

Memorandum



CITY OF DALLAS
(Report No. A12-006)

DATE: February 17, 2012

TO: Honorable Mayor and Members of the City Council

SUBJECT: Audit of City's Ethics Program ¹

The City of Dallas' (City) elected officials and management have made a commitment to further develop and maintain an acceptable City-wide ethical culture, promote ethics education, and report on ethical misconduct.

The Office of the City Auditor (Office) analyzed the design of the City's Ethics Program (Program) by comparing the Program to the seven elements specified in the Federal Sentencing Guidelines for Organizations (FSGO) (see text box at right).

The design assessment summarized in Attachment I showed that the Program:

Criteria for Design Assessment

The FSGO's "seven-step" standards for compliance/ethics programs have become the de-facto framework for United States (US) Corporations and also serve as a reference point for many US regulatory and enforcement agencies.

Chapter Eight [of the FSGO] outlines seven key criteria for establishing an "effective compliance program". The organizational guidelines criteria embody broad principles that, taken together, describe a corporate "good citizenship" model, but do not offer precise details for implementation.

This approach was deliberately selected in order to encourage flexibility and independence by organizations in designing programs that are best suited to their particular circumstances.

Source: *An Overview of the Organizational Guidelines*, United States Sentencing Commission, www.ussc.gov

The Federal Sentencing Guidelines for Organizations at Twenty Years, Ethics Resource Center, 2011

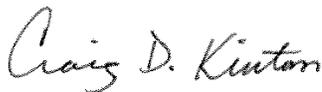
¹We conducted an Audit of City's Ethics Program (Program) under the authority of the City Charter, Chapter IX, Section 3. This audit is part of our Fiscal Year 2012 Audit Plan (Audit Plan) approved by the City Council. This performance audit was conducted in accordance with generally accepted government auditing standards except that the Office is not independent with respect to the Office's responsibilities for sponsoring and managing the City's Fraud Hotline and providing investigative services. 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. The objective of the audit was to assess and evaluate the design and effectiveness of the Program and associated activities for the Fiscal Years (FY) 2010 and 2011; however, certain other matters, procedures, and transactions outside the period may be reviewed to understand and verify information during the audit period. This audit was limited to an assessment of the design of the Program. We researched previously issued audit reports and best practices and determined that the Federal Sentencing Guidelines for Organizations (FSGO) elements were typically identified as the criteria for an effective ethics and compliance program. We developed an internal ethics questionnaire and the City Manager's Office provided responses and supporting documentation that was used to assess the design of the Program.

- **Satisfies** a significant portion of the FSGO elements, numbers 1 and 3 to:
 - *Establish standards, policies and procedures to prevent and detect unethical or unlawful conduct*
 - *Exercise due diligence and avoid delegation of authority to unethical individuals*
- **Partially satisfies** the FSGO elements, numbers 5 and 6 to:
 - *Monitor, audit, and evaluate Program effectiveness periodically, including mechanisms for reporting on ethical misconduct*
 - *Enforce ethical standards and design appropriate disciplinary actions*
- **Does not satisfy** FSGO elements, numbers 2, 4, and 7 to:
 - *Exercise oversight, assign responsibilities, and delegate day-to-day operations of ethics and compliance*
 - *Communicate and educate individuals on ethics and compliance*
 - *Prevent future occurrences and respond to identified, unethical behavior*

The Office's design assessment indicated that while the City has many of the components of the FSGO elements in place, there are opportunities to strengthen the Program. As a result, we recommend that the City further develop the Program to incorporate components of each of the FSGO elements and comply with best practices (see Attachment II for Management's Response).

If you have any questions or need additional information, please contact me at 214-670-3222 or Carol Smith, Assistant City Auditor, at 214-670-4517.

Sincerely,



Craig D. Kinton
City Auditor

Attachments

C: Mary K. Suhm, City Manager
Jeanne Chipperfield, Chief Financial Officer

Federal Sentencing Guidelines

ATTACHMENT I

| Federal Sentencing Guideline Elements | Auditor's Design Assessment | Comments |
|---|-----------------------------|---|
| <p>1 Establish standards, policies, and procedures to prevent and detect unethical or unlawful conduct</p> | <p>Yes</p> | <p>The City of Dallas (City) has established certain ethical standards, policies, and procedures (Ethical Standards) and <u>satisfies</u> this Federal Sentencing Guidelines for Organizations (FSGO) element.</p> |
| <p>2 Exercise oversight, assign responsibilities and delegate day-to-day operations of ethics and compliance</p> | <p>No</p> | <p>The City <u>does not satisfy</u> the FSGO element for effective ethics oversight.</p> <ol style="list-style-type: none"> 1. The City does not have a designated Ethics Officer who is insulated from political influence, has access to key individuals in the City, and is granted the appropriate authority and resources for day-to-day operations. 2. The Ethics Advisory Commission's (EAC) jurisdiction, which appears to be granted by the <i>Code of Ethics</i>, is limited to reviewing and issuing formal opinions on <i>Code of Ethics</i> violations only. |
| <p>3 Exercise due diligence and avoid delegation of authority to unethical individuals</p> | <p>Yes</p> | <p>The City <u>satisfies</u> a significant portion of the FSGO element by exercising due diligence; however:</p> <ol style="list-style-type: none"> 1. The City may not have a consistent process for checking an applicant's references since "applicant reference checks are the responsibility of each hiring department." 2. The City does not require hiring departments to use interview questions to assess a candidate's character during the initial hire or when the individual is being considered for promotion. |

