

City of San Diego

AUDIT REPORT

***REVIEW OF THE HIRING PROCESS OF
THE DIRECTOR OF
PURCHASING AND CONTRACTING***

August 21, 2009

**Office of the City Auditor
Eduardo Luna, CIA, CGFM, City Auditor**

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THE CITY OF SAN DIEGO

August 21, 2009

Honorable Mayor, City Council, and Audit Committee Members
City of San Diego, California

Enclosed is the Review of the Hiring Process of the Director of Purchasing and Contracting conducted by Sjoberg Evashenk Consulting Inc. The report contains five recommendations for improving the City's hiring process for unclassified upper-level officials. Management's written response is attached to the report after page 16.

We would like to thank City staff for their assistance and cooperation during this audit.

Respectfully submitted,

Eduardo Luna
City Auditor

cc: Hildred Pepper Jr., Director of Purchasing and Contracting
Jay M. Goldstone, Chief Operating Officer
Mary Lewis, Chief Financial Officer
Wally Hill, Assistant Chief Operating Officer
Scott Chadwick, Director of Human Resources
Hadi Dehghani, Personnel Director
Jan Goldsmith, City Attorney
Andrea Tevlin, Independent Budget Analyst
Stanley Keller, Independent Oversight Monitor



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August 21, 2009

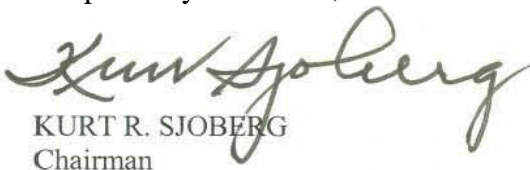
Eduardo Luna, City Auditor
City of San Diego
1010 Second Avenue, Suite 1400
14th Floor East Tower, MS 614B
San Diego, CA 92101

Dear Mr. Luna:

Sjoberg Evashenk Consulting, Inc. respectfully submits the results of our review of the process used in hiring the Director of Purchasing and Contracting, Mr. Hildred Pepper, Jr. This report, prepared by our firm on behalf of the City Auditor of the City of San Diego, includes findings, conclusions, and recommendations on the contracted issues. The responsible parties to the audit submitted a written response to the City Auditor. This performance audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS).

Sjoberg Evashenk Consulting was pleased to work with the Office of the City Auditor on this important project, and appreciate the direct assistance we received from you and members of your team throughout the audit.

Respectfully submitted,


KURT R. SJOBERG
Chairman

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Review of the Hiring Process of the Director of Purchasing and Contracting

On May 8, 2009, the Chief Operating Officer of the City of San Diego requested that the City Auditor commence a review of the process used in hiring the Director of Purchasing and Contracting, Mr. Hildred Pepper, Jr. The City Auditor contracted with Sjoberg Evashenk Consulting, Inc. to conduct this audit in accordance with Generally Accepted Government Auditing Standards.

In his memorandum, the Chief Operating Officer specifically asked that the audit determine, at a minimum, the following:

1. Whether the City of San Diego followed best practices in the hiring of the Director of Purchasing and Contracting;
2. The thoroughness of the City's background investigation;
3. Whether the City contacted and documented all listed references;
4. The extent to which City officials were formally or informally made aware of issues concerning the problems in the Detroit Public Schools' Purchasing Office (prior employment) and what role the employee played in them;
5. The materiality of this information and what weight it should have been given in the City's hiring decision;
6. The employee's participation in the U.S. Attorney's investigation regarding the Detroit Public Schools; and,
7. Whether the employee made any material misrepresentations and/or withheld any material information during this process.

This report addresses each of the objectives outlined above and describes the results of our review in seven separate sections.

Introduction and Background

In October 2007, the City's Director of Purchasing and Contracting position became vacant. Under the City's Charter¹, this position is deemed to be "unclassified" and, as such, is not subject to civil service personnel hiring rules.

The City's Chief Financial Officer (CFO) was requested by the Chief Operating Officer to lead the recruitment and hiring of a new Director of Purchasing and Contracting. She enlisted the assistance of the Personnel Department with recruiting efforts, including drafting the job description, advertising the position, and forwarding resumes to the CFO's office. The job announcement was released by the Personnel Department on

¹ San Diego City Charter Section 117; December 17, 1979.

December 11, 2007 and 17 candidates submitted resumes that were forwarded to the CFO for consideration from December 12, 2007 through January 29, 2008. Of the resumes forwarded by the Personnel Department, the CFO selected five or six applicants that the CFO and Deputy Chief Operating Officer of Public Works interviewed by phone. However, none of these candidates were chosen for the Director of Purchasing and Contracting position. The Deputy Chief Operating Officer of Public Works was included in the process because the Public Works Department is the largest internal client of the Department of Purchasing and Contracting.

