

# **CITY AUDITOR'S OFFICE**



## **AUDIT OF OFFICE OF CULTURAL AFFAIRS Artist Contracts**

**Report CA005-1617-05**

**January 24, 2017**

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**CITY AUDITOR**

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**AUDIT OF CULTURAL AFFAIRS**  
**Artist Contracts**  
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**BACKGROUND**

The Office of Cultural Affairs (Cultural Affairs) defines its mission as follows:

*The mission of the Office of Cultural Affairs is to provide performing and visual arts, experiences and services; thereby increasing the city's livability to the Las Vegas Community and city departments so they can have access to, be informed about, and participate in the arts.*

Cultural Affairs accomplishes its mission by offering a variety of visual and performing arts programs, training classes, art galleries, and festivals. Cultural Affairs oversees the operations of the Reed Whipple Cultural Center, the Charleston Height Arts Center, the Fifth Street School, and the West Las Vegas Arts Center. In addition, it manages a youth theater group known as the Rainbow Company. Cultural Affairs also coordinates cultural activities held at other city facilities.

Cultural Affairs regularly hires various types of artists for their events. These artists include a wide range of individuals including performers, musicians, visual artists, authors, instructors, speakers, etc. For purposes of this report, all of these types of artists are referred to as artists. Considering the unique nature of the services provided by these artists (sole source vendors) and the small dollar amounts of the contracts, contracts with these artists are exempt from the competitive bidding requirements under Nevada Revised Statutes Chapter 332.

**OBJECTIVES**

Our objectives in completing this audit were to:

- Review the adequacy of the contracts being used with the artists.
- Review the adequacy of the documented procedures surrounding the creation of the artist contracts and initiating the payments to the artists.
- Review the adequacy of the contract payment process.

**SCOPE AND METHODOLOGY**

The scope of this audit was limited to a review of artist contracts. The scope of our work on internal controls was limited to the controls within the context of the audit objectives and the scope of the audit. Specific testing samples were judgmentally selected from transactions during fiscal year 2016. The last fieldwork date of this audit was October 18, 2016.

Our audit methodology included:

- Review of existing policies and procedures
- Interviews with Cultural Affairs staff members and other city employees
- Review of various data, documents, and reports

We conducted this performance audit in accordance with generally accepted government auditing standards except for the requirement for an external peer review every three years. 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. The exception to full compliance is because the City Auditor's Office has not yet undergone an external peer review. However, this exception has no effect on the audit or the assurances provided.

## **FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

The following conclusions to our audit objectives were noted:

*Review the adequacy of the contracts being used with the artists.*

Inconsistencies were identified in the artist contracts created by Cultural Affairs staff members. (Finding #1)

There is ambiguity in what the actual insurance requirements are for artists contracting with Cultural Affairs, what insurance clauses should be included in the artist contracts, and what evidence of insurance should be required of the artists. (Finding #2)

*Review the adequacy of the documented procedures surrounding the creation of the artist contracts.*

Cultural Affairs lacks documented procedures for reference by its staff members on the creation of artist contracts. (Finding #1)

The payment processing procedures and document retention practices performed by the Administrative Support Assistant have not been documented for reference in case of an extended absence or turnover. (Finding #4)

*Review the adequacy of the contract payment process.*

Inefficiencies are created for Cultural Affairs staff members and the accounts payable unit and the timeliness of payments are hindered by incomplete invoices being submitted by artists hired by Cultural Affairs. (Finding #3)

Further information on these issues is contained in the sections below. While other issues were identified and discussed with management, they were deemed less significant for reporting purposes.

## 1. Inconsistencies in Artist Contracts

### Criteria

Contractual provisions should clearly and accurately inform the parties of their responsibilities. In addition, contracts of a similar nature should utilize standard contractual provisions where appropriate.

