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General

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January 5, 2023

Via Electronic Mail

Jaime Torres-Springer
President
MTA Construction & Development
2 Broadway, 20th Floor
New York, NY 10004

Richard Davey
President
New York City Transit
2 Broadway, 30th Floor
New York, NY 10004

Re: Contractor Contract Compliance
MTA/OIG #2023-01

Dear Mr. Torres-Springer and Mr. Davey:

The Office of the MTA Inspector General (OIG) substantiated an anonymous allegation that an MTA Construction and Development (MTA C&D) vendor (Construction Company1) violated its contractual warranty against offering inducements and gratuities and the MTA Vendor Code of Ethics (Vendor Code of Ethics): Construction Company 1 employed the nephew (the Nephew) of C&D's Assistant Vice President/Deputy Executive (the Executive) for Capital Programs and assigned the Nephew to a project managed by the Executive.¹ OIG also found that

¹ The conduct of the Executive and his subordinates who managed Construction Company 1's contract was discussed in MTA/OIG #2022-14.

Construction Company 1 violated the Vendor Code of Ethics when it failed to inform its employees of their obligations under the Vendor Code of Ethics, did not collect required acknowledgements from them, and neglected to maintain required certifications that it had satisfied these obligations.

Additionally, OIG found that Construction Company 1 failed to provide a full-time and exclusive Project Manager (the Project Manager) as contractually required. OIG discovered that the Project Manager was simultaneously working as a quality manager/project manager for a different construction company (Construction Company 2) on an MTA Small Business Mentoring Program (SBMP)² contract.

OIG recommends that the MTA conduct a responsibility hearing to determine whether Construction Company 1 is a responsible vendor. Further, MTA should determine whether Construction Company 1 can claim a credit for the value of the Project Manager's absence from this contract.

I. BACKGROUND

A. Construction Company 1

Construction Company 1 was founded by the Owner in 2005. It has been awarded four contracts by the MTA since October 2015, for a total value of \$36,999,501. On March 6, 2020, Construction Company 1 was awarded contract C-40257 (valued at \$14,668,239) for Façade Repair and Window Replacement at the East New York Bus Depot. The Executive was the Program Officer for the contract. Construction Company 1 is expected to complete work on this contract by the end of 2022. Construction Company 1 received overall satisfactory ratings in the All-Agency Contract Evaluation System (ACE)³ on all prior contracts and also on C-40257 until June 2022, when it received an overall "Marginal" evaluation after an onsite accident resulted in a contractor employee breaking his ankle.⁴

² The MTA SBMP pairs small firms with a large, established construction firm to provide mentoring in managing MTA contracts. The SBMP firms are pre-qualified and receive general business training; construction expertise; access to working capital, experience working with MTA construction projects; and fast-track payments.

³ ACE requires managers to prepare interim evaluations of contractor performance every six months, evaluating five separate performance indicators: quality, management, safety, scheduling, and Minority/Women/Disadvantaged Business compliance, as well as an overall performance rating. Evaluators can rate a contractor's performance as satisfactory, marginal, or unsatisfactory. ACE procedures require that evaluators provide contractors with written notice of performance deficiencies and give them time to correct them.

⁴ MTA/OIG Report #22-14 details some of the complaints the C-40257 Project Management team had with Construction Company 1's performance.

C-40257’s specifications require that Construction Company 1 assign a “full time Project Manager exclusively to this Project until its completion.” The Project Manager, or his duly authorized designee, is required to be at the worksite whenever work is being performed, for all inspections and testing, and from the beginning to completion and acceptance of the contract work. The Project Manager’s responsibilities include coordinating all work performed onsite and providing daily status reports to the MTA Resident Engineer.

The contract also requires Construction Company 1 to employ and assign a Contractor Safety Engineer (CSE) and a full-time Contractor Safety Supervisor (CSS), who will cover shifts that the CSE is unavailable to cover, such as weekend and holiday work when the CSE is not working. The CSE is required to have a minimum of five-years safety experience, and the CSS is required to have “a minimum of two years of safety or safety related experience”, be familiar with the work performed, and maintain specified safety certifications.