Consequently, at the behest of the CFO, the Deputy Chief Operating Officer of Public Works contacted local San Diego contracting officials to identify and recruit additional candidates. As a result of those contacts, Mr. Pepper's name surfaced as a possible candidate for consideration. Mr. Pepper submitted his resume on February 6, 2008 and was interviewed by the CFO by phone shortly thereafter. Mr. Pepper stated he was interviewed in San Diego by the CFO and Deputy Chief Operating Officer of Public Works on February 14, 2008 and later that day by the Chief Operating Officer (COO) and the CFO. He was subsequently offered and accepted the position soon after returning to Detroit. Both the CFO and Deputy Chief Operating Officer of Public Works concurred that Mr. Pepper was the best candidate for the position, and he assumed the position of Director of Purchasing and Contracting on March 10, 2008.

Scope and Methodology

To meet the scope and objectives of this audit, we reviewed the following City of San Diego documents, rules, regulations, and opinions:

- City Charter
- Civil Service Rules
- City Administrative Code
- Mayor's Guidance related to Personnel and Hiring
- City Attorney's Guidance related to Personnel and Hiring
- City Personnel Policies and Procedures
- City's Standard Recruiting Materials (applications, job announcements, etc.)
- City Recruiting and Selection Documentation Related to Director of Purchasing and Contracting Appointment
- System Generated Reports of Unclassified Appointments Provided by the Personnel Department

In addition, we obtained relevant information from and performed numerous detailed interviews with the following:

- San Diego's Personnel Director
- San Diego's Director of Purchasing and Contracting

- San Diego’s Chief Financial Officer
- San Diego’s Deputy Chief Operating Officer, Public Works
- Detroit Public Schools Inspector General
- Detroit Public Schools Attorney
- Former Detroit Public Schools Board Member
- San Diego Personnel Department staff (various)
- San Diego Labor Relations staff (various)

We also reviewed at-will employee hiring policies and procedures from the State of California as well as several California municipalities, including Los Angeles, Oakland, and San Francisco to identify any best and leading practices.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards required that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Section 1: Whether the City of San Diego Followed Best Practices in the Hiring of the Director of Purchasing and Contracting

The San Diego City Charter affords the Mayor wide latitude in hiring and firing most of the City’s unclassified employees, including the Director of Purchasing and Contracting. Unlike the City’s classified civil service positions, the only hiring requirement included in the City Charter for appointing unclassified employees is that the appointment “shall be on the basis of administrative ability and of the training and experience of such appointees in the work which they are to perform.”² The City Charter also provides that officers and employees in positions within the unclassified service may be removed by the Mayor³ at any time.⁴ Neither the City Charter nor City Regulations mandate that specific procedures, processes, or directives be followed to determine whether an appointee to an unclassified position possesses the necessary administrative competence, ability, training, or experience.

² City of San Diego Charter, Section 29.

³ City of San Diego Charter, Section 30 cites the “Manager” as the appointing authority; Mayor has since replaced the Manager.

⁴ The Mayor can remove employees only under his appointing authority.

On July 13, 2007, prior to Mr. Pepper's appointment, the Mayor issued guidelines describing the process to be followed in hiring and recruiting unclassified managers.⁵ The guidelines include the following processes:

- Recruitment – approvals, advertising, salary, duties, receipt of resumes.
- Selection – contacts and interviews, hiring decision, job offers, notice to non-selected candidates.
- Announcement – acceptance letter, City Council notice of hiring.

However, the guidelines allow that “some steps in this process may be deleted if not needed, at the discretion of the Appointing Authority” and also provides that “if no recruitment through Personnel is desired, all steps in this process (recruitment) besides the approval from the Assistant Chief Operating Officer can be skipped.”

In fact, we found that since July 2007, under the Mayor's appointment authority, the City has hired approximately 18⁶ unclassified employees at the Director-level and above. For the 18 recruitments, the Personnel Department was asked to assist in eight of them and the remaining 10 hiring processes (56 percent of all appointments since July 2007) were handled directly by the Appointing Authority without the Personnel Department's support.

As mentioned earlier, the recruitment of the Director of Purchasing and Contracting began when the CFO requested the assistance of the Personnel Department. Initially, Personnel helped draft the job description and advertised the job opening on the City's and a procurement association's website. As the 17 resumes were received, Personnel forwarded them to the City's Chief Financial Officer (CFO). However, after five or six interviews, the CFO and the Deputy Chief Operating Officer of Public Works did not identify a viable candidate from the group of individuals responding to the City's job announcement posted by the Personnel Department. Consequently, the recruitment process the City followed from that point no longer involved the Personnel Department.

