



**METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

OFFICE OF INTERNAL AUDIT

Professional Audit and Advisory Service

**Audit of the Metro Arts Commission
Public Art Program**

Date Issued: February 24, 2010

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*The Metropolitan Nashville Office of Internal Audit is an independent audit agency
reporting directly to the Metropolitan Nashville Audit Committee*

EXECUTIVE SUMMARY

February 24, 2010

Results in Brief	Recommendations
<p>We performed an audit of the processes and controls in place pertaining to the public art program. Key audit objectives and conclusions are as follows:</p> <ul style="list-style-type: none"> • Are proper procedures in place to ensure all public art program expenses are allowable as outlined in the public art guidelines? Yes. Current procedures in place are functioning properly. No material weaknesses were observed. • Are proper procedures in place for the selection of artists? Yes. No material weaknesses were observed. • Are bond proceeds used to fund the public art program properly calculated and set aside to fund public art as outlined in Ordinance BL2000-250? Yes. The current methodology was reviewed and no material weaknesses were observed. • Are contracts properly bid as required by the Metro Nashville Procurement Code? Yes. However we did note one contract had been expired for seven months before Metro Nashville Arts Commission staff became aware. 	<p>Key recommendations of this report include:</p> <ul style="list-style-type: none"> • Appropriate action should be taken by the Arts Commission so that future contracts will be monitored. Proper monitoring should include timely identification of contract expiration dates. <p>Management's response can be seen in Appendix A, page 13.</p>

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INTRODUCTION

AUDIT INITIATION

The Office of Internal Audit received a request from five Metropolitan Council members dated December 4, 2009 asking that an audit of the public art program be conducted due to pending legislation, Substitute ordinance BL2009-568.

The request specifically stated that the audit assess whether appropriate procedures were in place for the selection of artists, the disbursement of funds, and whether proper procedures were followed for all public art expenses since the program's inception.

The request for audit was considered and approved by the Metro Nashville Audit Committee during the December 8, 2009 meeting.

BACKGROUND

The Metro Nashville Arts Commission was created by Ordinance 78-1155, adopted by the Metropolitan Council on December 19, 1978. The officers of the Commission shall be a Chairperson, a Vice-Chairperson and other such officers as the Commission may designate from time to time.

The mission of the Metro Nashville Arts Commission is to provide arts resource, public art and arts leadership products to; artists, arts organizations, Davidson County residents, and visitors so they can experience an enriched quality of life through the arts.

The Metro Nashville Arts Commission has a professional staff consisting of six full time employees. The staff is comprised of one (1) director, one (1) public art manager, one (1) public art project manager, one (1) finance manager, one (1) grants program manager and one (1) office manager.

The Metro Nashville Arts Commission staff currently manages the Metro Nashville public art program which was established by the passage of a bill creating the public art ordinance announced on March 24, 2000, by Mayor Bill Purcell and approved on June 2, 2000, as ordinance BL2000-250.

The purpose of the public art program is to strengthen the positive reputation of the community, enhance the civic environment, and enrich the lives of citizens and visitors through the involvement of professional artists to integrate public artwork throughout Metro Nashville and Davidson County.

CURRENT LEGISLATION

The current legislation, ordinance BL2000-250, dedicates one percent (1%) of the net proceeds of any general obligation bond issued for construction projects to fund public art. The current ordinance also states that if one percent (1%) of a particular bond issue is insufficient to fund a public art project the proceeds may accumulate until they are sufficient to fund public art projects.

PROPOSED PENDING LEGISLATION

The pending legislation substitute ordinance BL2009-568, proposes that of the one percent (1%) of the net proceeds of any general obligation bond used to fund construction projects, seventy-five percent (75%) shall be allocated equally among the nine school districts, as established in the Metropolitan Nashville Charter. Such public art projects shall be distributed among the various types of Metro Nashville government property.

The remaining twenty-five percent (25%) shall be expended in accordance with public art guidelines anywhere within the area of the Metro Nashville government.

FINANCIAL INFORMATION

Exhibit A illustrates the one percent (1%) for the arts funds generated from bond proceeds used to fund construction projects.

