



Office of the Inspector General
U.S. Department of Justice



Audit of the City of San Jose Police Department's Equitable Sharing Program Activities San Jose, California

AUDIT OF THE CITY OF SAN JOSE POLICE DEPARTMENT'S EQUITABLE SHARING PROGRAM ACTIVITIES SAN JOSE, CALIFORNIA

EXECUTIVE SUMMARY

The U.S. Department of Justice (DOJ) Office of the Inspector General completed an audit on the use of DOJ equitable sharing revenue by the City of San Jose Police Department (SJPD), San Jose, California. DOJ equitable sharing revenue represent a share of the proceeds from the forfeiture of assets seized in the course of certain criminal investigations. During the period of July 1, 2012, through June 30, 2015, the SJPD received a total of \$569,461 in DOJ equitable sharing revenue to support law enforcement operations. During the same period, the SJPD expended \$281,039 in DOJ equitable sharing funds.

Based on our audit work, we determined that the SJPD did not have sufficient internal controls and lacked formal policies and procedures to properly account for and manage the use of DOJ equitable sharing funds. Specifically, the SJPD did not establish a separate revenue account or accounting code as required by the Criminal Division's Money Laundering and Asset Recovery Section (MLARS), which resulted in a failure to separately account for DOJ equitable sharing-related transactions. Further, the SJPD had improperly invested DOJ equitable sharing revenue received in stocks, bonds, and marketable securities, which was not allowed according to DOJ equitable sharing guidelines. We also determined that there were several issues regarding SJPD's oversight of its equitable sharing revenue. Specifically, SJPD recorded \$31,176 of non-DOJ funding in its DOJ equitable sharing revenue account, recorded \$83,872 of DOJ equitable sharing funds into the wrong fund accounts, and failed to post DOJ equitable sharing revenue in the correct fund in a timely manner – the most extreme example being posted almost 2 years after the SJPD had received the funds from the DOJ.

In addition, the SJPD submitted inaccurate Equitable Sharing Annual Certification reports to MLARS that we were unable to reconcile to the SJPD's accounting records. We also determined that \$33,390 was spent for window coverings that were procured through a less than arm's length transaction, had at a minimum the appearance of a conflict of interest, did not follow the City of San Jose's procurement policy, and were not supported with adequate documentation. We additionally found that the SJPD expended \$30,000 in funds for gift cards for two gun buy-back programs but did not fully comply with MLARS's policies or its own gun buy-back program policies and procedures. Moreover, the SJPD failed to report equitable sharing expenditures on its fiscal years (FY) 2014 and 2015 Single Audit Reports. Lastly, we identified \$1,247,207 in DOJ equitable sharing funds that should be put to better use based on the SJPD's reluctance to expend DOJ equitable sharing funds over a 10-year period when those funds should have been expended according to the intent of the DOJ Equitable Sharing Program. We found that the SJPD was not in compliance with an MLARS requirement that prohibited agencies from retaining equitable sharing funds unnecessarily, and that allowed funds to be

retained in a holding account for up to 3 years. SJPD officials explained that the monies were being saved to purchase a helicopter. However, we found that in FY 2011 the SJPD had enough equitable sharing funds saved to purchase a helicopter, but the purchase was never made. Similarly, in FY 2013, the SJPD proposed making a \$2 million payment with equitable sharing funds to purchase the helicopter; however, it was never purchased.

Our report contains 13 recommendations to the Criminal Division, which are detailed in this report. The audit objective, scope, and methodology are discussed in Appendix 1 and our Schedule of Dollar-Related Findings appears in Appendix 2. In addition, we requested written responses to our draft report from the SJPD and MLARS. We received those responses and they are found in Appendices 3 and 4, respectively. Our analysis of those responses and the summary of actions necessary to close the report are found in Appendix 5.

**AUDIT OF THE CITY OF SAN JOSE POLICE DEPARTMENT'S
EQUITABLE SHARING PROGRAM ACTIVITIES
SAN JOSE, CALIFORNIA**

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The U.S. Department of Justice (DOJ) Office of the Inspector General (OIG) completed an audit on the use of DOJ equitable sharing revenues by the City of San Jose Police Department (SJPD), San Jose, California. Equitable sharing revenues represent a share of the proceeds from the forfeiture of assets seized in the course of certain criminal investigations. During the period of July 1, 2012, through June 30, 2015, the SJPD received a total of \$569,461 in DOJ equitable sharing revenue to support law enforcement operations.¹ During the same period, the SJPD expended \$281,039 in DOJ equitable sharing funds.

DOJ Equitable Sharing Program

The Comprehensive Crime Control Act of 1984 authorized the implementation of the DOJ Asset Forfeiture Program (Asset Forfeiture Program). The Asset Forfeiture Program is a nationwide law enforcement initiative that removes the tools of crime from criminal organizations, deprives wrongdoers of the proceeds of their crimes, recovers property that may be used to compensate victims, and deters crime. A key element of the Asset Forfeiture Program is the Equitable Sharing Program.² The DOJ Equitable Sharing Program allows any state or local law enforcement agency that directly participated in an investigation or prosecution resulting in a federal forfeiture to claim a portion of federally forfeited cash, property, and proceeds.

Although several DOJ agencies are involved in various aspects of the seizure, forfeiture, and disposition of equitable sharing revenues, three DOJ components work together to administer the Equitable Sharing Program – the United States Marshals Service (USMS), the Justice Management Division, and the Criminal Division's Money Laundering and Asset Recovery Section (MLARS). The USMS is responsible for transferring asset forfeiture funds from the DOJ to the receiving state or local agency. The Justice Management Division manages the DOJ Consolidated Asset Tracking System, a database used to track federally seized assets throughout the forfeiture life-cycle. Finally, MLARS tracks membership of state and local participants, updates the Equitable Sharing Program rules and policies, and monitors the allocation and use of equitably shared funds.

State and local law enforcement agencies may receive equitable sharing funds by participating directly with DOJ agencies on investigations that lead to the seizure and forfeiture of property, or by seizing property and requesting one of the

¹ The SJPD's fiscal year (FY) begins on July 1 and ends on June 30.

² The U.S. Department of the Treasury also administers a federal asset forfeiture program. This audit was limited to equitable sharing revenues received through the DOJ Equitable Sharing Program.

DOJ agencies to adopt the seizure and proceed with federal forfeiture.³ Once an investigation is completed and the seized assets are forfeited, the assisting state and local law enforcement agencies can request a share of the forfeited assets or a percentage of the proceeds derived from the sale of forfeited assets. Generally, the degree of a state or local agency's direct participation in an investigation determines the amount or percentage of funds shared with that agency.

To request a share of seized assets, a state or local law enforcement agency must first become a member of the DOJ Equitable Sharing Program. Agencies become members of the program by signing and submitting an annual Equitable Sharing Agreement and Certification (ESAC) report to MLARS. As part of each annual agreement, officials of participating agencies certify that they will use equitable sharing funds for allowable law enforcement purposes.

In April 2009, MLARS issued the Guide to Equitable Sharing for State and Local Law Enforcement Agencies (Guide). The Guide identifies the accounting procedures and requirements for tracking equitably shared monies and tangible property, establishes reporting and audit requirements, and defines permitted uses of equitably shared resources. In addition, in July 2014, MLARS issued the Interim Policy Guidance Regarding the Use of Equitable Sharing Funds (Interim Policy Guidance), which outlines categories of allowable and unallowable uses for equitable sharing funds and property.

City of San Jose Police Department

The city of San Jose, California is located approximately 55 miles southeast of San Francisco, California. According to the July 2015 census, San Jose had a population of 1,026,908 people. As of June 17, 2016, the SJPD had 1,379 authorized staff, of which 927 were sworn police officers. According to the SJPD, during calendar year 2015 there were a total of 33,341 reported crimes with the most commonly reported crimes being larceny, motor vehicle theft, assault, and burglary. The SJPD became a member of the DOJ Equitable Sharing Program in 1999.

OIG Audit Approach

Our audit examined, but was not limited to, the SJPD's equitable sharing activities occurring between July 1, 2012, and June 30, 2015. We tested compliance with what we considered the most important conditions of the DOJ Equitable Sharing Program. Unless otherwise stated, we applied the Guide and the Interim Policy Guidance as our primary criteria.

³ The adoption of property seized by state or local law enforcement under state law is only allowable if the property directly relates to public safety concerns, including firearms, ammunition, explosives, and property associated with child pornography. Property that does not fall under these four specific categories may not be adopted without the approval of the Assistant Attorney General for the Criminal Division.

To conduct the audit, we tested the SJPD's compliance with the following aspects of the DOJ Equitable Sharing Program:

- **Compliance with audit requirements** to ensure the accuracy, consistency, and uniformity of audited equitable sharing data.
- **Accounting for equitable sharing resources** to determine whether standard accounting procedures were used to track equitable sharing assets.
- **Use of equitably shared funds** to determine if equitable sharing funds were spent for permissible uses.
- **Monitoring of applications for transfer of federally forfeited property** to ensure adequate controls were established.
- **Equitable Sharing Agreement and Annual Certification Reports** to determine if these documents were complete, accurate, and submitted in a timely manner.

The audit objective, scope, and methodology are discussed in Appendix 1 and our Schedule of Dollar-Related Findings appears in Appendix 2. We discussed the results of our audit with SJPD officials and have included their comments in the report, as applicable. In addition, we requested written responses from the SJPD and MLARS. We received those responses and they are found in Appendices 3 and 4, respectively. Our analysis of those responses and the summary of actions necessary to close the report are found in Appendix 5.

