

**OFFICE OF INSPECTOR GENERAL
CITY OF ALBUQUERQUE**



**Investigative Report
Case # 12-206**



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CITY OF ALBUQUERQUE**

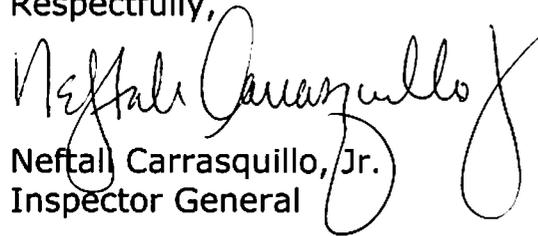
November 21, 2011

Lou Hoffman
Director, Department of Finance and Administrative Services (DFAS)
City of Albuquerque

Re: OIG-12-206, Alleged Release of RFP Confidential Information

On November 3, 2011, DFAS Employee #1 was interviewed at the Office of Inspector General (OIG) regarding the alleged release of RFP confidential information by an employee of the Purchasing Division. Enclosed please find a copy of the OIG's investigative report regarding this matter.

Respectfully,



Neftali Carrasquillo, Jr.
Inspector General

cc: Richard J. Berry, Mayor
Robert J. Perry, CAO
City Council

OIG INVESTIGATIVE REPORT: FINDINGS AND CONCLUSIONS OF THE OFFICE OF INSPECTOR GENERAL

On November 3, 2011, DFAS Employee #1 was interviewed regarding an alleged release of RFP confidential information. DFAS Employee #1 was advised of her obligation to cooperate and that she was being taped. DFAS Employee #1 indicated she understood she was under oath. DFAS Employee #1 stated that on Tuesday afternoon (Nov. 1, 2011) she was informed of a situation in her office where one of her employees, DFAS Employee # 4 had disclosed or provided her file regarding an RFP (Request for Proposal) to one of the vendors. While DFAS Employee #1 was in DFAS Employee #2's office, DFAS Employee #4 called DFAS Employee #2 and they had a conversation. DFAS Employee #2 disclosed, to DFAS Employee #1, that the reason for the call was that DFAS Employee #4 was upset because she was concerned that she would be fired because she had mistakenly allowed a vendor to go through an RFP file.

The RFP in question related to a bid for Public Access and Local Origination Television Services. The RFP files would contain the various vendor's offers, proposals and responses, proprietary confidential information (this would be proprietary information contained in documents marked confidential by the respective vendor), the ad hoc scoring sheets, Recommendation of Award (ROA) letter and Senior Buyer notes. Though the file and its contents are accessible through a public records request submitted to the City Clerk's Office adhering to the Inspection of Public Records Act (IPRA), there is a section of the City of Albuquerque Purchasing Rules and Regulation 10.4.16.2 which states the following:

"If the Purchasing Division receives a request for the disclosure of information for which an [sic] bidder has requested confidentiality in writing, the Purchasing Officer shall provide notice to the bidder that such information has been requested and that it will be released five (5) calendar days from the date notice was given. Unless the bidder takes legal action within the five (5) calendar days, to prevent the disclosure, the bid will be disclosed."

DFAS Employee #1 stated that the release of information by DFAS Employee #4 was improper because she did not follow the Purchasing Rules and Regulations as prescribed above. DFAS Employee #1 stated that she was advised by ACA Employee that she had conducted training with all of the Senior Buyers to review the protocols on how to provide the files to the vendors during the time period they are in protest or prior to the recommendation of award. DFAS Employee #1 stated that DFAS Employee #4 was in attendance at this training. The protest period refers to the time period of ten (10) days when vendors, who have lost the bid, can protest the recommended award. This usually coincides with requests to review RFP files.