Qualifying construction projects include the building or erection of any public building, structure, park, or parking facility. Qualifying construction projects shall also include the reconstruction replacement, extension, repairing, betterment or improvement of any public building, structure, park or parking facility where the cost of the improvement exceeds fifty percent of the value of the building, structure, park or parking facility before the reconstruction, replacement, repair or improvement.

Public art proceeds are calculated yearly by the Department of Finance by identifying qualifying construction projects as listed in the Capital Spending Plan, (if a plan is adopted) and taking one percent of each budgeted project total. Each individual project total is compiled into a yearly total that is to be set aside for public art.

When bonds are issued for the qualifying construction projects in an amount equal to or larger than the yearly total calculated for public art, the funds are then made available to the Metro Nashville Arts Commission for public art.

As of December 31, 2009, a total of \$3.18 million has been made available to the Metro Nashville Arts Commission and an additional amount of approximately

\$3.16 million will be made available pending upcoming bond sales. Public art funds are accounted for under fund number 40130, business unit 41401100.

Exhibit A – One Percent for the Arts Contributions by Fiscal Year

Capital Plan	Percent for the Arts	Total Made Available
FY 2001	\$ 473,991	\$ 473,991
FY 2002	413,319	887,310
FY 2003	1,164,191	2,051,501
FY 2005	487,367	2,538,868
FY 2006	643,311	\$ 3,182,179
FY 2007	1,253,687	Pending Bond Sale
FY 2008	647,050	Pending Bond Sale
FY 2010	1,267,300	Pending Bond Sale
Total thru 2010	\$ 6,350,216	Pending Bond Sale

*Note: A Capital Spending Plan was not adopted for fiscal years 2004 and 2009.
Source: Metro Department of Finance*

PARTIES RESPONSIBLE OVER PUBLIC ART PROGRAM

Public Art Committee

The Metro Nashville Arts Commission establishes the Public Art Committee as a stranding committee to oversee the public art program. With the Arts Commission approval, the Public Art Committee directs the selection, placement, maintenance, relocation, and deaccessioning of artwork acquired through the public art program.

Responsibilities of the Public Art Committee include:

- Reviewing project briefings organized by Metro Nashville Arts Commission staff.
- Initiate public forums where appropriate for determining thematic approaches and location options for public art.
- Determine recruitment strategy to establish a pool of artists for each project.
- Approve selection panel members recommend by Metro Nashville Arts Commission staff.
- Compile a list of potential sites for public art projects.

Selection Panels

The Public Art Committee will recommend for Metro Nashville Arts Commission approval a selection panel proposed by Arts Commission staff for each project. With Public Art Committee direction, each selection panel recommends artists or artwork for specific public art projects based on public art program goals and selection criteria.

Responsibilities of selection panels include:

- Review project summary by Arts Commission staff.
- Review artist submissions for the project according to Public Art Guidelines for artist selection.
- Chose semi-finalists which Arts Commission staff presents for Public Art Committee approval.
- Name finalist(s) and review Arts Commission staff prepared report to the Public Art Committee documenting the selection.

Arts Commission Staff

As previously stated, the Arts Commission staff consists of six employees, two of which are dedicated to the public art program.

Responsibilities of the Arts Commission staff include:

- Managing the public art program and facilitate communication between the Metro Nashville Arts Commission, Public Art Committee and selection panels.
- Identify public art project opportunities.
- Initiate and coordinate each public art project so that its process is comparable with and related project timelines.
- Present project briefing to the Public Art Committee.
- Administer the artists' recruitment and selection process.
- Compile a pool of potential selection panelists and recommend a selection panel for each project.
- Provide public art program overview and project summary to selection panel.
- Facilitate selection panel meetings.
- Present semifinalists identified by the selection panel to the Public Art Committee for approval.
- Provide report supporting finalist selection that the Public Art Committee presents to the Metro Nashville Arts Commission for approval.
- Coordinate publicity with department having oversight responsibility for artwork.
- Administer the public art fund.
- Direct the public relations and general education of the public art program.

