



City of Albuquerque

Office of Internal Audit and Investigations
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Interoffice Memorandum

June 29, 2005

Ref. No. 05-01-101F2

To: Sandy Doyle, Director, Department of Finance and Administrative Services
Pat Miller, Director, Human Resources Department

From: Carmen L. Kavelman, Acting Director, Office of Internal Audit and Investigations

Subject: SECOND FOLLOW-UP REVIEW OF CITYWIDE AUDIT REPORT NO. 01-101, VENDOR CONTRACT - WESTAFF

At the request of the City's Accountability in Government Oversight Committee, the Office of Internal Audit and Investigations completed a second follow-up review of Citywide Audit Report No. 01-101, Vendor Contract - Westaff. The purpose of this contract is to enable City departments to use Vendor temporary employees. The original audit report was issued on January 23, 2002. The first follow-up review was issued in June 2003, and determined the following:

- The recommendations in Finding No. 1 had not been implemented.
- The recommendations in Finding No. 2 had not been implemented.
- The recommendations in Finding No. 3 had been fully implemented.
- The recommendations in Finding No. 4 had been partially implemented.
- The recommendations in Finding No. 5 had been partially implemented.
- The recommendations in Finding No. 6 had been partially implemented.
- The recommendations in Finding No. 7 had been partially implemented.
- The recommendations in Finding No. 8 had been partially implemented.
- The recommendations in Finding No. 9 had been fully implemented.
- The recommendations in Finding No. 10 had been fully implemented.

Additionally, six additional new findings were reported in the first follow-up review.

The purpose of our second follow-up was to review the current status of the original audit recommendations which had not been implemented or only partially implemented. (These are Finding Nos. 1, 2, 4, 5, 6, 7, and 8.) Additionally, the second follow-up reviewed the current status of the six additional new findings that were identified in the first follow-up review. (These are Finding Nos. A, B, C, D, E, and F.) We determined the following:

In FY2003, City departments paid the vendor \$4.3 million for the use of use of Vendor temporary employees. In FY2004, City departments paid the vendor \$5.3 million for the use of use of Vendor temporary employees, a 24% increase. In the first 10 months of FY2005 (through April 2005), City departments paid the vendor \$5.5 million for the use of use of Vendor temporary employees.

INTRODUCTORY STATEMENT FROM THE CAO:

“Temporary employees, whether they are temporary City employees or temporary workers obtained through an employment agency, are necessary for the prompt and timely delivery of City services. Many City programs, such as parks maintenance, summer recreation programs, Isotopes stadium maintenance and after-school programs, are cyclical by definition or appeal to a labor pool seeking part-time or intermittent employment. It is good fiscal policy not to commit scarce resources to full-time employees entitled to the full complement of City employment benefits when part-time employees better meet the need. For that reason, the use of temporary workers is regularly addressed during the budget cycle, particularly for those departments that provide services that are cyclical or where the need for full-time employees can not be justified.

“The responses to the first follow-up recommendations contemplated the creation of a committee to generate policies and procedures with respect to the use of vendor temporary staff, and agreed that the Human Resources Department and the Department of Finance and Administrative Services should be responsible for the management of this specific vendor contract. The committee process was apparently unsuccessful based on the second follow-up recommendations, and the CAO believes that another approach is needed to ensure individual departments assume responsibility for, and are accountable for, their use of vendor temporary staff. Performance based budgeting requires that departments have the latitude to make business decisions designed to allow them to achieve their goals and priority objectives, as measured by performance standards. Delegating control of an asset (temporary labor) needed to meet department goals to another department is contrary to the premises underlying performance based budgeting.

“As priority objectives change from year to year, the actual work force composition needed to meet those priority objectives may also change from year to year. That is considered during the budget process. The CAO does not believe it is reasonable to make general assumptions about an increase or decrease in the use of vendor temporary labor from year to year, and an increase or decrease should not become the basis for a presumption that one or more departments are not properly using vendor temporary labor. It may be instructive to consider the use of vendor temporary labor in a slightly larger context.

