



OFFICE OF INSPECTOR GENERAL
City of Albuquerque

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Inspector General

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Report of Investigation

FILE NO: 19-0040 C

DATE: February 27, 2020

SUBJECT: A complaint was forwarded to the Office of the Inspector General alleging unethical conduct and abuse of position by the City Engineer

STATUS: FINAL

INVESTIGATOR: J. S.

INSPECTOR GENERAL

EDMUND E. PEREA, ESQ
ACCOUNTABILITY IN GOVERNMENT OVERSIGHT COMMITTEE
CHAIRPERSON

DISTRIBUTION:

Honorable Mayor
President City Council
Chief Administrative Officer
City Councilors
Director Council Services
City Attorney
Director of City Department
Members, Accountability and Government Oversight Committee
File

Executive Summary

The Office of the Inspector General (OIG) received a complaint from an anonymous worker for the City of Albuquerque (COA). The memo stated:

“Please accept this memorandum as notice that one of the Planning Department’s employees has been accused of abusing the authority of his position for the financial gain of his brother and possibly himself.

Shahab Biazar is the City Engineer. In this role, he oversees the Planning Department’s review, approval, and acceptance of infrastructure that the city requires to be built as part of certain real estate developments. Mr. Biazar’s brother, Shawn Biazar {hereinafter known as C-2}, is also an engineer in the private sector and provides services to various real estate investors and developers.

Last week, Mr. {complainant, will be referred to as C1 hereinafter} accused City engineer Biazar of refusing to finish a ‘close-out package’ that C-1 submitted. C-1 reported that City Engineer Biazar’s refusal is retaliation because C-1 is in a financial dispute with C-2, regarding the engineering portion of this specific application. Failing to finish a “close-out package” can cause a developer to incur additional costs. C-1 alleges that City Engineer Biazar and C-2 are partners and that they met on multiple occasions to plan the subject development. Currently, another engineer within the department has been assigned to process C-1’s project.

(We) take these allegations seriously and ask that the Office of the Inspector General investigate this matter.”

Based on the complaint received, the applicable policy/ordinance violations that were considered for this allegation were:

Albuquerque Code of Ordinances, § 3-3-5 CONFLICT OF INTEREST; EMPLOYEES.

(a) An employee shall disqualify himself or herself from participating in any official act directly affecting a business in which he or she has a financial interest. No employee shall acquire a financial interest at a time when he or she believes or has reason to believe that it will be directly affected by his or her official act.

(b) Every employee who has a financial interest which he or she believes or has reason to believe may be affected by an official act taken within the scope of his or her employment shall disclose the precise nature and value of such interest. The disclosures shall be made in writing to the City Clerk at the time the conflict occurs and during the month of January every year thereafter. Additionally, it shall be the duty of an employee to inform his or her department head of such a financial interest

at the time he or she acquires it. The information on the disclosures, except for the valuations attributed to the reported interests, shall be made available by the City Clerk for inspection to any citizen of this State; provided, however, the valuation shall be confidential. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in city employment.

(c) The city shall not enter into any contract with a business in which an employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding or the Chief Administrative Officer has made a written waiver of this prohibition; provided that this subsection does not apply to a contract of employment with the city.

(d) Any purchase order or contract entered into by the city with a business in which an employee of the city has a controlling interest is void if the employee failed to comply with the provisions of this Section prior to the city entering into such contract or purchase order.

('74 Code, § 2-3-5) (Ord. 31-1985)

Albuquerque Code of Ordinances, § 5-5-22 ETHICAL CONDUCT

(a) Conflict of Interest. It shall be unlawful for any vendor that knowingly has a conflict of interest, which conflict of interest would allow it an unfair advantage in a competitive process, or would prevent it's being able to perform fully and objectively under a contract with the City, to make an offer to the City or enter into a contract with the City.

(b) Prohibition of unfair advancement of private financial interest by any vendor. It shall be unlawful for any director, officer, or employee of a vendor; or any other individual or vendor by virtue of a personal or corporate relationship with the City to use confidential or insider information concerning the property, government, or affairs of the governmental body by which that person or corporation entity possesses a confidential relationship, for the purpose of real or potential advancement of private interest.