### Condition

Inconsistencies were identified in the artist contracts created by Cultural Affairs staff members. The staff members generally use one of two contract templates as a basis for these contracts including one for authors and one for performing artists. Visual artist (public art) contracts are created specifically for each project with the help of the Purchasing and Contracts division. Per Cultural Affairs management, the templates used were originally prepared by Purchasing and Contracts. Upon review of a judgmentally selected sample of 100 artist contracts initiated in fiscal year 2016 (out of 183 artist contracts), we identified the following inconsistencies:

- 71% of the contracts did not have an insurance, indemnification, or force majeure clause. See further information on this in finding #2.
- While all of the contracts referred to the city's *Standard Terms and Conditions – Purchase Order* document, there were inconsistencies on which version was referenced. 28% of the contracts referred to the 2013 version, 65% to the 2008 version, 3% to the 2004 version, and 4% did not refer to any version. In addition, the *artist terms and agreement contract* template available to Cultural Affairs staff members has not been updated to reflect the new website address for accessing the city's *Standard Terms and Conditions – Purchase Order* document.
- 60% of the contracts did not identify an email address for use by the artists in submitting invoices to the city, only a mailing address.
- 65% of the contracts used the phrase “***upon acceptance of the services by the city and reconciliation of all errors, correction, and credits, payment will be made within ten calendar days.***” 28% of the contracts used the phrase “***upon receipt of the invoice by the city, and the reconciliation of any errors, corrections and credits, if any, in the invoice, payment will be made within ten calendar days thereafter.***” The remaining 7% used some other instructions on submitting an invoice. The use of the phrase “*upon acceptance of the services by the city...payment will be made within ten calendar days*” could be inaccurately interpreted to mean that the city will pay the artist ten calendar days after completion of the event regardless of whether an invoice is properly submitted. The city's Finance department will not pay the artist until an invoice with all the required information is submitted to the city regardless of when the event is completed.
- The *Labor & Payment Release* form included with the contracts as Exhibit A is inconsistently being used by the artists. This form is to be completed if the artist “is a sole proprietorship which comprises of more than one performer” and more than one individual is performing. Many of these forms were completed by individuals who were

clearly the only performer for whom the form was not required. Forms were found with the top section completed and the bottom section not completed and visa versa.

- Four contracts were found with typed or digital signatures on the signature pages. It is unclear what Cultural Affairs' policy is on acceptable signatures. One contract was found without a signature.

### **Cause**

- Lack of documented procedures on the creation of artist contracts.
- Use of old templates in the creation of artist contracts.
- Lack of adequate supervisory review of artist contracts to ensure completeness and consistency.

### **Effect**

- Inconsistent artist contracts.
- Potential risk exposure to the city.

### **Recommendations**

- 1.1 Cultural Affairs management should review the validity of their artist contract templates with the assistance of other city departments as deemed appropriate (e.g., Finance - Purchasing and Contracts, Human Resources - Risk Management, City Attorney's Office). The issues identified within this audit finding should be addressed and the artist contract templates updated as needed.
- 1.2 Cultural Affairs management should evaluate whether additional artist contract templates are needed to address the various types of artists they hire and create additional templates if deemed necessary.
- 1.3 Cultural Affairs management should consider improving the instructions for the *Labor and Payment Release* form so that it is only used when required. If not required, the form should be removed from the final contract documentation.
- 1.4 Cultural Affairs management should document and implement procedures to be followed by their staff members in the creation of artist contracts and to ensure that only the most current artist contract templates are used in the creation of contracts.
- 1.5 Cultural Affairs management should document and implement procedures to have the artist contract templates periodically reviewed and updated as needed.
- 1.6 Cultural Affairs management should document and implement procedures for supervisors for reviewing artist contracts to ensure all required elements are included in the artist contracts before being approved.

## 2. Ambiguous Insurance Coverage Requirements

### Criteria

Insurance coverage requirements should be clearly stated in contracts and evidence of the coverage should be verified.

### Condition

There is ambiguity in what the actual insurance requirements are for artists contracting with Cultural Affairs, what insurance clauses should be included in the artist contracts, and what evidence of insurance should be required of the artists.