| | <i>FY/03</i> | <i>FY/04</i> | <i>FY/05</i> |
|--|----------------------|----------------------|----------------------|
| <i>Total Appropriated Wages</i> | \$305,565,879 | \$330,802,343 | \$347,832,792 |
| <i>% Increase/(Decrease)</i> | | 8.26% | 5.15% |
| <i>City Temp Wages Included in Above</i> | \$6,609,517 | \$7,744,970 | \$7,109,595 |
| <i>%Increase/(Decrease)</i> | | 17.18% | (8.2%) |
| <i>As % of Total Appropriated Wages</i> | 2.16% | 2.34% | 2.04% |
| <i>Payments to Vendor</i> | \$4,300,000 | \$5,300,000 | \$5,500,000* |
| <i>% Increase/(Decrease)</i> | | 23.26% | 3.77% |
| <i>As % of Total Appropriated Wages</i> | 1.41% | 1.60% | 1.58% |
| | | | * 10 Months |

“Just as department directors are held personally responsible by the Mayor for not overspending their budgets in total, an attitude of accountability needs to be inculcated with respect to the use of assets under the department’s control. It is appropriate for the administration to provide guidelines and policy guidance for the use of vendor temporary labor. At the same time, it is important to acknowledge that no set of guidelines can cover the multitude of situations that could arise with respect to the use of vendor temporary labor. That is why the departments must be made directly accountable. The responses reflect this difference in approach from the first follow-up report. Guidelines will be established for the use of vendor temporary labor and departments will be held strictly accountable for their use of that labor to achieve their goals and priority objectives.”

RECOMMENDATION NO.1:

The original audit recommended that the Chief Administrative Officer (CAO) review the increasing use of Vendor temporary employees, and determine if guidelines were necessary relating to departments adding Vendor temporary employees. The original audit reported that there were no written guidelines for user departments to follow regarding City positions being filled by Vendor temporary employees.

The first follow-up review determined that the original audit recommendation had not been implemented. The follow-up review noted that City procedures have not been finalized to specify the allowable use of private agency temporary staff.

The first follow-up review recommended that the Human Resources Department (HRD) finalize the City procedures and issue the procedures to departments that specify the allowable use of private agency temporary staff. The first follow-up review also recommended that the Department of Finance and Administrative Services (DFAS) Purchasing Division closely

monitor the use of Vendor employees; and that the DFAS should promptly notify the CAO of violations of the procedures for use of the Vendor contract, when they are finalized.

HRD responded to the first follow-up recommendation as follows:

The Administration will create a committee comprised of the directors of Finance and Administrative Services (DFAS), Human Resources (HR), Family and Community Services (FCS) and Senior Affairs, the budget officer, purchasing officer and an advisory member from Internal Audit. This committee will draft policies and procedures for the use of contract temporary staff with a targeted completion date of December 31, 2003.

DFAS responded to the first follow-up recommendation as follows:

The Administration agrees that the use of vendor employees should be closely monitored. The above-mentioned committee will address this issue and determine the responsible party or department.

ACTION TAKEN

The first follow-up recommendation has not been implemented. Although the administration responded to the first follow-up that it would establish a committee to draft policies and procedures for the use of contract temporary staff (with a targeted completion date of December 31, 2003); policies and procedures have not yet been drafted by the committee. In October 2004, the Director of DFAS informed the auditor that the committee had been set up, and had several meetings; but no further actions had occurred. She further informed the auditor that no procedures have been established.

Although the administration responded to the first follow-up that it agreed that the use of vendor employees should be closely monitored, and the above-mentioned committee will address this issue and determine the responsible party or department; this has not been done.

SECOND FOLLOW-UP RECOMMENDATION

HRD and DFAS should ensure that the committee finalizes the City policies and procedures and issues the procedures to departments, which specify the allowable use of private agency temporary staff.

HRD and DFAS should ensure that the committee determines the responsible party or department to closely monitor the use of Vendor employees. The responsible party should promptly notify the CAO of violations of the procedures for use of the Vendor contract.

EXECUTIVE RESPONSE FROM HRD
EXECUTIVE RESPONSE FROM DFAS

“The CAO is responding on behalf of both HRD and DFAS. The CAO agrees that official guidance should be provided to the departments on the use of vendor temporary labor. The CAO has assigned the CFO to work with HRD, DFAS and the primary user departments to prepare an Administrative Instruction with that necessary guidance by December 31, 2005, and to ensure that the provisions of the current contract with the vendor support those guidelines.

“In addition, the CAO has directed the CFO to propose changes to Administrative Instruction 2-20, Budgetary Control Responsibilities, to clarify that accountability for the use of vendor temporary labor lies with the departments. Proposed changes are due on November 1, 2005 to the CAO for consideration and adoption by December 31, 2005.”

RECOMMENDATION NO. 2:

The original audit recommended that the CAO determine if guidelines were necessary to limit the length of time that a City position may be filled by Vendor temporary employees. There were no written guidelines for user departments to follow regarding the length of time that a position may be filled by Vendor temporary employees. The audit had determined that City departments were having some positions filled by Vendor temporary employees for indefinite lengths of service.