1. Disclosure. Every vendor, the directors, officers, and key employees of that vendor who has an existing or potential financial interest or who has an immediate family member who has a presently existing or potential financial interest in any contract or other matter existing or pending before or within the governmental body of which that vendor is affiliated with, shall disclose that interest in writing to the City Clerk and to the End User Department Director with whom that vendor is negotiating, immediately upon knowing that such a conflict exists or upon having knowledge that a conflict may potentially come into being.

2. Enforcement. In each instance in which a vendor knowingly uses confidential or inside information for unfair advancement of private interest, or fails to disclose real

or potential financial conflict with the City, the City shall, if the offending party is a vendor or person affiliated with that vendor, cease all negotiations and contractual relationships with the offending party.

(b) Gratuities. It shall be unlawful for any vendor to offer, give, or agree to give any employee or former employee, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(c) Prohibition against contingent fees. It shall be unlawful for a person to be retained, or to retain a person, to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(d) Contemporaneous employment prohibited. Except as provided in the Ordinance, it shall be unlawful for any employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed

During the course of the investigation, it was determined that:

1. The COA does not have any direct purchases or procurements with the City Engineers family.
2. C-2's company, SBS Construction and Engineering, LLC, is often used as a subcontractor for development projects throughout the City and provides services to various real estate investors and developers who are working with the COA.
3. The City Engineer is not a partner in said company and has not conducted personal business with C-2 for many years.
4. The City Engineer has directed staff that he was not to be used as a signatory on any documents relating to C-2's company nor the accusers, C-1's company, and that all must be processed without his involvement.
5. The closeout package referenced in the original memorandum was placed on a delay while waiting for final approval, which required work from the

subcontractors involved. While the COA staff was aware of and acknowledged a financial dispute between the complainant, C-1 and C-2's company, SBS Construction and Engineering, the delay in final approval was not due to retaliation or involvement of the City Engineer but was due to a delay in the final required closeout documents to be properly submitted by C-1.

Abbreviations

A list of abbreviations should be included if the report is lengthy or there are numerous abbreviations.

OIG - Office of the Inspector General
COA – City of Albuquerque
DRC – Design Review Committee
DRB – Developmental Review Board
IDO - Integrated Development Ordinance
ASA – Assistant City Attorney

Introduction and Scope

The Office of the Inspector General (OIG) received a complaint from an anonymous worker for the City of Albuquerque (COA). The memo stated:

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Last week, Mr. {complainant, will be referred to as C1 hereinafter} accused City engineer of refusing to finish a ‘close-out package’ that C-1 submitted. C-1 reported that City Engineer’s refusal is retaliation because C-1 is in a financial dispute with C-2, regarding the engineering portion of this specific application. Failing to finish a “close-out package” can cause a developer to incur additional costs. C-1 alleges that City Engineer and C-2 are partners and that they met on multiple occasions to plan the subject development. Currently, another engineer within the department has been assigned to process C-1’s project.

(We) take these allegations seriously and ask that the Office of the Inspector General investigate this matter.”

The OIG investigation focused on the allegations asserted by the citizen through the Planning Director against the City Engineer, as previously described. The scope of the investigation addressed only the allegations. The methodology consisted of reviewing relevant documents and interviewing witnesses that could provide information regarding the allegations. The following activities were conducted as part of the investigative process:

- Review of pertinent documents to include contracts and relative documents with C-1 and the City Engineer C-2.
- Interviews of relevant staff members.
- Review of relevant City Ordinances, SOP's and COA's policies and procedures.
- Review of previous investigative reports relating to the City Engineer, Planning Department and Engineering Department.
- Review of previous audit reports relating to the Planning Department and Engineering Department.

Background and Document Review

A review of relevant and applicable City policy and ordinances was completed. The following areas were considered as relevant to the claims made in the received memorandum:

§ 3-3-5 CONFLICT OF INTEREST; EMPLOYEES.

(a) An employee shall disqualify himself or herself from participating in any official act directly affecting a business in which he or she has a financial interest. No employee shall acquire a financial interest at a time when he or she believes or has reason to believe that it will be directly affected by his or her official act.

(b) Every employee who has a financial interest which he or she believes or has reason to believe may be affected by an official act taken within the scope of his or her employment shall disclose the precise nature and value of such interest. The disclosures shall be made in writing to the City Clerk at the time the conflict occurs and during the month of January every year thereafter. Additionally, it shall be the duty of an employee to inform his or her department head of such a financial interest at the time he or she acquires it. The information on the disclosures, except for the valuations attributed to the reported interests, shall be made available by the City Clerk for inspection to any citizen of this State; provided, however, the valuation shall be confidential. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in city employment.

