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Investigative Informative Case Synopsis

FILE NO: 24-0473-C

SUBJECT MATTER: Alleged of abuse of position by a City Director for initiating work with a contractor without the proper permits, circumventing the permitting process, and delaying payment to the contractor for work completed.

STATUS: Draft

INVESTIGATOR: M. Santistevan

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OVERSIGHT COMMITTEE CHAIRPERSON

Date of Approval

DISTRIBUTION:

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EXECUTIVE SUMMARY

The Office of Inspector General (OIG) operates following the Association of Inspectors General (AIG) standards, as outlined in City Ordinance 2-17-2. The overarching goals include conducting investigations impartially, preventing fraud and abuse, ensuring independence, and enhancing the City of Albuquerque's (City) accountability.

As defined in the Inspector General Ordinance §2-17-3, fraud is the knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Waste is the thoughtless or careless expenditure, mismanagement, or abuse of resources to the detriment of the city. Abuse is the use of resources or exercise of authority contrary to rule or policy, or knowingly inconsistent with any established mission or objectives for the resource, or the position held by the person exercising the authority. Abuse does not necessarily involve fraud or illegal acts.

On December 31, 2024, the OIG received a complaint alleging abuse of position by a Director (D1) by initiating work with a contractor (C1) without the proper permits, circumventing the permitting process, and delaying payment to C1 for work completed on a city project to replace variable frequency drives (VFDs) at City Hall.

The OIG determined that it was appropriate to conduct a fact-finding investigation to substantiate or not substantiate the alleged abuse of position by a City Director by initiating work with a contractor without the proper permits, circumventing the permitting process, and delaying payment to the vendor for work completed.

The evidence obtained during the investigation does support that the contractor performed work on the project before obtaining the required electrical permit contrary to the contract. The evidence is inconclusive regarding the allegation that D1 abused its position by allowing the contractor to begin the project before obtaining the required electrical permit. The evidence reflects that while there was a requisition to change the purchase order, the contract has not been amended to address mathematical errors in the cost extensions as permitted by the request for bid resulting in the contractor not being paid for work completed in December 2024.

Findings:

- The project was initiated before the required electrical permit was obtained.
- The General Services Department (GSD) has not amended the contract for a mathematical error in the bid.
- C1 has not been paid, by the City, for invoices issued in October 2024.

Recommendations:

- GSD should amend the contract for the mathematical errors so they can pay C1 the balance owed on the project.
- City departments should not allow contractors to begin a project until all permits, testing, or other requirements are met.
- GSD project and facilities staff should be provided annual training for project management, permitting requirements, and project closure.

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ABBREVIATIONS

AIG: Association of Inspectors General
City: City of Albuquerque
C1: Contractor
D1: City Director
DD1: City Deputy Director
E1: City Employee
E2: City Employee
E3: City Employee
E4: City Employee
E5: City Employee
E6: City Employee
E7: City Employee
E8: City Employee
E9: City Employee
GSD: General Services Department
OIG: Office of Inspector General
RFB: Request for bid

INTRODUCTION

The OIG's mission is to promote a culture of integrity, accountability, and transparency throughout the City to safeguard and preserve public trust. Investigations, inspections, evaluations, and reviews are conducted following AIG Standards.

Complaint

The complaint alleges abuse of position by a Director (D1) by initiating work with a contractor (C1) without the proper permits, circumventing the permitting process, and delaying payment to C1 for work completed on a city project to replace variable frequency drives (VFDs) at City Hall.

Background

In April 2023, the City's Chief Procurement Officer issued a request for a bid for the replacement of Variable Frequency Drives in City Hall. A variable frequency drive is essentially a device that controls the speed of an electric motor by adjusting the frequency of the electricity it receives, allowing one to precisely control how fast a motor spins.

The Bid specifications were outlined as follows:

"A. The City is seeking competitive bids from Bidders to remove and replace all the VFDs as referenced in Exhibit F, with exception of the four that were replaced in 2021 on floors 7, 8, 9, 10 east side mechanical rooms.

B. The City estimates City Hall has 42 VFDs that control both supply and return air motors.

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C. The services for this project may require outages that need to occur after hours. The Awarded Bidder shall identify these cases and included pricing for after-hours work.

