

**PHYSICAL PLANT DEPARTMENT
MAINTENANCE AND PLANNING DIVISION
AUDIT OF ALLEGED CONFLICT OF INTEREST**

THE UNIVERSITY OF NEW MEXICO

**Report 2009-19
September 8, 2009**



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ABBREVIATIONS

3B	3B Builders Incorporated
CID	Construction Industries Division, New Mexico Regulation and Licensing Department
IA	Internal Audit Department
IFB	Invitation for Bid
Purchasing	The University of New Mexico Purchasing Department
State Auditor	New Mexico Office of the State Auditor
UBP	University Business Policies and Procedures Manual
University	The University of New Mexico
UNM	The University of New Mexico
USP	Universal Service Provider
PPD	Physical Plant Department
RFQ	Request for Qualifications
SPQ	Service Provider Questionnaire

EXECUTIVE SUMMARY

In March 2009, the Internal Audit Department (IA) received a conflict of interest complaint filed through the New Mexico Office of the State Auditor (State Auditor) Hotline. The complaint alleged that a Physical Plant Department (PPD) employee is a licensed owner of 3B Builders Incorporated (3B). According to the complaint, the PPD employee was issuing contracts to 3B. 3B has had contracts with UNM since 2007. Internal Audit reviewed UNM policies and procedures, researched the PPD employee's UNM work history and 3B's contracting history with UNM, interviewed various UNM employees, and consulted with Construction Industries Division, New Mexico Regulation and Licensing Department (CID) staff and University Counsel to determine if there was a conflict of interest. Internal Audit also reviewed the Universal Service Provider (USP) process and the Contract/Request for Proposal award process.

The relationship between 3B and the PPD Remodel Supervisor does not qualify as a conflict of interest as defined by the University conflict of interest policy. However, because the PPD Remodel Supervisor was listed as a qualifying party under 3B's licensure and the events that occurred, it appeared that a conflict of interest existed. During the course of the audit, we identified opportunities for improvement as summarized below.

CONFLICT OF INTEREST POLICY

University Counsel should work with the Policy Office to review and revise University Business Policies and Procedures (UBP) 3720 to include more specific language describing what constitutes a financial interest, and to clarify what is expected of employees. This will benefit the University of New Mexico (University) by maintaining the highest level of business ethics and never giving rise to suspicion of improper conflict of interest. University Counsel will review UBP 3720 and recommend revisions to the Policy Office that clarify the intent and meaning of the term "financial interest."

UNDOCUMENTED ON-CALL CONTRACTOR AWARDING PROCEDURES

PPD Remodel management should document and implement standard operating procedures for bid receipt, review, and award of on-call contractor work. PPD is in the process of developing documented procedures.

CONTRACTOR QUALIFICATIONS

The University of New Mexico Purchasing Department (Purchasing) should consult with University Counsel to determine if there should be a policy that addresses the consequences imposed on a vendor when they are found to have completed work for the University without proper certification or licensure. Purchasing will meet with University Counsel to confer on the subject.

INTRODUCTION

BACKGROUND

In an effort to efficiently contract for repeat services that arise, UNM has developed a USP process that includes a list of on-call contractors that provide particular, pre-defined products or services. When a UNM Department chooses to use one of the vendors listed as a USP, the process is meant to be more efficient and reduce repeat paperwork that would be required each time a vendor is used. Rather than repeatedly complete a Service Provider Questionnaire (SPQ), that includes a conflict of interest statement, the vendor is pre-qualified and does not have to complete the SPQ each time. A complete list of USPs is located on the Purchasing Department website. 3B is a USP and began work with UNM in October 2007. 3B received payments from UNM totaling \$112,639 in FY08 and \$859,642 in FY09, of which \$36,638.21 in FY08 and \$603,638.21 FY09 were contracted for by PPD Remodel.

When a department wants to use an on-call construction contractor that is listed as a USP, they are not required to complete the SPQ; however, they are required to solicit bids from qualified on-call contractors. In February, 2009, the Purchasing Department distributed written guidelines to be employed when soliciting quotes from UNM on-call contractor listings. The "Overview" section of the on-call Construction Contracting Services Request for Qualifications leaves the final hiring decision with the departments contracting the services.

