DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

LAVELLA HARRISON, Appellant,

vs.

DENVER TECHNOLOGY SERVICES, and the City and County of Denver, a municipal corporation, Agency.

The hearing in these consolidated appeals commenced on Dec. 1, 2008, and concluded on Aug. 12, 2009 before Hearing Officer Valerie McNaughton, after twenty-six non-successive days of hearing. Appellant was present throughout the hearing, and was represented by Ross Goldsmith, Esq. The Agency was represented by Assistant City Attorney Robert Wolf, and David Luhan served as the Agency advisory witness. Having considered the evidence and arguments of the parties, the Hearing Officer makes the following findings of fact and conclusions of law, and enters the following order:

I. STATEMENT OF THE CASE

On August 30, 2007, Appellant Lavella Harrison filed CSA Appeal No. 55-07, alleging that her placement on investigatory leave violated the Denver whistleblower ordinance, DRMC § 2-106 et. al. On Dec. 20, 2007, Appellant filed CSA No. 89-07, which challenges her "needs improvement" Performance Enhancement Program Report (PEPR), and also raises a claim that the rating was motivated by her whistleblower activity. That same day, Appellant filed CSA No. 90-07 appealing her Dec. 14, 2007 dismissal, and claiming a whistleblower violation. These appeals were consolidated for hearing by agreement of the parties on Jan. 4, 2008.

Agency Exhibits 1 – 37 and Appellant’s Exhibits A – 6Q1 were admitted by stipulation of the parties. During the hearing, Agency Exhibits 41 – 44, 46 – 49, 51 – 53 and Appellant’s Exhibits 6V – 7C, and 7F – 8G2 were also admitted. Appellant’s Exhibit 7D was rejected.

1 Appellant offered exhibits A – GGGGGGGG. For clarity, Appellant’s exhibits beyond the first alphabet will be referred to in this decision by number and letter: e.g., Exh. AA will be cited herein as Exh. 2A.
2 Exhs. 7L, 7Q-3 and 7Q-4 were admitted solely as demonstrative evidence. Exh. 7P was admitted over the Agency’s objection. [Hearing date 6/30/09, 1:30 p.m.]
The consolidated appeals challenge Appellant's 2007 performance review and termination as unwarranted under the Career Service Rules. Appellant also contends that she was placed on investigative leave, given a negative review and terminated in retaliation for her reports of official misconduct between Dec. 2006 and Aug. 2007. The claimed official misconduct was the Agency's negligent management of several contracts, resulting in waste of city funds and a negative effect on city revenue bonds. For the reasons set forth below, I find that the performance review was not improper, and that the termination was justified based on Appellant's proven misconduct and performance deficiencies. I also find that Appellant failed to establish that the adverse actions taken against her were motivated by her reports of negligent contract management by city officials.

II. ISSUES

The issues in this consolidated appeal are as follows:

1) Did Appellant establish that the Agency violated the whistleblower ordinance by its placement of Appellant on investigatory leave on Aug. 15, 2007?

2) Did Appellant establish that the "needs improvement" PEPR rating was arbitrary, capricious and without rational basis or foundation?

3) Did Appellant establish that the Agency violated the whistleblower ordinance by its "needs improvement" PEPR rating of Appellant?

4) Did the Agency establish by a preponderance of the evidence that Appellant's conduct justified discipline under the Career Service Rules (CSR)?

5) Did the Agency establish that dismissal was within the range of penalties that could be imposed upon Appellant by a reasonable administrator for the rule violations proven at hearing?

6) Did Appellant establish that the Agency violated the whistleblower ordinance by its dismissal of Appellant?

III. FINDINGS OF FACT

Appellant Lavella Harrison was a Senior Information Technology (IT) Developer for Technology Services (TS) who was hired by the city in 2000. Appellant's education and experience are in the fields of electronic commerce, cost accounting, software development, and project management. In November 2006, the Agency was reorganized in part because of an external auditor's findings of "weaknesses in the City's financial controls, some of which include Technology Services' processes and procedures." [Exh. W-2, ¶ 2.] As a part of that reorganization, the section in which Appellant had been working, the Project Management Office (PMO), was eliminated.
Appellant was reassigned to the Agency's Geographic Information Systems (GIS) section, which provides city geographic information to its agencies and the public, and supports the city's telephone interactive voice recognition (IVR) system.

In Nov. 2006, Appellant's new supervisor, GIS Director David Luhan, assigned her to act as System Analyst for the Permitting, Inspections, Licensing, Addressing and Design Review (PILAR) program. PILAR was designed in 2006 to migrate and integrate data from a number of agencies involved in development review, including building inspections and permits, to allow those agencies to collaborate during the development review process. [Exh. 35-17.] Mr. Luhan served as Project Manager for the PILAR project. [Exh. 7T-4.] City contractor reVision, Inc. provided on-call IT services on the PILAR project. [Exh. 4A-1.] Appellant was part of the internal agency team that coordinated reVision's work in developing the products needed by each agency.

Appellant was also assigned to work as Program Manager and Systems Analyst for a segment of the PILAR project known as the CISCO/IPCC IVR Migration Project (IVR). [Exh. 36-4.] IVR was intended to enhance automated phone service in four agencies as a part of the city’s 311 initiative, a centralized telephone information system for city constituents. [Exh. D-15.] Senior GIS Developer Allan Glen was the assigned supervisor for Agency employees staffing the IVR project. Gold Systems, Inc., a city contractor, was selected to design, develop and implement applications for the IVR project. [Exhs. 3A-1; 5N-175.] Documentum Content Project was a smaller part of the PILAR project that would permit the client agency, Community Planning and Development (CPD), to transition from storing building permits and like documents on microfiche to electronic scanning of those records. [Exh. 6A-16.] Jayne Cassidy was TS Project Manager for Documentum.

A. Verbal Reprimand

In Sept. 2006, the city signed a $9,750 contract for Phase 1A with Buddha Logic, LLC. Appellant, who was the Agency’s liaison for CPD, was asked by CPD managers Carol Rodarte and Caroline Karny to investigate if the Documentum project had enough money to make it compatible with the larger PILAR enterprise system. [Testimony of Carol Rodarte, 12/1/08, 2:48 pm; Exh. 4R-1.]

On Mar. 19, 2007, Appellant sent an email to ten Technology Services and four CPD managers, stating that Ms. Cassidy had developed the wrong set of functional requirements for Documentum. “When the time comes to integrate it into PILAR, it will be configured wrong and priced wrong.” [Exh. 37-10, -11, emphasis in original.] Several recipients, including Ms. Cassidy and Mr. Luhan, asked for background. Mr. Luhan added, “Why are we telling the customers the ‘sky is falling’. In the future please discuss this with the team before engaging the customers [CPD employees]. I thought we covered this issue in the IVR project.” [Exh. 37-9.]

Appellant responded to her supervisor by stating that she had been told by others “‘what Jayne said’ and it was way off base.” On another subject, she added that
“Allan [Glen] is abandoning standard business internal controls for managing cash flows”, causing her to have to do “damage control” to compensate for these shortcomings. “This situation is not rational!” [Exh. 37-9.] Mr. Luhan forwarded this email to Mr. Glen, who responded to Appellant that it contained “some very strong criticisms that I do not consider to be constructive.” He asked Appellant for evidence to support her statements.

If this is the perception from the customer then we need to engage the customer as a team and clarify the misunderstanding. I do not feel that hallway conversations and secret phone calls are productive . . . you indicate that this situation is not rational. One definition of ‘rational’ is . . . having its source in or being guided by the intellect (distinguished from experience or emotion). I am simply recommending that these ‘situations’ be handled intellectually; that statements and decisions are based on fact; and that this be accomplished with openness and professional respect. I believe that doing so will allow us to provide the best service and solutions to our customers.

[Exh. 29-11, 12.]

Appellant replied to Mr. Glen’s email, and copied Mr. Luhan, later that evening:

Allan, the appropriate measures were taken today to address my concerns to my satisfaction. If you were really as approachable as you think . . . there wouldn’t be any ‘hallway conversations and secret phone calls” (RF:1) coming my way . . . would there? I can assure you that I am not soliciting these comments, nor will I betray a confidence. Furthermore, even when I try to clue you in, your response is always accompanied by a backhanded insult. This is your ritual. Not mine. It’s unproductive and I am disengaging. My rationale = As you sow so shall you reap.
Which means: Your deeds, good or bad, will repay you in kind.
From the Bible, Galatians VI (King James Version)
Whatsoever a man soweth, that shall he also reap.
http://www.phrase.org.uk/meanings/48500.html
But here’s some food for thought: it’s possible you actually believe your disruptive behavior in the Monday and Tuesday IVR meetings is ‘rational . . . and your statements and decisions are based on fact; and accomplish something (?) with openness and professional respect’? (RF: 2) NOT!!!
To be truthful, internalizing, understanding and reciprocating for the other side is your challenge.
Reference: 1 and 2. Quotes from Allan Glen, MS Exchange:
Outlook email: ‘Your concerns’ 3/20/07.
Mr. Glen did not respond to this email, but forwarded it to his supervisor Mr. Luhan, with his apology for “this fuss,” and an admission that his response to Appellant “in hindsight may have not been the best choice.” Mr. Luhan in turn referred the matter to Human Resources Director Mark Brazwell with the comment, “I am really concerned about the escalation of this situation.” [Exh. 29-10.] He asked Mr. Brazwell to investigate the matter.

Three days later, Appellant sent an email to Mr. Luhan and Mr. Brazwell requesting their intervention “to prevent any future exposure to hostile, condescending, and professionally insulting episodes brought about by Allan Glen”, including meetings and all other communications. [Exh. 35-16.] Appellant later forwarded three pages of “background information, issues and requested outcomes”. That document detailed several problems with the PILAR project, from Appellant’s viewpoint as subject matter expert and customer liaison with CPD. Therein, Appellant noted that discussions with customers “were not perceived as ‘secret’ and ‘dirty laundry’” when she was in the Project Management Office, “but as opportunities to clarify expectations on both sides . . . there aren’t any ‘secret meetings’ or any ‘dirty laundry’ being exposed.” [Exh. 35-17, 18.] Appellant complained that Mr. Glen insulted her and challenged her competency during project meetings, and misrepresented matters to Mr. Luhan. Appellant stated she inherited the IVR project from a manager with a different strategy, and that Appellant therefore lacked the normal planning information. She made ten suggestions for improving project planning and tracking, including consistent use of HEAT tickets to address customer concerns, and avoidance of piecemeal funding requests. Appellant also listed five “requested outcomes” regarding Mr. Glen, including advising him that insults are not acceptable, and elimination of his access to documents related to Appellant.4 [Exh. 35-19.] Mr. Luhan conceded at hearing that Appellant’s first twelve requested outcomes were good ideas. He responded to the request for intervention by “putting things in place” within the PILAR project to address her concerns. [Testimony of Mr. Luhan, 4/6/09, 3:48 pm.]

Mr. Luhan transmitted Appellant’s request for intervention to Mr. Brazwell for inclusion in his ongoing investigation arising from the emails between Mr. Glen and Appellant. [Exh. 35-16.] Mr. Brazwell met with Appellant on Mar. 23 to obtain her further description of the situation. During that meeting, Appellant recalled that Mr. Brazwell advised her not to “air our dirty laundry.” [Testimony of Appellant, 6/10/09, 3:15 pm.] Mr. Brazwell also met with eight of the PILAR team members “around the table” to investigate Appellant’s allegations about Mr. Glen. His resulting report to Ms. Rauzi quoted some statements made at that meeting that were not attributed to any specific employee.

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3 HEAT tickets are requests for IT help from city employees using a specialized application.
4 Appellant testified that this requested outcome was a reference to Mr. Luhan’s act in forwarding her Mar. 20th email to Mr. Glen, an email she considered “somewhat confidential”. [Testimony of Appellant, 4/13/09, 3:35 pm; Exh. 37-9.]
On April 12, 2007, Mr. Brazwell submitted his investigative report to Agency Acting Chief Information Officer (CIO) Molly Rauzi. The report concluded that Appellant’s Mar. 19th email to the customer and team regarding Ms. Cassidy was unprofessional in that it publicly criticized a team member. It also found that a majority of Appellant’s co-workers had a favorable opinion of her work ethic, but would not like to work with her in the future based on their negative experiences with her. Mr. Brazwell reported that co-workers were “consistently positive” in their opinions about Mr. Glen. He recommended that Appellant take three classes on interpersonal skills, her managers take a class on handling employee behavior, and the Agency clarify Appellant’s functional role. [Exhs. 35-14, 15, 24, 25.] The questions asked of the team members interviewed as a group unfairly focused on Appellant’s behavior rather than that of Mr. Glen, despite the fact that the intervention arose from emails from both parties that “were less than professional and clearly warranted some type of management intervention”, in Mr. Brazwell’s opinion. [Exh. 27-1.] As a result, the report’s generalized remarks about Appellant which were not attributed to any specific co-worker lack the reliability of quoted statements made by specific persons in a neutral setting.

On April 23, 2007, Mr. Luhan, Mr. Brazwell and Ms. Rauzi met with Appellant and gave her a letter dated March 27th, entitled “Expected Behavior in the Workplace.” It described seven incidents Mr. Luhan considered confrontational and unprofessional towards co-workers, which led him to issue the letter as a verbal reprimand. Therein, he directed Appellant to refrain from negative communication with co-workers, vendors and customers, and to attend specified classes on workplace violence, managing emotions, and conflict management. [Exh. 25.]

The first specific co-worker complaint listed in the verbal reprimand was that Appellant sent an unprofessional email to GIS Database Administrator Paul Tessar. [Exh. 25-1.] In fact, Appellant’s only email on this subject was to Mr. Luhan, complaining of Mr. Tessar’s email as “a professional insult.” [Exh. 29-58.] Mr. Luhan later advised Mr. Tessar “to tone down his message in the future.” [Exh. 7P-6.] He also told Appellant he would personally handle her time sheets from then on, and she could submit her monthly reports to Mr. Glen instead of Mr. Tessar. [Testimony of Appellant, 6/30/09, 11:40 am; Exh. 5R-35.] Mr. Tessar recalled during his testimony that Mr. Luhan suggested he begin his messages to employees who had not submitted their time sheets by saying “hello, sorry to bother you”, rather than “getting right to the point”. [Testimony of Mr. Tessar, 7/16/09, 8:58 am.] Based on the undisputed evidence that Appellant sent her email only to Mr. Luhan, I find that Appellant did not send an unprofessional email to Mr. Tessar.

Secondly, the verbal reprimand cited Appellant’s behavior during a Jan. 12, 2007 meeting with Mr. Luhan. That meeting was intended to coach Appellant to avoid “disruptive and confrontational” behavior and communication as a result of an IVR meeting during which Appellant criticized team members about the reporting of call statistics. When Mr. Luhan asked for an explanation of the business requirements
supporting the need for the reporting, Appellant told him it was too complicated to explain, but that team members should just do the work and not speak to the customers about it. The team then gathered the call statistics as Appellant requested. Mr. Luhan later learned that the same data had already been included in existing reports. [Exh. 25-2.] The evidence does not establish that Appellant’s remark was disruptive or inappropriately confrontational in the context of the high-pressure and complex work of the IVR team.

A third incident occurred on Feb. 27th, when Appellant was said to have confronted Daniel Hauser, demanding that he relocate a computer and phone in a cubicle to be used by a part-time contractor set to start a week from then. [Exh. 3W-1.] Mr. Luhan claimed that Appellant should have worked with PC support to prepare the work space “in an organized manner”, and that her “self-imposed timeline created a safety hazard”, project delays, and written complaints. [Exh. 25-2.] Appellant asked Mr. Luhan about the work station to be assigned to the contractor, and Mr. Luhan told Appellant to arrange it. Mr. Glen directed Appellant to use a certain desk. Appellant then urged Mr. Hauser to relocate the computer and phone that day, explaining that she would be on vacation in the interim before the contractor’s first day. When Mr. Hauser said he could not do it until the following week, Appellant told Mr. Hauser that Mr. Luhan wanted him to do it now. Mr. Hauser later spoke to Mr. Luhan, who told him he had not made that statement. [Testimony of Mr. Hauser; Exh. 2H-11.] Appellant testified that the urgency came from the upcoming vacation of an employee scheduled to transfer the electronic equipment, not her own vacation. I find that Appellant failed to demonstrate a cooperative approach in requesting work from a co-worker, and exaggerated her authority to make an urgent request by representing that Mr. Luhan ordered the work done immediately.

Fourth, Mr. Luhan received a complaint from Yvonne Neiman regarding a rush request from Appellant to produce updates on ten old test data files, followed by phone calls, desk visits, and numerous “over-cc’d” emails from Appellant. Ms. Neiman viewed the communications as excessive and unnecessary under the circumstances. [Exh. 29-3.] Appellant testified that she only went to Ms. Neiman’s desk after Gold Systems reported she was having problems. Appellant saw that Ms. Neiman was using a view instead of a code query, which caused some of the problems. [Testimony of Appellant, 6/23/09, 4:08 pm.] I find that the Agency did not prove Appellant’s rush request was inappropriate.

Fifth, in response to Mr. Luhan’s request for the basis of her concerns about credit card reconciliations, Appellant stated, “my sources are confidential.” That led Mr. Luhan to question Appellant’s understanding of the project and ability to act in a collaborative manner. [Exh. 25-2.] Appellant admitted she made that same statement to Mr. Glen, and that Mr. Luhan objected to her refusal to reveal her sources. She explained that her PEP required her to keep sensitive information confidential. [Testimony of Appellant, 6/23/09, 4:15 pm; HH-12.] The PEP Accountability and Ethics standard requires that a senior IT developer “ensures sensitive, proprietary, and client personal information remains confidential.” [Exh. 30-5.] I find that customer concerns
about Agency project work are not confidential under her PEP definition, and that Appellant’s stated reason for withholding work information from her supervisor in a matter central to her job duties was therefore uncooperative and confrontational.

Sixth, Appellant exchanged unprofessional emails with Mr. Glen on Mar. 20. Mr. Luhan forwarded Appellant’s email to Mr. Glen with a request that he answer her criticisms, since Mr. Luhan did not have the information needed to resolve the issues it raised. Appellant’s reply to Mr. Glen stated he was unapproachable and responded to her with “backhanded insult[s].” Appellant added, “My rationale = as you sow so shall you reap.” [Exh. 29-12.] Mr. Glen later forwarded their email exchange to Mr. Luhan [Exh. 29-10 to 12.] Mr. Luhan considered both emails unprofessional, and conceded that Mr. Glen’s “could be construed” as condescending. [Testimony of Mr. Luhan, 4/6/09, 3:03 pm.] Thereafter, Mr. Luhan coached Mr. Glen to keep his emails professional, and recommended additional supervisory training. [Testimony of Mr. Luhan, 4/6/09, 1:49 pm.]

Appellant believed Mr. Luhan caused the confrontation when he forwarded her email to Mr. Glen, knowing it would trigger an unpleasant exchange. She considered it part of her role as Project Manager to bring Agency customer concerns to the IT meetings, but she felt targeted and insulted by the negative reactions of Mr. Glen and others to her statements about those concerns.

Mr. Glen testified that he considered Appellant’s response to his email “way over the top.” Appellant never gave him any further details supporting her opinion about the nature of the cash flow issue. Mr. Glen added that function six weeks later the finance department explained its need for daily reconciliations. He recalled that Appellant would use the phrase “you don’t understand” at almost every meeting. Mr. Glen observed that Appellant sometimes reacted to his or team questions about her proposals by taking offense and refusing to engage in further discussion. Since Appellant was the Project Manager, her objections prevented Mr. Glen from assigning tasks until issues were resolved, and delayed work on action items and the project as a whole. He added that customers attended the meetings, and thus had the opportunity to and did voice their concerns at that time. Mr. Glen testified that after he corrected his mistake, a subsequent payment card audit found no problems with cash reconciliations, the issue raised in Appellant’s Mar. 20th email.

I find that Appellant emailed Mr. Luhan her criticism of Mr. Glen in order to resolve certain cash flow issues, and Mr. Luhan appropriately forwarded her email to Mr. Glen to expedite resolution of the issues. Since Appellant had only been in his unit for four months, Mr. Luhan could not have reasonably anticipated Appellant’s angry reaction to Mr. Glen’s email. Mr. Glen’s response sought more detail, and criticized Appellant in turn for failing to try to resolve the issue as a part of the team. Appellant’s heated response added fuel to the fire, without answering Mr. Glen’s request for information to identify the problem and seek resolution. While both participants were clearly angry, Appellant went further in hinting that Mr. Glen would be punished for his behavior. Since Appellant was not Mr. Glen’s supervisor, the nature of this punishment
is not apparent. While discussions at team meetings were often “tough and passionate”, according to Mr. Glen and others, Appellant’s response exceeded even that intensity with an emotional broadside inappropriate in the workplace.

The seventh and final incident in the verbal reprimand occurred on Mar. 23 at a meeting with Mr. Luhan, who had asked Appellant to come to his office. Unknown to Appellant, Mr. Tessar was also in attendance, and Appellant’s Mar. 20 email to Mr. Glen was to be the topic. Appellant had just sent Mr. Luhan her “Request for Intervention” regarding Mr. Glen. [5R-101.] Mr. Luhan’s notes of the meeting indicate he clarified her role in PILAR and IVR, and emphasized the “need for positive dialogue and team work”. He then asked Appellant if she sent the email to Mr. Glen. When she said she had, Mr. Luhan asked why. “She stood up and stated, ‘This conversation is over, I am disengaging’ and she left my office and slammed the door open.” Mr. Tessar’s handwritten notes stated, “Everything went fine until David asked Lavella about email she sent to Allan G. She acknowledged sending it.” [Exh. 34-10.]

In her May 9 request for her personnel file, Appellant told Mr. Brazwell that she arrived at the Mar. 23 meeting “feeling lightheaded and very ill, plus I had a very painful migraine headache. Eventually I said, ‘I need to disengage’, and promptly left the room to go get my medication.” [Exh. 2H-44.] In contrast, Appellant testified that she had diarrhea and left to go to the restroom. [Testimony of Appellant, 7/13/09, 9:53 am.] Appellant’s failure to offer an explanation to her supervisor of her sudden departure renders this testimony less credible. Moreover, Appellant used the same phrase, “I am disengaging”, in her email to Mr. Glen, which in context clearly meant, “I am ending this conversation.” I find that Appellant inappropriately left the meeting in order to avoid her supervisor’s counseling regarding her email to Mr. Glen, and failed to conclude the conversation, as required by her duty to work with her supervisor to achieve the missions of the Agency.

