



Internal Audit Office

MAYOR
Oscar Leaser

DATE: November 30, 2021

TO: Benjamin E. Fyffe, Director of Cultural Affairs & Recreation

CITY COUNCIL

FROM: Edmundo S. Calderon, CIA, CGAP, CRMA, Chief Internal Auditor 

District 1
Peter Svarzbein

SUBJECT: Public Art Program Review P2021-04

District 2
Alexsandra Annelo

The Internal Audit Office has completed its review of the El Paso's Public Art Program. This engagement was accepted based on the engagement's potential to improve management of risks, add value, and/or improve the organization's operations (IIA 2010.C1). The work performed does not constitute an engagement conducted in accordance with *Generally Accepted Government Auditing Standards* (GAS 1.16). The observations and conclusions that are reported in this Memorandum do not require Management Responses.

District 3
Cassandra Hernandez

Background:

District 4
Joe Molinar

The El Paso's Public Art Program (Program) was first adopted by City Council in 2002. The Program's goal is to enhance the quality of life of residents, promote economic revitalization, and strengthen authentic images of El Paso as a unique place. The Program is administered by the Museums and Cultural Affairs Department (MCAD).

District 5
Isabel Salcido

District 6
Claudia L. Rodriguez

MCAD develops a Public Art Master Plan that establishes the long-term vision, mission, and goals for the Program, identifies key linkages to upcoming Capital Projects, and establishes priorities for selecting future projects. MCAD staff also develops an Annual Public Art Work Plan that outlines the public art activities and the use of the Public Art Program Fund for the coming Fiscal Year. It provides the new and ongoing Public Art Projects, location sites, selection process, Artists, and the completion dates. Both the Public Art Master Plan and the Annual Public Art Work Plan are approved by the Public Art Committee and the Museums and Cultural Affairs Advisory Board. Then, they are presented to City Council for final approval. Once approved, MCAD staff can proceed with the commissioning or acquisition of artwork.

District 7
Henry Rivera

District 8
Cissy Lizarraga

CITY MANAGER
Tommy Gonzalez

The Program is funded with a two percent (2%) allocation that is added to the cost of City Construction Projects funded with General Obligation Bonds, Revenue Bonds, or Certificates of Obligations. After every Certificate of Obligation or Bond issued for the construction projects, 2% of the net proceeds are transferred to a City Public Art Fund. The funds are to be used for artwork and/or administration expenses for the Program. No more than fifteen (15%) of the funds can be used for administration costs (Public Art salaries, benefits, office overhead, education, marketing, etc.) The remaining funds (85%)

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are for acquiring or commissioning the artwork (Artist fees, materials, drawings, installation, etc.)

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Artists are paid for the artwork through a payment installment process based on the Public Art Agreement entered into between the City and the Artist. After the Public Art Agreement is awarded, a Purchase Order is requested by MCAD to initiate the payment process. Purchase Orders are issued by the Purchasing and Strategic Sourcing Department. Occasionally, there may be delays to pay an Artist for a Public Art Project due to delays in issuing a Purchase Order.

Objectives:

The objectives of this review were to:

- Review the Public Art Program's Policies and Procedures/Ordinance No. 017424.
- Select a sample of Construction Projects financed by Bonds or Debt Obligations and determine if:
 - 2% of the net proceeds of each Construction Project was set aside for the Public Art Program.
 - At least 85% of the Public Art Program funds were used for the commissioning or acquisition of the artwork.
 - A max of 15% of the Public Art Program funds were used for administrative expenses of the artwork.
- Select a sample of completed Public Art Projects funded by the 2% Public Art Program Allocation and determine if:
 - Appropriate documentation is in place to support artwork expenses.
 - Artwork expenses were properly reviewed and approved.

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Scope:

The review period included operations and artworks completed during Fiscal Years 2020 and 2021.

Results:

Based on our review, one (1) Observation was identified. The Observation is outlined below:

OBSERVATION 1

Untimely Payments for City Public Art Projects

City of El Paso Strategic Plan:

- Goal 6.12 *Maintain systems integrity, compliance and business continuity.*

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City of El Paso Accounts Payable Policy dated September 2020

- Section 16.0 Prompt Payment Act Fees, Bullet #1: Pursuant to Government Code Title 10, Subtitle F, Chapter 2251, the City is obligated to pay interest at the time of payment on goods and services if the payment is overdue.
- Section 16.0 Prompt Payment Act Fees, Bullet #2: For contracts executed on or after September 1, 1987, a payment is considered overdue on the 31st day after the date the performance of the services under the contract is completed.

