- 4 disbursements tested, totaling \$39,243.81, were not paid within 30 days of the date of the invoice. Pursuant to the Procurement Code, the City is required to pay 1 ½% per month in late fees to the contractor. However, the City provided no documentation that indicated late fees were calculated or that late payments were remitted;
- For 4 disbursements tested, totaling \$14,425, the price on the vendor’s invoices did not agree with the purchase document, and the supporting documentation was vague with regard to the billing terms. See Finding 03 for additional detail regarding these transactions;
- 3 disbursements tested, totaling \$13,562.50, indicated a \$155 per hour rate, which was \$40 higher than the \$115 per hour rate charged on the original invoice. The three invoices did not document the reason for the increase, and the supporting

documentation was vague with regards to billing terms. See Finding 03 for additional detail regarding these transactions;

- 3 disbursements tested, totaling \$42,161.35, are associated with criminal complaints filed against the vendor(s) and City Councilor regarding fraudulent invoices submitted and paid by the City. See Findings 02 and 03 for additional detail regarding these transactions;
- 2 disbursements tested, totaling \$5,000, were not properly supported because the description on invoice did not agree to the check copy;
- 2 disbursements tested, totaling \$37,770.53, were partially improperly coded as services provided under the border crossing project;
- 2 disbursements tested, totaling \$10,000, were not applied to an active purchase order that was available. See Finding 01 for additional detail regarding these transactions; and
- 1 disbursement tested, totaling, \$16,713.50, was being held by the City for payment. The invoice date is 1/5/12 and the check date is 2/24/12. As of 4/4/12 the check had not been released to the vendor.

Criteria

Section 7-9-5 NMSA 1978 provides the following: “To prevent evasion of gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in business are subject to the gross receipts tax.” Pursuant to Section 7-9-3.5 NMSA 1978, “gross receipts” is defined as “the total amount of money or the value of other consideration received from.... selling services performed outside New Mexico, the product of which is initially used in New Mexico, or from performing services in New Mexico.”

Pursuant to Section 13-1-108 NMSA 1978, for contracts solicited by competitive sealed bids, “[t]he applicable gross receipts tax or applicable local option tax shall be shown as a separate amount on each billing or request for payment made under the contract.”

Section 13-1-158 NMSA 1978(A) provides the following: “No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications.”

Section 13-1-158(C) NMSA 1978 provides the following: “[U]pon certification by the central purchasing office or the using agency that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the contractor within thirty days of the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one-half percent per month.”

Section 13-1-125(C) NMSA 1978 provides that “a local public body may procure services having a value not exceeding ten thousand dollars (\$10,000) by issuing a direct purchase order to a contractor based upon the best obtainable price.” Pursuant to Section 13-1-77 NMSA 1978, a “purchase order” is “the document issued by the state purchasing agent or a central purchasing office that directs a contractor to deliver items of tangible personal property, services or construction.”

Good accounting practices require a purchase order be issued as a cash and budget control prior to making purchases. Purchase authorization and budgetary control should be executed by a responsible person at the department level and finance department level who has authority to approve the purchase.

Good accounting practices and internal controls require the proper recording of transactions. Also, adequate segregation of duties is required to ensure proper and sufficient internal controls over recording of all expenditures.

All costs should be completely supported before the City approves them for payment. Invoices should be processed only when they adequately detail all costs. Furthermore, pursuant to the AICPA *Audit and Accounting Guide for State and Local Governments*, AAG-SLV 13.08, “[m]anagement is responsible for the design and implementation of programs and controls to prevent and detect fraud; management's knowledge of any fraud or suspected fraud affecting the entity involving management, employees who have significant roles in internal control, and others where the fraud could have a material effect on the financial statements; and management's knowledge of any allegations of fraud or suspected fraud affecting the entity.

Section 30-16-6 NMSA 1978 provides the following: “Fraud consists of the intentional misappropriation or taking of anything of value that belongs to another by means of fraudulent conduct, practices or representations . . . Whoever commits fraud when the value of the property misappropriated or taken is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a third degree felony.”

Section 30-23-3 NMSA 1978 provides the following: “Making or permitting false public voucher consists of knowingly, intentionally or willfully making, causing to be made or permitting to be made, a false material statement or forged signature upon any public voucher, or invoice supporting a public voucher, with intent that the voucher or invoice shall be relied upon for the expenditure of public money. Whoever commits making or permitting false public voucher is guilty of a fourth degree felony.”

Cause

The City has wholly inadequate or completely nonexistent internal controls over disbursements made from the Border Crossing Fund. City Manager Andrew Moralez, City Manager Jaime Aguilera, Finance Director Helen Gonzalez and Purchasing Agent Neryza Rivera approved expenditures without proper supporting documentation. They failed to request support for costs before approving payments from the Border Crossing Fund, and

Purchasing Agent Neryza failed to certify goods or services were received prior to payment. Payments were made without purchase orders in place, and the City disbursed payments to vendors without check request forms. Certain disbursements were also not paid in the proper fiscal year, which results in the inaccurate reporting of financial information. City Manager Aguilera, Finance Director Gonzales, and Purchasing Agent Rivera did not ensure that gross receipts tax was properly identified on the invoices being submitted by vendors for payment. Altogether, the collective lack of oversight and internal controls increased the risk of fraud and payments for unauthorized costs.

Effect

The City violated the Procurement Code by failing to certify receipt of services and approving payments. The City's lack of internal controls and oversight over disbursements from the restricted Border Crossing Fund increases the risk that payments will be made for unauthorized or illegal purposes. The City made payments to a vendor without proper authorizing signatures on check request forms, proper supporting documentation or adequate descriptions on invoices. The lack of internal controls over properly approving invoices and oversight of cash payments to vendors puts the City at risk for significant fraud, waste and abuse. There is also an increased risk that errors will go undetected, overpayments to vendors will occur and gross receipts taxes may not be getting properly remitted to TRD. Altogether, this collective lack of oversight and internal controls significantly increases the risk of fraud. As a result of the City's lack of internal controls, the City was subject to fraud and disbursed certain payments in which the funds were used for purposes other than the border crossing project.

Recommendation

The City Council and management should implement strong internal controls over the procurement of services, review of invoices, certification of goods and services, and disbursements. At a minimum, the City should issue purchase orders prior to making payments for goods and services. The City should also require vendors to submit support for charges that adequately detail the composition of the charges and the services provided. Without adequate support, there is an increased risk that the City will pay for goods or services for unauthorized purposes or outside the scope of agreements. The City Manager, Finance Director and Purchasing Agent should ensure this documentation is submitted and question the vendor about costs if no support is provided. Additionally, the City should request support for any unjustified increases in costs. The City should ensure that applicable gross receipts taxes are included on vendor invoices and being paid to the proper taxation authorities. The City should not approve payment for invoices that do not show gross receipts tax as a separate amount.

Finally, the City Council adopted a resolution that revised the City's procurement requirements for purchases of professional services. The resolution stated that "staff is hereby instructed to amend the City of Sunland Park Procurement Procedures to reflect the changes." While the resolution directed the City staff to amend the City's Purchasing Regulations, we were never provided any documentation that any amendments were

made. Therefore, the City's Purchasing Regulations need to be updated and revised to give clear guidance and direction as to how services should be procured.

IV. FINDINGS RELATED TO THE CITY'S BUDGET

Finding 08 – City Expenditures in Excess of Approved Budget Limits

Condition

The City's actual expenditures exceeded budgeted expenditures approved by the Local Government Division of the Department of Finance and Administration (LGD-DFA) in the following amounts for the following funds we tested for fiscal year 2010:

- Fire Fund: \$54,762
- Joint Utilities Fund: \$769,882

Criteria

Pursuant to Section 3-37-1 NMSA 1978, the “governing body is the board of finance of the municipality.” In addition, Section 3-37-2A(A) through (C) NMSA 1978 provides that the governing body of a municipality shall “control the finances and property of the municipality,” “appropriate money for municipal purposes only,” and “provide for payment of debts and expenses of the municipality.”

Section 6-6-6 NMSA 1978 provides the following: “When any budget for a local public body has been approved and received by a local public body, it is binding upon all officials and governing authorities, and no governing authority or official shall allow or approve claims in excess thereof, and no official shall pay any check or warrant in excess thereof, and the allowances or claims or checks or warrants so allowed or paid shall be a liability against the officials so allowing or paying those claims or checks or warrants, and recovery for the excess amounts so allowed or paid may be had against the bondsmen of those officials.”

Cause

The Mayor, City Council and management failed to limit City expenditures in excess of approved budget amounts. The City does not have adequate internal controls in place to monitor each department and ensure that the departments are not expending funds in excess of their approved budgets. City Council members listed in the City's financial audit for fiscal year ended June 30, 2010 were Mayor Pro-Tem Daniel Salinas, Christian Lira, Carmen Rodriguez, Annette Diaz and Jessica Avila. City management included Mayor Martin Resendiz, City Manager Jaime Aguilera and former Finance Director.

Effect

The City Council failed to adhere to its responsibilities as the board of finance. The City is in violation of Section 6-6-6 NMSA 1978 and City officials may be subject to liability for excess allowances, claims, checks or warrants. The City's failure to implement adequate internal controls and monitor the disbursement of public funds or allowing

expenditures in excess of the City's approved budget may result in budget deficits or unauthorized expenditures.

Recommendation

The City Council should adhere to its responsibilities as the board and finance, and it should implement proper controls to ensure its expenditures do not exceed the amounts approved by LGD-DFA. The City should track all approved invoices from vendors as they are received, and greater attention should be given to the budget monitoring process so adjustments can be made on a timely basis to avoid excess expenditures. If adjustments to the budget are needed, the accounting personnel should submit them to the City Council for approval and then to the LGD-DFA.

Since fiscal year 2002, the City has received a finding in its annual financial audit for making expenditures in excess of approved budgeted amounts in violation of Section 6-6-6 NMSA 1978. In fiscal year 2010 alone, the City remitted payments for goods and services in excess of the approved budget for 23 separate funds. The City's repeated failures to address this problem is of significant concern, and LGD-DFA should engage in aggressive oversight of the City's corrective action plan related to remedying expenditures in excess of budget. Pursuant to Section 6-6-2(I) NMSA 1978, LGD-DFA is charged with the power and duty to "supervise the disbursement of funds to the end that expenditures will not be made in excess of budgeted items or for items not budgeted and that there will not be illegal expenditures."

Finding 09 – Missing Quarterly Reports and Failure to Submit Required Budget Reports

Condition

The City failed to submit timely its fiscal year 2010 quarterly financial report for September 30, 2009, and the City was unable to provide us with its quarterly financial reports for December 31, 2009, March 31, 2010 and June 30, 2010. The City also submitted its fiscal year 2011 quarterly reports to the Local Government Division of the Department of Finance and Administration (LGD-DFA) late, on September 29, 2011. The City also submitted its second quarterly report for fiscal year 2012 late, on February 21, 2012.