Mr. Luhan considered the “Expected Behavior in the Workplace” memo a personnel action plan which required Appellant to “refrain from negative, attacking or loud communication . . . with peers, vendors, and [Agency] customers.” [Exh. 28-15.] Mr. Luhan testified that he later met with Appellant to revise her PEP. At that time, he thought he made its terms clear, since Appellant nodded her head and left. [Testimony of Mr. Luhan, 12/17/08, 2:26 pm.] Appellant testified that Mr. Luhan never served her with an action plan, or met with her on June 1 to discuss her PEP, as required by the April memo. [Exh. L.] Appellant considered Mr. Luhan’s references to a non-existent action plan he said they wrote together as evidence that she was not being treated fairly. [Exh. 35-61.] However, Appellant conceded in her July 26 request for a CSA investigation that she met with Mr. Luhan “and reviewed my PEP”, and that they had two meetings thereafter on her performance plan. [Exh. 2H-37.] The fact that the memo was dated March 27th but not delivered until April 23rd caused Appellant to suspect she was being treated unfairly based on her criticism of Mr. Glen. It is more probable that the letter was drafted in March and not delivered until their April meeting. Appellant presented no evidence that she was harmed in any respect by the inaccurate
date on the reprimand. Appellant completed all classes required by the verbal reprimand by the end of May, 2007. [Exh. 28-20 to 22.]

B. Gold Systems Contract

The Agency's actions against Appellant were based in part on Appellant's interaction with contractor Gold Systems (Gold) in the IVR project during 2007. Appellant asserts that the adverse actions constituted retaliation for her reports of fraud by Gold and other contractors. The core of her fraud allegation against Gold is that the company was paid for work it did not perform, and that Ms. Rauzi, Mr. Luhan and Mr. Brazwell mismanaged the Gold contract by knowingly authorizing those payments and covering up Gold's attempts to obtain excessive or unearned payments. A review of the contract history is necessary to resolve the factual issues underlying these claims.

Prior to the Nov. 2006 reorganization, Appellant served as the IVR System Analyst under Project Manager Sara Harmer. The IVR project required transfer and adaptation of information from the old voice answering system to a new platform, and new touch-tone and speech recognition applications for three sections of Community Planning and Development: Building Inspections, Property Assessment, and Monitored Alarms. The one-year Gold Systems contract signed in Jan. 2006 set a maximum price of $424,130, payable upon the city's acceptance of five defined deliverables. [Exh. 2Z.] As part of her job duties, Appellant authored the city's specifications for the project. [Testimony of Mr. Luhan, 4/8/09, 11:03 am; Exhs. 6Y, 6Z, 30-8.]

The contract deliverables were five customized software products ready for city testing. [Exh. D-2.] Gold was required by the contract to fix any problems revealed after testing, or pay a refund. [Exh. D-1.] Software contracts often require the city to negotiate after delivery about the scope of the contract, adequacy of the deliverable, and changes needed if the deliverable fails the city's internal testing. [Testimony of Mr. Luhan.]

Almost immediately after the contract with Gold was signed in early 2006, the project schedule was delayed by call flow issues and CPD's lack of electronic records for the future database. [Exhs. 2K-1 to -3.] In Sept. 2006, Gold transmitted the first deliverable: specifications for the touch-tone and speech recognition applications. Appellant distributed the specifications on Ms. Harmer's behalf to the city IVR team for their review. [Exhs. 42 – 45.] Appellant reviewed the specifications, and circulated her responses to team questions about the adequacy of the specifications. [Exh. 2K-11.] Appellant asked the team to add certain additional specifications into the schedule and a list of deliverables for each IVR. [Exh. 7H-4.] Appellant's comments on the specifications included a reminder that they still needed a calendar, "out-of-office" messages, and a tickler function. [Exh. 71.] The city team concluded that the specifications were not intended to include "that level of detail." [Exh. 7H-2.] The city accepted the specifications that same month, and the invoice for deliverable 1 was paid shortly thereafter. [Exhs. V-2 & 10; 7R-5 & 6; 2K-9 & 11.] The touch-tone and speech
recognition specifications were amended twice by Gold, on Mar. 8 and Aug. 23, 2007, after testing by the city. [Exh. D-32, 40.]

In late Nov. 2006, the IVR project was transferred to GIS and Appellant assumed the Project Manager role. The Gold contract had just been extended for an additional year, until the end of 2007, and $37,500 was added for maintenance and support work, to be billed at $150 an hour. [Exhs. 3B, 3D.] Appellant’s project management duties included reviewing contract deliverables and managing contract issues within the city team and between Gold and the city. [Testimony of Mr. Luhan, 4/10/09, 10:59 am.] Appellant investigated the costs expended thus far in order to assess the project’s status. [Testimony of Appellant, 4/13/09, 9:25 am.] Shortly thereafter, a meeting of the entire team was held to do a full assessment of the project, “realign resources and the project schedule”, and sharpen the criteria for acceptance of the deliverables. [Testimony of Mr. Luhan; Exh. A.] Thereafter, Appellant continuously updated the project schedule begun by Ms. Harmer in Oct. 2005. [Exhs. 2J; 7R.] The city team and Gold Systems’ own project manager, Chris Hummel, held weekly meetings to discuss and resolve issues as they arose. [See e.g. Exh. 5R-5.] The notice of the first project meeting sent by Appellant, Mr. Luhan and Mr. Glen listed the touch-tone and speech recognition technical specifications, contracts, and invoices submitted for payment, and stated, “[w]e are not anticipating any changes to the original scope of work contracted for this project, all minor adjustments were captured in the documents listed below.” [Exh. A.] The context of the comment indicates that the specifications were received by the city, and the email signatories, including Appellant, had approved the work and submitted the invoices for payment.

Appellant testified that Ms. Harmer, IVR’s previous project manager, had not given her all the usual project documents when she handed off the project to her in Nov. 2006. Appellant did not complain about it at the time, since Ms. Harmer explained they could not be easily separated from documents involving Ms. Harmer’s other projects. Appellant did not later blame Mr. Luhan or Mr. Glen for the absence of project planning. “We were all frustrated with the lack of baseline planning.” [Testimony of Appellant, 6/30/09, 11:18 pm.] Appellant did not claim at hearing that her performance would have been improved in any specific respect by better or more complete planning documents.

In late Dec. 2006, Gold submitted its invoice for deliverable 2, the touch-tone applications readied for city testing. Mr. Luhan authorized the Agency’s Controller to “close out the outstanding invoices.” Ms. Harmer and Appellant were copied on the message. When Ms. Harmer returned from vacation on Dec. 27, 2006, she authorized payment for deliverable 2. [Exhs. 36-5, D-2.] The invoice was paid that same day. [Exh. 5N-8.] It was not uncommon to pay invoices before work was done, especially at the end of the year when Agency funding may disappear if not spent. [Testimony of Mr. De Angelis, 12/2/08, 3:36 pm.] Thereafter, Mr. Luhan assumed signature authority to

5 The contract term was extended to allow the city to compile specifications from the Assessor, Excise and License, and Community Planning, and the money increased to cover development costs for a new application. [Exh. 3B-1.]
pay all IVR invoices, and stated he therefore “needed to know what they [Gold] accomplished. [Testimony of Mr. Luhan, 4/6/09, 4:28 pm.]

Appellant testified that she believed Gold was paid for delivering work it had not completed; specifically, deliverables 1 and 2, the two specifications and the touch-tone applications. [Exh. D-2.] It is undisputed that the specifications were received and accepted by the city in Sept. 2006. Appellant’s testimony was contradictory on this issue, stating at one point that she never saw the deliverables, although she looked for them monthly. [Testimony of Appellant, 5/21/09, 9:00 am.] On another occasion, Appellant testified that the specification lacked hardware and software requirements and integration documents. [Testimony of Appellant, 4/13/09, 9:35 am.] Appellant also expressed that it was Gold’s failure to keep the specification amendments updated with later refinements and requested functionalities that was the problem, not the complete absence of technical specifications. She stated she looked but was never able to locate any documents that explained why the first two invoices were paid in the absence of deliverables 1 and 2. Appellant stated she told Ms. Harmer in Dec. 2006 she was uncomfortable with authorizing payment for deliverable 2, but Ms. Harmer informed her that Ms. Rauzi had ordered her to make the payment. [Testimony of Appellant, 6/9/09, 1:50 pm; 6/30/09, 11:21 am.] In contrast, Ms. Harmer testified that she made the decision to pay both of Gold’s deliverables, Appellant was aware of the payments and expressed no objection, and Ms. Rauzi did not order her to make those payments. [Testimony of Ms. Harmer, 7/16/09, 1:15 pm.]

It was Appellant’s job as Project Manager to receive, review and approve the deliverables produced under the contract by means of issuing a Notice to Proceed. Appellant did not notify Mr. Luhan that any of Gold’s deliverables should be rejected after she became Project Manager. [Testimony of Mr. Luhan, 4/10/09, 10:59 am.] The voluminous contract documents and email traffic reveal no contemporaneous complaint by Appellant that the IVR specifications were incomplete. [Exh. 36.] When she was asked in June for her input on Gold’s change orders and invoices, Appellant did not state that specifications had never been received, or that they were incomplete. [Exh. 5N-153.]

According to the contract’s statement of work, “the Specifications Document will serve as the basis for application development and testing”. [Exh. D-16.] The contract requires the parties to acknowledge acceptance of deliverable 1 in writing, and states that “the consultant is not authorized to commence work on any deliverable prior to its receipt of the corresponding [Notice to Proceed by the Project Manager.]” [Exh. D-1.] Appellant never issued a Notice to Proceed as to deliverable 2, which was the Touch-Tone applications for city testing. [Testimony of Appellant, 7/9/09, 9:38 am; Exh. D-2.] However, Appellant concedes that Mr. Luhan authorized Gold to “work ahead on the project”, and that he had signature authority to approve work on that project. [Testimony of Appellant, 6/30/09, 11:24 am.] Appellant’s handwritten notes on the March 2007 financial audit show that the undelivered products were caused by “platform complications, CISCO, ATT & SBC staff turnover”. [Exh. B-2.] Emails show only that Appellant continued to seek corrections to the partial inspections functionality, a
refinement that developed after city testing of the deliverable. [Exh. 36-102.] Other
documents indicate that deliverable 2 was transmitted to the city and tested according
to the project schedule. [Exh. 2J-6.] There are no emails or other documents showing
that Appellant continued to seek deliverable 2 after Dec. 2006, or that otherwise support
her claim that it was never produced[6]. [Exhs. 36; 5N.] Mr. Luhan later authorized Gold
to work on all the IVRs concurrently, including the Touch-Tone applications. [Testimony
of Appellant, 5/21/09, 9:50 am.]

Appellant believed the city engaged in fiscal misconduct by paying Gold before
receiving all the deliverables, without documenting a waiver or exception to the contract
terms. Appellant testified that she knew there was something wrong on Nov. 21, 2006
when she noticed that the project plan updated at 2 pm that day suddenly listed
numerous tasks as 100% complete, although the same tasks were at 0% completion at
9 am. There was no evidence that the project plan was always updated as soon as a
task was completed. The more credible explanation was that the plan was updated on
a periodic basis. Appellant testified that the first task, “identify weekly status meeting
time” was not 100% complete because the initial meeting time was changed thereafter.
[Testimony of Appellant, 7/13/09, 8:56 am.] The fact that a meeting time is later
changed does not alter the fact that an initial meeting was set. Appellant stated that
Gold should not have listed the technical specifications, deliverable 1, as 100%
complete because the artifacts were not listed as done. However, the contract does not
require that the specifications include artifacts. [Exh. D-16.] Deliverable 2 was shown
at lines 147 of the project plan as 68% complete, and on line 159 as 0% complete.
[Testimony of Appellant, 7/9/08, 8:54 am; Exhs. 7R-3, 5, 6; 7Q-3.] Appellant’s January
meeting notes showed the first two applications 85-90% complete, and thanked Gold
“for keeping the project moving. We know it has been a challenging effort.” [Exh. 3E-4.]

In March 2007, the city team submitted its response to Gold’s internal audit about
progress on the contract. At the team meeting, Appellant hand-wrote on her copy of the
audit that the undelivered products were due to “platform complications; CISCO, ATT,
SBC staff turnover.”[7] Appellant testified that she did not see any documents detailing
the reasons for payment exceptions during the meeting, but noted that the city affirmed
in its audit answers that there were no “undelivered services.”[8] [Exh. B-3.]

There was no exception report or waiver. I’ve said that twice. That’s
what I expected. There was nothing for the Gold Systems audit that
happened in March. Instead, they signed off and said, “Yeah, we got
everything, we should have paid it,” and I’m like, “No, we didn’t get
everything. We shouldn’t have paid it. Why are you doing this
again?” So, there should have been something to document they
said, “Yes, it was legitimate, and we paid it.” There should have

[6] In one meeting agenda dated Jan. 23, 2007, Appellant stated that Gold had delivered the application,
and testing started over 40 days later. [Exh. 5R-8.] By Jul. 16, 2007, Appellant was working with Gold to
get the Touch-Tone applications deployed to production mode. [Exh. 5N-152.]
[7] Appellant testified that Exhibit B is a copy of the audit document she brought to the team meeting, and
contains her handwritten answers on all but the final page. [Testimony of Appellant, 6/10/09, 3:38 pm.]
[8] The city’s response did confirm that there were undelivered products as of March, 2007. [Exh. B-2.]
been something, some document, that says, "We made all these exceptions and therefore paid - prepaid - these invoices without getting the deliverables." And there was nothing. So there were three cases there where I expected some document to justify – or just document – why the exceptions were made for this accounting process for reconciliations, which if they didn’t do that, came into fiscal misconduct. Because here were large amounts of money being paid, and we weren’t getting what was stated in the contract, and it says it has to absolutely be completed before you pay.

[Testimony of Appellant, 6/10/09, 3:25 pm.]

In Jan. 2007, Appellant asked Gold for a project accounting “so we never have to revisit this again.” Gold provided an Excel spreadsheet of the costs, invoices and change orders for the project. Appellant transmitted the accounting to the Agency Controller, with her analysis that it provided “the straight forward answers you need to reconcile our records”, without mentioning or requesting any missing specifications, updates, or exception reports. [Exh. X.]

In her March 2008 “Affidavit regarding Disclosures of Official Misconduct”, Appellant stated that she told Mr. Luhan, Mr. Wain, Mr. Matthews and Ms. Janisch in March 2007 that the Gold Systems “payments should not have been made.” [Exh. 5R-14.] The response stated that there were undelivered products, but no “undelivered services” under the contract as of that date. [Exh. B-3].

However, Controller Gloria Janisch testified that Appellant raised no objection to the city’s audit responses at the team meeting during which they were prepared. “We all agreed on what I drew up.” [Testimony of Ms. Janisch, 12/8/08, 2:32 pm.] Mr. Luhan testified that Appellant never stated to him that Gold had not done the invoiced work. Mr. Matthews stated in his testimony, “She [Appellant] never told me Gold Systems was ripping off the city.” [Testimony of Mr. Matthews, 12/12/08, 11:50 am.] Ms. Harmer, who authorized payment of deliverables 1 and 2, testified that Appellant never objected to either of the deliverables, or to payment of the invoices for that work. [Testimony of Ms. Harmer, 4/10/09, 1:18, 1:40 pm.] Likewise, the contemporaneous evidence does not show that Appellant asked Gold for the technical specifications or objected to payment of any Gold invoice before July, 2007. [See Testimony of Appellant, 7/9/08, 10:39 am.]

The development phase of the project consumed the next seven months. Frequent emails between and among the city team and Gold Systems show a day-by-day moving picture of the many details involved in planning and executing IVRs for the four sections within CPD, the customer agency. During the first few months of the project under Appellant, the email traffic largely concerned the need for a testing server, scope clarifications, added tasks, and corrections to the call flow, data, and coding. [Exh. 36.] Several major changes were thereafter made in the project. The number of software applications was reduced from 18 to five. [Exh. 18-17.] In May, the dashboard functionality was removed. [Exh. 5N-41.] Four change orders added work and money.
Work on the Building Inspection IVR was stopped in July at Appellant's request to allow a reevaluation of how the IVR should work. [Exh. 7-Y.]

In the spring of 2007, Mr. Luhan observed that the project was at least thirty days' behind schedule, and there was confusion both within the team and Gold personnel. The lack of a dedicated testing server caused delays, system shutdowns and a $3,000 expense because Appellant did not coordinate use of the one available server. [Testimony of Mr. Luhan, 12/12/08, 3:38 pm.] Appellant did not maintain a centralized project server file for the IVR team, a practice recommended for GIS projects. [Exhs. 6G, 28-14.] As a result, team members communicated in a steady stream of short emails covering single issues, which were time-consuming and inefficient for communicating project status. [Exh. 36-106.] On at least two occasions, Mr. Luhan instructed Appellant to place all project documents on the project server file to minimize the excessive email traffic. [Exh. 6G.] Mr. Luhan also reminded Appellant to document scope clarifications separately from emails, and to copy Mr. Pooley. "I have no clue how all of these changes impact other functionality." [Exh. 36-102, 103.] Appellant testified that on Jan. 29, she began having problems accessing project files, but the problem was fixed three months later. [Testimony of Appellant, 4/16/09, 11:55 am.]

The city's IVR team did not always agree about project goals or methods. Coordination of work within the city team, and between the city and contractor, was difficult at times. Poor quality control at Gold led to its submittal of products that failed Gold's internal testing process, a source of frustration to Mr. Luhan. [Exh. 36-150.] Staff turnover at Gold caused some duplication of effort by the city team to update the specifications after city testing. [Exhs. 36-161, 2K-13; testimony of Mr. Pooley.] Mr. Luhan believed that many of these problems would have been minimized if Appellant had managed the project more effectively. He also faulted Gold for its part in the project's ongoing problems.

Software Development Manager Allen Glen managed the team assigned to build the data-sharing software for the internal and external customers. Appellant's job as project manager was to track schedules, manage the meetings and budget, interact with the customers, and manage the project as a whole. Mr. Glen was not informed about what the core team promised the customer, and was restricted by Appellant from directly contacting the customer to resolve major issues with the design of the database. The technical staff could not make sense of the system requirements as stated by Appellant, and summarized the technical challenges caused by the requirements in a four-hour meeting with Appellant. [Testimony of Mr. Glen, 12/3/08, 3:14 pm.] In response to Mr. Glen's criticism of the project design, Appellant informed him that the missing design elements occurred on Ms. Harmer's watch. [Testimony of Appellant, 6/9/09, 12:00 pm.]

Lack of access to the customer caused long delays in resolving the core needs and finishing the data model and building inspection software. As a result, the project
missed all its target dates, and two members of the team asked Mr. Glen if they could be reassigned out of the project. Once Appellant was replaced as Project Manager in Aug. 2007, the team met with the customers, including the building inspectors. They confirmed that many of the functions and requirements Appellant sought were not necessary. The core needs were identified in six weeks, and the project was completed to the customer's satisfaction in Dec. 2007. [Testimony of Mr. Glen, 12/3/08, 3:30 pm.]

Technical disagreements between Appellant and the team also caused unnecessary work assignments and delays. One example occurred when Appellant had the team explore connecting to the Windows database through a CISCO secured database used for storing transactional call data. Mr. Glen and others on the team told Appellant the idea was technically unsound, because the CISCO database connected via a TCP port, a layer below the Windows networking. Nonetheless, Appellant kept the item on the agenda for six weeks and assigned work to investigate it. Finally, Mr. Glen confirmed in a short conversation with the database administrator that CISCO ran through a non-standard port, rendering connection to the network impossible by that means. The lengthy issue served no purpose, in Mr. Glen’s view, since the customer never requested reports of real-time calls from the CISCO IVR server. [Testimony of Mr. Glen, 12/3/08, 3:05 pm.]

Harlan Pooley was hired as TS Database Administrator in Feb. 2007, and was assigned to Mr. Glen to support the PILAR databases. In April, he observed that the IVR specifications were incomplete because of gaps in the city’s original specifications and staff turnover at Gold. Mr. Pooley became concerned that Appellant was not keeping the specifications updated, a function usually performed by a project’s systems analyst. As a result, he began amending the specifications himself. [Testimony of Mr. Pooley; Exh. 36-127, 128.] Gold’s Christine Stolz told Appellant she was keeping notes of the specification changes made by the parties, but Appellant learned in June 2007 that Ms. Stolz resigned before making those changes. [Exh. 36-116, 130.]

The IVR project required the city team to design and produce the IVR database from data on old city hardware no longer supported by a maintenance contract. Mr. Pooley and Mr. Glen believed that flaws in the city’s database design were having a rippling effect on the applications, and would require extensive coding changes to correct the problems. Both concluded that the agency customers who were to use the database should be asked to identify the functions they absolutely needed. However, Appellant denied team requests to discuss business requirements with the client on the grounds that it would encourage Gold to ignore its contract obligations, and invite “scope creep” and unrealistic client expectations. [Exh. 5E-2 to 4.] As a result, the team was unable to clarify what the customer considered essential functions, delaying completion of the project. After Appellant left the project in August, the team went back to the users, who agreed to eliminate some of the planned functions. The work was concluded without the additional functions in light of the fact that the contract was near its end and the funding was disappearing. “What we built got them in out of the rain.”

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9 Appellant described “scope creep” as expansion of a project over time by inclusion of additional functions not included in the original contract and specifications.
Appellant reported to Mr. Luhan that Mr. Pooley agreed with her in opposing Mr. Glen’s desire to “have multiple meetings with the users to review all the requirements.” [Exh. 35-49.] In contrast, Mr. Pooley testified that he disagreed with Appellant’s decision to restrict further discussions with the customer.

Mr. Pooley testified that Appellant was “very competent, hard-charging, competitive and ambitious.” However, she did not document project criteria and changes in an effective manner, choosing to communicate through numerous emails and meetings. Her style was to “press you to do what she asked you to do”, without seeking feedback from the technical staff on the team. As a result, the project was sometimes delayed while Appellant had the team explore ideas she later realized would not work. In August, Mr. Luhan replaced Appellant as IVR project manager and assigned Mr. Glen to handle the project. At the time, it was “in rough shape” because of tensions with the vendor and stress within the city team. Thereafter, the team functioned better, the project ran smoother, meetings were not confrontational, and the vendor reported no further conflict with the team. [Testimony of Mr. Pooley, 12/12/08; Ethan Wain, 12/17/08, 8:52 am.]

Mark Brazwell recalled that Appellant and he had a private conversation late one evening in the spring of 2007, during which she told him she thought the Gold contract was “not going the way it should” because some of the contract pieces had not been fulfilled by Gold. Mr. Brazwell told her she needed to elevate her concern to someone higher in the chain of command. Appellant recalled that Mr. Brazwell told her not to “air our dirty laundry”, which she interpreted as an effort to cover up the contract fraud being committed by Gold. Mr. Brazwell admitted that the phrase was used during the meeting by one of them, but he did not recall who said it. He insisted that nothing he said during that conversation was intended to discourage Appellant from raising her concerns with others. [Testimony of Mr. Brazwell, 7/16/09, 3:18 pm.]