The first follow-up review determined that the original audit recommendation had not been implemented. The follow-up review noted that City procedures have not been finalized to provide guidelines for user departments to follow limiting the length of time that a position may be filled by Vendor temporary employees.

The first follow-up review recommended that the Human Resources Department finalize the City procedures and issue the procedures to departments, to address the length of time that a private agency temporary employee may fill positions in City Departments. The first follow-up review also recommended that the DFAS Purchasing Division closely monitor the use of Vendor employees, and that the DFAS should promptly notify the CAO of violations of the procedures for use of the Vendor contract, when they are finalized.

ACTION TAKEN

The first audit recommendation has not been implemented. Although the administration responded to the first follow-up that it would establish a committee to draft policies and procedures for the use of contract temporary staff (with a targeted completion date of December 31, 2003); policies and procedures have not yet been drafted by the committee.

The administration responded to the first follow-up that the above-mentioned committee will also address the issue of duration for contract temporary employees; this has not been done.

SECOND FOLLOW-UP RECOMMENDATION

HRD and DFAS should ensure that the committee finalizes the City policies and procedures and issues the procedures to departments, that address the length of time that a private agency temporary employee may fill positions in City Departments.

HRD and DFAS should ensure that the committee determines the responsible party or department to closely monitor the use of Vendor employees and notify the CAO of violations of the procedures.

EXECUTIVE RESPONSE FROM HRD EXECUTIVE RESPONSE FROM DFAS

“The CAO is responding on behalf of both HRD and DFAS. The CAO agrees that official guidance should be provided to the departments on the length of time that a vendor temporary employee may fill positions in the City. The CAO has assigned the CFO to work with HRD, DFAS and the primary user departments to prepare an Administrative Instruction with that necessary guidance by December 31, 2005, and to ensure that the provisions of the current contract with the vendor support those guidelines.

“In addition, the CAO has directed the CFO to propose changes to Administrative Instruction 2-20, Budgetary Control Responsibilities, to clarify that accountability for the use of vendor temporary labor lies with the departments. Proposed changes are due on November 1, 2005 to the CAO for consideration and adoption by December 31, 2005.”

RECOMMENDATION NO. 4:

The original audit recommended that if user departments and the Purchasing Division desired to allow Vendor temporary employees to work overtime, then DFAS should modify the contract to allow the practice. The audit also recommended that the CAO should consider providing instructions to City departments regarding the use of overtime by Vendor temporary employees. The original audit reported that although the contract did not address the issue of Vendor temporary employees working overtime, several City departments had paid for overtime hours worked by Vendor temporary employees.

The first follow-up review determined that the original audit recommendation had been partially implemented. The follow-up review noted that City procedures have not been finalized, to provide guidelines for user departments to follow which addressed the use and payment of overtime.

The first follow-up review recommended that DFAS and HRD draft a policy addressing the number of overtime hours that can be approved for Vendor temporary employees. The first follow-up review also recommended that the DFAS Purchasing Division and the Human Resources Department should monitor the use of overtime by Vendor temporary employees and notify the CAO of any violations of established limits.

ACTION TAKEN

The first follow-up audit recommendation has not been implemented. Although the administration responded to the first follow-up that it would establish a committee to draft policies and procedures for the use of contract temporary staff (with a targeted completion date of December 31, 2003); policies and procedures have not yet been drafted by the committee.

Although the administration responded to the first follow-up that the above-mentioned committee will address the issue of overtime for contract temporary employees, this has not been done.

During FY04, City departments paid the vendor for 4,080 hours of overtime. During the first 10 months of FY05, City departments paid the vendor for 7,497 hours of overtime.

SECOND FOLLOW-UP RECOMMENDATION

HRD and DFAS should ensure that the committee finalizes the City policies and procedures and issues the procedures to departments, which address of the use overtime by Vendor temporary employees.

HRD and DFAS should ensure that the committee determines the responsible party or department to closely monitor the use of overtime by Vendor temporary employees and promptly notify the CAO of violations of the procedures.

EXECUTIVE RESPONSE FROM HRD

EXECUTIVE RESPONSE FROM DFAS

“The CAO is responding on behalf of both HRD and DFAS. The CAO agrees that official guidance should be provided to the departments on the use of overtime by vendor temporary employees. The CAO has assigned the CFO to work with HRD, DFAS and the primary user departments to prepare an Administrative Instruction with that

necessary guidance by December 31, 2005, and to ensure that the provisions of the current contract with the vendor support those guidelines.