Compliance with Audit Requirements

The Guide requires that state and local law enforcement agencies that receive equitable sharing cash, proceeds, or tangible property comply with the Single Audit Act and the Office of Management and Budget Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (OMB Circular A-133). The Single Audit Act requires that recipients of federal funding above a certain threshold receive an annual audit of its financial statements and federal expenditures. Under OMB Circular A-133, such entities that expend \$500,000 or more in federal funds within the entity's fiscal year must have a single audit performed annually covering all federal funds expended for that year.⁴ The Single Audit Report is required to include a Schedule of Expenditures of Federal Awards for the period covered by the auditee's financial statements. In addition, an entity must submit its Single Audit Report no later than 9 months after the end of the fiscal year covered by the audit.

⁴ Effective December 2014, OMB Circular A-133 was superseded by 2 C.F.R. 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). The new guidance, which affects all audits of fiscal years beginning on or after December 26, 2014, raised the audit threshold from \$500,000 to \$750,000. The Single Audit Report activities included here were conducted under OMB Circular A-133.

According to information provided by the SJPD, it expended more than \$500,000 in federal funds and met the Single Audit reporting threshold for FYs 2013, 2014, and 2015. We determined that for FY 2013 the SJPD reported equitable sharing expenditures on its FY 2013 Single Audit Report. To determine if the City of San Jose accurately reported SJPD's FY 2013 equitable sharing fund expenditures on its Single Audit Report's Schedule of Expenditures of Federal Awards (SEFA), we compared the schedule to the SJPD's accounting records and ESAC report. We found that for FY 2013 the total amount of equitable sharing expenditures reflected on its SEFA (\$17,050) was consistent with the total expenditures reported in the SJPD's equitable sharing fund and the FY 2013 ESAC report. For FYs 2014 and 2015, we determined that the City of San Jose did not report equitable sharing expenditures on its SEFA, as required by the Guide. SJPD officials overseeing the equitable sharing fund explained that they were unaware of the requirement to report equitable sharing funds expended on the SEFA. Therefore, we recommend that the Criminal Division ensure that the SJPD properly reports equitable sharing funds expended on its Single Audit Report's SEFA for the period covered by the auditee's financial statements.

In September 2011, MLARS conducted a review of the SJPD's compliance with DOJ Equitable Sharing Program requirements as set forth in the Guide. MLARS found that for FYs 2009 and 2010 the SJPD did not report equitable sharing program expenditures on its SEFA, as required by the Guide. The finding is similar to ours in that the SJPD did not report equitable sharing program expenditures on its FY 2014 and FY 2015 SEFA as previously discussed.

In addition, in its September 2011 review, MLARS determined that the SJPD was not posting in a timely manner to its general ledger equitable sharing funds that it received and in some instances deposits were not posted to the general ledger until the following fiscal year. Based on our audit, we likewise identified DOJ equitable sharing funds that were not posted in a timely manner to the SJPD's equitable sharing fund, which we discuss in more detail in the Inadequate Internal Controls over Funds section of this report. In the September 2011 review, MLARS recommended that the SJPD report DOJ equitable sharing program expenditures on its Single Audit Report and perform monthly reconciliations of equitable sharing revenue posted to its general ledger to the amounts disbursed by the DOJ. We asked MLARS if the SJPD had taken corrective action for these findings as we found similar issues during our audit. A MLARS official stated that it had no record of the SJPD providing evidence of the SJPD implementing corrective action on either of the two findings. A SJPD official acknowledged that the SJPD has not yet taken corrective action on either of the two findings from MLARS's 2011 review.

Accounting for Equitably Shared Resources

According to guidance issued by MLARS, participating agencies must implement a number of bookkeeping procedures and internal controls to track DOJ equitable sharing monies and tangible property. The Guide requires agencies to establish a unique fund code to separately track DOJ equitable sharing funds, including all revenue and expenditures. Despite this guidance, we found that the

SJPD did not fully comply with these requirements, as discussed in the following sections.

Inadequate Internal Controls over Funds

As part of our audit, we reviewed the SJPD's internal controls related to its administration and management of DOJ equitable sharing funds. What we found were significant internal control weaknesses. For example, we identified 13 DOJ equitable sharing deposits totaling \$157,410 that were not posted in the SJPD's equitable sharing fund in a timely manner. The most egregious example included a \$2,030 deposit that the SJPD failed to post in its equitable sharing fund until almost 2 years after it had received those funds. For the remaining 12 equitable sharing receipts, the SJPD posted the receipts in its equitable sharing fund anywhere from 12 days to almost 11 months after it had received those funds. A SJPD official stated that no one within the fiscal unit at the SJPD was truly overseeing the fund and that monthly reconciliation of the equitable sharing fund was not occurring. The SJPD has since drafted a policy for the administration of DOJ equitable sharing funds to strengthen internal controls over its equitable sharing fund, including the timely posting of funds received. Prior to the start of our audit, the SJPD did not have any formal, written policies and procedures related to how it should administer and manage DOJ equitable sharing funds. Therefore, we recommend that the Criminal Division ensure that the SJPD implements its draft policy for administering and overseeing DOJ equitable sharing funds, to include monthly reconciliation of those funds received to the SJPD's accounting system.

Commingling within the Equitable Sharing Account

According to the Guide, agencies receiving equitable sharing funds are required to establish a separate revenue account or accounting code to separately track DOJ equitable sharing funds. Further, the Guide prohibits the inclusion of other funds within this fund code. Although the SJPD utilized a unique account number for DOJ equitable sharing revenues, we found that it failed to establish a unique fund code that would allow for separate accounting of both revenue and expenditures related to DOJ equitable sharing funds. Instead, the SJPD commingled DOJ and Treasury equitable sharing funds within the same fund code.⁵ The SJPD also commingled investment income earned on both DOJ and Treasury equitable sharing funds that had been invested together from the general fund account for the City of San Jose. The DOJ equitable sharing distributions that are deposited into the general fund account are not transferred to other accounts but instead are invested through a general fund bank account earning income, which was then reallocated in the form of interest to the commingled equitable sharing fund. We discuss the issue of the SJPD earning income on equitable sharing funds that were invested, which is not allowed, in the Investment Income section of this report. We recommend that the Criminal Division ensure that the SJPD establishes

⁵ Participating agencies in the Treasury Asset Forfeiture Program include the Internal Revenue Service, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, U.S. Secret Service, and U.S. Coast Guard.

a separate account or unique fund code to separately track DOJ equitable sharing funds, including all revenue and expenditures, as required by the Guide.

Misapplied Revenue

Between FYs 2013 and 2015, the SJPD received DOJ equitable sharing funds totaling \$569,461 (118 deposits) to support law enforcement operations. We selected all 118 deposits and attempted to verify whether the DOJ equitable sharing receipts were accurately and properly posted to the SJPD's accounting records. As a result, we identified \$83,872 in DOJ equitable sharing distributions (revenue), from 12 deposits that had been incorrectly recorded into other accounts.⁶

We asked SJPD officials why the equitable sharing distributions had been incorrectly recorded in the accounting records. A SJPD official stated that when the City's Finance Department sends out the weekly wire report notifying city departments that money has come in, it is the responsibility of each department to properly claim and record its own funds in the accounting system. Therefore, if another department incorrectly claims and records DOJ equitable sharing funds, those funds are no longer available for the SJPD to claim and record in its account and it is not until the error is identified and corrected that the funds are released. A SJPD official further stated that if MLARS's facsimile notification of the incoming funds or the expected amount of funding does not match the amount listed on the SJPD's weekly wire report, then the funds may not be identified and recorded correctly into the accounting system. As part of our examination into these matters, we also found 7 non-DOJ equitable sharing receipts totaling \$31,176 that were incorrectly recorded in the SJPD's equitable sharing fund.⁷ Based on the \$115,048 in misapplied funds that we identified from our testing, we believe that the SJPD needs to strengthen its internal controls, including its procedures to ensure revenue is properly and accurately accounted for and recorded. Therefore, we recommend that the Criminal Division ensure that the SJPD establishes and strengthens its internal controls, including procedures that will result in DOJ equitable sharing revenue that is properly, completely, and accurately recorded in the SJPD's accounting records. The Criminal Division should also ensure that the SJPD makes adjusting journal entries to properly account for all DOJ equitable sharing distributions and to correct all misapplied funds in its DOJ equitable sharing fund.

⁶ Of the \$83,872 in DOJ equitable sharing funds that we found incorrectly recorded in the SJPD's accounting system, \$32,595 was improperly recorded in the wrong revenue account within the equitable sharing fund. The remaining \$51,277 was recorded in the City of San Jose's general fund (\$31,850) and in the SJPD's general fund (\$19,427).

⁷ The \$31,176 in erroneous revenue included: \$25,487 from the California State equitable sharing program, \$4,031 from the DOJ Organized Crime Drug Enforcement Task Force, and \$1,658 for which the SJPD was unable to identify the funding source.