Best Practices for Hiring “At-Will” Employees

Typically, municipal governments throughout California follow provisions set forth in their respective charters or municipal codes when selecting and appointing non-civil service (unclassified), “at-will” employees (usually higher level management). As these practices are statutorily set forth, discretionary “best practices” may not apply. San Diego's at-will hiring processes are very flexible and controlled by the City's Mayor or one of the other appointing authorities not under control of the Mayor. While the Mayor's appointing authority covers the vast majority of unclassified appointments, other appointing authorities that are not controlled by the Mayor include:

- ✓ City Council

⁵ Unclassified Recruitment and Hiring Process Guidelines, July 13, 2007.

⁶ An appointment related to the Director of Information Technology is still in progress.

- ✓ City Auditor
- ✓ City Attorney
- ✓ Personnel Director
- ✓ City Clerk
- ✓ Independent Budget Analyst
- ✓ Executive Director of the Ethics Commission

After reviewing practices employed by the State of California and several California municipalities, no provisions or guidance came to light as an approach to recruitment and hiring of at-will employees that we would classify as a “best practice.”

Nonetheless, we noted what we consider to be best practices in use by the City of San Diego before the Personnel Department was assigned unclassified employee support activities when the strong Mayor form of government was established. At that time, the City’s Human Resources Department oversaw, managed, and tightly controlled all hiring processes related to unclassified positions under the City Manager’s appointing authority. The Labor Relations Unit, within the Human Resources Department, was responsible for handling all aspects of the recruitment processes and was guided by a 13-step unclassified hiring process, which included specific steps and approvals such as:

- Method of recruitment
- Job bulletin solicitation
- Interview process and panel members
- Finalist selection and salary
- Background and Reference Checks

Furthermore, in 1991 the San Diego City Attorney issued a “Memorandum of Law” related to the City’s use of criminal history, drug testing, financial information and reference checks in the application process. Although the City Attorney’s discussion involves preventing claims of negligent hiring, the basic tenets of good recruitment and hiring practices are outlined. For example, the City Attorney’s memorandum discusses the following:

- Employer Background Investigations—conducting pre-employment investigations in balance with the degree of risk of torts or criminal acts associated with the position being filled.
- Pre-employment Applications—using pre-employment questionnaires and interviews to determine the applicant’s suitability for a particular job. Pursuant to San Diego City Charter 131, it is appropriate to require that the statements be complete and truthful.
- Employment Reference Checks—performing employment reference checks of prior employment and verifying employment references.

- Criminal Records Check—while not an absolute bar to employment, inquiring into an applicant’s criminal history.

Importantly, the City Attorney recommended that the City establish a policy that is written and administered in a “non-disparate” fashion. In the recruitment and hiring context, this would prohibit employment practices that are applied or administered in an unfair or inconsistent manner.

Also, the City Attorney’s statement that the need for pre-employment investigations increases depending upon the risk of criminal acts associated with the position being filled is important for the City to consider. Many of San Diego’s unclassified managers hold positions of trust and responsibility over the City’s assets, including the position of Director of Purchasing and Contracting. In its *2008 Report to the Nation on Occupational Fraud and Abuse*, the Association of Certified Fraud Examiners reports that “Billing Schemes” are the second most frequent type of fraud experienced by government.⁷ Consequently, pre-employment investigations should be an important part of filling any positions with authority over City billing and other fiscal activities.

Conclusion

As will be discussed in the following sections, we believe that the recruitment and hiring processes related to the Director of Purchasing and Contracting position did not follow a standardized set of practices that should document obtaining and evaluating background, education, employment history and employment reference information. Nonetheless, from our review of the City Charter relating to the recruiting and hiring for unclassified employees, the City’s approach in hiring Mr. Pepper complied with City provisions. It also appears that the hiring process met the provisions under the Mayor’s Unclassified Recruitment and Hiring Process Guidelines, and are not dissimilar to practices used in hiring at-will employees we have seen in other California municipalities.

Section 2 – The Thoroughness of the City’s Background Investigation

Unlike the City’s hiring of classified, civil service positions (both sworn and non-sworn) that are subject to the City’s rigorous Civil Service hiring regulations, recruiting, selecting, the hiring processes related to unclassified officers and employees are very flexible and are at the discretion of the appointing authority.

For this section, we focused on City actions related to both pre-employment offer and post-employment offer background checks of Mr. Pepper including validation and verification of the following:

- Dates and terms of prior employment and confirmation of position titles, responsibilities, and duties,

⁷ 2008 Report to the Nation on Occupational Fraud and Abuse, ACFE, page 30.

- Undergraduate and graduate degrees earned,
- Professional certifications attained and memberships, and
- Criminal history.

We also reviewed the information provided by Mr. Pepper during pre-employment interviews and discussions.