“In addition, the CAO has directed the CFO to propose changes to Administrative Instruction 2-20, Budgetary Control Responsibilities, to clarify that accountability for the use of vendor temporary labor lies with the departments. Proposed changes are due on November 1, 2005 to the CAO for consideration and adoption by December 31, 2005.”

RECOMMENDATION NO. 5:

The original audit recommended that City departments should comply with the state statute prohibiting Vendor temporary employees from performing construction work. The original audit noted that the Purchasing Division informed City Departments of this restriction, when the previous purchase order was issued to the Vendor in 1999. This notification from the Purchasing Division stated, “CONSTRUCTION CATEGORIES – DUE TO STATE LAW (ARTICLE 13A, EMPLOYEE LEASING), THIS CONTRACT CANNOT BE UTILIZED TO FILL POSITIONS IN THE CONSTRUCTION CATEGORIES.” The original audit reported that work performed by Vendor temporary employees at the Solid Waste Management Department and the Department of Family and Community Services, Albuquerque Housing Services Division (AHS) that appeared to be construction activities.

The first follow-up review determined that the original audit recommendation had been partially implemented. The first follow-up review noted that from FY2001 through May 13 of FY2003, City departments charged \$372,000 of Vendor temporary employee services to Capital Implementation Program (CIP) projects. CIP projects are primarily construction projects. The Vendor’s temporary employees are prohibited by state statute from performing construction work. It appears that City departments may not be in full compliance with this statute.

The first follow-up review recommended that the HRD address the issue of prohibiting Vendor temporary employees from performing construction work in the procedures that it is drafting. The first follow-up review also recommended that procedures for the use of Vendor temporary employees include a requirement that the DFAS CIP Fiscal Section pre-approve the use of Vendor temporary employees on capital projects to ensure that construction categories are not involved.

The Administration’s response to the first follow-up recommendation stated, “Human Resources and DFAS concur. The issue of vendor temporary employees performing construction work will be addressed in the new policies and procedures.”

ACTION TAKEN

The first follow-up audit recommendation has not been implemented. Although the administration responded to the first follow-up that the issue of vendor temporary employees performing construction work will be addressed in the new policies and procedures; policies and procedures have not yet been drafted by the committee.

SECOND FOLLOW-UP RECOMMENDATION

HRD and DFAS should ensure that the committee finalizes the City policies and procedures and issues the procedures to departments, which address the issue of prohibiting Vendor temporary employees from performing construction work.

HRD and DFASA should ensure that the procedures that the committee creates include a requirement that the DFAS CIP Fiscal Section pre-approve the use of Vendor temporary employees on capital projects to ensure that construction categories are not involved.

EXECUTIVE RESPONSE FROM HRD
EXECUTIVE RESPONSE FROM DFAS

“The CAO is responding on behalf of both HRD and DFAS. The CAO agrees that official guidance should be provided to the departments on the use of vendor temporary employees in construction categories. Section 60-13A-2.1 NMSA 1978 does not, in fact, prohibit the use of temporary workers in construction categories, provided certain conditions are met. Research has been initiated to determine if the deemed prohibition is the result of vendor contract provisions and, if so, whether those contract provisions should be amended. In any case, clarification of this issue is needed. The CAO has assigned the CFO to work with HRD, DFAS and the primary user departments to prepare an Administrative Instruction with that necessary guidance by December 31, 2005, and to ensure that the provisions of the current contract with the vendor support those guidelines.”

RECOMMENDATION NO. 6:

The original audit recommended that the Transit Department (Transit) ensure that Vendor temporary employees who handle City monies, receive the cash handling training required by Administrative Instruction No. 2-6. The original audit reported that Vendor temporary employees, who were working as City cashiers, had not received the required City cash handling training.

The first follow-up review determined that the original audit recommendation had been partially implemented. The first follow-up review noted that in July 2002, the DFAS Director sent a memorandum to all departments, which stated, "In compliance with Administrative Instruction 2-6, all (Vendor) contract workers upon acceptance of an assignment that involves city monies being handled must attend the City's cash handling training provided by Treasury." However, Transit did not comply with this directive.

The first follow-up review also noted that during the first year of the new contract with the Vendor, which started August 2001, the following additional departments used Vendor employees as cashiers: the Aviation, Cultural Services, and Family and Community Services Departments.

