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Report of Investigation

FILE NO: 19-0010-I

DATE: December 11, 2019

SUBJECT: Planning Department; possible fraud

STATUS: Final

INVESTIGATOR: JoVonne O'Connell


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for  Vice Chair
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Executive Summary

The Office of Inspector General (OIG) for the City of Albuquerque (City), NM, conducted an investigation based on information received regarding concerns with the contractor the City's Planning Department, Code Enforcement Division uses for emergency board up services. Concerns were brought to the OIG that the emergency board up contractor was being over-utilized by one particular Code Enforcement employee and that there might be possible collusion.

The City has contracts for both Emergency board up services and Non-Emergency board up services. Native Sons Real Estate Services (NSRES), LLC currently holds the contract for Emergency board up services. Emergency board up services may result from a variety of circumstances which render properties unsafe for habitation. They are to be used on an as needed basis only, which should be after hours (evenings, weekends and holidays) and only in situations that cannot wait. Per the contract, it is required that the emergency contractor respond to the job site within one hour of notification. They must also begin work within 24 hours and have it completed within 48 hours.

Vigil Contracting Services holds the contract for Non-Emergency board up services. Non-emergency board up services do not require a one-hour response time and are utilized during regular business hours.

It is also required that before and after photos be taken of a property and of the issue needing to be addressed with board up and/or clean up services. This is the responsibility of the contractors, as well as the Code Enforcement employee.

During the course of the investigation the OIG reviewed some Aging Reports which show outstanding invoices for NSRES under the Code Enforcement Specialists within the Code Enforcement Division. The Aging Reports showed that one particular Code Enforcement Supervisor (CESUP) had many more invoices from NSRES when compared with the other Code Enforcement supervisors and specialists. The amounts on these invoices were also much higher for the CESUP than the invoices for the other Code Enforcement supervisors and specialists.

The investigation revealed that many of the invoices from NSRES indicated that services were requested by the CESUP. In reviewing the invoices, the OIG found things that were cause for concern. For example, per one invoice, NSRES billed the City for seven hours of standby time at a total of \$1,400.

Per another invoice, NSRES billed the City \$21,600 for 96 hours of removing "general trash, weeds and debris" from a property.

NSRES sent the City invoices over the course of several months for "monthly fence rental" at another property. Each invoice was \$300 for the monthly fence rental fee, and during the course of the investigation, the OIG learned that there had never been a fence put up at this property at all. Photos were also provided showing this. Yet the emergency contractor and the CESUP indicated that a fence had been put up by NSRES.

The investigation also revealed invoices for several other properties in which NSRES charged for “monthly fence rental”. These invoices reflected that NSRES was charging \$300 per fence panel for the monthly rental. In the case of one property, NSRES charged \$300 per fence panel for the installation and then another \$300 per panel for the fence rental. In most cases, more than one fence panel is required when fencing is put up on a property. In addition, during the course of the investigation, the OIG learned that NSRES subcontracts with fence companies, which the Planning Director was unaware of and is in violation of the contract. The OIG further learned that one company, American Fence Company, already has a contract directly with the City and their cost for the removal of fencing, installation of new fencing, and one month’s rent was altogether less than \$300.

The OIG spoke with both the emergency contractor and the CESUP, who both claimed that if the Albuquerque Police Department (APD) and/or Albuquerque Fire and Rescue (AFR) say that a property needs to be boarded up or cleaned up right away, then the CESUP and the emergency contractor considered that an “emergency”.

As of Fiscal Year 2020, the Planning Department Code Enforcement Division has collaborated with the City’s Solid Waste Department and has brought the board up / cleanup services in house, and Solid Waste is now handling a majority of the board up and clean up jobs. By bringing these functions in house, the Planning Department is able to save money. Also, in speaking with several Planning employees, Solid Waste has been doing a thorough and efficient job with the board ups and cleanups.

Introduction

Concerns were brought to the OIG regarding possible fraud and collusion within the Code Enforcement Division (Code Enforcement) of the Planning Department (Planning). There are concerns that a supervisor (CESUP) is working with the on-call contractor who is used for emergency board up and clean up services (EC). The CESUP typically requests emergency services twice as frequently as other staff members and has invoices from the EC five times the amount of other staff within the division. There is concern that these discrepancies are intentional acts to defraud the City by both the CESUP and the EC.

Scope

The scope of this investigation focused on the allegations asserted by the complainant and review into the process of utilizing both emergency and non-emergency board up/clean up contractors. The methodology consisted of reviewing relevant documents and interviewing City personnel, as well as the EC, who could provide information regarding the allegation.

The following activities were conducted as part of the investigative process:

- Interviews of and discussions with Planning Department personnel
- Discussions with Solid Waste Department personnel
- Review of contracts
- Review of invoices
- Review of relevant procedures and directives

Investigation and Interviews

Background

The City of Albuquerque's Code Enforcement is a division within the City's Planning Department. Part of their mission is to help "safeguard life and health and protect the community from blight and deterioration." As part of this, Code Enforcement has inspectors who conduct inspections and monitor various properties throughout the City to determine compliance with code requirements.

