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Report of Investigation

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STATUS: Final

INVESTIGATOR: M. Santistevan

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August 8, 2022
Date of Completion

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EXECUTIVE SUMMARY

According to City Ordinance 2-17-2, the Inspector General's goals are to (1) Conduct investigations in an efficient, impartial, equitable, and objective manner; (2) Prevent and detect fraud, waste, and abuse in city activities including all city contracts and partnerships; (3) Deter criminal activity through independence in fact and appearance, investigation and interdiction; and (4) Propose ways to increase the city's legal, fiscal and ethical accountability to insure that tax payers' dollars are spent in a manner consistent with the highest standards of local governments.

On June 10, 2022, the Office of Inspector General (OIG) received an online complaint alleging misconduct by a Department of Municipal Development (DMD) employee (E1) and a conflict of interest between E1 and a vendor, identified as the Subject Vendor (VENDOR 1) of the Gibson Health Hub (GHH). The OIG determined that the allegation contained elements of potential fraud, waste, or abuse and that it was appropriate for the OIG to conduct a fact-finding investigation. The purpose of the investigation was to determine if there is a conflict of interest between E1 and VENDOR 1 and if the events surrounding the conflict of interest resulted in misconduct by E1.

As a result of the investigation, the OIG was able to substantiate Allegation 1 pertaining to a conflict of interest between E1 and VENDOR 1, but could not substantiate Allegation 2 pertaining to misconduct by E1.

ABBREVIATIONS

OIG:	Office of Inspector General
DMD:	Department of Municipal Development
FCS:	Department of Family and Community Services
GHH:	Gibson Health Hub
VENDOR 1:	Subject Vendor
VENDOR 2:	Vendor providing similar services
E1:	DMD Employee
F1:	E1's immediate family member
W1:	Gibson Center Employee 1
W2:	Gibson Center Employee 2
W3:	Gibson Center Employee 3
D1:	Director 1
D2:	Director 2
V1:	Subject Vendor Representative

INTRODUCTION

The mission of the Office of Inspector General (OIG) is to promote a culture of integrity, accountability, and transparency throughout the City of Albuquerque in order to safeguard and preserve the public trust.

Complaint

On June 10, 2022, the OIG received an online complaint alleging misconduct by E1 and a conflict of interest between E1 and a vendor, identified as VENDOR 1.

Background

The City of Albuquerque (City) purchased the Gibson Health Hub (GHH) in April 2021 from a private party. The GHH leased out space to numerous vendors including medical facilities that are dependent on stable heating and cooling for their spaces. The Alerton Control System is currently installed and utilized in the GHH to control the temperature and HVAC systems. The Alerton Control System uses Compass, an Alerton software developed and owned solely by Honeywell, Inc., to manage the HVAC and temperature for the Central Plant at the GHH campus. VENDOR 1 is an authorized dealer for the Alerton Control System. The GHH is operated by the Department of Family and Community Services (FCS). The GHH employs a facilities crew to maintain the Central Plant. DMD has oversight of capital projects and facilities of the City. DMD employs an employee whose objective is to plan, direct, manage, and oversee the activities and operations of various facilities for assigned departments, including facilities maintenance and energy management; serve as the Qualifying Party for the City's Construction Contractor License (GB98); coordinate assigned activities with other divisions and outside agencies and provide highly responsible and complex administrative support to the Director of the Department of Municipal Development.

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SCOPE AND METHODOLOGY

Scope: Qualitative and quantitative transactions between the vendor and E1 and the GHH facility staff between April 1, 2021, and June 30, 2022.

The methodology consisted of:

- Review Conflict of Interest Policy to determine applicability to the specific complaint
- Review Code of Conduct Policy to determine potential violations related to misconduct and conflict of interest
- Review Ethical Conduct for Purchasing Policy to determine applicability to the specific complaint
- Obtain and review the contracts for the subject vendor
- Obtain and review the contract for a competing vendor
- Obtain and review specific emails related to VENDOR 1 between E1, W1, W2, W3, D1, D2, and VENDOR 1 representatives
- Review invoices from VENDOR 1 for the GHH from April 1, 2021 to June 30, 2022
- Review invoices from VENDOR 2 for the GHH from April 1, 2021 to June 30, 2022
- Conduct Interviews with E1, W1, W2, W3, D1, D2, and V1

This report was developed based on information from interviews, inspections, observations, and the OIG's review of selected documentation and records.