Pre-Employment Background Checks

The CFO confirmed that a pre-employment background investigation was not required to verify and validate Mr. Pepper's employment history, education, or professional certifications presented on his resume prior to Mr. Pepper being offered and accepting the Director of Purchasing and Contracting position.

Further, Mr. Pepper stated that he was not asked to provide any underlying support for the information presented on his resume, except that he clarified for the CFO during the January 2008 telephone interview that his resume was out-of-date regarding his position with the Detroit Public Schools. Although it stated that he was employed "to present," he had actually resigned his position in August 2007. The CFO confirmed that Mr. Pepper verbally updated his resume regarding his resignation from the Detroit Public Schools during the telephone interview.

Although we were unable to independently verify most information on Mr. Pepper's resume because it is deemed confidential by former employers, universities, and professional organizations, we confirmed that he holds two of the six professional certifications cited on his resume. These are the Certified Public Purchasing Buyer and Certified Public Purchasing Official certifications and these were verified on the Universal Public Purchasing Certification Council's website. Furthermore, in an interview with us, Mr. Pepper stated that all information contained on his resume, after updating his dates of service with the Detroit Public Schools, was correct.

Post-Employment Background Checks

Upon acceptance of the Director of Purchasing and Contracting position, the City conducted its standard post-employment offer criminal background investigation required of all city employees. Specifically, Mr. Pepper's background was checked for any criminal history by the Personnel Department through local San Diego area conviction records and the California Department of Justice. Although no criminal history was identified for Mr. Pepper in the local area or in the California database, the post-employment offer background investigation was insufficient since he was a Michigan resident who did not reside in California.

Conclusion

Based on the absence of an in-depth investigation of Mr. Pepper's education, employment and professional background, we believe that the City did not conduct a

thorough background investigation prior to his hiring. As mentioned, we were able to verify two of his professional certificates, but because of privacy issues, we could not confirm education, past employment or other certifications. Moreover, Mr. Pepper has stated that all information on his resume is correct.

Section 3 – Whether the City Contacted and Documented all Listed References

For this section, we focused on City actions to conduct reference checks prior to hiring the Director of Purchasing and Contracting. Mr. Pepper listed the names of three individuals located in Detroit, Michigan as references at the time he submitted his resume, which were:

- Former Detroit Public Schools Board member (and former Chair of the Board’s Committee on Procurement and Contracts)
- Executive Director, Department of Technology and Information Services, Detroit Public Schools
- Gallery owner and civic leader from Detroit

According to the CFO, none of these references were contacted prior to Mr. Pepper being offered and accepting the Director of Purchasing and Contracting position. However, Mr. Pepper provided the names of two local references during his initial telephone interview with the CFO. The CFO stated that since these two individuals were in San Diego, they were contacted by the Deputy Chief Operating Officer of Public Works in-lieu of the original named references. The contemporaneous notes taken during the reference interviews and reflected brief phrases regarding the individuals’ perspective on Mr. Pepper’s work. Each had shared positive comments about Mr. Pepper’s experience and skills.

These local individuals are managers from the Port of San Diego who had worked with Mr. Pepper in the past at the Dallas-Fort Worth International Airport. According to Mr. Pepper’s resume, he held the position of Vice-President, Procurement and Materials Management at the Dallas-Fort Worth International Airport from 1987 to 2001—a position he held prior to his employment with the Detroit Public Schools. Consequently, both references’ knowledge of Mr. Pepper’s work experience was at least eight years old at the time they were interviewed.

The CFO told us that she did not contact any Detroit Public Schools contacts or other Detroit-based references provided by Mr. Pepper because the local San Diego references had credible reputations and would be reliable references. (In March, after Mr. Pepper was hired, the CFO called the former Detroit Public Schools Board Member when concerns over his role in the Detroit Public Schools investigation surfaced. See Section 4 of the report.)

Conclusion

The City did not contact the references Mr. Pepper originally submitted with his resume that would have reflected his most recent work experience. Although the notes taken by the Deputy Chief Operating Officer of Public Works during discussions with the two San Diego Airport references were well documented, the knowledge of Mr. Pepper's work by these two references was based on their contacts with him eight years prior.

Consequently, we find that the reference checks conducted were insufficient to obtain any current information regarding Mr. Pepper's work with his last employer—the Detroit Public Schools where he was employed from 2001 to August 2007.

