Economic Development –
380 Agreement Monitoring Audit Report
A2015-09

Issued by the
Internal Audit Office
November 13, 2015
EXECUTIVE SUMMARY

The Internal Audit Office has concluded its audit of the monitoring of Economic Development – 380 Agreements. Based on the results of the audit, six findings have been identified. All six of these findings are considered significant.

Listed below is a summary of the findings identified in this report:

1. Economic & International Development does not have Policies and Procedures documenting the monitoring of incentive files.

2. Economic & International Development is not conducting any analysis of an applicant’s personal finances or business finances regarding an applicant’s financial stability and capacity to complete a project.

3. Economic & International Development does not report the actual dollar amount of incentives paid out to each recipient, both in monetary form and in waived fees.

4. Deficiencies were noted with how incentive files are maintained, the lack of property inspections, and the consistency of providing incentives to similar projects.

5. Companies requesting incentives are not consistently being required to submit a completed application or pay the appropriate application fee.

6. Accela is not consistently being utilized to track “Key Dates” and the “Compliance Status” of applicable deadlines.

For a detailed explanation of the findings please refer to the individual finding contained in the body of this Audit Report.
BACKGROUND

Chapter 380 of the Texas Local Government Code authorizes municipalities to offer incentives designed to promote economic development such as commercial and retail projects. Specifically, it provides for offering loans and grants of City funds or services at little or no cost to promote state and local economic development and to stimulate business and commercial activity.

Depending on the size of a company and its investment in El Paso, the City can award up to millions of dollars in tax breaks, grants and other incentives through its Chapter 380 Economic Development Agreement Program. In order to be eligible for incentives, a project must meet qualifying standards in at least one of the categories defined in the City of El Paso Incentives Policy. There is a $2,000,000 aggregate cap per fiscal year for all Chapter 380 Agreements that were executed under the Sustainable Centers & New Construction Downtown Incentive Policies. Given the increased number of Incentive Agreements, this audit was completed at the request of the Financial and Audit Oversight Committee (FAOC).

AUDIT OBJECTIVES

The audit objectives for the Economic Development – 380 Agreement Audit were to:

- Determine if the practices used by Economic & International Development to monitor 380 Agreements are in compliance with:
  - the City of El Paso Chapter 380 Economic Development Program,
  - 380 Agreement payout terms and deliverables,
  - Chapter 380 of the Texas Local Government Code (“Chapter 380”) and the Texas Constitution Article VIII Section 52-a.
- Determine if the 380 Incentive Program has been successful in meeting the terms of the 380 Agreements and in establishing a permanent business in the City of El Paso.

AUDIT SCOPE

The audit period covered the operations of the Economic & International Development Department during Fiscal Year 2014 – 2015.

AUDIT METHODOLOGY

In order to achieve the audit objectives we:

- Conducted interviews with Economic & International Development management and staff,
- Conducted a review of Economic & International Development Department’s applicable policies and procedures,
- Conducted a review of Economic & International Development’s 380 Agreement monitoring processes,
- Conducted a review of Economic & International Development’s reporting mechanisms,
- Tested a sample of active 380 Agreement Incentive files monitored by Economic & International Development staff.
We conducted this audit in accordance with Generally Accepted Government Auditing Standards and the International Standards for the Professional Practice of Internal Auditing. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.
SIGNIFICANT FINDINGS, RECOMMENDATIONS, AND MANAGEMENT’S RESPONSES

The definition of a “Significant Finding” is one that has a material effect on the City of El Paso’s financial statements, identifies an internal control breakdown, is a violation of a City procedure, or a violation of a law and/or regulation, which the City is required to follow. Any finding not meeting these criteria will be classified as a “Regular Finding”.

<table>
<thead>
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<th>Finding 1</th>
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<td><strong>Monitoring Policies and Procedures</strong></td>
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City of El Paso Strategic Plan 2016:
- Goal 6.6 Ensure continued financial stability and accountability through sound financial management, budgeting and reporting.

Government Finance Officers Association (GFOA) Best Practice, “Monitoring Economic Development Performance dated February 2009 states, For the purposes of consistency, transparency, and accountability, a clearly defined monitoring process should be a part of every economic development policy. Objectives of the monitoring process should include periodic evaluations of individual project performance by incentive and an evaluation of the cumulative costs, benefits, and degree of goal attainment of the jurisdictions overall program.

Best business practices require that:
- A strong system of internal controls requires that Policies and Procedures are written to document routine or repetitive activity followed by an organization. The development and use of Policies and Procedures are an integral part of a successful quality system as it provides individuals with the information and guidance to perform a job properly.

Economic & International Development does not have Policies and Procedures documenting the monitoring of incentive files, specifically to include the review of incentive reimbursement requests.