INVESTIGATION

Allegation 1: A conflict of interest exists between E1 and VENDOR 1.

Authority: Article 3, Article 5, and the VENDOR 1 Contract SHR000022476 for the period 09/01/21 to 8/31/2022

Evidence: The OIG's review of the Ordinances governing conflict of interest revealed that Article 5 § 5-5-22 Ethical Conduct states "In the procurement of goods, services, and construction for the city, all city employees shall comply with the rules of ethical conduct set out in § 3-3-1 et seq., Conflict of Interest. In addition, the following ethical provisions shall also apply to all city procurements:"

Article 3 § 3-3-2 defines Financial interest as "Any interest which shall yield, directly or indirectly, any monetary or other material benefit to a city employee or to the city employee's spouse or minor children. The term "financial interest" shall not include the employee's salary or other compensation authorized by law." Article 5 does not define financial interest.

Article 5 §5-5-22 (C) (5) defines Immediate Family as "A person and his or her spouse, their children; grandchildren; parents; siblings including step or half brothers and sisters; aunts, uncles;

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or any natural person residing in the same household.” Article 3 does not define Immediate Family.

The OIG obtained emails that revealed that E1 was engaged in soliciting quotes for services between VENDOR 1 representatives, including direct email communications with F1, who has been identified as an immediate family member of E1 as defined by § 5-5-22 (c) (5).

Interviews: W1, W2, D1, and D2 stated that they were aware of a conflict of interest between E1 and VENDOR 1. W3 stated that a conflict of interest between E1 and VENDOR 1 was the subject of speculation and rumor but that W3 had no direct knowledge regarding the matter. W2 reported the potential conflict of interest to W1. W1 stated that a conversation regarding the potential conflict of interest between W1 and E1 was escalated to D1 and D2 and consequently, E1 was removed from decision-making for the GHH. D1 stated that they became aware of the issues when the conflict of interest was brought to their attention by W1. D2 stated that D2 is aware that E1 has a family member who works for VENDOR 1. D2 is not sure if there is a direct conflict of interest but stated that some may say there is. D2 stated that E1 did not provide a written statement regarding the potential conflict of interest.

An interview with V1 revealed that VENDOR 1 does employ F1. F1 is employed as a Journeyman Electrician and Installation/Project Manager. F1 works on various jobs and supervises lower-level employees. V1 stated that F1 has been assigned to work on the GHH. F1 is paid a salary and there are no incentives. VENDOR 1 retains the right to pay out bonuses at year-end based on the profitability of the company. Year-end bonuses paid are applied consistently throughout the entire employee population and are not based on individual accomplishments. V1 stated that VENDOR 1 has been working with the GHH on the Central Plant heating and HVAC systems since its inception and there have been three different building owners. Through each transition, VENDOR 1's name and contact information have been provided to each new owner.

An interview with E1 revealed that E1 did have an immediate family member, identified as F1, who works for VENDOR 1. E1 stated that there were two (2) City employees in E1's office and that one of the employees noticed a family picture and inquired about one of the members and whether the individual was the project manager for VENDOR 1. E1 confirmed to those in the meeting that the family member was the project manager for VENDOR 1. During the interview, E1 stated that F1 is also related to V1.

E1 stated that E1 does have signature approval for procurements under a specified threshold. E1 stated that E1 has approved purchases from both VENDOR 1 and VENDOR 2 in addition to other vendors but these are usually on an emergency basis or are isolated events. E1 stated that E1 did engage in direct email correspondence with F1 related to the services provided by VENDOR 1.