D. All VFD's shall be ASEA Brown Boveri (ABB) with the manufacturer's warranty to convey to the city. Along with a Factory start up on VFD's w/ 30-month warranty labor and materials.

E. The Awarded Bidder shall obtain municipality required permitting for all electrical work performed and all associated required inspections.

F. The Awarded Bidder shall coordinate all raceways and wiring methods necessary and shall obtain approval by the Facilities Official and/or its designee.

G. The Awarded Bidder shall work with General Services Department City staff to create setpoints for all of the VFDs.

H. Any subsequent controls are excluded from this RFB.

I. The Awarded Bidder shall connect the VFDs in the existing enclosure terminate supply and load conductors and verify operation, and rotation of equipment.”

A contract was awarded on June 21, 2023, to C1, and work on the project commenced with the first invoice being submitted on October 16, 2023.

SCOPE AND METHODOLOGY

Scope:

Events and transactions of the Variable Frequency Drive (VFD) Replacement at City Hall project from May 2023 to the present.

Methodology:

- Identify contractors and research contract
- Research permitting requirements
- Request and review emails related to VFDs
- Review purchase orders and amendments.
- Review invoices
- Conduct Interviews or inquiries.

This report was developed based on the OIG's review of documentation and records available during the investigation.

INVESTIGATION

Allegations:

The complaint alleges abuse of position by a Director (D1) by initiating work with a contractor (C1) without the proper permits, circumventing the permitting process, and delaying payment to C1 for work completed on a city project to replace VFDs at City Hall.

Authority:

Inspector General Ordinance, Article 17 Abuse definition

Request for Bid

Contract SHR000022893

Evidence:

Request for Bid

The OIG reviewed the City's request for bid (RFB), noting that item nine (9) specifically addresses mistakes in the bids as follows:

“Mistakes in bids may not be corrected after the request for proposal (RFP) closes. The only exception is when a Bidder incorrectly calculates a total price based on unit price times estimated quantity. In such a case, the unit price will be presumed to be the correct price and the total price may be recalculated. This will be determined on a case-by-case basis. If there is only one Bidder in this circumstance, the City may determine that re-posting the Bid is in the best interest of the City.”

Contract

The OIG reviewed the original and amended contracts with C1 reflecting a contract maximum cost of two hundred forty-six thousand one hundred seventy dollars and seventy-seven cents (\$246,170.77), excluding gross receipts tax. The OIG noted that the only difference between the contracts was that the amendment granted an extension through June 20, 2025. The OIG reviewed the contract and Exhibit A, the Cost Sheet, noting discrepancies in cost extensions. Specifically, the OIG identified differences in the following two (2) parts and two (2) labor items.

CUTL-DH361NGK SFTY-SW 3 PST 600V 30A HD FS N1 46 ea @ 300.26=\$13,812.08
The extended cost should have been \$13,811.96 based on the mathematical computation.

LTF- FLNR030 FUSE CL-RK5 30A 250V TD 138 ea @ 4.38=\$ 603.75
The extended cost should have been \$604.44 based on the mathematical computation.

Journeyman Electrician 394.5 hours @\$ 94= \$34,185
The extended cost should have been \$37,083 based on the mathematical computation.

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Apprentice Electrician 300 hours @ \$72= \$19,008

The extended cost should have been \$21,600 based on the mathematical computation.

The OIG also reviewed a requisition dated January 8, 2025, to correct the amounts for the labor costs and increase the contract by five thousand four hundred ninety dollars (\$5,490.00).

Permit

The OIG reviewed C1's application for an electrical permit dated March 22, 2024, stating it was to "Replace (46) existing VFDs at Albuquerque City Hall Building. Install a new disconnect for each VFD." The OIG requested the plans for the project from D1 but they were not provided. The OIG also did not see where plans were submitted in the City's permit tracking system. On March 22, 2024, the permit tracking system reflected a completeness check with a note that the application "requires more information". The OIG requested further information from the permit tracking system and was provided with screenshots of each tab of the permit tracking system. The tab for application documents was blank. The review tab reflected no review. The inspections tab reflected an electrical final inspection was mandatory but not requested. The project activity revealed that the permit had expired as of October 16, 2024. The tabs for conditions, warnings, and file notes were blank. The tab for documents reflected the electrical permit issued on April 15, 2024.