DFAS Employee #1 stated that DFAS Employee #4 has handled numerous RFP's and should have known not to release information that contained documents marked confidential by vendors which were contained in the RFP file. The significance, according to DFAS Employee #1, is that the entire file was released and should not have been. Thus, the vendor was not given the opportunity to maintain their proprietary information confidential as is prescribed in the Purchasing Rules and Regulations. DFAS Employee #1 provided me a copy of an email message from DFAS Employee #4 to DFAS Employee #2, dated November 1, 2011, which reads as follow:

“On Friday, October 28 I was called from the Purchasing Office phone at around 2:30 pm by Mike Trujillo and Allen Cooper from Quote-Unquote. They were at Purchasing to review the RFP File. They asked if they could come to the Warehouse to review the file. I said yes. They came around 3:00 and reviewed the file. They asked for copies of the other Offers received, my notes, and the Ad Hoc score sheets. I told them I would scan and email the responses to them. They asked that I send them asap, as time was of the essence and they only had 10 days to respond. I scanned the responses and sent them at around 3:30 pm. I did not remove the confidential information, in my haste.”

DFAS Employee #1 was asked how the process for reviewing files is handled. DFAS Employee #1 stated that if a vendor requests to review a file that an internal review is conducted first to ensure that they give a vendor the opportunity to keep confidential their documents marked proprietary and confidential and having their information disclosed. If the vendors follow the procedures, those confidential documents are removed and all the files pages are marked to ensure that pages are not removed or added. In addition, the buyer is supposed to stay with the file at all times. This process and procedure is also stated and part of the request for proposal documents and therefore, DFAS Employee #4 could not claim she was unaware of the process.

On November 7, 2011, ACA Employee was interviewed. ACA Employee was advised of her obligation to cooperate, that she was being taped and that she was under oath. ACA Employee also acknowledged that she had received and signed a letter of interview provided to her by DFAS.

ACA Employee understood that DFAS Employee #4 received a request for copies of some documents related to the RFP file for the Public Access Television but was unsure when that request was received. ACA Employee was shown and read a copy of the email from DFAS Employee #4 to DFAS Employee #2 dated November 1, 2011. ACA Employee stated she had seen this email before and stated that DFAS Employee #4 had not personally contacted her regarding this request. I asked ACA Employee if it should have been anticipated that the Purchasing Division would be receiving a protest from, at least, Vendor A since they had had the contract for so long and now were going to lose it, and she stated yes. I then asked ACA Employee to explain the procedure and process of a protest. ACA Employee related that the request for public records, in this case, eventually ends up at the City Clerk's Office and is forwarded to the appropriate

custodian of records. In this case, the request would go to the Purchasing Division for the RFP file. The procedure is that those requests are to go through her and the Purchasing Manager/Officer. ACA Employee said that this is the procedure as a result of prior problems involving a prior RFP where a buyer had allowed a vendor to review the file unattended and unsupervised. There were also issues with following the procedures in releasing and handling the requests for review of files and proposals, as well as, handling numerous requests at the same time. ACA Employee stated that these issues were addressed at a March 2011 general staff meeting where DFAS Employee #4 was present, but there is no documentation or sign-in sheet which would verify what she recalls. The vast majority of the meeting covered IPRA and what was required by the Rules and Regulations, as well as, the instruction that all requests had to be screened by her (ACA Employee) and the Purchasing Officer.

ACA Employee also spoke about another issue with release of information or proposals during the protest period. This is an issue because ACA Employee stated that according to a section in the Public Purchases Ordinance, RFP proposals shall not be disclosed if the solicitation is cancelled and will be put again within the next 6-months. This is critical because during the protest period they do not know whether or not a solicitation will in fact be cancelled for any number of reasons, one of which is if a protest is found to have merit. ACA Employee stated that the appropriate response by DFAS Employee #4 to the request by Vendor A, to review the file, would have been to set up an appointment at a later date and time. Vendor A should not have been allowed to review the entire file without her (ACA Employee) or the Purchasing Officer knowing about it or without screening it for confidential information, nor should they have been sent copies. In addition, ACA Employee stated that all communications regarding this particular RFP should have gone through the Mayor's Communications people to include the request to review the file and that DFAS Employee #4 was aware and advised of this instruction and requirement. ACA Employee also stated that she was present during a couple of conversations, earlier in the year, with DFAS Employee #4 where the issue of releasing confidential information and the proper procedure for reviewing files especially during a protest period or protest pending was discussed.

On November 7, 2011, DFAS Employee #2 was interviewed regarding an alleged release of confidential information. DFAS Employee #2 was advised of her obligation to cooperate, that she was being taped and that she was under oath. DFAS Employee #2 also acknowledged that she had received and signed a letter of interview provided to her by DFAS.

