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Inspector General

Office of the Inspector General
Metropolitan Transportation Authority
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February 6, 2014

Craig F. Stewart
Senior Director of Capital Program
Metropolitan Transportation Authority
347 Madison Avenue, 7th Floor
New York, NY 10018

Re: **MTA Small-Business Mentoring
Program**
MTA/OIG #2013-12

Dear Mr. Stewart:

The MTA Office of the Inspector General (OIG) has completed its investigation of an allegation that a contractor received preferred treatment from the MTA Small Business Mentoring Program (SBMP) staff and appeared to ignore the MTA Bus Facilities staff's concerns about the contractor's integrity. We found no evidence that the SBMP's staff deliberately favored one contractor over another. We did, however, find that in the rush to meet a program deadline, the SBMP staff did not adequately address MTA Bus' concerns about the contractor's integrity. Moreover, none of the representatives at the contractor's Qualification Hearing followed NYC Transit procurement protocols in handling bids that did not meet the contract specifications. In addition, the recommendation sent by the MTA Office of Construction Oversight (OCO) mentioned only an initial Qualification Hearing, did not mention the concerns which arose about the contractor during the Qualification Hearings, and stated that the management team had been present at the qualification hearing, when, in fact, it had not. Finally, SBMP staff did not include MTA Bus Facilities staff in the post-qualification hearing deliberations, if any, in selecting the contractor for the project.

As more fully set forth below, OIG recommends that MTA agencies implement a process that ensures the agency staff responsible for accepting the final project either be permitted to sign-off on the contract award or be permitted a specific opportunity to memorialize their opinion about the contract award. MTA agrees with the OIG recommendations and has begun implementation.

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BACKGROUND

In 2010, the New York State Legislature authorized the creation of a Small-Business Mentoring Program in the Metropolitan Transportation Authority. PAL §1265-b. The purpose of the program is to “develop [the] business capabilities of small construction firms, so that they become capable of successfully competing for and completing larger projects, ultimately widening the prospective pool of construction firms competing for authority public work projects.” Senate Introducer’s Memo in Support, Bill Jacket L. 2010 ch. 206 at 7. The target participants for this program must be independently owned and operated businesses in the construction trades with annual revenues not exceeding five million dollars. Section 1265-b specifically authorizes the MTA to select, through a competitive bidding process, a consultant with “extensive construction management and mentoring experience,” to mentor the small businesses with advice and technical assistance in competing for and managing authority construction contracts. MTA conducted a Request for Proposal to select the mentoring firm authorized by Section 1265-b and received 8 proposals. TDX Construction Corporation (TDX) was ultimately selected as the most qualified as it was “the only CM firm that has continuously provided CM services to the School Construction Authority’s comparable program, which is the genesis for MTA’s program.” Staff Summary Contract Number 10009-0100 6/23/10.

The implementation of the MTA’s SBMP is overseen jointly by the OCO and the MTA Department of Diversity and Civil Rights. The program is managed by MTA SBMP Program Manager Amil Patel, who reports to the Director of the OCO, Ronald Saporita. Each MTA Agency is expected to identify appropriate construction projects that are within the guidelines of the program, i.e. not to exceed \$1 million. In the first year of the program the agencies were expected to pledge contracts in the amounts of: \$7.5 Million NYC Transit; \$1.5 Million LIRR; \$1 million MNR, \$1 million B&T; and \$1 million MTA Capital Construction. In each subsequent year the agencies are expected to pledge 50% more than the prior year’s pledge. Small businesses admitted into the program have the opportunity to compete for these projects for up to four years in the mentor assisted Tier 1, with projects not exceeding \$1 million.

TDX Construction Company recommends the firms and their respective trades to be admitted into the program by prequalification and recommends admission of firms to the program to Saporita, who ultimately makes the admission decision. Rejected firms may appeal to Michael Garner, Chief Diversity Officer, MTA. TDX identifies appropriate bidding opportunities for admitted firms, conducts periodic updates of financial and integrity information, provides the instructors for classroom training, and ensures that participants attend training.