Section 4 – The Extent to Which City Officials were Formally or Informally Made Aware of Issues Concerning the Problems in the Detroit Public Schools' Purchasing Office and What Role the Employee Played in Them

During the employment interviews, the CFO and Deputy Chief Operating Officer of Public works met together as a “panel” and asked a pre-determined set of questions of each candidate. Mr. Pepper was first interviewed in a phone call with the CFO, and on February 14, 2008, he had face-to-face interviews in San Diego with the CFO and Deputy Chief Operating Officer of Public Works, and then by the Chief Operating Officer (COO) and CFO later that day. During these interviews, Mr. Pepper described that his relationship with the Detroit Public School Board was “contentious” and he had both supporters and detractors among Board members. He also mentioned that he had resigned in August 2007, along with three other managers after a new superintendent was hired. Consequently, he stated that the dates of employment with the Detroit Public Schools on his resume needed to be updated. In an interview with us, Mr. Pepper stated that he worked one or two months under the new superintendent and resigned because of the changes implemented that affected his department, including being “micro-managed.”

In early March, the CFO received information from the Personnel Department that originated from a complaint regarding the City's hiring of Mr. Pepper. Specifically, the complaint brought to light investigations associated with the Detroit Public Schools' Department of Risk Management related to allegations of improper contracting practices as well as illegal wire transfers. As a result, the CFO contacted Mr. Pepper to inquire why he had not previously told the City about the Detroit Public Schools investigation and to request clarification as to his role in the investigation.

In response, Mr. Pepper prepared a “Memorandum for Record,” dated March 7, 2008, in which he described the situation at the Detroit Public Schools and stated that his role in the matter was that of a whistleblower bringing the issue to the attention of the chairperson of the Detroit Public Schools Board's procurement committee, Ms. Paula Johnson.

The CFO also informed us that she and the COO met with Mr. Pepper either before he officially started or the day he started work to discuss his possible involvement with the suspected fraud. According to the COO, he was prepared to rescind Mr. Pepper's offer (as an unclassified employee) if he had reason to suspect that Mr. Pepper had any involvement in the Detroit Public Schools illegal wire transfers. After the interview with Mr. Pepper, and with the CFO's input regarding her investigation into the matter, the COO allowed Mr. Pepper to fill the position.

To clarify Mr. Pepper's role in the matter, in early March 2008, the CFO contacted Ms. Johnson—a former Detroit Public Schools Board Member and one of the original Detroit-based references Mr. Pepper had provided. In our interview with the CFO, she stated that the former Detroit Public School board member and chair of the procurement committee believed Mr. Pepper was a hard worker, worked long hours and was professional. The CFO's contemporaneous notes of this conversation reflect such statements as “chose the right thing” and “lot of integrity,” but do not reflect detail of her conversation with Ms. Johnson concerning the Detroit Public Schools investigation.

During a phone interview we had with Ms. Johnson, the information she provided supported Mr. Pepper's description of his role as a whistleblower, that he was not a subject of the investigation, and the CFO's notes related to Mr. Pepper's work performance.

During our review, we identified several audit reports associated with Mr. Pepper's tenure as Chief Contracting Officer for the Detroit Public Schools. For example, audits conducted by KPMG and Plante & Moran in 2004, 2005, 2006 and 2007 cited significant findings related to his Department, such as:

- Procurement controls being over-ridden;
- Inadequate internal controls over procurement of goods and services;
- Contracts entered into without open and competitive bidding; and,
- Contracts lacking federal suspension and debarment certifications.

Mr. Pepper was aware of these findings, and in an interview with us stated that when he arrived at the Detroit Public Schools the contracting and procurement operations were in a “shambles” and that it is much better now than when he arrived. He also stated that when issues were raised by the auditors, he worked to rectify them in the following year. Also, Mr. Pepper asserted that several of the findings were caused by user departments making purchases without following purchasing protocols, such as creating purchase orders after vendors had already completed the work. We did not follow up to verify Mr. Pepper's statements regarding prior audits since this was not within the scope of this audit.

On March 2, 2009, the Michigan Governor appointed Mr. Robert Bobb as the Emergency Financial Manager for the Detroit Public Schools. On March 23, 2009, Mr. Bobb appointed Mr. John Bell, a former FBI agent, as Inspector General of the Detroit

Public Schools. We spoke with John Bell on July 10, 2009 and were told the contracting practices Mr. Bobb and he found when they arrived at the Detroit Public Schools were “haphazard” and lacked basic controls—a condition that he believed Mr. Pepper must have known when Mr. Pepper was employed there.

Conclusion

Prior to Mr. Pepper being hired, the only information the City had about his Detroit Public School work experience was his statement that the Detroit School Board was “contentious” and that he had supporters and detractors among Board members. The issues related to an investigation at the Detroit Public Schools did not surface until after Mr. Pepper was appointed as Director of Purchasing and Contracting. Moreover, audit report findings related directly to contracting problems within the Detroit Public Schools during the period when Mr. Pepper was Chief Contracting Officer were not discussed nor raised during the hiring process. Consequently, the City was neither formally nor informally made aware of the problems at the Detroit Public Schools prior to his hiring.

