



OFFICE OF INSPECTOR GENERAL
City of Albuquerque

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Investigative Informative Case Synopsis

FILE NO: 22-0176-C

SUBJECT MATTER: The City’s Planning Department did not obtain an extension of time for the Chief Building Official to obtain the certified building official designation with the State of NM Construction Industries Division within 60 days as required by Article 13.

STATUS: Final

INVESTIGATOR: M. Santistevan

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ACCOUNTABILITY IN GOVERNMENT
OVERSIGHT COMMITTEE CHAIRPERSON**

October 3, 2022

Date of Completion

October 19, 2022

Date of Approval

DISTRIBUTION:

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

EXECUTIVE SUMMARY

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

On September 23, 2022, the Office of Inspector General (OIG) received an anonymous tip hotline complaint alleging that the City's Planning Department violated Article 13 by not having a certified building official within 60 days of the recently retired Chief Building Official's departure. The OIG determined that the allegations contained elements of potential fraud, waste, or abuse through a violation of regulation and that it was appropriate for the OIG to conduct a fact-finding investigation. The purpose of the investigation was to determine if there was a violation of Article 13, NMSA 1978. During our investigation, the OIG discovered a subsequent matter related to the hiring process that is addressed in this report.

As a result of the investigation, the OIG was able to substantiate Allegation 1 that the City's Planning Department did not obtain an approved extension of time for the Chief Building Official to obtain the certified building official designation or enter into a memorandum of understanding with another political subdivision meeting the requirements *within the sixty (60) days* as prescribed in Article 13 §60-13-41 (G). The OIG can substantiate that the City's Planning Department did request an extension before the sixty (60) day deadline. The OIG is also able to substantiate that the City's Planning Department was ultimately provided an extension of time dated September 30, 2022, which was sixty-one (61) days after the retirement of the City's Certified Building Official.

Additionally, the OIG was able to substantiate subsequent matter 1 that the change from rejected to pass, by Human Resources at the request of the E1, in NeoGov resulted in an unfair advantage in the hiring process for position 2201401. An unfair advantage exists due to the applicants being given the opportunity, through City intervention, to interview when the general policy is that a candidate who was rejected would be required to reapply.

ABBREVIATIONS

CID: Construction Industries Division
CITY: City of Albuquerque
E1: Planning Employee
E2: Planning Employee
E3: Planning employee
E4: Planning employee
HR1: Human Resources Employee
HR2: Human Resources Employee
HR3: Human Resources Employee
HR4: Human Resource Employee
NMRLD: New Mexico Regulation and Licensing Department
OIG: Office of Inspector General

INVESTIGATION

Background: The Planning Department’s Chief Building Official retired effective July 31, 2022. Effective September 10, 2022, the City hired a Chief Building Official that did not possess the required certifications. The job description for the Chief Building Official provided six months to obtain the credential of Certified Business Official and twelve months to obtain a Commercial Building, Residential Building, Electrical, Mechanical, or Plumbing Inspector Certification from the State of New Mexico.

Allegation 1: The City Planning Department did not obtain an extension of time for staff to obtain the certified building official designation with the State of NM Construction Industries Division within 60 days as required by Article 13.

Authority: NMSA 1978, Article 13 Construction Industries Licensing Act defines a Certified Building Official as defined as an employee of any county, municipality, or other political subdivision who has a broad knowledge of the construction industry, holds a current nationally recognized code organization certified building official certificate and has:

- (1) been a practicing inspector or practicing contractor for at least five years; or
- (2) held a management position in a construction-related company or construction organization for at least five of the past ten years.

60-13-41. Inspectors; designated inspection agencies.

E. Except, as provided in Subsection F of this section, the state or its agent, shall conduct all inspections if a county, municipality, or other political subdivision does not have a certified building official in its employ.

F. A county, municipality, or other political subdivision may enter into a memorandum of understanding to share a certified building official and inspectors operating under that certified building official with another county, municipality, or other political subdivision; provided that the certified building official is employed in the same county, in an adjacent county, within one

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hundred miles of the county, municipality, or other political subdivision or as approved by the division.

G. A person currently acting in the capacity of a certified building official may continue to act in that capacity and shall have five years from the effective date of this 2013 act to become a certified building official as prescribed by the Construction Industries Licensing Act. When a certified building official leaves the employ of a county, municipality, or other political subdivision, the plan review, permitting, and inspections overseen by that certified building official shall transfer to the state unless the county, municipality, or other political subdivision, within sixty days or a longer period as approved by the division, replaces that certified building official or enters into a memorandum of understanding according to Subsection F of this section.