The OIG reviewed the Commercial Electrical Permit EP-2024-10610 noting that it was issued on April 15, 2024. A statement at the bottom of the permit said "This permit will expire if an inspection is not requested within 6 months or an entire required inspection is not passed within any 6-month period. No refunds will be given after expiration."

The OIG considered the language on the permit to be important as the notes in the permit tracking system reflected that an inspection had not been requested, thus the permit expired on October 16, 2024 by default.

Purchase Orders and invoices

The OIG reviewed the PeopleSoft Financial Software for purchase orders issued and invoices paid to C1.

The OIG reviewed four (4) invoices documented in the PeopleSoft system totaling two hundred sixty-six thousand forty-nine dollars and ninety-three cents (\$266,049.93). The OIG noticed that invoice 413797 for fifty-nine thousand eight hundred twenty-seven dollars and seventy-four cents (\$59,827.74) was modified to fifty-five thousand twenty-seven dollars and seventy-four cents (\$55,027.74) and was noted as a "Voucher Unpaid Balance". The OIG reviewed each of the invoices attached as supporting documentation noting that the invoices totaled two hundred seventy thousand eight hundred forty-nine dollars and ninety-three cents (\$270,849.93). The OIG reviewed emails between E7 stating they were out of balance for invoice 413797 and asking for assistance. E8 replied to the email detailing each line item with an adjustment to reduce line items 7-13 on the invoice.

Emails

The OIG reviewed available emails relating to the project.

An email from C1 to E3, E4, E1, and E2 dated February 29, 2024, stated “The electrical disconnect installation will be completed today or tomorrow. The installation of the VFDs is still pending permitting. I will be at City Hall on Monday at 11 to discuss options to move forward with the project completion.”

An email dated March 11, 2024, from E4 to E3, E1, E2, and DD1 stated “Apparently there has been some issues with this work/contract. Being that this is going to continue through June I think it is best that GSD takes this Wage decision over and verifies it meets state requirements. I am not sure where this project stands and or if the wage decision requirements have been met to this point. I am not sure who all has state access? However I did get [REDACTED] access.”

E3 replied to E4 stating “I will let [REDACTED] answer your request. I do not have wage decision access. Please allow [REDACTED] a little bit of time to answer this email chain. The contract on this project by [REDACTED] is a mess. Thank you.”

An email dated April 1, 2024, from E4 to DD1 and E3, stated “Can you find out if [REDACTED] has utilized this wage decision to this point? This will have to be closed out to prevent the city from getting locked out again. If they have used it then a call will need to be made to extent, if they have not or are complete then it would need to be closed out by tomorrow.”

Various emails between March 5, 2024, and April 11, 2024, referencing the requirement for the City to “update the wage decision with a completion date or the state is going to close this project on us.”

An email dated June 12, 2024, from E5 to E3, E1, C1, and D1, was sent to confirm that the VFD replacement project would be starting on June 24, 2024.

On July 2, 2024, the City received an email notification from Alerts.PWAA@dws.nm.gov stating that the wage decision used for this project was “90 days past the expected project completion date of 4/3/24.”

An email dated July 3, 2024, from E5 to D1 and E4 said “This (completion date) has been extended and will be closed when it is complete. The state does not have a way to transfer it (the wage decision) but it will be closed in a few weeks.”

An email dated August 8, 2024, between a different contractor and E5 revealed that arrangements were discussed to set up the Fire Marshal’s Final Inspection and Duct Detector inspection and the VFDs at the same time.

An email dated August 29, 2024, between C1 and E5 shows C1 identified a discrepancy in the math on the bid form and reached out to inquire how to move forward with the final invoice. The email was forwarded to E7 for assistance.

On October 1, 2024, E5 sent an email to E7 stating that it was discovered that two (2) VFDs were missed and needed to be installed at an additional cost of \$22,879. This email requested a change order and was to inquire about the best method for adding these to the contract.

On October 29, 2024, E5 emailed C1 telling them to “Please revise invoice 413797 to match the attached quote for the Journeyman and Apprentice prices. Journeyman total should be \$34,185, and Apprentice total should be \$19,008.” C1 replied advising E6 and E5 that their contact wasn’t able to get it corrected and asked them to create an invoice for the corrected amounts. There was an explanation that the issue was a math error in the extended total and requested assistance in resolving this matter. E6 replied to C1, E5, and D1 stating “Thank you for this information, unfortunately, contract SHR000022893 attached with C1 was created based off the attached cost sheet. We are unable to add money to the PO as it will exceed the contract amount.”