Investment Income

The SJPD received DOJ equitable sharing distributions via electronic fund transfers from the USMS's E-Share program, and funds were directly deposited into a City of San Jose bank account. This bank account is a general fund account for the City of San Jose whose balance is invested in stocks, bonds, and money market accounts. The DOJ equitable sharing distributions that are deposited into this account are not transferred to other accounts but instead remain in the general fund bank account earning income, which was allocated in the form of interest to the equitable sharing fund. According to a MLARS Equitable Sharing Wire, equitable sharing funds are to be maintained in an interest or non-interest bearing federally insured depository account. Other investment accounts that have a market risk including money market or uninsured accounts are unacceptable depositories for equitably shared funds. A SJPD official explained that they were unaware of MLARS's requirement pertaining to the investment of equitable sharing funds and that the City of San Jose was responsible for the management of the bank account and investment of DOJ equitable sharing funds. A City of San Jose official explained that even if the invested equitable sharing funds lose value, the SJPD does not record those losses in the DOJ equitable sharing fund. We recommend that the Criminal Division ensure that the SJPD maintains its equitable sharing funds in an interest or non-interest bearing federally insured depository account in accordance with MLARS's requirements.

Interest Earned

According to the Guide, interest income earned on equitable sharing funds must be deposited into the same revenue account and be solely used in compliance with the terms and conditions of the Guide. Participants are also required to report the amount of interest income earned annually on the ESAC report. We tested compliance with the Guide by comparing the interest earned amount recorded on the FYs 2013, 2014, and 2015 ESAC reports with the interest recorded in the SJPD's DOJ equitable sharing revenue account.

We determined that the SJPD commingled interest earned from DOJ equitable sharing funds and Treasury's equitable sharing funds. Specifically, the City of San Jose's Finance Department calculated interest earned on a monthly basis by totaling all interest earned in the city-wide revenue account and then it allocated the interest earned to each fund based on the fund's average monthly cash balance. The SJPD utilized one fund code for both DOJ and Treasury funds, so the monthly interest recorded to the fund was for both the DOJ and Treasury. A SJPD official stated she manually calculated and tracked monthly interest earned for each equitable sharing program in order to accurately report each amount separately on the ESAC reports. Using the SJPD's methodology for calculating interest earned, we determined that the SJPD had inaccurately calculated interest earned for FY 2013. As shown in Table 1, the SJPD had accurately calculated and reported interest earned for FYs 2014 and 2015. A SJPD official stated that the FY 2013 ESAC report's interest was calculated incorrectly because a different methodology for calculating the interest had accidentally been used and that the

SJPD has not yet corrected the ESAC report. Therefore, we recommend that the SJPD correct and resubmit to MLARS its FY 2013 ESAC report. We also discuss the accuracy of the ESAC reports in further detail in the Timeliness and Accuracy of ESACs section of this report.

Table 1
DOJ Interest Income Earned

Fiscal Year	ESAC Report^a	OIG Calculation	Difference
2013	\$4,387	\$5,514	\$(1,127)
2014	\$11,525	\$11,525	\$0
2015	\$10,944	\$10,944	\$0
Total	\$26,856	\$27,983	\$(1,127)

Note: ^a Differences due to rounding.

Source: SJPD, DOJ, and OIG

Retaining Equitable Sharing Funds Unnecessarily

Based on our review of equitable sharing receipts, we determined that the SJPD maintained a high balance in its equitable sharing fund not only throughout the scope of our audit (July 1, 2012 through June 30, 2015) but for the past 10 years. Prior to July 2014, MLARS required that agencies not retain equitable sharing funds unnecessarily, and that it may be retained in a holding account for up to 3 years. As of July 2014, the Guide no longer specifies the amount of time for which funds may be held unspent, although MLARS officials stated that agencies cannot retain equitable sharing funds unnecessarily. We found that the SJPD's receipts from July 2005 through June 2012 were not in compliance with this requirement. Therefore, we computed the amount of equitable sharing funds retained on-hand unnecessarily by analyzing the information that the SJPD reported to MLARS in its annual certification reports.

We began with calculating the amount of DOJ distributions made to the SJPD between FYs 2006 and 2012 (\$1,940,729) and then subtracted the expenditures reported to MLARS on the SJPD's ESAC reports between FYs 2006 and 2015 (\$693,522).⁸ We concluded that \$1,247,207 in equitable sharing funds received had not been expended by the end of FY 2015. This significant balance indicates that the SJPD was not expending equitable sharing funds in a timely manner, which was inconsistent with the intent of the DOJ Equitable Sharing Program. SJPD officials explained that the monies were being saved to purchase a helicopter estimated at \$4.5 million. Although the SJPD has included purchasing a helicopter

⁸ We did not count DOJ equitable sharing revenue that the SJPD received between FY 2013 and FY 2015 because the SJPD had 3 years to expend those funds according to MLARS guidance that was effective at that time.

with equitable sharing funds in its annual budget request every year since 2010, it has never purchased it. We asked MLARS if the SJPD had notified them of its intent to save equitable sharing funds received for the purchase of a helicopter. A MLARS official stated that the SJPD did not notify them of its intent to save for the procurement of a helicopter. We also found that in FY 2011, the SJPD had enough equitable sharing funds saved to purchase a helicopter, but the purchase was never made. In FY 2013, the SJPD proposed making a \$2 million payment with equitable sharing funds to purchase the helicopter; however, it was never purchased. According to a SJPD official, the SJPD now plans to purchase police officer-worn body cameras and has obligated \$276,244 in FY 2016 and plans to obligate \$923,756 in FYs 2017 and 2018 for the purchase. As of July 2014, the Guide no longer specified the amount of time for which funds may be held unspent. Although not written in policy, MLARS officials stated to us that participating agencies need to obtain its prior approval if they want to save towards a specific high-dollar purchase. MLARS also stated that the intent of the Equitable Sharing Program is to expend equitable sharing monies for a designated use or permissible law enforcement purpose as they are received and it will place law enforcement agencies on a spending plan if it notices that the agency is not expending funds in a timely and judicious manner. Therefore, we recommend that the Criminal Division ensure that the SJPD develop a strategic plan for expending the remaining equitable sharing funds in a judicious but timely manner that enhances the department's operations.

Based on the internal control weaknesses we identified, commingling, and the holding of funds for excessive periods, we believe that the SJPD, in conjunction with the City of San Jose, needs to implement formal equitable sharing policies and procedures and establish a fund or accounting code specific to the DOJ equitable sharing program. Additionally, the SJPD should ensure that its equitable sharing activities are monitored on a more routine basis and that it timely and accurately accounts for all DOJ equitable sharing transactions. Moreover, we recommend that the Criminal Division puts to a better use the \$1,247,207 in equitable sharing funds that have been retained unnecessarily by the SJPD.

Use of Equitably Shared Funds

The Guide requires that equitable sharing funds received by state and local agencies be used for law enforcement purposes. As of June 2015, the SJPD had expended \$281,039 (49 percent) of the total equitable sharing funds received. We judgmentally selected a sample of 18 expenditures, totaling \$262,605 to determine if the costs charged were allowable, properly authorized, adequately supported, and in compliance with the terms and conditions of the Guide. Of the 18 expenditures we tested, 13 were non-personnel expenditures while 5 were personnel expenditures. The SJPD used equitable sharing funds to pay for overtime, law enforcement equipment and supplies, and other expenditures. The following sections discuss the results of our testing.

Non-Personnel Costs

Our sample included 13 non-personnel expenditures totaling \$247,504. Specifically, we reviewed expenditures that included a crime scene digitizer, window coverings, gift cards purchased for two SJPD gun buy-back programs, gym equipment, and seismic flooring anchors. To determine if costs were allowable, properly authorized, adequately supported, and in compliance with the terms and conditions of the Guide; we reviewed supporting documentation including purchase orders, invoices, and receipts.

Gun Buy-back Programs

We determined that \$30,000 was expended for gift cards for two gun buy-back programs. The programs occurred in December 2013 and December 2014. According to the Guide, gift cards purchased for a gun buy-back program are a permissible use of equitable sharing funds. MLARS provided additional guidance to law enforcement agencies participating in a gun buy-back program that included: (1) ensuring that all DOJ equitable sharing funds used for the program were properly accounted for; (2) the amount provided per weapon was reasonable; (3) receipts were issued for all weapons collected; and (4) all weapons collected were destroyed.

In addition to the Guide and MLARS's guidance, the SJPD required a receipt for all guns collected, which included the individual's name and address, the make and model of the weapons collected, and the number of gift cards issued including serial numbers.⁹ SJPD officials provided a \$100 gift card for every hand gun it collected and a \$200 gift card for every assault rifle it collected. Lastly, after the events were completed, SJPD officials were required to reconcile the total number of gift cards distributed to the receipts it issued.

As shown in Table 2, we found that out of 157 receipts; 70 were missing the names and addresses of the participants, 77 did not list the make and model of the guns collected, and 33 receipts did not list the gift card serial numbers given to participants.¹⁰ The SJPD maintained an inventory listing of all gift card serial numbers. However, without recording those serial numbers on the receipts, the list of gift-card serial numbers could not be reconciled to the receipts. We also found that four gift cards worth \$400 in total were distributed, but the SJPD did not have receipts to support them. SJPD officials acknowledged that the four gift cards were unsupported. After our exit conference was conducted in February 2017, the SJPD provided newly updated documentation to support the \$400 in gift cards that the SJPD had distributed.

⁹ The SJPD's gun buy-back program also allowed individuals to turn in weapons without providing their name and addresses in order to remain anonymous. SJPD officials stated that DOJ equitable sharing funds did not pay for gift cards provided to anonymous individuals.

¹⁰ The results of our gift card testing were not mutually exclusive; some of the buy-back transactions included multiple discrepancies.