The first follow-up review recommended that Transit ensure that Vendor temporary employees, who handle City monies, receive the training required by Administrative Instruction No. 2-6. The first follow-up review also recommended that DFAS should remind the other departments that use Vendor temporary employees as cashiers that those employees must attend cash handling training.

DFAS response to the first follow-up recommendation stated, "DFAS concurs and will include cash handling training requirements in the new policies and procedures."

Transit, Aviation, Cultural Services, and Family and Community Services all responded that their department concurred with the recommendation that vendor temporary employees who worked in their department would receive City cash handling training.

ACTION TAKEN

The first follow-up audit recommendation has not been implemented. Although the DFAS responded to the first follow-up that the new policies and procedures will include cash handling training requirements; policies and procedures have not yet been drafted by the committee.

The auditor requested that the Transit, Aviation, Cultural Services, and Family and Community Services departments provide us a list, as of May 2005, of vendor temporary employees who worked in their department who handled City cash. We then compared this information to the Treasury records which indicate who has had cash handling training. We determined that there were 41 vendor temporary employees who handled City cash in the Cultural Services Department. Of these 41 individuals, 34 of them had not received the required City cash handling training. Additionally, two vendor temporary employees who handled City cash in this department had received training, but their cash handling training certification had expired. We also determined that the one vendor temporary employees who handled City cash in the Aviation Department had not received the required City cash handling training.

The Transit fiscal manager did not respond to our request for us a list, as of May 2005, of vendor temporary employees who worked in his department who handled City cash.

SECOND FOLLOW-UP RECOMMENDATION

HRD and DFAS should ensure that the committee finalizes the City policies and procedures and issues the procedures to departments, which address the issue of required cash handling training for Vendor temporary employees who work as City cashiers.

HRD and DFAS should ensure that the committee determines the responsible party or department to closely monitor the use of Vendor temporary employees and promptly notify the CAO of violations of the procedures.

The Transit, Aviation and Cultural Services Departments should ensure that Vendor temporary employees who handle cash have the required cash handling training.

EXECUTIVE RESPONSE FROM HRD EXECUTIVE RESPONSE FROM DFAS

***“The CAO is responding on behalf of both HRD and DFAS. The CAO agrees that official guidance should be provided to the departments on the issue of required cash handling training for vendor temporary employees. The CAO has assigned the CFO to work the HRD, DFAS and the primary user departments to prepare an Administrative Instruction with that necessary guidance by December 31, 2005, and to ensure that the provisions of the current contract with the vendor support those guidelines.*”**

***“The CAO has also directed the CFO to propose changes to Administrative Instruction 2-20, Budgetary Control Responsibilities, to clarify that accountability for the use of vendor temporary labor lies with the departments. Proposed changes are due on November 1, 2005 to the CAO for consideration and adoption by December 31, 2005. In addition, changes to existing Administrative Instruction 2-6, regarding cash-handling training, and 2-8, regarding the handling and deposit of public monies, will be proposed by November 1, 2005 if appropriate.”*”**

EXECUTIVE RESPONSE FROM TRANSIT

***“Transit agrees with the recommendation. All cashiers in Transit have received cash handling training as required by Administrative*”**

Instruction 2-6. However, Transit had two security vault pullers who had not received the required training; this has been corrected.

EXECUTIVE RESPONSE FROM AVIATION

“Aviation agrees with the recommendation. The vendor temporary employee working at Aviation is scheduled to attend cash handling training on June 23, 2005.”

EXECUTIVE RESPONSE FROM CULTURAL SERVICES

“Cultural Services agrees with the recommendation. Of the vendor temporary employees in Cultural Services without current cash handling certifications, eleven have now received the training. The remaining 24 vendor temporary employees in the Library system are scheduled for training on September 1, 2005. The one vendor temporary employee at the KiMo Theatre who handles cash will be scheduled for training by September 30, 2005.”

RECOMMENDATION NO. 7:

The original audit recommended that City departments should carefully review Vendor invoices to avoid paying incorrectly billed charges. The original audit noted that the Aviation Department (Aviation), and other City departments, had paid Vendor invoices that had incorrect billing rates.

The first follow-up review determined that the original audit recommendation had been partially implemented. The first follow-up review noted that Aviation had performed a review of Vendor invoices, and had determined that the Vendor owed the City \$1,068. However, Aviation informed Internal Audit that the department has “. . . no record of ever receiving this refund.” Aviation subsequently informed us that “After researching our records, It appears we never recovered the money from (the Vendor). . . . Given this information, the Aviation Department is going to seek either a credit or a reimbursement through our offices.”