On October 26, 2010, the Interim Deputy Director of the LGD-DFA sent a letter to City officials regarding a fiscal year 2011 budget deficit for the City. The letter was directed to the Mayor Martin Resendiz, City Manager Andrew Moralez, and City Councilors Angelica Marquez, Carmen Rodriguez, Christian Lira, Jessica Avila and Annette Diaz. In the letter, the Interim Deputy Director stated that “[e]ffective immediately and until further notice, the City must submit to LGD monthly financial reports rather than the usual quarterly reports.” We found that the City did not submit monthly reports following this LGD-DFA’s notice, and as previously mentioned, the City did not submit its fiscal year 2011 quarterly reports until September 29, 2011. According to the LGD-DFA, the LGD-DFA allowed Finance Director Gonzalez to provide verbal status reports instead of written monthly reports. Finance Director Gonzalez would inform LGD-DFA verbally of the City’s problems and progress related to fixing financial data. The LGD-DFA stated that “no monthly reports were submitted because of the inaccuracy of information, DFA wanted reports with as accurate information as possible since financial information is shared with other agencies.”

Criteria

Pursuant to Section 6-6-2(F) NMSA 1978, local public bodies must submit “periodic financial reports, at least quarterly,” to LGD-DFA. The financial report forms prescribed by LGD-DFA state that local public bodies must “SUBMIT TO LOCAL GOVERNMENT DIVISION NO LATER THAN 30 DAYS AFTER THE CLOSE OF EACH QUARTER.” On October 26, 2010, LGD-DFA began requiring the City to submit monthly reports instead of quarterly reports until further notice.

Pursuant to Section 6-6-3(B) NMSA 1978, every local public body shall “make all reports as may be required by the local government division.”

Cause

The City had an accounting software and data back system failure in fiscal year 2010. Due to the system failure, as well as its data backup system failure, the City was unable to submit its fiscal year 2010 quarterly financial reports to LGD-DFA. This also caused the City to be late in submitting its fiscal year 2011 quarterly reports. In fiscal year 2012,

the City's Finance Director, Helen Gonzalez, had to make various corrections, which caused the late submission of the second quarterly report. LGD-DFA also allowed Finance Director Gonzalez to submit monthly verbal reports rather than written reports.

Effect

The City violated Section 6-6-2 NMSA 1978, and the City did not provide LGD-DFA the information necessary to carry out its oversight duties. Additionally, without written reports, transparency regarding the financial status of the City is harmed. The City Council, management and LGD-DFA did not have timely and accurate information needed to evaluate the financial condition of the City as well as make management and oversight decisions.

Recommendation

The City Council and management should implement and adhere to proper internal controls to ensure that each quarterly financial report is accurate and submitted to LGD-DFA no later than 30 days after the close of each quarter. The LGD-DFA should require written reports to ensure transparency and the creation of a verifiable record about the City's compliance with reporting requirements. The City should develop a contingency plan for submission of its quarterly financial reports in the event of an accounting software or backup system failure.

Finding 10 – Failure to Submit Timely Interim Budget

Condition

The City did not submit its fiscal year 2011 interim budget to the Local Government Division of the Department of Finance and Administration (LGD-DFA) until June 29, 2010. The budget was due on June 1, 2010.

Criteria

Pursuant to Section 3-37-1 NMSA 1978, the “governing body is the board of finance of the municipality.” In addition, Section 3-37-2A(A) through (C) NMSA 1978 provides that the governing body of a municipality shall “control the finances and property of the municipality,” “appropriate money for municipal purposes only,” and “provide for payment of debts and expenses of the municipality.”

Per Section 6-6-2(A) NMSA 1978, municipalities are required to submit their interim budgets to LGD-DFA by June 1 of each year.

Cause

The City had an accounting software and data back system failure in fiscal year 2010. Due to the system failure, as well as its data backup system failure, the City was unable to submit its interim budget by the required deadline. Also, the Finance Director was hired in May 2010 which did not provide ample time to prepare an interim budget by the statutory deadline.

Effect

The City Council failed to adhere to its responsibilities as the board of finance. The City violated Section 6-6-2(A) NMSA 1978. The City Council, management and DFA-LGD did not have timely and accurate information needed to evaluate the financial condition of the City as well as make management and oversight decisions.

Recommendation

The City Council and management should implement and adhere to proper internal controls to ensure that its interim budget is submitted to LGD-DFA by June 1 of each year. The City should develop a contingency plan for submission of its budget in the event of an accounting software or backup system failure.

Finding 11 – Failure to Submit a Complete Annual Budget

Condition

City Manager Andrew Morales, who was employed from October 22, 2010 to July 16, 2011, failed to submit a complete budget for fiscal year 2012 to the Local Government Division of the Department of Finance and Administration (LGD-DFA). We noted that City Manager Morales submitted the budget on time. When a new City Manager, Jaime Aguilera, was hired in August 2011, he revised the budget and submitted the amended final budget for approval on September 13, 2011. The budget was due on July 31, 2011. The final budget submitted to the LGD-DFA addressed an approximate \$300,000 budget deficit identified by City Manager Aguilera. LGD-DFA approved the resubmitted budget.

Criteria

Pursuant to Section 6-6-2 NMSA 1978 and LGD-DFA requirements, municipalities are required to submit their final budgets to the LGD of DFA on or before July 31 each year, or the first day of August if July 31 falls on a weekend.

Cause

City Manager Morales submitted the City's final budget on time; however, when City Manager Aguilera was hired, he noticed that information was missing from the budget and submitted an amended budget to LGD-DFA.

Effect

The City violated Section 6-6-2(A) NMSA 1978. The City Council, management and DFA-LGD did not have timely and accurate information needed to evaluate the financial condition of the City as well as make management and oversight decisions. Failure to provide complete budget information could also cause incorrect monitoring of the disbursement of City funds, resulting in unauthorized expenditures or over expending the budget in violation of Section 6-6-6 NMSA 1978.

Recommendation

The City Council and management should implement and adhere to proper internal controls to ensure that its final budget submission is accurate and complete before submitting it to LGD-DFA. The City Council should also ensure that management submits timely and accurate budgets to LGD-DFA.

V. FINDINGS RELATED TO ACCOUNTS RECEIVABLE

Finding 12 – Total Forgiveness of Certain Utility Bills in Violation of State Law and the Anti-Donation Clause of the New Mexico Constitution

Condition

At a special meeting of the City Council on July 6, 2010, the City Council approved a plan to reduce certain customer utility bills. The minutes show that Mayor Pro-Tem Daniel Salinas informed the Council that the City “had encountered billing problems due to the computer failure that took place in November 2009.” Therefore, “Mayor Pro-Tem Salinas informed council that in order to alleviate this burden, 80% of the water bills would be reduced and the remaining 20% cost would be divided in 12 months.” Camino Real Regional Utilities Authority Director Jaime Bari informed the City Council that “a forgiveness plan or elimination of the last water bill would cost the City \$250,000.” In response, Mayor Pro-Tem Salinas “stated that in regards to the budget, city council had consulted with the City Manager, Finance Director and City Attorney and legally, the city could move forward with this plan.” Based upon OSA’s conversation with the Finance Director, she stated she was never consulted.

The City Council voted to approve an 80 percent discount to “the current water utility bill” and the remaining 20 percent would be paid over a twelve-month period. The minutes show that motions to approve the plan were made by Mayor Pro-Tem Salinas, Councilor Rodriguez and Councilor Avila. The motion carried, but the minutes do not show how each member voted. Also present at the meeting were Councilors Christian Lira and Annette Diaz.

Criteria

Pursuant to Section 3-37-1 NMSA 1978, the “governing body is the board of finance of the municipality.” In addition, Section 3-37-2A(A) through (C) NMSA 1978 provides that the governing body of a municipality shall “control the finances and property of the municipality,” “appropriate money for municipal purposes only,” and “provide for payment of debts and expenses of the municipality.”

Pursuant to Section 3-37-7 NMSA 1978, a municipality is allowed to “write off” a utility account only if certain conditions are met. Specifically, “the governing body of a municipality may, by resolution, remove the uncollectable utility account or unsecured account from the list of accounts receivable of the municipality” if “the finance officer of a municipality states: (A) the manner in which a utility account or any unsecured account has been incurred; (B) the efforts made to collect the utility account or unsecured account and to locate the debtor; (C) that the utility account or unsecured account has been uncollectable for a period of more than four years; and (D) that in his opinion the utility account or unsecured account is uncollectable.”

Pursuant to the Constitution of the State of New Mexico, Article IX, Section 14 (Anti-Donation Clause), “neither the state nor any county, school district or municipality . . .

shall directly or indirectly lend or pledge its credit or make any donation to or aid of any person, association or public or private corporation,” except for the specific reasons provided in the Constitution.

Cause

Due to computer problems at the City, the City did not timely bill customers for one month’s service. When this issue was resolved, customers received two bills in a single month. The City Council voted to forgive the make-up billing for residential customers.

Effect

The City Council violated Section 3-37-7 NMSA 1978 and the Anti-Donation Clause. There is also an increased risk of fraud and misappropriation when these types of wholesale donations or forgiveness of debts of public money occur. The City also may have lost revenue that should have been collected for utility bills and accounts.

Recommendation

The City Council should adhere to the requirements of state law and the New Mexico Constitution. The City should also implement controls to follow the required procedures set forth in Section 3-37-7 NMSA 1978 before determining if an account qualifies to be removed from accounts receivable.

Finding 13 – Unsupported Adjustments of Accounts Receivable that Violated State Law and the Anti-Donation Clause of the New Mexico Constitution

Condition

On October 7, 2011, the City Council adopted a Resolution No. 2011-46, which established the “City of Sunland Park Utility Assistance Program.” Councilor Annette Diaz, Councilor Carmen Rodriguez, Councilor Christian Lira, Councilor Angelica Marquez, Councilor Jessica Avila and Mayor Pro-Tem Daniel Salinas all voted in favor of the resolution. Mayor Pro-Tem Salinas signed the Resolution under the signature line reserved for the City’s Mayor, Martin Resendiz. We found that the Resolution and the City’s associated adjustments of utility bills violated state law and the Anti-Donation Clause of the New Mexico Constitution.

According to the Resolution, the Council recognized that the City’s citizens “need assistance in order to survive in this harsh economy,” and the assistance program was designed to help certain City residents pay their utility bills through reduced water and sewer utility rates. To be eligible for the program, a person had to meet four criteria: 1) be a City resident; 2) be age 50 or older; 3) have an income of less than 80 percent of the median income for the City; and 4) the resident must have had the utility bill in his or her name for two consecutive years or longer. Under the Resolution, every citizen who met all four criteria would be “eligible for a reduction in the water and sewer rate equal to the minimum rate charged by the City” and the City Manager “shall approve the request” if the resident requests the program be applied to him or her. However, the Resolution also provided that “[i]f a resident meets only 3 of the criteria then the request shall be subject to approval by both the Mayor and the City Manager at their discretion. If either the City Manager or the Mayor do (sic) not approve the request, it may be appealed to the City Council, who may approve the request.” Therefore, by the language of the Resolution, the City Council allowed residents to receive a reduced water and sewer utility rate regardless of income.