In June 2007, Appellant and Mr. Luhan took a class on controlling project costs, which included Earned Value Analysis (EVA), a widely-used accrual accounting technique that measures a contractor’s performance at defined periods against established baselines. [Testimony of Appellant, 6/30/09, 11:30; testimony of Ms. Rauzi, 7/28/09, 3:13 pm.]

That month, Mr. Luhan received a bill for $172,980 from Gold, which included $140,000 remaining for deliverable 3, part of the first change request, and the cost of system maintenance training for city staff. [Exhs. D-2; 5N-12.] Under the contract, a deliverable must be completed and accepted before the invoice can be paid. [Exh. D-2, ¶ C.] Mr. Luhan asked Appellant to confirm that the work was done, and that the amount was correct and remained unpaid. [Exhs. V-6; 2A-1.] Shortly thereafter, Appellant forwarded to Mr. Luhan a summary prepared that January by Tom Tasker, the company’s Regional Sales Manager, and a template to calculate the balance for each IVR application. [Exh. F.] Mr. Luhan used Mr. Tasker’s summary to ask him directly for additional details. On June 18, Mr. Tasker responded with an updated billing “summary and outline for moving forward,” reviewing each change request and the status of each
payment. [Exh. 2F-1, 2.] Mr. Luhan commented on each item in red, and forwarded the exchange to Appellant with a request that she verify that the work was done and was within the original contract scope. [Exh. 2A-1.]

In response, Appellant added her thoughts and suggestions in blue, and sent them back to Mr. Luhan. [Exhs. 5N-69, 70; 2L-26, 27; 5N-153 to 155.] Her response referred to the Touch-Tone Only specifications as delivered on Sept. 29, 2006, but did not add that she considered the specifications incomplete. [Exh. 5N-154.]

On June 22, Appellant sent Mr. Luhan another template for use by Gold Systems to track its expenses by individual software application for each month and quarter from the beginning of the project, “to cover us if the project gets audited again . . . or for paying invoices based on earned value.” Appellant informed Mr. Luhan she would check back in a week to discuss the template with him. [Exh. 36-144.] Mr. Luhan later met with Appellant and approved the template for transmittal to Gold. [Testimony of Mr. Luhan, 4/10/09, 9:38 am.]

On July 12, Appellant asked Gold System managers Tasker and Hummel to produce the expanded time records, including a project cost accounting for 2006 and 2007 invoices and change requests, and monthly progress reports detailing their hours-of-effort for each of the four IVR applications. Appellant attached a four-page template for its use in providing the information, and requested it back by July 27. [Exh. 2I-8 to -13.] Mr. Luhan had been out of the office at the time of the first attempt, but he was copied on both emails. [Exhs. 36-163; 36-190.]

On July 16, Mr. Tasker responded to the request by asserting that the contract was based on identified deliverables, “and no mention of monthly invoicing/accounting.” He also referred Appellant to his June 18 summary of the contract accounting, and sent her a copy of the summary the next day. [Exhs. 36-199, 200; 2F-1, 2.] Appellant had already given Mr. Luhan her comments on Mr. Tasker’s summary. [Exh. 5N-153.]

A few days later, Appellant reminded Mr. Hummel of the July 27th deadline in an email on another topic. Appellant quoted the contract language entitling the city to seek a refund of fees paid if the software provided by Gold does not conform to all specifications. [Exh. 36-24, 25.] On July 26, Appellant emailed Mr. Hummel, “Make sure you guys get that financial information to me tomorrow. David can not give you a waiver. It’s critical.” On Friday morning, July 27, Mr. Hummel responded, “Tom [Tasker] is working with David on the financial info.” [Exh. 36-23.]

Between July 27 and August 9, 2007, Appellant had four meetings with Ms. Rauzi and Mr. Luhan, one of which was described as “a mentoring session [to help Appellant] understand the expectations for communicating project status, issues and assignments.” [Testimony of Ms. Rauzi; Exhs. 5R-118; 28-13, 14, 17.] At their first

10 The email’s reference to “8/29/2009” for the first two invoices is presumed to be a typographical error, as other evidence indicates that those invoices were dated August 2006 rather than 2009. [Exh. 5N-5.]
meeting on July 27, Appellant met with Ms. Rauzi, Mr. Luhan, and Mr. De Angelis. Appellant informed them that she believed reVision and Gold had been paid for work that had not been delivered. Ms. Rauzi testified that she had heard from others that the deliverables listed in Gold’s original contract did not clearly define the scope of work. Ms. Rauzi concluded from Appellant’s comments that she shared that concern.

In response to Appellant’s concerns, Ms. Rauzi reiterated the Agency’s standard business practices on contract management. Ms. Rauzi told Appellant to stay focused on the technical implementation of the project, and advised all present not to communicate with Gold until the team developed a plan of action to adjust the scope of the contract. [Exh. 2L-25.] Ms. Rauzi instructed Appellant to distribute an issues log listing her concerns about the IVR project. The group at the meeting discussed the appropriate scope of the work intended by the contract, and resolved to avoid mixed messages by communicating to the vendor with one voice. Appellant expressed relief that they were working toward resolving the Gold contract issues. Ms. Rauzi mentioned she would explore amending the contract with the City Attorney’s Office. [Testimony of Ms. Rauzi, 12/3/09, 11:00 am; 12/8/09, 11:08 am.] Later that day, Mr. Luhan filed the written order, entitled “DirectOrder.htm”, with the Agency’s personnel department.\footnote{That document was not offered as an exhibit, and the Agency offered no evidence that it was ever given to Appellant.}

Based on a number of complaints from the team that Appellant was causing miscommunication and confusion within her assigned projects, Ms. Rauzi had already worked with Mr. Luhan and the head of Human Resources to place in Appellant’s earlier action plan a direction to “[m]aintain professional communication by refraining from negative, attacking or loud communication when communicating with peers, vendors, and Technology Services customers. This includes the words you chose, body language (no pointing, or glancing looks), use of email, hallway interactions, and phone calls.” [Exh. 25-3.] Ms. Rauzi believed she should not have been required to provide this level of guidance on communication skills to an employee at Appellant’s level. However, Ms. Rauzi decided to reinforce the need for professional communication by requiring Appellant to take three classes on interpersonal relations, and by meeting with Appellant on July 27 to mentor her on communication issues. [Testimony of Ms. Rauzi, 12/8/09, 11:26 am.]

Shortly after that Friday’s meeting, Ms. Rauzi asked Ms. Janisch, the Agency’s Controller, to review the city’s payments to Gold. Ms. Janisch reported back that she had discovered no irregularities, and sent the contract material to Mr. Luhan for his further review. Ms. Rauzi did not consider Appellant’s request for an EVA accounting appropriate, since the Gold contract did not establish a baseline to measure performance before the work began. [Testimony of Ms. Rauzi, 7/28/09, 3:13 pm.] As a result, Gold was not thereafter required to produce an earned value analysis. Ms. Rauzi also asked reVision to prove it had produced the contract work. As a result, reVision agreed to improve and clarify its methodology as to one task.
The following Monday, July 30, 2007, Appellant sent Gold a “2nd Request for Information”. Therein, she stated that Mr. Luhan did not have the authority as Project Executive Sponsor “to circumvent internal controls such as a request . . . to verify project costs.”

Refusing . . . will compromise the terms of [the contracts]. . .

Gentlemen, I would prefer not to engage the Accounting department and the City Attorney in this business matter. However, this is Gold System Inc’s written notification, that I will engage every City and County of Denver resource available to me as the Project Manager, to substantiate the legitimacy of the invoices we have received from [Gold].

[Exh. 36-21, 22.]

Appellant then gave Gold until 4 pm the next day to provide her with the cost accounting. Appellant ended the email by quoting the contract section granting the City Auditor or other city representative access to the contractor’s books and records related to the city contracts. [Exh. 36-22.] Mr. Luhan, who was copied on the message, forwarded it to Ms. Rauzi, who was not. Ms. Rauzi immediately scheduled a meeting with Appellant for the next day, adding, “No further communications with the vendor until we have met.” [Exh. 31-14.]

That evening, Mr. Tasker emailed Mr. Luhan and Ms. Rauzi to report an “escalation” in Appellant’s interaction with Gold based on Appellant’s demand for an accounting “broken down into very granular detail . . . of all hours spent on the project to date.” When he objected on the basis that the contract was for a fixed fee rather than hourly work, Mr. Tasker said Appellant responded “that Gold either acquiesces or she will escalate to the City Attorney and Auditor.” Mr. Tasker added that the requested accounting would take over forty hours to prepare, and would be “not beneficial and just disruptive to the completion of the project.” He added that Appellant refused to discuss her demand or to take his calls. Mr. Tasker requested that Appellant be removed from the project based on the “chronic delays and conflicts [and] the recent escalation of derogatory and condescending emotional outbursts.” [Exh. 31-1.]

Appellant asserts that the Agency permitted violations of the contract by not requiring Gold to submit an earned value analysis. She believes that Gold was obligated by contract to provide an EVA based on the contract’s reference “weekly status calls”. [Exh. 3A-5.] That phrase does not give notice of an obligation to issue monthly invoices, and the contract does not specifically require submittal of an EVA. Appellant’s interpretation is also at odds with the contract provisions stating that “[p]ayment for this project will be made upon acceptance of each deliverable”, and requiring invoices “upon completion of each deliverable”. [Exh. 2Z-2.] Appellant testified that Gold Systems did prepare project schedules and periodic status reports. [Testimony of Appellant, 6/9/09, 10:58 am.]
Appellant also contended that in demanding the accounting she was exercising the contract option to quantify the work done. [Testimony of Appellant, 6/9/09, 9:08 am.] The contract contains no option clause. In any event, Appellant was neither a party to the contract nor a representative authorized by the city to exercise an option. Moreover, Appellant had not complained about Gold’s failure to bill monthly for the prior seven months she served as Project Manager.

In support of her opinion that the contract requires monthly bills, Appellant also cited the contract’s termination provision, which permits Gold to receive the reasonable value of its completed work in the event the city terminates the contract. [Testimony of Appellant, 6/9/09, 11:12 am; Exh. 2Z-3.] That language recognizes that a claim may exist for the reasonable value of work performed under the quasi-contract theory of quantum meruit if the contract is terminated by the city. See Black’s Law Dictionary (8th ed. 2004). However, it does not specifically require monthly bills to support a claim for such damages.

Ms. Harmer and Mr. Luhan both testified that they authorized payments to Gold despite problems and delays because the latter were caused by factors that were discovered after the contract was negotiated. Mr. Luhan stated those problems included platform issues, too many groups using the server at once, delays getting the proper system installed, turnover at Gold, and mergers affecting the equipment suppliers. He blamed some of the problems on Appellant’s failure as Project Manager to coordinate use of the server, and her failure to share project documents with team members.

Appellant’s emails reveal that she had persistent issues with the quality of Gold’s work during the development phase. [Exhs. 36-24, 36-100, 5N-75.] Mr. Luhan shared Appellant’s financial and other concerns about the IVR project, but asked Appellant to use a more conciliatory tone with Gold in her attempts to resolve the issues. [Testimony of Mr. Luhan, 4/6/09, 2:11 pm; Exh. 25-3.] He complained to both Gold and Appellant about the “hundreds of emails” they sent him containing one line about a minor project detail.12 [Exh. 36-103, 106.] Appellant never placed the project documents on the sharepoint site after Mr. Luhan’s request that she do so. [Exh. 28-14.] Mr. Luhan believed he was obligated to get involved in Appellant’s projects to a greater than normal extent in order to resolve problems usually handled by a project manager. After Appellant was removed from the project, Mr. Luhan continued to negotiate with Gold, which was ultimately paid about $30,000 less than the full contract amount of $467,000 after some work was subtracted and other work added. [Testimony of Mr. Luhan, 4/6/09, 4:37 pm.]

C. Appellant’s Hostile Work Environment Complaint

On July 17, Ms. Rauzi invited Mr. Luhan, Appellant, and reVision’s manager Scotty Martin to a meeting in her office for an update on PILAR, which would include a discussion of several itemized topics related to the IVR project. [Exh. 35-30, 31.] Less

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12 Exhibit 36 contains 289 pages of emails regarding the IVR project in 2006-07.
than an hour later, Appellant sent her responses on the listed IVR topics to Ms. Rauzi, Mr. Luhan, and several others, with the following message: "If this update does not cover the information you are looking for, then the other individuals I have identified are more knowledgeable of the relevant subject matter." Mr. Luhan responded, "Please coordinate with me in advance before sending anything out. Thanks." Appellant replied, in a message entitled, "Notice of Distress",

My previous email was the polite way of expressing: I have nothing to add to that meeting. If Scotty [Martin of reVision, Inc.] needs information, let him engage the natives and take the arrows like I did for 2 years. In my recent training, I was advised that the City and County of Denver has not (and will not) authorize you to repeatedly put me in harm's way, after the hostile episodes with Allan Glen and Alex Able\(^{13}\). As a professional City and County of Denver employee, I am officially requesting that you not subject me to the degree of hostility I was exposed to before when acting as your representative for the PILAR program. The blatant hostility is well documented. If I am subjected to that degree of hostility again (from another City and County employee (or contractor)), I will go directly to CSA and file a formal grievance. Please do not put me in harm's way again!

[Exh. 35-29.]

Unknown to Mr. Luhan, Appellant had emailed Ms. Rauzi's assistant accepting the meeting invitation a few minutes after she sent her response to the meeting agenda. [Exh. 35-45, 68, 69.] Early the next day, Appellant declined another co-worker's request for a meeting to update him on PILAR cashiering issues, stating that her information was outdated. [Exh. 35-46.]

In response to Appellant's email entitled "Notice of Distress", Mr. Luhan asked her, "How have I put you in harm's way? Are you having recent issues with Allan and Alex? The meeting invite was arranged by Molly [Rauzi] and Becca [Ms. Rauzi's assistant] invited you." [Exh. 35-32.] Mr. Luhan forwarded her message to Ms. Rauzi, who sent it on to Mr. Brazwell with a request that he work with Appellant and Mr. Luhan to manage the situation "before it escalates again." [Exh. 35-40.] Later that day, Mr. Luhan told Appellant, "Hi Lavella. Your input to this process is essential . . . Please attend." [Exh. 35-44.] Appellant replied with a lengthy email, marked confidential, entitled "Written request to stop being exposed to violence and hostility in the workplace". Therein, Appellant claimed that the team was in denial about the amount of stress and hostility caused by the PILAR project.

\(^{13}\) In an Apr. 2007 email sent to Appellant and 12 others, Mr. Abel openly criticized the facilitator of the PILAR Review Committee, in an obvious reference to Appellant, who was serving as facilitator. Mr. Abel later apologized to Appellant at her request. A few weeks later, the agency sponsoring the project removed Mr. Abel from the committee. [Testimony of Appellant; Exh. 3U-3 to 5.]
I was also informed by Mark Brazwell yesterday (7/18/07) that not attending your new cycle of PILAR meetings will probably result in another reprimand. My first priority is to protect myself from violence and hostility in the workplace. If that results in you retaliating again with a reprimand, history will repeat itself. . . . If you do not help me, I have the right to pursue other City resources to protect myself . . . PILAR is not worth my health or my life. If something happens to me, my family and friends will publicly publish this request for help. Scared and Frustrated City and County of Denver Employee, Lavalla Harrison.

[Exh. 35-52 to 54.]

Appellant also itemized seven incidents of hostility she experienced in the past. [Exh. 35-53.] At hearing, Appellant stated that the prior incidents occurred in 2003 and led to her internal complaint against co-worker Vladimir Goldenberg. Bill Hellman investigated that complaint, and corrective measures were implemented by Mr. Hellman, Mr. Brazwell, and Mr. De Angelis. [Testimony of Appellant, 6/23/09, 10:24 am; Exh. 2H-80.]

Ms. Rauzi became concerned about the heightened level of emotion expressed by Appellant’s email. “It looked like she thought she was under a death threat” when she used the phrase, “if something happens to me”. Ms. Rauzi was aware that Appellant’s projects were delayed, and communication within the teams was becoming “progressively more confusing.” Ms. Rauzi was finding it difficult to hold the teams accountable to complete their projects, one of which was a top mayoral priority. She believed that Appellant’s reaction to problems was “disproportionate to the importance of the work. . . I knew there was a disconnect somewhere, so we decided we needed to investigate.” [Testimony of Ms. Rauzi, 12/3/08, 11:28 am.]

Mr. Luhan informed Appellant that he had asked Mr. Brazwell to retain a third party to investigate her claim of workplace violence14, but added that he did not believe inviting her to the meeting created a hostile work environment. He then ordered her to attend the PILAR meeting. “Failure to comply will result in disciplinary action up to and including dismissal. Please review your action plan we wrote April 13 which was written after you received a verbal and written reprimand.” [Exh. 35-61.] Appellant replied,

See David, you still don’t get it. . . . you always penalize me for asking for help. . . . I never refused to attend the meeting. I merely asked for help upfront. That is not insubordination, it’s F E A R.
And, it’s not that meeting I am concerned about . . . it’s what comes after the meeting that I am afraid of.
I have never seen the April 13 action plan you are referring to, and I did not coauthor it. Where is it? Can you send me a copy?

14 On July 20, Mr. Brazwell asked Mr. Cooper of CSA to conduct the investigation based on Appellant’s allegation of hostility in the workplace. [Exh. 32-14.]
The next day, Mr. Luhan sent Appellant the R-drive location of her action plan and 6-month Performance Action Plan (PEP), and asked her why she had not raised these concerns at their bi-weekly meetings. He also asked CSA Employee Relations Analyst Jerome Cooper to investigate Appellant’s allegations. Three days later, Appellant contacted Mr. Cooper herself and asked him to investigate her complaint of hostile work environment against Mr. Luhan. That same day, Mr. Brazwell confirmed to Appellant that Mr. Cooper would conduct the investigation. Mr. Cooper interviewed Appellant three times between July 26 and Aug. 7. Appellant’s request for investigation claimed that the hostility arose from her participation in the PILAR project, and that she had a witness to substantiate questionable conduct by a PILAR contractor. Appellant also attached documents related to the Gold IVR contract. After discussing her contract concerns with Mr. Cooper, Appellant began to think the hostility she was experiencing was connected to her reports about contract issues. The CSA investigation was concluded on Oct. 15, 2007.

Appellant testified that Mr. Luhan threatened her once, and the threat caused her to develop migraines and acid reflux, for which she was out sick the week of July 27th. She experienced “chills down my spine whenever I saw an email” from him, out of fear that he would say “something mean.” Her fear was also based on Mr. Luhan’s reprimand for the Tessar email, his forwarding her Mar. 20 email to Mr. Glen, and his claim that her Mar. 19 email was critical of Jayne Cassidy. During the CSA investigation, Appellant requested as relief that Mr. Luhan cease communication with her, and transfer the PILAR and IVR projects to her former supervisor, John De Angelis.

D. Reports of Contract Fraud or Mismanagement

On Aug. 1, Appellant met with Michael Henry, Staff Director of the Denver Board of Ethics, about her allegation of contract fraud. Mr. Henry informed Appellant that she could file an ethics complaint with the Board of Ethics through him, but that the Board does not have jurisdiction over complaints of contract fraud. Mr. Henry suggested she discuss the matter again with Ms. Rauzi. He also advised her that the Auditor’s office could investigate her claim of fraud. Appellant did not thereafter file an ethics complaint with the Board of Ethics. In accordance with Mr. Henry’s policy of maintaining confidentiality, he did not inform anyone that Appellant had spoken to him.

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15 The “April 13 action plan” was written by Mr. Luhan based on his meeting with Appellant to discuss “how we were to move to a better place” after the verbal reprimand. [Exh. 25; Testimony of Mr. Luhan, 4/6/09, 1:14 pm.]

16 Appellant testified that the threat was Mr. Luhan’s statement that her failure to attend the July 23 PILAR meeting could lead to disciplinary action. [Testimony of Appellant, 6/23/09, 2:29 pm; Exh. 35-107.]
Appellant told Mr. Henry that her questions made some of the team members nervous because they didn’t know the answers. [Testimony of Appellant, 6/9/09, 11:16 am.]

That same day, Ms. Rauzi, Mr. Luhan and Appellant met for the second time on the subject of communications. Appellant told them she had received customer complaints about Ms. Cassidy’s handling of the Documentum project. When asked about her July 30th email to Gold, Appellant stated she sent it because she was still concerned about the contract issues. Appellant told the group that reVision had not produced two PILAR deliverables for the DIA contract, Buddha Logic was out of control, and Ms. Cassidy was asking for another $400,000 for Documentum or she would wash her hands of the project. [Testimony of Appellant, 6/9/09, 9:49 am.] Appellant also asked Ms. Rauzi for copies of nine contracts with several consultants, among them Gold Systems, reVision, Inc., and Buddha Logic.

Appellant then told them she planned to go to the City Attorney’s Office and Accounting to report contract fraud. Ms. Rauzi became frustrated by what she saw as Appellant’s continued tendency to get distracted from the task at hand, and responded, “[h]ow is that helpful?” She asked Appellant why she would go to the Auditor about a contract matter before discussing it with her. Ms. Rauzi believed that some of the deliverables in the contract were not yet due, and that a contract audit would be premature. She urged Appellant to focus on resolving the contract issues, in keeping with the plan they had developed at the July 27th meeting. Ms. Rauzi told Appellant that there were ways to fix her concerns, and said she would explore a contract amendment with the City Attorney’s Office. [Testimony of Ms. Rauzi, 7/28/09, 3:31 pm; and 12/8/08, 9:01 am.] Appellant concluded from Ms. Rauzi’s remarks that she thought Appellant had made a report to the Auditor, even though Appellant had not mentioned the Auditor, and that Ms. Rauzi was trying to prevent her from further reports of contract fraud. “I didn’t tell her that made me uncomfortable [because I] did not want to be chewed out” again. [Testimony of Appellant, 6/9/09, 10:45 am.]

Ms. Rauzi then instructed Mr. Luhan to send a letter to Gold informing it of the team decision to amend the contract to adjust its scope, and asking Gold to estimate the percentage of completed work and payments made for each deliverable. In his subsequent letter to Gold, Mr. Luhan added, “I may require your team to provide supporting documentation if a consensus cannot be reached.” [Exh. 5N-1, 2.] Ms. Rauzi also asked Mr. De Angelis to check whether the Project Server computer site was being utilized for the IVR project. Mr. De Angelis reported back that it was last modified in Oct. 2006, when Ms. Harmer served as Project Manager. [Exh. 28-14.]