**Recommendation**

The Economic & International Development Department should document Policies and Procedures for the monitoring of incentive files and the review of incentive reimbursement requests.
Management’s Response

Within the next six months a “Contract Compliance Coordinator” will be hired, and will be placed under the Business Services section. This employee will work along with a Senior Economic Development Specialist to ensure review of all active agreements.

The CCC’s main responsibility will be to develop and institute policies and procedures for appropriate monitoring of all contract agreements being managed by the Economic and International Development Department. The policy will support and be aligned with the newly approved City of El Paso Incentives Policy. This individual will conduct a best practices research project to gather information on what other cities of similar population size are doing in order to keep their EDO’s in compliance with financial and sound governance. This individual will oversee all compliance of the entire incentive agreement portfolio regardless of section.

Responsible Party

Economic Development Department, Business Services Section, “Contract Compliance Coordinator”

Implementation Date

No later than August 31, 2016 (FY 2016)
Finding 2

Financial Stability of Incentivized Businesses

City of El Paso Strategic Plan 2016:
- Goal 6.13 Maintain systems integrity, compliance, and business continuity.

The City of El Paso Incentives Policy – Guidelines & Criteria dated February 2010 and November 2015:
- Section I. Purpose, In order to be eligible for incentives, businesses or individuals must be current on all city taxes or any other obligation to the City.
- Section III. & IV. General Criteria, The project must include solid evidence provided by the business that demonstrates the business’s financial stability and capacity to complete the project.

The Infill Development Incentive Policy adopted on November 11, 2013 (Pg. 3) and the Downtown New Construction Incentive Policy adopted on February 19, 2013 (Pg. 4) both state, The project must include solid evidence provided by the property owner that demonstrates the financial stability and capacity to complete the project, evidence can include financial statements for corporation or tax statements for an individual.

12 out of 12 (100%) 380 Agreement Incentives files did not contain documentation providing evidence of financial stability of the individuals or businesses selected to participate in the incentive program. An applicant’s financial stability and capacity is limited to reviewing the applicant’s property tax payments.

Recommendation

Economic & International Development should consider that incentive applicants demonstrate their business’s financial stability and capacity to complete the project by requiring an analysis be conducted of an applicant’s personal finances or business finances.
Management’s Response

The Economic and international Development Department will acquire an additional subscription for “business credit reports” through Dun and Bradstreet (Hoovers) to verify an applicant’s financial stability. This database provides business credit reports for $69-129.99 on average. The CCC will inform the applicant of the cost of the report, so that they can cover the expense.

A complete application packet will consist of:

- Incentives application (completely filled out)
- Proof of Insurance (only where projects are tied to jobs and investment)
- Credit Report

Responsible Party

Economic Development Department, all staff members handling incentives applications must ensure that they receive a complete application.

Implementation Date

No later than August 31, 2016 (FY 2016)
Finding 3

Not Reporting of Actual Incentive Costs

City of El Paso Strategic Plan 2016:
- Goal 6.6 Ensure continued financial stability and accountability through sound financial management, budgeting and reporting.
- Goal 6.8 Support transparent and inclusive government.
- Goal 6.13 Maintain systems integrity, compliance, and business continuity.

Economic & International Development does not report the actual dollar amount of incentives paid out to each recipient, both in monetary form and in waived fees.
- Economic & International Development’s status updates to City Council continuously list the estimated amount of incentive packages or “Total Expected Payout.”
  - Example: The 2015 City of El Paso 380 & 312 Development Agreement Profile booklet provided to City Council on November 3, 2015 lists the “Total Expected Payout” for the Double Tree Hotel as $2,969,190.31. As of September 1, 2015 according to the PeopleSoft Financial System, the Double Tree has been paid a total of $3,501,305.77 in incentives; $532,115.46 over the estimated amount.
- Economic & International Development reports the maximum amount of waived fees of $10,000.00 that an Incentive project can receive instead of the actual dollar amount of fees waived.
  - Example: The “Economic Development Inv & Job Creation” tracking sheet provided to the Internal Audit Office on November 4, 2015 lists the Lomaland West LLC project as receiving a total of $10,000.00 in waived fees. The City Development Division identified a total of $3,830.79 in waived fees provided to Lomaland West LLC.

Recommendation

Economic & International Development should report the actual dollar amount of incentives paid out to each recipient, both in monetary form and in waived fees.
Management’s Response

The Economic & International Development Department have compiled and continuously update a comprehensive report that details and lists every executed incentive agreement in our portfolio. The report provides an executive summary listing all active agreements and an analysis of expected payouts, forecasted revenue, and an implementation schedule of when the company will be fully operational. As these projects are completed and or they’ve met their specific metric(s)/criteria actual payouts will be added.