The City Manager, Jaime Aguilera, instructed Victor Torres, the Executive Director of the Joint Utility Department, to adjust utility bills and accounts of certain customers; however, the City did not provide any documentation to support that City Manager Aguilera followed the assistance program criteria when adjusting the utility bills and accounts. Moreover, based on our interview with City Manager Aguilera, he stated that in several cases Mayor Pro-Tem Salinas instructed City Manager Aguilera to adjust bills of certain customers regardless of whether the customers qualified for the City’s assistance program. For nine out of the eleven items we selected to test, the customer’s bills were adjusted as follows:

- September 13, 2011, the customer’s bill was adjusted from \$70.55 to \$48.20.
- September 27, 2011, the customer’s bill was adjusted from \$123.78 to \$42.34.
- October 4, 2011, the customer’s bill was adjusted from \$60.17 to \$42.34.
- October 11, 2011 the customer’s bill was adjusted from \$730.20 to \$531.88 (from two meters to one).

- October 31, 2011, the customer's bill was adjusted from \$767.00 to \$195.80 (from two meters to one and a credit was given due to an accidental rupture of a water line on the customers property that he was unable to repair immediately).
- November 10, the customer's bill was adjusted from \$356.76.00 to \$195.75.
- October 11, 2011, the customer's account was adjusted from \$38.38 to \$12.34 (reduced to the minimum monthly amount).
- October 27, 2011, the customer's account was adjusted from \$23.25 to \$12.34 (reduced to the minimum monthly amount); and
- November 4, 2011, the customer's account was adjusted from \$18.54 to \$12.34 (reduced to the minimum monthly amount).

For the amounts we tested, the total amount reduced by the City Manager was \$1,095.30.

Criteria

Pursuant to Section 3-37-1 NMSA 1978, the "governing body is the board of finance of the municipality." In addition, Section 3-37-2A(A) through (C) NMSA 1978 provides that the governing body of a municipality shall "control the finances and property of the municipality," "appropriate money for municipal purposes only," and "provide for payment of debts and expenses of the municipality."

Pursuant to the Constitution of the State of New Mexico, Article IX, Section 14 (Anti-Donation Clause), "neither the state nor any county, school district or municipality . . . shall directly or indirectly lend or pledge its credit or make any donation to or aid of any person, association or public or private corporation," except for the specific reasons provided in the Constitution.

Pursuant to Section 3-37-7 NMSA 1978, a municipality is allowed to "write off" a utility account only if certain conditions are met. Specifically, "the governing body of a municipality may, by resolution, remove the uncollectable utility account or unsecured account from the list of accounts receivable of the municipality" if "the finance officer of a municipality states: (A) the manner in which a utility account or any unsecured account has been incurred; (B) the efforts made to collect the utility account or unsecured account and to locate the debtor; (C) that the utility account or unsecured account has been uncollectable for a period of more than four years; and (D) that in his opinion the utility account or unsecured account is uncollectable."

Cause

City Councilors Diaz, Rodriguez, Lira, Marquez, Avila and Mayor Pro-Tem adopted a resolution that violated the Anti-Donation Clause and Section 3-37-7 NMSA 1978. Additionally, City Manager Aguilera adjusted billings and accounts without documenting the resident's eligibility for the program or whether the adjustment was in compliance with Section 3-37-7 NMSA 1978. Additionally, Mayor Pro-Tem Salinas instructed City Manager Aguilera to make adjustments to certain bills regardless of whether individuals qualified for the assistance program.

Effect

The City Council violated its responsibilities as a board of finance by adopting the assistance program, which violated the Anti-Donation Clause and Section 3-37-7 NMSA 1978. City Manager Aguilera's unsupported adjustments to utility bills, as well as Mayor Pro-Tem Salinas' instruction to adjust certain bills, violated the Anti-Donation Clause and Section 3-37-7 NMSA 1978. Additionally, there is an increased risk of fraud and misappropriation when these types of unsupported adjustments are made due only to the City Manager's or Mayor Pro-Tem's discretion. The City also may have lost revenue that should have been collected for utility bills and accounts.

Recommendation

The City Council and management should adhere to its responsibilities as a board of finance. Accordingly, the City Council should comply with the requirements set forth in state law and the New Mexico Constitution. The City should implement controls to follow the required procedures set forth in Section 3-37-7 NMSA 1978, and the City Council and management should oversee any write offs of utility accounts before determining if an account qualifies to be removed from accounts receivable. If the City wants to provide financial assistance to those in need, it should develop a system that allows citizens to make donations that will be used to assist others with their utility bills. The City should also implement a process that requires a second review and sign off of any adjustments or write offs, including supporting documentation.

VI. FINDINGS RELATED TO CASH AND INVESTMENTS

Finding 14 – Missing Bank Reconciliations and Unreconciled Cash Amounts

Condition

During our cash test work, we noted the following items pertaining to the City’s cash reconciliations:

- For the fiscal year 2011 CDBG Fund Account, two months of bank reconciliations were not performed by the City’s Finance Director, Helen Gonzalez;
- For the fiscal year 2011 Accounts Payable Account, twelve months of bank reconciliations were not performed by Finance Director Gonzalez;
- For the fiscal year 2012 General Fund Account, three months of bank reconciliations were not performed by Finance Director Gonzalez;
- For the fiscal year 2012 Utility Account, one bank reconciliation was not performed by Finance Director Gonzalez;
- From July 2010 to January 2011, various amounts of money were transferred out of the Accounts Payable Account to an unknown bank account. There are no bank reconciliations to support the purpose of these transfers. The combined total of transfers was \$15,054; and
- The General Fund, the Utility Account and the CRRUA Account have a combined unreconciled amount of \$285,320 for the fiscal year ended 2011:
 - The General Fund ending book balance amount of \$571,791 does not tie to the fiscal year 2011 working trial balance cash amount of \$213,339;
 - The Utility Account ending book balance amount of \$12,979 does not tie to the fiscal year 2011 trial balance cash amount of \$36,666; and
 - The Camino Real Regional Utility Authority (CRUUA) Account ending book balance amount of \$993,662 does not tie to the fiscal year 2011 working trial balance cash amount of \$1,610,748.

Criteria

Good accounting practices require that third-party statements be reconciled to subledger and general ledger accounts on a timely basis.

Good internal controls require adequate segregation of duties to reconcile bank accounts and investigate discrepancies or issues related to cash. Bank statements should be received and reviewed by a responsible person, other than the person who reconciles the bank accounts, before being submitted for reconciliation.

Pursuant to Section 3-37-3(A)(5) and (6) NMSA 1978, the “finance officer” of a municipality shall “submit monthly, or oftener if required by the governing body, a report of the receipts and expenditures of the municipality,” and “prepare annually, at the close of the fiscal year, a financial report showing the receipts, expenditures and balances for

each fund.” In order to submit an accurate and correct report of receipts and expenditures, monthly reconciliations would have to be performed by the finance officer.

Cause

Finance Director Gonzalez did not reconcile certain bank accounts or properly maintain the books and records for certain bank accounts. The City’s Finance Director failed to document the purpose for all transfers in or out of each bank account or institute proper accounting controls to protect the City’s finances. The City Manager failed to review the City’s bank reconciliations on a periodic basis and investigate any variances from the bank reconciliations to the trial balances by end of fiscal year. Also, the Finance Director failed to file and maintain bank statements and bank reconciliations for the City’s many bank accounts.

Effect

Untimely or late reconciliations of the City’s bank accounts increase the likelihood that misstatements of account balances will occur. Also, there is an increased risk of fraud and that missing funds may go undetected.

Recommendation

The City should implement and adhere to proper controls to ensure it conducts bank reconciliations and maintains adequate books and records for all its accounts. The City’s Finance Director should document the purposes for any transfers in or out of each bank account and institute proper accounting controls to protect the City’s finances. In addition, the City needs to properly store and maintain records both electronically and hard copy of their banking and accounting data.

Finding 15 – Failure to Properly Record Investments, and Missing Bank Statements and Reconciliations

Condition

During our test work of the City's investments, we noted the following:

- For fiscal year 2010, we were unable to verify that the City properly recorded investments for all of its State of New Mexico Local Government Investment Pool (LGIP) investment accounts. At the end of fiscal year 2010, the total amount of the City's investment accounts was \$12,383,241 per the bank statements. In addition, we found that the City is missing bank statements and reconciliations for all of its investment accounts for the period of July 2009 to December 2009;
- For fiscal year 2011, we found that the City's current year opening account balances for investments on the trial balances does not tie to the prior fiscal year's adjusted ending working trial balances. The total amount of the City's LGIP investment accounts at fiscal year-end was \$11,444,006. In addition, the City is missing bank statements for all of its investment accounts for the month of February 2011; and
- For fiscal year 2012, we found that the City's trial balances do not provide the opening balances to trace to the prior fiscal year's adjusted working trial balances. The total amount of the City's LGIP investment accounts through February 29, 2012 was \$10,244,049. In addition, the City is missing a bank statement for one of the investment accounts the month of August 2011.

Criteria

Good accounting practices require that third-party statements be reconciled to subledger and general ledger accounts on a timely basis.

Pursuant to Section 3-37-3(A)(5) and (6) NMSA 1978, the "finance officer" of a municipality shall "submit monthly, or oftener if required by the governing body, a report of the receipts and expenditures of the municipality," and "prepare annually, at the close of the fiscal year, a financial report showing the receipts, expenditures and balances for each fund." In order to submit an accurate and correct report of receipts and expenditures, monthly reconciliations would have to be performed by the Finance Officer.

Governmental Accounting Standards Board Statement No. 31 generally provides that most investments be reported at fair value. Fair value represents the current exchange value between two willing parties, other than a forced or liquidation sale. Changes in the fair value of investments should be reported as part of investment income.

Cause

The City's Finance Director, Helen Gonzalez, is not properly maintaining the books and records for all investment accounts. Also, the City's investment reconciliations are not

being prepared in a timely manner. Investments and investment income are understated because not all investments are recorded or investment income is under accrued.

Effect

Untimely or late reconciliations of the general ledger account balances to the third party statements increase the likelihood that misstatements of the investment account balance will occur. Also, there is an increased risk of fraud and that missing funds may go undetected.

Recommendation

The City should implement and adhere to proper controls to ensure it maintains adequate books and records for all investment accounts, and to ensure reconciliations are performed timely. Additionally, the City's investment committee or appropriate member of management should be reviewing investments, investment returns and withdrawals and comparing them to the City's accounting records for accuracy and compliance with restrictions imposed by laws or funding sources.