At their first meeting on July 27, Ms. Rauzi had instructed Appellant to produce and share an issues log detailing her concerns about the IVR project, and asked her to

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17 Their first meeting occurred on July 27th, and is summarized in the previous section of this decision.
18 At about the same time, Appellant told Mr. Brazwell she thought the Auditor “would be interested” in the reVision and Gold contracts. Mr. Brazwell testified that he did not think he mentioned this conversation to Ms. Rauzi before he left on his August vacation. [Testimony of Mr. Brazwell, 12/1/08, 3:50 pm.]
verify contract terms and funding.\textsuperscript{19} The issues log was intended to assist the team in resolving the contract disputes, a best practice in the field of project management. On July 30, Appellant sent Ms. Rauzi a list of other contracts and their status, placed numerous contract documents on Ms. Rauzi’s desk, and forwarded her an 11-page email string between herself and Gold “to assist you in getting up to speed” on the issue of the Gold invoices. [Exh. 36-20 to -30.] One of the emails was the “2\textsuperscript{nd} Request for Verification of Project Expenditure” sent to Gold. None of the attached documents contain a description of Appellant’s issues with the Gold contract. The only reference to the Accounting Department and City Attorney was a statement included in her July 30\textsuperscript{th} email to Gold that she “would prefer not to engage [them] in this business matter”, but that she would use every resource available to her “to substantiate the legitimacy of the invoices we have received”. Appellant ended the latter email by quoting the contract provision giving the City Auditor the right to examine Gold’s records related to the contract for three years after final payment. [Exh. 36-22.] The documents were not disclosures of official misconduct, but a warning to Gold that Appellant would seek enforcement of the city’s contract rights if the company did not provide the details of the work done under the contract.

Appellant testified that she believed the email string contained her issues, and that it therefore complied with Ms. Rauzi’s request for an issues log. [Testimony of Appellant, 6/9/09, 3:40 pm.] Ms. Rauzi viewed these documents as background and a list of contract documents, not the information she needed to move the project forward. [Testimony of Ms. Rauzi, 12/8/08, 9:49 am.]

After the meeting on Aug. 1, Mr. Luhan drafted another memo to Appellant instructing her to maintain professional communications. That memo was never sent to Appellant, since Ms. Rauzi decided instead to meet with Appellant and discuss the matter. The memo stated that Appellant was reminded at the Aug. 1 meeting of her action plan, which required her to “maintain a courteous demeanor and use professional cooperation and communication between all . . . contractors . . . and outside parties”. [Testimony of Mr. Luhan; Exh. 28-15, 16.]

At 10 am on Aug. 2\textsuperscript{nd}, Appellant sent Ms. Rauzi an email informing her that she had asked five people for further contract details “per our conversation yesterday regarding verifying contract terms and funding”. Ms. Rauzi responded by asking her to “please stop sending all of these emails and asking people to collect all of this information. I do not need all of this detail. I will sit down with you and explain what I asked for yesterday.” [Exh. 28-13.] Ms. Rauzi then scheduled a mentoring session with Appellant, Mr. Luhan and Mr. De Angelis for Aug. 7\textsuperscript{th} to reinforce the need to use the PMO process for project communications, and “help her understand the expectations for communicating project status, issues, and assignments.” [Exh. 28-14.]

Appellant testified that Ms. Rauzi’s comment that she would “fix it” referred to the failure of reVision to produce the DIA deliverables. [Testimony of Appellant, 6/9/09, 19

\textsuperscript{19} Appellant testified that Ms. Rauzi did not order her to produce an issues log until their second meeting, which occurred on Aug. 1. [Testimony of Appellant, 4/16/09, 2:04 pm.]
This comment alarmed Appellant, and caused her to suspect misconduct by the Agency itself. Appellant believed the contractor’s behavior was fraudulent, and could therefore not be fixed. After Ms. Rauzi’s Aug. 2nd to “stop sending all these emails”, Appellant began to think that Ms. Rauzi and perhaps Mr. Luhan were resisting her efforts to obtain contract details because they had a financial interest in the contracts and could therefore profit from the contractors’ fraudulent actions. [Testimony of Appellant, 6/9/09, 1:26 pm; 6/10/09, 4:58 pm.] Appellant later testified that she did not believe Mr. Luhan was trying to enrich himself at the city’s expense or sabotage city contracts because they often discussed how to determine what work was done and what remained. [Testimony of Appellant, 6/30/09, 11:28 am.]

That evening, Appellant communicated her suspicion to a Career Service Authority (CSA) employee and two employees at the Office of Employee Assistance in an email entitled, “Need help with VERY serious ethics problem – SCARED!!!” Therein, Appellant began that Mr. Cooper was investigating her hostile workplace complaint, which she believed now presented an ethics issue.

I attempted to discuss the matter with Molly Rauzi first (yesterday: 8:30 AM) but things are getting weird. I think she is trying to delay me from discussing the ethics issue with someone that might understand my concerns and she said she would “fix it.” Fraud is not something you fix. This is a conflict of interest. She may be implicated in the ethics issue herself, and by telling her, I may have just put the nails in my own coffin. I don’t trust her. I am SCARED!

Do you think I should talk to the City Auditor or someone else?

I am really scared now because the ethics issue is a very serious matter and it explains all the other hostile behaviors.

Would either of you be available next Tuesday morning to talk to me and help me get through this? I can’t do this by myself.

If something happens to me or my family, it will be related to the fraud issue or “poorly managed contracts.”

[Exh. 35-27, 28.]

This is Appellant’s first statement to anyone in the city that she suspected a city employee of ethical misconduct. Only Marcia Cunningham of CSA responded, and advised Appellant to share this information with Mr. Cooper that day. Appellant left for vacation the next day. Upon her return on Aug. 7, Appellant replied that she would report this to Mr. Cooper, adding, “I feel cornered and scared. My family and I agreed that I need to talk to the City Auditor about the fraud and file a formal statement.” [Exh. 35-27.] Appellant testified that she was scared because Ms. Rauzi took the word of a
contractor over her word, an action Appellant considered unethical. [Testimony of Appellant, 6/9/09, 1:30 pm.]

By Aug. 7, Appellant had decided to file a formal statement with the City Auditor alleging fraud. [Exh. 35-27.] She met with Mr. Cooper, intending to give him the documentation for investigation of her claim that Ms. Rauzi was attempting to cover up her conflict of interest in a city contract. [Exh. 35-27.] Mr. Cooper testified that his report summarized everything Appellant told him, including her concern about how contract money was being spent. The investigative report’s only reference to Appellant’s contract issues was contained in the following sentence: “The complainant raised concerns about the propriety of contractor expense tracking related to the CISCO/IVR Migration Project.” [Exh. 2H-22.] Mr. Cooper informed Appellant that he did not have jurisdiction over contract fraud claims, and referred her to the Auditor’s Office. [Testimony of Mr. Cooper, 7/16/09, 10:47 am.] I conclude that Appellant did not raise her ethical concerns about any city employee during the CSA investigation.

Appellant also met with Ms. Rauzi, Mr. Luhan, and Mr. De Angelis for a third mentoring session intended to encourage her to use the PMO communication process. At that meeting, Ms. Rauzi told Appellant the City Attorney advised her to amend the Gold contract. Ms. Rauzi then asked Mr. De Angelis to work with Appellant on any remaining contract issues. [Exh. 5R-15.] Again, Appellant did not inform those at the meeting of her belief that some managers might have a financial interest in the contracts they were administering for the city, or that she believed there had been fiscal mismanagement or waste of funds.

On Aug. 9, Appellant spoke with Amy Mueller, the Mayor’s Deputy Chief of Staff. Ms. Mueller advised her to await the outcome of the CSA investigation about her workplace and safety concerns, and to file a complaint with the Board of Ethics as to any ethics issues. That same day, in a conversation at Appellant’s desk, Appellant informed Ms. Rauzi that she would be contacting the Auditor to report two cases of contract fraud. Appellant later told Ms. Mueller that “the conversation was encouraging,” and that Ms. Rauzi told her she understood her concerns. As a result, “I am not as scared as I was last week. But . . . I am still very leery of what comes next and still feel fairly exposed.” [Exh. 5R-36.]

On Aug. 10, Appellant made a report of contract fraud to Phil Cummings, the since-retired Audit Supervisor for the Denver Auditor’s Office. Appellant told Mr. Cummings that she believed a city contractor had been paid twice for the same work. She brought with her contracts, amendments, payment vouchers, and other documents, and gave him an outline of the facts on her allegation of contract fraud by Gold and financial negligence by the Agency. Mr. Cummings informed her it sounded more like contract mismanagement on the part of the Agency, and advised her to return with multiple examples of the transactions she questioned. [Exh. 5R-12, 13.] He also informed her about the whistleblower ordinance scheduled for enactment in the Denver City Council. Mr. Cummings was assigned to initiate the city’s Whistleblower Ordinance, DRMC 2-106 et. seq., after the passage of the federal Sarbanes-Oxley
Act. The city whistleblower ordinance prohibits retaliation against city employees who disclose official misconduct to appropriate reporting authorities. The Denver City Council passed the ordinance on Aug. 13, 2007, a few days after Appellant’s meeting with Mr. Cummings.

Mr. Cummings testified that Appellant brought documents which showed "a possibility of a double payment." If the documents had shown a pattern of such payments, he would have brought the matter to his supervisor. Mr. Cummings stated that the city had no ordinance adopting Sarbanes-Oxley reporting standards, and Appellant did not mention the Fiscal Accountability Rules as the basis for her claim of contract fraud. Appellant also mentioned she had ethical concerns about Agency actions, and Mr. Cummings advised her that the Board of Ethics was the appropriate forum to raise those issues. As of May 2008, the month of Mr. Cummings’ retirement, Appellant had not returned or submitted any further information to Mr. Cummings.

Mr. Cummings referred Appellant to the Auditor’s contract specialist Dana Peterson, who met with Appellant and her attorney about her allegations of contract fraud. He also passed on her information to David Coury in Audit Services for investigation into the fraud allegation. Mr. Coury reported back to him that it was inconclusive as to fraud, and did not warrant a performance audit. Mr. Cummings did not inform Ms. Rauzi or Mr. Brazwell that Appellant had spoken to him. [Testimony of Mr. Cummings, 12/2/08, 11:10 am.] Ten days after their meeting, while Appellant was already out on investigative leave, Appellant informed Ms. Rauzi and Mr. Brazwell that the Auditor’s office did not believe her contract concerns would be considered fraud. [Exh. 5R-20.] Appellant acknowledged in her testimony that Sarbanes-Oxley has not been adopted by the city, although she believed minutes of the City Council indicate that it considered the law to be a best practice.

E. Investigative Leave

On Aug. 14, an hour after an internal IVR team meeting, Appellant sent a confidential email to Mr. Luhan requesting his help in resolving several disagreements she was having with Mr. Glen about the project. The email criticized as unnecessary Mr. Glen’s proposals for “radical redesign” of the project and additional meetings with the customers. She asked Mr. Luhan to remind Mr. Glen he was not the project manager, and to advise him to let the core team decide what was necessary and do its work “without him raiding the project resources.” Mr. Luhan forwarded the email to Ms. Rauzi and Mr. Brazwell early the next morning, and soon thereafter asked Appellant to come to his office. [Exhs. 36-33, 36 to 38; 5R-125.] During that meeting, Mr. Luhan placed Appellant on investigative leave based on an order from Ms. Rauzi. [Testimony of Ms. Rauzi, 12/8/08, 8:55 am; Exh. 28-4.] Appellant was instructed not to access any city computers, phones or computer systems, and to refrain from communication with

employees, contractors, vendors, or customers regarding her projects or any city project. [Exh. I.]

Mr. Luhan, Ms. Rauzi and Mr. Brazwell met on Aug. 23 to discuss the decision to place Appellant on investigative leave. Mr. Luhan thereafter recapped their reasons in an email to both: 1) Appellant’s inability to work with others, most recently demonstrated in her Jul. 30th email to Gold and the Aug. 14th email to Mr. Luhan; 2) her lack of respect for co-workers, as shown by their walk-in complaints about her, as well as the Aug. 14 email; 3) her disobedience of a direct order to stay focused on the IVR project; 4) her repeated claims of a hostile work environment; and 5) behavior that caused delays in completing the IVR project. [Exh. 28-1.] Mr. Luhan testified that the fourth item was based on Appellant’s repeated claims that the hostility at work was a threat to her personal safety, claims that were not borne out by the Agency’s investigations. “We couldn’t understand what was going on.” [Testimony of Mr. Luhan, 4/8/09, 9:07 am.] The investigative leave was intended in part to take her out of the environment she claimed was hostile, and allow a full investigation into the reason for her belief that her life was in danger. [Testimony of Mr. Brazwell, 12/3/08, 9:26 am.] By Aug. 23, Mr. Brazwell had heard rumors that Appellant had gone to see the Auditor and Mr. Henry, the Director of the Board of Ethics. [Testimony of Mr. Brazwell, 12/2/08, 9:15 am.]

Ms. Rauzi concluded that investigative leave was appropriate because 1) Appellant believed she was unsafe while on the job, for reasons that were not apparent, 2) the team was upset and unproductive, and 3) the vendor was frozen due to confusion in the city team. She instructed Mr. Brazwell to place Appellant on investigative leave in order to remove her from the conditions she claimed were unsafe, and to launch an investigation into the reasons for Appellant’s fear. [Testimony of Ms. Rauzi, 12/8/08, 8:55 am.] At the time, Ms. Rauzi was unaware that Appellant had made reports of misconduct about her or anyone else in the Agency. The investigative leave was ultimately extended until Dec. 31, 2007 pursuant to CSR § 16-30 B. to allow completion of the CSA investigation. [Exhs. 9, 23, 24.]

On Aug. 17, while Appellant was on investigative leave, she transmitted the requested issues log, entitled “Risks Inventory”, to John De Angelis [Exh. 2W.] Ms. Rauzi did not see the issues log until Dec. 8, 2008, during her testimony, but observed that the document was what she expected to receive immediately after she ordered Appellant to produce an issues log at their July 27th meeting. On Aug. 30, 2007, Appellant filed Appeal No. 55-07, which asserts that her investigative leave was a violation of the whistleblower ordinance.

On Oct. 15, CSA issued its 24-page investigative report on Appellant’s July hostile work environment complaint. It included a summary of 24 witness interviews, 22 attachments, and the investigator’s conclusions on the issues of discrimination. Mr. Cooper found that Appellant’s complaint had four bases: 1) Mr. Luhan misrepresented Appellant’s behavior as unprofessional in the verbal reprimand dated Mar. 27; 2) Mr. Glen conspired with Mr. Luhan to undermine and intimidate her; 3) Mr. Abel misrepresented her efforts as chair of a PILAR committee in retaliation for her criticism
of his style of questioning staff during the meetings; and 4) Ms. Myers was given a verbal reprimand and ordered to apologize to Appellant for criticizing her in a phone conversation in May 2006. The report concluded that allegations 3 and 4 occurred as described by Appellant, but that they were not motivated by Appellant’s age – 52, her race – African American, or her gender – female. [Exh. 2H-22.] Appellant testified that she did not intend to allege discrimination by describing herself as “a black, 52-year old female employee” in her Independent Investigation Request dated Jul. 26, 2007. [Exh. 2H-36.] Appellant also clarified that she is not alleging discrimination in any part of this consolidated appeal.

F. 2007 Performance Evaluation

On Nov. 14, 2007, the Agency issued a “needs improvement” Performance Enhancement Program Report (PEPR) to Appellant for the period Oct. 16, 2006 to Oct. 16, 2007. [Exh. 17.] Appellant was rated “needs improvement” in four out of the five citywide duties, including Service, Teamwork, Accountability and ethics, and Respect for self and others. She was rated “successful” in the duty of Safety. Together, those duties are known by their acronym, STARS.

Mr. Luhan based the rating in the service category on his receipt of more than two substantiated complaints from internal and external customers, and Appellant’s failure to fully verify customer expectations, resulting in disagreements among the city team and delay in completing the IVR project. [Testimony of Mr. Luhan, 12/12/08, 3:25 pm.] In the area of teamwork, Mr. Luhan believed that Appellant’s derogatory communications in emails and meetings created a tense work environment which adversely affected morale and constructive communication among the team, as shown by negative co-worker feedback revealed during Mr. Brazwell’s investigation into Appellant’s March request for intervention. [Exh. 35-14, 15.] Mr. Luhan received complaints about Appellant’s negative demeanor at staff meetings, and observed the same behavior himself, including a habit of cutting others off before they were finished speaking. Mr. Luhan received positive customer feedback on Appellant from Ms. Rodarte regarding the quality of her customer service to CPD on the IVR project. However, he found that her failure to regularly attend monthly staff meetings, failure to provide signed standards for change control and user acceptance documents, and behavior of walking out on meetings when her statements were questioned adversely impacted team performance. [Testimony of Mr. Luhan, 12/12/08, 3:27 pm.]

Appellant was rated “needs improvement” in accountability based on her failure to take responsibility for problems she caused after they were brought to her attention. Appellant was rated “needs improvement” in the area of respect for self and others because she did not adequately communicate and share project documents within the city team, or assure team compliance with applicable guidelines and policies. [Testimony of Mr. Luhan 12/12/08, 3:36 pm; Exhs. 17-6 to 8, 6G.] The PEPR rated Appellant successful on her job duty of providing business process analysis for PILAR and IVR. However, Mr. Luhan commented that “her involvement on two projects IVR and PILAR has resulted in 1. Project delays, 2. Confusion, 3. Scope changes, 4. Project
task re-work, and 5. Promoting a high tension environment with internal and external teams." [Exh. 17-12, 14.] At hearing, Mr. Luhan testified that Appellant's failure to provide Gold a separate testing server on which to work caused a system crash and a $3,000 expense for contractors to bring the system back up on a Saturday. When problems and delays in Appellant's projects were brought to his attention, he discovered that Appellant was not using industry best practices to avoid problems, such as maintaining a sharepoint issues log. On Nov. 2, Mr. Luhan provided Appellant with a Performance Improvement Plan (PIP), which stated Appellant was to abide by the standards of service, teamwork, accountability and ethics, and respect for self and others. [Exh. 21.]

Appellant submitted a 26-page response to the PEPR, which did not specifically address the above “needs improvement” ratings. [Exh. 18.] Therein, Appellant stated her March Request for Intervention was intended to inform project stakeholders about forthcoming operational reforms, changes and funding. She also described her disagreements with some management decisions involving her projects, and criticized contractors Gold Systems, reVision, and Buddha Logic as unreliable and not knowledgeable in the subject matter of their contracts. Appellant stated reVision failed to deliver 200 use case diagrams, billed for a four-hour meeting with her that did not occur, and made misrepresentations leading to its payment of $300,000. Appellant calculated that Gold was only due $129,361 - roughly 28% of the contract price - because the number of applications was reduced from 18 to 5, which was 28% of the contracted-for work. Appellant noted that she reported misuse of city resources in PILAR and IVR to Mr. Luhan, Mr. Brazwell and Ms. Rauzi, and that her efforts to mitigate the waste of project resources would be addressed through appropriate channels. [Exh. 18-13.] Appellant's grievance of the PEPR was denied on Dec. 10, 2007, and she timely filed Appeal No. 89-07 challenging that decision. [Exh. 3.]

G. Dismissal

On Nov. 15, 2007, Appellant was sent a notice that the Agency was considering discipline against her based on multiple complaints from co-workers and contractors, inappropriate emails in March and July, and disobedience to two direct orders, among other misconduct. [Exh. 16.] The pre-disciplinary meeting was held on Dec. 3, 2007. On Dec. 14, Mr. Brazwell on behalf of the Agency made the decision to terminate Appellant, effective Dec. 31, 2007. [Exh. 6.] Appellant filed Appeal No. 90-07 five days later, claiming the termination violated CSR §§ 15-106, 110 and 130, and the city's whistleblower ordinance. The three appeals were consolidated for hearing on Jan. 4, 2008.

The termination decision listed the following behavior as violations of the Career Service Rules:

1) Engaging in actions that led to numerous complaints from co-workers and contractors from Dec. 2006 to Aug. 2007,
2) Sending an email to Mr. Glen on Mar. 20, 2007 that could have been construed as a veiled threat,

3) Abruptly leaving the room on Mar. 23rd during a coaching session with Mr. Luhan,

4) Sending a "Request for Intervention" on Mar. 23rd critical of Mr. Glen, leading to an investigation which found that Appellant's co-workers complained of her negative behavior, and which concluded that Appellant's working environment was not hostile,

5) Sending Mr. Luhan emails on July 17 and 19 which accused him of exposing her to violence and hostility based on his order that she attend a PILAR meeting,

6) Using a work product and communication style that required extensive management oversight from Mr. Luhan and the Agency CIO,

7) Disobeying a July 27th direct order to cease threatening communications with contractors by virtue of her July 30 email to Gold, in which she threatened to report it to the City Attorney and Accounting if Gold did not provide certain information by the next day,

8) Disobeying a July 27th direct order to establish and share an issues log for the IVR project, and

9) Failing to share project documents or allow senior team members to contact the customer to clarify business requirements, even after repeated management intervention. Those actions demonstrated a "lack of openness to consider positive, constructive dialogue to problem resolution", and caused unnecessary work, confrontations with city teams, delays, confusion, cost overruns, and a high-tension work environment.

H. Whistleblower Allegations

In response to an order in this appeal, Appellant filed an affidavit in support of her whistleblower allegations in March 2008. [Exh. C.] In that affidavit and her April 2008 memo to Denver City Councilwoman Jeanne Faatz, Appellant asserts that Mr. Luhan and Mr. Glen resisted her efforts to improve the planning and control tools for the PILAR and IVR projects. Specifically, Appellant alleges that Mr. Glen failed to include department-level reconciliations in his design of the online credit card payment system. [Exh. 5S-132, 136.] Mr. Luhan testified that Mr. Glen initially failed to understand the need for such reconciliations, but added them after being educated by Appellant and the Treasury Department about the business practice which required them. [Testimony of Mr. Luhan, 4/10/09, 9:46 am.]

Appellant's affidavit also asserted that Mr. Luhan retaliated against her by threatening discipline after she told him she was "going to talk to the City Auditor about
the deception going on with Revision Inc. on the PILAR Program.” However, the complaint itself does not mention deception by reVision, or that Appellant told Mr. Luhan she was going to make a report to the Auditor. In June 2007, Appellant requested a formal investigation of her hostile work environment complaint on the basis of Mr. Luhan’s threat of discipline “for missing a meeting”. [Exh. 2H-30.] The investigative report, the product of Mr. Cooper’s three interviews with Appellant, contains no reference to claimed deception by reVision. [Exh. 2H.] Since the June 2007 complaint was Appellant’s statement written directly after the event, it is a more accurate indication of their conversation, and the issues she intended to raise. I find that Mr. Luhan told Appellant she could be disciplined if she failed to attend the upcoming PILAR meeting.

