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April 21, 2023

Via Electronic Mail

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

**Re: Vendor and Employee Compliance
Issues - MTA/OIG #2023-07**

Dear Mr. Torres-Springer and Mr. Davey:

In MTA/OIG # 2022-14 (Employee Conflicts of Interest), the Office of the MTA Inspector General (OIG) substantiated an anonymous allegation that an MTA Construction and Development (MTA C&D) Assistant Vice President/Deputy Executive (the Executive) failed to recuse himself from managing a contract on which his brother (the Brother) was employed as a Safety Engineer. OIG noted that the investigation of the vendor (the Construction Company) would continue. OIG has concluded the investigation and found the following:

1. The Construction Company hired a friend referred by an MTA Associate Project Manager (the Resident Engineer) and assigned him as the Contract Safety Supervisor (the Safety Supervisor) on a contract overseen by the Resident Engineer.
2. The Construction Company submitted a resume with false information about the Safety Supervisor's experience tailored to meet the contract requirements.
3. The Executive, the Project Chief Executive Officer (PCEO), and the Resident Engineer knew that the Safety Supervisor's resume contained false information, but

nevertheless, allowed the Construction Company to retain him in that role and took no action against the Construction Company.

4. Despite concerns about the Safety Supervisor's qualifications, neither the PCEO nor her supervisor, the Senior Director-Programs-Infrastructure (senior Director) further investigated the Safety Supervisor's qualifications or whether the Construction Company knew that he was unqualified.
5. The PCEO subsequently approved the Safety Supervisor for the same role on another project.
6. The Construction Company hired the Brother, who had no prior construction experience, as a safety professional.
7. The Construction Company submitted a resume with false information about the Brother's experience tailored to meet the contract requirements.

The Construction Company currently has only one contract with MTA and that one is substantially complete. OIG recommends that MTA consider the Construction Company's conduct in future responsibility determinations. OIG further recommends that MTA C&D should evaluate the conduct of the PCEO and Senior Director to determine what further action is appropriate for failing to address the Construction Company's falsifying the resume of its Safety Supervisor.

I. BACKGROUND

A. Construction Company

The Construction Company has been awarded nine contracts by the MTA since 2014 for an approximate value of \$35,914,786, and all but two of those contracts have involved work performed in or about bus depots. The Construction Company was accepted into the MTA Small Business Mentoring Program (SBMP) in 2012 and was awarded three contracts through the SBMP before graduating from the program in 2017.

On May 20, 2019, the Construction Company was awarded C-40273 to replace the roof of the Queens Village Bus Depot (QVD) for the Lump Sum Price of \$5,184,000; the final payment for this contract was authorized on May 7, 2021. On October 24, 2019, the Construction Company was awarded C-40237 to replace the roof of the Fresh Pond Depot (Fresh

Pond) for the Lump Sum Price of \$3,870,000, and as of February 2023 had completed all punch list work. Both contracts required the Construction Company to employ and assign both a full-time Contractor Safety Engineer (CSE) and Contractor Safety Supervisor (CSS) for the projects, with the CSS covering shifts when the CSE was unavailable due to weekends, illness, or vacation. 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.

Finally, both contracts required the Construction Company to comply with all provisions of the MTA Vendor Code of Ethics.

II. INVESTIGATION

OIG interviewed the Construction Company’s Owner (Owner), Project Manager, and the Brother, as well as the Resident Engineer for the QVD Contract and the Project Chief Executive Officer (PCEO) and Senior Director, Programs-Infrastructure (Senior Director) for both the QVD and Fresh Pond contracts. OIG also reviewed MTA project documents for both contracts and personnel documents for the Brother and the Safety Supervisor given to OIG by the Construction Company.

A. MTA Project Management Failed to Remove the Unqualified Safety Supervisor After Learning the Construction Company Submitted a Falsified Resume

In July 2019, an MTA Associate Project Manager (former APM), who resigned effective October 9, 2019, approved the Construction Company’s Project Manager, Safety Engineer, and Scheduler; the Safety Supervisor was not among these approvals.¹ Nevertheless, the Resident Engineer’s Daily Reports state that the Safety Supervisor was on site as early as September 27, 2019. To date, none of the MTA Project Management team have been able to produce a signed approval or document the approval of the Safety Supervisor but have provided the resume and safety certifications submitted by the Construction Company. The Construction Company submitted a resume to the MTA that claimed that the Safety Supervisor worked as a safety manager for a different firm from 2011 through December 2018. Notably, none of the Safety Supervisor’s certifications pre-date May 31, 2019.