E1 stated that E1 did not know that a disclosure form was required to be completed and submitted to the City Clerk and to the department head. E1 stated that there was a conversation between E1 and D2 in April or May 2022 due to the deterioration of the relationships at GHH and that E1 did reveal the fact that F1 was an immediate family member who is employed with VENDOR 1 and works at the GHH to D2 at that time.

E1, W1, W2, W3, D1, and D2 all indicated that each was unaware of any conflict of interest with VENDOR 2.

Finding regarding Allegation 1: Based solely on Article 3's definition of "financial interest" there is no conflict of interest. However, E1 has an immediate family member who is employed by VENDOR 1 and has a presently existing or potential financial interest as defined by Article 5 § 5-5-22 (C) (5). An indirect financial interest exists between VENDOR 1 and F1 as a result of year-end bonuses paid by VENDOR 1 based on the profitability of the company which would be influenced by the City contract. Additionally, E1 stated that written notification of the conflict of interest was not submitted to the City Clerk and to the Department Head in violation of §5-5-22 (c) (1). The City Clerk and DMD Director verified that they had never received the disclosure form from E1.

Recommendation: The enforcement clause in Article 5 §5-5-22 should be followed and E1 shall not be permitted to participate in continued negotiations or receive further information regarding the services provided by VENDOR 1.

Management's response: E1 will receive written instruction and will not be permitted to participate in any discussions with the vendor identified. He will also be instructed to submit written notification of his conflict of interest to the City Clerk and to the Department Interim Director.

E1's immediate supervisor will handle all communications with the vendor and participate in continued negotiations or receive further information regarding the services provided by the vendor referenced in this investigation.

Allegation 2: The conflict of interest between E1 and VENDOR 1 resulted in misconduct by E1 directing GHH employees to use the services of VENDOR 1 despite complaints by GHH employees of a lack of service provided and poor customer service.

Authority: Misconduct is defined as mismanagement of governmental responsibilities, malfeasance or a deliberate violation of a law or standard by a government official, or improper behavior.

301. Code of Conduct and Article 17

§ 301.3 Standards of Conduct states “Employees shall in all instances maintain their conduct at the highest personal and professional standards in order to promote public confidence and trust in the City and public institutions and in a manner that merits the respect and cooperation of co-workers and the community.

Article 17 provides the Office of Inspector General the authority to prevent and deter fraud, waste, and abuse through investigations of theft or other disappearance of cash, check, or property, misfeasance or nonfeasance, defalcation, and improper governmental actions as defined in the Whistleblower Ordinance and non-compliance with federal and state law, city ordinances and city regulations of which they are aware.

Evidence: An OIG review of invoices from VENDOR 1 for the period of April 1, 2021 to June 30, 2022 revealed that there were sixty-three (63) invoices identified specifically for the GHH. Payments made to VENDOR 1, for these invoices totaled \$318,220.09. Many of the invoices were for repairs and maintenance, however, one (1) large invoice totaling \$171,978.20 was for the checkout and damper replacement for twenty-three (23) AHU units. The procurement for these services was executed utilizing an existing CES contract.

The OIG review of invoices for VENDOR 2 for the period of April 1, 2021 to June 30, 2022 revealed that there were sixty-seven (67) invoices identified specifically for the GHH. Payments made to VENDOR 2 for these invoices totaled \$238,297.81. Twelve (12) of these invoices totaling \$206,663.45 were for the rental of a chiller to assist with cooling portions of the GHH due to the main chiller breaking in May of 2021.

Emails reviewed by the OIG revealed that E1 directed employees of the GHH to “work with VENDOR 1” and resulted in the removal of the employee with oversight of VENDOR 1 from the process when a disagreement about the lack of service and lack of customer service arose.

Interviews: OIG interviews with W1, W2, W3, and E1 revealed that the GHH utilizes multiple vendors for its heating and HVAC system. One vendor provides service for the mechanical aspects of the heating and HVAC system, one vendor services the electrical components of the heating and HVAC system and two vendors service the control systems of the heating and HVAC system. This report is confidential and shall not be released until publication by the Office of the Inspector General. Violations are subject to the provisions of Article 17: Inspector General Ordinance.

