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Date: August 29, 2012  
To: Audit, Finance & Enterprise Committee  
From: Jennifer Ruttman, City Auditor  
Subject: Audit of RICO Funds  
cc: John Pombier, Deputy City Manager

Attached is the final report on our audit of the Mesa Police Department's RICO funds. This report will be presented at the next scheduled meeting of the Audit, Finance and Enterprise Committee. If you have any questions, please feel free to contact me at x3767.

## AUDIT REPORT

CITY AUDITOR

<b>Report Date:</b>	<b>July 19, 2012</b>
<b>Department:</b>	<b>Mesa Police Department (MPD)</b>
<b>Subject:</b>	<b>Audit of the Use of RICO Funds</b>
<b>Lead Auditor:</b>	<b>Tami Steadman, Sr. Internal Auditor</b>

### **OBJECTIVES**

The purpose of this audit was to verify compliance with statutory and other requirements relating to the Racketeer Influenced and Corrupt Organizations Act (RICO Act), and to determine whether adequate controls are in place to help ensure future compliance.

### **SCOPE & METHODOLOGY**

To accomplish our objectives, we reviewed RICO related policies, procedures and financial activity for fiscal years 2010/2011 and 2011/2012. This included interviews with various staff members as well as reviews of documents on file in the MPD Fiscal and Asset Forfeiture Units, deposit slips, invoices, City and County balance reports, and County, State and Federal comprehensive activity reports.

### **BACKGROUND**

The RICO Act was designed to “take the profit out of crime” by empowering law enforcement agencies to seize assets that were used in (or resulted from) criminal racketeering enterprises, and to use those assets for law enforcement activities. When MPD participates in a task force that results in Federal or State prosecution and seizing of assets, they often receive a share of those assets proportionate to their level of involvement in the case. They also obtain RICO funds when eligible assets are seized in an MPD case. When assets are seized in an MPD investigation, they are processed by the Asset Forfeiture Unit and awarded to MPD by the courts.

Various State and Federal laws govern how RICO funds must be managed, and how they may be used. Arizona Revised Statutes (ARS) require that all RICO monies be deposited into the Maricopa County Attorney's Anti-racketeering Revolving Fund and maintained for each local agency in separate Federal and State accounts. The County Attorney (or the Attorney General, if applicable) retains 20% of these funds for their role in prosecuting the cases, obtaining the Orders of Forfeiture, and administering the funds. The funds accrue interest and are held on Mesa's behalf until they are expended for allowable purposes.

To help agencies comply with applicable Federal laws, detailed guidelines are provided in the US Department of Justice Guide to Equitable Sharing for State and Local Law Enforcement Agencies (the Guide). The Guide explains the various permissible and impermissible uses of

RICO funds; and also explains the many requirements related to accounting and reporting, including maintenance of separate accounts; allocation and tracking of interest; establishment of internal procedures for revenue management and expenditure authorization; recordkeeping; and specific reporting formats and frequencies.

One of the general rules listed in The Guide states: *“Shared monies should not be retained unnecessarily—Shared monies normally should be expended for their designated use or other permissible law enforcement purpose as they are received. Shared monies may be retained in a holding account for up to three years to satisfy future needs or retained longer for major long-term expenditures such as capital improvements.”* While this is not a definitive statutory requirement, it is the practice that is recommended by the US Department of Justice.