VII. FINDINGS RELATED TO CAPITAL ASSETS

Finding 16 – Failure to Conduct a Complete Annual Physical Inventory of Capital Assets

Condition

During our test work of capital assets, we found missing and insufficient information. The City failed to provide us with a complete certified listing of capital assets based upon an annual physical inventory for fiscal years 2010 and 2011. The City only provided incomplete asset inventory lists for 13 departments. We were unable to determine if these lists were printed in connection with a physical count of capital assets or if the City merely printed the lists for the auditors. We also noted a discrepancy in the number of departments listed in the City's departmental organization chart when compared to the lists provided by the City. Specifically, we noted the following:

- Most of the City's inventory lists do not indicate a date or fiscal year. For the few lists that display a date, it is uncertain if the date indicates the lists were printed or if the City did, in fact, conduct a physical count of the capital asset inventory on that date;
- When we compared the lists to the City's departmental organization chart, we found the City is missing inventory lists for the following departments: Solid Waste; Water; Wastewater; and the Motor Vehicle Fund;
- The City provided us inventory lists for two departments, the Senior Center and the WIC Program Health Office, which were not listed on City's departmental organization chart;
- For fiscal years 2010 and 2011, the City did not provide signatures from the City Council that are required to ensure certification and correctness of capital asset items as of the end of those two fiscal years. City Council members listed in the City's financial audit for fiscal year ended June 30, 2010 were Mayor Pro-Tem Daniel Salinas, Christian Lira, Carmen Rodriguez, Annette Diaz and Jessica Avila. For the fiscal year ended June 30, 2011, the City Council's meeting minutes show the City Council members were Mayor Pro-Tem Daniel Salinas, Christian Lira, Angelica Marquez, Carmen Rodriguez, Annette Diaz and Jessica Avila; and
- The City did not provide sufficient information for the elements required by state regulation pertaining to recording and maintaining its fixed assets.

Criteria

Pursuant to Section 12-6-10 NMSA 1978, "[t]he governing authority of each agency shall, at the end of each fiscal year, conduct a physical inventory of movable chattels and equipment . . . under the control of the governing authority . . . The inventory shall list the chattels and equipment and the date and cost of acquisition . . . Upon completion, the inventory shall be certified by the governing authority as to correctness. Each agency shall maintain one copy in its files."

Section 2.20.1.8(A) NMAC provides that agencies “should implement systematic and well-documented methods for accounting for their fixed assets.” Pursuant to Section 2.20.1.8(B) NMAC, certain information must be recorded and maintained on an agency’s fixed assets, including (1) the agency name or commonly used initials used to identify the agency; (2) fixed asset number or fixed asset number plus component number; (3) a description using words meaningful for identification; (4) location, specifically a building and room number; (5) model number or model name; (6) serial number, or vehicle identification number for vehicles in the agency’s use and possession; (7) date the asset was acquired; (8) cost (according to the valuation methods described in state regulation; and (9) the fund and organization that purchased the asset, or to which it was transferred.

Cause

City management failed to conduct complete annual capital asset inventories. The City Council failed to ensure the inventories were conducted. The Council also failed to certify the inventories as to correctness. There also appears to be a complete lack of internal controls and inadequate management oversight that would ensure the City’s capital assets are consistently and properly tracked and safeguarded.

Effect

The City Council violated Section 12-6-10 NMSA 1978. The City Council and management are also in violation of state regulations pertaining to capital assets. Failure to conduct, record and reconcile an annual physical inventory of capital assets may lead to an inaccurate accounting and reporting of the City’s inventory. Moreover, without proper monitoring and certification by the City Council, there is an increased risk that capital assets will be subject to misappropriation and fraud.

Recommendation

The City Council should act swiftly to achieve compliance with Section 12-6-10 NMSA 1978. The City Council should oversee, and management should designate, the immediate appointment of a capital asset administrator who is dedicated to ensuring accurate reporting and safeguarding of capital assets in all the City’s departments. The administrator should oversee inventories of the City’s capital assets on a continual basis and assist the City Council with certifying the correctness of capital assets listings. The City should also implement internal controls to ensure compliance with all elements of capital asset inventories required by state regulations. The City Council must certify the annual inventory lists on an annual basis as to correctness.

Finding 17 – Unsupported Disposals of Computer Hard Drives

Condition

The City disposed of eight computers and three standalone hard drives between December 2009 and June 2011. All the equipment was property of the City Police Department. During our test work of capital assets, we noted the City did not provide written certification that any of the computer hard drives in the capital asset dispositions during this time period had been properly “sanitized” as required by state regulation. Additionally, the City did not provide the Office of the State Auditor the required notification of disposal under the Audit Rule, 2.2.2 NMAC.

The City Council approved Resolution No. 2010-19 on April 14, 2010 to dispose of the property. City Councilors Carmen Rodriguez, Christian Lira, Annette Diaz, Jessica Avila and Mayor Pro-Tem Daniel Salinas voted in favor of the disposal at a special meeting of the Council on April 14, 2010. We noted that the minutes for the meeting showed City Councilor Angelica Marquez was absent and did not vote, but the Resolution shows that Councilor Marquez voted in favor of the disposal during a roll call vote. Mayor Martin Resendiz and City Clerk Elizabeth Gamez also signed the Resolution.

Criteria

Section 2.2.2.10(V) NMAC requires that agencies “‘sanitize’ or effectively make ‘inaccessible,’ all licensed software and any electronic media pertaining to the agency” when an agency plans to dispose of a computer. As stated in that section, “[h]ard drive erasure or destruction certification is still required even if the asset originally cost less than the capitalization threshold when purchased and was not included in the capital asset inventory . . . The agency will certify in writing the proper erasure or destruction of the hard drive and submit the certification along with the notification of the proposed disposition of property to the state auditor at least thirty days prior to taking action.”

Cause

The City’s management failed to provide the proper oversight for the disposal of computer hard drives.

Effect

The City violated Section 2.2.2.10(V) NMAC. Failure to sanitize computer hard drives increases the risk that confidential agency and customer information could be disclosed and possibly used in connection with identity theft or fraudulent acts.

Recommendation

The City Council and management should implement internal controls to provide adequate oversight over all future disposals of computer hard drives and to ensure compliance with state regulations pertaining to computer hard drive disposals.

Finding 18 – Failure to Follow Proper Internal Controls and the Procurement Code for Capital Assets Additions

Condition

During our test work for capital assets for fiscal years 2010, 2011 and 2012, we noted that none of the City’s check request forms provided to us which related to additions of capital assets had the required approval signatures for the City Manager or the City’s Finance Director. We also noted eight exceptions out of the eight capital assets additions packets provided by the City for the fiscal years 2010, 2011 and 2012, including the following:

- Seven capital assets additions packets were missing supporting documentation, such as the purchase agreement, bids, bill of sale, and purchase order or purchase voucher/check request;
- The City coded two capital assets additions to an incorrect account line item. The City coded two additions to a construction line item and not to an asset or capital outlay account line item;
- In one instance, we were unable to determine the City appropriately charged or expensed funds, or if the addition was posted to correct account line item;
- On October 31, 2011, the City purchased a 2011 Mack Truck in the amount of \$233,688. Given this amount, we were not provided documentation to support that the City followed competitive sealed bid requirements prior to this purchase; and
- On November 18, 2011, the City purchased a 2011 Dodge Ram 1500 in the amount of \$27,769. We found that the City did not retain in its documentation a copy of the state contract agreement (#00000000033) which it relied upon to make the purchase.

Criteria

Good accounting practices require a purchase order be issued as a cash and budget control prior to making purchases. Purchase authorization and budgetary control should be executed by a responsible person at the department level and finance department level who has authority to approve the purchase.

Good accounting practices and internal controls require the proper recording of transactions. Also, adequate segregation of duties is required to ensure proper and sufficient internal controls over recording of all expenditures.

Pursuant to the City’s Purchasing Regulations, Section 14.3 (prior to July 2010), the purchases between \$3,001 and \$20,000 “must be made by the City Council and as directed by City Management prior to issuance of a purchase order. Purchases shall be made after receipt of fax, Email, or written quotation, which must be attached to the purchase requisition prior to the Purchasing Department processing the request.”

Pursuant to the City’s Purchasing Regulations, Section 14.4 (prior to July 2010), purchases over \$20,000 “must be made by the City Council prior to issuance of a purchase order . . . All purchases exceeding \$20,000 require – formal bid procedures as specified by State regulations and shall be processed and executed by the Purchasing Department, through said procedures.”

Pursuant to the Procurement Code, specifically Section 13-1-125(A) and (C) NMSA 1978, “[a] central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars (\$20,000) in accordance with the applicable small purchase regulations adopted by . . . a local public body.” Additionally, “a local public body may procure services, construction or items of tangible personal property having a value not exceeding ten thousand dollars (\$10,000) by issuing a direct purchase order to a contractor based upon the best obtainable price.”

In July 2010, the City Council approved a resolution that adopted the following limits and requirements for purchases of tangible goods: 1) “small purchases” between \$0 and \$10,000 must be purchased according to the “best obtainable price;” 2) “informal purchases” between \$10,001 and \$20,000 must have “3 valid quotes;” and 3) “major purchases” of \$20,001 or more “require formal bids” to be obtained.

Section 13-1-129 NMSA 1978(B) requires that “[t]he central purchasing office shall retain for public inspection and for the use of auditors a copy of each federal supply contractor state purchasing agent price agreement relied upon to make purchases without seeking competitive bids or proposals.”

Pursuant to the City’s Purchasing Regulations, Section 14.6, “[d]irect purchases may be made in cases that a vendor has a State or Federal Purchasing Contract recorded in the Purchasing Department.”

Cause

City Manager Aguilera and Finance Director Gonzalez did not approve the check request forms for cash disbursements for the capital asset additions. It appears Finance Director Gonzalez did not record certain transactions correctly. Additionally, the City’s Purchasing Agent, Neryza Rivera, did not properly document the purchase or addition of capital assets in the City’s records. It also appears that Purchasing Agent Rivera failed to seek competitive sealed bids for one purchase. Overall, the City does not have adequate internal controls over capital assets additions.

Effect

It appears the Procurement Code and the City’s Purchasing Regulations may have been violated. Additionally, failure to process capital asset additions correctly and the failure to maintain proper supporting documentation can lead to material misstatements on the City’s financial statements. The value of the capital assets and annual additions can be

monetarily significant. Without proper accounting and monitoring of capital assets by the City, there is an increased risk for significant fraud, waste or abuse.