¹ The Project Manager was approved as the Construction Company’s Safety Engineer in July 2019, but is referred to herein as the Project Manager, since he appears to have primarily worked in that role for the two contracts that are the subject of this report.

By late December 2019, the Executive learned that the Safety Supervisor had been referred to the Construction Company by the Resident Engineer and had been an Uber driver at the time he was hired by the Construction Company in April 2019.² Nevertheless, the MTA project managers allowed the Construction Company to retain the Safety Supervisor on the QVD contract in a safety role for another year and later approved him as the Safety Supervisor on the Fresh Pond Contract. Moreover, no action was taken against the Construction Company for submitting a resume containing fabricated experience for the Safety Supervisor.

1. *The Construction Company Hires and Assigns the Safety Supervisor*

The Resident Engineer told OIG that, while working on the East New York Roof Replacement Contract (the ENY Contract) the Owner's brother told him that the Construction Company was hiring and asked him if he knew anyone looking for a job. The Resident Engineer told OIG that he gave the Construction Company's telephone number to two acquaintances, one of whom was the Safety Supervisor, but he adamantly denied doing anything more. The Resident Engineer told OIG that he attended college with the Safety Supervisor in Nepal and the Safety Supervisor had been a junior colleague in a Nepali firm in 2006 or 2007. The Resident Engineer told OIG that he did not know what positions the Construction Company was filling, and he did not know where the Safety Supervisor worked when he was hired by the Construction Company.

The Owner and the Project Manager both told OIG that the Safety Supervisor was referred to the Construction Company by the Resident Engineer. The Owner confirmed that the Safety Supervisor had attended the same Nepali university as the Resident Engineer and graduated with an engineering degree. The Owner told OIG that the Safety Supervisor was working as an Uber driver when the Construction Company hired him in January 2019.³ The Owner confirmed that the Safety Supervisor had no safety certifications when he was hired, and the Construction Company paid for his certification courses. The Owner stated that the Safety Supervisor was assigned to the QVD Contract with the Project Manager and would cover for the Project Manager after 10 or 11 a.m. when the Project Manager would report to another non-

² OIG learned about this after the Executive was terminated by MTA. None of the remaining MTA project management team has been able to tell OIG how the Executive learned that the Safety Supervisor was referred by the Resident Engineer and lacked the required safety experience.

³ Although the Owner claimed, and the resumes submitted to MTA represented, that the Safety Supervisor was hired by the Construction Company in January 2019, the Safety Supervisor was not on its payroll until April 2019.

MTA project that the Construction Company was performing at the same time.⁴ The Owner noted that a Field Supervisor from the Local 8 Roofer's union was also on-site at the QVD project.

When shown the resume provided by the MTA's QVD project management team, the Owner confirmed that it stated that a company owned by his wife and sister-in-law employed the Safety Supervisor from 2011 through 2018. The Owner told OIG that the company had been a New York State certified WBE, but it has not been operational since around 2007. The Owner could not explain how the Safety Supervisor could have been a Safety Manager at a company defunct for five years before he began working there, nor could he explain how that information was added to the Safety Supervisor's resume before the Construction Company submitted it to the MTA for approval.

The Project Manager told OIG that he prepared the resumes that the Construction Company submitted to the MTA. He explained that he would usually review and discuss a resume with an employee to determine whether they have the experience required by the contract specification. The Project Manager did not recall preparing the Safety Supervisor's resume that OIG showed him, but immediately recognized the Safety Supervisor's purported employer from 2011 through 2018 as the Owner's wife's company. The Project Manager did not know whether the Safety Supervisor had really worked there but agreed that if he had, the referral from the Resident Engineer would have been unnecessary. The Project Manager assumed that the Safety Supervisor provided the information contained on the resume. The Project Manager told OIG that he did not confirm the Safety Supervisor's prior employment.