The first follow-up review recommended that Aviation ensure that it obtains refunds from vendors, when it determines that it has been overcharged.

Aviation’s response to the first follow-up recommendation stated, “The department will follow up with the vendor until the issue is resolved.”

ACTION TAKEN

The first follow-up audit recommendation has not been implemented. The auditor requested that Aviation personnel provide documentation to show that the department had obtained a refund from the Vendor for the overbillings. In May 2005, Aviation

informed the auditor that in 2003, it was “. . . unsuccessful in rectifying this situation” and that the department would “. . . continue to communicate with them (the vendor) regularly to ensure this overcharge is dealt with.”

SECOND FOLLOW-UP RECOMMENDATION

Aviation should ensure that it obtains refunds from vendors, when it determines that it has been overcharged.

EXECUTIVE RESPONSE FROM AVIATION

“Aviation agrees with the recommendation. The vendor branch manager is scheduled to contact Aviation on June 27, 2005 to begin resolving this issue, which has been complicated and delayed by vendor employee turnover, lost invoices and a new financial management system.”

RECOMMENDATION NO. 8:

The original audit recommended that DFAS inform the Vendor of the specific testing requirements for each of the positions included in the contract. The original audit determined that Vendor temporary employees were filling truck driver positions, which required a commercial drivers license. If City employees had filled these positions, a pre-employment drug test would have been required for the position, because the position was “safety-sensitive”, as defined by City regulations. However, because there was no testing requirement for these Vendor temporary employees, these employees could drive City trucks without undergoing pre-employment drug testing.

The first follow-up review determined that the original audit recommendation had been partially implemented. The first follow-up review noted that DFAS stated that it would eliminate the use of job titles that require commercial driver’s licenses. However, there are at least three job titles in the current purchase order with the Vendor, which specifically state that the job requires a commercial driver’s license. These are truck driver, mechanics helper, and driver. During the first year of the new contract with the Vendor, which started August 2001, various City departments used all of these positions.

The first follow-up review recommended that the DFAS ensure that the Purchase Order prohibits the use of Vendor temporary employees in positions requiring commercial drivers licenses.

DFAS response to the first follow-up recommendation stated, “DFAS concurs. The PO’s will be modified to include language for each of these titles prohibiting them to be used for a position which requires a CDL.”

ACTION TAKEN

The first follow-up audit recommendation has been implemented. DFAS has modified the purchase order with the vendor to prohibit Vendor temporary employees from being used by City departments for positions which require commercial drivers licenses.

The additional six items (findings and recommendations) were initially reported in the first follow-up review. This is the first time that these six items have been followed-up on.

RECOMMENDATION NO. A:

The first follow up review recommended that the CAO should determine the City's short-term and long-term strategies for dealing with staffing needs, and determine how the use of Vendor employees fits into the overall staffing strategy. The first follow up review reported that the use of the Vendor contract has been determined on a division-by-division basis throughout the City; as a result, some divisions have as much as 26% of total staffing supplied by the Vendor. The first follow up review noted that it did not appear that the Administration or City Council intended to replace permanent City employees with Vendor employees; however, the number of Vendor employees at the City has increased significantly as positions have been cut or frozen.

The previous CAO's response (in part) to the first follow-up recommendation stated, "As process and procedures are revised in response to continuing cuts and freezes in positions, the City expects the need for vendor employees to decrease."

ACTION TAKEN

In FY2003, City departments paid the vendor \$4.3 million for the use of use of Vendor temporary employees. In FY2004, City departments paid the vendor \$5.3 million for the use of use of Vendor temporary employees, a 23% increase.

Consequently, the previous CAO's expectation that the need for vendor employees would decrease has not occurred. Instead, the use by City departments of Vendor temporary employees has increased by 23% in one year.

SECOND FOLLOW-UP RECOMMENDATION

The CAO should determine the City's short-term and long-term strategies for dealing with staffing needs, and determine how the use of Vendor employees fits into the overall staffing strategy.

EXECUTIVE RESPONSE FROM THE CAO

"The CAO agrees that business needs should drive staffing decisions. Temporary employees, whether they are temporary City employees or

temporary workers obtained through an employment agency, play a vital role in the prompt and timely delivery of City services. Many City programs, such as parks maintenance, summer recreation programs, Isotopes stadium maintenance and after-school programs, are cyclical by definition. Many City positions appeal to a labor pool seeking part-time or intermittent employment, such as full-time students or professionals who wish to keep their technical skills current while taking care of family obligations. It is good fiscal policy to not commit scarce resources to full-time employees entitled to the full complement of City employment benefits when part-time employees better meet the need. For that reason, the use of temporary workers is regularly addressed during the budget cycle, particularly for those departments that provide services that are cyclical or where the need for full-time employees can not be justified.