Table 2
SJPD's Gun Buy-back Program Receipts

Fiscal Year	Total Number of Receipts	Name and Address Missing	Make and Model of Weapon Missing	Gift Card Serial Number Missing
2013	104	17	37	0
2014	53	53	40	33
Total	157	70	77	33

Source: SJPD and OIG

To determine if all the weapons collected were destroyed, we compared the number of weapons recorded on the receipts to the destroyed weapons inventory list from the SJPD property warehouse. We found 295 weapons were collected; however, the SJPD's weapons inventory list recorded 659 guns destroyed. We asked SJPD officials why the number of guns destroyed from the property warehouse inventory list was greater than the number of guns collected as listed on the receipts. SJPD officials stated that only receipts for gift cards purchased with DOJ equitable sharing funds had been maintained and that additional weapons had been collected with gift cards purchased with other funding. All of the guns collected, regardless if they were obtained using DOJ equitable sharing funds or other funds were placed together in the SJPD's property warehouse, inventoried, and then destroyed. SJPD officials also stated that weapon serial numbers were not always recorded at the collection site but were rather recorded after the weapons were taken to the property warehouse. Therefore, the guns collected and destroyed using DOJ equitable sharing funds could not be distinguished from weapons collected using other funding sources. As required by MLARS, we believe that the SJPD should have properly tracked all weapons collected from inception through destruction. Therefore, we recommend that the Criminal Division ensure that the SJPD abides by the terms and conditions of the Guide, MLARS's guidance, and its own gun buy-back program policies and procedures.

Sub-station Window Coverings

The SJPD also expended \$33,390 for window coverings for its sub-station located on the south side of the City of San Jose. The 107,000 square foot sub-station was completed in 2010 at a cost of approximately \$90 million to the City of San Jose. The window coverings purchased were blinds to be installed in multiple rooms in the SJPD sub-station.

In November 2014, the SJPD received a quote for blinds from School Specialty and based on that quote, SJPD's fiscal unit approved a purchase

requisition for \$38,069 to purchase and install blinds for the sub-station.¹¹ The SJPD's purchase requisition stated that the purchase was for 14 or 15 blinds to be purchased and installed. According to the City of San Jose's procurement policy, purchases greater than \$10,000 require competitive solicitation to provide for fair and open competition. However, existing city-wide open purchase orders may be used to obtain similar pricing for procurements, without requiring the procurement to go out for bid.¹² A City of San Jose Purchasing Department official informed the SJPD that an existing purchase order, which was not a city-wide open purchase order, from the San Jose Public Works Department could be used for the blinds procurement; therefore, the SJPD did not require a competitive solicitation. The SJPD used the San Jose Public Works Department's vendor, hereinafter referred to as the contractor, to purchase the blinds.¹³

We asked a Purchasing Department official why the contractor had been selected as the vendor instead of soliciting competitive bids, particularly since the purchasing official stated to us that the Public Works Department purchase order was not a city-wide open purchase order as required by the City of San Jose's procurement policy. A Purchasing Program Manager stated that the contractor had won a competitive solicitation in July 2011 from the Public Works Department to install and replace window coverings at various city facilities and that the SJPD could obtain similar pricing for the sub-station's blinds.¹⁴ Despite the fact that this was a 1 year contract with 3 option years, all of which the city had exercised, the SJPD attempted to leverage this contract to obtain similar pricing for the 2014 blinds procurement. The SJPD received a quote from the contractor for \$66,440 in January 2015, which was an increase of more than \$28,000 from the quote received from School Specialty. The contractor's job estimates included 71 pieces and 16 motorized blinds. When we asked a SJPD official what the 71 pieces represented and why the amount of blinds to be purchased had increased; we were informed that they did not know what the 71 pieces meant but that more blinds than originally estimated for were determined to be needed at the sub-station, causing an increase in the contractor's quote over School Specialty. We also

¹¹ The quote did not state how many blinds would be purchased. However, it did state blinds would be installed in the sub-station's academy rooms, training center rooms, mat room, weight room, conference room, community meeting room, armory room, and third floor training offices. The executive conference room and community meeting room were to receive motorized blinds. The SJPD obtained the quote to determine if the blinds purchase would be over the City of San Jose's procurement limit of \$10,000, thus requiring competitive solicitation.

¹² The City of San Jose solicits competitive bids for the selection of city-wide vendors.

¹³ The contractor has been a vendor for the City of San Jose since 1997 and has consistently won competitive bids, including the latest competitive solicitation in 2015, for a 1-year contract with 4 option years. If all years are exercised, the contractor will continue to be a vendor with the City of San Jose until 2020. Between 1997 and 2015, the City of San Jose has paid the contractor \$592,983.

¹⁴ The contractor's contract was for blinds purchased at cost plus 25 percent mark-up, plus shipping and installation costs at \$60 an hour for regular time, \$90 an hour for overtime, and \$100 an hour for holiday time. However, because the contractor's estimate for the job and invoice for the sub-station blinds did not specify the rates paid we could not determine if the SJPD had received similar pricing or not.

determined that the job estimates did not specify the measurements of the blinds or the location of where the blinds were to be installed. In January 2015, the San Jose police officer overseeing the project received approval from the SJPD Fiscal Unit's Administrative Officer and the Division Manager to increase the blinds purchase requisition by \$28,000. The contractor sent invoices to the SJPD totaling \$33,390 for standard blinds installed at the sub-station. The invoices received from the contractor did not state the quantity, size, or location of the blinds purchased and the contractor was ultimately unable to install the motorized blinds it had quoted the SJPD. After our exit conference was held in February 2017, a SJPD official provided to us documentation to support that the SJPD had paid the contractor for 71 window coverings. However, the documentation still did not specify the sizes of the blinds to be installed.¹⁵

A San Jose police officer stated that the blinds purchased with equitable sharing funds were located in the sub-station's armory, gym, second floor hallway, training offices, and multiple training center rooms. The invoice provided to us in March 2017, lists 71 blinds purchased for locations different than the San Jose police officer had explained to us. Without supporting documentation, such as proof of delivery and installation, the SJPD could not definitively distinguish which blinds in the sub-station were purchased with DOJ equitable sharing funds and which blinds existed before the contractor was contracted to deliver and install blinds.

In addition, according to the City of San Jose's procurement policy, the city was required to provide a fair opportunity for participants to competitively solicit for the award of city contracts by promulgating integrity and the removal of conflicts of interests. The contract awarded to the contractor was not awarded through a competitive solicitation. In addition, when accepting the terms and conditions of the July 2011 award to provide blinds for the city, the contractor certified that it did not have a conflict of interest with the City of San Jose. However, we determined that the spouse of the contractor worked for the City of San Jose as a Parks and Recreation Manager at the time the contract was awarded and we were unable to find any documentation that the contractor had disclosed this relationship to the City of San Jose Purchasing Department. We were able to determine that the contractor's spouse (the Parks and Recreation Manager) filed a statement of economic interest form that disclosed the financial interest in the contractor for calendar year 2014 with the City of San Jose Clerk's Office. However, the blinds for the sub-station were purchased in 2015 when the Parks and Recreation Manager still worked for the City of San Jose but had not filed an Economic Interest form for that year. We believe without the contractor, and those who held a financial interest in the contractor, properly disclosing their relationships to the City of San

¹⁵ The invoice from the contractor stated it had billed the SJPD \$32,738 for a total of 71 blinds, including: (1) 6 in the training conference room south; (2) 13 in the conference room; (3) 6 in the mat training room; (4) 11 in the weight room; (5) 11 in the academy classroom; (6) 13 in the executive room; (7) 8 in the simulator room; and (8) 3 in the academy room north. The contractor provided the SJPD an invoice for the remaining \$652 to cover applicable tax on the order.

Jose, a potential conflict of interest for the contractor existed when the SJPD purchased the sub-station blinds.

According to the City of San Jose's Code of Ethics, city employees and officials are expected to avoid any conflicts of interest and should avoid the appearance of conflicts of interest in order to ensure that city decisions are made in an independent and impartial manner. We found that the SJPD Administrative Officer that approved the invoice and payment for the sub-station blinds had previously worked for the City of San Jose Parks, Recreation, and Neighborhood Services as an employee for the former Parks and Recreation Manager, who held a financial interest in the contractor's business, and between 1988 and 2010 both worked at the City of San Jose Parks, Recreation, and Neighborhood Services. We asked the Administrative Officer if there was an appearance of a conflict of interest for her to approve invoices for the contractor due to her longstanding professional relationship with the owner's spouse. The Administrative Officer stated it was not a conflict of interest. We disagree. We believe that the appearance of a conflict of interest existed based on the Administrative Officer's long standing professional relationship with the owner's spouse and that it was the Administrative Officer's responsibility to ensure the window coverings were procured in an independent and impartial manner by appointing another SJPD official to approve the invoice payments made to the contractor.