The Resident Engineer told OIG that when he was assigned to the QVD contract in the fall of 2019, the Safety Supervisor was already assigned to the contract and had been approved by the former APM who resigned effective October 9, 2019. The former APM told OIG that he only worked on the QVD contract for a couple of weeks in July 2019 and did not recall approving the Safety Supervisor. Notably, OIG found that the resumes for all other approved QVD Construction Company staff were accompanied by a form bearing the Construction Company's letterhead and had a red-stamped approval with the name of the MTA project management staff who reviewed and approved the resumes. To date, MTA has not provided OIG with a similar approval form for the Safety Supervisor.

⁴ Although not conclusive, OIG has reviewed the Resident Engineer Daily reports as well as the Contractor's Daily Reports which appear to confirm that the Safety Supervisor was frequently the only Construction Company project management team member present on site at the QVD project.

2. *The MTA Project Management Team Learns of the Resume Deception but Permits the Safety Supervisor to Remain on the Project and Takes no Action Against the Construction Company*

The PCEO told OIG that she remembered that the Executive returned from a visit to the QVD site and told her that he had learned that the Safety Supervisor had no prior safety experience, had been an Uber driver prior to working for the Construction Company, and the Resident Engineer and the Safety Supervisor knew each other, but did not explain how he knew this. According to the PCEO, the Executive held a meeting with her and her direct supervisor, the Senior Director, and told them that they would need to “re-educate” the Resident Engineer about referring people to contractors he was supervising.

The Resident Engineer confirmed that in late 2019 or early 2020, he met with the Executive and the PCEO, his direct supervisor. He did not mention that the Senior Director was also at the meeting.⁵ At that meeting he was shown the resume submitted by the Construction Company for the QVD project Safety Supervisor, which included the seven years of employment with the Owner’s wife’s firm. The Resident Engineer told OIG that the Executive and the PCEO advised him that the Safety Supervisor’s resume was fabricated and that the Safety Supervisor had been an Uber driver immediately before he was hired by the Construction Company. The Resident Engineer told OIG that the Executive and the PCEO knew that he suggested that the Safety Supervisor contact the Construction Company about a job. The Resident Engineer informed OIG that during this meeting he was told by both the Executive and the PCEO to never recommend a prospective employee to a contractor and that he was given a “final warning.” Although it was not explicitly stated, he understood that he would be fired if he recommended someone to a vendor again.

The PCEO told OIG that she knew that the Executive met with the Resident Engineer, and that the Senior Director may have been present, but could not recall whether she was present.⁶ The Senior Director, on the other hand, denied to OIG that he participated in any meetings about the qualifications of the QVD contract’s Safety Supervisor. The PCEO provided OIG with a series of emails, on which she was copied, between the Resident Engineer,

⁵ The Resident Engineer told OIG that during the Senior Director’s daily TEAMS meeting he was told to report to the East New York Depot, so there was no appointment request to document the date of the meeting.

⁶ The PCEO provided OIG with documentation that she was out of the office December 23rd through December 30th, 2019, as evidence that she was not present for the meeting with the Resident Engineer. However, no one has documented when the meeting occurred, only a series of emails between December 24th and December 26th, 2019, that appear to have been sent because of the meeting.

Construction Company employees, and the Senior Director. In the first email of the series, the Resident Engineer forwarded the Safety Supervisor's resume and safety certifications to the Senior Director. The Senior Director responded to the Resident Engineer by asking him to obtain references from the Safety Supervisor's prior employer. In that same email thread, the Senior Director also asked the Construction Company to provide the Safety Supervisor's W-2. Finally, he responded, "The Executive will review the resume and advise." Nevertheless, the Senior Director denied participating in any meetings in which the Safety Supervisor's resume or qualifications were discussed and told OIG that he did not recall sending the emails or receiving responses. The Senior Director told OIG that the Executive often asked him to get documents without explaining why they were needed.