Contracts

The City has contracts for both Emergency Board Up services and Non-Emergency board up services.

NSRES (Native Sons Real Estate Services), LLC currently holds the contract for Emergency Board Up Services. The contract is noted as secondary and Emergency Board Up Services are to be used on an as needed basis. Per the contract, Emergency Board Up Services may result from a variety of circumstances which render properties unsafe for habitation. In addition, it states:

"Emergency" for the purpose of this procurement contract is defined as a property that contains a condition that endangers the life, limb, health, property, safety or welfare for the public and/or occupants.

Some stipulations for Emergency Board Up services are:

- The supplier/contractor is required to respond to the job site within one (1) hour of notification
- Commencement of work shall begin within 24 hours of award of a project and should be completed within 48 hours (exception Emergency Request 1-hour time frame)
- The supplier/contractor shall include before and after pictures of every job site

Vigil Contracting Services holds the contract for Non-Emergency Board Up Services. These services do not require a one (1) hour response time and are usually taken care of during regular business hours.

The “No Collusion” stipulation can be found within the terms and conditions of both the Emergency and Non-Emergency Board Up contracts. It states:

Vendor represents that it has entered into the Contract without collusion on the part of the Vendor with any person or firm, without fraud and in good faith. Vendor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of the Contract, will be offered or given by vendor or any agent or representative of vendor to any officer or employee of the City with a view towards securing the Contract or for securing more favorable treatment with respect to making any determinations with respect to performing the Contract.

In addition, the “Assignment” stipulation can be found within the terms and conditions of both the Emergency and Non-Emergency Board Up contracts. It states:

Neither the Contract, nor any interest therein, nor claim thereunder, shall be assigned or transferred by vendor, except as expressly authorized in writing by City’s Chief Procurement Officer or designee. No such assignment or transfer shall relieve vendor from the obligations and liabilities under the Contract.

Within the City of Albuquerque’s General Instructions, Terms and Conditions it also states:

35. Assignment, Transfer and Subcontracting: *The Contractor shall not assign, transfer or subcontract any portion of the Contract without the express written consent of the City’s Purchasing Officer. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.*

This language can be found within the Request for Bid (RFB) that the contractor responded to. The general terms and conditions apply to all resulting contracts and specifically states:

The General Instructions, Terms and Conditions apply to this solicitation and to any contract resulting from this solicitation. Failure by an offeror to review these instructions/provisions shall in no way constitute or be deemed a waiver by the

City of its contents, or any part of them. No liability will be assumed by the City for an offeror's failure to consider the General Instructions, Terms and Conditions in its response to the solicitation.

Collaboration with Solid Waste

As of Fiscal Year 2020 (FY20), which began on July 1, 2019, the City's Solid Waste Department (Solid Waste) has collaborated with Planning and has taken over a majority of the board up/clean up duties. The purpose of bringing the board up services in house was to save money, to have more control over the board ups, and to make the process more efficient and thorough. \$285,000 was budgeted for board up operations. Additional funding was allocated for three laborer positions and one supervisor position, as well as for operating expenses for the board ups. The board up operations are assigned to the Clean City Division of Solid Waste and are Monday through Friday between the hours of 7:00 A.M. and 3:30 P.M.

Vigil Contracting Services is still utilized for Non-Emergency Board Up Services; however, it is usually when Solid Waste is unavailable.

The OIG spoke with the Director for Planning, who explained that the contract with NSRES for Emergency Board Up services means NSRES should only be utilized after hours (evenings, weekends and holidays) and only in situations that cannot wait. For example, in the event of a structure fire, or when there has been possible criminal activity that may have required police to use forced entry to gain access inside a property.

Processes

The process is as follows when Code Enforcement staff need to request services:

- A Code Enforcement Supervisor (CES) determines a need for vendor services.
- It is also required that photos be taken of the property and of the areas needing the requested work.
- The CES emails the vendor with details of the service request (address, description of work, etc.). When requests are through any other means (text, phone, etc.) an accompanying email shall be sent immediately after.
- The accountants within Planning are to also be copied on these emails. The email shall also serve as a request for a Contract Release Order (CRO), or Purchase Order Release (POR), if applicable.
- The vendor performs the services requested and documents completion of the requested work. It is also the responsibility of the vendor to provide before and after photos.
- Using the established email string for the requested work, the vendor provides a copy of the invoice and evidence of completeness (to include before and after photos) to the CES, the accountants within Planning and to the City's Accounts Payable (AP) division.
- Upon receipt, AP updates the aging system to track the invoice. Also, upon receipt the CES confirms accuracy of the invoice (the address, the work requested, etc.).