Ultimately, we identified multiple problems with the SJPD's purchase of blinds for its sub-station. First, we believe that a less than arm's length relationship existed between the Administrative Officer overseeing the DOJ equitable sharing fund and the contractor's spouse. Second, the SJPD made a purchase from a vendor whose spouse was, at the time of the purchase, an employee of the City of San Jose, which, at a minimum, has the appearance of a conflict of interest. Third, the contractor did not disclose its potential conflict of interest to the City of San Jose purchasing department when accepting the San Jose Public Works Department contract as required by the City of San Jose. We believe that the SJPD could have avoided this situation by soliciting competitive bids for the procurement of blinds for the police sub-station, as required by the city's procurement policy. Without fair and open competition that was free of conflicts of interest, the SJPD cannot be certain it received the best price for the blinds it purchased. In addition, the contractor was unable to provide and install the motorized blinds that the SJPD had wanted. Lastly, the SJPD failed to maintain adequate supporting documentation related to its purchase of the blinds. Therefore, based on all of the above, we question the \$33,390 of inadequately supported costs expended on window coverings for the SJPD sub-station. We also question the \$33,390 as unallowable because the procurement of the window coverings was less than arm's length and in violation of the City of San Jose's procurement policy.

Personnel Costs

We judgmentally selected 5 personnel expenditures representing reimbursement to the SJPd for the overtime costs of 23 fulltime sworn police officers.¹⁶ The selected transactions totaled \$15,101. We reviewed supporting documentation including timecards, pay rate tables, and other documentation, and found that all overtime was accurately recorded and properly authorized.

Maintaining Inventory of Accountable Property

To determine if equipment purchased with DOJ equitable sharing funds were accurately recorded, we observed accountable property purchased by the SJPd and verified it to the SJPd's equipment inventory log. According to the City of San Jose's policy, fixed assets are valued at \$5,000 or more. The SJPd provided us a draft policy for equipment purchased with DOJ equitable sharing funds that required all equipment purchased with those funds to be labeled and logged into the equipment inventory log and a physical inventory to be conducted annually. At the beginning of our fieldwork, the SJPd had not yet implemented this draft policy.

We selected one item, a crime scene digitizer purchased for \$145,411 from the SJPd's equipment inventory log. We found that the crime scene digitizer's serial number we observed did not match the serial number on the inventory log. SJPd officials explained the original crime scene digitizer was faulty and the SJPd had returned it in August 2014 and replaced it with a new one. The SJPd had not updated its equitable sharing inventory log until we identified the inaccuracy during our fieldwork conducted in May 2016, almost 2 years after the equipment was exchanged. At the time we performed our fieldwork, the SJPd had not performed a physical inventory. We believe that the SJPd should annually conduct a physical inventory of its equipment in order to maintain an accurate inventory log as stated in its draft policy. We recommend that the Criminal Division ensure that the SJPd accurately tracks accountable property purchased with DOJ equitable sharing funds.

Supplanting

According to the Guide, equitable sharing funds must be used to increase or supplement the resources of the local law enforcement agency. To identify indicators of supplanting, we examined the SJPd's total budgets for FYs 2012 through 2015 and compared them to SJPd's equitable sharing expenditures, which consisted mostly of equipment and supplies as well as overtime costs. Based on the documentation we reviewed, we did not find any indicators of supplanting.

Monitoring of Applications for Transfer of Federally Forfeited Property

The Guide required participating agencies to complete a DAG-71 form when requesting its portion of equitable sharing funds from MLARS. In addition, all

¹⁶ There were no associated fringe benefit costs charged to the DOJ equitable sharing funds.

participating agencies were required to maintain a log of all sharing requests. However, as of July 2015, MLARS no longer requires state and local law enforcement agencies to maintain a log.

During our fieldwork, we found that the SJPD maintained copies of all submitted DAG-71s, but did not maintain a complete and accurate log of equitable sharing requests between FYs 2012 and 2015. We tested the SJPD's log against MLARS's distribution report and although 118 sharing requests were made between FYs 2013 and 2015, the SJPD did not record 52 of those requests in its log. As previously mentioned, state and local law enforcement agencies are no longer required to maintain a log; therefore, we do not make a recommendation regarding the SJPD's inaccurate sharing requests log.

Equitable Sharing and Certification Forms

The Guide requires participating law enforcement agencies to submit an ESAC report within 60 days following the end of that agency's fiscal year, signed by the head of the law enforcement agency and a designated official with budgetary authority. The Guide also mandates participating agencies to report the beginning and ending balance of the equitable sharing fund, interest accrued, and categorize how the agency spent equitable sharing money for the fiscal year. By signing the form, signatories agree to be bound by the statutes and guidelines that regulate the equitable sharing program and certify that the law enforcement agency will comply with these guidelines and statutes.

Timeliness and Accuracy of ESACs

To ensure that appropriate agency officials properly prepared, signed, and submitted the reports, we reviewed the ESAC reports for FYs 2013, 2014, and 2015, and we found that the Police Chief and City Manager had signed the reports. According to the Guide, the SJPD is required to return its ESAC report within 60 days from the end of the SJPD's fiscal year. While the FY 2013 report was submitted 5 days late, the FY 2014 report was submitted timely. The FY 2015 ESAC form that SJPD electronically submitted to MLARS had been updated and it lacked a submission date that we could use in our testing.

To determine if the amounts reported on the ESACs were accurate, we compared MLARS's distribution reports with the SJPD's general ledger and bank statements. The DOJ had provided the SJPD 118 equitable sharing disbursements between FYs 2013 and 2015, totaling \$569,461. We determined that the SJPD received each of the 118 disbursements through electronic funds transfer directly into its bank account. The amount of equitable sharing disbursements listed on the ESAC reports also reconciled to the disbursement amounts listed on MLARS's distribution reports. However, as previously discussed in this report, MLARS's distribution reports did not reconcile to the SJPD's general ledger because deposits were not posted timely or accurately to SJPD's equitable sharing fund.

Table 4
Receipts Comparison

Fiscal Year	MLARS Distribution Report	SJPD ESAC	Difference	SJPD General Ledger	Difference
2013	\$159,888	\$159,888	\$0	\$128,038	\$31,850
2014	\$197,757	\$197,757	\$0	\$145,040	\$52,717
2015	\$211,816	\$211,816	\$0	\$150,649	\$61,167
Total	\$569,461	\$569,461	\$0	\$423,727	\$145,734

Source: SJPD and OIG

To verify the total expenditures listed on the SJPD's three most recent ESAC reports, we compared expenditures listed on the ESACs to the SJPD's general ledger for each of the fiscal years we tested. We determined that the total expenditures reported in the SJPD's ESACs were \$324,116, which did not match the expenditures as recorded in the SJPD's accounting records.

Table 5
Expenditure Comparison

Fiscal Year	SJPD ESAC	SJPD General Ledger	Difference
2013	\$17,050	\$17,050	\$0
2014	\$186,619	\$186,619	\$0
2015	\$120,447	\$77,370	\$43,077
Total	\$324,116	\$281,039	\$43,077

Source: SJPD and OIG

The SJPD reported \$43,077 in expenditures on its FY 2015 ESAC report that were not posted to the SJPD's official accounting records (general ledger). SJPD officials explained that funding may have been obligated but then never expended. According to the Guide, information submitted in the ESAC report must be an accurate accounting of the funds received and spent by the agency during that reporting period. Therefore, we recommend that the Criminal Division ensure that the SJPD develop and implement a process to ensure that its ESAC reports are accurate. We also recommend that the SJPD correct and resubmit to MLARS its FY 2015 ESAC report.

In FY 2013, the SJPD reported on its ESAC as having received \$366,202 in other income. When we asked SJPD officials about this other income, they stated that during FY 2012 \$366,202 was inappropriately charged to the SJPD's DOJ equitable sharing fund to pay for police officer's salaries belonging to the Community Oriented Policing Services (COPS) program. According to the Guide, program participants may use equitable sharing funds to pay an agency's matching

contribution for other federal grant programs. However, according to a letter sent by MLARS to the SJPD, MLARS stated that the SJPD was not allowed to use equitable sharing funds to pay for COPS grant entry level salary and fringe benefits. As the charges were unallowable, MLARS directed the SJPD to reimburse its equitable sharing fund in the amount of \$366,202 and the SJPD reported it as other income on the FY 2013 ESAC report. We verified on the general ledger that the SJPD had made this correction.

In addition to summarizing, by category, the shared monies spent on the ESACs, entities are required to report the amount of interest income earned during the given reporting period. As previously mentioned, based upon our review of the supporting documentation provided by the SJPD, we found that the SJPD had inaccurately calculated and under-reported interest earned in the amount of \$1,127 for FY 2013. The SJPD had accurately calculated and reported interest earned for FYs 2014 and 2015. According to the Guide, agencies must deposit any interest income earned on equitable sharing funds in the same revenue account or under the accounting code established solely for the shared funds. We also previously discussed in this report that the SJPD had incorrectly commingled in its accounting records earned interest income attributable to the DOJ equitable sharing fund with Treasury-related interest income.

Categorization of Equitable Sharing Expenditures

We also reviewed for accuracy the section of the ESAC report that summarizes the shared monies spent by specific category, such as law enforcement operations and investigations, travel and training, and law enforcement equipment. To do so, we asked the SJPD for documentation reflecting expenditures by category. Using this documentation, we computed the total expenditures by category for each fiscal year and compared the results to the amounts reflected on the ESAC reports. We determined that the category totals reflected on the FYs 2013 and 2014 ESACs matched the expenditure category totals as provided by the SJPD. For FY 2015, we found that \$105,022 for law enforcement equipment was reported on the ESAC report but it failed to match the SJPD's general ledger. As previously discussed, SJPD officials stated funding may have been obligated to purchase equipment, which was reported in the ESAC, and then later SJPD officials decided not to make the purchase. We believe that the SJPD should perform a reconciliation of its equitable sharing fund prior to submitting its annual ESAC report to ensure the categorization of equitable sharing expenditures is accurate.