Recommendation

The City Council and management should implement strong internal controls over the purchase of capital assets. The City should adhere to all procurement and purchasing requirements under the Procurement Code and City regulations. All check request forms for capital asset additions should have the proper authorizing signatures before payments are processed and made. The City's Purchasing Agent should maintain all required documentation and support for capital asset additions. Without proper approvals for purchases and the retention of supporting documentation, there is a risk of fraud and the City's purchases are not transparent to the public. Furthermore, the City Council should oversee, and management should designate, the immediate appointment of a capital asset administrator who is dedicated to ensuring accurate reporting and safeguarding of capital assets in all the City's departments. The administrator should oversee inventories of the City's capital assets on a continual basis and assist the City Council with certifying the correctness of capital assets listings.

Finally, as stated in the Criteria to this finding, in July 2010, the City Council adopted a resolution that revised the City's procurement requirements for purchases of tangible goods. The resolution stated that "staff is hereby instructed to amend the City of Sunland Park Procurement Procedures to reflect the changes." While the resolution directed the City staff to amend the City's Purchasing Regulations, we were never provided any documentation that any amendments were made. Therefore, the City's Purchasing Regulations need to be updated and revised to give clear guidance and direction as to how goods should be procured.

Finding 19 – Deficiencies in the Transfer of Capital Assets from the City to Camino Real Regional Utility Authority

Condition

Pursuant to a Joint Powers Agreement (JPA) entered into by the City and Dona Ana County (County) on February 24, 2009, the City transferred certain capital assets to the Camino Real Regional Utility Authority (CRRUA). Section 6 of the Agreement provides the following:

“The City and the County shall integrate their separate water rights, water and wastewater systems located within the Water and Wastewater Service Area, into one utility by conveying their water and wastewater facilities, other water and wastewater assets, improvements and property real and personal, tangible and intangible, including all records related thereto, to the Joint Authority without cost. As provided for in the MOU executed by the County and the City, the County’s La Union service area and water and wastewater infrastructure serving that area are specifically excepted from the said integration and transfer. The conveyances are made “as is” and without any express or implied warranty.”

During our test work related to capital assets, we noted that the City did not provide us a complete, certified, and detailed capital assets listing or a listing of capital assets that were transferred to CRRUA pursuant to the JPA. The City also did not maintain proper accounting records for the capital assets, and it did not maintain proper documentation of the transfer of capital assets from the City to CRRUA. However, we did receive from CRRUA a “Bill of Sale” signed by the City’s Mayor, Martin Resendiz, on August 25, 2011, two and a half years after the JPA which executed the transfer of certain City assets to CRUUA. Attached to the Bill of Sale was a listing of assets with a cover sheet that stated, “Unaudited June 2009.” Conversely, the dates on the actual listing indicated that the listing was printed on August 13, 2008. Given that the listing had not been updated during the subsequent period, and that the information on the listing was insufficient, we were unable to review the balances of capital assets along with the balances of infrastructure held by the City prior to the transfer. We were also unable to review the transfer of capital assets, which included water and wastewater infrastructure, vehicles, equipment and machinery, furniture, fixtures, supplies, inventory, and other tangible assets.

Criteria

Pursuant to Section 12-6-10 NMSA 1978, “[t]he governing authority of each agency shall, at the end of each fiscal year, conduct a physical inventory of movable chattels and equipment . . . under the control of the governing authority . . . The inventory shall list the chattels and equipment and the date and cost of acquisition . . . Upon completion, the inventory shall be certified by the governing authority as to correctness. Each agency shall maintain one copy in its files.”

Section 2.20.1.10(E) NMAC provides that fixed assets acquired through governmental reorganization, specific legislation, mutual agreement between agencies, or a capital project “shall be placed in an agency’s fixed asset inventory at the time the assets are transferred to the agency. The transfer will require the entity transferring the fixed asset to provide information that properly identifies the asset(s) being transferred. The information . . . should include estimated service life and accumulated depreciation.”

Cause

Due to a computer crash that occurred in 2009, the City lost its electronic information related to the City’s capital assets. The City did not have an adequate disaster recovery plan that ensured the information was backed up or could otherwise be recovered. Following the crash, the City did not reconstruct information on the capital assets and it has not maintained proper accounting records for the capital assets, including real, personal, tangible and intangible property. Mayor Resendiz executed a Bill of Sale which executed the transfer of certain City assets to CRUUA; however, the listing had not been updated at the time of the transfer and the information on the listing was insufficient to determine the balances of capital assets.

Effect

The City is in violation of Section 12-6-10 NMSA 1978 and related state regulations. The capital assets could be overstated due to items that the City transferred to CRRUA and not removed properly and timely in the correct period. Without the proper documentation regarding the assets and infrastructure transferred from the City to CRRUA, CRRUA will not be able to properly account for and verify all of its capital assets. This may result in adverse impacts to the operations of CRRUA and its rates. Additionally, failure to account for capital assets can lead to material misstatements on the City’s financial statements.

Recommendation

The City Council should implement proper controls that ensure an annual inventory of its capital assets is conducted, and the inventory system should track movement of capital assets. The City Council should oversee the annual inventory as required by Section 12-6-10 NMSA 1978. The City must also maintain a master capital asset listing and reconcile the listing to the results of the physical inventory. Any discrepancies found during such observation should then be addressed appropriately. The City should maintain accurate and adequate records of the assets maintained by them. All transfers, either interdepartmental or external, of assets should be adequately documented and maintained.

The City should also establish and maintain an adequate disaster recovery plan that will ensure financial information is backed up or can otherwise be recovered in the event of a computer crash.

VIII. FINDINGS RELATED TO TRAVEL AND PER DIEM PAYMENTS

Finding 20 – Travel and Per Diem Reimbursement Payments Made Without Proper Forms or Approvals

Condition

During our test work of certain travel and per diem expenditures, we noted the following:

- Out of 48 travel vouchers tested, 34 were missing the proper approval for travel and per diem expenditures. The instances varied and included the following:
 - On multiple in-state travel forms, the City Manager, Jaime Aguilera, signed both the signature approval line designated for “Elected Official/Department Head” and the signature approval line designated for the “Mayor/City Clerk”;
 - For certain in-state travel forms, the signature approval lines for the “Department Head” and the “Mayor/City Clerk” are not signed. It was unclear who the City’s “Department Head” was for purposes of approval. For City Councilors per diem act and travel reimbursements, no “Department Head” is indicated under the City’s Travel and Per Diem Reimbursement Policy; and
 - For certain out-of-state travel forms, the City’s Purchasing Agent, Neryza Rivera, signed the signature approval line designated for the “City Council”;
- Out of 48 travel vouchers tested, 3 were missing a travel request form; and
- Out of 48 travel vouchers tested, 6 had the traveler approve their own travel. For example, in one instance, the Mayor, Martin Resendiz, signed the travel form as the traveler and also signed the signature approval line for “Mayor/City Clerk.” In another instance, the Mayor Pro-Tem, Daniel Salinas, signed the travel form as the traveler and also signed the signature approval line for “Elected Official/Department Head.”

Criteria

Section 10-8-5(B) NMSA 1978 provides that “[p]ublic funds shall be paid out under the Per Diem and Mileage Act only upon vouchers duly presented with any required receipts attached thereto.”

The City’s Travel and Per Diem Reimbursement Policy, Section 3.1, provides the following: “Every in-state request for travel reimbursement, claim for reimbursement, request for actual reimbursement and advance of per diem, mileage, meals and other reimbursable travel expense shall be on a travel voucher form approved by the Department Heads and review by the Finance officer or designee. The Mayor or City Clerk shall approve in-state travel. All in-state forms should be submitted 2 weeks in advance of travel.”

The City’s Travel and Per Diem Reimbursement Policy, Section 3.2, provides the following: “Every out-of-state request for travel reimbursement, request for actual reimbursement and advance of per diem, mileage, meals and other reimbursable travel

expense shall be on a travel voucher form and approved by the Department Heads and the City Council. All out-of-state travel forms should be submitted 30 days in advance of travel.”

The City’s Travel and Per Diem Reimbursement policy, Section 3.3, provides the following: “No per diem, mileage or expenses shall be reimbursed to any public officer or employee unless: 1) the travel request form (voucher) has been completed reflecting per diem cost or actual cost of travel, and receipts if applicable, after completion of trip; 2) the voucher has been approved for payment by the Department head and Finance Officer as true and correct.”

Good accounting policies warrant that travelers who request reimbursement for travel costs should not authorize and approve their own travel and reimbursements. The person who approves travel requests should be a responsible person other than the traveler.

Cause

The City paid reimbursements for travel without the required forms and authorizing approvals. City Manager Aguilera approved travel requests in violation of City policy, and Mayor Resendiz approved his own travel.

Effect

The City violated the Per Diem and Mileage Act and its own policies related to travel and per diem reimbursements, and there is a lack of oversight over these payments. Without proper forms and approvals, there is an increased risk of fraud and payments for unauthorized travel expenses.

Recommendation

The City Council and management should implement proper controls to ensure the City adheres to the Per Diem and Mileage Act and its own policies related to travel and per diem reimbursements. The City should not pay reimbursements without completed and accurate travel vouchers and forms which are approved and signed by the proper oversight officials or employees. No City official or employee should serve as the designee for an approval authority if not properly authorized by law or City policy. State law, regulations and City policies should prohibit travelers from approving their own travel. Travel vouchers and forms should also have supporting documentation that justifies the travel.

Finding 21 – Travel and Per Diem Reimbursement Payments Made Without Proper Supporting Documentation

Condition

During our test work of certain travel and per diem expenditures, we noted the following:

- Out of 48 travel vouchers selected for testing, 1 could not be located;
- Out of 48 travel vouchers tested, 3 were missing receipts for actual expenditures incurred. Mayor Martin Resendiz, City Manager Jaime Aguilera, City Finance Director Helen Gonzalez and City Purchasing Agent Neryza Rivera had approval authority over the transactions and authorized reimbursements; and
- Out of 48 travel vouchers tested, 46 were missing supporting documentation such as agendas, registration forms, memos, and mileage charts.

Criteria

Section 10-8-5(B) NMSA 1978 provides that “[p]ublic funds shall be paid out under the Per Diem and Mileage Act only upon vouchers duly presented with any required receipts attached thereto.”

Pursuant to Section 10-8-5 NMSA 1978, the Secretary of Finance and Administration “may promulgate rules and regulations for state agencies and local public bodies for the purpose of carrying out the provisions of the Per Diem and Mileage Act.” Accordingly, Section 2.42.2.9(B)(3) NMAC requires receipts be submitted for actual meal and lodging expenses incurred: “The public officer or employee must submit receipts for the actual meal and lodging expenses incurred. Under circumstances where the loss of receipts would create a hardship, an affidavit from the officer or employee attesting to the expenses may be substituted for actual receipts. The affidavit must accompany the travel voucher and include the signature of the agency head or governing board.”