The process is as follows for payment of services:

- Once the supervisor/manager receives the invoice with before and after pictures:

- They are to inspect or send out the requesting specialist to ensure all work has been completed as invoiced and take pictures.
- Confirm all information on the invoice is correct (CRO/POR, work performed, location, date of service is the same date or prior to the invoice date, etc.).
- Create the memo confirming that the work was completed as requested.
 - The memo shall include the CRO/POR, address, and date of service.
 - If the work performed is not on the contract, an emergency purchase form shall be required.
 - ❖ The supervisor/manager is to review the emergency form to ensure all the information is correct (work, reason, location, date, etc.).
- The invoice, pictures, memo, case file, and the emergency form, if required, are then turned into the Administrative Assistant.
 - Invoice and memo are to be initialed or signed by supervisor/manager
- The Administrative Assistant will then perform a review of the documents, scan them and email them to the vendor, the accountants in Planning, and the requesting supervisor/manger.

The current process is as follows when Code Enforcement utilizes Solid Waste:

- The Code Enforcement Specialists/Inspectors take photos of the property to show what needs to be cleaned or boarded.
- An email is sent to a CES requesting a cleanup or board up from Solid Waste.
- The CES sends an email to the Solid Waste supervisor requesting cleanup or board up services.
- After the work has been completed more photos are taken.
 - Both Code Enforcement and Solid Waste are responsible for taking before and after photos of the property.
- Solid Waste utilizes the funds budgeted for their department for board up and cleanup services. No invoices are sent to Planning.

Memorandum

On August 12, 2019 the Director of Planning sent a memo to the Code Enforcement Specialists and Supervisors providing clarification for the use of Emergency Board Up Services. The memo provided guidance as follows:

The use of the “Emergency Board Up Services” contract services should be limited to only those instances needed to address the dangerous conditions of a property that require immediate, urgent corrective action. This limitation includes not requesting board-up services for unbroken, intact, or functioning doors or windows that lock, close, or can otherwise be secured. All other forms of abatement should be handled with non-emergency measures. When appropriate, employees should perform any work necessary to correct the situation that does not necessitate assistance from a contractor.

Aging Reports

Aging Reports were provided for NSRES for both June and July 2019. The Aging Reports show outstanding invoices for NSRES under the Code Enforcement Specialists and Supervisors within the Code Enforcement Division. For the month of June, the outstanding invoice totals amongst the Code Enforcement Specialists and Supervisors ranged from \$200 to \$4,560, with the exception of CESUP, whose outstanding invoice total was \$45,850. For the month of July, the outstanding invoice totals amongst the Code Enforcement Specialists and Supervisors ranged from \$360 to \$9,400, with the exception of CESUP, whose outstanding invoice total was \$51,705.

In addition, the number of outstanding invoices the Code Enforcement Specialists and Supervisors had each of these months ranged from one outstanding invoice to 17 outstanding invoices, with the exception of CESUP. For the month of June, CESUP had 37 outstanding invoices and for the month of July he had 34.

These aging reports reflect that CESUP is working with NSRES on a more frequent basis than the other Code Enforcement Specialists and Supervisors.

Properties and Invoices

There were concerns with invoices for several properties in which Emergency Board Up Services were utilized via NSRES.

3200 Central S.E.:

- Invoice dated 7/29/19: Service date of 7/26/19 – 7/27/19
 - Included “Emergency Request Stand-By Time” of twenty-eight (28) fifteen (15) minute increments at the rate of \$50 per 15 minutes.
 - This totaled seven hours of “Stand-By Time” at the total cost of \$1,400
 - Invoice also stated that this was requested by CESUP
 - This invoice also included Emergency request to install 21 fence panels at \$300 per panel, for a total cost of \$6,300

Emails dated July 30, 2019 show that the Planning Director questioned the CESUP as to why he responded to the call out on this property when a different Code Enforcement Specialist was on call, and why the emergency contractor was utilized for this property. The Director also questioned why there were so many fence panels ordered, why the City was being billed for seven hours of standby time, and if anyone from Code Enforcement checked the invoice before it was sent to the accountant for Planning.

The explanation provided by CESUP was that Albuquerque Fire Rescue (AFR) called him directly. AFR allegedly indicated this was an emergency and that the property needed to be fenced immediately, which the CESUP and the emergency contractor then measured for fencing. However, according to the CESUP, AFR did not mention that they were conducting an investigation. This resulted in the CESUP and the emergency contractor having to “standby” for approximately 4 to 5 hours -- from approximately 10:00/10:30 pm until approximately 3:00 am (though the emergency contractor billed for 7 hours of standby time).

The CESUP further explained that the emergency contractor called for fencing to be delivered. However, the fence company never made it out to the property that night. The Director questioned if the emergency contractor made any attempt to work with another fence company when the first company failed to respond. The CESUP did not know. The Director also questioned that if the CESUP and the emergency contractor left the site at 3:00 am because the fence company failed to show up, then why was the emergency contractor utilized again in the morning, if at that point, the non-emergency contractor could have been contacted and utilized. The CESUP's response to this was that per AFR, this was an emergency.