(c) The city shall not enter into any contract with a business in which an employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding or the Chief Administrative Officer has made a written waiver of this prohibition; provided that this subsection does not apply to a contract of employment with the city.

(d) Any purchase order or contract entered into by the city with a business in which an employee of the city has a controlling interest is void if the employee failed to comply with the provisions of this Section prior to the city entering into such contract or purchase order.

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program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(c) Prohibition against contingent fees. It shall be unlawful for a person to be retained, or to retain a person, to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

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Email Review
Engineering Department

On August 28, 2019, a Principal Engineer in the Planning Department sent an email to the interim planning director which stated:

“Good morning,

Last October you agreed for me to act on behalf of the City Engineer for the Rohan Subdivision as Shahab’s brother, Shawn Biazar, was involved.

Shawn Biazar continues to submit plans to the City and is a General Contractor for some Work Order construction plans.

This request is to act on behalf of the City Engineer for all DRC related matters. This includes, but may not be limited to, approval of; Infrastructure Improvement Agreements, Work Order paperwork, Work Order construction plans and acceptance of the constructed infrastructure.”

In response to this request, the interim director approved this for all projects moving forward involving the C-2.

Document Review
State of New Mexico, Secretary of State
Corporations and Business Services Division

A search and review of the company SBS Construction and Engineering, LLC to determine if the City Engineers is listed as an owner or agent. According to the records, SBS Construction and Engineering, LCC, Business ID Number 2747228, a

domestic limited liability company, does not have the City Engineer listed as a registered agent or organizer.

Interviews and Investigation

Telephone Discussion
Assistant City Attorney

On October 28, 2019, an investigator from the OIG spoke via telephone with an Assistant City Attorney, referred to hereinafter at ACA, with the COA to obtain background information on closeouts, as the delay of a closeout is the subject of this investigation. In general terms, ASA explained that as a developer or builder builds something, for example a development, they indicate all impacts to the City. They may need to make adjustments or do things to city infrastructure before the project can be completed, these can include adding sidewalks, culvert, drains, etc. After they build or complete this project they will submit a closeout package to the city. If a closeout is rejected or could not be signed off on by one engineer, it is difficult to get a different engineer to sign off on it, as it is not their work.

ASA also stated that the C-2 is conducting business as SBS Construction and Engineering, LLC.

Request for Documentation
Engineering Department

The investigator with the OIG asked the Planning Department for any and all contracts between the COA and the C-2's company, SBS Construction and Engineering, LCC, for the past year. The OIG was provided with seven projects.

1. Project 1: 3308 4th Street.

There was a memo inside the documents that stated that this project does not require agreements. The work order paperwork was approved on 10/24/2019, until additional engineering fees are paid, final approval on the work plans will not be approved.

This contract, for the amount of \$ 20, 240.14 relates to 3308 4th Street and fire line and fire hydrant improvements and is listed as city project 587881. The project manager for this project is listed as Shawn Biazar.

2. Project 2: NM Beef Jerky Alley Project

A memo provided to the investigator states that there is no work order paperwork, agreements, plans or acceptance of constructed infrastructure. This project went through Design Review Committee (DRC) review of the work order plans, but plans have not been finalized/approved. No other information on project. SBS Construction and Engineering, LLC would be the consulting Engineer. These documents have not been updated since June, 2018.

3. Project 3: Commercial Street Addition

The memo received by the OIG states that this project requires agreements. The work order paperwork was approved 02/05/19. This project requires an extension to the agreement and DRB extension approval or a closeout package to be submitted for review and approval for final closeout. Depending whether an extension to the agreement is done or the City accepts this project for final closeout all paperwork will be reviewed and executed.

This project was for the amount of \$ 199,060.13 and involved Commercial Street road and storm drain improvements. The City Project number associated with this work is 702882.

City engineer Biazar initialed the final contract review on December 20, 2018 and February 11, 2019.

4. Project 4: Rio Grande

A memo from the department to the investigator stated that this project does not require agreements. The work order paperwork was approved 09/12/16. There is no "Work Order" letter of Acceptance for required infrastructure.

The Consultant, SBS Construction & Engineering, did not turn in a closeout package for City's Construction Engineer's review. This project has not been accepted for final closure with the City.

