

Executing A Contract with the Wrong Entity and Awarding Funding Without Written Agreements Compromised the City's Ability to Audit Wide Open Walls and David Sobon Events

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City of SACRAMENTO

Office of the City Auditor

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Introduction

In accordance with the City Auditor’s 2021/22 Audit Plan, we have completed our report titled *Executing A Contract with the Wrong Entity and Awarding Funding Without Written Agreements Compromised the City’s Ability to Audit Wide Open Walls and David Sobon Events*.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. 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. Due to scope limitations, as required by auditing standards, we limited our work to those areas specified in the Objective, Scope, and Methodology section of this report.

Background

The City of Sacramento (City) regularly awards funding to third-party organizations that provide services to residents. These funding arrangements may be memorialized in the form of grants, sponsorships, or service contracts. In May 2020, the Mayor’s Office and a former Councilmember received a complaint that third-party vendors Wide Open Walls (WOW) and David Sobon Events, Inc. (DSE) had allegedly mismanaged and mishandled funds provided by the City. Representatives of WOW and DSE disputed the allegations.

Due to the seriousness of the allegations and the fact that as of May 2021, the City had provided WOW a total of \$60,094 and DSE a total of \$105,000 in grants, small business loans, and service contracts, we informed City Council that we would conduct an audit of WOW and DSE to assess if there was any evidence of misappropriation of City funds.

David Sobon Events, Inc.

David Sobon Events, Inc. (DSE) was a for-profit live auction and fundraising consulting firm. According to DSE, the firm provided pre-event consulting services, auction event planning, and volunteer training. DSE was managed by David Sobon, an auctioneer and fundraiser. DSE’s Chief Financial Officer/Secretary was Margaret Owens. DSE filed a Certificate of Dissolution with the California Secretary of State in October 2021.

As of May 2021, the City had issued DSE \$100,000 in payments for the Wide Open Walls mural festivals. In addition, DSE was a recipient of a \$5,000 Coronavirus Aid, Relief, and Economic Security Act (CARES) Small Business Recovery Loan that was offered to small businesses in response to the COVID-19 pandemic. The table below provides a brief description of the payments the City issued to DSE.

Figure 1: Summary of Payments the City Issued to David Sobon Events, Inc.

| David Sobon Events, Inc. | | | | |
|------------------------------------|-----------------|------|------------------|--|
| Type of Payment | Contract Number | Year | Amount | Description |
| Grant | C2018-0165 | 2018 | \$50,000 | City funds were to be used for expenses related to advertising, public relations, and equipment rental for Wide Open Walls Mural Festival. |
| Grant | PRC000516 | 2019 | \$50,000* | City funds were to be used for expenses related to advertising, public relations, and equipment rental for Wide Open Walls Mural Festival. |
| CARES Small Business Recovery Loan | C2020-2130 | 2020 | \$5,000 | Forgivable loan to small businesses to mitigate the effects of the COVID-19 public health emergency. |
| Total | | | \$105,000 | |

*Although this check was made out to DSE, the payment was deposited into WOW’s bank account and spent by WOW.

Source: Auditor generated based on City records.

Wide Open Walls

The first Sacramento Mural Festival was established in 2016 by organizations Sterling Transportation, In the Sac, and the nonprofit Friends of Sacramento Metropolitan Arts Commission. In 2018, David Sobon set up a non-profit organization called Wide Open Walls (WOW) to continue promoting the annual festival under the Wide Open Walls name and to bring art to the community. Margaret Owens is the Chief Financial Officer/Treasurer of WOW. According to WOW, “the Sacramento Mural Festival was first conceived as an idea to activate spaces in alleyways and buildings throughout Sacramento.”

According to the WOW website, the festival “brings local, national and international artists together to transform our region with amazing street art.” WOW also produces other public art events throughout the year, including The Mural Jam, Sac Republic’s Paint the Park, and the Playa Art Trail. WOW pays artists to produce murals throughout the City. During an interview with WOW staff, they estimated to have 110 paid artists and 150 volunteer artists.

By May 2021, the City had issued WOW \$60,094 in payments and services which included a CARES Small Business Recovery Loan that was given to small businesses in response to the COVID-19 pandemic. The City also contracted with WOW to cover the cost of City services for a 2018 WOW event. The table below provides a brief description of the payments and services the City issued to WOW.