Conclusion

Over the course of our audit we identified significant deficiencies related to the SJPD's management of DOJ equitable sharing funds. We noted several internal control weaknesses, including a lack of established policies and procedures that weakened the SJPD's management of its equitable sharing activities. We also found that the SJPD unnecessarily retained more than \$1.2 million in DOJ equitable sharing revenue received and improperly invested those funds in stocks, bonds, and marketable securities, contrary to DOJ equitable sharing regulations. In addition,

the SJPD commingled DOJ equitable sharing funds, and failed to report DOJ equitable sharing expenditures on its FYs 2014 and 2015 Single Audit Reports. As a result of our findings, we identified \$33,390 in net questioned costs and \$1,247,207 in funds that should be put to better use. We make 13 recommendations to the Criminal Division to assist in its administration of the SJPD's equitable sharing program.

Recommendations

We recommend that the Criminal Division:

1. Ensure that the SJPD properly reports equitable sharing funds expended on its Single Audit Report's SEFA for the period covered by the auditee's financial statements.
2. Ensure that the SJPD implements its draft policy for administering and overseeing DOJ equitable sharing funds, to include the monthly reconciliation of those funds received to the SJPD's accounting system.
3. Ensure that the SJPD establishes a separate account or unique fund code to separately track DOJ equitable sharing funds, including all revenue and expenditures, as required by the Guide.
4. Ensure that the SJPD establishes and strengthens its internal controls, including procedures that will result in DOJ equitable sharing revenue that is properly, completely, and accurately recorded in the SJPD's accounting records and makes adjusting journal entries to properly account for all DOJ equitable sharing distributions and to correct all misapplied funds in its DOJ equitable sharing fund.
5. Ensure that the SJPD maintains its equitable sharing funds in an interest or non-interest bearing federally insured depository account in accordance with MLARS's requirements.
6. Ensure that the SJPD correct and resubmit to MLARS its FYs 2013 and 2015 ESAC reports.
7. Ensure that the SJPD develop a strategic plan for expending the remaining equitable sharing funds in a judicious but timely manner that enhances the department's operations.
8. Puts to a better use the \$1,247,207 in equitable sharing funds that have been retained unnecessarily by the SJPD.
9. Ensure that the SJPD abides by the terms and conditions of the Guide, MLARS's guidance, and its own gun buy-back program policies and procedures.

10. Remedy \$33,390 of inadequately supported costs expended on window coverings for the SJPD sub-station.
11. Remedy \$33,390 in unallowable costs related to window coverings resulting from less than arm's length procurement in violation of the City of San Jose's procurement policy.
12. Ensure that the SJPD accurately tracks accountable property purchased with DOJ equitable sharing funds.
13. Ensure that the SJPD develop and implement a process to ensure that its ESAC reports are accurate.

OBJECTIVE, SCOPE, AND METHODOLOGY

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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objective.

Objective

The objective of this audit was to assess whether equitably shared revenue and property received by the requesting agency were accounted for properly and used for allowable purposes as defined by the applicable regulations and guidelines. We tested compliance with the conditions of the DOJ equitable sharing program. Also, we reviewed laws, regulations, and guidelines governing the accounting for and use of DOJ equitable sharing receipts, including:

- Guide to Equitable Sharing for State and Local Law Enforcement Agencies dated April 2009;
- Interim Policy Guidance Regarding the Use of Equitable Sharing Funds that was issued in July 2014; and the
- OMB Circular A-133, Audits of State, Local Governments, and Non-Profit Organizations, revised June 2003.

Unless otherwise stated in our report, the criteria we audited against are contained in these documents.

Scope and Methodology

Our audit focused on, but was not limited to, equitable sharing receipts received by the SJPd from July 1, 2012, through June 30, 2015. During this period, the SJPd received a total of \$569,461 in DOJ equitable sharing revenue to support law enforcement operations. During the same period, the SJPd expended \$281,039 in equitable sharing funds. We performed audit work at the SJPd's headquarters in San Jose, California. We interviewed SJPd officials and City of San Jose officials and examined records, including revenue and expenditures related to the administration of DOJ equitable sharing funds.

We judgmentally selected a sample of transactions with the highest dollar value for each fiscal year. This non-statistical sample design does not allow for the projection of test results to all expenditures. In total, we reviewed 18 expenditures totaling \$262,605 out of the \$281,039 expended during our audit period.

In addition, we obtained computer-generated data contained in the DOJ Consolidated Asset Tracking System and the USMS Electronic Funds Transfer System to identify equitable sharing revenue and property awarded to the SJPD during the audit period. We did not establish the reliability of the data contained in the systems as a whole. However, when viewed in context with other available evidence, we believe the opinions, conclusions, and recommendations included in this report are valid.

In planning and performing our audit, we considered the internal controls established and used by the SJPD and the City of San Jose in managing the DOJ Equitable Sharing Program. We did not assess the reliability of the SJPD's financial management system or the internal controls related to that system. Additionally, we did not assess internal controls and compliance with laws and regulations for the City of San Jose as a whole. Our audit included an evaluation of the City of San Jose's Single Audit Reports for FY 2013, FY 2014, and FY 2015. The Single Audit Reports were prepared under the provisions of the OMB Circular A-133.

APPENDIX 2

SCHEDULE OF DOLLAR-RELATED FINDINGS

<u>Description</u>	<u>Amount</u>	<u>Page</u>
Questioned Costs:		
Unallowable Window Coverings	<u>\$33,390</u>	11
Unallowable Costs	\$33,390	
Unsupported Window Coverings	<u>\$33,390</u>	12
Unsupported Costs ¹⁷	\$33,390	
<i>Gross Questioned Costs</i>	<i>\$66,780</i>	
Less Duplicative Costs ¹⁸	<u>(\$33,390)</u>	
Net Questioned Costs	\$33,390	
Funds Put to Better Use:		
Funds Unnecessarily Held	<u>\$1,247,207</u>	8
Total Funds to Better Use¹⁹	\$1,247,207	
TOTAL DOLLAR-RELATED FINDINGS	<u>\$1,280,597</u>	

¹⁷ **Questioned Costs** are expenditures that do not comply with legal, regulatory, or contractual requirements, or are not supported by adequate documentation at the time of the audit, or are unnecessary or unreasonable. Questioned costs may be remedied by offset, waiver, recovery of funds, or the provision of supporting documentation.

¹⁸ Some costs were questioned for more than one reason. Net questioned costs exclude the duplicated amount.

¹⁹ **Funds Put to Better Use** are future funds that could be used more efficiently if management took actions to implement and complete audit recommendations.

AUDITEE RESPONSE TO THE DRAFT AUDIT REPORT



San José Police Department
EDGARDO GARCIA, CHIEF OF POLICE

June 1, 2017

David J. Gaschke
Regional Audit Manager
San Francisco Regional Audit Office
Office of the Inspector General
U.S. Department of Justice
90 7th Street, Suite 3-100
San Francisco, California 94103

Dear Mr. Gaschke:

Below are the recommendations which resulted from the audit conducted by United States Department of Justice Office of the Inspector General and San José Police Department (SJPD) responses:

1. Ensure that the SJPD properly reports actual equitable sharing funds expended on its Single Audit Report's Schedule of Expenditures of Federal Awards for the period covered by the auditee's financial statements.

Response: SJPD agrees with this recommendation. To ensure equitable sharing funds expended are properly reported on the Single Audit Report's Schedule of Expenditures of Federal Awards for the reporting period, SJPD will add Equitable Sharing funds expended to the Master Grant list submitted to the City's Finance Department and updated written procedures. The procedure will ensure compliance with audit requirements under OMB Circular A-133.

2. Ensure that the SJPD implements its draft policy for administering and overseeing DOJ equitable sharing funds, to include the monthly reconciliation of those funds received to the SJPD's accounting system.

Response: SJPD agrees with this recommendation. SJPD is in the process of instituting new procedures to ensure that equitable sharing funds are reconciled and validated with supporting documents on a monthly basis. The City's Finance Department will review the policy and procedures to ensure proper accounting practices are followed. The policies and procedures will be saved in a centralized location.

3. Ensure that the SJPD establishes a separate account or unique fund code to separately track DOJ equitable sharing funds, including all revenue and expenditures, as required by the Guide.



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Response: SJPD agrees with this recommendation. Although the City currently uses a specific revenue code number for DOJ revenue, SJPD is working with City's Finance Department on establishing a unique fund code to separately track DOJ equitable sharing funds revenue and expenditures, from other equitable sharing funds, as required by the Equitable Sharing Guide.

4. Ensure that the SJPD establishes and strengthens its internal controls, including procedures that will result in DOJ equitable sharing revenue that is properly, completely, and accurately recorded in the SJPD's accounting records and makes adjusting journal entries to properly account for all DOJ equitable sharing distributions and to correct all misapplied funds in its DOJ equitable sharing fund.

Response: SJPD agrees with this recommendation. SJPD has reviewed its internal control procedures and will improve written procedures for its DOJ equitable sharing fund. SJPD will monitor the implementation of these procedures and continue to update and enhance procedures going forward to ensure equitable sharing revenue is properly and accurately recorded in a timely manner. The policy for the administration of DOJ equitable sharing funds will strengthen internal controls over the equitable sharing funds, including the timely posting of funds received. The City's Finance Department will review the policy and procedures to ensure internal controls are sufficient. The policies and procedures will be saved in a centralized location.