In April 2008, Appellant reported to Councilwoman Faatz that the Agency’s mismanagement of three contracts resulting in a distortion of the city’s financial reports for its outstanding bonds, and cited the Finance Committee Summary on the Justice Center bonds in support of that statement. [Exhs. 5S-132, K.] In support of the allegation that the Agency’s or contractor’s actions caused a reportable default under the terms of a city bond, Appellant presented a summary of a Finance Committee meeting on Oct. 4, 2006, at which the committee authorized issuance of the $378 million general obligation bond for the Denver Justice Center. The Disclosure Undertaking attached to the summary requires the city to give notice of any non-payment related defaults to the Municipal Securities Rulemaking Board. [Exh. K-5.] Appellant presented no evidence that any action of a city official caused or could have caused a default on a city bond, or that it had any negative effect on the city’s financial statements.

The affidavit claims that her investigative leave, performance evaluation and termination were the result of her disclosure of official misconduct on the following twelve occasions:


The contemporaneous documents do not support Appellant’s testimony that she notified anyone at the city that she objected to payment of those invoices before they were paid, or at any time before she was placed in investigative leave. Ms. Harmer’s email requesting payment approval was sent to Appellant and Mr. Luhan on Dec. 18, 2006. Two days after that request, Mr. Luhan copied Appellant on his approval to pay the invoices. [Exh. 36-5.] Appellant did not object to their payment at that time. On July 12, 2007, after the Agency’s receipt of other invoices, Appellant made her first request for a monthly breakdown of Gold’s contract work. That request does not state that Appellant objected to payment of any invoice, but merely asks for information supporting all work and payments. [Exh. 36-188.] The parties continued to negotiate the issues of work done and payments due, and Appellant was a part of those discussions. [Exhs. 2L-26, -27; 5N-1, -2.]

Those contracts were reVision, Inc., Gold Systems, Inc. and Buddha Logic. [Exh. 5S-130.]
Appellant made five written complaints about various matters between March and August 2007. All of them express her disagreements with various aspects of the PILAR project. [Exhs. 5R-101, 32-6, 35-10, 2H-36, 35-1.] None indicate she objected to payment of any Gold invoice. In her July 31, 2007 monthly report, Appellant stated, "None of the deliverables associated with [the Gold invoices for $206,700\textsuperscript{22}] have been completed yet." [Exh. 7M-1, emphasis in original.] This was the first time Appellant made this claim in writing. Seven months earlier, just after the city paid for deliverable 2, Appellant informed the Agency's Controller that "Tom Tasker, from Gold Systems, has done an excellent job of breaking down the CISCO PICC IVR costs/expenses, invoices and change orders for us in the attached Excel spreadsheet. I think it will provide the straight forward answers you need to reconcile our records." [Exh. X.] In any event, an objection to payment of an invoice is not an allegation of official misconduct under the ordinance.


This may refer to Appellant's meeting on that day with Messrs. Luhan and Tessar regarding her email exchange with Mr. Glen. Appellant also testified that she met with Ms. Rauzi, Mr. Luhan and Mr. Brazwell that day to discuss her verbal reprimand. At the latter meeting, Appellant discussed her request for intervention, which complained of both Ms. Cassidy's solicitation of PILAR funding for her project, Documentum, and additional work assigned to her based on customer concerns she had communicated to Mr. Glen. [Exh. 35-18.] These are complaints about routine workplace matters, not disclosures of official misconduct. Appellant presented no evidence that she raised an allegation of official misconduct at either meeting.

"c. To Mark Brazwell on March 27, 2007." [Exh. C-5.]

Although Appellant did not explain the nature of this asserted disclosure, this was the date of her request for intervention, in which Appellant informed Mr. Brazwell of her issues regarding the PILAR project and her complaints about Mr. Glen. [Exh. 35-16 to - 19.] Appellant stated at hearing that "I disclosed inappropriate contract activity and mismanagement to Mark Brazwell as Finance Director; he took no action... he knew I was complaining of the absence of financial control." [Testimony of Appellant, 5/11/09, 1:50 pm.] The only specific issue Appellant raised was that Mr. Glen failed to add the credit card reconciliation function in his initial IVR work. That asserts a mere work error, which was later corrected. There is no evidence that Appellant disclosed misconduct by a city official on this occasion.

"d. On April 23, 2007 I disclosed these matters to Mark Brazwell and David Luhan who responded that I should not 'air our dirty laundry.'" [Exh. C-5.]

\textsuperscript{22} Those invoices were for deliverables 1 and 2.
Appellant testified that she was served with the verbal reprimand on that date at a meeting with Mr. Luhan and Mr. Brazwell. She did not indicate that she discussed any contract issues at this meeting, or disclosed any waste of city funds, mismanagement, or other misconduct by a city official. Mr. Brazwell testified that the phrase “air our dirty laundry” was uttered during a late-night discussion.

“e. In March, 2007 the Gold Systems auditor sent a questionnaire . . . asking whether everything had been delivered that had been paid for. I discussed this with Gloria Janisch, David Luhan, Ethan Wain and Todd Matthews. I explained that the payments should not have been made. The Agency overrode my objection and responded that the payments had been proper.” [Exh. C-5.]

As indicated above, Ms. Janisch testified that Appellant did not object to the city’s audit responses. Mr. Matthews and Mr. Luhan both testified that Appellant did not inform them that she believed Gold had not finished the invoiced work. Appellant’s handwritten notes of that meeting do not confirm that Appellant objected to any payments. [Exh. B.]

“f. On April 23, 2007 in a meeting with David Luhan and Mark Brazwell when they delivered an ‘expected behavior’ document to me.” [Exh. C-5.]

As stated above, Appellant did not disclose any contract or mismanagement issues at that meeting, which was held for the purpose of delivering the verbal reprimand.

“g. On August 1, 2007 in a meeting with David Luhan and Molly Rauzi, I disclosed that I was going to Accounting and the City Attorney . . . I drafted and sent an e-mail to Molly Rauzi detailing my concerns”. [Exh. C-5, -6.]

On that date, Appellant informed Ms. Rauzi and Mr. Luhan that she planned to report contract fraud by Gold Systems, Inc. to the City Attorney and Accounting. Appellant did not state she believed any city employee or official had committed official misconduct. Appellant testified that she informed Ms. Rauzi on Aug. 23\(^{23}\) that reVision had not provided the electronic deliverables for the DIA contract on the PILAR project. When Ms. Rauzi replied that she could “fix it”, Appellant began to suspect that she might be implicated in a conflict of interest about reVision, Inc. “The way she said it, it just didn’t sound right to me, but I left it alone and assumed that somehow I would get what I needed from the reVision project.” [Testimony of Appellant, 6/9/09, 10:00 am.]

There is no evidence that Appellant disclosed her suspicion of unethical or other official misconduct at that meeting.

\(^{23}\) According to Appellant’s email to CSA, that meeting actually occurred on Aug. 1, 2007. [Exh. 35-27, 28.]
“h. On August 2, 2007 I met with Molly Rauzi and told her I was uncomfortable with the Gold System situation and was considering going to the City Auditor’s office to discuss these matters. Molly wrote me an e-mail preventing me from gathering further information on these contracts and saying that she would schedule a meeting.” [Exh. C-6.]

Appellant met with Ms. Rauzi and other managers on Aug. 1 and 7 to discuss her contract concerns. Appellant testified that she did not mention that she suspected a city official of official misconduct at either of those meetings. Ms. Rauzi’s emailed order to “stop sending all these emails” was not addressed to Appellant’s duty to verify contract work and payments.

“i. On August 8, 200724, David Luhan, John De Angelis, Molly Rauzi and I met again. Molly said the City Attorney had told her to do an addendum to the contract. Molly told John to work with me regarding any other contract issues I had (ReVisions and Buddha Logic”). [Exh. C-6.]

At that meeting, Appellant did not reveal her concern that Ms. Rauzi or others at the city had a financial or other conflict of interest as to a city contract. Thus, Ms. Rauzi’s actions were not made in reaction to a disclosure of official misconduct.

“j. On August 9, 2007 I spoke to Amy Mueller in the Mayor’s office and explained my discomfort. Amy said she would talk to some people and get back to me. On the same day I had a conversation with Molly. I told Molly I was going to talk to the Auditor about these matters.” [Exh. C-6.]

Appellant discussed “2 cases of contract fraud” with Ms. Mueller, and reported she was encouraged and “not as scared as I was last week” based on her recent discussion with Ms. Rauzi: “she understood my concerns. . . . there is still an issue regarding the lack of adequate internal controls that must be addressed.” [Exh. 5R-36.] Appellant does not state she informed either Ms. Mueller or Ms. Rauzi she believed any city official may be guilty of official misconduct.

“k. On August 10, 2007, Amy Mueller from the Mayor’s Office told me to contact L. Michael Henry for ethics issues.” [Exh. C-6.]

Appellant testified that she told Ms. Mueller she was being mistreated because there was an issue with contracts, “and if anything happens to me it’s because of mismanaged or poorly managed contracts.” [Testimony of Appellant, 6/9/09, 11:33 am.] Ms. Mueller testified that Appellant told her she had an ethics complaint, but that Ms. Mueller did not communicate their conversation to anyone at the Agency. [Testimony of Amy Mueller, 12/4/08, 2:13 pm.] Therefore, the Agency was still not informed that Appellant suspected official misconduct.

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24 Exh. 28-17 indicates that the referenced meeting occurred on Aug. 7, 2007.
"I. On August 20, 2007, after I had been placed on investigatory leave, I sent an e-mail to Molly Rauzi, Mark Brazwell and Jerome Cooper telling them about my meeting with Mr. Cummings of the Auditor's Office. (see Exhibit B, attached). [Exh. C-6.] In that email, Appellant informed the three that Mr. Cummings of the Auditor's office did not believe her concerns rose to the level of contract fraud." [Exh. C-10.]

None of the above communications indicate that Appellant informed anyone at the city of any official misconduct. Appellant clearly communicated her mistrust of contractors Gold Systems and reVision, and pressed Mr. Luhan and Ms. Rauzi to seek an earned value analysis to reconcile the Gold work and charges. However, Appellant did not allege mismanagement or convey her suspicion that Ms. Rauzi had a conflict of interest regarding any contract.

It is noteworthy that the above list of asserted disclosures does not include Appellant's Aug. 10th meeting with Phil Cummings in the Auditor's Office, where she reported contract issues with Gold and reVision. [Testimony of Appellant, 4/16/09, 4:22 pm.] In any event, Appellant did not testify that she informed Mr. Cummings of her concern that Ms. Rauzi had a conflict of interest with regard to those contracts, or that anyone at the city was guilty of official misconduct.

At hearing, Appellant stated that she believed Ms. Rauzi was attempting to cover up her "rubber-stamping quarterly [fiscal reconciliation] reports without review[ing]" them. She stated her whistleblowing disclosures were directed at Mr. Luhan, Ms. Rauzi and Mr. Brazwell, because they could have corrected the payout of money to the contractors by disapproving their invoices. Appellant believed she was penalized by her manager for reporting that the contract work was not done. [Testimony of Appellant, 5/11/09, 4:00 – 4:51 pm.] However, this alleges at best neglect of duty, rather than a violation of law, rule, or ethics, or other type of official misconduct as defined in the ordinance.

I. Other Contract and Project Issues

1. Lack of Matrix Manager Authority

Appellant claimed that Mr. Luhan did not give her the authority to act as a "matrix" project manager, which would have allowed her to directly commit staffing resources for her projects. Instead, Appellant was given only the powers of a "functional" project manager, requiring her to get permission from the supervisors of all project staff. In Dec. 2006, Mr. Luhan issued a new organizational chart, and told Appellant that he would manage all the resource requirements for her projects. [Exh. 2V-19.] At that time, Appellant became aware she would not have signature or matrix authority until her position was reclassified, and accepted her new assignment without objection. Mr. Luhan informed Appellant that he anticipated submitting the request to reclassify her position in the spring of 2007. [Testimony of Appellant, 7/15/09, 3:35 pm; Exh. 8B.]
Lack of matrix authority delayed Appellant's ability to directly assign work to those working under other supervisors. The absence of a formal staff management plan caused Sarah Harmer the same problems in 2006, despite her status as a matrix manager with signature authority to pay contractors. Ms. Harmer was able to negotiate laterally to staff her projects because she was at a peer level with Mr. Luhan. [Testimony of Appellant, 7/15/09, 3:08 pm.] Appellant did not assert that her lack of authority to directly assign or supervise project staff prevented her from performing her duties, including verification of contract work or accuracy of invoices. In July 2007, Appellant directed Gold Systems to complete an earned value analysis covering two years, convincing proof that Appellant believed she had the authority to make such a request at the time.

2. ReVision, Inc.

Appellant cited two instances she believed were contract fraud on the part of ReVision, Inc., the contractor for the larger PILAR project: 1) failure to produce 200 use case diagrams for the PILAR business requirements (BRD) and conceptual architecture documents (CAD), and 2) billing the city for a four-hour meeting with Appellant that never occurred.

a) Missing Use Case Diagrams

As to the first issue, Appellant argues that Mr. Luhan wasted city assets by approving payment to ReVision despite its failure to produce 200 use case diagrams required by the contract. She testified that the city paid ReVision twice for the same work: once in 2006, then another $150,000 in 2007 to complete the business process mapping. Appellant stated the city had already paid another contractor, CH2MHiIl, $125,000 to do that same work. Appellant identified the diagrams in Exh. 5T as the type of work she expected ReVision to produce as Task 1. [Testimony of Appellant, 6/12/09, 10:26 am.] In support of this argument, Appellant presented her own testimony and two documents: 1) a March 2007 email from Mr. Luhan asking ReVision for the use case diagrams [Exh. 6K], and 2) an analysis of the ReVision work by another contractor, DevelopIntelligence, which concluded that it did not provide the details needed for developer implementation. [Exh. 5F.]

The city contracted with ReVision in Oct. 2005 to perform operation business analysis for the PILAR project. The scope of work was to create “a template for business process mapping [for the development review and permitting process] going forward”, research and benchmarking, and creation of “a strategic plan on how to support the city’s e-Permitting initiative.” [Exhs. 3Z, 4A, Contract CE51091.] The contract price was $38,000, and called for monthly timesheets and several benchmark dates. [Exh. 3Z-6; 4D, 41 to 4K.]

Task 1 of that work required ReVision to produce:
high-level, informal use cases\textsuperscript{25} intended to provide general requirements for PILAR, to enable software architecture analysis, and to support the benchmarking exercise in Task #2 [research and benchmarking]. \textit{They will not be formal use cases} (with preconditions, post-conditions, etc.) and are not intended to be used as the formal requirements necessary to develop software.

\[\text{Exh. 3Z-7, emphasis added.}\]

In August 2006, reVision produced the Task 1 deliverables, including 159 pages containing the business requirements (BRD) and conceptual architecture documents (CAD). [Exhs. 5U; 5T; 8G.] “This deliverable is intended to provide a high-level overview of the business processes surrounding [the city’s] permitting, inspection, licensing, addressing and plan review.” It included “very brief use cases that are meant to be descriptive about the actions taken . . . by an actor or actors. They are not intended to be detailed use cases that will be used to support future software development and testing.” [Exh. 8G-8, 9.] At Mr. Luhan’s request, it also submitted Viseo files useful to pull together the deliverables. [Exhs. 51, 52.]

On Mar. 3, 2007, Appellant obtained an analysis of the work from DevelopIntelligence, a company that provides training for software developers. The report examined reVision’s 200 pages of BPD and CAD artifacts, and concluded that they provided a high-level overview of process flow, actors, use cases, architecture and implementation design, but lacked “a complete definition of architecture/implementation strategy”. It recommended that the team re-group to define how the effort would move forward. DevelopIntelligence offered its mentoring services during the re-grouping process at an hourly rate of $135. [Exh. 5F-3 to 8; 5H-2.]

Scotty Martin was a principal with reVision, Inc. during the PILAR project, and performed much of the work under the company contract. He was thereafter hired by the city in 2009 as a manager in the Denver Budget and Management Office. Mr. Martin confirmed that the deliverable was for “high level” – i.e., less detailed - use cases, and that the contract did not require any certain number of use cases to be produced. He stated the city did not give reVision permission to interview the end users, which would have been necessary to produce more detailed use cases. He used CH2MHill’s diagrams to evaluate the city’s current processes and make recommendations for changes under an integrated PILAR system. The resulting product was 159 pages of diagrams illustrating the “to-be” functions and flow of work – i.e., reVision’s recommendations for how the work should flow for each internal and external actor with respect to each PILAR process. [Exhs. 8G, 5T, 5U.]

The Task 1 deliverables were accepted by the city after Mr. Martin’s formal presentation to Mr. Luhan and Appellant in Aug. 2006. The presentation was held for

\textsuperscript{25} A use case is a diagram of stick figures, information boxes and arrows that illustrates the type and order of tasks to be done by various employees in a multi-task operation. [Testimony of Appellant, 6/12/09, 10:37 am; Exh. 5T.]
the purpose of obtaining city acceptance of the deliverable and approval for payment under the contract. Appellant expressed one concern at that meeting, which related to the work style of one reVision staff member. Mr. Martin quickly reassigned the staffer to a different project. [Testimony of Mr. Martin, 7/28/09, 10:17 am.] The city paid reVision a total of $20,209.88 for Task 1 between April and Sept. 2006. [Exhs. 4D, 4J, 4K, 4L.] Mr. Luhan testified that Appellant did not object to the payment.

In contrast, Contractor CH2MHill was given an hourly contract in March 2006 to complete the diagrams begun by Appellant which showed current PILAR work flow, mostly in Building Permits, Public Works Developmental Engineering, and Environmental Health. [Exh. 6C-31 to 38.] Pam Turner of CH2MHill testified that her company was contracted to document the existing business processes by interviewing employees in certain divisions, and charting their work flow. [Testimony of Ms. Turner, 12/1/08, 1:56 pm.] This was called the “as-is” analysis, in contrast to reVision’s “to-be” analysis of the planned work flow under the integrated PILAR system, which was to span several departments and divisions involving in the development process.

On Mar. 9, 2007, Ms. Turner produced an analysis of the city’s current review process, which was “a generic representation of ... the tools needed to support the related workflow and status tracking activities.” [Exh. 5G, 5G-4.] The only diagrams included were two flow charts showing the order of tasks done in reviewing permit and license applications. [Exh. 5G-3.] Mr. Luhan testified that reVision was later hired to complete the reengineering after CH2MHill “took it as far as it could”, given their limited experience in the area. The resulting diagrams were loaded onto the sharepoint site, and Appellant had administrative access to the documents on the site. [Testimony of Mr. Luhan, 12/17/08, 11:00 am.]

Budget Supervisor Brendon Hanlon worked with Appellant on the PILAR project, and wrote a progress report at the request of the Agency’s Chief Operating Officer. He testified that he did not find any financial mismanagement within PILAR, and he never heard anyone express a concern that contract funds were being mishandled. [Testimony of Mr. Hanlon, 7/16/09, 9:38 am.] Mr. Luhan testified that Appellant was in charge of monitoring the contract, and met with the users for that purpose. He said Appellant reported other things reVision could have done in the use cases, but never said the work was not done at all. Mr. Luhan determined that the work met the contract criteria. [Testimony of Mr. Luhan, 12/17/08, 10:56 am; 4:12 pm.]

The contemporaneous business records indicate that the “to-be” use cases were produced in August 2006, and were accepted by Mr. Luhan and Appellant on behalf of the city. CH2MHill was paid to complete certain missing “as-is” use case diagrams, and it completed that work in March 2007. ReVision completed the contract work in the summer of 2007, after the project was divided up into operations and technology sub­parts, at Appellant’s suggestion. Neither DevelopIntelligence’s report nor Mr. Luhan’s responsive email disproves this evidence. Appellant’s testimony that CH2MHill was

26 CH2MHill also mapped CPD’s Records and Revenue Accounting procedures for the permitting process under a different contract. [Exh. 7F.]
hired to re-do reVision's work based on the flaws revealed in the DevelopIntelligence report was rebutted by the fact that the city contracted with CH2M-Hill in March 2006, a full year before the DevelopIntelligence report was issued. Moreover, Appellant conceded in her July 31, 2007 monthly report that not having the use case diagrams “may be a blessing since none of the operational reforms were done prior to doing the first set of Use Case diagrams.” Exh. 7M-2.] I find that Mr. Luhan did not waste city assets or otherwise commit official misconduct by virtue of his approval of payments to reVision for work under contract CE51091.

b) Bill for Four-hour Meeting with Appellant

ReVision also had a contract to do on-call IT services for various city projects and operations during this period. [Exh. 4G-1, 2.] Its invoices were divided into sections for work on each contract, and each task in the PILAR contract. On Jan. 12, 2007, reVision submitted an invoice containing an entry for four hours on Jan. 4th for “PILAR project charter doc updates. Meetings with Lavella H. and Brendan Hanlon.” [Exh. 4F-2.] Appellant testified that she did not meet with Mr. Martin on that date, and that she informed Mr. Luhan of that fact several times after she saw the invoice in February or March. [Testimony of Appellant, 6/12/09, 10:16 am.]

Mr. Martin testified that his time entries for Jan. 4 included follow-up project support for web updates for CPD processes, and meetings with both Mr. Hanlon and Appellant. He conceded he could have been in error about meeting with Appellant, but it was in any event not an attempt to defraud the city. Mr. Martin knew Appellant reviewed reVision’s invoices prior to their submittal for payment, and Appellant never asked him about this entry. Mr. Martin stated if anyone from the city had questioned the entry, he would have investigated the item and corrected it if it was erroneous. [Testimony of Mr. Martin, 7/28/09, 11:26 am.]

3. Buddha Logic

Buddha Logic, LLC provided on-call IT consulting services to the city under a contract which ran from Oct. 2006 to Dec. 2007. The maximum amount of the original contract was $83,970. [Exh. 6A-1 to -15.] On Mar. 20, 2007, the on-call contract was extended to June 2008, and the maximum was increased to $138,970. [Exh. 6A-18.] In July 2007, the amount was increased again to $238,970. [Exh. 6A-21.] A statement of work attached to the contract also required the contractor to establish a content repository as Phase 1A of the Documentum project on an hourly basis, for an amount not to exceed $9,750. [Exh. 6A-16, 17.]

In March 2007, Appellant began to suspect that contractor Buddha Logic engaged in fiscal misconduct by obtaining a contract amendment changing the amount of the Documentum contract from $9,730 to $238,970 without a change order. Appellant reported contract fraud to Mr. Cummings in the Auditor’s Office on Aug. 10th. She informed Mr. Cummings that Ms. Cassidy may be complicit in that misconduct, since she had signature authority to change the contract as Project Manager for
Documentum. On Mr. Cummings' suggestion, Appellant searched the City Clerk files for contract amendments that might account for the difference in amounts. When she could find no amendments, Appellant concluded that Buddha Logic had committed contract fraud. [Testimony of Appellant, 5/21/09, 9:24 am.]