Figure 2: Summary of Covered Costs and Payments that the City Provided Wide Open Walls

| Wide Open Walls | | | | |
|------------------------------------|--------------------|------|-----------------|--|
| Type of Payment | Contract Number | Year | Amount | Description |
| Special Event Grant | C2018-1254 | 2018 | \$5,094* | Grant used to defray the cost of fees assessed to WOW for services provided by the City's Police, Parking, and Fire Departments and Private Security related to the Wide Open Walls Block Party event. |
| Sponsorship | No Contract Issued | 2018 | \$25,000 | One-time event sponsorship under the North Sacramento Economic Development Investment Initiative. |
| Sponsorship | No Contract Issued | 2019 | \$25,000 | Sponsorship for the Del Paso mural project under the North Sacramento Economic Development Investment Initiative. |
| CARES Small Business Recovery Loan | C2020-2131 | 2020 | \$5,000 | Forgivable loan to small businesses to mitigate the effects of the COVID-19 public health emergency. |
| Total | | | \$60,094 | |

*This was not a direct payment. This grant was used to defray the cost of fees assessed to WOW for services provided by the City's Police, Parking, and Fire Departments and Private Security related to the Wide Open Walls Block Party event in an amount up to \$5,094. According to the City's Convention and Cultural Services Department, WOW did not use the entire grant and only \$3,229 of costs were defrayed.

Source: Auditor generated based on City records.

Objective, Scope, and Methodology

We received an allegation that vendors Wide Open Walls (WOW) and David Sobon Events, Inc. (DSE) may have misused City funding they received. To evaluate these claims, the objective of this audit was to assess the City's contracts with WOW and DSE and determine whether City funds provided to them were appropriately spent. It should be noted that although WOW and DSE are two separate entities (one non-profit organization and one for-profit business), there is overlap between the two agencies as they share the same business address, CEO/President (David Sobon), and CFO/Treasurer (Margaret Owens). During our audit, we communicated with Margaret Owens and David Sobon in their capacity as representatives of both organizations and made combined requests for information regarding DSE and WOW.

Our initial scope included assessing the use of City funds awarded to WOW and DSE since the City's first payments to these organizations in calendar year 2018. However, as discussed below, we encountered a scope limitation that compromised our ability to complete this work. Our methodology included a review of City policies and procedures, City financial records (i.e. check disbursements and agreements), interviews with City staff, consultation with the City Attorney's Office, and communications with WOW and DSE.

Scope Limitation

In June 2020, we initiated this audit and requested financial records from DSE and WOW to assess the receipt and use of City funds. However, in light of the fact that the City did not have a written agreement with WOW, the actual service provider, for funds provided to DSE or a written agreement for the WOW sponsorships, we were not able to audit whether City funds awarded to DSE and WOW were used appropriately.

Generally Accepted Government Auditing Standards¹ (GAGAS) require that auditors report any limitations encountered during the course of an audit. Specifically, the following GAGAS sections state:

Section 8.136: When auditors do not comply with applicable GAGAS requirements because of law, regulation, scope limitations, restrictions on access to records, or other issues affecting the audit, the auditors should document the departure from the GAGAS requirements and the impact on the audit and on the auditors' conclusions.

Section 9.11: Auditors should communicate audit objectives in the audit report in a clear, specific, neutral, and unbiased manner that includes relevant assumptions. In order to avoid potential misunderstanding, when audit objectives are limited but users could infer

¹ Gao.gov. 2021. *Government Auditing Standards: 2018 Revision Technical Update April 2021 (Supersedes GAO-18-568G)*. [online] Available at: <<https://www.gao.gov/products/gao-21-368g>> [Accessed 21 December 2021].

broader objectives, auditors should state in the audit report that certain issues were outside the scope of the audit.

Section 9.12: Auditors should describe the scope of the work performed and any limitations, including issues that would be relevant to likely users, so that report users can reasonably interpret the findings, conclusions, and recommendations in the report without being misled. Auditors should also report any significant constraints imposed on the audit approach by information limitations or scope impairments, including denials of, or excessive delays in, access to certain records or individuals.

The restriction on our ability to analyze how WOW and DSE used City funds is a scope limitation because it prevents us from completing the primary audit objective to determine whether City funds provided to them were appropriately spent. We are disclosing this scope limitation to comply with GAGAS Sections 8.136, 9.11, and 9.12. As a result of this limitation, we could not audit WOW or DSE's financial records and we do not express an opinion on the appropriate use of City funds by either WOW or DSE.

In order to communicate the "lessons learned" from this exercise, this report focuses primarily on the City's internal processes and how they could be strengthened to better position the City to conduct future audits of funding recipients.

Finding 1: Executing A Contract with the Wrong Entity and Awarding Funding Without Written Agreements Compromised the City's Ability to Audit Wide Open Walls and David Sobon Events

Establishing contracts between parties helps define and set forth services that are to be completed. The City typically requires contracts for the procurement of professional services or work of any nature. To verify City funds were spent in accordance with their intended purpose, City contracts usually include information regarding the City's ability to request an organization's records for inspection and review. During our review of WOW and DSE, we noted the following issues that compromised the City's ability to audit the appropriate use of funds:

- The City executed a contract with DSE, when WOW was the actual service provider; and
- The City provided WOW with two \$25,000 awards to fund the Del Paso mural project without written agreements.