5626 Guadalupe Trl. N.W.:

- Invoice dated 6/27/19: Service date of 6/13/19 – 6/27/19
 - Included “Emergency request removal of general trash, weeds and debris (exterior)”
 - Totaling ninety-six (96) hours at the rate of \$225 per hour, for a total cost of \$21,600
 - Invoice also stated that this was requested by the CESUP

An email dated July 11, 2019 shows that the Planning Director requested that the CESUP provide a complete, detailed report of why an emergency request for the “removal of general trash, weeds and debris” was authorized for this property, pointing out that this cleanup cost the City \$21,600.

According to the CESUP, this was treated as an emergency due to APD being on site. The CESUP reached out to the emergency contractor and asked if the emergency contractor would be willing to work with Planning on bringing down the total cost of the invoice. The emergency contractor indicated that he would see what could be done to cut the price, but claimed that it was a very large job, and claimed that it took over two weeks of work, to include the use of a backhoe and seven dumpsters.

An amended invoice states “Discount approved ... Deduct 21 hours”. This decreased the invoice by \$4,725 for a new total of \$16,875.

The OIG spoke with another Code Enforcement employee, who informed the OIG that there was absolutely no need to use the emergency contractor at this property. The employee stated that most of what was on the property was general trash and debris, as well as debris from sheds that had burned in the back. There was also no reason for the clean up of this property to take 96 hours. According to the employee, the clean up could have been completed in about two days with less than seven dumpsters. The employee further expressed that a backhoe was not really necessary either.

1510 John S.E.:

Invoices were provided to the OIG showing that NSRES billed the City a monthly fence rental fee of \$300 per month. The invoices were as follows

- Invoice dated 12/07/18: includes \$300 for fence rental from 11/20/18 – 12/20/18
- Invoice dated 12/20/18: \$300 for fence rental from 12/20/18 – 1/20/19

- Invoice dated 1/21/19: \$300 for fence rental from 1/20/19 – 2/20/19
- Invoice dated 3/20/19: \$300 for fence rental from 2/20/19 – 3/20/19
- Invoice dated 4/22/19: \$300 for fence rental from 3/20/19 – 4/20/19
- Invoice dated 5/20/19: \$300 for fence rental from 4/20/19 – 5/20/19
- Invoice dated 6/20/19: \$300 for fence rental from 5/20/19 – 6/20/19
- Invoice dated 7/29/19: \$300 for fence rental from 6/20/19 – 7/20/19
- Invoice dated 8/26/19: \$300 for fence rental from 7/20/19 – 8/20/19

The OIG learned that there was never a fence ordered for this property and there was never a fence erected on the property, other than what the property owner already had up. Photos taken by a Code Enforcement inspector over the course of several months, from approximately early 2019 to August 2019 show that there were no fencing panels on the property. However, NSRES billed the City for at least nine months of fence rental at the cost of \$300 per month. Planning processed payment for these invoices from December through June. An accountant for Planning relayed that the July and August 2019 invoices were not processed for payment as NSRES never provided pictures when asked and because there was never a fence on property. However, the accountants for Planning did not learn this until August 2019.

The home that sat on this property was demolished sometime around March 19th or 20th, 2019 and was featured on a news story on KOB 4.

One of the Planning accountants reached out to the CESUP in April 2019 to confirm if this property had been demolished, as another invoice was received from NSRES for fence rental at this property (from 3/20/19 – 4/20/19). The CESUP responded and claimed that the fence was still up and that the demolition company was supposed to inform Planning when it could be removed. The CESUP cited “safety reasons”, but stated that he would contact NSRES and cancel the fence. However, invoices show that NSRES billed for fence rental an additional four months thereafter.

Additional Concerns with Billing for Fencing

Additional concerns that came up during the course of the investigation was the cost of fence panels and the amount the City was being billed by NSRES. The rental cost for one fence panel through NSRES is \$300. The installation cost for one fence panel through NSRES is also \$300. In most cases, more than one fence panel is required when fencing is put up on a property. The following are some examples:

3200 Central S.E.:

- Invoice dated 7/29/19: Emergency request install of 21 fence panels at \$300 per panel. Total \$6,300
- Invoice dated 8/12/19: Fence rental (pro-rated) of 21 panels, 17 days at \$10 per day, per panel. Total \$3,570

1319 San Pedro N.E.:

- Invoice dated 7/22/19: Installation of 15 fence panels at \$300 per panel. Total \$4,500

- Invoice also stated requested by the CESUP
- Invoice dated 8/26/19: Monthly fence rental fee of 15 panels at \$300 per panel (7/21/19 – 8/21/19). Total \$4,500