5. Ensure that the SJPD maintains its equitable sharing funds in an interest or non-interest bearing federally insured depository account in accordance with MLARS's requirements.

Response: SJPD agrees with this recommendation. The City will withdraw the balance of the equitable sharing funds and deposit it into a separate interest bearing checking account. This account will be federally insured and collateralized at 110% under a Tri-Party Collateral Agreement. SJPD will reconcile the bank balance with corresponding general ledger account on a monthly basis. Bank reconciliation will be included in the policy and procedures for the DOJ equitable sharing funds. The City's Finance Department will review the policy and procedures to ensure internal control are sufficient.

6. Ensure that the SJPD correct and resubmit to MLARS its FYs 2013 and 2015 ESAC reports.

Response: SJPD agrees with this recommendation. SJPD is in the process of correcting and resubmitting the ESAC reports for FYs 2013 and 2015.

7. Ensure that the SJPD develop a strategic plan for expending the remaining equitable sharing funds in a judicious but timely manner that enhances the department's operations.

Response: SJPD agrees with this recommendation. SJPD is in the process of developing a strategic plan for expending the remaining equitable funds in a judicious and timely manner that enhances the department operations. The strategic plan will be submitted to City Council for approval.

8. Puts to a better use the \$1,247,207 in equitable sharing funds that have been retained unnecessarily by the SJPd.

Response: SJPd agrees with this recommendation. SJPd has anticipated the need to replace its aging helicopter and planned to utilize equitable sharing funds to purchase a helicopter estimated at \$4.5 million. In FY 2011, SJPd had enough equitable sharing funds saved to purchase a helicopter; however, the purchase was not made as the City was facing a budget deficit and the helicopter program was suspended. In FY 2013, the helicopter program funding and staffing was restored. At that time, SJPd renewed discussions and planning for the replacement of the aging helicopter. SJPd is finalizing a plan to either lease or purchase a helicopter.

9. Ensure that the SJPd abides by the terms and conditions of the Guide, MLARS's guidance, and its own gun buy-back program policies and procedures.

Response: SJPd agrees with this recommendation. The gun buy-back program policies and procedures will be updated and enhanced based on MLARS's guidance to track all weapons collected from inception through destruction and information collection. A copy of the MLARS's guidance has been placed in a centralized location with all other fiscal procedures. SJPd will review the policies and procedures with staff prior to the gun buy-back to ensure compliance.

10. Remedy \$33,390 of inadequately supported costs expended on window coverings for the SJPd sub-station.

Response: SJPd agrees with this recommendation. SJPd will be conducting additional staff training to ensure adequate supporting documents are provided with purchase requisitions using equitable sharing funds.

11. Remedy \$33,390 in unallowable costs related to window coverings resulting from less than arm's length procurement in violation of the City of San José's procurement policy.

Response: The City disagrees with this recommendation. City Finance Department has reviewed and determined the purchase for the window coverings followed all City purchasing policies. The purchase leveraged a valid competitive solicitation that was previously done for the Public Works Department for the installation and repair of window coverings throughout the City resulting in the award of an Open Purchase Order. There was no violation of the City's Process Integrity Guidelines including any conflicts of interest. The fact that a SJPd Administration Staff member once worked for a City employee that has an ownership stake in the vendor does not present a conflict of interest, and neither individual was involved in any aspect of the specification development, vendor selection, and subsequent award of the Open Purchase Order for the Public Works Department. The Description of Services on the Public Works Purchase Order is for "window covering services including all labor, materials, and equipment necessary for jobs at various San José City locations".

12. Ensure that the SJPd accurately tracks accountable property purchased with DOJ equitable sharing funds.

David J. Gaschke
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Response: SJPD agrees with this recommendation. SJPD has created a centralized location for property purchased with equitable sharing funds. An asset management database has been purchased to track these assets. All equipment purchased with equitable sharing funds will be labeled and logged into the database. A physical inventory of the property will be conducted annually to maintain an accurate inventory log.

13. Ensure that the SJPD develop and implement a process to ensure that its ESAC reports are accurate.

Response: SJPD agrees with this recommendation. SJPD agrees with the importance of submitting accurate equitable sharing agreements and certification forms. The equitable sharing agreement will be prepared by SJPD fiscal staff assigned responsibility for the reporting requirement using reports from the City's accounting system. SJPD fiscal staff will review all equitable sharing fund transactions for the reporting period to ensure they are properly reported. The draft reports will be reviewed by the Fiscal Manager for accuracy prior to submission to the Chief of Police for signature and final submission. SJPD will update policies and procedures to ensure proper internal controls are in place and will work with the City Finance Department to review and approve this process.

Our goal is to fully comply with all requirements of the equitable sharing program and we appreciate the assistance and guidance from the Department of Justice Office of the Inspector General throughout the audit.

Sincerely,



Edgardo Garcia
Chief of Police
San José Police Department

EG:LP:jo



**THE CRIMINAL DIVISION'S
RESPONSE TO THE DRAFT AUDIT REPORT**



U.S. Department of Justice

Criminal Division

Money Laundering and Asset Recovery Section

Washington, D.C. 20530

JUN - 2 2017

MEMORANDUM

TO: David J. Gaschke, Regional Audit Manager
San Francisco Regional Audit Office
Office of the Inspector General

FROM: Jennifer Bickford, Deputy Chief
Program Management and Training Unit
Money Laundering and Asset
Recovery Section *Jennifer Bickford*

SUBJECT: DRAFT AUDIT REPORT for the San Jose Police Department's
Equitable Sharing Program Activities

In a memorandum dated May 15, 2017, your office provided a draft audit report for the San Jose Police Department (SJPD), which included 13 proposed recommendations. The Money Laundering and Asset Recovery Section (MLARS) concurs with the 13 recommendations in the draft audit report.

Upon receipt of the final audit report, MLARS will work with SJPD to correct all identified findings.

cc: Denise Turcotte
Audit Liaison
Criminal Division

Richard P. Theis
Assistant Director, Audit Liaison Group
Internal Revenue and Evaluation Office
Justice Management Division

**OFFICE OF THE INSPECTOR GENERAL
ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE THE REPORT**

The OIG provided a draft of this audit report to the SJPD and MLARS. The responses from SJPD and MLARS are incorporated in Appendices 3 and 4, respectively, of this final report. The following provides the OIG analysis of these responses and summary of actions necessary to close the report.

Recommendations for the Criminal Division:

- 1. Ensure that the SJPD properly reports equitable sharing funds expended on its Single Audit Report's SEFA for the period covered by the auditee's financial statements.**

Resolved. MLARS concurred with our recommendation. MLARS stated in its response that it will coordinate with the SJPD to ensure implementation of this recommendation.

The SJPD concurred with our recommendation and stated in its response that it will add equitable sharing funds expended to its master grant list, which is submitted to the City of San Jose's Finance Department, and used to compile its Single Audit Report's Schedule of Expenditures of Federal Awards (SEFA). The SJPD also stated it will update its written procedures for the reporting of DOJ equitable sharing funds on its Single Audit Report's SEFA. This recommendation can be closed when we receive evidence of the master grant list to include DOJ equitable sharing expenditures and updated procedures that will ensure equitable sharing expenditures are reported on its Single Audit Report's SEFA for the period covered by the SJPD's financial statements.

- 2. Ensure that the SJPD implements its draft policy for administering and overseeing DOJ equitable sharing funds, to include the monthly reconciliation of those funds received to the SJPD's accounting system.**

Resolved. MLARS concurred with our recommendation and stated in its response that it will coordinate with the SJPD to ensure implementation of this recommendation.

The SJPD concurred with our recommendation and stated in its response that the SJPD is in the process of establishing procedures to ensure that equitable sharing funds are reconciled and validated with supporting documents on a monthly basis. The SJPD further stated that the City of San Jose's Finance Department will review the policy and procedures to ensure proper

accounting practices are followed. This recommendation can be closed when we receive evidence that the SJPD has implemented its draft procedures to ensure the appropriate administration of DOJ equitable sharing funds, including the monthly reconciliation of those funds received to the SJPD's accounting system.

3. Ensure that the SJPD establishes a separate account or unique fund code to separately track DOJ equitable sharing funds, including all revenue and expenditures, as required by the Guide.

Resolved. MLARS concurred with our recommendation and stated in its response that it will coordinate with the SJPD to ensure implementation of this recommendation.

The SJPD concurred with our recommendation and stated in its response that it is working with the City of San Jose's Finance Department to establish a unique fund code to separately track DOJ equitable sharing revenue and expenditures from other funds. This recommendation can be closed when we receive evidence that the SJPD has established a unique fund code to separately track DOJ equitable sharing funds, including all revenue and expenditures, as required by the Guide.

4. Ensure that the SJPD establishes and strengthens its internal controls, including procedures that will result in DOJ equitable sharing revenue that is properly, completely, and accurately recorded in the SJPD's accounting records and makes adjusting journal entries to properly account for all DOJ equitable sharing distributions and to correct all misapplied funds in its DOJ equitable sharing fund.

Resolved. MLARS concurred with our recommendation and stated in its response that it will coordinate with the SJPD to ensure implementation of this recommendation.

The SJPD concurred with our recommendation and stated in its response that it has reviewed the internal control procedures for DOJ equitable sharing funds. The SJPD stated that it will strengthen its internal controls by establishing procedures for the timely posting of DOJ funds received and that it will monitor newly implemented procedures. The SJPD also stated that the City of San Jose's Finance Department will review the policy and procedures to ensure that the internal controls over equitable sharing funds are sufficient.