These examples illustrate how failure to execute a contract with the appropriate entity or the decision to forego a contract can significantly limit the City's ability to hold a recipient of City funds accountable. If the City wants to have the ability to assess whether City funds were used appropriately, the City should execute contracts/agreements that allow the City to hold the ultimate recipient and user of the funds accountable.

The City executed a contract with DSE, when WOW was the actual service provider

In early 2018, the City paid DSE \$50,000 for advertising, public relations, and equipment rental expenses incurred during the previous 2017 Wide Open Walls mural festival. In August of 2019, the City executed another contract with DSE to support the 2019 Wide Open Walls festival, even though David Sobon had established WOW as a non-profit in 2018, whose purpose included putting on the Wide Open Walls mural festival. Attachment 1 to the DSE contract states;

“CONTRACTOR is responsible for producing the 2019 Wide Open Walls Mural Festival. The compensation provided under this Agreement shall be used by CONTRACTOR for costs associated with production of the Mural Festival event and for no other purpose. Specifically, the compensation shall be used for expenses related to advertising, public relations, and equipment rental for the Festival. Pursuant to Section 6 of Exhibit B, CONTRACTOR shall keep necessary accounting and financial records regarding the Festival so that the CITY may properly audit all expenditures made pursuant to this Agreement.”

During our audit, we learned that DSE had not directly spent the 2019 City funds granted to them. According to WOW and DSE, the funds were deposited in the account of the newly-formed WOW non-profit and the records relating to the use and accounting of those funds were in the control of WOW. According to the CFO/Treasurer of WOW and DSE, the City made an error in contracting with DSE instead of WOW. The CFO/Treasurer mentioned that the City informed her that it would take weeks to

reprint the check and advised her to deposit the check in the WOW account if she could. According to staff in the City's Convention and Cultural Services Department, when they received direction from the City Manager's Office to begin the contract process for funding the 2019 Wide Open Walls event, they followed the previous year's agreement and contracted with DSE again. It is not clear if City staff knew of the existence of the newly formed WOW organization.

Although contracting with DSE for the 2019 Wide Open Walls mural festival did not appear to be problematic to City staff at the time, the unintended consequence of executing a contract with DSE when WOW was the organization that incurred the expenses and organized the event is that the City has no contract with WOW and therefore little recourse to audit the use of those funds.

Since the \$50,000 City contract with DSE in 2019 was for the Wide Open Walls festival and WOW had already been established as the organization responsible for producing the event, the City should have identified WOW as the recipient of the grant and contracted with WOW instead of DSE. Failure to properly document and execute an agreement with the correct recipient has significantly hindered the City's ability to hold the recipient of City funds accountable. In our opinion, City employees that distribute City funds should continuously be educated about procurement pitfalls like this that could limit the City's ability to hold an entity accountable for the appropriate use of public funds.

The City provided WOW with two \$25,000 sponsorships to fund the Del Paso mural project without written agreements

The City has procurement policies that provide guidance to City employees on how to go about procuring services and supplies. The procurement policy states that a written contract is required if the cost of the services or supplies exceed \$5,000. The City has developed various contract templates for procuring services and supplies to help ensure that standard contract language, such as insurance requirements, indemnity clauses, and access to the contractor's records, are stipulated in each contract. The City's contracts are also reviewed by the City Attorney's Office prior to execution. However, it appears the City's process for awarding sponsorships is not as well defined. During our audit, we found that the City provided two \$25,000 sponsorship awards to WOW² without a written contract.

Documenting sponsorships in a written agreement is a best practice. According to the Sponsorship Collective, a firm specializing in assisting sponsorship seekers, "because a sponsor relationship requires an investment, there is an expectation that they [sponsors] will be given an opportunity to improve their image, promote their products and leverage your customer relationships to gain exposure for their brand. Therefore, when entering into a sponsorship, a professional sponsorship sales agreement is a must."³

² The City issued WOW a \$25,000 sponsorship in 2018 and another \$25,000 sponsorship in 2019.

³ "How To Write A Sponsorship Agreement: 5 Things For Every Sponsorship Contract - The Sponsorship Collective". The Sponsorship Collective, 2022, <https://sponsorshipcollective.com/how-to-write-a-sponsorship-agreement-5-things-for-every-sponsorship-contract/>.