Additionally, the contract, in Special Conditions section “SC 8”, titled “Security”, requires that “prior to each working shift, all Contractor and Subcontractor personnel” be identified to the MTA Resident Engineer on the Contractor Access form and that they produce photo identification to ensure the Resident Engineer knows who is onsite.

Finally, the contract’s Information for Bidders, paragraph 25, required Construction Company 1 to certify its compliance with the Vendor Code of Ethics, which is incorporated into the contract in its appendix.

B. Construction Company 2

Construction Company 2 was accepted into the SBMP in 2017. In June 2021 it was awarded C-43052, the upgrade of Communication Room 327A Longwood Avenue Station; this was its first SBMP contract award. In its Responsibility Questionnaire it disclosed that it had been a subcontractor to Construction Company 1 on a prior contract. Construction Company 2’s approved project manager was the Quality Manager for C-40257, and its approved “Alternate Project Manager/Quality Manager” was the Project Manager for C-40257.

II. INVESTIGATION

OIG conducted interviews with the Project Manager, the Owner, and MTA’s Project Management Team (Resident Engineer, Construction Manager, and Project Chief Executive Officer) on both C-40257 and C-43052. OIG also reviewed the Executive’s and the C-40257 Project Management Team’s emails as well as other relevant documents associated with C-40257. This review revealed that Construction Company 1 employed the Executive’s nephew as

the CSS, despite not being qualified for the position as detailed in MTA/OIG report #2022-14. Additionally, OIG was provided with copies of the meeting minutes on C-43052 for the March 19, 2020, Construction Kick-Off meeting and the May 29, 2020, Field Kick-Off meeting after Construction Company 1's Project Manager and Owner were interviewed.

Although OIG made multiple requests through Construction Company 1's counsel, Construction Company 1 failed to provide OIG with copies of employee acknowledgements that they had "received, read, underst[ood], and [would] comply with the MTA Vendor Code of Ethics" and the requisite Vendor certifications.

A. Construction Company 1 Violated the MTA Vendor Code of Ethics

1. Summary of Findings for MTA/OIG Report #2022-14

As detailed in MTA/OIG Report #2022-14, Construction Company 1 offered the Nephew a job in June 2020, contingent on his completing Occupational Safety and Health Administration (OSHA) training and certification. Approximately two months after being interviewed by Construction Company 1 personnel and completing his OSHA training, the Nephew began work with the company. The Nephew worked for Construction Company 1 for approximately nine months before his resume was submitted to the Resident Engineer to be approved as the CSS. The MTA Project Management team admitted that the Nephew did not have the experience required by the contract specifications; nevertheless, he was approved by the MTA Project Management Team and was employed as the CSS until May 2022. At that time, the CSE was removed from the project after a beam fell on and broke a contractor's employee's ankle. Construction Company 1 proposed replacing the CSE with the Nephew, despite his lack of qualifications. MTA C&D Safety rejected the Nephew and noted that he was not qualified to be the CSS, a position he had already held for about a year.

When asked how he came to be employed by Construction Company 1, the Nephew initially told OIG that he had walked off the street onto a construction site and gave his resume to the Project Manager. He also denied that he was related to the Executive. He later retracted that story, admitted he was the Executive's nephew, and told OIG that he provided his father with his resume and did not know what his father did with it. He explained that shortly thereafter the Project Manager contacted him about employment with Construction Company 1. The Nephew also told OIG that the Project Manager had advised him to tell OIG the fabricated story, and that both the Project Manager and the Owner told him to tell OIG that he was not related to the Executive. Following this interview, the OIG found that the Nephew's resume was emailed to the Executive on June 9, 2020.

Since issuing MTA/OIG Report #2022-14, OIG has interviewed the Project Manager and the Owner about their decision to hire the Nephew and assign him to C-40257. OIG also reinterviewed the PCEO.

2. Interviews

The Project Manager

The Project Manager told OIG that Construction Company 1 was awarded C-40257 in February 2020, but work was delayed due to Covid and other disruptions. Although trailers were installed outside the East New York Depot in June 2020, the Project Manager worked from a cubicle in the East New York Depot in June and July because the trailers did not yet have an internet connection. The Project Manager claimed he first met the Executive during this time and would sometimes see him while working in the East New York Depot.