The contracts make it apparent that the increase to $238,970 was for the Oct. 10, 2006 on-call IT consultant contract, not the hourly Documentum contract, as Appellant believed. CPD manager Carol Rodarte explained that the increases to the consulting contract were necessary because CPD realized after the contract was signed that it would need to retrieve permits electronically using a similar method to that used by CityView, in anticipation of the completion of PILAR. [Testimony of Ms. Rodarte, 12/1/08, 2:48 pm.] In March 2007, Ms. Cassidy outlined the five phases of the permit document management system, and explained that "future enhancements would have to be separately funded." [Exh. 5B-22, 23.] The only part of Documentum that was included in current funding was Phase IA. Ms. Rodarte planned to submit a 2008 budget request to adapt Documentum for zoning requests. [Exh. 4R-1.]

Mr. Watson approached Mr. Luhan to ask for additional funding from the PILAR project, but Mr. Luhan explained that funding decisions were the province of the PILAR committee. [Exh. 7P-8.]

IV. ANALYSIS

The Agency bears the burden to prove by a preponderance of the evidence that the imposition of discipline was appropriate under the Career Service Rules, and that her termination was within the range of discipline that could be issued by a reasonable administrator based on the proven misconduct or performance deficiencies. As the party bringing forward the whistleblower claims for action, Appellant is the "proponent of an order" under CRS § 24-4-105, and must prove those claims by a preponderance of the evidence. Velasquez v. Dept. of Higher Education, 93 P.3d 540, 542 (Colo. App. 2003), citing Dept. of Inst. v. Kinchen, 886 P.2d 700 (Colo. 1994). A "needs improvement" performance review may only be reversed if Appellant proves it was arbitrary, capricious and without rational basis or foundation. CSR § 19-10 A.2.c.

A. Was PEPR rating arbitrary, capricious and without rational basis or foundation?

"An evaluation must be fairly based on the standards and measures in the PEP plan in order to give an employee notice of the criteria by which her performance will be judged. Evaluations must weigh performance against standards of performance that are objective to the extent feasible given the job being measured." In re Padilla, CSA 25-06, 10 (9/13/06).

Appellant's job classification at the time of her evaluation was that of Senior Information Technology Developer, which includes the duties to independently analyze end user operations and consult with IT staff about user problems and system enhancements. Those duties also describe the work of a project manager as contained
in Appellant's PEP. [Exhs. 26, VV-19.] The job requires effective communication as a necessary skill in performing all the work involved in the position. [Exh. 26.] During the performance period, Appellant was assigned project manager duties for the IVR and PILAR technical projects. [Exh. 18-11.] Appellant demonstrated familiarity with the terms of her PEP in her testimony, and an awareness of the duties assigned to her based on her fourteen years' experience as a project manager at the city and in previous positions.

As to the entire evaluation, Appellant argues that she was rated as if she was a Project Manager, the position to which Mr. Luhan planned to promote her, but she was not given signature authority to approve invoices and contract amendments. [Testimony of Appellant, 7/15/09, 1:51 pm.] She presented no evidence that she was limited in her ability to perform her analytical or consultation functions the performance period or in her PEPR response. I find that the lack of signature authority did not unfairly restrict Appellant's ability to perform the duties of her position listed in her PEP.

In the category of service, an incumbent in this position

10. Communicates with information technology professions, and end users concerning current [IT] systems . . . and practical methods to meet end user and department requirements.
11. Express information, ideas or facts to individuals or groups effectively, taking into account the audience and nature of information (for example, technical, sensitive, controversial); makes clear and convincing oral presentations; listens to others, attends to nonverbal cues, and responds appropriately.

Meet Expectations: No more than 2 substantiated customer complaints per year.

[Exh. 30-2, 3.]

Mr. Luhan testified that he rated Appellant "needs improvement" in service based on her receipt of more than two substantiated complaints from internal and external customers, and her failure to fully verify customer expectations, resulting in disagreements among the city team and delay in completing the IVR project. The verbal reprimand contained two substantiated co-worker complaints, from Mr. Hauser and Mr. Glen, after which Appellant was directed to maintain professional, non-confrontational communication with peers, vendors, and customers, and ordered to take three training courses on communication. Two months after she completed the classes, Appellant received a customer complaint from Mr. Tasker at Gold, who asked the city to remove Appellant from their project based on her confrontational behavior, threats to report Gold to the Auditor's office, and refusal to answer their calls.

Appellant did not deny she received those complaints, but argues that they were unfounded. Appellant also contends that she did verify the needs of the customers, and restricted team members from directly contacting the clients during the development
phase to prevent unwarranted expansions of the contract scope that can arise from new customer demands. It is undisputed that Appellant created and maintained a very positive working relationship with CPD on the IVR project for the previous three years. [Testimony of Ms. Rodarte, 12/1/08; Exhs. 2H-19.]

Appellant’s job required that she “independently [consult] with information technology staff about user problems and agency for enhancement of current [IT] systems including system emulation, compatibility and configuration”, and demonstrate “skill in exercising initiative, judgment and decision making in solving problems and meeting organizational objectives.” [Exh. 26-2.] An important part of Appellant’s job was to serve as liaison between CPD, the customer, and TS technical staff that would design the IVR product. In two respects, Appellant took positions that had a negative impact on customer service: 1) her refusal to permit the technical staff to discuss solutions to database problems with the customer, and 2) her refusal to tell Mr. Luhan the source of her statements that Internet quick permits required credit card reconciliations. [Exh. 25-2.] Both created confusion and frustration in the team, and restricted the flow of information necessary to complete the work, contrary to her job duties requiring effective communication and problem-solving.

As to the first customer service issue, database redesign was delayed until Appellant was removed from the project, and the new Project Manager obtained CPD’s permission to simplify the project. Despite objections from the technical team, especially Mr. Glen, Appellant never agreed to permit Mr. Glen’s staff to speak directly with the customer. In the second instance, Appellant explained at hearing that Carol Rodarte complained about the MidTech contract, and asked Appellant to communicate the complaint to Mr. Luhan but keep her identity as the complainant anonymous. A few days, later, Ms. Rodarte agreed that she could share the information with Mr. Luhan. “That resolved the confidentiality issue.” [Testimony of Appellant, 6/9/09, 3:18 pm.]

On another matter, Appellant testified that Caroline Hendrickson complained to Appellant about Mr. Glen’s failure to include cash management controls, but was afraid that Mr. Luhan would become angry at her. Ms. Hendrickson, the cash manager in the Treasury Department, testified that she was initially frustrated by Mr. Glen’s failure to ensure data security standards to prevent credit card thefts in his customization of the on-line payment system. However, after Ms. Hendrickson educated Mr. Glen about the financial requirements, Mr. Glen provided a fully compliant product that is now in use. Ms. Hendrickson denied that she asked Appellant not to reveal her name to Mr. Luhan, or that she was concerned he would be angry. [Testimony of Ms. Hendrickson, 7/16/09, 2:27 pm.] Ms. Rodarte likewise testified that Mr. Glen came to understand their requirements through his participation in the core committee, and the problems were addressed. [Testimony of Ms. Rodarte, 12/1/08, 2:51 pm.]

The Agency interprets the word customer to include city employees and contractors, given the collaborative nature of the Agency’s work. There were two substantiated complaints from co-workers during this period. In addition, city contractor Gold Systems requested her removal based on its assessment that the project would
fail if she continued to act as Project Manager. The IVR emails and testimony demonstrate that Appellant refused to consider the viewpoints of others or attempt to resolve disagreements, contrary to the requirements of her job. I find that Appellant frequently failed to maintain a courteous demeanor toward other employees, and failed to listen and communicate with the team and Gold in a collaborative manner, justifying a needs improvement rating as to her duty to provide good customer service.

In the category of teamwork, a “meets expectations” rating required Appellant to work cooperatively with others to achieve team goals, foster commitment and team spirit on a consistent basis, and resolve conflicts in a constructive manner, without a request from management. [Exh. 30-3, 4.] Mr. Luhan testified that he based his assessment on Appellant’s failure to handle the team environment in a manner that fostered cooperation and trust. After her complaints that she was not being treated respectfully at team meetings, he attended those meetings to make an independent determination of the facts. He observed that Appellant had not signed the standards for change control, did not have user acceptance documents present, and did not follow best practices in the field, resulting in delays and lack of a cohesive team effort. Appellant walked out of meetings when her ideas were questioned, and failed to attend monthly staff meetings despite Mr. Luhan’s order that she attend. He began to receive complaints from others on the team that her relationships were not effective in moving the project forward. The project required prompt decisions and coordination of scope, resources, and time limits. “A lot of it would have been resolved by a sharepoint issues log.” [Testimony of Mr. Luhan, 12/12/08, 3:36 pm.]

Mr. Luhan, Mr. Pooley and Mr. Glen all testified credibly that Appellant created tension at team meetings by becoming defensive when asked for details about her reports and assignments. Mr. Wain, Manager of Network and Data operations, noted that team meetings with Appellant were “difficult”, and his staff dreaded going to those meetings. Two of his staff asked to be removed from the project because of recurring database problems arising from Appellant’s order not to speak to the customers. Appellant was described as angry, pushy, confrontational, critical, and abrasive by five of the members of the IVR team. Mr. Watson told the CSA investigator that Appellant’s frequent misunderstandings and escalation of minor matters led him to decide to communicate with her only in writing. At meetings, Appellant criticized the work of staff in front of their supervisors, causing one team member to avoid speaking up at meetings, and another to resolve not to work with her again. [Exh. 2H-15 to -21.] After her departure, staff complaints and conflicts with the vendors ceased. [Testimony of Mr. Wain, 12/17/08, 8:52 am.]

Appellant admitted that she felt Mr. Glen in particular attacked her competence by questioning her representations of what the customer needed. Appellant’s emails to team members and customers were sometimes angrily disapproving of the work performed by internal team members and contractors. [Exhs. 35-49, 36-21, 36-86, 36-161, 37-10, 37-15.] Appellant filed a request for intervention and a complaint of a hostile work environment between March and July 2007, an email entitled “notice of distress”, and two emails in which she anticipated “something” happening to her that...
would lead her family to publish her request for help. [Exh. 35-27, 35-52.] She reported in those emails that her distress began with the tension at PILAR meetings with Mr. Glen, but steadily grew to include the actions of Mr. Luhan, Mr. Brazwell and Ms. Rauzi when they too became critical of her. Appellant believed her interpretation of events was correct, and that others in the Agency were working together to undermine her performance and threaten her job. Appellant did not take steps to check the facts underlying her assumptions of bad faith by other team members, and failed to resolve project issues as they arose. One example is her widely disseminated criticism of Ms. Cassidy for not scaling Phase 1A of Documentum to support enterprise functionality, despite the fact that CPD was not scheduled to move to that functionality until Phase 3 of that project. [Exhs. 5B-21, 22.] Appellant failed to work cooperatively with others or resolve her conflicts with the team in a constructive manner, and thus failed to consistently demonstrate teamwork during this period.

The next STARS criteria was accountability, which requires that an employee contribute to maintaining the integrity of the organization, and act in a trustworthy and ethical manner. The PEP provides that more than two minor documented complaints, or one major documented and verified complaint, require a needs improvement rating in the category of accountability. [Exh. 30-6.] Appellant’s rating was based on her failure to take responsibility for the problems she caused after they were brought to their attention, including failure to share project documents and issues with the team. As a result, hundreds of single-subject emails created inefficiency and lack of coordination within the team and between the city and Gold. Mr. Glen testified that he received 40 to 45 emails a day from Appellant, many marked urgent and emphasized by use of bold font, highlighting, and underlining. Mr. Luhan complained about this method of managing the project, and told Appellant to establish a common project site for the team. Because she did not do so, Mr. Luhan was required to spend a greater than necessary portion of his time reviewing the flow of emails in order to resolve project issues as they arose.

Appellant failed to update the specifications during the development phase, and placed responsibility for the duty on Ms. Stolz at Gold Systems. Mr. Pooley performed the work in default, since it was causing problems with the database. Appellant’s failure to coordinate use of the server caused a system failure which cost the city $3,000 to correct. Her failure to employ best practices in project management contributed to accumulating issues in this technically complex project. As Project Manager, it was her duty to coordinate information and use effective communication to attempt to resolve issues as they arose. Instead, Appellant attributed problems to the actions of others, and did not accept responsibility for her part in the ongoing problems in the IVR project. Ultimately, both teamwork and performance were undermined. Communication with the contractor became so difficult that Gold asked for Appellant’s removal as manager. The Agency replaced her with Mr. Glen, who completed the simplified project with fewer communication problems. As a result, Appellant failed to hold herself accountable for her performance and contribute to the integrity of the Agency as to the IVR project, which made up a significant portion of her work.

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The final STARS category in which Appellant was rated needs improvement is respect for self and others, which requires employees to "foster an environment where creativity, innovation, interpersonal relations and teamwork are valued and appreciated" by respecting the "perspectives, interests, feelings" and differences "of all parties concerned" on a consistent basis. [Exh. 30-6.] Mr. Luhan based his rating on Appellant’s failure to effectively communicate with the team, and her failure to assure team compliance with applicable guidelines and policies. Mr. Luhan acknowledged Gold’s contributions to the project’s issues, and did not penalize Appellant in her performance review for the fact that the contract was delayed by emerging complexities.

The evidence showed that team communication and performance were often hampered by the lack of information that should have been provided by Appellant. Team meetings were tense because of palpable conflict between Appellant and Mr. Glen. Mr. Pooley noted that Appellant’s style was to assign tasks without researching their technical feasibility. Appellant’s instructions to Mr. Goldenberg to run a report without checking with staff in the face of contrary opinions among the team resulted in duplicating work already done. Her overreaction to minor issues led one manager to communicate with her only in writing. Appellant’s criticism of one team member in front of her supervisor resulted in the loss of one team member’s input at meetings. “I think Lavella could have shown more personal respect for co-workers.” [Exh. 2H-15 to -21.]

The evidence revealed a number of examples of the inconsistency with which Appellant viewed her own and others’ behavior. Appellant claimed that Mr. Glen was disrespectful when he questioned her statements or assumptions during meetings. In contrast, Appellant denied that her March 19th email publicly criticized Ms. Cassidy. That email stated that Ms. Cassidy “failed to do adequate planning for preliminary resources, staffing and data migration, causing rework and cost overruns”, and failed to monitor expenses. Those statements, distributed to 14 employees and customers, expressed strong criticism of Ms. Cassidy’s major project tasks by any objective measure. When her supervisor asked her why she was telling the customers the sky was falling, Appellant replied that her statements were based on facts. A month later, Appellant demanded an apology from Alexander Abel for his similarly public criticism of her leadership on the PILAR committee. [Exh. 2H-75.] Appellant claimed Mr. Luhan threatened her with discipline if she did not attend a PILAR meeting. However, Appellant denied her email to Gold was a threat, despite its clear language that she would contact the City Attorney, Accounting and the Auditor if they did not provide a detailed hourly accounting of two years’ work within 28 hours.

In addition, Appellant on several occasions interpreted ordinary work events as disrespect, threats or unethical conduct. Appellant believed that Ms. Cassidy was demonstrating disrespect for her when she sat on Appellant’s desk as they talked. Appellant reacted to Ms. Rauzi’s PILAR meeting invitation by accusing Mr. Luhan of endangering her life. At that meeting, Appellant told Ms. Rauzi she was going to go to the Auditor to report her contract concerns about Gold. When Ms. Rauzi asked her how that would be helpful, Appellant assumed Ms. Rauzi was ordering her not to report contract fraud, and feared for her job and her life. [Exh. 35-28.] She interpreted Ms.
Rauzi’s statement that she could fix her PILAR contract concerns as meaning that she sought to prevent Appellant from reporting Gold’s contract fraud to the Auditor, even though the two contracts bore no relation to one another. The evidence supports a finding that Appellant failed to perform her duties in a manner that demonstrated her respect for the perspectives of other team members on a consistent basis.

Appellant’s PEPR response did not directly address Mr. Luhan’s criticism of her job performance. [Exh. 18-13 to -20.] As found above, Appellant’s management of the IVR project was hampered by her failure to coordinate information, her negative communication style, and her failure to resolve technical issues as they arose, all of which resulted in delay, extra work, and expense in the city and contractor teams. Appellant’s assertion in her PEPR response that her March Request for Intervention was intended to notify the PILAR stakeholders of upcoming operational reforms is unpersuasive, since the stakeholders were not addressed in the email or provided copies of it. [Exh. 5R-101.]

Appellant did not acknowledge any weaknesses in her performance, and evaluated herself as earning an “exceeds expectations”, without an explanation for the numerous problems in her projects. Disagreements with management decisions are not relevant to a performance review unless those decisions handicapped an employee in adequately performing her job. Appellant’s inclusion of her disagreements in her PEPR response does not rebut or explain the reasons for her performance problems in her assigned projects. Appellant asserted that Gold failed to perform all work due under the contract, but did not state that those failures affected her ability to complete her own work. Mr. Luhan appropriately distinguished between problems caused by the contractor or the complexity of the project, and considered only the problems caused by Appellant’s performance deficiencies. Given the extent and severity of the problems caused by Appellant’s failure to comply with the standards of performance, the rating was not arbitrary, capricious and without rational basis or foundation, as required by CSR § 19-10 A.2.c. for reversal of the evaluation.

B. Did Agency Prove Violation of Rules as Alleged in Dismissal Letter?

The letter of dismissal cited nine reasons for the disciplinary action, most of which were specific instances of what the Agency deemed unprofessional interactions with others. The Agency determined that Appellant thereby violated CSR rules on compliance with orders, performance standards, maintaining satisfactory work relationships, and conduct prejudicial to the city or Agency.

1. Failure to Comply with Orders, CSR § 16-60 J

A violation of this rule is established if the Agency demonstrates by a preponderance of the evidence that a supervisor clearly communicated a reasonable order to a subordinate, and the subordinate violated the order under circumstances demonstrating willfulness. In re Owens, CSA 69-08, 4 (2/6/09); In re Mounijim, CSA 87-07 (7/10/08). Here, Appellant is charged with violating two orders: 1) cease hostile and
threatening communications with vendors, and 2) establish an IVR issues log. [Exh. 6, ¶¶ 11, 14.]

The seventh item in the dismissal letter states that Appellant disobeyed a direct order to cease threatening communications with contractors by sending her July 30th email to Gold. In this email, Appellant demanded that Gold reconstruct its contract accounting into hourly records of work done for the past two years, and tie each invoice for each deliverable to the hourly work done.

The first issue here is whether and when Appellant was ordered to cease threatening emails. The evidence indicates that Ms. Rauzi told Appellant and all those at the July 27th meeting not to communicate with Gold until the team developed a plan to finish the contract. Three months earlier in her verbal reprimand, Appellant was ordered not to use negative, attacking or loud communication with vendors and others. In spite of these orders, Appellant sent a lengthy email to Gold demanding an earned value analysis on a two-year contract within the next 28 hours, or she would engage every resource available to her, including the City Attorney, Accounting department, and Auditor. Appellant warned Gold that the demand could not be circumvented by the project’s executive sponsor or the resource supervisor.

Appellant contends that the email was not threatening, since the contract gave the Auditor the right to request a refund if the work did not conform to the contract. A threat is a communicated intent to inflict harm or loss on another or his property. Black’s Law Dictionary (8th ed. 2004). A statement constitutes a threat if a reasonable person would interpret it as such. In re Katros, CSA 129-04, 8 (3/16/05). Appellant was not a “duly authorized representative of the City” under the contract with authority to invoke the city’s contract rights. [Exh. D-4.] Appellant ceased to act in conformity with her supervisor’s instructions when she informed Gold that Mr. Luhan as project executive sponsor and Mr. Glen as resource supervisor would be interfering and circumventing internal controls if they worked with Gold to get the financial information. Appellant’s demand was not expressly authorized by the city, Appellant had no implied authority to communicate the demand, and the email was threatening in tone and content. Mr. Tasker reasonably interpreted the communication as a threat, and immediately requested extraordinary assistance from the Agency Director in the form of removing Appellant from the project. [Exh. 31-1.] Thus, the Agency established that Appellant violated its order to cease threatening communication with contractors.

The second order Appellant is charged with violating is Ms. Rauzi’s July 27th order to send her an IVR issues log. Appellant first testified that she thought the contracts and emails she sent to Ms. Rauzi on Aug. 2nd complied with this request, but later stated she was reluctant to post an inventory of contract risks on the website because it would have listed what others had done wrong, and alienated her from her peers. Appellant added that Ms. Rauzi never told her she wanted the issues log on the website, and so she gave her list to Mr. De Angelis when she finished it on Aug. 17, after she was out on investigatory leave. [Testimony of Appellant, 6/9/09, 3:36 pm; Exh. 2W.] Appellant’s argument that she believed her Aug. 2nd emails and documents was
an issues log is weakened by the fact that she later produced the 27-page risk inventory, which she also identified as an issues log. If the earlier group of documents was intended to comply with the order, Appellant would not have prepared a second such list meant to accomplish the same purpose. More importantly, her Aug. 2nd submittals did not list any issues with the IVR project or the Gold contract.

Appellant admits that Ms. Rauzi ordered her to produce an issues log for the purpose of identifying her contract issues. The next step developed by the four people at the July 27th meeting was to have Mr. Luhan send a letter to Gold, advising it that the contract scope would be amended and asking for the percentage of work completed and payments made for each deliverable. Mr. Luhan sent that letter on Aug. 9th, without the benefit of Appellant’s issues log. The contract was already seriously delayed by technical issues and lack of coordination, and funding was about to run out. Appellant was on notice as Project Manager that further delay in producing her issues log would affect the ability of the Agency to redefine the contract scope and finish the project.

Nonetheless, Appellant did not transmit the issues log to Ms. Rauzi, post it on the shared website, or ask Ms. Rauzi for additional time or help to complete it. Three weeks later, Appellant sent a 27-page risk inventory to Mr. De Angelis, describing it as “the issues I wanted to discuss with you”, without a request that he send it on to Ms. Rauzi. [Exh. 2W.] Ms. Rauzi did not see the list until the date of her testimony in this hearing. On the stand, Ms. Rauzi confirmed that the risk inventory was what she expected Appellant to produce. As a result of Appellant’s failure to deliver the issues log to Ms. Rauzi in a timely manner, the Agency was forced to revise the contract without the benefit of Appellant’s detailed knowledge of the remaining contract issues. The evidence is clear that Appellant failed to comply with two clear supervisory orders under circumstances indicating willfulness, in violation of this rule.