Responsible Party

Economic Development Department, Business Services Section, “Contract Compliance Coordinator”

Implementation Date

Immediate
Finding 4

**Incentive File Deficiencies**

The City of El Paso’s Strategic Plan 2015:
- Goal 6.4 *Implement leading-edge practices for achieving quality and performance excellence.*
- Goal 6.13 *Maintain systems integrity, compliance, and business continuity.*

The Infill Development Incentive Policy adopted on November 11, 2013 (Pg. 5) and the Downtown New Construction Incentive Policy adopted on February 19, 2013 (Pg. 5) both state, *During the term of such agreement, the City of El Paso will have the right to inspect the project facility during regular business hours to ensure compliance with the agreement and accuracy of the owner certification.*

Twelve (12) Incentive files were selected for review: 3 Downtown New Construction, 3 General 380 Agreement, 3 Infill Development, 3 Multi-family. The following deficiencies were noted:
- There does not appear to be a centralized filing system for the Incentive Agreement files. Documents are dispersed among manual files and electronic files.
- 6 out of 12 (50%) Incentive files reviewed (3 Infill and 3 Downtown New Construction) did not contain evidence of property inspections conducted by Economic & International Development staff.
- One (1) out of 3 (33.3%) Infill Incentive files reviewed was not provided a 380 Agreement for a Sales Tax Rebate. The other two Infill Incentive files reviewed were provided a Sales Tax Rebate.

**Recommendation**

The Economic & International Development Department should:
- Establish a central filing system,
- Ensure property inspections conducted by the Economic & International Development staff are documented when required.
- Ensure applicants are provided with agreed upon incentives.
**Management’s Response**

The Contract Compliance Coordinator will establish a central filing system that ensures consistency and will be able to streamline the process for manual and electronic files. A customer relationship management (CRM) database will also be obtained no later than August 31, 2016 and utilized to upload and sustain information specific to each agreement that will also alert and ensure that property inspections and other compliance processes are completed.

**Responsible Party**

Economic Development Department, Business Services Section, “Contract Compliance Coordinator”

**Implementation Date**

Immediate
Finding 5

Incentive Applications

City of El Paso Strategic Plan 2015:
- Goal 6.4 Implement leading-edge practices for achieving quality and performance excellence.
- Goal 6.8 Support transparent and inclusive government.
- Goal 6.13 Maintain systems integrity, compliance, and business continuity.

City of El Paso Incentives Policy – Guidelines & Criteria dated February 2010 Section V. Economic Development Incentive, Companies meeting the qualification standards above who wish to pursue incentives will need to pay a $750 nonrefundable application fee in order to formally request incentives. The City of El Paso Incentives Policy – Guidelines & Criteria dated November 2015 does not require applicant to submit an application fee with their application.

The Infill Development Incentive Policy adopted on November 11, 2013, Procedural and Program Guidelines state, Applicants shall submit a completed “Application for Infill Development Incentives” form for consideration of financial incentives to the Planning & Economic Development Department...

The Downtown New Construction Incentive Policy adopted on February 19, 2013, Procedural and Program Guidelines state, Applicants shall submit a completed “Application for Downtown New Construction Incentives” form for consideration of financial incentives to the Planning & Economic Development Department...

A review of Economic & International Development’s 380 Agreement files approved during the period of June 27, 2006 to April 28, 2015 identified that Companies requesting incentives are not consistently being required to submit a completed application or pay the application fee.

- Five (5) out of 12 projects (41.67%) did not have an application on file.
- Six (6) out of 12 projects (50.0%) had an incomplete application on file.
- One (1) out of 12 projects (8.33%) had a complete application on file.
- Companies meeting qualification standards who wished to pursue incentives were not being asked to pay a $750.00 nonrefundable application fee in order to formally request incentives during the period when the fee was required. In FY 2015, a total of $15,750.00 in application fees were not collected from the applicants of 21 Agreements that were approved.

Recommendation

The Economic & International Development Department should ensure that companies requesting incentives are required to submit a completed application.
Management’s Response

The “Contract Compliance Coordinator” along with the Business Services & Redevelopment Section will ensure all proper documentation is submitted prior to conducting an incentives analysis. The policy and procedures that will be instituted to check every agreement for compliance will incorporate a checklist of all documents needing to be submitted along with an application, more importantly the application must be fully completed or “N/A” must be written in the space provided were the question does not apply to the project whose incentives are being requested.

A complete application packet will consist of:

- Incentives application (completely filled out)
- Proof of Insurance (only where projects are tied to jobs and investment)
- Credit Report

Responsible Party

Economic Development Department, all staff members handling incentives applications must ensure that they receive a complete application.