Analysis: During our investigation, the OIG reviewed Article 13, the City's Chief Building Official job description, and the human resource packet for position 2201401. The OIG spoke to E1 and reviewed a request for an extension submitted to NM Regulation and Licensing Department (NMRLD) Construction Industries Division (CID).

Article 13 explicitly stated that the City had to have a CBO within sixty days or have an approved extension or have entered into a memorandum of understanding with another political subdivision meeting the requirements.

The job description for position 2201401 provided six months to obtain the Certified Building Official credential and twelve months to obtain a Commercial Building, Residential Building, Electrical, Mechanical, or Plumbing Inspector Certification from the State of New Mexico.

The human resources packet for position 2201401 indicated that the individual had certifications but not the required certification.

The six months to obtain the certification exceeds the period the state of NM provides. According to Article 13 when the City has not replaced the certified building official within sixty days or received an extension from the division, or entered into a memorandum of understanding, the plan review, permitting, and inspections overseen by that certified building official shall transfer to the state.

On September 27, 2022, the OIG spoke to E1 and learned that the City Planning Department does employ an individual, E2, who has the certified building official credential. E1 stated that a request for an extension was submitted to NMRLD CID on September 23, 2022. E1 also indicated that the City had the option to temporarily upgrade the individual who holds the certified building official credential until the City's Chief Building Official obtains the credential. E1 stated that a meeting was scheduled with NMRLD on September 30, 2022.

On September 27, 2022, the OIG reached out to NMRLD and was told that our call would be returned on September 28, 2022. OIG did not receive a return call.

The OIG reviewed a letter dated September 23, 2022, requesting an extension to obtain the certified building official credential. The OIG noted that there was no explanation that the City

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employed an individual, E2, who possessed the certified building official designation which may have mitigated any potential transfer of duties to the State of NM.

On October 3, 2022, E1 emailed the OIG a signed extension letter from NMRLD, dated September 30, 2022. The letter grants an extension of time until November 15, 2022, for the City to designate a Certified Building Official.

Allegation 1 Finding: The OIG was able to substantiate the allegation that the City's Planning Department did not obtain an approved extension of time for the Chief Building Official to obtain the certified building official designation or enter into a memorandum of understanding with another political subdivision meeting the requirements *within the sixty (60) days* as prescribed in Article 13 §60-13-41 (G). The OIG can substantiate that the City's Planning Department did request an extension before the sixty (60) day deadline. The OIG is also able to substantiate that the City's Planning Department was ultimately provided an extension of time dated September 30, 2022, which was sixty-one (61) days after the retirement of the City's Certified Building Official.

Recommendation: Noting that the City's Planning Department received an extension for the Certified Building Official, the OIG recommends that the Planning Division take immediate action to ensure the approval and placement of an interim Certified Building Official before the expiration of the November 15, 2022 extension deadline.

Management Response: The Department does not dispute the Finding. The request to the State for an extension was submitted before the deadline, and the approval letter from the State is dated September 30, 2022. The Department is diligently working towards fulfilling the requirement.

Subsequent matter identified: During the OIG review of the human resources packet for position 2201401 the OIG noticed that the Human Resources policy was violated. NeoGov, the software used by the Human Resources Department for processing job applicants, indicates that the candidate selected did not meet the minimum requirements of the position and was rejected as an applicant. On June 6, 2022, a note was entered into NeoGov stating that a Human Resource employee requested that the applicant's status be changed to pass. On August 3, 2022, the candidate was offered position 2201401 with a start date of September 10, 2022.

Authority: Human Resources corrective action responses from previous investigations and internal audits indicated that applicants must attest to the Supplemental Questions on the Application by answering the questions to determine if minimum qualifications are met. If minimum qualifications are not met, the NeoGov system will reject the candidate for the position, however, they are eligible to reapply.

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Analysis: The OIG's review of the NeoGov packet for 2201401 reflected that the candidate was originally rejected and then subsequently passed. The pass was a manual override in NeoGov. OIG contacted the Human Resources department to inquire why the exception was granted. The following emails reviewed by the OIG reflect the context for the change in NeoGov.

From: E1
Sent: Wednesday, May 25, 2022 4:33 PM
To: HR1
Cc: HR2
Subject: FW: Chief Building Official Application & Job Description

HR1, good afternoon,
I was reviewing applicants for the Chief Building Official position and was a bit surprised to see that this applicant (contractor who ran a large construction company for 14 years) was not deemed qualified. Can you please take a look for me?
I very much appreciate it.