When a project is ready to be put out for bid, TDX will conduct a constructability review and then select eight participating firms to bid on the project. After the low bidder has been selected for a contract, TDX participates in the technical qualification process of the contractor, which includes participating in the qualification hearing with the sponsoring MTA Agency representatives, and procurement personnel from the sponsoring MTA Agency. After a qualification hearing, TDX will write a recommendation to award the contract to Saporita.

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Saporita will then notify the procurement department of the sponsoring MTA Agency, who, in the case of NYC Transit, will then send a Notice of Award letter to the contractor.

At the time of this investigation, NYC Transit did not transcribe the qualification hearings of SBMP contractors, as it does all other qualification hearings. There is no record of how contractor representatives responded to questioning, or whether there were apparent differences of opinion in the qualifications of contractors. According to the procurement personnel at NYC Transit, the MTA Bus representatives who participated in designing a designated project are not consulted about OCO's recommendation, nor can they override OCO's decision to award the contract to a particular SBMP participant. No one that OIG interviewed could identify any formal process by which the Agency representatives could express their assessment of a contractor's ability to complete a contract, other than at the qualification hearing. By way of contrast, OIG was told that MTA Bus staff signs off on every staff summary prepared by NYC Transit Procurement before the contract is awarded.

INVESTIGATION

V.I.V. Contracting

First Qualification Hearing

On June 28, 2012, NYC Transit Procurement opened the bids for MTA SBMP Contract C-40220 (Brick Façade Repair at Flatbush Depot) and V.I.V Contracting, the second lowest bidder, was invited to a Qualification Hearing the next day. NYC Transit Procurement was represented by Terrence Brown; MTA Bus was represented by Lawrence Lambert, Project Manager, Edwin Dones, Project Coordinator, Teddy Yu, Director-Design, Jason Fisher, Lead Architect, and Kian Tan Architect; TDX was represented by Judy Lee, Project Manager, and Paul Vitale, Program Manager; and V.I.V. was represented by Vivi Grillias, President, and George Miliadiou, Proposed Project Manager. The Qualification Hearings for the SBMP contractors were not transcribed at that time.

All of the hearing attendees reported to OIG that several issues about V.I.V.'s methods of completing the contract arose. In discussing the sidewalk shed, it became apparent that V.I.V. proposed only providing sidewalk shed protection at the entrances of the depot, while the contract specifications required sidewalk shed protection around the entire perimeter of the depot. The proposed Project Manager, Miliadiou, insisted that the city only required that amount of protection, but V.I.V. was told that they had to follow the contract specifications. They were given an opportunity to obtain a proposal from a scaffolding subcontractor to see if they could provide the required protection without affecting the bid price. Indeed, on July 2nd, Lee e-mailed Brown to tell him that V.I.V.'s bid only included the sidewalk bridge installation on only one street and the specifications required that it be erected around the perimeter of the building.

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All of the attendees told OIG that at the hearing they learned that V.I.V.'s bid proposed mechanical removal of the mortar rather than the hand removal required by the contract specifications. OIG was told that MTA Bus and TDX Representatives stepped out of the room to discuss whether they could waive this requirement. The group decided that because another contractor, on a previously awarded SBMP contract involving nearly identical work, had been allowed to employ mechanical mortar removal, they would permit the mechanical mortar removal. OIG was told that on the earlier contract, there had been a Request for Information on this issue prior to the bid submissions, and the bidders had been told that they could mechanically remove the mortar prior to submitting their bids. OIG was told that no one at the meeting discussed whether there was a possibility that other bidders had created their bid relying on the more expensive hand removal required in the specifications.

After the first Qualification Hearing, MTA Bus employees reviewed V.I.V.'s submittals, including their proposed subcontractors, and found that the President of US Electric, VIV's proposed electrical subcontractor, is George Militiadou, who was also V.I.V.'s proposed Project Manager. They also discovered that Militiadou had been the designated contact for the proposed masonry subcontractor for a contract that Elite Green Builders had with Dormitory Authority State of New York. An emergency qualification hearing was held on July 5th because of the relationship between V.I.V.'s project manager and the proposed subcontractors.