DFAS Employee #2 stated that she does not supervise any staff or DFAS Employee #4 but because of her previous positions in DFAS she still gets calls and is used as a source of advisory information. DFAS Employee #2 was asked if she understood and is familiar with the RFP process and procedures to which she said yes. DFAS Employee #2 was shown and asked about the email that was sent to her by DFAS Employee #4. DFAS Employee #2 acknowledged that she did receive the email and also received a phone call from DFAS Employee #4 where she stated she had messed up. DFAS Employee #2 was asked why DFAS Employee #4 called her and not her supervisor

since she (DFAS Employee #2) did not supervise her. DFAS Employee #2 stated that when she received the call, DFAS Employee #1 was in her office and told DFAS Employee #2 that she should take the call.

DFAS Employee #2 stated that DFAS Employee #4 told her that she thought she had done something wrong, that she let Vendor A see the file and, that they requested to be sent copies. She stated that she had sent them electronically and had not taken out the confidential information. DFAS Employee #2 stated that DFAS Employee #4 asked her if this was bad or if she would get fired and DFAS Employee #2 stated she did not know and asked her to send her what she had. This is when DFAS Employee #2 received the email from DFAS Employee #4. DFAS Employee #2 later called DFAS Employee #4 back and requested that she send her a timeline of the events of what happened.

DFAS Employee #2 stated that DFAS Employee #4 sent her an email with a clause and then called her and referenced the clause as 1.20 which deals with confidentiality and was part of the contract itself which she believed did not allow her to withhold anything and therefore she did not believe she was in that much trouble. The IG asked DFAS Employee #2 what her understanding was of 1.20, which is a section of the RFP. DFAS Employee #2 did not know if 1.20 was the section in the Purchasing Ordinance, which has already been discussed this report, if they were one and the same. DFAS Employee #2 stated that DFAS Employee #4 stated that she should be covered by this clause and DFAS Employee #2 stated that she did not know and that this was not in her hands.

DFAS Employee #2 stated that she, in her previous positions, had supervised DFAS Employee #4. DFAS Employee #2 was asked if knowing what she knew of the situation if she believed DFAS Employee #4 had done anything wrong. DFAS Employee #2 stated that she believed that DFAS Employee #4 did not follow the process that was in place. She also believed that DFAS Employee #4's interpretation of 1.20, i.e., that it does not guarantee confidentiality even if requested, is ambiguous at best when applied to this situation. DFAS Employee #2 stated that this has happened before and that the penalties or consequences have been to exercise more caution or care. DFAS Employee #2, when asked, did not recall the specific general staff meeting in March 2011, but knows the topics have been covered in the past as it related to handling release of information requests. DFAS Employee #2 acknowledged that in her previous positions she has been concerned with improper release of information such as this. DFAS Employee #2 again stated, when asked, that she believed DFAS Employee #4 did not follow the process and went on to state the process/policy which was not followed, that confidential information was released improperly, and that this was a problem. DFAS Employee #2, when asked, stated that this was never a problem before with DFAS Employee #4 but this has happened in the Division before. This was the situation previously mentioned in the interview with ACA Employee. DFAS Employee #2 admitted that the issue of handling the release or viewing of files was never put in writing and should have been but she never did because she felt the buyers should have known better. DFAS Employee #2 does believe that DFAS Employee #4 made a

mistake but does not believe the release of information was done deliberately or maliciously.

On November 7, 2011, DFAS Employee #3 was interviewed regarding an alleged release of confidential information. DFAS Employee #3 was advised of his obligation to cooperate, that he was being taped and that he was under oath. DFAS Employee #3 also acknowledged that he had received and signed a letter of interview provided to him by DFAS.