601 Bellamah N.W.:

- Invoice dated 6/25/19: Emergency request install of 2 fence panels at \$300 per panel. Total \$600

5605 Fair Oaks Trl. N.E.:

- Invoice dated 5/13/19: Installation of 14 fence panels at \$300 per panel (5/6/19 was the date of service). Total \$4,200
 - Invoice also stated that this was requested by the CESUP
- Invoice dated 6/7/19: Monthly fence rental fee of 14 panels at \$300 per panel (5/6/19 – 6/6/19). Total \$4,200

(*This is an example where NSRES charged per panel for installation and then charged a monthly rental fee per panel in addition)

- Invoice dated 7/8/19: Monthly fence rental fee of 14 panels at \$300 per panel (6/6/19 – 7/6/19). Total \$4,200
- Invoice dated 8/8/19: Monthly fence rental fee of 14 panels at \$300 per panel (7/6/19 – 8/6/19). Total \$4,200
- Invoice dated 9/9/19: Monthly fence rental fee of 14 panels at \$300 per panel (8/6/19 – 9/6/19). Total \$4,200

Planning cancelled the fence rental with NSRES for this address and had a new fence put up by American Fence Company (American Fence). An invoice from American Fence dated 10/29/19 shows a total cost of \$286.75, which included:

- installation and removal of an 84 ft temporary fence
- rental fee from 10/28/19 – 11/27/19
- sales tax of \$17.35

This is a fraction of the cost of what NSRES was charging the City. The OIG learned that when Planning contacted American Fence Company to obtain a quote, they were informed that American Fence has a contract directly with the City and it was not required for Planning to utilize fencing through NSRES. In addition, Planning was informed by American Fence that their company also has a contract with NSRES. American Fence seem shocked to learn the amount NSRES was charging the City for fencing services.

When the OIG spoke with the Planning Director, he was under the impression that NSRES had their own inventory of fence panels and that is what they would use at various properties. The Director was unaware that NSRES had been subcontracting with fencing companies.

Interview with Emergency Contractor (NSRES)

The OIG met with the EC, who is the owner of NSRES. He stated that NSRES has been the board up contractor for the City of Albuquerque (City) for approximately 20 years.

The EC indicated he did not know what the City constitutes as an “emergency” and that the contract also does not specify what constitutes as an “emergency”. He explained that all the contract says is that NSRES has one hour to respond and go out to a property once they are contacted by Code Enforcement.

The EC confirmed that before and after photos of a property are to be submitted. He stated that the only time before and after photos are not submitted is if the property is a rental and NSRES has a fence put up around the property. If a fence is rented for several months, monthly photos are not taken of the property showing that the fence is still up. Instead, an inspector will go out to the property monthly and verify that the fence is still there. The fence remains until the inspector informs NSRES that the fence is no longer needed and can be taken down. The EC mentioned that starting recently in August 2019, the Planning Department requested that NSRES go out to verify that a fence is still on a property. He also relayed that he uses a subcontractor for the fencing.

The EC then indicated that the inspector will take before and after photos of the fencing to provide to his or her supervisor. The EC stated that he only keeps around six fencing panels on hand in his personal inventory. The fencing gets “destroyed” with kids climbing on the fence, and he does not have time to keep rebuilding them, so that is part of the reason he subcontracts with a fencing company. The owner mentioned Albuquerque Fence Company and commented that he has had a “personal relationship” with the owner for about 15 – 20 years.

The EC indicated that NSRES will not go out to a property until a Code Enforcement inspector is at the property as well. If the EC is unable to get ahold of the inspector, then he will try contacting a supervisor, and then another supervisor until he gets a supervisor on the line. The EC claims that he does not know what inspector is on-call at any given time. He also indicated that there is one phone number for the supervisors and they will swap the phone based on whoever’s turn it is. The EC further indicated that if APD calls the phone number and there is no answer, then APD will call the EC. The EC will then try contacting the supervisor, and if he cannot get ahold of anybody, then he will call the next supervisor he knows, commenting that he will call until he gets somebody out to the property. The EC then confirmed that he has phone numbers for all the supervisors.

The OIG asked the EC about the property located at 1510 John St. S.E. According to the EC, he had been out at this property the day before the interview with the OIG and discovered that the house on the property had been demolished (“demoed”), and that the fence he had up around the property was gone. The EC stated he was informed that the house had been demoed the month before, yet nobody told him. The EC stated he then took a photo and sent it to the Planning Department so that AP could be informed to cancel the invoice. The OIG pointed out that the home located at 1510 John St. S.E. was actually demolished several months ago in March, and there was a news story that featured the demolition. The EC claimed that when he contacted the CESUP the day before this interview, he was informed that the property was demolished last month. The OIG pointed out emails dated back to April 2019 that referenced the property being

demolished, yet the City was still being billed by NSRES for fence rental. The EC claimed this was before NSRES was asked to go out to the property to verify. The OIG pointed out that NSRES submitted invoices for monthly fence rental for the months of May, June, July and August 2019, despite the home on the property being demolished and despite there being no fence up. The EC maintained that NSRES was not aware of this and he was never informed that the home had been “demoed”; NSRES was not informed to stop sending invoices for the fence. According to the EC, usually the demolition company will take down the fencing and it is then up to NSRES to contact that company to get their fencing back.