Second Qualification Hearing

An emergency Qualification Hearing was held on July 5, 2012, to address the concerns about Militiadou's apparent conflict of interest. Grillias arrived at 2 Broadway with Militiadou, but he was asked to wait in the lobby. Grillias initially denied knowing that her project manager had an interest in her two subcontractors. The representatives of NYC Transit, MTA Bus and MTA SBMP were skeptical of Grillias' claim, and under questioning, Grillias finally admitted that she knew that Militiadou had a relationship with US Electric and Elite Green Builders. Notably, the resume that Grillias had provided to NYC Transit Procurement two days earlier for Militiadou stated that he had been the president of US Electric through at least 2009, with a three year gap before he purportedly began working at V.I.V. in 2012¹.

Lambert told OIG that everyone in the meeting had agreed that Grillias had lied in the meeting about Militiadou. Lambert also told OIG that Grillias did not appear to know how to run a construction project at either of the Qualification Hearings, and found it troubling that she seemed incapable of answering basic questions. Lambert and Brown agreed after the meeting that they were not comfortable with V.I.V., and believed the contract would not be awarded to the company. Brown reported to OIG that Vitale expressed concerns about awarding the contract to V.I.V., which was corroborated in e-mails provided to OIG by Robert Eskenazi, Senior Director, Procurement, Capital Procurement Program, Division of Materiel, NYC Transit.

¹ Notably, V.I.V.'s application for the SBMP, which was signed and notarized January 20, 2011, states that Militiadou is the "highest-ranking employee" "responsible for safety."

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In an e-mail exchange between Vitale and Eskenazi, Vitale explained that during the second Qualification Hearing, V.I.V. had been asked to provide additional information, but that it had been decided to meet with the next lowest bidder because of the "time constraints." When Eskenazi pressed Vitale to tell him whether "there is still a chance that V.I.V. can still be saved," and Vitale responded, "Slim, but yes." A pervasive concern in the e-mail between Eskenazi and Vitale was that if the contract was not awarded by July 9, 2012, the program goals would not be met by July 13, 2012.

Attendees at the hearing did not all agree on what Grillias had told them about her proposed management team. Amil Patel was the only person present in the meeting who claimed that Grillias said that Militiadou was not currently an employee of V.I.V., but that she intended to bring him on as Project Manager. Vitale was the only attendee at the second qualification meeting to tell OIG that at that meeting Grillias had proposed a management team consisting of her son, George Tsimis, as project manager, and another employee, Anthanasios Tsidavis, as safety supervisor.² Vitale told OIG that he was satisfied that Grillias representation that Militiadou was an employee was a "mistake," despite having identified him as an employee on the application she had submitted a year earlier.

Reality Qualification Hearing

A Qualification Hearing for Reality Construction, the third lowest bidder, on the Flatbush Façade contract, was held on July 6, 2012 and was attended by Brown, for NYC Transit Procurement, and Yu, MTA Bus, and Vitale and Patel for SBMP. Brown told OIG that Reality seemed very prepared. Brown also told OIG that Reality came into the hearing with their scaffolding and staffing in place, as opposed to V.I.V., which had not. All of the participants in the Qualification Hearing told OIG that Reality, like V.I.V., had bid on mechanical removal of the mortar rather than hand removal. They all agreed, including Patel that Patel had harshly disparaged Reality for deviating from the specifications of the contract. Brown described Patel as "infuriated" that Reality did not submit an RFI about the mortar removal specification. Vitale told us that Patel was adamant that the bid was non-responsive because the specifications called for the mortar to be removed manually.³ Patel had to leave before the hearing concluded and did not participate in the post-hearing discussion. During the post-hearing discussion, Brown felt that the panel was leaning toward awarding the contract to Reality, despite the fact that their bid was \$90,000 more, because they had their scaffolding in place, the President's husband was the Project Manager and was present at the meeting and the mortar removal method was the same as V.I.V.

² Notably, Grillias did not submit an organizational chart for the project until Monday, July 9 at 12:47 p.m. via e-mail. She also submitted a resume for her son George Tsimis, the new proposed project manager, different than the one she had submitted for him as proposed site safety manager.

³ Patel told OIG that because Reality had previously submitted a bid on a similar contract in which an RFI and addendum addressed the mortar removal, he felt Reality should have known that they could not simply ignore the specifications and substitute mechanical for hand mortar removal.