2. Failure to Meet Performance Standards, CSR § 16-60 K

The termination letter highlighted three performance standards it believed were violated by Appellant: 1) communicating in a professional and effective manner, 2) performing project lead work, and 3) working independently to complete projects. The Agency claims that Appellant failed to meet those standards based on her confrontations with team members, failure to share project documents, refusal to permit the team to clarify business requirements with the customer, failure to correctly document user requirements, and assignment of work that was not validated by the customer or technically sound. These deficiencies are asserted to have caused project delays, customer confusion, cost overruns, re-work, and a high-tension environment within the project teams. [Exh. 6-5.]

The Agency asserts that Appellant’s work and communication style required extensive oversight. The classification description for senior IT developer requires that the employee “independently consults with [IT] staff about user problems" exercises “skill in exercising initiative, judgment, and decision making in solving problems and meeting organizational objectives", and displays knowledge of project management and
coordination techniques and methodologies sufficient to be able to plan and control project activity. . . . Completed work is generally reviewed for soundness of judgment, conclusions, adequacy and conformance to policy." [Exh. 26.]

Mr. Luhan was frequently required to intervene to resolve matters with the contractor and team members caused by Appellant's failure to resolve those issues herself. Examples range from important ones such as reconciling Gold's bills to routine tasks like arranging a work space for a contractor. After complaints by co-workers about Appellant's communication style, Mr. Luhan attended project meetings to determine whether there was a problem. He observed that Appellant was defensive, interrupted others, and walked out of meetings after being questioned about her statements. Her failure to establish a shared project site resulted in delays and excessive emails among both the internal and external teams. Mr. Pooley and Mr. Glen both confirmed that team progress in the IVR project became difficult based on Appellant's refusal to research the technical feasibility of her work assignments, and refusal to allow the team to resolve major database issues by talking to the customers to confirm their core needs. The contractor reported that her "threats are seriously hindering the delivery of the solution", and asked for her removal as Project Manager. After Mr. Luhan worked directly with Mr. Tasker to reconcile the work and bills and amend the contract as needed, the work was finished.

All of that work was Appellant's responsibility as Project Manager. Her failure to coordinate communications and seek solutions required Mr. Luhan to closely monitor and ultimately reassign the project so the city could revamp its development process by means of the IVR solution. Appellant did not deny the above problems occurred in the Gold project, but asserted that they were caused by others, including Gold Systems, Mr. Glen, and Mr. Goldenberg. The most persuasive evidence that Appellant caused the above issues was that the project was completed within a few months after another project manager was assigned. I find that the Agency proved that Appellant's difficult work and communication style — and her unwillingness to correct it despite counseling, training, and discipline — required her supervisor to oversee her work to a greater extent than should have been necessary, given the nature and level of Appellant's position and previous experience in project management.

3. Threatening, Fighting with, or Abusing Employees: CSR § 16-60 M

The Agency claimed that Appellant made a veiled threat to Mr. Glen by quoting the biblical phrase, "As you sow, so shall you reap. Which means: Your deeds, good or bad, will repay you in kind." [Exh. 29-14, -15.] The CSA investigator determined that the statement was not a threat. I find that the words indicate Mr. Glen's "deeds" would repay him, not any action of Appellant herself. On that basis, I find Appellant did not threaten Mr. Glen.

The rule also prohibits fighting with or abusing employees. Abuse is physical or mental maltreatment, often resulting in mental, emotional, sexual, or physical injury. Black's Law Dictionary (8th ed. 2004). The Agency does not claim Appellant expressed
an intent to inflict physical harm on others or their property. The dismissal letter cites co-worker complaints, hostile and critical emails, and unsubstantiated claims of hostility and threats against her in support of this allegation. Since Appellant was already disciplined for the co-worker complaints in the verbal reprimand dated Mar. 23, 2007, they cannot be the basis for further discipline. In re Richmond, CSA 18-07, 7 (8/7/07). The Agency presented no evidence that Appellant engaged in physical or mental maltreatment of any person, or that her actions caused any type of injury. Interaction which is merely angry does not constitute abuse as that word is used in this rule. See e.g. In re Owens, CSA 69-08, 7 (2/6/09). Therefore, I find that the Agency failed to prove a violation of this rule.

4. Failure to Maintain Satisfactory Work Relationships, CSR § 16-60 O

Violation of this rule is proven by conduct that would cause a reasonable person standing in the employee’s place to know it would be harmful to another person or would have a significant impact on his working relationship with that person. In re Schultz, CSA 70-08, 4 (3/2/09). The affected co-worker’s reaction to the conduct is one factor to consider in assessing whether harm should have been anticipated. In re Burghardt, CSB 81-07, 2 (8/28/08).

The dismissal letter supports this violation by reference to several co-worker complaints, a series of emails sent by Appellant, and her claims of workplace hostility. Because the Agency already disciplined Appellant for the incidents recited in the verbal reprimand, consideration of the same incidents as grounds for termination would constitute double punishment under the Career Service Rules. In re Richmond, supra. The allegations that remain are Appellant’s emails dated July 19, July 30 and August 15, 2007.

On Apr. 23, 2007, Mr. Luhan and Mr. Brazwell instructed Appellant to “maintain professional communication by refraining from negative, attacking or loud communication” with peers, vendors, and customers, and to attend three skill-building classes on communication and interpersonal relationships. [Exh. 25-3.] That instruction was repeated at her six-month review, and was consistent with the standards contained in her PEP regarding courteous and positive communication. [Exh. 30.]

On July 17, Appellant emailed Mr. Luhan and others her comments about the circulated agenda items, in an attempt to avoid attending a PILAR update meeting. In response to Mr. Luhan’s request that she coordinate with him before sending anything out, Appellant told him she had nothing to add to the meeting, and said she would be “put in harm’s way” and subjected to hostility if she attended the PILAR meeting. Appellant added that she would file a grievance if subjected to “that degree of hostility again.” When Mr. Luhan asked how he had put her in harm’s way, Appellant told him PILAR churned stress, anger and hostility within the city. “My first priority is to protect myself from violence. If that results in you retaliating again with a reprimand, history will repeat itself.” She ended with the words, “[i]f something happens to me, my family and friends will publicly publish this request for help.”
Appellant's expression of fear based on a routine meeting notice on her project was outside the rules of behavior defined by her job description. Her allegation that Mr. Luhan intended her physical harm was made without any stated factual basis. Appellant had not given her supervisor previous notice that she believed PILAR meetings endangered her health or life, nor had she requested a change of assignment or filed a complaint to protect herself. Mr. Luhan was surprised by both the allegation itself, and Appellant's vehemence in asserting the level of her fear. He asked if she was having recent issues with Mr. Glen or Mr. Able. Appellant denied it, citing only the stress engendered by PILAR meetings.

Since Mr. Luhan had received no previous complaints from Appellant about attending PILAR meetings, he was unable to understand the reason for Appellant's extreme fear at the prospect of a routine meeting. He referred the matter to CSA for investigation of her claim of workplace violence, but informed Appellant she was still expected to attend the meeting. In reply, Appellant denied that she had refused to attend the meeting. "I merely asked for help upfront." This contradicts the clear meaning of her earlier email. Appellant then stated she was not concerned about the meeting, but fearful about "what comes after", without explaining where that danger would come from. In the meantime, Appellant had replied to the Outlook meeting notice sent by Ms. Rauzi's assistant by accepting it on her calendar. This in its turn is inconsistent with her July 19th statement that she would rather risk further discipline than attend the meeting. Mr. Luhan was understandably taken by surprise by these emotional and contradictory emails. Appellant's failure to give him any previous notice of her issues prior to refusing to attend project meetings prevented him from taking corrective action to address Appellant's concerns and allow her to do her job. Her accusation that he was exposing her to violence caused Mr. Luhan to doubt his own ability to protect his employee, since Appellant did not identify the source of her fears. Appellant's hostile work environment complaint did not clarify the matter, since it cited only Mr. Luhan's reference to discipline if she did not attend the meeting, and three other matters unrelated to PILAR meetings. A thorough investigation by CSA failed to uncover any basis for Appellant's claim that her supervisor had endangered her health or life. [Exh. 2H.]

The July 30th email to Gold threatened to report a breach of contract to the City Attorney's Office, Accounting and the Auditor if Gold did not accede to her demand for an immediate and detailed accounting. As a direct result of the email, Mr. Tasker reported this to the Agency as an escalation of threats by Appellant, and made a formal request for her removal as Project Manager in the interest of completing the contract work. [Exh. 31-1.] This request, and the contents of the email, constitute credible evidence of the damage done to this working relationship by the unauthorized communication.

As stated above, her argument that she acted on her supervisor's instructions in attempting to verify contract funds is contradicted by her statement to Gold that Mr. Luhan did not have the authority "to circumvent internal controls such as a request . . .
to verify project costs". [Exh. 36-22.] In any event, Appellant concedes that Mr. Luhan maintained signature authority to approve payments and contract amendments on the IVR project because she lacked the appropriate job classification to support that authority. [Testimony of Appellant, 5/18/09, 2:23 pm.]

The content and tone of Appellant's email to Gold did not demonstrate that Appellant was “working collaboratively with [Gold] to solve their problems, [or] developing and maintaining trusting, constructive relationships” with the customer, as required by her PEP. [Exh. 30-1.] Instead, Appellant made a demand for an immediate accounting that would require forty hours of effort to reconstruct and produce, according to Gold. [Exh. 31-1.] Appellant's aggressive tone was based on her growing suspicion that Gold was concealing a double payment. Since Appellant had been the Project Manager for the previous eight months, her urgent demand should not have been necessary if she had performed her own accounting of the work done and payments made under the contract, as required by her job duties. Ten days later, the Auditor's office made an initial finding that the facts presented by Appellant did not prove contract fraud. In any event, the contractor reacted predictably by requesting Appellant's removal from the project based on its conclusion that Appellant's continued involvement would be "a detriment to project completion", further supporting that conclusion by Appellant's refusal to answer its emails and calls. A reasonable person in Appellant's position would know that her emails would seriously harm project management relationship with the contractor, which requires positive communication and the ability to solve problems together.

On Aug. 15th, Appellant sent a confidential request for help to Mr. Luhan, which repeated her March criticisms of Mr. Glen for requesting to discuss the user requirements with the IVR customer agency. Ms. Rauzi and Mr. Luhan concluded that this was a continuation of Appellant's pattern of criticizing her co-workers, and that recent counseling and focused training had not improved her ability to treat team members with respect or communicate positively with others to resolve issues. Citing this behavior and her July 30th threat to Gold, the Agency placed Appellant on investigative leave.

When viewed together, this series of emails demonstrate that Appellant arrived at unfavorable assumptions about the actions and motivations of her co-workers and contractors with little objective evidence to support those assumptions. Appellant failed to integrate past documents and communications inconsistent with her assumptions, or do any research to test whether her conclusions were accurate. On the basis of her feelings alone, Appellant communicated her fears and anger to others, with predictable results on her relationships with her co-workers, supervisor, Agency Director and contractors. After discipline and extensive training in communication skills, Appellant's actions towards Gold and Mr. Glen were a continuation of her previous behavior, and persuasive evidence of her intent to reject the collaborative style necessary for her work.
While discipline for merely seeking a supervisor's help about workplace issues is contrary to the language and intent of CSR Rule 18, an employee is not insulated from all consequences of statements made in such a complaint if they are otherwise in violation of performance standards or rules of conduct. Appellant was given detailed notice of both her job duties and the standards by which her communications would be rated. Her verbal reprimand three months earlier outlined several similar incidents which resulted in co-worker complaints about her conduct. A reasonable person in Appellant's position would know her emails to Mr. Luhan and Mr. Tasker would have a significant impact on her working relationship with them. Mr. Tasker reacted immediately by reporting Appellant's threats and asking that she be removed from the project, convincing proof of the damage done by the email to that important relationship. The Agency reasonably concluded that Appellant was intentionally returning to her earlier misconduct, in spite of their warnings that her communication style harmed her working relationships. See In re Burghardt, CSB 81-07, 2 (8/28/08). The Agency established that Appellant failed to maintain satisfactory work relationships in violation of the rule.

5. Conduct Prejudicial to Agency or City, CSR § 16-60 Y

To sustain a violation of the first part of this rule, the Agency must prove Appellant's conduct hindered the Agency's ability to carry out its mission, or was prejudicial to the good order of the agency, i.e., the internal structure and means by which the agency achieves its mission. In re Norman-Curry, CSA 28-07 and 50-08, p. 28 (2/27/09).

The Agency argues that Appellant was so noxious and ineffective that her continued presence in the workplace would have impaired the work of others, contributed nothing to the work's progress, wasted money and manpower, and would have led to the loss of future work by two city contractors. [Agency Closing, p. 15.] The Agency supported this argument with the testimony of several members of the IVR team that Appellant's work style caused problems within the team, and delayed completion of the project. Appellant actively blocked the team from clarifying the user requirements, failed to share information or coordinate activities, discouraged collaboration, and delayed completion of the contract until after she was replaced as Project Manager. In one instance, her failure to coordinate use of the server cost the city $3,000. Appellant contends that her actions in exposing official misconduct and contract mismanagement were directed toward protecting the city against contract fraud and waste, and her disclosures, not her actions or performance, were the real cause of the actions taken against her.

All witnesses conceded that the IVR project was technically difficult, and the contractor's actions contributed to the problems and delays. However, Appellant's performance in the crucial role of Project Manager created significant difficulties in completing the work of implementing an IVR system for the client agency. Since a large part of the Agency's mission includes management of intra-Agency technology projects and outside contractors, the Agency established a violation of the first part of this rule.
The Agency offered no evidence that Appellant violated the second part of this rule, which requires proof of actual injury to the city's reputation or integrity. In re Compos, CSA 56-08, 15 (12/15/08).

C. Was Termination Appropriate for the Proven Violations?

HR Director Mark Brazwell conducted the pre-disciplinary proceedings and made the disciplinary decision dated Dec. 14, 2007. Mr. Brazwell worked in close proximity with Appellant for many years. He was aware of Appellant's complaints about Mr. Glen based on her March request for intervention and the April verbal reprimand, and he counseled her to consider that the same actions can often be perceived differently by different people. Mr. Brazwell also received copies of her July request “to stop being exposed to hostility in the workplace”, which led to the CSA investigation. Mr. Brazwell did not review the results of that investigation prior to making his decision. However, he was informed by Mr. Cooper that the investigation was unable to substantiate Appellant's allegation of a hostile work environment. [Testimony of Mr. Brazwell, 12/2/08, 10:30 am.]

Mr. Brazwell participated in the decision to place Appellant on investigative leave, and believed it was appropriate in an effort to remove Appellant from a workplace she felt was hostile and unsafe, and investigate that allegation. He wrote the Aug. 23rd letter which explained the terms of Appellant’s investigatory leave with the intent to prevent her from contacting vendors and employees, given her blatant disregard of orders and inappropriate conduct towards coworkers and contractors. Prior to Appellant’s investigatory leave, he had heard rumors that Appellant had gone to Mr. Henry and the Auditor to report her contract fraud allegations, but he did not believe the matter was germane to the discipline, and did not consider it in his findings or decision to terminate Appellant. [Testimony of Mr. Brazwell, 12/2/08, 9:15 am.]

Mr. Brazwell testified that he examined Appellant’s entire employment record prior to making the disciplinary decision. He strongly weighed the fact that she had been a highly-rated and dedicated employee, whose only previous discipline during her seven years with the Agency was the April verbal reprimand. He found that Appellant's disobedience to direct orders to prepare an issues log and cease confrontational communications with vendors was intentional misconduct. Her decision to act contrary to the orders from the Agency head was, in his opinion, “in-your-face type stuff” from which it would be hard to recover and continue her employment. He believed that a disagreement with an order from the head of the Agency should be handled by asking for further discussions and negotiations. Appellant's actions in immediately disobeying the orders rendered the possibility of turning her behavior around for future success on the job difficult, especially given the fact that Appellant believed she was on the right track and had done nothing wrong.

Mr. Brazwell noted that prior counseling, mentoring sessions, warnings, an improvement plan, and extensive remedial training to reinforce the Agency's
communication standards over a five-month period, all of which was intended to correct
the behavior, were ineffective. He cited Appellant’s improvement for a short period after
attending the classes, and her acknowledgement to him that they had been helpful.
Two months later, a similar situation triggered Appellant’s resumption of her pattern of
negative behavior. He concluded that Appellant had intentionally chosen to
communicate and act the way she wanted, regardless of Agency standards and orders.
On that basis of that conclusion, Mr. Brazwell determined that lesser discipline would
not alter her behavior, and that without such a change in her behavior, there would be
serious problems in the city’s relations with outside contractors. [Testimony of Mr.
Brazwell, 12/1/08, 4:20 pm.]

The purpose of discipline is to correct inappropriate behavior if possible. CSR §
16-20; In re Blan, CSA 40-08, 6 (7/31/08). The Agency established that Appellant
violated a number of disciplinary rules based on her behavior, the most serious of which
was her immediate disobedience of orders given to her by the Agency Director. As a
result, the Agency received a written request from the contractor for Appellant’s removal
from the IVR project, Appellant’s chief responsibility during this period. Based on its
assessment that the contractor’s claims against Appellant had merit, the Agency did
remove Appellant from the project, and was then required to reassign management of
the work to another employee shortly before the contract funding was to expire. The
Agency also proved that Appellant failed to meet the accepted performance standards,
to the detriment of her assigned projects and her relationships with team members. It
was determined that Appellant failed to maintain effective relationships with team
members and outside vendors, a necessary element in performance of her job duties,
with serious consequences to the Agency’s projects. Finally, the Agency proved
Appellant’s failures in the role of Project Manager damaged team performance and
significantly delayed the IVR project, which adversely affected the city’s development
planning process during this period.

Given the severity of the proven misconduct, the damage caused to the work of
the Agency, and Appellant’s failure to acknowledge any responsibility for the
consequences of her conduct, I conclude that the imposition of lesser discipline than
termination would not have corrected the behavior, and was within the range of
discipline that could properly be imposed under CSR §§ 16-20 and 16-50.

D. Whistleblower Claims

1. Agency’s motion to disregard evidence of acts occurring before
passage of Whistleblower Ordinance

Initially, the Agency argues that the whistleblower ordinance adopted and
effective August 13, 2007 does not apply to disclosures made by Appellant prior to that
date “because they were not acts of whistleblowing at the time they were engaged in.”
[Agency’s Proposed Findings and Conclusions, p. 1.]

A statute is retrospective for the purpose of the constitutional prohibition against
retrospective legislation if it takes away or impairs vested rights acquired under existing
laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past. *City of Colorado Springs v. Powell, 156 P.3d 461* (Colo. 2007); CRSA Const. Art. 2, § 11. A right of action vests when there is "a concurrence of tortious conduct and actual injury or damages caused by the tortious conduct." *Martin Marietta Corp. v. Lorenz,* 823 P.2d 100, 115 (Colo. 1992, citing *DeCaire v. Public Service Co., 479 P.2d 964, 966* (Colo. 1971.) A statute is not retrospective merely because the facts upon which it operates occurred before the adoption of the statute. *Wood v. Beatrice Foods Co,* 813 P.2d 821 (CA 1991); *Neodata Services v. Industrial Claim Appeals Office, 805 P.2d 1180* (Colo.App.1991); *Continental Title Co. v. District Court,* 645 P.2d 1310 (Colo.1982.)

Here, the first asserted adverse action was the Agency’s placement of Appellant on investigative leave on Aug. 15, 2007, two days after the ordinance was passed. On that date, Appellant’s right to pursue a whistleblower claim accrued. The Agency’s argument would bar a whistleblower claim unless all disclosures of official misconduct occurred after the effective date of the ordinance, contrary to the stated intent of the law and the well-settled legal principles applicable to limitation periods. Accordingly, Appellant is not barred from reliance on events that preceded the ordinance in proving her claim.

2. **Whistleblower Protection Ordinance**

A claim under the city’s whistleblower ordinance is raised by allegations that 1) the claimant made a disclosure of official misconduct to appropriate reporting authorities, 2) the agency imposed or threatened to impose an adverse action on the claimant, and 3) the disclosure was a substantial or motivating factor for the adverse action. *D.R.M.C. § 2-108; In re Wehmhoefer, CSA 02-08, 4, 5* (2/14/08).

The city’s declared intention in enacting the ordinance was to encourage “all employees to speak out full and frankly on any official misconduct which comes to their attention without fear of retaliation.” *D.R.M.C. § 2-106, Legislative Declaration.* The ordinance was the product of a 12-month process involving employee and official stakeholders who sought to create “a good government policy that will mesh well with existing whistleblowing protections at the state and federal levels.” [*Denver City Council General Government Committee Summary, July 24, 2007.*]

Denver’s whistleblower ordinance is patterned largely after the Colorado Employee Protection Act, which shields from retaliation state employees who disclose waste of public funds, mismanagement, abuse of authority, and illegal or unethical practices. *CSR § 24-50.5-101 et. seq.* Based on the legislative history indicating that the ordinance was intended to “mesh well” with the state whistleblower law, and the ordinance’s use of similar wording as that used in the Colorado act, state case law

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27 Both the state statute and the city ordinance describe the causation element with the identical phrase: [no supervisor shall impose adverse action] **on account of** [a disclosure of official misconduct.] (Emphasis added.) Both also include illegal and unethical practices, waste of public funds and abuse of authority as official misconduct. Compare *D.R.M.C. § 2-108(a)* and *C.R.S. 24-50.5-101 - 103.*
interpreting the Colorado statute is persuasive authority in construing the intended meaning of the ordinance.

Under the Colorado law, a whistleblower claimant must establish that the disclosures made were "a substantial or motivating factor" for disciplinary action. Ward v. Industrial Commission, 699 P.2d 960 (Colo. 1985); cf. Mt. Healthy School District v. Doyle, 429 U.S. 274 (1977). If that burden is sustained, the agency may then present evidence that it would have made the same decision in the absence of these disclosures. Ward, at 968; Mt. Healthy, at 287; Taylor v. Regents of University of Colorado, 179 P.3d 246 (Colo. App. 2007).

The evidence is undisputed that Appellant suffered adverse employment actions by virtue of her four-month investigative leave, unfavorable performance review, and termination. DRMC 2-107(b); In re Muller, CSA 48-08, 2 (CSB 10/24/08). I find also that Appellant has established she made disclosures of information prior to those adverse actions. The remaining issues are 1) whether Appellant's statements were disclosures of official misconduct, and 2) whether the adverse actions were imposed "on account of" those disclosures.

a) Allegations of Official Misconduct

In order to establish her claim, Appellant must first prove she made a disclosure of official misconduct under the ordinance. "Official misconduct" is defined in the ordinance as

any act or omission by any officer or employee of the City and County that constitutes (1) a violation of law; (2) a violation of any applicable rule, regulation or executive order; (3) a violation of the code of ethics . . .; (4) the misuse, misallocation, mismanagement or waste of any city funds; or (5) an abuse of official authority.

D.R.M.C. § 2-107(d).