The software originally installed by VENDOR 1 is proprietary and can only be serviced by VENDOR 1. A change in vendor would require an update of the controls system. Currently, VENDOR 2 is providing a temporary Chiller to the GHH.

Inquiry of W2 and W3 regarding the process for determining which vendor to utilize for services if there are multiple vendors revealed that the considerations are if there is an open purchase order with a vendor, vendors with institutional knowledge, response time, cost comparison, and the vendor's performance history. W1 stated that the DMD facilities person would conduct an assessment and would initiate a service call based on experience and knowledge of the area of service. D1 stated that there are multiple procurement methods and that D1 is not in an operational role but imagines that consideration would be given to responsiveness and availability. D2 stated a vendor must apply to be registered with the City of Albuquerque through the Purchasing office. D2 stated that D2 does not work regularly work with most procurements. D2 is familiar with contracting for Architects and Engineers and under a competitive process, the lowest bidder for the best services is considered.

The different interviews revealed that the GHH had experienced issues with VENDOR 1 and the documented issues related to lack of response, respecting other contractors, and substandard customer service through a lack of communication with job notes and creating more issues resulting in the City having to pay other vendors to fix the issues. W1, W2, W3, and E1 stated that they were aware of the issues with VENDOR 1 as they had been discussed at weekly meetings. W1 stated that W1 was in a meeting with VENDOR 1 and City Officials in August or September 2021 where the context of the meeting was to discuss VENDOR 1's responsiveness and ability to make adjustments. The outcome of the meeting was that VENDOR 1 was going to try to respond timelier. W1 states that VENDOR 1's response time has not improved. W3 stated that since April 2022, VENDOR 1's customer service had improved slightly but that the performance issues have not improved. D2 stated that D2 was not familiar with VENDOR 1 but was aware that GHH managers were not happy with VENDOR 1's services.

Interviews with W1 revealed that the GHH had an opportunity to acquire controls from VENDOR 2 but that E1 was adamantly opposed to changing the control system from VENDOR 1 to VENDOR 2 despite the lack of service from VENDOR 1. D1 stated that D1 was aware that FCS had funding to acquire a new control system and that E1 was opposed to acquiring a new control system because E1 did not feel that a comprehensive analysis had been completed for this decision.

W2 stated that E1 was involved in soliciting and directing work to VENDOR 1. W2 stated that E1 directed that W2 use the services of VENDOR 1. W3 stated that the employees were asked to work with VENDOR 1 because their controls are in the facility and to give them the opportunity to improve their performance. W1 stated that W1 witnessed E1 direct employees to use the services of VENDOR 1.

Interviews with E1 revealed that E1 did solicit quotes from VENDOR 1 and directed employees to call out services from VENDOR 1. E1 also stated that E1 had directed City employees to utilize different vendors including VENDOR 1. E1 did decide to replace an employee with oversight of VENDOR 1 with another employee due to misunderstandings. E1 stated that E1 had the authority to make the decisions and did not feel that this was wrong as E1 was acting in the best interest of the City. A review of E1's job description also supports the fact that these types of activities were within E1's authority. Additionally, D2 stated that E1 had the authority to make such determinations.

Finding regarding Allegation 2: The OIG is not able to substantiate that the conflict of interest between E1 and VENDOR 1 resulted in misconduct by E1 directing GHH employees to use the services of VENDOR 1 despite complaints by GHH employees of a lack of service provided and poor customer service. The OIG did not find evidence to support that E1 engaged in the mismanagement of governmental responsibilities, malfeasance, or that E1's actions were the results of a deliberate violation of law or standards by a government official. Additionally, improper behavior is based on what a reasonable person would do, however, the interview with E1 revealed that E1 had little to no understanding of the complexities of identifying a conflict of interest. Additionally, the requirement to disclose a conflict of interest when there is an indirect or direct interest as defined in Article 5 for Ethical Purchasing was not known by E1.

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