We also identified in our report a total of \$115,048 in misapplied funds; \$83,872 in DOJ equitable sharing distributions (revenue) that had been incorrectly recorded into other accounts and \$31,176 that was non-DOJ funding incorrectly recorded in the SJPD's equitable sharing fund. Based on these misapplied funds, we believe that the SJPD also needs to properly account for all DOJ equitable sharing distributions and to correct all

misapplied funds in its DOJ equitable sharing fund. This recommendation can be closed when we receive evidence that the SJPD has strengthened its internal controls over equitable sharing funds and made adjusting journal entries to properly account for all DOJ equitable sharing distributions and to correct all misapplied funds in its DOJ equitable sharing fund.

5. Ensure that the SJPD maintains its equitable sharing funds in an interest or non-interest bearing federally insured depository account in accordance with MLARS's requirements.

Resolved. MLARS concurred with our recommendation and stated in its response that it will coordinate with the SJPD to ensure implementation of this recommendation.

The SJPD concurred with our recommendation and stated in its response that the City of San Jose will withdraw the balance of its DOJ equitable sharing funds and deposit them into a separate interest bearing checking account. The SJPD stated that the account will be federally insured and collateralized at 110 percent under a Tri-Party Collateral Agreement. The SJPD also stated that it will reconcile, on a monthly basis, the checking account balance with the corresponding DOJ equitable sharing general ledger. The City of San Jose's Finance Department will review the policy and procedures to ensure the internal controls related to its maintenance of DOJ equitable sharing funds are sufficient. This recommendation can be closed when we receive evidence that the SJPD maintains its equitable sharing funds in an interest or non-interest bearing federally insured depository account in accordance with MLARS's guidance.

6. Ensure that the SJPD correct and resubmit to MLARS its FYs 2013 and 2015 ESAC reports.

Resolved. MLARS concurred with our recommendation. MLARS stated in its response that it will coordinate with the SJPD to ensure implementation of this recommendation. MLARS also informed us at the exit conference we held with them, that the SJPD should make corrections in its current fiscal year ESAC report rather than in previously submitted reports to MLARS.

The SJPD concurred with our recommendation and stated in its response that it is in the process of correcting and resubmitting to MLARS its ESAC reports. This recommendation can be closed when we receive evidence that the SJPD has made corrections in its current fiscal year ESAC report to MLARS.

- 7. Ensure that the SJPD develop a strategic plan for expending the remaining equitable sharing funds in a judicious but timely manner that enhances the department's operations.**

Resolved. MLARS concurred with our recommendation and stated in its response that it will coordinate with the SJPD to ensure implementation of this recommendation.

The SJPD concurred with our recommendation and stated in its response that it is in the process of developing a strategic plan for expending the remaining equitable sharing funds in a judicious and timely manner that enhances the SJPD's operations. In addition, the SJPD stated that the strategic plan will be submitted to the City Council for approval. This recommendation can be closed when we receive evidence that the SJPD has developed and implemented its strategic plan for expending the remaining equitable sharing funds in a judicious but timely manner that enhances the department's operations.

- 8. Puts to a better use the \$1,247,207 in equitable sharing funds that have been retained unnecessarily by the SJPD.**

Resolved. MLARS concurred with our recommendation and stated in its response that it will coordinate with the SJPD to ensure implementation of this recommendation.

The SJPD concurred with our recommendation and stated in its response that it has anticipated the need to replace its aging helicopter and planned to utilize equitable sharing funds to purchase a helicopter estimated at \$4.5 million. According to the SJPD in FY 2011, it had enough equitable sharing funds to purchase a helicopter; however, the purchase was not made as the City of San Jose was facing a budget deficit and the helicopter program was suspended. In FY 2013, the helicopter program funding and staffing was restored and SJPD renewed discussions and planning for the replacement of the aging helicopter. We believe that the SJPD should have informed MLARS of its intent to save for and purchase the helicopter, which it did not. The SJPD stated it is finalizing a plan to either lease or purchase a helicopter. This recommendation can be closed when we receive evidence that the SJPD has puts to a better use the \$1,247,207 in equitable sharing funds that have been retained unnecessarily by the SJPD.

- 9. Ensure that the SJPD abides by the terms and conditions of the Guide, MLARS's guidance, and its own gun buy-back program policies and procedures.**

Resolved. MLARS concurred with our recommendation and stated in its response that it will coordinate with the SJPD to ensure implementation of this recommendation.

The SJPD concurred with our recommendation and stated in its response that its gun buy-back program's policies and procedures will be updated and enhanced, based on MLARS's guidance, to track all weapons collected from inception through destruction. The SJPD further stated that it has also placed a copy of MLARS's guidance in a centralized location and will review the guidance and its own policies and procedures with staff prior to holding a gun buy-back event. This recommendation can be closed when we receive evidence that the SJPD has updated and enhanced its gun buy-back program's policies and procedures to ensure that the SJPD abides by the terms and conditions of its guidance, as well as the Guide and MLARS's guidance.

10. Remedy \$33,390 of inadequately supported costs expended on window coverings for the SJPD sub-station.

Resolved. MLARS concurred with our recommendation and stated in its response that it will coordinate with the SJPD to ensure implementation of this recommendation.

The SJPD concurred with our recommendation and stated in its response that it will be conducting staff training to ensure that adequate supporting documents are provided with purchase requisitions when using equitable sharing funds. In our report, we identified that the SJPD received and approved job estimates for window coverings which did not specify the measurements of the blinds or the location of where the blinds were to be installed. Furthermore, we found that after the window coverings were installed, the invoices received from the vendor and paid by the SJPD did not state the quantity, size, or location of the blinds purchased. Without adequate supporting documentation, such as proof of delivery and installation, the SJPD could not definitively distinguish which window coverings were purchased with equitable sharing funds. This recommendation can be closed when we receive evidence that the SJPD has remedied \$33,390 of inadequately supported costs expended on window coverings for the SJPD sub-station.

11. Remedy \$33,390 in unallowable costs related to window coverings resulting from less than arm's length procurement in violation of the City of San Jose's procurement policy.

Resolved. MLARS concurred with our recommendation and stated in its response that it will coordinate with the SJPD to resolve this recommendation.

The SJPD disagreed with our recommendation and stated in its response that it has reviewed and determined that the purchase for the window coverings followed all city purchasing policies. The SJPD further stated that the purchase leveraged a valid competitive solicitation that was previously done for the Public Works Department for the installation and repair of window

coverings throughout the City of San Jose resulting in the award of an open purchase order, and therefore no violation of the city's Process Integrity Guidelines including any conflicts of interest existed. We disagree. The Public Works Department's purchase order was not a city-wide open purchase order and therefore, was not an option for the SJP, according to city policy, when selecting a vendor for the window coverings. In addition, the SJP did not adhere to the City of San Jose's procurement policy requiring competitive solicitation on purchases greater than \$10,000 in order to provide for fair and open competition.

In its response, the SJP also stated that a SJP administration staff member, who once worked for a City of San Jose employee that has an ownership stake in the contractor's business does not present a conflict of interest, and neither individual was involved in any aspect of the specification development, vendor selection, and subsequent award of the open purchase order for the Public Works Department. We disagree. We believe that the appearance of a conflict of interest existed based on the Administrative Officer's long standing professional relationship with the owner's spouse and that it was the Administrative Officer's responsibility to ensure that the window coverings were procured in an independent and impartial manner by appointing another SJP official to approve the invoice payments made to the contractor. In addition, the spouse of the contractor did not file a statement of economic interest form that disclosed the financial interest in the contractor's business for the fiscal year in which the blinds were procured, as required by the City of San Jose. This recommendation can be closed when we receive evidence that the SJP has remedied \$33,390 in unallowable costs related to window coverings resulting from less than arm's length procurement in violation of the City of San Jose's procurement policy.

12. Ensure that the SJP accurately tracks accountable property purchased with DOJ equitable sharing funds.

Resolved. MLARS concurred with our recommendation and stated in its response that it will coordinate with the SJP to ensure implementation of this recommendation.

The SJP concurred with our recommendation and stated in its response that it has created a centralized location for property purchased with equitable sharing funds. In addition, the SJP stated that it has purchased an asset management database to help track its assets. The SJP stated that all equipment purchased with equitable sharing funds will be labeled and logged into the database and that a physical inventory of the property will be conducted annually to maintain an accurate inventory log. This recommendation can be closed when we receive evidence that the SJP has implemented its asset management database to ensure that it accurately tracks accountable property purchased with DOJ equitable sharing funds.

13. Ensure that the SJPD develop and implement a process to ensure that its ESAC reports are accurate.

Resolved. MLARS concurred with our recommendation and stated in its response that it will coordinate with the SJPD to ensure implementation of this recommendation.

The SJPD concurred with our recommendation and stated in its response that it will update its policies and procedures to ensure that proper internal controls are in place when preparing and submitting ESAC reports. Specifically, the SJPD's Fiscal Unit will review all equitable sharing fund transactions for the reporting period to ensure they are properly reported. The ESAC report will also be reviewed by the Fiscal Manager for accuracy before being submitted to the Chief of Police for signature and final submission. The SJPD stated it will work with the City of San Jose's Finance Department to review and approve its updated process. This recommendation can be closed when we receive evidence that the SJPD has implemented its updated policy to ensure that its ESAC reports are accurate.

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