DFAS Employee #3 stated he has been DFAS Employee #4's supervisor for about three weeks. DFAS Employee #3 was asked if he understood the RFP policies, process and procedures and what he knew about the situation. DFAS Employee #3 stated he understood the policies, process and procedures because he was a senior buyer before and had worked with DFAS Employee #4. DFAS Employee #3 stated that he understood that DFAS Employee #4 inadvertently released information that had been marked confidential from other proposers that were part of an RFP. DFAS Employee #3 stated that DFAS Employee #4 had come into his office and told him she had messed up. She stated that she had been requested by a proposer for that RFP for information, as a result of a public records request, and she inadvertently released confidential information. DFAS Employee #3 stated that she needed to report this to DFAS Employee #1 and DFAS Employee #2 so they could work to resolve the issue. DFAS Employee #3 stated that in the RFP boilerplate it states that they do not withhold confidential information. DFAS Employee #3 also stated the policy that is in the Ordinance that has been discussed previously. DFAS Employee #3 stated that the release by DFAS Employee #4 was a bad error but believed it was not done with malice or deliberation. DFAS Employee #3 stated it was wrong and violated policy. DFAS Employee #3 stated that DFAS Employee #4 and he both handled RFP's but that she was more experienced and knew what the proper policies and procedures were. DFAS Employee #3 also stated that they both spoke to DFAS Employee #2 via speakerphone from his office where the events were explained and that DFAS Employee #2 requested that DFAS Employee #4 send her a timeline of what happened.

On November 8, 2011, DFAS Employee #4 was interviewed regarding her alleged improper release of information. DFAS Employee #4 stated she has been in this position for approximately six years and was currently on placed administrative leave. DFAS Employee #4 was advised of her obligation to cooperate, that she was being taped and that she was under oath. DFAS Employee #4 also acknowledged that she had received and signed a letter of investigation provided to her by DFAS, which she signed in our presence. She stated she was not a member of a union and therefore did not require union representation

DFAS Employee #4 stated that her duties and responsibilities involved primarily RFP's, professional/technical contracts mostly service related software/IT purchases. Currently, she has different duties which are mainly to buy for the Warehouse. For RFP's her duty was to prepare the proposals to go out and she utilized professional/technical boilerplate contracts for this purpose. After working on and

releasing the letters, relating to the ROA to the vendors, on October 28, 2011, she received a call from Vendor A representatives who were at the Purchasing Office requesting to review the files. DFAS Employee #4 advised them that she was at the Warehouse and they asked if they could come over to review the files to which she said yes, Vendor A was the incumbent contract holder but had just lost the award and wanted to review the file for the purpose of an anticipated filing of a protest. DFAS Employee #4 stated that they wanted to see the ad hoc score sheets, notes, other responses received. DFAS Employee #4 stated this was routine and that they were also allowed to receive copies. DFAS Employee #4 stated she would email them copies and they requested to have that done quickly because they only had ten (10) days for the protest. DFAS Employee #4 stated that it was 3:30PM and they had left so she scanned the file and emailed it to them. She did not think about it, she felt rushed and was trying to be quick and responsive to them. DFAS Employee #4 was asked if she could have advised Vendor A that it was late in the day and that she would do it next week. DFAS Employee #4 stated that in retrospect that is what she should have done but she was trying to help them.

On Tuesday, November 1, 2011, DFAS Employee #4 received a phone call from Legal Employee who asked if she had removed the confidential information from the files before sending them. DFAS Employee #4 stated she said, "Oh my God, no." DFAS Employee #4 then stated that Legal Employee stated that was not the reason she was calling but rather wanted to know whose hand written notes were those that were in the files and she stated it was hers. After getting off the phone, she went to the file to look at it and almost fainted because it was not like her to do something like that because she is very thorough. She immediately called DFAS Employee #2 because she used to be her boss for six (6) years in Purchasing and, she (DFAS Employee #2) taught her everything she knows about RFP's and she goes to her (DFAS Employee #2) for everything. DFAS Employee #4 stated she asked DFAS Employee #2 if anyone had ever released confidential information and DFAS Employee #2 replied that in the history of Purchasing people had. DFAS Employee #4 then told her she had just did it and DFAS Employee #2 stated "Oh no." DFAS Employee #4 stated she hung up with DFAS Employee #2 and went to see her supervisor DFAS Employee 3# to tell him what she had done. While in his office, she received a call from DFAS Employee #2 who asked DFAS Employee #4 to write down everything and send it to her.