Public Art Agreement – Section 2.2 Payment Schedule:

- 2.2.1: Within thirty calendar days of the Effective Date, the City will pay the Artist an amount equal to 15% of the total Budget Amount.
- 2.2.2: Within thirty calendar days of MCAD's acceptance of the Construction Documents under Section 6.1.3, the City will pay the Artist an amount equal to 45% of the total Budget Amount.
- 2.2.3: Within thirty calendar days of receipt by MCAD of an itemized statement from the Artist for the completion of 50% of the fabrication of the Artwork, the City will pay the Artist an amount equal to 15% of the total Budget Amount.
- 2.2.4: Within thirty calendar days of receipt by MCAD of an itemized statement from the Artist for the completion of 100% of the fabrication of the Artwork, the City will pay the Artist an amount equal to 10% of the total Budget Amount.
- 2.2.5: Within thirty calendar days of the City's Final Acceptance of the Artwork, in accordance to Article VII of this Agreement, the City will pay the Artist the remaining 15% of the total Budget Amount (**Final Payment**).

Payments are made to Artists by the Museums and Cultural Affairs Department at various stages of the Public Art Project Process. Each Artist has a Public Art Agreement with the City stipulating the various payment due dates.

Our review identified that payments made to the Artists are not paid on time as stipulated by the Public Art Agreements. A sample of six (6) completed City Public Art Projects were selected for review, which included 35 payments made to Artists totaling \$1,167,000.00. Our review identified that:

- Five out of the six (83%) Public Art Projects had seven payments that were paid from 3 to 49 days after the stipulated payment date. These seven payments totaled \$164,250.00.
 - Three Art Projects only had an Initial Payment overdue. The three payments totaled \$54,250.00 and were paid 8 to 22 calendar days past due.
 - One Art Project had an Initial Payment of \$30,000.00 and a Final Payment of \$30,000.00 that were paid 3 to 11 calendar days past due.

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- One Art Project had an Initial Payment of \$30,000.00 and a \$20,000.00 payment for 100% completion of the artwork that were paid 36 to 49 calendar days past due.

RECOMMENDATION

The Museums and Cultural Affairs Department should adhere to the payment terms stipulated by the Public Art Agreements when paying an Artist to avoid noncompliance issues, like paying interest for payments overdue.

Conclusion

Based on our review of the El Paso’s Public Art Program, we were able to confirm the following:

- A two percent (2%) allocation of the net proceeds of each Construction Project financed with Bonds or Debt Obligations is set aside for the Public Art Program as stipulated on City Ordinance No. 017424.
- No more than fifteen percent (15%) of the Public Art Program funds are used for administrative costs as stated on City Ordinance No. 017424.
- Artwork expenses for the Public Art Program are properly supported, reviewed, and approved.
- An Annual Public Art Work Plan is approved by City Council for acquiring or commissioning artwork.

Payments made to Artists for Art Projects are not paid on time as stipulated by the Public Art Agreements. The Museums and Cultural Affairs Department needs to adhere to the payment terms stipulated by the Public Art Agreements to avoid noncompliance issues, like paying interest for payments overdue.

If you have any questions please feel free to contact me at extension 21365.

cc: Financial Oversight and Audit Committee
Tomas Gonzalez, City Manager
Tracey Jerome, Deputy City Manager of Quality of Life

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**Public Art Program Review P2021-04
Management's Response**



Museums and Cultural Affairs

MAYOR
Oscar Leeser

DATE: January 13, 2022

CITY COUNCIL

TO: Edmundo Calderon, Chief Internal Auditor, Internal Audit Office

District 1
Peter Svarzbein

FROM: Ben Fyffe, Managing Director of Cultural Affairs & Recreation

District 2
Alexandra Anello

SUBJECT: Management Response- Public Art Program Review P2021-04

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The Museum and Cultural Affairs Department understands the importance of timely payments and seeks to adhere to payment terms; however, there are factors outside of the Museum and Cultural Affairs Department that have contributed to the delay in initial payments as stipulated in the Public Art Agreements. Due to amounts on said agreements and in compliance with the Accounts Payable Policy and the Purchasing Manual, purchase orders are requested via the Purchasing and Strategic Sourcing Department in order to process payments. The processing time and issuance of the purchase orders is a main cause for initial payment delays. The Museums and Cultural Affairs Department will continue to work within the prescribed system while ensuring the Purchasing Department understands the contractual obligations and payments terms listed in the Public Art Agreements so that process improvements are achieved and noncompliance issues are avoided.

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