The Project Manager claimed that sometime in June he found the Nephew's resume on his desk at a project in Midtown Manhattan, where he was no longer working. He claimed that he did not know who left the resume and there was not a note or cover letter attached to the resume. He told OIG that at that time he was transitioning staff from the Midtown Manhattan project to the East New York project, and he needed a "competent person" to cover site safety at the Midtown project. They were struggling to find employees due to Covid, so he called the Nephew, who he acknowledged to OIG had no construction or safety experience, because he had a college degree.

The Project Manager told OIG that he and the Owner interviewed the Nephew in the East New York Depot trailer in June and July 2020. The Project Manager explained that the Nephew was offered a job at that time because he had a college degree and he "seemed smart". The Nephew was told to complete his OSHA training courses. Two months after the interview and after completing his OSHA training, the Nephew began working for Construction Company 1.

The Nephew was first assigned to the Midtown Manhattan project as the safety "competent person." The Project Manager told OIG that the Nephew was only required to have the OSHA-30 certification to be the safety manager on this project, pursuant to NYC Department of Buildings and the Federal General Services Administration regulation. In the spring of 2021, the Midtown project was winding down so the Nephew and the remaining staff were transferred to C-40257. The Project Manager submitted the Nephew's resume to the Resident Engineer, who initially objected that the Nephew did not have the required experience. But because the Project Manager did not have any other candidates the Nephew was ultimately approved.

The Project Manager told OIG that at some point he asked the Nephew if he had a relative who worked for MTA and the Nephew confirmed that he did but did not know where his relative worked. The Project Manager claimed that he only learned that the Nephew was related to the Executive after an “East New York Depot union worker, possibly a mechanic” asked him whether the OIG had interviewed the Project Manager about the Nephew and the Executive’s relationship. The Project Manager did not recall whether he told the Owner that the Nephew was related to the Executive. The Project Manager did not recall ever receiving or reading the MTA Vendor Code of Ethics.

The Project Manager explained that the MTA removed the project CSE after the April 2022 accident and Construction Company 1 needed to find a replacement because work could not continue without a CSE. The Project Manager told OIG that the PCEO directed him to submit the Nephew even though he lacked the required five-years safety experience. The Nephew was assigned the CSE responsibilities for about a week until the Resident Engineer informed the Project Manager that MTA C&D Safety had rejected the Nephew as the CSE.

The Owner

The Owner told OIG that Construction Company 1’s project management staff for C-40257 was hired either through an online recruiting website or through word of mouth. The Project Manager was hired by Construction Company 1 around 2012 as a quality manager for an earlier roofing and masonry project. The Owner explained that he creates a project management team by first selecting a project manager who in turn selects the rest of the team. The Owner told OIG that the Project Manager provided him with the Nephew’s resume and told the Owner that someone had given it to him but did not recall who it was. The Owner met the Nephew at the East New York Depot. The Owner directed the Project Manager to make sure the Nephew completed his OSHA 30 training. Two months later, after the Nephew completed the OSHA training, he began working as a “competent person” for Construction Company 1 on a midtown Manhattan project. The Owner said he did not know who decided to submit the Nephew for the C-40257 CSS position and was unaware that the contract required the CSS to have two years of safety experience.

The Owner told OIG that he did not know the Executive and the Nephew were related until after the Nephew was interviewed by the OIG, when the Project Manager told him. The Owner believed that the Nephew was being interviewed by the OIG about the April accident and said that he was concerned when he learned that the Nephew was related to the Executive. He did not address the issue because the Nephew resigned shortly after the OIG interview. The Owner stated that he did not know that the Executive and Nephew had the same surname, claiming that when the Executive was included in emails only his first name was displayed. The

Owner said that he is “somewhat” familiar with the Vendor Code of Ethics as a contract specification but did not know whether he had completed the certifications required by Section 8 of the MTA Vendor Code of Ethics.

Project Chief Executive Officer

The PCEO told the OIG that the Owner and Project Manager both attended the Construction Kick-Off meeting on March 19, 2020, where the Executive introduced himself to Construction Company 1’s team, reviewed the “information for bidders, the contract terms and conditions, general requirements, and specifications.” Both the Owner and Project Manager also attended the May 29, 2020, Field Kick-Off meeting, which was attended by the Executive. The PCEO told OIG that both the meeting minutes and the attendance sheet would have been circulated to the Project Manager and the Owner; both attendance sheets contained the Executive’s surname. In addition, the PCEO said that the Owner and the Executive attended numerous meetings together over the course of the project. The PCEO was skeptical of the Owner’s claim that he did not know the Executive’s surname.