Although the PCEO was copied on the Senior Director's emails, sent while she was on vacation, she told OIG that she did not follow up with the Resident Engineer or the Senior Director about whether the Construction Company provided any of the requested documentation. Nor did the PCEO determine whether the Resident Engineer had been "re-educated" about referring people to the contractors he supervised even though she is his supervisor. Notably, both the PCEO and the Senior Director told OIG that they did not follow up on the Construction Company submitting a false resume for its Safety Supervisor. In fact, the Senior Director insisted that he did not get involved in safety issues and insisted that safety matters were handled exclusively by the Executive. The Construction Company was permitted to retain the unqualified Safety Supervisor on the QVD project for a year after discovering he was not qualified and without consequence, and the Safety Supervisor was subsequently approved as the Safety Supervisor for the Fresh Pond Depot project. Although the Construction Company revised the Safety Supervisor's resume for the Fresh Pond project so that it was mostly accurate, he still lacked the required two years' experience.

B. The Executive's Brother was Approved as the Construction Company's Safety Engineer for the Fresh Pond Depot Project Despite not Possessing the Required Experience

1. The Construction Company Hires the Executive's Brother

The Brother told OIG that in 2016 he worked as a store's night shift manager in an area that he considered dangerous. One evening he was talking to a customer that he had never met before and mentioned that he would like to find another job. The Brother told OIG that this stranger gave him the Construction Company's telephone number and told him they were looking for a "safety guy." The Brother told OIG that he never learned the customer's name and never saw him again. The Brother told OIG that he called the Construction Company, spoke to

the Office Manager, asked him if the Construction Company was hiring, and asked if he could speak with “the boss.” The Office Manager confirmed that he had that conversation with the Brother and that he transferred his call to the Owner.⁷ The Brother told OIG that he spoke to the Owner, who invited him for an interview.

The Brother stated that he told the Owner his name during that initial call but did not mention that he was related to the Executive. He only revealed the Executive was his brother when he was asked by the Owner, either during the interview or at another time. The Owner confirmed to OIG that the Brother disclosed that he was related to the Executive. The Owner claimed that he only met the Executive once and he did not hire the Brother because he is related to the Executive. The Brother denied that the Executive or any other MTA employee referred him to the Construction Company.

The Owner told OIG that a few years ago he decided to hire an in-house safety person and the Brother was recommended to him, although he could not recall by whom. The Project Manager told OIG that the Brother had heard about the Construction Company through word of mouth and contacted the company. The Owner told OIG that despite having no safety experience he hired the Brother because the Brother’s wife had recently lost her job and an experienced safety person would cost three times more than the Brother. The Owner told OIG that the Brother admitted that he had no prior safety experience. The Owner told OIG that the Brother was assigned to a project in Ulster County for the first year that he was employed by the Construction Company and completed his safety certifications in either 2018 or 2019 while working for the Construction Company on non-MTA projects.

The Project Manager said that the Brother was hired as a field representative to oversee safety but admitted that the resume the Brother submitted to the Construction Company did not describe any safety experience. The Project Manager was shown a resume submitted to MTA that claimed the brother had OSHA experience while working at Home Depot and admitted that he “might have modified” the Brother’s resume to fit the MTA contract specifications, and that he does this as needed to meet MTA contract specifications. The Project Manager admitted to OIG that he knew the Brother was not qualified when he submitted the Brother’s resume as the proposed Safety Engineer. However, he denied that the Brother’s relationship to the Executive

⁷ As detailed in MTA/OIG # 2022-14, during a telephone interview with OIG, the Office Manager stated that the Brother was referred to the Construction Company by an MTA employee. In a second, in-person OIG interview the Office Manager told the OIG that he did not recall telling us that the Brother was referred by someone at the MTA.

influenced his decision to submit the Brother's resume. The Owner could not explain why the Construction Company submitted the Brother's resume with misrepresentations about the Brother's safety experience.

2. *The MTA Project Management Team Approved the Brother as the Fresh Pond Contract Safety Engineer*

The PCEO told OIG that the Construction Company submitted resumes for its project management staff, including the Safety Engineer, to her subordinates to review and determine whether the proposed staff met the contract requirements. If her staff told her the proposed project management staff met the requirements, she would approve the resume submittal. The PCEO told OIG that she approved the Brother as the Safety Engineer for the Fresh Pond contract after concluding he had the required experience. When OIG showed the Brother's resume to the PCEO, she conceded that she must not have looked at the resume closely and that he did not have the required experience. She admitted that one of the reasons she approved the Brother as Safety Engineer was because she recognized his name from the East New York contract she had managed from 2016 to 2017. The PCEO told OIG that she was shocked to learn that the Brother was related to the Executive, and pointed out their surnames are spelled slightly differently. The PCEO told OIG that she was never pressured by the Executive to approve the Brother.