Twenty-nine percent of the artist contracts reviewed had an insurance clause, indemnification clause, and force majeure clause within the actual contract. These were primarily contracts that were prepared using a template for hiring authors. The insurance clause used reads as follows:

*If applicable, the Author shall procure and maintain Workers' Compensation, General Liability and Auto Liability Insurance, at its own expense, for all work related to the performance of this Contract. The Company shall provide proof of insurance upon request of the City.*

The artist contracts make reference to the *City of Las Vegas Standard Terms and Conditions – Purchase Order (ST&C)* document which includes the following insurance requirements:

*The Supplier shall procure and maintain Workers' Compensation, General Liability and Auto Liability Insurance, at its own expense, for all work related to the performance of this Purchase Order.*

In discussions with Cultural Affairs staff members, the city's insurance broker, and a review of the judgmentally selected sample of artist contracts outlined in Finding #1, the following was noted:

- While Cultural Affairs management represented that over the years there have been discussions regarding insurance requirements, a conclusion does not appear to have been reached on the requirements and the contractual insurance clauses to be included in the artist contracts.
- There are no documented guidelines on what types of insurance and levels of coverage are required for artists.
- The contracts do not identify the levels of insurance coverage needed.
- There are no documented guidelines on when and what evidence of insurance is required to be shared with the city. The city's insurance broker recommended that evidence of insurance should always be obtained and reviewed.

- The insurance clause begins by saying “if applicable” but does not clearly state if and when the insurance clause is applicable. In addition, Cultural Affairs staff members are not clear on when the insurance clause is applicable.
- While the insurance clause states that the contractor shall provide proof of insurance upon request of the city, Cultural Affairs staff members never request evidence of insurance coverage from the artists.

### **Cause**

- Ambiguous wording in contracts on insurance requirements.
- Lack of documented guidelines on insurance requirements for artists.
- Lack of documented guidelines on when and what insurance evidence is required.

### **Effect**

- Potential risk exposure to city.
- Lack of evidence of insurance coverage of artists.

### **Recommendations**

- 2.1 Cultural Affairs management should consult with the Human Resources Risk Management division, Purchasing & Contracts, the City Attorney’s Office, and the city’s insurance broker to determine:
  - The insurance coverage and evidence of insurance coverage required of artists hired by Cultural Affairs.
  - The standard insurance clause that should be included in the artist contracts.
  - The standard indemnification and force majeure clauses that should be included in the artist contracts.
  - The documents that should be obtained by Cultural Affairs staff members to verify insurance coverage.
- 2.2 Cultural Affairs management should update the verbiage in its contract templates to coincide with the conclusions reached as a result of their consultations.
- 2.3 Cultural Affairs management should document and implement the process to be followed by Cultural Affairs staff in ensuring that artists comply with the insurance requirements.

## **3. Invoice Processing Inefficiencies**

### **Criteria**

Invoices are most efficiently processed and payments made when vendors are educated in and comply with an organization’s payment requirements.



## **Condition**

Inefficiencies are created for Cultural Affairs staff members and the city's accounts payable unit and the timeliness of payments are hindered by incomplete invoices being submitted by artists hired by Cultural Affairs.

Per discussions with Cultural Affairs and accounts payable staff members, many of the artists that Cultural Affairs hires are independent contractors that are unfamiliar with the elements required in an invoice. The city's accounts payable unit regularly receives invoices from these artists without all the required elements (i.e., name, address, date, unique invoice number, purchase order number, agreement number, description of services) or not in accordance with the terms of the contract. In addition, the artists will sometimes neglect to submit multiple invoices to accounts payable when there are multiple payments scheduled under the terms of the contract (e.g., deposit and final payment). Considering accounts payable staff members will not pay the artists until a complete invoice is received, accounts payable or Cultural Affairs staff members must follow-up with the artists and request revised invoices.

All vendors who conduct business with the city must register through a software application known as Oracle iSupplier. A module within this application that allows vendors to create their invoices on-line and in conformance with the city's standards is not currently being used. Increased efficiencies may be achieved with the use of this module with small vendors such as the artists hired by Cultural Affairs.

## **Cause**

- The artists used by Cultural Affairs are often independent contractors that are unfamiliar with the elements required in an invoice.