The PCEO denied that he told the Project Manager to replace the CSE with the Nephew after the April 2022 accident. The PCEO said that the Nephew’s resume was submitted for approval as the CSE by Construction Company 1 to the Resident Engineer, who in turn submitted it to MTA C&D Safety. MTA C&D Safety rejected the Nephew as unqualified and added that he was not qualified for the CSS position. The PCEO added that, by this time, he knew the Nephew was related to the Executive.

The PCEO informed OIG that the Project Manager was removed from C-40257 on October 28, 2022.

B. Construction Company 1 Did Not Provide the Contractually Required Full-Time Exclusive Project Manager

1. Document Review

OIG’s review of the MTA project management emails as well as the Daily Logs prepared by the MTA Resident Engineers on C-40257 revealed that MTA personnel were concerned about the Project Manager’s absence from the site when work was being performed. Based on the MTA Daily Logs, as well as the Contractor Access forms submitted by Construction Company 1, OIG estimates that the Project Manager was absent from the C-40257 site 81 days of 334 days,

or 24% of the time from the beginning of onsite work through February 2022.⁵ OIG's review of records also revealed that the C-40257 MTA Project Management team advised the Owner about contract performance problems including the Project Manager's absence and recurring safety issues. Specifically, the MTA Project Management team, on multiple occasions, reminded both the Project Manager and the Owner that all of Construction Company 1's employees were contractually obligated to sign the Contractor Access form every day that they were onsite. During their OIG interviews each member of the MTA Project Management team confirmed that the Project Manager's refusal to sign the Contractor Access forms was a problem throughout the project and was brought to the attention of Construction Company 1's project team and Owner. OIG reviewed the Contractor Access forms and confirmed that the Project Manager did not sign them.

OIG also discovered, through its review of materials in Asite,⁶ that the Project Manager and Construction Company 1's C-40257 Quality Manager (the Quality Manager), were both working for Construction Company 2 on C-43052, a contract awarded through the SBMP for the Upgrade of Communication Room 372A on the Longwood Avenue Station, Pelham Line. OIG found that the Project Manager and the Quality Manager both attended the MTA Qualification Hearing on May 5, 2021. The Project Manager (for Construction Company 1) identified himself as the "Senior Project Manager for (Construction Company 2)" and the Quality Manager (also for Construction Company 1) identified herself as the "Project Manager" for Construction Company 2. The Quality Manager's resume stated that she had ended her employment with Construction Company 1 in February 2021, however the Project Manager told OIG, and Construction Company 1's bank records reflect, that she remained on Construction Company 1's payroll through August 2021. Documents filed in Asite, including progress meeting minutes and the MTA Daily logs prepared by MTA's resident engineer indicate that the Project Manager was engaged in work on C-43052 site on at least 20 days from August 2021 through February 2022.⁷

⁵ This number is based on notations in the MTA Daily Log that the Project Manager was not present at the site or left the site early and did not include days when work was not performed. The Detailed Cost Breakdown for Construction Company 1 includes a \$10,000 per month line item cost for the Project Manager, which is approximately \$400 per day.

⁶ Asite is the MTA's electronic construction project management site. An electronic file is created for each contract and all project documents should be uploaded into the designated file.

⁷ C-43052 was awarded in June 2021 and Asite contains notes of meetings as early as July 2021 and the project appears to have reached Substantial Completion at the end of February 2022. Arguably, MTA was deprived of a full time and exclusive Project Manager on C-40257 for the full duration of C-43052 and could claim a credit for the full value of the Project Manager's work for that time.

2. Interviews

Project Manager

The Project Manager admitted that he had been told many times by MTA Project Management staff that he was required to sign the Contractor Access forms, the MTA's method of determining who is onsite every day. Nevertheless, he insisted that as long as a "competent person," which he believed to be either the Quality Manager or the field engineer, signed the log, work could begin on C-40257 for the day, and consequently he did not need to sign the form.⁸ He admitted that he was usually not at the project by 7 a.m., the time when the forms generally were completed and collected. He claimed that delays in public transportation made him late to the site, but that he frequently stayed until 5 or 6 p.m. He claimed that he would supervise the night work but conceded that he did not document this nor offer this explanation to anyone at the MTA.