In support of her whistleblower claim, Appellant asserts that she reported Gold's contract fraud and the Agency's financial negligence in early August 2007 to three separate entities prior to being placed on investigatory leave on Aug. 15, the first adverse employment action. Appellant argues that all three of the Agency's adverse actions were imposed because of her whistleblower activity.

On Aug. 1, 2007, Appellant disclosed to the Director of the Board of Ethics her belief that Gold had committed contract fraud, and the Agency mismanaged contract funds. Mr. Henry invited Appellant to file an ethics complaint, but informed her that the Board did not have jurisdiction over contract fraud. He told her she may report the fraud issue to the Auditor for investigation. The next day, the Mayor's Office likewise referred Appellant to the Auditor after she told Ms. Mueller that there was "an issue with
contracts, and I thought that was why I was being mistreated, and if anything happens to me is because of mismanaged or poorly managed contracts." [Testimony of Appellant, 6/9/09, 11:35 am.]

On Aug. 10, Appellant spoke to Mr. Cummings in the Auditor's Office, and provided him with a number of contracts and other documents she said demonstrated contract fraud by Gold and fiscal mismanagement by the Agency. Mr. Cummings advised her he believed the allegations could support fiscal mismanagement rather than contract fraud, and asked her to provide him with multiple samples of the transactions she claimed were fraudulent or negligent. Appellant later met with and provided further information to a contract specialist within the Auditor's Office. The matter was concluded without official action on the asserted fraud and negligence claims by the Auditor's Office.

On April 4, 2008, eight months after her conversation with Mr. Cummings and three months after her termination, Appellant delivered a letter and assorted attachments to Councilwoman Faatz describing her allegation of official misconduct. The letter claims that the Agency was negligent in its accounting of three PILAR contracts totaling $985,610 “due to the lack of appropriate project planning”, waste of resources based on a failure to do frequent reconciliations of costs and funding, and failure to effectively manage professional service contracts, leading to distortion of city financial reports and impact on investors' earnings on city bonds. The letter also claims that “the wasteful outflow of funds . . . inflated the city's operating costs.” In support, Appellant attached her Affidavit in this appeal and her July 30th email to Gold. [Exh. 5S-128, 131.]

At her meeting with Councilwoman Faatz that same day, Appellant informed Ms. Faatz that she believed the Agency mismanaged three city contracts, resulting in distortion of the city’s financial reports and impact on city bonds under the federal Sarbanes-Oxley Act. Appellant gave Ms. Faatz a copy of the Finance Committee Summary on the Justice Center bonds dated Oct. 4, 2006, at which the committee authorized issuance of the $378 million general obligation bond for the Denver Justice Center. The Disclosure Undertaking attached to the minutes requires the city to give notice of any nonpayment-related defaults to the Municipal Securities Rulemaking Board. [Exhs. 5S-132, K.] Councilwoman “Faatz and I were both confused about the interpretation and the consequences. We concluded we were not sure how they applied to city government and financial reports submitted to bond investors.” [Testimony of Appellant, 5/11/09, 1:57 pm.] Appellant did not testify or present other evidence that the federal act applies to the city, or that any action by a city employee or

28 The Sarbanes-Oxley Act of 2002 was established “to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws”. It does not by its terms apply to municipal entities, or govern their administration of contracts. 15 U.S.C.A. § 7201.
contractor resulted in a distortion of the city's financial reports or affected city bonds, as alleged in her disclosure. This evidence does not support a conclusion that Appellant reasonably believed that a city official or contractor caused or could have caused either a default on a city bond or distortion of the city's financial reports. See e.g. In re Wehmhoefer, CSA 02-08, 5 (2/14/08). In any event, Appellant's disclosure to Ms. Faatz was made several months after the Agency imposed its first adverse action against her, and so could not have been the cause of any of those actions.

Appellant has also cited the federal False Claims Act in support of her whistleblower claims. [Exh. 5Y.] The Act criminalizes the filing of a false claim for payment to the federal government. 31 USCA § 3729.] At hearing, Appellant testified that she does not rely on that statute as a basis for her whistleblower claims.

Appellant also alleges that the three managers failed to adequately plan and reconcile contract accounts, and failed to provide adequate internal controls, in violation of the Fiscal Accountability Rules. Rule 2.2 requires all city agencies to do quarterly analysis of their material ledger accounts, and submit their annual certification of their compliance with the rule to the Controller. This rule governs agency ledger accounts, not an agency's financial records of outside contracts.

Rule 2.3 and its current version, Rule 10.1\textsuperscript{29}, states:

Fiscal misconduct is an expenditure of city resources, including assets or personnel, without proper authorization or for purposes other than city business; knowingly violating fiscal rules or financial policy; or manipulating or falsifying data or documentation so as to misrepresent or inaccurately report city transactions or city business with a monetary impact.

Any City employee who has reason to believe that their appointing authority is engaged in or has engaged in fiscal misconduct shall promptly notify the Auditor's Office or the Controller's Office of such fiscal misconduct.


Appellant's affidavit asserts that Mr. Glen's failure to install an adequate credit card reconciliation system in the design for CPD in March 2007, which was corrected six weeks later, was a violation of the FARs. Appellant testified that she explained her concern about the credit card reconciliations issue during the April 23rd meeting, but that she "never had specific conversations about fiscal rules." [Testimony of Appellant, 6/10/09, 3:17 pm.] There is no evidence that the short delay in installing a

\textsuperscript{29} Rule 2.3, adopted Oct. 13, 2005, was repealed and reenacted as Rule 10.1 on Mar. 11, 2009 under the same title, "Reporting Fiscal Misconduct".
reconciliation function in the unfinished IVR design caused the Agency to fail to submit its quarterly analyses under FAR 2.2, or that it constituted fiscal misconduct under any provision of FAR 2.3.

Appellant considered Ms. Rauzi's Aug. 1st email an order to deny her the information needed to do contract reconciliations, and therefore a violation of FAR 2.2 and 2.3. [Testimony of Appellant, 6/9/09, 1:26 pm; Exh. 5R-15.] On the contrary, Ms. Rauzi's email did not cancel Mr. Luhan's order to Appellant to verify contract payments. Her order to "stop sending all of these emails and asking people to collect all of this information" was in response to Appellant's actions in leaving numerous contracts on Ms. Rauzi's desk, forwarding voluminous emails, and asking four other employees to obtain additional documents about "the database related contracts, licenses and the associated annual costs for 2008 and 2009." [Exh. 28-13.] The latter contracts have no discernable relationship with the issues raised in the Aug. 1st meeting, and Ms. Rauzi's reply did not prevent Appellant from continuing to reconcile Gold's work and the city's contract payments. Appellant did not allege that Ms. Rauzi's email was itself fiscal misconduct.

Moreover, FAR 2.2 and 2.3 do not mandate reconciliations of individual city contracts. Rule 2.2 requires quarterly reconciliations of an agency's general ledger accounts. Rule 2.3, now Rule 10.1, states that city employees shall report fiscal misconduct to their appointing authority or the Auditor's Office. Most importantly, an allegation of misconduct by a contractor does not assert official misconduct by a city officer or employee.

Appellant testified that she believes FAR 2.2 and 2.3 require the Agency to maintain documents justifying the nature of any exception or waiver of the contract terms, including contract prepayments. After Appellant assumed the role of IVR Project Manager in Nov. 2006, she asked Mr. Brazwell for the monthly reconciliations, by which she meant the records validating the amount and percentage of contract work done as against the amount and percentage of contract costs incurred. "He didn't know what I was talking about."

Fiscal misconduct to me would have been, in December I discovered that deliverable #1 had been paid, and we did not receive the deliverables, and there was no waiver or any type of exception report to explain why we paid without getting those deliverables. It would have also covered payment for deliverable #2, where in the same case, the contractor claimed we received all of the Touch-Tone IVRs, and we paid for them, and paid for Change Request # 1. In both instances, we had nothing to show for it. There was no exception report or anything to say, "We did this because."

[Testimony of Appellant, 6/10/09, 3:24 pm.]
As Project Manager, Appellant was required to lead the internal project team, communicate with the contractor about the work, review contractor invoices, and assure that assigned projects are completed in a cost-efficient and timely manner. Appellant proffered no contemporaneous documents that showed she opposed payment of deliverables 1 or 2, or that she was not given the tools or authority to perform her duties. Appellant presented no evidence that the lack of an exception report for the payment of an invoice was fiscal misconduct as defined by FAR 2.3. Appellant never cited the Fiscal Rules to the Agency or any of the reporting authorities as the basis for her claim of official misconduct, either before or after her disclosures of contract fraud and/or fiscal mismanagement. On cross-examination, she explained that she did not raise the issue to anyone because it was not her job to enforce the Fiscal Rules, and she believed the exception reports must be somewhere. Appellant stated she continued to look for them and inquire about their location because she needed them to do her job as Project Manager. [Testimony of Appellant, 6/10/09, 3:21 pm.]

Appellant did not request exception reports from Gold at any time over the seven months she served as Project Manager. In Jan. 2007, Appellant asked Gold for a project accounting “so we never have to revisit this again.” Gold provided an Excel spreadsheet of the costs, invoices and change orders for the project. Appellant transmitted the accounting to the Agency Controller, with her analysis that it provided “the straight forward answers you need to reconcile our records”, without mentioning or requesting any missing exception reports. [Exh. X-4.] Appellant’s tacit acceptance of the invoice payments and failure to notify her supervisors or Gold that she considered the deliverables unacceptable is inconsistent with her testimony that the payments were improper absent written exception reports, despite her duty to control contract costs. I conclude that Appellant did not prove that her allegation of contract mismanagement made any claim that the Agency violated any law, rule, or code of ethics under DRMC § 2-107(d)(1) – (3).

The next issue is whether Appellant’s disclosure revealed any other type of official misconduct as defined in the ordinance. On Aug. 2, 2007, Appellant emailed CSA employee Marcia Cunningham that she suspected Ms. Rauzi was trying to delay her in reporting to the Auditor until Ms. Rauzi could “fix” Appellant’s contract concerns. That communication alleged that Ms. Rauzi may have a conflict of interest as to an outside contract, a matter regulated by the city’s Code of Ethics. DRMC 2-107(d)(3); DRMC § 2-61. Appellant testified that Ms. Rauzi’s “fix it” comment related to Appellant’s statement that reVision did not deliver two PILAR deliverables in the DIA contract. Appellant did not explain why that caused her to suspect Ms. Rauzi sought to prevent her from reporting fraud by Gold, as there is no evidence connecting the two contracts. Neither Appellant nor Ms. Cunningham repeated that suspicion to any other person at the city, and Appellant did not follow up by filing an ethics complaint. See DRMC § 2-55. Appellant presented no evidence that Ms. Rauzi had an actual conflict of interest, or that she violated an ethics rule in her conduct related to any of the three contracts.

At hearing, Appellant claimed that she disclosed that the Agency wasted city funds by approving Gold’s double-billing for services, in violation of DRMC 2-107(d)(4).
Appellant testified that Ms. Rauzi must have known about the contract issues because she signed off on the payments. [Testimony of Appellant, 6/9/09, 10:15 am.] That assumption depends on whether Ms. Rauzi shared Appellant’s belief that Gold had billed twice for some work. In fact, Appellant did not demonstrate that Gold’s June bills included any amount that had already been paid. The amount of the June 27th bill about which Appellant complained is almost identical to the contract price for deliverable #3, the speech recognition applications. [Exhs. D-2, V-6.] The previous invoices were payment for deliverables 1 and 2, and smaller amounts for training and approved change orders. [Exhs. D-2, V-7, V-10.] A subsequent Controller’s audit of the Gold invoices showed no irregularity in city payments.

The evidence as to this issue does not support a conclusion that Ms. Rauzi knew or believed that Gold was double-billing, that Gold received payments to which it was not entitled, or that the Agency wasted city funds in its payments to Gold. Appellant admitted during her testimony that Ms. Rauzi’s statement that she would “fix it” related to Appellant’s allegation that reVision never produced the electronic PILAR deliverables for the DIA contract. [Testimony of Appellant, 6/9/09, 9:59 am; 1:35 pm.] This is a different contractor working under a separate contract on another project, bearing no relation to Gold’s work on IVR. Appellant failed to support her claim by any evidence of waste of city funds under subparagraph four of the ordinance’s definition of official misconduct.

Appellant’s 2008 affidavit and disclosures to Ms. Faatz, and her testimony at hearing, all allege only that she believed the Agency was negligent in planning, reconciliations and management of the three contracts, resulting in mismanagement of city funds or assets. Appellant testified that she believed the city was entitled to a refund of all four invoiced amounts paid to Gold, for a total of $260,700. [Testimony of Appellant, 6/9/09, 1:49 am.] However, Appellant made no demands for a refund, and did not inform her supervisors of either her belief that a refund was due or the basis for that belief. Appellant as IVR Project Manager had direct responsibility to manage the Gold contract by working independently without close supervision to achieve contract completion, on time and within budget. In contrast, Mr. Luhan was Appellant’s direct supervisor, and Ms. Rauzi was her manager and the Agency director. Mr. Brazwell, as Agency HR and Financial Director, had no direct reporting relationship with Appellant. Thus, Appellant bore the most direct responsibility for ensuring that the Gold contract was adequately planned, reconciled and managed.

Appellant’s early workplace complaints raised no concerns about the planning, reconciliations and management of the contracts. In order of their occurrence, Appellant raised the following issues related to her projects between March and August 2007 before being placed on investigative leave: 1) Ms. Cassidy’s request to use PILAR funds for her scanning project endangered the PILAR budget; 2) Mr. Glen ignored Appellant’s feedback from customers and challenged her competence at PILAR meetings; 3) Appellant was exposed to hostility during PILAR meetings; 4) Mr. Luhan threatened her with discipline if she did not attend a PILAR meeting; and 5) Mr. Glen overstepped his authority in the IVR project. [Exhs. 37-10; 5R-102; 35-3; 35-10; 2H-30;
These were complaints about workplace or personnel matters, in contrast to the types of official misconduct listed in the ordinance, disclosure of which would serve "[t]he interests of the City and County of Denver and the larger interests of the citizens of Denver". DRMC 2-106; 2-107(d); see also In re Steward, CSA 18-08 (4/11/08). General complaints of mismanagement that are part of "an escalating dispute between the employee and his supervisors" are personal in nature and do not raise matters of public concern. Methvin v. Bartholomew, 971 P.2d 151 (Alaska 1998) (interpreting Alaska’s whistleblower statute).

After her investigative leave began on Aug. 15, 2007, Appellant raised other issues. In both her March 2008 affidavit and her April 2008 memo to Denver City Councilwoman Jeanne Faatz, Appellant asserts that Mr. Luhan and Mr. Glen resisted her efforts to improve the planning and control tools for the PILAR and IVR projects. Specifically, Appellant alleges that Mr. Glen failed to include department-level reconciliations in his design of the online credit card payment system. [Exh. 5S-132, 136.] Mr. Luhan testified that Mr. Glen initially failed to understand the need for such reconciliations, but added them after being educated by Appellant and the Treasury Department about the business practice which required them. [Testimony of Mr. Luhan, 4/10/09, 9:46 am.] As determined above, Appellant failed to prove that the delay in adding the reconciliation tool to an early version of the IVR design caused any waste of city funds.

Principles of statutory construction require that words in a string of statutory terms should be given related meanings. Ruff v. Industrial Claim Appeals, 218 P.3d 1109, 1113 (Colo.App. 2009); 73 Am.Jur.2d Statutes § 134. The ordinance’s use of the word “mismanagement” in a list which includes violations of law, rules, ethics, and abuse of authority, indicates the City Council’s intention to target serious violations of the standards affecting public employees and “the larger interests of the citizens of Denver”. Thus, mistakes or even neglect by a city employee in performing his work, without more, do not rise to the level of the type of misconduct targeted by the whistleblower ordinance.

Here, the only mismanagement alleged was paying Gold twice for the same work, and failing to require timely deliverables from reVision. As noted above, Appellant failed to prove either allegation, and her responses to Gold’s Jan. 2007 accounting and the March audit are inconsistent with her later claim of fiscal mismanagement. In any event, mistakes or oversights during administration of a lengthy service contract that are resolvable by contract amendments or other means are not the type of significant misconduct addressed by the ordinance. The evidence does not establish that the Agency wasted or mismanaged any city funds or assets as a result of the Gold, reVision, or Buddha Logic contracts. Appellant did not allege or prove that there was an abuse of official authority arising from the contracts under DRMC 2-107(d)(5). Appellant’s discussions with her supervisor about problems within the IVR work group were not disclosures of official misconduct under the city’s whistleblower ordinance. See In re Steward, CSA 18-08 (4/11/08).
Appellant's affidavit also asserted that Mr. Luhan retaliated against her by threatening discipline after she told him she was "going to talk to the City Auditor about the deception going on with Revision Inc. on the PILAR Program", and that she filed a hostile work environment complaint because of Mr. Luhan's threat of discipline. [Exh. 5S-136.] However, her June 2007 CSA complaint did not allege any deception by reVision, or state that she intended to make any report to the Auditor. Instead, the complaint asserted that Mr. Luhan threatened discipline "for missing a meeting", and complained of the conduct of four co-workers that Appellant believed were hostile toward her. [Exh. 2H-30, 31.] Appellant's claim that she was treated unfairly from March to August because of her complaints about Gold is seriously undermined by two facts: her complaints about Gold occurred in July, and her supervisor and manager disciplined her in April for similar misconduct before she began to complain about Gold's invoices.

Appellant's responsibility for planning, reconciliations and management of the contracts was a major part of her position as Project Manager. Her supervisor and Agency managers had only indirect responsibility for same. The latter exercised their oversight duties by coaching Appellant on use of project management tools, resolving internal project issues as presented to them by Appellant and others on the team, working with the contractor to resolve contract scope, amendment and payment issues, and ordering a contract audit at its conclusion. Appellant failed to communicate her belief that the Agency was negligent as to the contracts, or that the Agency's negligence could result in a loss of city funds or assets. When she did communicate her concern about the Gold invoices, Ms. Rauzi took definitive action to meet with the team, hear Appellant's concerns, clarify the status of work, and work to resolve the issues.

Appellant argued at hearing that she was prevented from investigating or making further disclosures by the terms of her investigative leave. On Aug. 23, Appellant was prohibited from accessing any city equipment or communicating with city staff or contractors regarding the projects listed in her PEP or other city projects. [Exh. 1.] A week later, Appellant was represented by an attorney and filed an appeal under the whistleblower ordinance, which declares that city employee should never suffer retaliation for revealing official misconduct, on pain of disciplinary action against any supervisor who imposes an adverse action on the employee. Appellant had already requested nine contracts from the Agency Director, and obtained copies of all contracts and amendments filed in the Clerk and Recorder's Office. Appellant had personally spoken to Mr. Henry at the Ethics Board, Mr. Cummings in the Auditor's Office, and Ms. Mueller in the Mayor's Office, all of whom advised her of her options under the whistleblower law. Under these circumstances, Appellant's testimony that she interpreted the investigative leave letter as an order not to pursue her whistleblower disclosures is not credible.

Based on the above findings, I conclude that Appellant did not prove that what she disclosed prior to the first adverse action was in fact official misconduct under the whistleblower ordinance, or that Appellant reasonably believed what she was disclosing was official misconduct.
b) Nature and Timing of Disclosures

Appellant claims that she made several disclosures of official misconduct from March 2007 to April 2008. As determined above, Appellant’s early complaints in the spring of 2007 related to the conduct and performance of her co-workers, not contract mismanagement. On July 27th, Appellant reported to Ms. Rauzi that Gold was billing again for work already invoiced and paid. She repeated that complaint to Mr. Henry, Ms. Mueller and Mr. Cummings between Aug. 1 and 10, 2007, characterizing it as contract fraud by Gold. None of these reports were disclosures of misconduct by anyone in the city.

Mr. Cummings’ statement to Appellant that it sounded more like contract mismanagement on the part of the Agency was not a disclosure of mismanagement by Appellant herself, but rather Mr. Cummings’ own evaluation of the nature of her claim. The whistleblower ordinance requires that the employee upon whom an adverse employment action is imposed or threatened must be the person disclosing official misconduct. DRMC 2-108(a). Appellant’s later statements to Councilwoman Faatz occurred well after all three of the adverse employment actions, and therefore could not have motivated the Agency’s actions.

In her closing statement, Appellant argues that Ms. Cassidy and her manager Mr. Watson sought to inflate the cost of the project to cover upgrades to the core infrastructure, and that they failed to reconcile project expenses under FAR 2.2. [Appellant’s Closing Argument, pp. 11, 14.] However, as determined above, FAR 2.2 regulates an agency’s general ledger accounts, not individual city contracts. Moreover, Appellant did not submit evidence supporting her allegation that the maximum amended contract amount of $238,970 was spent on functional requirements already included in the Documentum Phase 1A contract. Appellant failed to prove that any city employee working on the Documentum project committed official misconduct, or that she made this allegation to any reporting authority prior to any of the three adverse actions.

Appellant did not inform anyone at the Agency that she believed there was official misconduct of any description by any city employee or official prior to the Aug. 15th decision to place her on investigative leave. Appellant communicated only her belief that Gold was double-billing and that she suspected contract fraud. The Agency’s actions were motivated by Appellant’s behavior and failure to perform her duties, including effective communication, in accordance with the standards set forth for her position. She made no other disclosures until several months after the Agency issued its “needs improvement” evaluation and its notice of dismissal. Appellant therefore failed to prove that her disclosures were a substantial or motivating factor for any of the adverse actions.

Appellant did not allege or present evidence that she engaged in any other protected activity, as required to prove retaliation under CSR § 15-106. To the extent
the appeal raises claims of retaliation under that rule, it is determined that the evidence does not support that claim.

V. ORDER

Based on the foregoing findings of fact and conclusions of law, the following orders are entered:

1) The Agency actions dated Nov. 14 and Dec. 14, 2007 are AFFIRMED.

2) Appellant’s whistleblower claims under Appeal Nos. 55-07, 89-07 and 90-07 are DISMISSED.

3) Appellant’s claims of retaliation under CSR § 15-106 are DISMISSED.

DATED this 17th day of June, 2010.

Valerie McNaughton
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this decision within fifteen days after the date of mailing of the Hearing Officer’s decision, as stated in the certificate of delivery below. CSR § 19-60, 19-62. The Career Service Rules are available as a link at www.denvergov.org/csa.

All petitions for review must be filed as follows to:

Career Service Board
c/o Employee Relations
201 W. Colfax Avenue, Dept. 412, 4th Floor
Denver, CO 80202
FAX: 720-913-5720
EMAIL: Leon.Duran@denvergov.org

AND

Career Service Hearing Office
201 W. Colfax, 1st Floor
Denver, CO 80202
FAX: 720-913-5995
EMAIL: CSAHearings@denvergov.org

I hereby certify that a copy of this Decision and Order was sent on June 17, 2010 to the