“As priority objectives change from year to year, the actual work force composition needed to meet those priority objectives may also change from year to year. That is considered during the budget process and the proposed budget reflects the labor force composition that is expected to best allow the departments to meet their priority objectives.”

RECOMMENDATION NO. B:

The first follow up review recommended that the CAO develop procedures for departments to follow to ensure that the effect of hiring freezes and City budgetary cuts are not mitigated by the addition of Vendor temporary employees.

The previous CAO’s response (in part) to the first follow-up recommendation was follows:

The CAO acknowledges that the use of vendor temporary employees did increase during FY/01 and FY/02 while departments adjusted to the required hiring freezes and position eliminations. However, during FY/03 that expenditure item is being closely monitored and is expected to be reduced from prior year levels.

ACTION TAKEN

In FY2003, City departments paid the vendor \$4.3 million for the use of use of Vendor temporary employees. In FY2002, City departments also paid the vendor \$4.3 million for the use of use of Vendor temporary employees, as compared to \$4.2 million in FY01. In FY2004, City departments paid the vendor \$5.3 million for the use of use of Vendor temporary employees, a 23% increase from FY2003.

Consequently, the previous CAO’s expectation that the FY2003 expenditure for vendor employees would be reduced (as compared to the previous two fiscal years) has not

occurred. Instead, the use by City departments of Vendor temporary employees has increased by 23% in one year.

SECOND FOLLOW-UP RECOMMENDATION

The CAO should develop procedures for departments to follow to ensure that the effect of hiring freezes and City budgetary cuts are not mitigated by the addition of Vendor temporary employees.

EXECUTIVE RESPONSE FROM THE CAO

“The CAO does not believe it is reasonable to make general assumptions about an increase or decrease in the use of vendor temporary labor from year to year. As priority objectives change from year to year, the actual work force composition needed to meet those priority objectives may also change from year to year. An increase or decrease should not become the basis for a presumption that one or more departments are not properly using vendor temporary labor.”

“Departments can not arbitrarily use vendor temporary employees to mitigate the effect of hiring freezes or other budgetary constraints. It is important to note that an increase in the dollars paid to this vendor may or may not be related to the actual number of persons hired. The City has found that some professionals in the IT field, for example, do not desire to work full time. Having them available as a temporary resource is a benefit to the City, even though the hourly cost may be higher than that for a full-time employee.”

RECOMMENDATION NO. C:

The first follow up review noted that five of the contractual job classifications for the Vendor’s temporary employees specifically include supervisory responsibilities. In February 2003, Administrative Instruction No. 7-34, Prohibition of Supervision of City Employees by Non-City Personnel, was issued. This Administrative Instruction states, “In no instance will temporary employment agency employees be allowed to supervise City employees.”

The first follow up review recommended that HRD and DFAS work together to identify those Vendor temporary employee job classifications which would violate Administrative Instruction No. 7-34; and modify or delete these positions.

The CAO response to the first follow-up recommendation stated, “This issue of contract temporary employees supervising City Workers will be addressed in the new policies and procedures.”

ACTION TAKEN

Although the CAO responded to the first follow-up that it would establish a committee to draft policies and procedures for the use of contract temporary staff (with a targeted completion date of December 31, 2003); policies and procedures have not yet been drafted by the committee.

SECOND FOLLOW-UP RECOMMENDATION

HRD and DFAS should ensure that the committee finalizes the City policies and procedures and issues the procedures to departments that address the issue of contract temporary employees supervising City Workers.

HRD and DFAS should ensure that the committee determines the responsible party or department to closely monitor the use of Vendor temporary employees and promptly notify the CAO of violations of the procedures.