Section 5 – The Materiality of This Information and What Weight it Should Have Been Given in the City’s Hiring Decision

The CFO informed us that she believes that Mr. Pepper has been a very good employee in the time he has been employed with the City of San Diego and that this is the measure that is most important. We did not analyze Mr. Pepper’s performance as Director of Purchasing and Contracting nor did we request performance feedback from the managers of the Department of Purchasing and Contract’s client departments.

In the final analysis, as discussed in Section 6, evidence suggests that Mr. Pepper was not directly involved in the Detroit Public School wire transfer payments that are the subject of the federal investigation. We have been told by an independent party that the actions took place in the school’s Risk Management department and not the Contracting department that Mr. Pepper oversaw. In addition, this independent party in Detroit tends to corroborate Mr. Pepper’s statements that he was not involved with the wire transfer problems identified with Risk Management. The Detroit contact based his opinions on Mr. Pepper’s statements included in notes prepared during prior independent investigations of the wire transfer issue. Further, he felt that Mr. Pepper “had not seen anything” related to the wire transfer problems prior to their discovery.

Recently, the Detroit Public School filed a civil lawsuit against two Risk Management officials (plus 12 vendors) for damages resulting from the wire transfers they made.⁸ Mr. Pepper is not a defendant in that lawsuit and will likely be deposed in support of the Detroit Public Schools.

⁸ City of Detroit v. Hill, et al. Wayne County Circuit Court, Case # 08116305.

Additionally, according to Mr. Pepper, he brought the issues to the former chair of the Detroit Public School's procurement committee who also advised him to consult with an attorney regarding whistleblower protection, which he stated he did. During an interview we had with Ms. Johnson, the information she provided supported Mr. Pepper's assertion that he brought the issues to the procurement committee and that he was not a subject of the investigation.

Conclusion

The question of whether Mr. Pepper should have shared the Detroit Public School problems with the CFO and Deputy Chief Operating Officer of Public Works during the first interview or whether they should have asked more specific questions remains unresolved. However, if the City of San Diego employed a more rigorous pre-employment background check process, the problems at the Detroit Public School may have surfaced and Mr. Pepper could have been asked specific questions about his role in the matter prior to being offered the position. The result would have likely remained the same—his being offered the position—however, the City's decision would have benefitted from the vetting of these issues prior to, rather than after, making an offer of employment.

Section 6 – The Employee's Participation in the U.S. Attorney's Investigation Regarding the Detroit Public Schools

Mr. Pepper informed us that he has had several contacts with the FBI starting in 2007 and continuing to present and indicated he was told that he is not a subject of the investigation. Rather, he believes he will likely be called to testify as a witness if the investigation results in a federal prosecution. We attempted to contact the FBI agent that Mr. Pepper told us he had spoken to and the agent did not return our phone calls.

Additionally, Mr. Pepper also told us that he had testified before a Federal Grand Jury in Detroit about problems at the Detroit Public Schools. When we spoke to the Detroit Public Schools Inspector General—a former FBI agent in the Detroit office—it was his opinion that the FBI would not likely share information with us while the case was still with the Federal Grand Jury. He also confirmed that the FBI contact Mr. Pepper had given us was an agent in the Public Corruption Unit of the Detroit FBI office, and that the agent was assigned to the Detroit Public Schools' investigation.

Conclusion

While we are unable to verify the extent of Mr. Pepper's participation in the U.S. Attorney's investigation into the Detroit Public Schools, we also found no evidence suggesting he is a subject of the current investigation into the wire transfer payments.

Section 7 – Whether the Employee Made any Material Misrepresentations and/or Withheld any Material Information During this Process

Overall, we did not identify any material misrepresentations by Mr. Pepper. He corrected the initial error on his resume concerning his tenure with the Detroit Public Schools verbally during his first telephone interview with the CFO.

On the issue of the wire transfer investigation at the Detroit Public Schools, we found no evidence that he was asked to share such information during his telephone interview with the CFO or during his face-to-face interviews with the CFO, Deputy Chief Operating Officer for Public Works or COO. Whether such information should have been volunteered by Mr. Pepper given the magnitude of the Detroit Public Schools investigation is another matter best addressed by the Appointing Authority.

Further, based on our follow-up inquiries concerning the Detroit Public Schools wire transfer investigation, we believe two key areas discussed by Mr. Pepper in his March 7, 2008 Memorandum for Record conform to our independently verified information regarding his:

- Role involving the initial audit inquiry of wire transfers circumventing the procurement process and internal controls; and,
- Reporting Risk Management’s activities to higher authorities within the Detroit Public Schools.