From: E1
Sent: Friday, June 3, 2022, 10:19 AM
To: HR1,HR2
Cc: HR3
Subject: FW: Chief Building Official Application & Job Description (please respond)

E2 good morning,
Just a follow up to see if you can please take a look at this today. We are in the process of scheduling the interviews.
Thank you,
E1

From: HR1
Sent: Monday, June 6, 2022 11:33 AM
To: E1;HR3:E3
Cc: HR3;E3
Subject: RE: Chief Building Official Application & Job Description (please respond)

I'm so sorry this response was delayed. In reviewing the quals, (the candidate) does look qualified; and I would encourage you to interview him. The reason why (the candidate) failed the quals was because (the candidate) answered the supplemental questions with only having 11 years experience and not the 14 from (the candidates) business ownership. The system automatically processed (the candidate) out because (the candidate) didn't meet the 12 years ed/experience combination.

If you have questions about qua ls, E3 can help. Our typical process when this occurs is to have them reapply, so we can capture the correct response and an accurate application. Harder when the job closes so that is something I can discuss with the team. I'll work with E3 on how we need to get (the candidate) through. Let us know if we do need to work through that as we will only do that if you are interviewing him.

Thanks,
HR1

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From: E1
Sent: Monday, June 6, 2022 12:22 PM
To: HR1;HR2
Cc: HR3;E3;E4
Subject: RE: Chief Building Official Application & Job Description (please respond)
HR1,
We very much appreciate the updated information. (The Candidate) will be one of the applicants that is interviewed.
Thank you,
E1

From: HR2
Sent: Monday, June 6, 2022 12:24 PM
To: E1;HR1
Cc: HR3;E3;E4
Subject: RE: Chief Building Official Application & Job Description (please respond)
HR1,
As we discussed earlier, please have HR3 look at the others who received a "FAIL" message and disqualified themselves for not accurately answering the Supplemental Questions. This may give Planning additional qualified people to interview and ensure that we were fair to each applicant.
Thank you,
HR2

From: HR3
Sent: Monday, June 6, 2022 12:27 PM
To:HR2;E1;HR1
Cc: E3;E4;HR4
Subject: RE: Chief Building Official Application & Job Description (please respond)
Thank you, yes, agreed we will need to treat each candidate fairly as this is a classified position and one exception we highly do not encourage with such positions.
Thanks again,
HR3

From: HR1
Sent: Monday, June 6, 2022 12:30 PM
To: HR3;HR2;E1
Cc: E3;E4;HR4
Subject: RE: Chief Building Official Application & Job Description {please respond)
We are on it and we are already done. E4 and I went through them.
(another candidate) would also meet the quals; E4 will get with HR3 on sending him through. He answered no to supervisory and he meets the minimum through his business ownership as well.
Thanks,
HR1

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From: E4

Sent: Monday, June 6, 2022 12:36 PM

To: HR1;HR3;HR2;E1

Cc: E3;HR4

Subject: RE: Chief Building Official Application & Job Description (please respond)

Hello: I tried to move (another candidate) and (candidate) to the eligible list by checking their names and selecting "selected" candidates. They won't move forward to the eligible list. Does anyone know how I can move them forward or should I just print their applications?

Thanks.

E4

Subsequent Matter 1 Finding: The OIG was able to substantiate that the change from rejected to pass, by Human Resources at the request of the E1, in NeoGov resulted in an unfair advantage in the hiring process for position 2201401. An unfair advantage exists due to the applicants being given the opportunity, through City intervention, to interview when the general policy is that a candidate who was rejected would be required to reapply.

Recommendation: The recommendations from previous investigations and internal audits regarding the City's hiring practices need to be implemented and the Human Resources Department should follow the policies and procedures implemented for corrective action. Human Resources should hold employees accountable for violations of the policies and procedures. Candidates should be treated equitably throughout the hiring process and policies should not be circumvented for certain positions.

Management Response: The applicant's resume and answers within the application clearly showed that the applicant had more than the required minimum years of management experience. The applicant inaccurately answered a screening question within our talent acquisition module (NeoGov). With the inaccurate response, the system rejected the applicant. It was an obvious error. A manual review was conducted by the HR Coordinator and the error was detected. The applicant did possess more than the required number of years of management experience.

After recognizing the automation error, Central HR recommended that other rejected applicants within the system were also manually screened. This intervention was required not only to comply with competitive and equitable hiring practices, but with creating the most robust applicant pool that we could attain for this difficult to recruit position. Although systems may be designed to make our processes efficient, human intervention may be necessary to more effectively achieve business outcomes and comply with rules and regulations.

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