PURPOSE

In March, 2009, the State Auditor forwarded a complaint to IA that they received through their Hotline. The complaint stated that a Remodel Supervisor was issuing contracts to 3B. The complaint alleged that the Remodel Supervisor is a licensed owner of 3B, and that 3B has had contracts with UNM since 2007. The purpose of our audit is: to determine what type of relationship exists between the PPD Remodel Supervisor and 3B, whether the PPD Remodel Supervisor issued contracts to 3B, and finally, if there is concern with respect to a conflict of interest between the PPD Remodel Supervisor and 3B.

SCOPE

Our audit was limited to reviewing contracts with 3B, beginning with the first recorded business in 2007, through the month of April, 2009. We interviewed UNM personnel in the PPD Remodel Department and the Purchasing Department, the PPD Remodel Supervisor, and 3B Owner(s). We also consulted with CID staff and University Counsel to determine if there was a conflict of interest. Our field work was completed on June 15, 2009.

OBSERVATIONS, RECOMMENDATIONS AND RESPONSES

CONFLICT OF INTEREST

An actual conflict of interest as defined in UBP 3720 does not exist. The sequence of events and documentation relating to work performed by 3B, created an appearance of a conflict of interest with the PPD Remodel Supervisor, however, because:

- The PPD Remodel Supervisor obtained his GB98 construction certification in 1997 and had it registered with UNM until just prior to his retirement from UNM; he transferred his license to 3B on July 20, 2007.
- The PPD Remodel Supervisor retired on July 31, 2007, and returned to work at PPD Remodel as a part time temporary employee in September 2007.
- In July 2007, 3B paid CID the required \$300 licensing fee, and listed the PPD Remodel Supervisor's GB98 as a qualifying party.
- 3B began doing UNM work in October 2007.
- The PPD Remodel Supervisor supervised two jobs performed by 3B.

PPD Remodel could not provide documentation regarding who awarded PPD Remodel jobs to 3B; therefore, we could not verify who awarded the jobs, or confirm/deny that the PPD Remodel Supervisor had any involvement in the award process. We did confirm that the PPD Remodel Supervisor did supervise two jobs performed by 3B during winter break 2008, as documented by his initials on PPD Remodel internal forms that approve change orders and initiate payment to 3B.

When 3B paid CID the \$300 license fee, the PPD Remodel Supervisor's name was listed as a qualifying party. This created the appearance of a conflict of interest.

Section 1, "Conflict of Interest," UBP 3720, states:

Employees shall maintain the highest standards of business ethics in transactions with the University, with state, federal, and local governments, and with the public. Employees are expected to perform their duties faithfully and efficiently and never to give rise to suspicion of improper conflict with interest of the University.

Section 2, "Conflicts of Interest, UBP 3720 states:

Employees shall not accept favors or gratuities from any firm, person, or corporation that is engaged in, or attempting to engage in, business transactions with the University. On occasion companies doing business with the University will send employees small items of appreciation, e.g., coffee mugs with a company logo. Such gifts may be accepted if they do not have any significant economic value. If an employee has any question regarding the acceptance of a favor or gratuity, he or she should discuss the matter with a

supervisor or other appropriate University official for a determination of the proper course of action....

Section 3, "Conflicts of Interest, UBP 3720 states:

"Financial Interest" also includes any transaction between the University and a business entity (corporation, sole proprietorship, partnership, LLC, or similar entity) in which the employee or a member of the employee's immediate family meets any of the criteria listed below:

- (1) has an ownership interest (other than one percent (1%) of the stock of a publicly traded corporation);
- (2) is an employee, partner, officer, director, trustee, or paid consultant to such business entity;
- (3) has gift or grant support from such business entity;
- (4) has received support for travel expenses, honoraria, etc, from such business entity; or
- (5) has a right to receive royalties from such business entity.

The PPD Remodel Supervisor did discuss with his supervisor, the PPD Remodel Manager, the possibility of registering his GB98 certification with 3B. The Manager's opinion was that it was not a conflict of interest according to UBP because the PPD Remodel Supervisor's relationship with 3B did not qualify as a direct or indirect financial interest as described in UBP; he was not a 3B owner or employee, and would not receive any type of compensation from 3B.