PUBLIC ART PROGRAM TIMELINE OF EVENTS

Exhibit B – Public Art Program Timeline of Events between 2000 and 2009

2000				2009			
2000-2003			2003-2009				
Public Art Ordinance Signed	Public Art Program Design	Public Art Project Locations Decided	East Bank Greenway Project	* Public Square Courtyard and Dispersed Art Projects	* Bike Rack Projects		
			\$591,665	\$155,801			

*Denotes project is still in progress.

Source: Compiled by Office of Internal Audit from Metro Nashville Arts Commission Meeting Minutes and Records

OBJECTIVES AND CONCLUSIONS

1. *Are proper procedures in place to ensure all public art program expenditures are allowable as outlined in the public art guidelines?*

Yes. Our office analyzed and tested all public art expenditures since the inception of the program. Our review consisted of each line item being vouched to the transaction details to ascertain whether the expenditure had the appropriate supporting documentation, was approved properly, and was allowable under public art guidelines.

Public art guidelines specify that bonds funds may not be spent for:

- Public relations and general education;
- Review and management of public art collection;
- Dedications and publicity; and
- Special public art projects recommended by the Public Art Committee for Arts Commission approval.

Our office reviewed \$747,466, which represents all public art expenses as of December 31, 2009. Exhibit C on the next page illustrates a breakdown of public art expenditures by fiscal year.

Exhibit C – Public Art Expenses by Fiscal Year

Fiscal Year	Public Art Expenses
2005	\$ 11,125
2006	83,649
2007	231,978
2008	218,878
2009	176,835
2010	25,000
Total	\$ 747,466

Source: Compiled by Office of Internal Audit from Metro Nashville EnterpriseOne Financial Management Cost Reports

Expenditures tested totaling \$747,466 had the appropriate support, approval and were allowable in accordance with public art guidelines.

2. *Are proper procedures in place for the selection of artists?*

Yes. Procedures are in place as outlined in the public art guidelines, to ensure the selection of artists is conducted in a consistent manner. Current practice is to work with the Metro Purchasing Division and issue a “Request for Qualifications” which is an open competitive call to artists for a specific project. Artists can then respond to the request by submitting evidence of their past work.

A selection panel is then compiled by a recommendation from the Public Art Committee. The selection panel is responsible for reviewing artist submissions and naming a finalist.

Our office reviewed the evaluation cards submitted by each selection panelist regarding the first two public art projects, the East Bank Greenway project and the Public Square Courtyard and Dispersed Arts project and determined that the procedures regarding artist selection were properly followed and documented.

Additionally, our office also determined that Metro Nashville Purchasing Division staff also assisted the selection panels during their evaluation process so if any questions or concerns came up during the process, they could be answered properly without impairing the selection process.

3. *Are bond proceeds used to fund the public art program properly calculated and set aside to fund public art as outlined in ordinance BL2000-250?*

Yes. Our office evaluated the process used by the Department of Finance to identify and calculate public art proceeds.

Our office reviewed the Capital Spending Plans for fiscal years 2001 through 2003, 2005, and 2006 and determined that qualifying construction projects were properly identified as allowable for public art and that the projects were properly calculated at one percent of the total project budget total.

Note: There was not a Capital Spending Plan adopted for fiscal year 2004.

4. *Are contracts properly bid as required by the Metro Procurement Code?*

Yes. Our office reviewed nine contracts utilized by the Arts Commission between the calendar years 2003 and 2009 to determine if the contracts were properly secured in accordance with Metro Nashville's Procurement Code.

Of the nine contracts reviewed, six were secured for the purposes of the first public art project *East Bank Greenway*, two were secured for the second public art project(s) at the public square and one was secured for public relations purposes. Of the nine contracts, all were properly bid out to the public and secured in accordance with the Metro Nashville procurement code.

However, one contract initiated in 2004 for the purchase of public relations services paid for through the Art Commission's operating budget appropriated from the general fund, expired as of December 31, 2008, Arts Commission staff continued to pay for services rendered until July 2009. (See observation A).