The City’s Travel and Per Diem Reimbursement Policy, Section 5.3, provides the following: “Receipts are required. The public officer or employee must submit receipts for the actual meal and lodging expenses incurred. Under circumstances where reimbursement may be denied due to the loss of receipts and said denial would create a hardship, an affidavit from the officer or employee attesting to the expenses may be substituted for actual receipts.”

The City’s Travel and Per Diem Reimbursement Policy, Section 3.4, provides the following: “Every travel request form (voucher) shall include the following: (A) Destination, purpose of the trip and the date and hour of departure and return; include agendas or other supporting documentation; (B) Estimated cost of travel prior to departure (per diem, mileage, meals); (C) Signature of the traveler, Department Head, Finance Officer or designee, and Mayor or City Clerk.”

Cause

Mayor Resendiz, City Manager Aguilera, City Finance Director Gonzalez and City Purchasing Agent Rivera approved travel reimbursements without the required receipts. The City also failed to require or maintain proper supporting documentation related to travel.

Effect

Mayor Resendiz, City Manager Aguilera, City Finance Director Gonzalez and City Purchasing Agent Rivera violated the Per Diem and Mileage Act, state regulations and the City's own policies related to travel and per diem reimbursements. There is also a lack of adequate oversight over these payments. Without proper supporting documentation, there is an increased risk of fraud and payments for unauthorized travel expenses or travel not taken.

Recommendation

The City Council and management should implement proper internal controls to ensure adherence to the Per Diem and Mileage Act, state regulations and its own policies related to travel and per diem reimbursements. The City's Mayor, City Manager, Finance Director or Purchasing Agent should not authorize travel reimbursements without proper supporting documentation required by law, and prior to payment the proper City officials and employees should review all documentation to verify the travel is justified.

Finding 22 – Excess Payments Made for Mileage Reimbursements

Condition

During our test work of certain travel and per diem expenditures, we noted the following:

- Out of 48 travel vouchers tested, 6 were calculated using a mileage rate that exceeded the rate allowed for by state regulation, for a total of excess payments in the amount of \$22.62. The following individuals had approval authority over the transactions and also authorized the payments: the City’s Mayor, Martin Resendiz; Mayor Pro-Tem, Daniel Salinas; City Manager, Jaime Aguilera; Purchasing Agent, Neryza Rivera; and the City Clerk, Elizabeth Gamez.
- Four instances in which certain City officials and employees made the same trip, but separately charged the City for mileage for attending the same event for a total of \$3,939.08, when commuting to the event using one City vehicle may have been available at a lesser cost to the City. Those officials and employees were Mayor Resendiz, Mayor Pro-Tem Salinas, City Manager Aguilera, City Councilor Avila, City Councilor Lira, City Councilor Marquez, and the Public Information Officer, Arturo Alba;
- Mayor Resendiz took four out-of-state trips for which he was reimbursed a total of \$4,799.58 for mileage, when total coach class commercial airfare for these trips on a common carrier was a cheaper travel alternative. Mayor Pro-Tem Salinas, City Manager Aguilera, and Purchasing Agent Rivera had approval authority over the Mayor’s travel and authorized the payments;
- Out of 48 travel vouchers tested, mileage and per diem totals for 2 vouchers were calculated incorrectly for a total overpayment of \$26.00.

Criteria

Section 10-8-4(D) NMSA 1978 provides that “[e]very public officer or employee shall receive up to the internal revenue service standard mileage rate set January 1 of the previous year for each mile traveled in a privately owned vehicle.” Section 2.42.2.11(C) NMAC provides that “[p]ublic officers and employees of local public bodies may be reimbursed for mileage accrued in the use of a private conveyance in the discharge of official duties, at the statutory rates unless such rates have been reduced by the governing bodies of the local public body pursuant to Section 10-8-5 (D) NMSA 1978.”

Additionally, Section 2.42.2.11(F) NMAC provides the following: “Total mileage reimbursement for out-of-state travel by privately owned automobile or privately owned airplane shall not exceed the total coach class commercial airfare that would have been reimbursed those traveling had they traveled by common carrier.”

The City’s Travel and Per Diem Reimbursement Policy, Section 7.4, provides the following: “Subject to prior approval of the Department Head, Council or designee, the total mileage reimbursement pursuant to this section for out-of-state travel by privately owned vehicle or privately owned airplane shall not exceed the total coach class commercial air fare based on the price of a ticket if purchased prior to travel.”

Cause

Mayor Resendiz, Mayor Pro-Tem Salinas, City Manager Aguilera, Purchasing Agent Rivera and City Clerk Gamez authorized reimbursement to City officials and employees for mileage at an incorrect rate and authorized reimbursement to the Mayor in violation of state regulation and City policy. Mayor Resendiz charged mileage to the City when total coach class commercial airfare on a common carrier was a cheaper travel alternative.

Effect

Mayor Resendiz, Mayor Pro-Tem Salinas, City Manager Aguilera, Purchasing Agent Rivera and City Clerk Gamez violated the Per Diem and Mileage Act, state regulation and the City's own policies by authorizing overpayments for mileage reimbursements, including reimbursement to Mayor Resendiz when total coach class commercial airfare on a common carrier was a cheaper travel alternative. Without proper oversight and approvals of travel expenses, there is an increased risk of fraud and payments for unauthorized travel.

Recommendation

The City Council and management should implement proper controls to ensure lawful mileage rates are used when calculating and approving travel and per diem reimbursements. The City should also institute adequate controls and oversight over reimbursements for out-of-state travel to ensure compliance with state regulation and its own policies. The City should closely review the method and details of travel reimbursement requests to ensure that expenses are reasonable.

Finding 23 – Misappropriation of Public Monies for Travel and Per Diem Due to Fraud

Condition

During our test work of certain travel and per diem expenditures, we noted that the City contracted travel arrangements for six City officials through a local travel agency charging six airline tickets at the cost of \$461.71 each to the City for a total of \$2,770.26. Those officials were City Councilor Christian Lira, City Councilor Angelica Marquez, Mayor Pro-Tem Daniel Salinas, City Manager Jaime Aguilera, Public Information Officer Arturo Alba, and Dario Hernandez. The travel was to the XXIV Conferencia Legislativa Fronteriza, which was held on November 17 through November 19, 2011 in Saltillo, Coahuila de Zaragoza, Mexico. The purpose of the travel was for a presentation for the border crossing.

According to the Affidavit for Arrest Warrant supporting criminal charges against Daniel Salinas filed on April 6, 2012, this first cash disbursement was made as a result of fraud. The Affidavit states that Jorge Angulo, the owner of EnviroSystems Management Consultants, Inc. (EMC), provided \$250.00 per day to certain City officials as per diem for the XXIV Conferencia Legislativa Fronteriza, which was held on November 17 through November 19, 2011 in Saltillo, Coahuila de Zaragoza, Mexico. The officials included the Mayor Pro-Tem Salinas, the Public Information Officer Alba and City Manager Aguilera. The expenses paid for included “meals, travel, lodging and ‘night life.’” The affidavit further states the following:

“The ‘night life’ included alcohol and strip clubs for the entire group and prostitutes for Mr. Alba and Mr. Salinas. Mr. Alba advised that in order to get around the per diem set by the City of Sunland Park and the State of New Mexico that Mr. Salinas had arranged for a “pyramid scheme” with Mr. Angulo. Mr. Alba further advised that this “pyramid scheme” was such that Mr. Angulo would provide the group with money and pay for their expenses and, in exchange, he would invoice the City of Sunland Park through EnviroSystems which, in turn, would be paid back to Mr. Angulo through the border crossing fund.”

During our test work of cash disbursements for the City’s contract with EMC, for the Anapra-Sunland Park Land Port of Entry Presidential Permit, we noted that the City made a cash disbursement in the amount of \$10,240.72 to EMC. The City paid the amount from the Border Crossing Fund. Invoice #11104, in the amount of \$10,240.72, including gross receipts tax, was dated November 14, 2011. The “Description” provided on the invoice was “In conformance with Item 2A, ‘Additional Work’ of Agreement November 2, 2011. Saltillo Conference Nov. 17, 2011. Travel expenses: lodging transportation: Presentation Border Legislative Conference.” The City paid the EMC invoice through a check request form which was approved by City Manager Aguilera, Finance Director Gonzalez and Purchasing Agent Rivera. There is no documentation indicating that anyone certified that the services were received prior to payment. See Finding 02 for additional detail regarding this transaction.

Additionally, we were not provided any travel request forms required for authorization of travel for the each six City officials. Furthermore, two of the six employees did not make the trip; therefore, \$923.42 of the original cost to the City was not refunded back due to the local travel agency's no-refund policy for cancelled flights.

Criteria

Section 30-16-6(E) NMSA 1978 provides the following: "Whoever commits fraud when the value of the property misappropriated or taken is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a third degree felony."

Section 30-23-3 NMSA 1978 provides the following: "Making or permitting false public voucher consists of knowingly, intentionally or willfully making, causing to be made or permitting to be made, a false material statement or forged signature upon any public voucher, or invoice supporting a public voucher, with intent that the voucher or invoice shall be relied upon for the expenditure of public money. Whoever commits making or permitting false public voucher is guilty of a fourth degree felony."

Cause

According to the Affidavit for Arrest Warrant supporting criminal charges against Daniel Salinas filed on April 6, 2012, Mayor Pro-Tem Salinas arranged for a scheme with the owner of EMC in which money from the Border Crossing Fund would be used to reimburse the owner of EMC for expenses related to alcohol and strip clubs for the entire group, and prostitutes for Mayor Pro-Tem Salinas and Public Works Director Alba.

One City employee decided last minute that he would not attend the conference and one other employee had issues with her passport. The City used a travel agency that would not refund travel charges.

Effect

The scheme caused a false public voucher to be created for the payment of public monies from the Border Crossing Fund for unallowed and illegal expenses. This resulted in fraudulent misappropriation of public funds. The City also was not refunded the advance payment made on behalf of employees in the amount of \$923.42.

Recommendation

The City should implement controls to ensure that expenses are properly supported prior to submitting payments to vendors. The City should seek restitution for payments made as a result of fraud. The City should also implement policies and procedures to ensure refunds of monies paid advance for travel when City officials or employees ultimately do not travel.