Nonetheless, it appears that there were several missed opportunities that, alone or combined, would have likely uncovered important information that the City could have considered in the analysis of the candidate’s suitability for the position, such as:

- Investigated the accuracy of the work history, education or professional certifications Mr. Pepper presented in his resume.
- Required Mr. Pepper to certify in writing that the information he provided during the hiring process was truthful—a standard requirement of all individuals applying for civil service positions, but not a requirement for uncertified personnel. However, Mr. Pepper verbally asserted to us that all information contained on his resume is truthfully represented.
- Requested information regarding any problems at the Detroit Public Schools or matters relating to criminal investigations, grand jury probes, or civil lawsuits, including conducting Internet searches.
- Inquired about any audit findings issued during his tenure with the Detroit Public Schools related to contracting practices.

- Spoken with each of the Detroit-based references originally provided by Mr. Pepper.

Conclusion

We did not identify any material misrepresentations made by Mr. Pepper during the recruitment and hiring process; however, as stated in Section 2, we were unable to verify or validate employment, education or most professional certifications claimed due to the lack of authorization. Additionally, discussions inquiring about contracting-related audit findings or pending investigations may have also been valuable in assessing Mr. Pepper's past management history prior to a hiring decision – however, none of this information was part of any interviews Mr. Pepper had with the City nor did the City conduct its own review of relevant available public information.

Summary – Overall Conclusion and Recommendation

It appears that the City of San Diego complied with existing Charter or City Regulations in appointing Mr. Pepper as the Director of Purchasing and Contracting in March 2008. Because this position is unclassified, few specific recruitment and hiring processes are required, and the Mayor is given wide latitude to choose the City's management team. This flexibility is not unique to San Diego as we have seen similarities in many municipalities throughout California. At-will or unclassified positions offer an opportunity to bring talented management from outside of the city or state government to help fulfill the vision of the respective governor, mayor or legislature. Further, at-will managers who are not successful at bringing effectiveness or efficiency to their departments can be quickly replaced. The fact that most state and municipal governments offer this type of flexibility is a testament to its value as perceived by legislative bodies and voters.

However, the pre-employment background investigations the City of San Diego conducted in hiring Mr. Pepper were minimal and inconsistent with approaches the City has used in some other unclassified position recruitments it has conducted in the past. While we did not evaluate Mr. Pepper's performance while with the City of San Diego, the CFO stated that his work has been very good.

Moreover, we did not identify any errors in his resume or background information once his tenure with the Detroit Public Schools was updated. In the matter of the Detroit Public Schools investigation, we were able to confirm many of Mr. Pepper's contentions regarding his role and he does not appear to currently be a subject in the FBI investigation nor a defendant in the school district's civil suit.

Nonetheless, the pre-employment background investigation of Mr. Pepper's employment history, education and professional certifications was insufficient for a position with the level of authority afforded the Director of Purchasing and Contracting. Additionally, critical information regarding his most recent experience with the Detroit Public Schools

was not pursued until after he was offered the position. At that time, the COO allowed Mr. Pepper to become the Director of Purchasing and Contracting once he was convinced Mr. Pepper had no involvement in the Detroit Public Schools' improper wire transfers. Furthermore, because the references that were contacted had worked with Mr. Pepper at the Dallas-Fort Worth International Airport more than eight years ago, none had knowledge of Mr. Pepper's recent employment history with the Detroit Public Schools.

Consequently, we believe the City of San Diego should revamp the processes it uses to recruit and hire unclassified upper-level officials to be more rigorous, consistent and standardized.

Recommendations

The City of San Diego should do the following:

- Re-issue the Unclassified Recruitment and Hiring Process Guidelines to eliminate the exceptions on using the Personnel Department for unclassified recruitment and hiring activities of upper-level officials.
- In addition to the California DOJ check, conduct criminal background checks utilizing the FBI national criminal database (currently utilized when recruiting sworn classified personnel) for non-California resident candidates as well as any candidates that will be responsible for safeguarding the City's assets.
- Direct the Chief Operating Officer to assign an appropriate City Department the responsibility to conduct the following steps in hiring upper-level officials:
 - > Lead unclassified higher-level official recruiting efforts, including creating, posting, and advertising job announcements and gathering resumes.
 - > Obtain candidate statements of authentication regarding qualifications and background in writing (use City application as a guide).
 - > Validate and verify education, experience and professional credentials as well as conduct media/Internet background searches prior to conducting interviews.
 - > Screen applicants and forward to hiring departments the best qualified candidates based on resume experience prior to formal interviews.
- Direct the Assistant Chief Operating Officer to assure that the departments hiring upper-level officials follow these interview and selection processes:
 - > Using an interview panel of persons knowledgeable of the position being filled.
 - > Establishing a preset list of questions to ask each candidate, including asking about successes and challenges faced in prior employment.
 - > Recording or taking notes of questions asked and answered by all interviewees.