EXECUTIVE RESPONSE FROM HRD EXECUTIVE RESPONSE FROM DFAS

***“The CAO is responding on behalf of both HRD and DFAS. The CAO agrees that official guidance should be provided to the departments on the issue of supervision responsibilities to be performed by vendor temporary employees. The CAO has assigned the CFO to work with HRD, DFAS and the primary user departments to prepare an Administrative Instruction with that necessary guidance by December 31, 2005, and to ensure that the provisions of the current contract with the vendor support those guidelines.*”**

***“The CAO has also directed the CFO to review Administrative Instruction 7-34, Prohibition of Supervision of City Employees by Non-City Personnel, to determine if changes are necessary or appropriate. Under limited circumstances, it might be either necessary or appropriate for vendor temporary employees to supervise City employees. However, it would not be appropriate for vendor temporary employees to directly hire, terminate, discipline or evaluate any City employee.”*”**

RECOMMENDATION NO. D:

The first follow up review noted that one of the purposes of Administrative Instruction No. 7-34 is to “provide requirements for independent contractors supervising City employees.” The first follow up review commented that there are risks associated with having non-City employees supervising City employees. For example, by allowing independent contract employees to

supervise City employees, the City is putting itself at risk for any inappropriate actions taken by the independent contract employees.

The first follow up review recommended that independent contractors not be allowed to supervise City employees, and that Administrative Instruction No. 7-34 be revised.

The Administration's response to the first follow-up recommendation stated, "The CAO will consider revising the administrative instruction."

ACTION TAKEN

No revisions have been made to Administrative Instruction No. 7-34. Consequently, independent contractors are still permitted to supervise City employees

SECOND AUDIT FOLLOW-UP RECOMMENDATION

The CAO should consider revising Administrative Instruction No. 7-34 to prohibit independent contractors from supervising City employees.

EXECUTIVE RESPONSE FROM THE CAO

"As noted in the finding to Recommendation C, the CAO has directed the CFO to review Administrative Instruction 7-34, Prohibition of Supervision of City Employees by Non-City Personnel, to determine if changes are necessary or appropriate. Under limited circumstances, it might be either necessary or appropriate for vendor temporary employees to supervise City employees. However, it would not be appropriate for vendor temporary employees to directly hire, terminate, discipline or evaluate any City employee. The CAO notes that "inappropriate actions" can be taken by any employee, whether they are full-time, part-time or temporary City employees or vendor temporary employees. Training and supervision are the risk management tools available to the City to mitigate the risk."

RECOMMENDATION NO. E:

The first follow up review reported that a Solid Waste Management Department supervisor had been involved in obtaining pay raises for Vendor temporary employees. This was in violation of written instructions that the DFAS Purchasing Division had given to City departments, which included the following restriction, "Raises/Promotions/Other Benefits – City employees do not determine the rate of pay, promise a given rate of pay or promise promotions to contract workers."

The first follow up review recommended that DFAS “. . . review the RFB specifications to determine if the clause prohibiting reassignment of temporary workers to higher positions should be clarified.”

DFAS responded to the first follow-up recommendation stated, “DFAS concurs and will clarify regarding pay raises for vendor employees.”

ACTION TAKEN

The RFB specifications regarding reassignment of temporary workers to higher positions have not been clarified.

SECOND FOLLOW-UP RECOMMENDATION

DFAS should review the RFB specifications to determine if the clause prohibiting reassignment of temporary workers to higher positions should be clarified.

DFAS and HRD should ensure that the committee finalizes the City policies and procedures and issues the procedures to departments which address the issue of City involvement in pay raises for contract temporary employees.

DFAS and HRD should ensure that the committee determines the responsible party or department to closely monitor the use of Vendor temporary employees and promptly notify the CAO of violations of the procedures.

EXECUTIVE RESPONSE FROM DFAS EXECUTIVE RESPONSE FROM HRD

“The CAO is responding on behalf of both HRD and DFAS. The CAO agrees that official guidance should be provided to the departments on the issue of pay rates, promotions or transfers for vendor temporary employees. The CAO has assigned the CFO to work with HRD, DFAS and the primary user departments to prepare an Administrative Instruction with that necessary guidance by December 31, 2005, and to ensure that the provisions of the current contract with the vendor support those guidelines. In conjunction with that task, the RFB specifications will be reviewed to determine if clarification is necessary.”

RECOMMENDATION NO. F:

The first follow up review reported that the Department of Senior Affairs (Senior Affairs) charged \$133,000 of payments to the Vendor for temporary employees to a supplies expense account. The first follow up review recommended that the department should correct these erroneous charges, and correctly account for payments to the Vendor in the future.

The audit recommendation in the first follow up review has been fully implemented. The auditor determined that the erroneous charges have been corrected by a journal voucher prepared and entered by Senior Affairs.

CLK/PGK/RW

xc: Mayor Martin Chavez
City Councilors
James B. Lewis, CAO
Ed Adams, COO
Gail Reese, CFO
Laura Mason, Director, Council Services
Sandy Doyle, Director, DFAS
File