IX. FINDINGS RELATED TO THE FIRE PROTECTION FUND

Finding 24 – Deficiencies Related to Fiscal Year 2011 Cash Disbursements from the City’s Fire Protection Fund

Condition

During our test work of 45 cash disbursements from the City’s Fire Protection Fund in the amount of \$170,387.21 for fiscal year 2011, we found the following discrepancies:

- 4 out of 45 expenditure vouchers tested in the amount of \$2,495.96 were coded to the wrong account code;
- 2 out of 45 expenditure vouchers tested in the amount of \$930.54 were not recorded in the proper period code;
- 1 out of 45 expenditure vouchers tested in the amount of \$144.67 was paid twice;
- 23 out of 45 expenditure vouchers tested in the amount of \$44,088.25 were not properly authorized, i.e., the vouchers were not authorized prior to the goods or services being purchased or the vouchers were missing the required signatures of City Manager, Fire Chief Andres Burciaga and Finance Director Helen Gonzalez;
- 11 out of 45 expenditure vouchers tested in the amount of \$58,702.60 were missing purchase orders;
- 1 out of 45 expenditure vouchers tested in the amount of \$2,500.00 was missing an invoice;
- 14 out of 45 expenditure vouchers tested in the amount of \$9,769.72 were not paid timely or included past due amounts;
- 6 out of 45 expenditure vouchers tested in the amount of \$1,206.97 were for open purchase orders for which there was no evidence that the City tracked expenditures to prevent disbursements in excess of the purchase order;
- 4 out of 45 expenditure vouchers tested in the amount of \$4,119.84 had invoice amounts that were larger than the purchase order amounts associated with the vouchers;
- 5 out of 45 expenditure vouchers tested in the amount of \$6,068.42 did not have sufficient detail on the purchase orders;
- 2 out of 45 expenditure vouchers tested in the amount of \$366.69 did not appear to be for allowed purchases;
- 23 out of 45 expenditure vouchers tested in the amount of \$61,289.69 were missing evidence of goods or services being received prior to payment of invoices;
- 8 out of 45 expenditure vouchers tested in the amount of \$28,156.83 did not include adequate breakdowns of the costs for the invoices paid;
- 10 out of 45 expenditure vouchers tested in the amount of \$102,433.34 did not include evidence that the purchases of goods or services were made pursuant to a proper procurement process, i.e., evidence that price quotes were obtained for the goods or services purchased; and
- 1 out of 45 expenditure vouchers tested in the amount of \$1,666.86 did not include adequate support to determine if the check was properly voided;

- 2 out of 45 expenditure vouchers tested in the amount of \$1,804.13 related to payments made to the City of Las Cruces for the Joint Powers Agreement (JPA) between the City of Las Cruces, Dona Ana County, Town of Mesilla, Village of Hatch, and the City of Sunland Park, which governs the Mesilla Valley Regional Dispatch Authority. The JPA was not recorded in the Fire Protection Fund in the City budget in a separate account code line item.

Criteria

Section 59A-53-11 NMSA 1978 provides the following: “Amounts so distributed from the fire protection fund to any incorporated city, town or village or to any county fire district shall be expended under the direction of the chief of the fire department of the city, town, village or district, upon duly executed vouchers approved as required by law; and in no event is any amount to be expended for any purpose which does not relate directly to the permitted purposes specifically stated in Sections 59A-53-8 and 59A-53-9 NMSA 1978.”

Section 59A-53-8 NMSA 1978 requires, in part, that amounts from the Fire Protection Fund shall only be expended “for the maintenance of its fire department; the purchase, construction, maintenance, repair and operation of its fire stations, including substations; fire apparatus and equipment and the financing or refinancing thereof; the payment of insurance premiums on fire stations, substations, fire apparatus and equipment and insurance premiums for injuries or deaths of firefighters as otherwise provided by law; and fire department emergency medical services, except salaries.”

Section 59A-53-13 NMSA 1978 provides the following: “Any person who shall expend, or direct or permit the expenditure of, any money distributed from the fire protection fund, for purposes not expressly authorized . . . shall be personally liable to the state of New Mexico for the full amount of the money wrongfully expended, together with interest thereon and costs.”

Section 13-1-158(A) NMSA 1978 provides the following: “No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications.”

All costs should be completely supported before the City approves them for payment. In addition, invoices should be processed only when they adequately detail all costs.

Good accounting practices require a purchase order be issued as a cash and budget control prior to making purchases. Purchase authorization and budgetary control should be executed by a responsible person at the department level and finance department level who has authority to approve the purchase. Pursuant to Section 13-1-77 NMSA 1978, a “purchase order” is “the document issued by the state purchasing agent or a central purchasing office that directs a contractor to deliver items of tangible personal property, services or construction.”

Good internal controls require identifying and recording expenditures according to fund, budget, account code, and category for the tracking of expenditures related to specific revenue sources.

Cause

In certain cases, the City Manager Aguilera, Fire Chief Burciaga, Finance Director Gonzalez and employees of the City's Purchasing Department did not ensure that expenditures were authorized prior to issuing a voucher. In other cases, the City failed to follow the proper procedures in accordance with the Procurement Code, including failing to ensure that invoices and payments were properly supported. The City also failed to certify the receipt of goods and services prior to payment. Additionally, the City lacks procedures for recording and tracking expenditures for the JPA and open purchase orders. Overall, the City lacks internal controls for Fire Protection Fund disbursements, and it appears that City employees lack proper training and supervision regarding procurement requirements.

Effect

The City appears to have violated state laws pertaining to the Fire Protection Fund, which could result in City officials or employees being held personally liable. Authorization of payments without proper supporting documentation, approvals, review and approval of invoices, and certification that goods and services are received increases the risk that Procurement Code violations and fraud will occur. For example, there is an increased risk that the City may pay vendors in excess of contract or purchase order amounts. There is also an increased risk that the City could overpay for goods or services, or the City could pay for a good or service that was never received. Failure to monitor purchases and implement proper internal controls over purchases can also result in inaccurately reporting and recording transactions. There is an increased risk that the revenues and expenditures associated with the JPA will not be tracked; therefore, those revenues and expenditures will not be reflected in the City's budget.

Recommendation

The City Council, management and the Fire Chief should implement procedures and controls to closely monitor its expenditures, and expenditures should only be made if they are in accordance with procurement requirements, the purposes of the Fire Protection Fund and the City's budget. The City should also develop a system to track purchase orders and reconcile invoices to vouchers. The City should also ensure employees review the vendor list prior to purchasing goods and services, and prior to payment employees should certify the receipt of goods and services and that the specifications conform to the quality and quantity ordered. Moreover, the City should ensure all invoices contain sufficient detail and supporting documentation before payments are made. Finally, the City should ensure that it has properly recorded all JPAs on a master list, and monitor the revenues and expenditures under those JPAs until the end of the agreements.

Finding 25 – Deficiencies Related to Fiscal Year 2012 Cash Disbursements from the City’s Fire Protection Fund

Condition

During our test work of 34 cash disbursements from the City’s Fire Protection Fund in the amount of \$59,506.12 for fiscal year 2012, we found the following discrepancies:

- 1 out of 34 expenditure vouchers tested in the amount of \$40.16 was coded to the wrong account code;
- 21 out of 34 expenditure vouchers tested in the amount of \$46,502.01 were not properly authorized, i.e., the vouchers were not authorized prior to the goods or services being purchased or the vouchers were missing the required signatures of City Manager, Fire Chief Andres Burciaga and Finance Director Helen Gonzalez;
- 11 out of 34 expenditure vouchers tested in the amount of \$44,201.35 were missing purchase orders;
- 2 out of 34 expenditure vouchers tested in the amount of \$735.88 were missing invoices;
- 1 out of 34 expenditure vouchers tested in the amount of \$238.00 was missing a copy of the check;
- 9 out of 34 expenditure vouchers tested in the amount of \$28,615.09 were not paid timely or included past due amounts;
- 8 out of 34 expenditure vouchers tested in the amount of \$8,347.64 were for open purchase orders for which there was no evidence that the City tracked expenditures to prevent disbursements in excess of the purchase order;
- 2 out of 34 expenditure vouchers tested in the amount of \$5,617.57 did not have sufficient detail on the purchase orders;
- 1 out of 34 expenditure vouchers tested in the amount of \$1,220.60 had an invoice amount larger than the check amount;
- 2 out of 34 expenditure vouchers tested in the amount of \$1,771.23 did not appear to be for allowed purchases;
- 18 out of 34 expenditure vouchers tested in the amount of \$10,220.58 were missing evidence of goods or services being received prior to payment of invoices;
- 9 out of 34 expenditure vouchers tested in the amount of \$35,712.36 did not include adequate breakdowns of the costs for the invoices paid;
- 3 out of 34 expenditure vouchers tested in the amount of \$1,943.04 did not include evidence that the purchases of goods or services were made pursuant to a proper procurement process, i.e., evidence that price quotes were obtained for the goods or services purchased; and
- 2 out of 34 expenditure vouchers tested in the amount of \$5,617.57 related to payments made to the City of Las Cruces for the Joint Powers Agreement (JPA) between the City of Las Cruces, Dona Ana County, Town of Mesilla, Village of Hatch, and the City of Sunland Park, which governs the Mesilla Valley Regional Dispatch Authority. The JPA was not recorded in the Fire Protection Fund in the City budget in a separate account code line item.

Criteria

Section 59A-53-11 NMSA 1978 provides the following: “Amounts so distributed from the fire protection fund to any incorporated city, town or village or to any county fire district shall be expended under the direction of the chief of the fire department of the city, town, village or district, upon duly executed vouchers approved as required by law; and in no event is any amount to be expended for any purpose which does not relate directly to the permitted purposes specifically stated in Sections 59A-53-8 and 59A-53-9 NMSA 1978.”

Section 59A-53-8 NMSA 1978 requires, in part, that amounts from the Fire Protection Fund shall only be expended “for the maintenance of its fire department; the purchase, construction, maintenance, repair and operation of its fire stations, including substations; fire apparatus and equipment and the financing or refinancing thereof; the payment of insurance premiums on fire stations, substations, fire apparatus and equipment and insurance premiums for injuries or deaths of firefighters as otherwise provided by law; and fire department emergency medical services, except salaries.”

Section 59A-53-13 NMSA 1978 provides the following: “Any person who shall expend, or direct or permit the expenditure of, any money distributed from the fire protection fund, for purposes not expressly authorized . . . shall be personally liable to the state of New Mexico for the full amount of the money wrongfully expended, together with interest thereon and costs.”

Section 13-1-158(A) NMSA 1978 provides the following: “No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications.”

All costs should be completely supported before the City approves them for payment. In addition, invoices should be processed only when they adequately detail all costs.

Good accounting practices require a purchase order be issued as a cash and budget control prior to making purchases. Purchase authorization and budgetary control should be executed by a responsible person at the department level and finance department level who has authority to approve the purchase. Pursuant to Section 13-1-77 NMSA 1978, a “purchase order” is “the document issued by the state purchasing agent or a central purchasing office that directs a contractor to deliver items of tangible personal property, services or construction.”

Good internal controls require identifying and recording the expenditures according to fund, budget, account code, and category for the tracking of expenditures related to specific revenue sources.

Cause

In certain cases, the City Manager, Fire Chief Burciaga, Finance Director Gonzalez and employees of the City's Purchasing Department did not ensure that expenditures were authorized prior to issuing a voucher. In other cases, the City failed to follow the proper procedures in accordance with the Procurement Code, including failing to ensure that invoices and payments were properly supported. The City also failed to certify the receipt of goods and services prior to payment. Additionally, the City lacks procedures for recording and tracking expenditures for the JPA and open purchase orders. Overall, the City lacks internal controls for Fire Protection Fund disbursements, and it appears that City employees lack proper training and supervision regarding procurement requirements.