- > Assuring that the interview panel reaches a consensus decision prior to offering a position.
 - > Maintaining appropriate documentation to support selection decisions.
- Assure that the Assistant Chief Operating Officer participates with the hiring department in the negotiation of salary, benefits and miscellaneous expenses, such as moving costs, for all unclassified upper-level officials.



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: August 21, 2009

TO: Eduardo Luna, City Auditor

FROM: Jay M. Goldstone, Chief Operating Officer 

SUBJECT: Response to Review of the Hiring Process of the Director of Purchasing and Contracting

The following is in response to the recommendations contained in the Report entitled "Review of the Hiring Process of the Director of Purchasing and Contracting". The most important finding in this Report is not addressed in the recommendations, as there is no avenue by which to correct the wrong done to the name of Hildred Pepper Jr., the City's Director of Purchasing and Contracting.

As such, I am compelled to begin this memorandum by noting that the auditors found no evidence to support the spurious attempts to link Mr. Pepper to an FBI investigation into Detroit Public Schools. The auditor, instead, found evidence that Mr. Pepper was uninvolved in the activities under investigation, and that when he became aware of those activities he reported them to his superiors.

My response to this finding is that it affirms the character and integrity of Mr. Pepper, as well as the decision the City made to hire him. Elsewhere, the audit cites improvements that can be made in the City's hiring processes. None of those recommendations can be read as a reflection on Mr. Pepper, his qualifications or his abilities.

Recommendation 1: Re-issue the Unclassified Recruitment and Hiring Process Guidelines to eliminate the exceptions on using the Personnel Department for unclassified recruitment and hiring activities of upper-level officials.

Response: Management partially agrees. The City will reassign unclassified recruitment and hiring processes to the Human Resources Department. Exceptions on using the Human Resources Department for unclassified recruitment and hiring will not be permitted. The Administrative Regulation will be reviewed and modified as appropriate and will then be re-issued to provide clear policy and procedures on the recruitment and hiring of unclassified personnel.

Recommendation 2: In addition to the California DOJ check, conduct criminal background checks utilizing the FBI national criminal database (currently utilized when recruiting sworn classified personnel) for non-California resident candidates as well as any candidates that will be responsible for safeguarding the City's assets.

Response: Management agrees. The City will continue to conduct the California DOJ check for conditionally offered candidates who are California residents. The City will also conduct, as appropriate and available national criminal database check for conditionally offered candidates who are non-California residents as well as any conditionally offered candidates for positions that are responsible for safeguarding the City's assets.

Recommendation 3: Direct the Chief Operating Officer to assign an appropriate City Department the responsibility to conduct the following steps in hiring upper-level officials.

- Lead unclassified higher-level official recruiting efforts, including creating, posting, and advertising job announcements and gathering resumes.
- Obtain candidate statements of authentication regarding qualifications and background in writing (use City application as a guide).
- Validate and verify education, experience and professional credentials as well as conduct media/Internet background searches prior to conducting interviews.
- Screen applicants and forward to hiring departments the best qualified candidates based on resume experience prior to formal interviews.

Response: Management agrees. The City will assign unclassified recruitment and hiring processes to the Human Resources Department. The recommended steps will be incorporated into the Administrative Regulation that will be promulgated to provide clear policy and procedures on the recruitment and hiring of unclassified personnel.

Recommendation 4: Direct the Assistant Chief Operating Officer to assure that the departments hiring upper-level officials follow these interview and selection process:

- Using an interview panel of persons knowledgeable of the position being filled.
- Establishing a preset list of questions to ask each candidate, including asking about successes and challenges faced in prior employment.
- Recording or taking notes of questions asked and answered by all interviewees.
- Assuring that the interview panel reaches a consensus decision prior to offering a position.
- Maintaining appropriate documentation to support selection decisions.

Response: Management partially agrees. The City will assign unclassified recruitment and hiring processes to the Human Resources Department. Accordingly, the Human Resources Director will be responsible for assuring that departments follow the recommended interview and selection process, which will be incorporated into the Administrative Regulation that will be promulgated to provide clear policy and procedures on the recruitment and hiring of unclassified personnel.

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Recommendation 5: Assure that the Assistant Chief Operating Officer participates with the hiring department in the negotiation of salary, benefits and miscellaneous expense, such as moving costs, for all unclassified upper-level officials.

Response: Management agrees. The Assistant Chief Operating Officer will oversee and approve all Mayoral unclassified employee salary, benefits and miscellaneous expenses to ensure an appropriate level of review and consistency within Mayoral departments. The Assistant Chief Operating Officer will also offer consultation, as requested, to non-Mayoral departments on unclassified employee salary, benefits and miscellaneous expenses.

cc: Honorable Mayor Jerry Sanders