This project involves placing a fire line at the Rio Grande Boulevard location. The total amount of this project contract in \$7,069.02.

5. Project 5: Kentucky Court Water Line

The OIG received a memo from the department stating that this project does not require agreements. The work order paperwork was approved 05/15/18. There is no work order letter of acceptance for required infrastructure. The consultant, SBS Construction & Engineering did not turn in a close out package for the City Construction Engineer's review. This project has not been accepted for final closure with the City.

This contract is for work at Kentucky Court to include construction of a fire hydrant and a fire lane and is City Project Number 772065. The amount of the contract is for \$25,830.64.

The final contract review was initiated by the City Engineer on 05/15/2018.

6. Project 6: Rohan Subdivision

The contract for the subdivision was signed in July 2017 between the COA and Senemar, LLC (owned and operated by C-1) with the construction surveying being conducted by SBS Construction and Engineering, LCC. As part of the contract, SBS Construction and Engineering LLC would conduct all construction surveying for the construction of the public improvements.

This contract was signed by City Engineer Shahab Biazar on October 1, 2019. Under the agreement, the subcontractor, SBS Construction and Engineering was to be paid \$125,561.98.

DRCCS later stated that a close out package was submitted and reviewed for final closure by DRC's Construction Engineer. The Construction Engineer is the only person at this time who reviews and authorizes DRC's projects to be closed out. The contract specialist prepares all contracts, releases, letters, etc., within the division.

Prior to final approvals, the original call on the financial guarantee of the municipal lien was started by the principal engineer and sent to legal, absent the City Engineer.

7. Project 7: Homewood Suites

SBC Construction and Engineering was a subcontractor in a project for storm drains at the property of Homewood Suites dba Mountain West Lodging for the total amount of \$31,820.00. This agreement was signed by the City Engineer Shahab Biazar on December 21, 2017.

The OIG also asked for any and all open contracts with C-1's company, in an effort to determine if any disparate treatment of C-1 could be identified. The DRC Contract Specialist stated:

“As of the date this email and in regards to open contracts involving C-1, we don't have any current or open contracts, in our division, at this time. His business name goes under Senemar, LLC. C-1 has only had 2 projects from what I can tell, that has gone through DRC. La Vista at Desert Ridge & Rohan Subdivision. Both projects & contracts are closed.”

DRC Contract Specialist
COA Planning Department

On December 12, 2019, the OIG met with DRC Contract Specialist (DRCCS) at Planning Department Office. The purpose of this meeting was to seek clarification on the contract process and the various contracts that were provided.

The DRCCS summarized the processes that the department goes through when completing these types of contacts/approvals.

Due to the length and details in these processes, the links for the full and complete documents will be included in this report. Below are two (2) links that break down the private/public development construction processes. The first link, “Development Process Manual” is the most informative on contract and work order process in the unit. Please refer to the “Draft Development Process Manual-January 2019” Chapter 2, Article 2-3 starting at page 17 of the manual or page 42 of entire document. This chapter details the process from going through DRC plan review of the actual plans to the contract process. It also articulates about the different types of contracts and “Non-IIA” contracts that are utilized. This “Draft Manual” more or less describes in detail all phases that each project must undergo in the Planning Department and this unit.

<http://www.cabq.gov/planning/development-review-services>

In addition, if the Development Process Manual is selected, there are several links under Chapter 5 that go into detail about the current processes. The Draft Manual is not approved yet, but it is easy to understand and gives a very clear detailed explanation of the process.

[http://library.amlegal.com/nxt/gateway.dll/New%20Mexico/albuqdpdpm/albuquerqueenewmexicodevelopmentprocessma?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:albuquerque_nm_mc\\$sanc=JD_DPM](http://library.amlegal.com/nxt/gateway.dll/New%20Mexico/albuqdpdpm/albuquerqueenewmexicodevelopmentprocessma?f=templates$fn=default.htm$3.0$vid=amlegal:albuquerque_nm_mc$sanc=JD_DPM)

Lastly, reviewed and included here is the Integrated Development Ordinance (IDO) link. The role in the Planning Department is partially dependent upon the Development Review Boards decision on certain infrastructure that needs to be built. If there is a project that does not need to go through the Development Review Board, then there is no agreement (Non IIA) that is entered into, however, plans are still reviewed through the DRC committee. All Non-IIA work orders are still processed the same, with the exception there is no actual contract agreement.