Effect

The City appears to have violated state laws pertaining to the Fire Protection Fund, which could result in City officials or employees being held personally liable. Authorization of payments without proper supporting documentation, approvals, review and approval of invoices, and certification that goods and services are received increases the risk that Procurement Code violations and fraud will occur. For example, there is an increased risk that the City may pay vendors in excess of contract or purchase order amounts. There is also an increased risk that the City could overpay for goods or services, or the City could pay for a good or service that was never received. Failure to monitor purchases and implement proper internal controls over purchases can also result in inaccurately reporting and recording transactions. There is an increased risk that the revenues and expenditures associated with the JPA will not be tracked; therefore, those revenues and expenditures will not be reflected in the City's budget.

Recommendation

The City Council, management and the Fire Chief should implement procedures and controls to closely monitor its expenditures, and expenditures should only be made if they are in accordance with procurement requirements, the purposes of the Fire Protection Fund and the City's budget. The City should also develop a system to track purchase orders and reconcile invoices to vouchers. The City should also ensure employees review the vendor list prior to purchasing goods and services, and prior to payment employees should certify the receipt of goods and services and that the specifications conform to the quality and quantity ordered. Moreover, the City should ensure all invoices contain sufficient detail and supporting documentation before payments are made. Finally, the City should ensure that it has properly recorded all JPAs on a master list, and monitor the revenues and expenditures under those JPAs until the end of the agreements.

X. FINDINGS RELATED TO THE OPEN MEETINGS ACT

Finding 26 – Deficiencies in the Meeting Minutes of the City Council

Condition

During our test work, we reviewed signed copies of the meeting minutes for 84 meetings of the City Council which were held between January 13, 2009 and October 5, 2011.

Thirty-five of the meeting minutes were for special meetings where the rules of procedure normally would not call for approving the minutes of previous meetings. Of the remaining 49 minutes, 18 included approval of a consent agenda but fail to specifically identify the meeting minutes that are being approved. The minutes for the remaining 31 meetings specifically identify the minutes that are being approved.

We also noted numerous inconsistencies and errors in the drafting of the minutes. For a number of meetings, the heading on the first page indicates the minutes are for a special meeting, but the adjournment paragraph on the last page indicates it was a regular meeting that adjourned. There are great numbers of typos and errors in the minutes, and the minutes for April 7, 2009 are incomplete since the names of city council members who made motions to approve resolutions, and the names of city council members who seconded motions, were not entered into the minutes. We also noted that for the following instances the meeting minutes do not show how each member voted for certain actions, such as for awards of professional services contracts:

- At a special meeting of the City Council on September 14, 2009, the City Council approved the award of a professional services contract to Javier Ortiz. Councilor Daniel Salinas made a motion to approve the award to Mr. Ortiz, and Mayor Pro-Tem Angelica Marquez seconded the motion. The motion carried, but the minutes do not show how the Councilors voted. See Finding 01 for additional detail;
- The City Council approved renewal of the agreement with Javier Ortiz on October 20, 2010. The minutes for the meeting indicate that Councilor Carmen Rodriguez made a motion for approval and Councilor Annette Diaz seconded the motion. The motion carried, but the minutes do not show how the Councilors voted. See Finding 01 for additional detail;
- The minutes for the City Council's March 2, 2011 meeting indicate that the Council considered and approved the contract with Medius, Inc (Medius). The minutes state that Mayor Pro-Tem Daniel Salinas made a motion to approve the contract, and Councilor Diaz seconded the motion. The motion carried, but the minutes do not show how the Council members voted. See Finding 01 for additional detail;
- At its meeting on September 7, 2011, the City Council approved termination of the Medius contract. City Councilor Rodriguez made a motion to terminate the contract "immediately," and the motion was seconded by Councilor Angelica Marquez. The motion carried, but the minutes do not show how the Council members voted. See Finding 01 for additional detail;

- On May 10, 2011, at a Special Meeting of the City Council, the Council approved the award of a professional services contract to The Idea Group of Santa Fe. Mayor Pro-Tem Salinas made the motion to approve the contract negotiations and Councilor Rodriguez seconded the motion. The motion carried, but the minutes do not show how the Councilors voted. See Finding 01 for additional detail;
- On January 30, 2009, the City Council approved Frank Coppler as the City Attorney. Upon a motion made by Councilor Daniel Salinas, and seconded by Councilor Jessica Avila, the City Council approved Coppler. The other City Councilor present via telephone at the meeting was Angelica Marquez; however, the minutes do not indicate how Ms. Marquez voted. See Finding 04 for additional detail; and
- At a special meeting of the City Council on July 6, 2010, the City Council approved a plan to reduce certain customer utility bills. The City Council voted to approve an 80 percent discount to “the current water utility bill” and the remaining 20 percent would be paid over a twelve-month period. The minutes show that motions to approve the plan were made by Mayor Pro-Tem Salinas, Councilor Rodriguez and Councilor Avila. The motion carried, but the minutes do not show how each member voted. See Finding 12 for additional detail.

The auditors also noted that a rough draft of the minutes for the meeting of April 18, 2012 was still not available as of Friday, May 11, 2012.

Criteria

The Open Meetings Act (OMA), specifically Section 10-15-1 NMSA 1978, requires that “[t]he board, commission or other policymaking body shall keep written minutes of all its meetings. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted . . . Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Minutes shall not become official until approved by the policymaking body.”

Pursuant to Section 3-37-1 NMSA 1978, the “governing body is the board of finance of the municipality.” Pursuant to Section 3-37-1(B)(2) NMSA 1978, the “municipal clerk shall . . . keep a record of the proceedings of the board of finance which shall be a public record.”

Cause

The City Council’s meetings are first recorded. After each meeting, the City Clerk, Elizabeth Gamez, prepares a written draft of the minutes. In certain cases, the City Clerk does not appear to have prepared a draft of the minutes within ten working days. Also, in certain instances, the City Clerk is not noting in the minutes how members voted. The City Council is also not approving, amending or disapproving the minutes of its previous meeting at the next meeting where a quorum is present.

Effect

The City Council and the City Clerk are in noncompliance with the OMA provisions relating to the preparation of minutes and the approval of minutes. The actions of the City Council are not fully transparent to the public. The City Council's minutes are also not readily available for public inspection when the City Clerk does not prepare them timely. Councilors or the City Clerk may be subject to civil action or criminal penalties.

Recommendation

The City Clerk needs to make preparation of minutes that comply with the requirements of the OMA a high priority. The City Clerk should ensure the minutes show how each member voted on a particular action item by the City Council. The City Council should also ensure that it approves its meeting minutes in accordance with the OMA. Furthermore, after the City Clerk prepares the first draft of the minutes, another person, preferably somebody who attended the meeting should proofread the draft. The City Clerk could then incorporate corrections recommended by the proofreader.

Finding 27 – Violation of the Open Meetings Act Due to the City Council’s Failure to Permit Attendance of All Interested Individuals

Condition

On April 18, 2012, the City Council appointed a new mayor at a meeting in which there was an overflow crowd. As a result, not all of the persons who wanted to attend were able or were permitted to enter the meeting room. City Councilors present at the meeting were Christian Lira, Annette Diaz, Carmen Rodriguez, Sergio Carrillo, Jessica Avila and Mayor Pro-Tem Isabel Santos. Councilors voting in favor of the appointment of Javier Perea as the City’s Mayor were Councilors Diaz, Rodriguez and Carrillo. Councilor Lira and Mayor Pro-Tem Santos voted against the appointment of Mr. Perea. Councilor Avila abstained from the vote.

The Las Cruces Sun-News filed a formal complaint with the New Mexico Attorney General’s Office (AGO) against the City Council alleging that the Council violated the Open Meetings Act (OMA). In a letter dated April 26, 2012 to the City’s Mayor Pro-Tem Isabel Santos and the City Council, the AGO wrote the following: “It is our opinion that when a public body is faced with the situation that was before the Sunland Park City Council . . . OMA requires the public body to make reasonable efforts to find a way to permit attendance of all interested individuals.” Those efforts “include the postponement of the meeting to allow for relocation to a larger meeting room and the use of audio and video devices so that individuals excluded from the facility can listen to the meeting.” The AGO went on to state that “[i]f the circumstances surrounding the Council’s April 18, 2012 meeting are as we understand them, then it appears the Council violated the OMA.”

Further, the AGO stated that if the City Council believes there was no violation of the OMA, the City Council should provide its reasoning in support of that belief. Otherwise, the City Council should (1) hold another public meeting in a facility capable of accommodating the large public attendance that can be anticipated based on the April 18, 2012 meeting; (2) properly provide public notice of the date, time, location and agenda of the meeting; and (3) re-deliberate those matters discussed at the April 18, 2012 meeting, including a summary of the deliberations of the April 18, 2012 meeting, and re-vote on any items voted on at the April 18, 2012 meeting.

Criteria

The OMA, specifically Section 10-15-1 NMSA 1978, requires that “all meetings of a quorum of any . . . policymaking body . . . held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of . . . [the] policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act.”

Section 10-15-3 NMSA 1978 provides the following: “No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements” of the OMA.

Section 10-15-4 NMSA 1978 provides that any person who violates the provisions of the OMA “is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) for each offense.”

Cause

The City failed to make reasonable efforts to permit attendance of all interested individuals.

Effect

All interested persons were deprived of their right to attend the City Council’s April 18, 2012 meeting. The City’s appointment of the Mayor may be invalid. City Councilors may be subject to criminal penalties.

Recommendation

The City Council members should ensure all reasonable efforts are made to permit attendance of all interested individuals at Council meetings. This would include postponement of the meeting while a larger meeting space is sought, or it could include the use of audio or video equipment so individuals may be able to listen to the meeting. Additionally, City Councilors, the City Manager and the City Clerk should obtain and review copies of the OMA guide published by the AGO. They should refer to this guide regularly to ensure the City complies with the requirements of the OMA.

XII. EXIT CONFERENCE

An exit conference to discuss the contents of the report was held at the City of Sunland Park on May 14, 2012 and attended by the following:

City of Sunland Park:

Maria Isabel Santos, Mayor Pro Tem
Helen B. Gonzalez, Finance Director
Roberto Diaz de Leon, Project Manager, Border Crossing Fund

Office of the State Auditor:

Hector Balderas, State Auditor
Carla Martinez, Deputy State Auditor
Evan Blackstone, Chief of Staff/Acting General Counsel
Antonio Corrales, Director of Operations and Compliance
Rosemary Whitegeese, Audit Supervisor
Michelle Clark, Senior Auditor
Andrew Gallegos, Senior Auditor