The OIG asked the EC about the property located at 3200 Central S.E. and why there was seven hours of standby time per the invoice. He explained that the fire department was doing their investigation and they allegedly had NSRES stay at the property until they were done.

The EC mentioned to the OIG that on Fridays NSRES will follow APD around when APD does their “warrant sweeps”, and when they go out to abandoned homes and properties that are considered a nuisance. However, the EC claimed that he does not charge standby time in these situations, as it is an “all morning process”.

The OIG asked about the property located at 5626 Guadalupe Trl. N.W. The EC explained that the inspector called NSRES out to this property and APD was called out to this property, where they arrested several individuals. APD then declared they wanted the property boarded up and cleaned up. According to the EC, the cleanup took a week and required seven dumpsters, a backhoe and six people to get the property cleaned up. He admitted he was personally not at the property and was unaware if the property was an abandoned house and was unaware of the reason APD was called out.

The OIG pointed out that the invoice for this property reflected that NSRES charged 96 hours, at \$225.00 per hour, for “removal of general trash, weeds and debris”. The OIG questioned how removal of “general trash” is considered an emergency. The EC’s only explanation was that NSRES was told that the cleanup needed to be done “now”. APD gave the directive to whoever the inspector was at the time. He also mentioned there was “quite a bit of needles” on the property and a lot of “just general trash” that needed to be disposed of. According to the EC, NSRES worked 12 to 14 hours a day until the job was completed. He pointed out that he in fact brought the amount of this particular invoice down because The Planning Director asked if he could “help him out with this”. He acknowledged that it was a large invoice at \$21,600, but that he has had higher invoices than this in the past and has never been questioned before about some of the other large invoices.

The EC claimed he contacts the Code Compliance Manager first, then the CESUP, then another supervisor, and he works his way “down the line”, as he was told to “start at the top and work down”. The Code Compliance Manager calls whoever he wants from the Code Enforcement staff; it is the Code Compliance Manager’s decision to call whoever he is going to call. The EC claimed he does not really call the CESUP.

According to the EC, if APD or AFR gives the directive, that is what determines whether a job is an emergency or not. The EC claimed that he does not have a directive as to what constitutes an emergency and what does not, and commented that not even the inspectors or the Planning Director have a directive or know what constitutes an emergency. However, per the EC, it is the

inspectors' job to tell him what is an emergency and what is not. He further commented that there is probably going to be "a couple thousand invoices" from NSRES that would raise the question "Why is that an emergency?".

The OIG pointed out that per the Emergency board up contract that the City has with NSRES, it states that commencement of work shall begin within 24 hours of award of a project and it should be completed within 48 hours. The EC responded by claiming this was true when he was "able to bid". He further explained that "when awarded" means that he used to be able to bid, but the bidding process was taken away.

Interview with Code Enforcement Supervisor

The OIG met with the CESUP, who has held his current position for approximately two years.

The CESUP shared that internally, within the Planning Department and Code Enforcement there has been discussion for a while about what constitutes an "emergency" and what does not. The definition on "emergency" has been vague and the department has worked on coming up with criteria as to what would be an emergency. The CESUP then explained that when Code Enforcement uses an emergency service, they are out at the property within the hour -- usually within 10 to 15 minutes. The emergency service takes care of the issue(s) with the property; it is boarded up and the situation is resolved.

If Code Enforcement does not use the emergency service then according to the CESUP, it is a bid process and could take a week to take care of the issues at the property. He commented that the non-emergency contractor "will get to it when he gets to it", but a week can seem like forever when people are calling asking why the issue has not been taken care of, and not understanding that there is a process.

The CESUP stated that when they had their internal discussion regarding what constitutes an emergency, they came up with approximately six criteria items such as: drug paraphernalia; proximity to a school; proximity to a church; proximity to senior living centers; proximity to community centers; and criminal activity, to include trespassing and squatting. An emergency would also include anything that needed to be demolished ("demoed"). The CESUP indicated that there had been nothing that had ever been put into writing and most times Code Enforcement supervisors just used their own judgment. Also, if APD or AFR say it is an emergency.

The CESUP referenced the interoffice memo that was sent by the Planning Director, in which he listed basically the same items -- and possibly more -- that Code Enforcement had come up with regarding what constituted an emergency. According to the CESUP, Code Enforcement has been treating this memo as Standard Operating Procedures (SOP).