OBSERVATIONS AND RECOMMENDATIONS

A - Services Rendered Beyond Contract Expiration

The Metro Nashville Arts Commission continued to pay for public relations services rendered without a contract during the period January 1, 2009 through July 31, 2009 for a total amount of \$24,786 before realizing the contract had expired. The public relations services were paid for through the Art Commission's operating budget appropriated from the general fund. This contract started in June 2004 with a final expiration date of December 31, 2008.

Upon the realization that the contract had expired, Metro Nashville Arts Commission staff followed proper procurement procedures and had a purchase order issued for their public relations services for the upcoming period August 2009 through December 2009.

As of the close of fieldwork, the Metro Nashville Arts Commission has properly secured a new contract for public relations services pending finalization.

Criteria:

Prudent business practice in securing goods and services.

Risk:

Not having a contract can result in both parties leaving themselves open to several risks. Such risks can include duties and responsibilities not defined, payment not agreed upon, no established time frame for the duties expected and finally no recourse defined if one of the parties falters.

Recommendation:

Metro Nashville Arts Commission management should ensure future contracts are monitored. Proper monitoring should include timely identification of contract expiration dates so that staff will have enough time to allow for new contract proposal drafting and the open competitive bidding process if needed.

GENERAL AUDIT INFORMATION

STATEMENT OF COMPLIANCE WITH GAGAS

We conducted this performance audit from December 2009 to February 2010 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 observations, and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our observations and conclusions based on our audit objectives. Our audit included tests of management controls that we considered necessary under the circumstances.

SCOPE AND METHODOLOGY

The audit period focused primarily on the period July 1, 2000 through December 31, 2009 financial balances, transactions, and performance on the processes in place during the time of the audit.

The methodology employed throughout this audit was one of objectively reviewing various forms of documentation, including written policies and procedures, financial information and various forms of data, reports, and information maintained by Metro Nashville Arts Commission. Management, administrative and operational personnel, as well as personnel from other Metro departments and other stakeholders were interviewed.

CRITERIA

In conducting this audit, the existing processes and controls in place pertaining to the public art program were evaluated for compliance with:

- Metropolitan Code, Title IV Procurement Code
- Ordinance No. BL2000-250, Public Art Ordinance
- Public Art Guidelines, adopted July 19, 2001
- COSO Internal Control, Integrated Framework

STAFF ACKNOWLEDGEMENT

Mark Swann, CPA - Texas, CISA, CIA – Metropolitan Auditor
Jane Terry, CFE - In Charge Auditor

APPENDIX A. MANAGEMENT RESPONSE

-Management's Responses Starts on Next Page -



Jennifer Cole, Executive Director

Metropolitan Nashville Arts Commission

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February 19, 2010

Mr. Mark Swann
Metropolitan Auditor
Office of Internal Audit
222 3rd Ave. North, Suite 401
Nashville, TN 37201

RE: Audit of Metro Percent for Public Art Fund

Dear Mr. Swann:

This letter acknowledges that the Metro Nashville Arts Commission received the report entitled: Audit of Metro Arts Commission-- Public Art Program. The Metro Arts Commission is dedicated to broad public participation in and appreciation of arts and culture. The Public Art program is one of our most visible vehicles for engagement with the arts and we are pleased that this report shows no concerns about the overall program and fiscal management. We acknowledge the finding relative to contract renewals and expirations and have put in place quarterly reviews of all open contracts to address this going forward. We agree with the review and its findings. Thank you for your assistance in helping the Metro Nashville Arts Commission practice excellence in all it does.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Gilligan Cole".

Jennifer Gilligan Cole
Executive Director

www.artsnashville.org
email: arts@nashville.gov

**Audit of Metro Arts Commission Public Art Program
Management Response to Audit Recommendations**

Audit Recommendation	Response to Recommendation / Action Plan	Assigned Responsibility	Estimated Completion
<p>A. Metro Nashville Arts Commission management should ensure future contracts are monitored. Proper monitoring should include timely identification of contract expiration dates so that staff will have enough time to allow for new contract proposal drafting and the open competitive bidding process if needed.</p>	<p>Agree—quarterly review of all contracts.</p>	<p>Jennifer Cole</p>	<p>Ongoing</p>