## **Effect**

- Inefficiencies created from the submittal of incomplete invoices by artists.
- Delays in payments to artists.

## **Recommendations**

- 3.1 Cultural Affairs management should implement measures to improve the completeness of the invoices being submitted by artists. Consideration should be made to implementing the following:
  - Creation of a sample invoice that highlights all required elements for reference by artists.
  - Creation of an electronic invoice template that could be used by the artists in creating their invoices.

- 3.2 Cultural Affairs management should evaluate the feasibility and cost of implementing the use of the online invoice creation module within Oracle iSupplier with its artists. If the decision is made to proceed with implementation, Cultural Affairs management should document a plan to educate the artists on its use.

## **4. Need for Documented Procedures**

### **Criteria**

Effective documented procedures formally establish employee accountability, provide orientation and reference material for employees, and document the institutional knowledge of existing staff in case of employee turnover or extended absences.

### **Condition**

The payment processing procedures and document retention practices performed by the Cultural Affairs Administrative Support Assistant have not been documented for reference in case of an extended absence or turnover. This employee plays a key role in ensuring artists are paid timely in accordance with the terms of the contract and maintaining copies of the contracts. No other staff members have been trained on the performance of these responsibilities.

### **Cause**

- Procedures performed by Administrative Support Assistant are not documented.
- Other staff members have not been trained on the performance of the Administrative Support Assistant's duties.

### **Effect**

- Potential for artists not being timely paid and in accordance with contract terms in case of extended absence or turnover of the Administrative Support Assistant.

### **Recommendations**

- 4.1 Cultural Affairs management should document the procedures being performed by the Administrative Support Assistant to process artist contracts and payments. These procedures should also address the retention of these artist contracts.
- 4.2 Cultural Affairs management should train another staff member in the payment processing procedures performed by the Administrative Support Assistant in case of an extended absence or turnover.

## MANAGEMENT RESPONSES

### 1. Inconsistencies in Artist Contracts

- 1.1 Cultural Affairs management should review the validity of their artist contract templates with the assistance of other city departments as deemed appropriate (e.g., Finance - Purchasing and Contracts, Human Resources - Risk Management, City Attorney's Office). The issues identified within this audit finding should be addressed and the artist contract templates updated as needed.

**Management Action Plan:** Management is currently working with Human Resources/Risk Management to determine the insurance needs of this department's contracted artists/authors. When this crucial part of the contracts has been determined, management will schedule meetings with Finance/Purchasing and Contracts to finalize the artistic templates.

**Estimated Date of Completion:** June 30, 2017

- 1.2 Cultural Affairs management should evaluate whether additional artist contract templates are needed to address the various types of artists they hire and create additional templates if deemed necessary.

**Management Action Plan:** Cultural Affairs management has reached out to Finance/Purchasing and Contracts to schedule meetings to discuss the use of artistic contracts and the number of templates that may needed to be created.

**Estimated Date of Completion:** June 30, 2017

- 1.3 Cultural Affairs management should consider improving the instructions for the *Labor and Payment Release* form so that it is only used when required. If not required, the form should be removed from the final contract documentation.

**Management Action Plan:** The Management Team has held a preliminary training session with the Cultural Supervisors regarding the *Labor and Payment Release* form. A detail instruction will be written and sent out to all employees. In addition, the written instructions will be included in the department handbook.

**Estimated Date of Completion:** June 30, 2017

- 1.4 Cultural Affairs management should document and implement procedures to be followed by their staff members in the creation of artist contracts and to ensure that only the most current artist contract templates are used in the creation of contracts.

**Management Action Plan:** When the contract templates are finalized and approved by Finance/Purchasing and Contracts and the City Attorney's office, a detailed written instruction guide will be created for all employees and included in the department handbook.

**Estimated Date of Completion:** August 30, 2017

1.5 Cultural Affairs management should document and implement procedures to have the artist contract templates periodically reviewed and updated as needed.

**Management Action Plan:** Cultural Affairs management will include this procedure in the detailed written instruction guide on contracts. Management will document on a quarterly basis that no changes have been made to the contracts. If changes are needed, management will document those changes and update the written instructions guide.