Based on a review of the invoices submitted by WOW, the funds were for the “Wide Open Walls sponsorship for the Del Paso mural project” to create an outdoor art gallery. According to City staff, a contract was not signed with WOW because they did not consider the sponsorship to be a program or service. However, we found that in other instances, the City had written sponsorship agreements with organizations. For example, the City has executed multiple annual sponsorship agreement with the Sacramento Kings to advertise a City program during the Sacramento Kings regular season home games and on its website and social media. We also found that in 2010, the Sacramento City Council approved the *Department of Parks and Recreation Community Sponsorship Initiative* - a policy which provides the framework for the Department of Parks and Recreation (now renamed the Department of Youth, Parks, and Community Enrichment) donation and sponsorship program. The policy states:

All sponsorship agreements, and all donations and sponsorships with a value of more than \$500, must be memorialized in a written agreement between the City and the donor or sponsor. The Director of DPR is authorized to execute any written agreement for a donation or sponsorship where the value of the donation or sponsorship is less than \$100,000. No written donation or sponsorship agreements will be valid unless approved as to form by the City Attorney.

While the City’s Youth, Parks, and Community Enrichment Department has documented policies and procedures regarding sponsorships, there is not a centralized Citywide policy. Therefore, departments may process sponsorships inconsistently. The City recently established the *Grant Distribution Policy* which states, “The City shall enter into a formal grant agreement with all recipients in accordance with the City’s signing authority in place at the time of granting.” However, the *Grant Distribution Policy* does not specifically address sponsorships. In our opinion, the City could benefit from clarifying in the *Grant Distribution Policy* that sponsorships also have written agreements documenting the intended use of City funds, the requirement to document the appropriate use of funds, and expectations that such records will be made available to assess compliance in a timely manner.

Although the sponsorship awards were provided to WOW prior to the implementation of the City’s *Grant Distribution Policy*, in hindsight the City would have benefited from entering into a formal agreement with WOW as it would have better defined what the funds were to be used for or what the City expected in return for sponsoring the event and it could have outlined the City’s right to audit the use of the funds.

Although the City did not have contracts in place with WOW, it appears that WOW did provide the services that it set out to do. Several artists painted murals in various places on Del Paso Boulevard (Blvd.) including the Money Mart, King Cong Brewing Company, Sacramento News & Review, and other locations in the area. Images of the murals that were completed by artists can be found on the Del Paso Blvd. Partnership website. The image below contains an example of a mural that was completed in 2018 and appeared to be part of the mural project.

Figure 3: A Mural Completed by a Participant of the Del Paso Mural Project



Source: Del Paso Blvd. Partnership <https://dpbpartnership.com/wide-open-walls>

The risk of not having a signed agreement is that it limits the City's recourse should something questionable occur regarding how the funds were used. Furthermore, it is to the City's benefit to document the terms of an award in an agreement, even for sponsorships, so all parties have a clear understanding of what constitutes appropriate use of funds and so that the City may assess compliance with the terms of the agreement. Although the City's new *Grant Distribution Policy* requires the City to enter into formal grant agreements with all recipients, we recommend the policy clarify that sponsorships should also have written agreements documenting the intended use of City funds, the requirement to document the appropriate use of funds, and expectations that such records will be made available to assess compliance in a timely manner.

RECOMMENDATION:

We recommend the City Manager's Office:

1. Update the *Grant Distribution Policy* to clarify that sponsorships should also have written agreements documenting the intended use of City funds, the requirement for recipients to document the appropriate use of funds, and expectations that such records will be made available to assess compliance in a timely manner.

DATE: June 21, 2022
TO: Mayor and Council Members
FROM: Jody Ulich, Director Convention & Cultural Services
RE: Auditor's 2021 Audit of Wide Open Walls



The City Manager's Office and staff of Convention & Cultural Services and Innovation would like to thank the Auditor staff for their thorough work on the audit of Wide Open Walls and David Sobon Events. Staff concurs with the findings and recommendations from the City Auditor's report.

Finding 1: Executing A Contract with the Wrong Entity and Awarding Funding Without Written Agreements Compromised the City's Ability to Audit Wide Open Walls and David Sobon Events

Response

Staff within the CCS Department were not made aware of the creation nor existence of the non-profit entity Wide Open Walls during the course of executing the two \$50,000, City Manager designated funds to DSE. The non-profit entity (WOW) was apparently created in the time frame between execution of the two contracts but never brought to the attention of staff. We agree that contracting should always be with the appropriate entity and will assure that in the future, whether funds are directly designated, through a grant process, or a sponsorship, an application must be submitted by the contractor in order to properly identify and record the correct entity to be contracted with.

Departments will adhere to the City's policy of providing a written agreement for grants, sponsorships, and designated funding with a value of more than \$500.

Thank you again for your diligent work.