Implementation Date

No later than August 31, 2016 (FY 2016)
Finding 6  

Monitoring Key Dates

City of El Paso Strategic Plan 2016:
- Goal 6.4 Implement leading-edge practices for achieving quality and performance excellence.
- Goal 6.13 Maintain systems integrity, compliance, and business continuity.

The Chapter 380 Economic Development Program Agreements outline terms and conditions that must be met in order for incentives to be paid. The Agreements establish dates, referred to as “Key Dates,” in which required documentation is to be submitted to Economic & International Development for review. 380 Agreement recipients must comply with key dates before they can submit reimbursement requests.

The monitoring of 380 Agreement files is dependent on the monitoring of key dates, deadlines and deadlines extensions. Key dates include deadlines for property purchase, construction commencement, date extensions resulting from a Default Notices, Certificate of Occupancy due dates, and tax abatement submittal dates. Economic & International Development utilizes Accela as a monitoring tool to help staff track “Key Dates” contained within each of the Chapter 380 Economic Development Program Agreements. When a 380 Agreement is executed, it is up to Economic Development staff to enter each agreement’s “key dates” into Accela. Once the key dates are entered into Accela, Economic Development will receive automatic notifications that a key date is approaching.

Accela is not consistently being utilized to track “Key Dates” and their “Compliance Status.”

A review of twelve (12) 380 Agreement files in Accela identified that:
- All applicable “Required Dates” and their “Compliance Status” were not entered into the Accela “Key Dates” section for 6 out 12 (50%) files reviewed. The following dates were omitted when applicable:
  - Property purchase deadlines,
  - Construction commencement deadlines,
  - Certificate of Occupancy due dates,
  - Revised deadlines associated with Notices of Default,
  - Tax abatement submittal dates.
- 2 out of 12 (17%) projects had a delay in sending Notices of Default.
  - One project had a Certificate of Occupancy due date of 6/20/2015 - the Notice of Default was dated 7/15/2015.
  - One project had a Grant Submittal Package due 7/31/2014 - the Notice of Default was dated 4/13/2015 (the notice was sent when another key date had expired).
**Recommendation**

Economic & International Development staff should ensure that the monitoring system utilized to track deadlines and compliance status for 380 Agreements is consistently utilized.

**Management’s Response**

The Contract Compliance Coordinator will utilize a customer relationship management (CRM) database that will be obtained no later than August 31, 2016. This tool will ensure that key information pertaining to each company/agreement will be uploaded, continuously monitored, and updated as we move forward. Accela will still be consistently utilized as it ensures coordination with key city departments such as planning and inspections, however, there are certain fields and information needed with each agreement that will tailored through the use of the other CRM database.

**Responsible Party**

Economic Development Department, Business Services Section, “Contract Compliance Coordinator”

**Implementation Date**

Immediate
INHERENT LIMITATIONS

Because of the inherent limitations of internal controls, errors or irregularities may occur and not be detected. Also, projections of any evaluation of the internal control structure to future periods are subject to the risk that procedures may become inadequate due to changes in conditions, or that the degree of compliance with the procedures may deteriorate.

CONCLUSION

We have concluded our work on the objectives of the Economic Development – 380 Agreement Monitoring Audit. The audit evidence used in the analysis is sufficient and appropriate for addressing the objectives and supporting the findings and conclusion. In accordance with Generally Accepted Government Auditing Standards, we are required to conclude whether Economic & International Development met the objectives of this audit. Based on our audit work, we have determined that:

1. Economic & International Development met the audit objectives in the following area:
   • Economic & International Development’s Incentive Program has been successful in establishing permanent businesses in the City of El Paso.

2. Economic & International Development did not meet the audit objectives in the following areas:
   • Documenting Policies and Procedures for the monitoring of incentive files.
   • Conducting analysis of an applicant’s personal finances or business finances.
   • Reporting the actual dollar amount of incentives paid out to each recipient, both in monetary form and in waived fees.
   • Incentive file maintenance, conducting property inspections, and consistently providing incentives to similar projects.
   • Requiring the submission of completed incentive applications and the payment of application fees.
   • Consistently utilizing Accela to track “Key Dates” and the “Compliance Status” of applicable deadlines.

Economic & International Developments continued efforts to provide incentives to businesses will make a measurable difference in achieving economic growth and development within the City of El Paso. By implementing the recommendations identified in this audit, Economic & International Development will ensure that procedures and processes governing the monitoring of the 380 Agreement Incentive files are enhanced and in compliance with the City of El Paso’s policies and procedures.

We wish to thank the Economic & International Development’ management and staff for their assistance and numerous courtesies extended during the completion of this audit.

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