In the opinion of University Counsel the PPD Remodel Supervisor's relationship and arrangements with 3B do not amount to his having a direct or indirect "financial interest" in 3B as defined in Section 3 of UBP 3720. Clauses (1), (2), and (5) of Section 3 do not apply to this situation. In counsel's opinion, clauses (3) and (4) also appear not to apply for the following reasons. Although 3B's (the UNM contractor's) payment to CID of the required \$300 license fee appears to have indirectly benefited the Remodel Supervisor in that it allowed him to continue to maintain his license in effect, an isolated, single, payment of this nature and amount appears not to constitute a "gift or grant support" or "support for travel expenses, honoraria, etc." as described in these clauses of the policy. Moreover, consultation with CID revealed that payment of this certification fee by the party with which the GB98 is registered (in this case 3B) is standard practice in the industry and not viewed as payment made by or on behalf of the certification holder (in this case the PPD Remodel Supervisor).

University Counsel also advised that based on CID's guidance, the payment of the \$300 fee is not treated as a matter of industry practice as payment by or on behalf of the PPD Remodel Supervisor, and 3B's payment of the fee does not qualify as the PPD Remodel Supervisor's acceptance of a "favor or gratuity" from a contractor under Section 2 of UBP 3720. In any event, the PPD Remodel Supervisor consulted with his own supervisor as specifically prescribed for purposes of resolving favor or gratuity issues under Section 2, and was advised that no conflict existed.

University Counsel advised, however, that Section 1 of UBP requires that employees avoid engaging in transactions that give rise to an appearance of a conflict because it requires that employees “perform their duties faithfully and efficiently and never give rise to suspicion of improper conflict with interests of the University.” University Counsel advises that the arrangements between the PPD Remodel Supervisor and 3B create an appearance of a conflict of interest. Specifically, the supervisor appears to have indirectly benefited from 3B’s payment of the \$300 license fee. Also, the PPD Remodel Supervisor agreed to an arrangement with 3B to transfer his license to the company which then listed the supervisor as a qualifying party, and the PPD Remodel Supervisor subsequently supervised and signed off on at least two jobs for UNM.

Although it does not appear that a conflict of interest per UBP exists, the PPD Manager was aware of the situation and could have exercised better judgment when the PPD Remodel Supervisor consulted with him.

Recommendation 1

PPD management should consult with Human Resources regarding the judgment exercised by the PPD Remodel Manager.

Response from the Director of the Physical Plant Department

PPD recognizes the concern regarding the perception of this situation. Even though no conflict occurred, it is important to address this issue as a whole for PPD personnel. PPD director will discuss this with the Vice President of Human Resources for guidance in this matter.
Completion: September 30, 2009.

Recommendation 2

University Counsel should work with the Policy Office to review and revise UBP 3720, to more specifically describe what constitutes a financial interest, and to more clearly define ethical standards.

Response from University Counsel

University Counsel concurs with this recommendation. University Counsel will review UBP 3720, and recommend revisions to the Policy Office that clarify the intent and meaning of the term “financial interest” for purposes of determining the existence of a conflict of interest and better defining standards expected of employees to avoid conflicts of interest. Such recommended revisions will be submitted to the Policy Office within sixty days of approval of this audit report.

UNDOCUMENTED ON-CALL CONTRACTOR AWARDING PROCEDURES

As stated above, we could not verify who made the award decision for the jobs that 3B performed for PPD Remodel. PPD Remodel does not have a consistent and documented process that provides a clear audit trail on who reviews bids and makes the final award for on-call contractor projects.

According to the PPD Remodel Manager, he performs the bid receipt and review process; however, he stated that neither formal office procedures nor documentation of the process exist. He stated that it is common knowledge that he has the review and award role for the PPD Remodel Department.

In the course of reviewing documentation available at PPD Remodel to support jobs awarded to 3B, PPD Remodel could provide some “scope” forms. In addition, not all sections of the scope forms are consistently completed, and do not always contain signatures where indicated. The only signatures required on the form are for the “Requester/Contact” and the “Chair/Dean/Director;” there is not an area for the preparer signature, only an area where the preparers’ name is typed in. According to the PPD Remodel Manager, the forms are not commonly signed because they are only used internally.