## **OBSERVATIONS**

### **Exemplary Performance of Staff Managing RICO Funds**

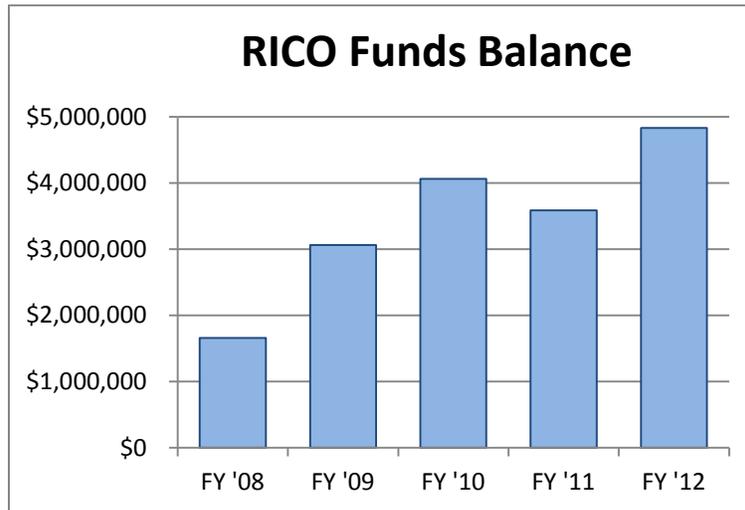
During the audit, we noted that the employees of the Fiscal and Asset Forfeiture Units demonstrated an extraordinary level of commitment to excellence and cooperation, as evidenced by accurate, thorough and timely reporting; meticulous record-keeping; and well documented successful forfeiture efforts. Since RICO funds are held by another agency, rather than controlled exclusively by Mesa, accurate tracking of all funds awarded, received and expended requires continuous diligence on the part of the Police Economic Crimes Investigator (PECI) in MPD's Fiscal Unit. In addition, when the assets are seized in a Mesa case, the PECI and various members of the Asset Forfeiture Unit work very effectively together. The level of effort, attention to detail, organization and cooperation we witnessed between and within these two units was exemplary.

Furthermore, although MPD is required to file quarterly reports with the County Attorney's Office listing all sources and expenditures of RICO funds; the PECI has developed and implemented an additional control in which she performs a detailed reconciliation of these reports to the County's records. This reconciliation ensures that no errors or fraudulent disbursements can occur without detection. In fact, while other Arizona agencies' RICO funds have experienced instances of errors, abuse, and even fraud in recent years, MPD's thorough reconciliations and other internal controls have been directly responsible for preventing any such losses of MPD's funds.

### **Growing Balance of RICO Funds on Hand**

MPD generally maintains a conservative philosophy with regard to how RICO funds are expended. This philosophy has served the Department well, by providing funds for necessary but unbudgeted equipment while avoiding extravagant or wasteful spending. However, the annual year-end balance of RICO funds held by MPD has almost tripled since 2008, growing from \$1.66 Million to \$4.83 Million. Although not strictly prohibited, maintaining a steadily

increasing balance of RICO funds for an extended time period is inconsistent with the Federal guidelines. In addition, the purpose of these funds, which is to benefit law enforcement efforts, cannot be realized if they remain unspent. The graph below shows the year-end balance of MPD's RICO funds for the last 5 fiscal years:



We discussed this with MPD management and recommended that they explore additional opportunities for the appropriate use of these funds. The Department agreed, and has recently revised their strategy for managing RICO funds to ensure future outflows keep closer pace with inflows. In addition, as of this writing, there are several appropriate expenditures in process which, when completed, will bring the fund balance down considerably.

### **CONCLUSION**

In our opinion, the Mesa Police Department has done an excellent job of designing and following strong internal procedures, which include well developed controls to effectively safeguard RICO assets. We found that all controls necessary to mitigate the risks associated with RICO funds are in place, including written policies and procedures; segregation of duties; reconciliations; regular monitoring; layers of review and approval; management oversight; third party reconciliations; and timely reporting to regulatory agencies.

In addition, MPD complies with all statutory requirements applicable to RICO funds, including but not limited to the following:

- RICO funds are used only for permissible expenditures.
- RICO funds are deposited into the appropriate accounts at the Maricopa County Attorney's office, and interest is regularly credited to each account.
- Quarterly reports are submitted to Maricopa County.
- Annual certification reports are filed with the US Department of Justice.
- All required records and activity logs are maintained.
- Internal policies and procedures are documented and followed.



MESA POLICE DEPARTMENT  
INTEROFFICE MEMO



To: Jennifer Ruttman (City Auditor)  
From: Chief Frank Milstead *Fm*  
Date: July 26, 2012  
Subject: Audit of the Use of RICO Funds

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On July 19, 2012 we received the draft report on the audit of the use of RICO funds. We agree with the comments in the report and appreciate your work during the audit. We are working on using a large amount of the funds this fiscal year due to several projects that are currently being worked through City Engineering. If you need anything else please let me know.