When the Project Manager was asked about Construction Company 2, he told OIG that the company is owned by a friend and that he is a "consultant" for the company. The Project Manager acknowledged that he worked on C-43052 and described it as a short-term project that lasted from December 2021 through March 2022, with most of the work completed by February 2022. He claimed that the Quality Manager was the project manager until she left Construction Company 2 in March 2022. He admitted that he attended the Qualification Hearing for the contract in May 2021.

The Project Manager told OIG that he knew that C-40257 required that Construction Company 1 assign a "full time Project Manager exclusively to this Project until its completion." However, he told OIG that he believed the contract specification only required he be present for eight-hours, and those hours could include administrative work after the construction work was completed for the day. The Project Manager could not explain how his work with Construction Company 2 squared with C-40257's requirement that he be "exclusive" to that contract. The Project Manager told OIG that he did not tell the Owner about his work with Construction Company 2 but said that the Owner told him that he was able to make shop drawings for additional income.

⁸ The contract requires that the Project Manager's "designee" be approved by the MTA Resident Engineer. A designee was not approved for this project until October 22, 2021. Notably, the Nephew told OIG that he was frequently the first person at the project site.

The Owner

The Owner acknowledged that MTA's C-40257 project management team had complained to him about the Project Manager not signing the Contractor Access forms because it was a protracted problem.⁹ The Owner claimed he did not know that both his Project Manager and his Quality Manager for C-40257 were working for Construction Company 2 on an MTA Small Business Mentoring Program contract and that they both attended the May 2021 Qualification Hearing. While he initially claimed he was unfamiliar with Construction Company 2, he ultimately remembered that Construction Company 2 had been a subcontractor on a prior MTA project; the Project Manager had been the quality manager on that contract.

Small Business Mentoring Program Consultant Contract Manager

OIG interviewed the SBMP Consultant Project Manager (MTA Project Manager) who oversees C-43052. The point people for Construction Company 2 were the Project Manager and the Quality Manager, although the Quality Manager "disappeared" in spring 2022, when the Project Manager assumed the primary responsibility for the project. The MTA Project Manager confirmed that the Project Manager attended the progress meetings. The MTA Project Manager said that the Quality Manager was onsite a couple of times, but he considered the Project Manager to be the primary project manager.

Small Business Mentoring Program Field Representative

The SBMP Field Representative told OIG that he was onsite overseeing Construction Company 2's work on the project about 60% of the time, and the Project Manager and the Quality Manager were onsite together 80% of that time. He told OIG that he considered the Project Manager to be C-43052's project manager, and the Quality Manager to be the assistant project manager. The SBMP field representative said that either the Project Manager or the Quality Manager were onsite every day, and often both were onsite at the same time.

⁹ The Owner, through an email from Construction Company 1's counsel, told OIG that he spoke to the Project Manager, and was led to believe the issue was with the Project Manager's late arrivals. However, in a November 9, 2021, email sent to the owner by the Construction Manager, noted that "there are inconsistencies with Project staffing of the job and oversight @ East New York Depot." The same emails reminded the Owner of his obligation to have the Project Manager or authorized designee onsite.

III. POLICIES AND ANALYSIS

A. Contract C-40257 Non-Compliance

1. *Article 10.08 (F) No Inducement or Gratuities*

C-40257's article 10.08 (F)(2) states, in pertinent part, that the contractor warrants that it has not and will not offer inducements, such as "offers of employment or any other thing of value," to any official or employee of the MTA. As a remedy for breach or violation of this warranty, the MTA "shall have the right to cancel the contract without liability, or at its discretion, recover the full amount of the gratuity as well as "include the occurrence of such a breach or violation in assessments of the Contractor's responsibility in future bids."