An organization uses policy documents to record their rules and regulations and to identify how to manage their operations. Procedures identify how the policies are to be implemented to ensure compliance with University policies, departmental policies, and Federal and State laws. Written procedures are used to establish what should be done as well as how, when and by whom. The procedures normally identify the step-by-step processes of how to implement and carry out the policy including identifying the specific tasks, and clarifying roles and responsibilities. They should be used to provide consistency in the processes, which can increase overall efficiency. Procedures can also be used to improve communications, establish strong internal controls for regulatory compliance, and standardize bookkeeping to help reduce waste, fraud and abuse.

Well-defined policies and procedures can be used to provide orientation and training for new employees, and to refresh the skills of current employees. In addition, they can reduce the risk of confusion, the potential for litigation, and provide documentation for auditors and program reviewers.

Policies and procedures should be widely accessible. This will provide employees with the information needed to effectively make decisions at the most appropriate level, streamline administrative processes, and provide the basis for individual and departmental accountability.

Recommendation 3

PPD Remodel management should document and implement standard operating procedures for bid receipt, review, and award of on-call contractor work.

Response from Director of the Physical Plant Department

Work to develop document procedures is currently in progress. This is also being coordinated with the Purchasing Department's comprehensive review of the on call contractor procedure.

Completion: November 30, 2009.

CONTRACTOR QUALIFICATIONS

3B presented themselves for business as a licensed contractor with a GB98 certification. As part of standard operating procedures, the Purchasing Department confirmed active licensure via on-line contractor licensure look up. However, at the time that 3B completed work for UNM, its license was qualified by a GB98 that belonged to the PPD Remodel Supervisor. The PPD Remodel Supervisor was not a 3B employee and could not have supervised the work completed by 3B. The Purchasing Department could not have been aware that the qualified GB98 belonged to the PPD Remodel Supervisor.

NMAC 14.6.6.9 provides specific guidelines regarding eligible work performed by various General Construction Classifications. For example, a GB98 certification allows for construction or repair of residential and commercial buildings, while a GB2 certification allows for construction or repair of residential structures.

3B was licensed as a GB2 prior to the PPD Remodel Supervisor moving his GB98 to 3B. According to the Chief Procurement Officer, Purchasing relies on CID to properly permit a contractor. CID is responsible for determining that a contractor has the appropriate type of certification/licensure to perform particular jobs. CID reviews the job specification against the type of certification/licensure that a contractor has, and issues a permit to proceed. If a permit is granted, the Purchasing Department assumes that CID properly reviewed the application, and that the contractor has the correct type of certification/licensure to complete the job.

NMAC also provides regulation and guidance to certified persons acting as qualifying parties for a contractor license. NMAC 14.6.3.8 (E) (3) states:

While validly attached to, and qualifying a license, no qualifying party shall accept or engage in any employment that would conflict with his responsibilities as a qualifying party for, or conflict with his ability to adequately supervise the work performed by, the licensee.

Recommendation 4

Purchasing management should consult with University Counsel to determine:

- What, if any, consequences should be imposed on 3B with respect to current and future business with the University; and
- If any policy changes should be made to address the consequences imposed on a vendor when the vendor is found to have misled the University.

Response from Chief Procurement Officer

We concur. We will meet with University Counsel on the subject by April 15, 2010.

Recommendation 5

The Director of PPD should require situations like this to be elevated to Director level review in consultation with University Counsel, and the appropriateness of the relationship should be researched for compliance with other State laws, rules and regulations before providing guidance.

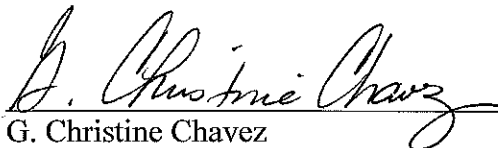
Response from the Director of the Physical Plant Department

PPD personnel are aware of the need to elevate certain issues to the PPD Director. They will be advised of this routinely. PPD will consult with University Counsel if similar situations arise.
Completion: Ongoing.

CONCLUSION

The relationship between 3B and the PPD Remodel Supervisor does not result in a conflict of interest as defined in University policy. However, some of the events that transpired create the appearance of a conflict of interest. UBP Conflict of Interest language should be revised to exclude confusing language, and to clarify, in detail, what is expected of employees in order to maintain the highest level of business ethics and to never give rise to suspicion of improper conflict of interest.

APPROVALS



G. Christine Chavez
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Approved for Publication



Chair, Audit Committee