The CESUP explained that the after-hours calls were never Code Enforcement's responsibility; they were the responsibility of the old Safe City Strike Force program. At some point, the Director at the time decided that the Code Enforcement Division would help, and that all the supervisors would be put on a rotating schedule to assist. The CESUP stated when he got hired that was never his job and he was never supposed to be on a rotating schedule, but he did it to help out. Code Enforcement was tasked with the on-call phone and so all the supervisors take a turn a week at a time. However, there has been some debate and some problems with that

because some of the employees that had been there longer did not want to be tasked with this, stating that it was not in their job description. Another supervisor left, so the CESUP would cover during the weeks these particular supervisors would have been on call. He stated that since he was the field supervisor, he felt it was his job to pick up the slack for the on-call duties. Currently there are six individuals that rotate the duties. The on-call phone is the old Safe City Strike Force phone. So according to the CESUP, the other issue is that police officers will still often times call that phone, even during the day, to ask for things to be taken care of at properties.

When the OIG pointed out that the Aging Reports for the emergency contractor were much higher for the CESUP compared to the rest of the Code Enforcement staff, he asked if we had looked at the Aging Reports for those who used to be with the Safe City Strike Force, commenting that theirs would have been comparable and possibly even higher. He added that he then had to absorb their work when they left. The CESUP also stated that his are going to be higher than the rest of the Code Enforcement staff because he makes a lot of the determinations of what is an emergency and what is not.

The CESUP confirmed that it is the responsibility of both the vendor and the Code Enforcement inspector to take before and after photos of a property. In a situation where fencing panels are up at a property for several months, the CESUP stated that photos are not taken every month showing the fencing is still up; this is not a requirement. He reiterated that the inspectors go out to the properties on a monthly basis and during these times should be able to verify whether a fence is still up or not. In addition, as of two months ago it was not required of the contractor to provide monthly photos showing that a fence was still present on a property. However, the CESUP agreed that it would be a good practice to have monthly photos of the fencing.

The CESUP shared that the property located at 1510 John SE was a property he was working on for demolition. According to the CESUP, this property had a fence up. He stated, another inspector allegedly went and had the property demolished “behind the scenes” and without CESUP’s knowledge. It was not until he got an email sometime in April 2019 asking if the fence was still up around the property that he learned the property had been demolished. The OIG pointed out that even after this time, NSRES continued to bill the City for a monthly fence rental fee. CESUP stated that invoices past April were not processed for payment. When asked if he ever questioned NSRES as to why they continued to send invoices for monthly fence rental, CESUP stated he did not ever talk to NSRES or question them, and commented that it is not his place to ask them why they were continuing to send bills for a fence that was not up.

The OIG then asked CESUP about the property located at 5626 Guadalupe Trl. N.W. and the invoice from NSRES in the amount of \$21,600 for 96 hours of removing “general trash, weeds and debris”. The OIG asked him to explain how this was an emergency and why it was not handled by Solid Waste or by the non-emergency contractor. According to CESUP, the trash included drug paraphernalia and hazardous material and there were needles throughout the property. APD was constantly calling about this property, which was actually a Safe City Strike Force property to begin with. There were transients and squatters on the property; the owner allegedly sold drugs, used drugs and fired guns on the property. The owner was eventually arrested on a felony arrest and APD directed that the property needed to be boarded up and

cleaned up immediately. In short, the primary reason it was deemed an emergency was because of the criminal activity, the paraphernalia, and because APD was on site and requested it.¹

The reason why the CESUP chose to use the emergency contractor was because they were able to get out there within that hour and start cleaning while APD was there. If he had called on the non-emergency services, it could have taken a week for them to get out there and start cleaning, and “Who knows what could happen in a week.” The CESUP agreed that the invoice for this property was high and the Planning Director questioned why the invoice was so high. The CESUP commented that he did not apologize for the high invoice and that he does not set the prices, but he told the Director he would see what he could do. He stated he reached out to NSRES and expressed to them that the invoice was extremely high and asked if there was anything that could be done. NSRES did lower the amount of the invoice. The CESUP also claimed that “general trash, weeds and debris” is standard language and that it’s like a template. He stated that it is up to the contractor to provide further information on the invoice and be more specific about the type of things found on the property that needed to be cleaned up, especially if there were dangerous and hazardous items.

The OIG pointed out that the other concern with this 96 hour clean-up is that per the emergency contract, it states that once the contractor arrives at the property, commencement of work shall begin within 24 hours and should be completed within 48 hours. The CESUP indicated that he did not think that the contract had a timeframe in which a job had to be completed, and did not think that time constraints could be placed on a cleanup. The OIG pointed out that the emergency contractor could focus on cleaning up any needles, waste, paraphernalia, etc. first, and once those items are cleared, the emergency is essentially cleared, and then the non-emergency contractor could come in to clean up the remainder.