<http://www.cabq.gov/planning/codes-policies-regulations/integrated-development-ordinance>

DRCCS stated that the City Engineer typically does not sign off on documents as they relate to his C-2's business, as there was an email to this effect approximately one (1) year ago.

DRCCS stated that various other areas and individuals review and approve these documents as they relate to development and DRCCS is the person responsible for putting all the packets together for final signature. Typically, the person to review is her, the second step involves the DRC manager, and then it is forwarded to legal prior to being seen by the City Engineer.

Finally, DRCCS stated that the processes followed here are not like other procurement or purchases that are made in the COA. They are not bid-on nor do RFP's occur. She stated that these types of projects impact the COA therefore they require approvals in advance.

CE
City Engineer

A meeting was held with the City Engineer (will be referred to a CE moving forward in the report) on January 10, 2020 in the OIG. This discussion was digitally recorded. Of note during this meeting, CE stated the following:

- CE has been in the position of City engineer for six (6) years. He has been out of the private practice of engineering for over nine (9) years.
- CE, C-2 and C-1 were business partners, over ten (10) years ago.
- I sign numerous documents as the City Engineer. I am always the last person to sign. My staff, other engineers, and the DRC Committee and DRC chair usually all sign before I do. I am simply the final signature. CE stated that he is not involved in the contract review process.
- CE stated that he looks at the key elements when he receives the documents, such as the bonds and financial guarantees and makes sure that they match.
- In regards to the Rohan property, there was many problems and delays. The builder came to me as well as C-1. The builder was trying to place houses on the property but could not without the closeout. They asked if I could complete the closeout. I stated that part of the closeout check sheet was to include documentation that all was paid. C-1's company was not paid therefore we could not close out this package. That document cannot be falsified. In this instance, the COA is just the middleman and we need to see all the documents prior to a closeout being signed off on.
- C-1 even approached me in Trader Joes, when I was with my children, in an aggressive manner about this closeout.

- CE stated that this project was eventually closed out after C-2 signed a new contract to be paid after the properties are sold, in the closing costs associated with those sales.
- CE stated that he admits that since the original directive was sent, he may have been given some documents and signed them with his C-2's company listed, inadvertently. CE stated that he will once again remind all of his staff that he cannot sign off on anything with C-1 or C-2's companies involved.

After the meeting, the City Engineer sent an email to upper management in his division, which stated:

“Hi,

I must inform you that project involving SBS Construction & Engineering LLC, Mr. C-2, and Mr. C-1 must be processed without my involvement. Projects, paperwork and construction plans submitted to DRC section will be signed and approved by the DRC manager Mr. Cherne on behalf of City Engineer. Other plans documents submitted to other sections of the Development Review Services under Planning will have to be approved by the supervisor of that section or other authorized employee under their supervision. Any issues or problems regarding the projects involving SBS Construction & Engineering LLC, Mr. C-2, and Mr. C-1 must be directed to the Planning Director, Mr. Brennon Williams.”

Conclusion

During the course of the investigation, it was determined that:

1. The COA does not have any direct purchases or procurements with the City Engineers family.
2. The C-2's company, SBS Construction and Engineering, LLC, is often used as a subcontractor for development projects throughout the City and provides services to various real estate investors and developers who are working with the COA.
3. The City Engineer is not a partner in said company and has not conducted personal business with C-2 for years.
4. The City Engineer has directed staff that he was not to be used as a signatory on any documents relating to C-2's company nor the accuser and all must be processed without his involvement.
5. The closeout package mentioned in the complaint was placed on a delay while waiting for final approval, which required work from the subcontractors involved. While the COA staff was aware of and acknowledged a financial dispute between the complainant, C-1 and SBS Construction and Engineering, the delay in final approval was not due to retaliation or involvement of the City Engineer but was due to a delay in the final required close-out documents to be properly submitted by C-1.

With the above detailed determinations, it is the conclusion of the OIG that the initial allegation received against the City Engineer is unfounded. No bias against C-1 could be demonstrated through documentation available. In addition, C-2 has not received any additional business, advantage or revenues with relation to the City Engineer or any projects that have been processed through the COA.

While directives have come out in both August, 2019 and January, 2020, it is the position of the OIG that all dealings with C-1 and C-2 should be diverted from the signatory authority of the City Engineer, whenever possible, acknowledging that this is not always feasible.