III. POLICIES AND ANALYSIS

A. 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, the Construction Company hired the Brother of the Executive, even though he had no prior construction experience, for a safety position for which he was not qualified. OIG was told conflicting stories about how the Brother learned about the Construction Company and whether he had been recommended by someone to the Construction Company. The Brother was assigned to projects that the Executive oversaw and, although he did not meet the contract specifications, approved as the Safety Engineer.

B. MTA All-Agency Code of Ethics

1. §4.02 Public Trust

Section 4.02 of the Code, prohibits employees from engaging in conduct that “will raise suspicion among the public that they are likely to be engaged in acts that are in violation of the public trust.” It further requires employees avoid “even the appearance” they can be improperly influenced in the performance of their work, induced to violate the public trust, or impair their independence of judgment in the exercise of their official duties. It further proscribes employees from using their official position to secure unwarranted privileges for themselves or others. And finally, it prohibits employees from engaging in conduct that provides a “reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties or that they are affected by the kinship, rank, position, or influence of any party or person.”

Here, the Resident Engineer’s referral of a friend for employment with the Construction Company may be perceived as violating the public trust. The Resident Engineer was supervising the Construction Company’s work at the time it asked the Resident Engineer for potential employees. The Construction Company then assigned the unqualified Safety Supervisor to a contract overseen by the Resident Engineer. Although OIG found no evidence that the Resident Engineer pressured the Construction Company to hire the Safety Supervisor or that the Resident Engineer’s oversight of the Construction Company was influenced by the Safety Supervisor’s employment, the circumstances could create the appearance that he could be. Because the Resident Engineer was reinstructed about this conduct at the time, OIG does not recommend that MTA C&D consider discipline or retraining him.

C. New York State Public Officers Law

1 § 74(3)(h)

Public Officers Law § 74(3)(h) provides, in pertinent part that an officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.

As discussed above, the Resident Engineer’s supervision of the Construction Company, and in turn, the Safety Supervisor he recommended to the Construction Company created a risk that his conduct would raise suspicion among the public that his conduct violated the public trust.

IV. FINDINGS

1. The Construction Company hired the Safety Supervisor, referred by the Resident Engineer, and assigned him to a safety position he was not qualified to perform, which was also supervised by the Resident Engineer who referred him.
2. The Construction Company submitted a resume for the Safety Supervisor that contained false information that was tailored to meet the contract specifications.
3. After the MTA Project Management team learned that Safety Supervisor's resume contained a false employment history, he was allowed to remain the Safety Supervisor on the project for almost a year longer.
4. Neither the Senior Director nor the PCEO further investigated the Safety Supervisor's qualifications or whether the Construction Company knew that he was not qualified.
5. The PCEO approved the Construction Company's subsequent submittal of the Safety Supervisor for the Fresh Pond contract after learning that they had fabricated his resume for the QVD contract.
6. The Construction Company hired the Brother of the Executive, who had no prior construction experience as a safety professional.
7. The Construction Company submitted a resume for the Brother that contained false information that was tailored to meet the contract specifications.

V. RECOMMENDATIONS

1. We recommend that the MTA retain this report and consider its findings in any responsibility determination if the Construction Company is considered for future contracts.
2. We recommend that MTA C&D evaluate the conduct of the PCEO and Senior Director to determine whether future action is appropriate for failing to address the Construction Company's falsifying the Safety Supervisor's resume.

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. 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
Diane Nardi, Senior Vice President and Deputy General Counsel, MTA C&D



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Addendum
to
MTA/OIG #2023-07

Vendor and Employee Compliance Issues

In October 2023, in response to the Office of MTA Inspector General's (OIG) investigation and report, MTA Construction & Development (MTA C&D) and NYC Transit (collectively, the MTA Parties), advised OIG that it has accepted all of OIG's findings and implemented its recommendations. MTA will retain the report and consider its findings in any responsibility determination if the Construction Company is considered for future MTA contracts. The MTA Parties accepted OIG's recommendation to evaluate the conduct of the PCEO and Senior Director and concluded that reinstruction on the importance of enforcing contract specifications.