The OIG asked the CESUP about the property located at 3200 Central S.E. and the invoice from NSRES for seven hours of standby time at the total cost of \$1,400. He stated that AFR called and stated to get out to the property immediately and that emergency board up was needed. The CESUP contacted the emergency contractor, but when they got to the property, it was a “different story”. The OIG asked why the CESUP didn’t just send the contractor away and let them know that they would be contacted to come back when things were cleared and ready. He claimed he did not know the emergency contractor was going to charge for standby time and he did not know that they were going to be out at the property for as long as they were. However, according to the CESUP, Planning never processed payment for the invoices related to this property and that the property owner is the one who paid NSRES to avoid liens.²

The CESUP stated he does not have a business arrangement with the EC or a relationship with him outside of work. He stated that NSRES is the City’s only emergency contractor and that is why NSRES is utilized a lot; there is no one to call other than NSRES, especially if something happens after 5:00 P.M. and before 8:00 A.M. The CESUP commented that Code Enforcement has turned into “an emergency response” service and that “City Council, APD, everybody wants

¹ During the interview, the CESUP indicated he had photos of the needles and other hazardous materials that were on the property and would provide copies of these photos to the OIG. As of the date of this report, CESUP has failed to provide such photos to the OIG.

² The OIG spoke with an accountant in the Planning Department who verified that the invoice for 3200 Central SE has not been paid, and that there is a lien on property from Code Enforcement.

it done and they want it done now.” As a result, it is easy to just call NSRES and ask if they can come take care of something right now, and it’s done. Whereas if Code Enforcement waits a week for non-emergency services, then the CESUP claimed he is the one getting phone calls asking why something has not been done.

However, since Solid Waste has come on board, the CESUP indicated that he has used NSRES once, maybe twice, and only for after-hours calls. He admitted that Solid Waste is very efficient and very good. He stated he does not utilize Vigil Contracting Services.

The CESUP stated he has not received any compensation of any kind from NSRES. He commented that he is just trying to do his job, but feels like he is “Damned if I do, damned if I don’t”. He is told to get things done right away, but then is told that he is over-utilizing the emergency services. He commented that the issue he has with all of this is that he is “*The guy*” and the “supervisors’ supervisor”. He has been doing this for so long that he knows what to do, what questions to ask, what he’s looking for. So although he uses the emergency contractor a lot, he stated it is because he does a lot more than everybody else. He further explained that Code Enforcement is tasked with public safety, with nuisance properties, with things as simple as weeds. “The constituents want things done ‘yesterday’; the Mayor’s office wants things done ‘yesterday’; APD wants things done ‘yesterday’.” Planning and Code Enforcement have the resources to get it done, and how they go about that is through an emergency process.

The CESUP felt that the emergency process and contractor were not over-utilized per the August memo put out by the Director. The CESUP commented it is frustrating that he has to explain his actions and why things were done, and it is frustrating that there is nothing in writing explaining how it is supposed to be done.

The CESUP commented that it is still very vague as to what constitutes an emergency. However, since Solid Waste had come on board, Code Enforcement has tightened up their practices significantly.

Conclusion

There was not enough evidence to substantiate or unsubstantiate concerns that the emergency board up contractor was colluding with the CESUP. However, after reviewing various documents and speaking with various individuals, the OIG concludes that NSRES and the CESUP were not fully complying with the Code Enforcement procedures nor with the terms of the contract. The OIG also concludes that the CESUP is in violation of section 301 Code of Conduct of the City of Albuquerque’s Personnel Rules and Regulations.

301.13 City Records and Accounting

All City records, including reports, vouchers, requisitions, payroll and personnel records must be prepared factually and accurately. It is the personal obligation of the employee completing such records as well as the supervisor to ensure that such records are accurate and comply with federal, state, and City record-keeping and accounting requirements.

Employees within the Planning Department also reported hearing the CESUP make the comment that he does not care if a property only requires non-emergency services or if the non-emergency contractor costs less, he is going to utilize the emergency contractor. Employees also reported that the CESUP has been seen with t-shirts that bear the name of the emergency contractor.

The Planning Department's Code Enforcement Division should implement official Standard Operating Procedures for the use of board up and cleanup services, to include clearly defining what constitutes an emergency and what does not. The Planning Department's Code Enforcement Division should also consider making it a requirement that when applicable, photos are taken of properties on a monthly basis; especially in those circumstances where a temporary fence has been put up at a property or where the City is paying for any other ongoing service that was requested by the Code Enforcement Division.

Code Enforcement should also implement a policy stating that the on-call Code Enforcement employee is responsible for handling any emergency board up / cleanup request during their on-call status. No other Code Enforcement staff may authorize any emergency contractor to perform work during that time. Failure to respond to calls for assistance by the on-call Code Enforcement employee will subject that employee to disciplinary action up to and including termination.

Any emergency board up / cleanup work authorized by the on-call Code Enforcement employee shall be approved by the next higher supervisor within 48 hours of work commencement.