November 11, 2024, C1 sent an email to E5, E6, E7, and D1 inquiring about the status of payment for the October invoice.

On November 26, 2024, D1 sent an email to E4 and E7 stating “Do not cover this cost just yet” indicating that facilities need to talk to E5 “about the fire alerting portion not being complete.”

December 5, 2024, C1 sent an email to E5, E6, E7, and D1 requesting an update on the payment status of invoice 413797. D1 replied to C1, E5, E6, E7, E2, and E1 stating “We have discovered some items we have concerns about for the VFD installation. Before we approve this invoice we’d like to prepare a list of concerns and set up a meeting to discuss.”

On December 11, 2024, C1 replied to D1 stating “Please let me know what concerns you have related to the performance of our work. We completed an acceptance turnover walkthrough with the factory services representative and your team. All locations are complete and have been in service now for several months.”

An email dated January 7, 2025, from E5 to E1, E2, D1, E6, E7, and E9 stated “Can we proceed with final payment?”

On January 7, 2025, an email from E1 to E5, D1, E6, E7, E2, and E9 stated “[REDACTED] did a walkthrough Friday of all the deficiencies that were notated on various floors. These deficiencies have been corrected. [REDACTED] had some questions regarding outstanding payments and corrections to the quote. Can you help [REDACTED] navigate the corrections and payments.”

On January 8, 2025, E2 sent an email to D2, and E9 stating “Let me walk the floors to make sure, I did talk with [REDACTED] and he stated that he himself did not walk the job he had [REDACTED] do the walk through after the corrections were made. Give me by the end of the Day tomorrow and I will walk the Mech Rooms and give you an update.”

On January 8, 2025, an email was sent from E9 to D1 and E2 stating “Thank you [REDACTED]. Keep in mind that [REDACTED] (contractor) has stated that money was owed other than invoice. I don’t think we would know what [REDACTED] had arranged. Please be cautious when proceeding.”

On January 8, 2025, an email was sent from E5 stating “It sounds to me that all the work on this project is completed so I will ask to proceed with payment.”

On January 8, 2025, D1 sent an email to E2 and E9 asking “Why isn’t [REDACTED] walking these jobs? Why would [REDACTED] assure that the work is completed if he didn’t put eyes on this. I don’t agree that [REDACTED] should be held accountable if something was to go wrong.”

On January 13, 2025, an email was sent by C1 to D1, E5, E1, and E2 stating “Can you provide me with an update on our final invoice payment?”

An email dated January 13, 2025, from E1 to C1, D1, E5, and E2 stated “[REDACTED] I walked all these spaces and verified the corrections have been made.”

On January 13, 2025, an email was sent to D1 by E8 stating “The contract amendment is currently awaiting approval from purchasing. Once approved, it will be clear for match exceptions to be paid.”

Inquiries/Interviews

The OIG was told that E1 or E3 from the City insisted a permit be pulled for the project. The OIG was advised that the contract was “replacement in kind” and that these services did not require a permit. The OIG was told that there were delays in obtaining a permit because the State of New Mexico Construction Industries Division would not issue a permit because it was not necessary. The City insisted and required C1 to obtain a permit for the work from the City.

This project was to replace the VFD wiring to the panel and add another shut-off switch and smoke sensors in the ducts. The work was completed and a walkthrough was scheduled for August 7, 2024. E1 and E2 were invited to participate in the walkthrough but did not attend. A punch list was not prepared at this or any walkthrough and no sign-offs were required. Two (2) months after the final invoice was submitted and four (4) months after the walkthrough was performed, the City notified C1 of deficiencies to be corrected.

Further inquiry revealed that D1 raised concerns over why E1 was not at the final walkthrough. D1 required another final walkthrough with E1. During the walkthrough, E1 identified deficiencies between October and November 2024 to be corrected by C1. D1 did not relay the deficiencies to C1 until December 11, 2024. The OIG was told that the deficiencies were relayed only after C1 made multiple inquiries about the status of the final payment. Upon learning of the identified deficiencies, C1 sent an electrician to remedy the identified deficiencies. The deficiencies were rectified in the last week of December 2024.