Here Construction Company 1 breached this warranty when it hired the Executive's Nephew. At about the same time Construction Company 1's staff began working in the East New York Depot, the Executive received the Nephew's resume, and the Nephew was interviewed by Construction Company 1's Project Manager and Owner, then offered a job. The Nephew told the OIG that he received a call from the Project Manager shortly after he gave his father his resume. Less than nine-months later the unqualified Nephew was submitted and approved as Construction Company 1's CSS. Finally, the Nephew told OIG that the Project Manager instructed him to tell the false story he initially told OIG about how he was hired and deny that the Executive was his uncle.

2. *Specification 1K-Construction Management*

Section 1.2 of Specification 1K-Construction Management unambiguously states that Construction Company 1 was required to assign "a full time Project Manager exclusively to this Project until its completion." It further requires that the Project Manager or his duly authorized designee, subject to the approval by the Engineer", be "present at the Work Site to receive orders and directions from the Engineer, each and every workday that work is being planned or performed." The Project Manager is also required to "coordinate all the Work at the Work Site of his forces and subcontractors on a daily basis and inform the Engineer on a daily basis of the status of the work in progress and that planned for the next working day."

Here Construction Company 1 failed to provide a contractually required full-time exclusive Project Manager. Both the Project Manager and the Owner were repeatedly informed by the MTA Project Management team that it was dissatisfied with the Project Manager's attendance and attention to the project. Nevertheless, the Project Manager continued to ignore his obligations, so much so that he was considered the project manager on another MTA project

being performed in another borough. While the Owner disavowed knowing that two of his employees were simultaneously working on a second project for another construction company, he did not address the Project Manager's attendance issues, as they did not improve until after a construction accident at the East New York Depot in April 2022.

B. MTA Vendor Code of Ethics

1. §4.01 Zero Tolerance

The Vendor Code of Ethics, Section 4.01, prohibits vendors from giving a gift, directly or indirectly, to family members of an MTA employee "where such gift is made because of the Vendor's relationship with the MTA Employee."

Here, Construction Company 1 offered a job to the Nephew, even though he had no prior construction experience and could not work for two months until he completed OSHA training. Notably, the Project Manager's explanation about how he hired the Nephew tracked closely with the story that the Nephew retracted, with some notable exceptions. For example, the Nephew told OIG that in June he met the Project Manager at a project in Midtown Manhattan. However, the Project Manager told OIG that he found the resume on his desk at the Midtown site, but nevertheless interviewed the Nephew at the East New York Depot.

The Executive received the Nephew's resume on his MTA email in early June 2020. Notably, the Project Manager and the Owner also met the Nephew at the company's East New York trailer, and the Nephew was offered the job during one of those meetings in June. Yet both denied knowing the Nephew was related to the Executive at the time he was hired. These accounts, however, were contradicted by the Nephew's revised statements to OIG. After all, the Nephew told OIG that the Project Manager told him to tell OIG the fabricated story about walking onto the construction site. The Nephew also told OIG that both the Project Manager and the Owner counseled him to tell OIG he was not related to the Executive. Additionally, the PCEO assured OIG that it was implausible that the Owner did not know the Executive's surname since the Owner and the Executive both participated in meetings from the kick-off and throughout the project.

2. §8.01 Gift Certifications

The Vendor Code of Ethics, Section 8.01, states, in pertinent part that every bid or proposal made to and every contract with the MTA must contain a certification that no individual or entity has been or will be offered or given any Gift in connection with such bid or contract and that no conflicts of interest exist.

Here, Construction Company 1 failed to submit or maintain the certification required by the Vendor Code of Ethics and did not, therefore, comply with its requirements.

3. *§8.02 Distribution of Vendor Code of Ethics and Vendor's Participating Employee Acknowledgements*

The Vendor Code of Ethics, Section 8.02, states, in pertinent part, that as a condition of being considered for the award of any MTA contract, the Vendor will be required to distribute the copies of the Vendor Code of Ethics to all Participating Employees prior to their participation in the procurement and obtain a written acknowledgement from each of its Participating Employees that they have received, read, understand, and will comply with the Vendor Code of Ethics. This obligation is ongoing and shall last through the completion of the contract.

Here the Owner acknowledged a vague familiarity with the Vendor Code of Ethics as a contract specification but was unaware of an obligation to distribute the MTA Vendor Code of Ethics to all participating employees and obtain their acknowledgement of receiving, reading, understanding, and agreement to comply with its provisions. The Project Manager told the OIG that he did not recall ever receiving or reading the Vendor Code of Ethics.