**Estimated Date of Completion:** December 1, 2017

1.6 Cultural Affairs management should document and implement procedures for supervisors for reviewing artist contracts to ensure all required elements are included in the artist contracts before being approved.

**Management Action Plan:** A check list will be included in the written instruction guide for the supervisors. The check list shall be used when a supervisor is reviewing each contract.

**Estimated Date of Completion:** December 1, 2017

## **2. Ambiguous Insurance Coverage Requirements**

2.1 Cultural Affairs management should consult with the Human Resources Risk Management division, Purchasing & Contracts, the City Attorney's Office, and the city's insurance broker to determine:

- The insurance coverage and evidence of insurance coverage required of artists hired by Cultural Affairs.
- The standard insurance clause that should be included in the artist contracts.
- The standard indemnification and force majeure clauses that should be included in the artist contracts.
- The documents that should be obtained by Cultural Affairs staff members to verify insurance coverage.

**Management Action Plan:** Cultural Affairs management has begun discussions with Human Resources/Risk Management regarding insurance requirements for contracted artists. Currently, information is being provided to the city's insurance broker to move forward with the correct insurance needs.

**Estimated Date of Completion:** April 30, 2017

- 2.2 Cultural Affairs management should update the verbiage in its contract templates to coincide with the conclusions reached as a result of their consultations.

**Management Action Plan:** OCA management shall update the verbiage as it continues to work with Finance/Purchasing and Contracts on the contract templates.

**Estimated Date of Completion:** June 30, 2017

- 2.3 Cultural Affairs management should document and implement the process to be followed by Cultural Affairs staff in ensuring that artists comply with the insurance requirements.

**Management Action Plan:** Written instructions will be provided for the OCA staff on the process to be followed to ensure that all contracted artists comply with the new insurance requirements. The procedure will be included in the written instruction guide and included in the department handbook.

**Estimated Date of Completion:** December 1, 2017

### 3. Invoice Processing Inefficiencies

- 3.1 Cultural Affairs management should implement measures to improve the completeness of the invoices being submitted by artists. Consideration should be made to implementing the following:
- Creation of a sample invoice that highlights all required elements for reference by artists.
  - Creation of an electronic invoice template that could be used by the artists in creating their invoices.

**Management Action Plan:** Cultural Affairs management will continue to work with Finance/Accounts Payable to develop a template and a process that may easily be used by contracted artists/authors when requesting payment. OCA staff will receive written instructions as part of the written instruction guide and will be included in the department handbook.

**Estimated Date of Completion:** December 20, 2017

- 3.2 Cultural Affairs management should evaluate the feasibility and cost of implementing the use of the online invoice creation module within Oracle iSupplier with its artists. If the decision is made to proceed with implementation, Cultural Affairs management should document a plan to educate the artists on its use.

**Management Action Plan:** Cultural Affairs management will meet with Finance/Purchasing and Contracts on the feasibility of utilizing an online invoice through iSupplier. If feasible, written instructions will be created, placed in the written instructions guide and placed in the handbook. Then the new instructions will be issued to department employees for training.

**Estimated Date of Completion:** December 30, 2017

#### **4. Need for Documented Procedures**

4.1 Cultural Affairs management should document the procedures being performed by the Administrative Support Assistant to process artist contracts and payments. These procedures should also address the retention of these artist contracts.

**Management Action Plan:** The OCA Administrative Support Assistant will create a procedure manual outlining a step-by-step instruction on processing artist/author contracts, payments and the retention of their contracts. The instruction guide will be provided to each programming unit in the department and placed in the department handbook.

**Estimated Date of Completion:** November 15, 2017

4.2 Cultural Affairs management should train another staff member in the payment processing procedures performed by the Administrative Support Assistant in case of an extended absence or turnover.

**Management Action Plan:** Cultural Affairs management will oversee the training of one staff member from each programming unit in the payment processing procedures as outlined in the Administrative Support Assistant's step-by-step instructions for contracts, payments and retention of artistic contracts.

**Estimated Date of Completion:** December 30, 2017