The OIG learned through its inquiries of the planning department that the City permits its own work and that electrical components are required to be permitted.

Requisition

The OIG reviewed a requisition, created by E6 on January 8, 2025, to correct the contract for the extended costs on the two items discovered by C1 in August 2024.

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Analysis:

Abuse, as defined in the Inspector General Ordinance 2-17-3, is “the use of resources or exercise of authority contrary to rule or policy, or knowingly inconsistent with any established mission or objectives for the resource, or the position held by the person exercising the authority. Abuse does not necessarily involve fraud or illegal acts.”

The OIG’s investigation noted that discrepancies in the total cost from the bid were transferred into the contract. Based on the language in the request for mistakes in bids, the City, on a case-by-case basis, could make modifications based on the unit prices and amend the contract to correct the extended prices. The OIG considered evidence that attempts to correct the pricing occurred more than four (4) months after C1 brought the discrepancy to the attention of the City.

The original contract period was June 21, 2023, through June 20, 2024, and an amended contract extended the period to June 20, 2025. According to the invoices, C1 invoiced the City for materials on October 16, 2023, and invoiced the City for services under the contract on March 25, 2024. These services reflected labor costs for a Journeyman Electrician and an Apprentice Electrician. Billing for a Project Manager, a Journeyman Electrician, and an Apprentice Electrician indicates electrical work being performed, but did not specify the work being performed. The OIG considered the June 12, 2024, email that stated that the VFD replacement project was to start on June 24, 2024, as this indicated some division between the services performed before C1 obtained the electrical permit from the City on April 15, 2024.

The OIG’s review of invoices supports that C1 submitted the final invoice in October 2024 and that the invoice remained unpaid by the city as of February 21, 2025.

The emails reviewed, while not contiguous, provided information and timelines for the project, invoices, concerns about the project by the City, and delays in processing payments to C1.

Conclusion

The evidence obtained during the investigation does support that the contractor performed work on the project before obtaining the required electrical permit contrary to the contract. The evidence is inconclusive regarding the allegation that D1 abused its position by allowing the contractor to begin the project before obtaining the required electrical permit. The evidence reflects that while there was a requisition for changes to the purchase order, the contract has not been amended to address mathematical errors in the cost extensions as permitted by the request for bid resulting in the contractor not being paid for work completed in December 2024.

FINDINGS AND RECOMMENDATIONS

Allegation:

The complaint alleges abuse of position by a Director (D1) by initiating work with a contractor (C1) without the proper permits, circumventing the permitting process, and delaying payment to C1 for work completed on a city project to replace variable frequency drives (VFDs) at City Hall.

Finding:

Condition:

The project for the replacement of variable frequency drives in City Hall was initiated without the required electrical permit contrary to the contract. The Contract has not been amended to address mathematical errors in the cost extensions as permitted by the request for bid resulting in the contractor not being paid for work completed in December 2024.

Criteria:

Section E of the Request for bid for the replacement of Variable Frequency Drives in City Hall related to Contract SHR000022893.1 states “The Awarded Bidder shall obtain municipality required permitting for all electrical work performed and all associated required inspections.”

Abuse, as defined in the Inspector General Ordinance 2-17-3, is the use of resources or exercise of authority contrary to rule or policy, or knowingly inconsistent with any established mission or objectives for the resource, or the position held by the person exercising the authority. Abuse does not necessarily involve fraud or illegal acts.

Cause:

Improper management and oversight of the project.

Effect:

Non-compliance with the contract permitting requirements and delay of final payment to the contractor.

Recommendations:

GSD should amend the contract for the mathematical errors so they can pay C1 the balance owed on the project.

City departments should not allow contractors to begin a project until all permits, testing, or other requirements are met.

GSD project and facilities staff should be provided annual training for project management, permitting requirements, and project closure.

Management's Response:

The City denies that the project was started without the proper permit in place. The permit was issued on April 15, 2024. In addition, the City does not agree that it had an obligation to, or would even be legally permitted to, correct mathematical errors made by a contractor. Correcting these errors could violate the bid requirements, particularly if a competing bid was only slightly higher. The City disputes that it engaged in either waste, fraud, or abuse by holding a contractor to its bid as submitted.