4. *§8.03 Vendor Certifications*

The Vendor Code of Ethics, Section 8.03, states, in pertinent part, that as a condition of being considered for any MTA contract, an authorized official of the Vendor will certify that the Vendor has been provided a copy of the Vendor Code of Ethics; all Participating Employees have been provided with copies of the Vendor Code of Ethics prior to their participation in the procurement; the Vendor obtained a written acknowledgement from each of its Participating Employees that they have received, read, understand, and will comply with the Vendor Code of Ethics; and that the Vendor will continue to do so through the completion of the contract.

Here, the Owner was unaware of his obligation and failed to distribute the Vendor Code of Ethics to all participating employees and obtain their acknowledgement of receiving, reading, understanding, and agreement to comply with its provisions.

IV. FINDINGS

1. Construction Company 1 violated its contract warranty that it would not offer inducements to MTA employees and Vendor Code of Ethics when it hired the Executive's Nephew for a position he was unqualified to perform.
2. Construction Company 1's Project Manager and Owner instructed the Nephew to lie to OIG about how he was hired and his relationship to the Executive.
3. Construction Company 1 failed to provide the contractually required full-time exclusive Project Manager for C-40257, because he was concurrently working as the project manager on another MTA contract, C-43052.
4. The Owner of Construction Company 1 was aware of the MTA Project Management teams complaints about the Project Manager's absence from the job but failed to correct the deficiency until after an accident occurred on the site.
5. The Owner of Construction Company 1 was only vaguely aware that the MTA Vendor Code of Ethics was a contract specification, despite Construction Company's history of working on prior MTA contracts and C-40257's explicit requirement that Construction Company 1 adhere to its requirements.
6. Construction Company 1 failed to distribute the MTA Vendor Code of Ethics to its employees and subcontractors as required.

V. RECOMMENDATIONS

1. We recommend that MTA conduct a responsibility hearing to determine whether Construction Company 1 is a responsible vendor.
2. We recommend that the MTA consider negotiating a credit for the Project Manager's absence from his responsibilities on C-40257 in an amount to which it believes it is entitled.

As always, we appreciate your continued courtesy and cooperation. Please advise our office within thirty (30) days of any action you intend to take, and the result of any action taken. In addition, please indicate your acceptance or rejection of each recommendation and the proposed quarter in the calendar year that the recommendation will be implemented.

Please be advised that the Office of the MTA Inspector General may publicly disclose this report consistent with its statute and other state law, which may include name(s) of individuals and entities. Should you have any questions, or need additional information, please contact William McGrogan, Executive Deputy Inspector General, Investigations, at (212) 878-0143.

Very truly yours,

/S/

Elizabeth Keating

cc: Janno Lieber, Chair, MTA Board of Directors, and CEO
Evan Eisland, Executive Vice President, General Counsel & Contracts MTA C&D
Lamond Kearse, Chief Compliance Officer, MTA
Paige Graves, General Counsel, MTA
David Farber, General Counsel, NYC Transit
Monica Murray, Chief Administrative Officer, NYC Transit
Diane Nardi, Senior Vice President and Deputy General Counsel, MTA C&D



Daniel G. Cort
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Addendum
to
MTA/OIG #2023-01

Contractor Contract Compliance

In October 2023, in response to the Office of MTA Inspector General's (OIG) investigation and report, MTA Construction & Development (MTA C&D) advised that it has accepted all of OIG's findings and implemented its recommendations. To that end, MTA's Vendor Relations Department (VR Lead) conducted a responsibility hearing for Construction Company 1. Although the VR Lead did not find that Construction Company 1's conduct warranted a finding of non-responsibility, the VR Lead concluded that Construction Company 1 needed to strengthen its corporate infrastructure and develop better internal policies regarding its hiring practices, including improving its background checks. Construction Company 1 has since complied with the VR Lead's directives. In addition, MTA C&D has reviewed Construction Company 1's attendance records, among other things, to determine when the Project Manager was working on the contract. Based on this review, MTA C&D has concluded that a \$174,000 credit is warranted. Finally, at MTA C&D's request, Construction Company 1 promptly removed the Project Manager and replaced him with another full-time employee.