| Federal Sentencing Guideline Elements | Auditor's Design Assessment | Comments |
|---|-----------------------------|--|
| 4 Communicate and educate individuals on ethics and compliance | No | <p>The City <u>does not satisfy</u> the FSGO element for communicating and educating individuals on ethics and compliance.</p> <ol style="list-style-type: none"> 1. The City does not have a comprehensive ethics training program which is tailored to meet each individual's roles and responsibilities, is continuous, and is administered throughout all levels of the City, including City Officials and City management. 2. The City relies on the <i>New Employee Orientation</i> which: <ol style="list-style-type: none"> a. Occurs only once upon initial hire or re-hire b. Addresses only the <i>Rules of Conduct</i> and disciplinary actions c. Does not address ethics or City management's philosophy on ethics d. Does not outline the process for reporting violations or observations of ethical misconduct e. Does not clarify which of the various venues an individual can seek ethical advice given a certain circumstance |

| Federal Sentencing Guideline Elements | Auditor's Design Assessment | Comments |
|--|-----------------------------|---|
| <p>5 Monitor, audit, and evaluate Ethics Program (Program) effectiveness periodically, including mechanisms for reporting on ethical misconduct</p> | <p>Partial</p> | <p>The City <u>partially satisfies</u> the FSGO element since the City has established reporting mechanisms; however:</p> <ol style="list-style-type: none"> 1. <u>Monitoring and Auditing:</u> <ol style="list-style-type: none"> a. The City does not monitor the ethical culture and climate by conducting baseline assessments or regular re-assessments of the Program. b. The AD 2-14 <i>Fraud, Waste and Abuse Procedures</i>, which identifies a reporting mechanism and encourage anonymous reporting, does not reflect the current Fraud Hotline telephone number. 2. <u>Reporting:</u> <ol style="list-style-type: none"> a. The City has established certain mechanisms for reporting ethics complaints; however, the Ethical Standards do not explicitly state that whistle-blower protection is available to employees. b. The City's Fraud Hotline, one of the reporting mechanisms, is not readily identifiable on the City's Internet Home Page, but can be accessed through the link to City Departments – City Auditor's Office. |
| <p>6 Enforce ethical standards and design appropriate disciplinary actions</p> | <p>Partial</p> | <p>The City <u>partially satisfies</u> the FSGO element for designing disciplinary actions, however, the City does not enforce Ethical Standards through:</p> <ol style="list-style-type: none"> 1. Staff meetings to encourage ethics as a priority 2. Quarterly discussions with management teams to discuss ethics 3. A formal venue to recognize good ethical behavior |

| Federal Sentencing Guideline Elements | Auditor's Design Assessment | Comments |
|---|-----------------------------|--|
| 7 Prevent future occurrences and respond to identified unethical behavior | No | The City <u>does not meet</u> the FSGO element for preventing future occurrences. The City has not established and developed a process to: 1. Avoid repeated incidents of known ethical misconduct 2. Revise Ethical Standards to incorporate prevention of repeated incidents 3. Report on ethical violations and keep City management, City Council, and other committees apprised of potential repeated incidents 4. Self-report for known violations |

Management's Response

Memorandum

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City Auditor's Office



DATE: February 8, 2012

TO: Craig D. Kinton, City Auditor

SUBJECT: Response to Audit Report: Audit of City's Ethics Program

Our responses to the audit report recommendation is as follows:

Recommendation:

We recommend that the City further develop the Program to incorporate components of each of the FSGO elements and comply with best practices.

Management Response / Corrective Action Plan

Agree Disagree

Management agrees that a strong ethics program exists and that there are opportunities to strengthen both the program and compliance. Management intends to hire an outside firm to provide an assessment of the effectiveness of the City's ethics program; training and subsequent evaluation of the revised training program's effectiveness. Additionally, management will implement corrective action to remediate noted deficiencies in the existing policies, documentation and procedures such as updating administrative directives and standardizing the interviewing and hiring processes used in departments with regard to ethics and reference checks.

Implementation Date

Various – anticipate conclusion of the training and subsequent evaluation by Sept 2013.

Responsible Manager

Chief Financial Officer

Sincerely,

Handwritten signature of Jeanne Chipperfield.
Jeanne Chipperfield
Chief Financial Officer

C: Mary Suhm, City Manager

"Dallas. The City That Works. Diverse. Vibrant, and Progressive."

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