DFAS Employee #4 admitted that releasing the file containing the confidential information was a problem and should not have been done but then went on to explain that the boilerplate contract she utilizes seemingly can be interpreted to contradict the Purchasing Rules and Regulation. DFAS Employee #4 stated that after reading this, she felt better because she was off the hook, but later that day she was placed on Administrative Leave. The section she is referring to reads as follows:

"1.20 Proprietary Data: The file and any documents relating to this RFP, including the proposals submitted by Offerors, shall be open to public inspection after the recommendation of award of contract has been signed by the Mayor, or his designee. An Offeror

*may designate trade secrets or other proprietary data to be confidential by separating that material from the Offeror's main proposal, marking it as "Confidential" and uploading it separately from its main proposal submitted in response to this RFP. **Pricing and makes and models or catalog numbers of items offered, delivery terms, and terms of payment should not be so designated.** The City of Albuquerque will endeavor to restrict distribution of material separated, designated as "Confidential" and provided separately to only those individuals involved in the review and analysis of the proposals. If a request for inspection of records under the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq. NMSA 1978) is received, however, which request encompasses such materials, they will be disclosed. **The City assumes no responsibility to maintain the confidentiality of any materials submitted in response to this RFP.***

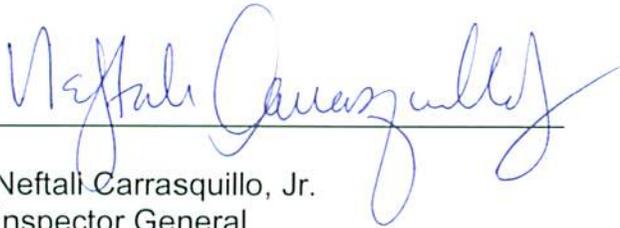
DFAS Employee #4 stated she has been doing her job for six (6) years and has handled numerous RFP's in that time. She stated that she has never done this before but also has never been given any instruction not to do this. She admitted though that it is common sense that if something is marked confidential, it is not to be released. The IG explained the requirements stated in the Purchasing Rules and Regulations to DFAS Employee #4 to which she stated she knew the requirements, did not follow those requirements and she should have and, should not have released the confidential information. DFAS Employee #4 was then asked why she released the information and she stated she could give me a million excuses but honestly it was on her and that she made a mistake. She acknowledged she should not have done this. The IG asked DFAS Employee #4 why, if she had never done this before, did she release that information to the vendor which had just lost the contract and she stated it was not done deliberately or maliciously and immediately came forward when she realized what she had done.

DFAS Employee #4, when asked, stated she did not recall attending a meeting back in March 2011 where IPRA and handling review requests was discussed; that she never has been instructed that all review requests needed to be sent and approved by the Purchasing Officer and ACA Employee; or the instruction regarding having two (2) people present when files are being reviewed. The IG verified that DFAS Employee #4 was working on March 9, 2011 the date the meeting/training took place but there is no internal documentation of who was either present or in attendance at this meeting. DFAS Employee #4 stated that she was also involved in a \$9 million RFP and was trying to learn her new job and was under or felt pressure and she made a mistake but that it was not intentional.

DFAS Employee #4 provided a sworn written statement regarding her actions; admitting she improperly released the confidential information, acknowledging she made a mistake and stating it was neither intentional nor deliberate.

The Office of Inspector General makes the following recommendations for consideration by the Purchasing Division:

1. Instructions/reminder issued regarding the supervisory chain of command.
2. For all future RFP's, a signed and documented acknowledgement regarding IPRA and the proper handling of release of information be part of the file.
3. That all training be documented as to the topics discussed and those in attendance, at least via a sign-in sheet.
4. Written and documented instructions that cover the requirement of having two people present, from the Purchasing Division, when files are being viewed.
5. Written and documented instructions which state that all requests for review of files be directed to the Purchasing Officer and Asst. City Attorney, Purchasing for their approval and prior to an actual review.
6. That the boilerplate RFP section 1.20 Proprietary Data be modified so that it cannot be misinterpreted as being contradictory with the Purchasing Rules and Regulation, IPRA, or current City policy on transparency in government.



A handwritten signature in blue ink, reading "Neftali Carrasquillo, Jr.", is written over a horizontal line. The signature is cursive and extends to the right of the line.

Neftali Carrasquillo, Jr.
Inspector General