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Brown told OIG that at the conclusion of the meeting, he thought the panel was leaning toward awarding the contract to Reality. Yu told OIG that there had been some discussion about leaving the issue of the mortar removal method to be resolved after the weekend; he left with the impression that the panel would reconvene to make a decision. Although Lambert did not attend the Reality Qualification hearing, he had attended both of the V.I.V. Qualification Hearings and felt that the consensus of the participants in those hearings was that V.I.V. should not be awarded the contracts because they had misrepresented the relationship of the proposed Project Manager to the panel, and because they had underbid the scaffolding, which Lambert believed left them \$100,000 in the hole from the outset of the project. Immediately after the hearing, Brown had to make an emergency trip abroad and would not return for two weeks.

Contract Award

Eskenazi, who filled in for Brown in his absence, sent two e-mails to Vitale on the morning of July 9, 2012, inquiring about whether the contract would be awarded to V.I.V. or Reality. According to an e-mail provided to OIG, Vitale received V.I.V.'s revised organizational chart at 12:18 p.m. on July 9, 2012. At some point in the day, Eskenazi advised Lambert that TDX was going to award the contract to V.I.V. According to Lambert, he raised his concerns about V.I.V.'s responsibility, given the concerns about the owner's misrepresentations about Militiadou's relationship to V.I.V. Eskenazi did not recall speaking to Lambert on the 9th, but thought that he had communicated with him by e-mail. Fisher contacted Eskenazi by e-mail at 3:24 p.m. on July 9, 2012, raising concerns about V.I.V.'s responsibility. Eskenazi responded by advising Fisher that Procurement does not make technical recommendations, and that TDX determined whether V.I.V. was technically qualified to do the work. OIG reviewed the TDX memo recommending that V.I.V. be awarded the contract, and it made no mention of the concerns raised during the qualification hearings, nor did it contain assurances that those concerns had been allayed by V.I.V.

Vitale told OIG that he spoke to Lambert and explained that TDX was recommending that V.I.V. be awarded the contract. He told him that, in his opinion, V.I.V. had submitted an adequate scaffolding proposal and they were satisfied with the proposed project management team. Patel told OIG that he did not think that the issues that concerned the MTA Bus personnel were significant enough to justify spending \$90,000 more on the contract.

Notably, the Staff Summary, upon which the award is based, fails to disclose that V.I.V. deviated from the specifications of the contract for the mortar removal. Further, the Staff Summary reports that V.I.V. attended the Qualification Hearing with its Project Manager, which is misleading, since one of the primary sticking points was that Militiadou, the only proposed Project Manager interviewed by the team, was disqualified as the principal of V.I.V.'s subcontractor. The Staff Summary is further misleading in that it fails to describe the additional obstacles and concerns about awarding this contract to V.I.V.

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Post Award

OIG interviewed all of the participants in the qualification hearings, as well as the Procurement Director who filled in for Brown after he had to attend to a family emergency. What emerged from these interviews was a story that suggests that critical information was not discussed among all of the stakeholders before a decision was made. There were three different Qualification Hearings and only two people, Brown and Vitale, attended all three. At the conclusion of the three hearings there were specific issues about V.I.V. left unresolved. The decision to award the contract was made without all of the participants of the two hearings having had the benefit of those issues being addressed and discussed. Notably, only TDX received any information about the project management team, the issue that most concerned all of the participants, which TDX received on the day of the award. Given V.I.V.'s lack of candor about Militiadou and Grillias' ability to speak convincingly about her construction management background, it is surprising that TDX was willing to accept the new proposed project manager, Grillias' son, on little more than his resume without at least meeting with him. Vitale claimed that he conferred with his counterpart at the School Construction Authority who had worked with V.I.V. and was reassured that V.I.V. was competent. Nevertheless, the obvious conclusion to be drawn is that the decision to award this contract without at least some effort to get a consensus from all of the stakeholders was driven by the July 13th deadline, rather than the interests of getting the contract awarded to a fully vetted, responsible contractor.

OIG also learned that TDX and Patel did not share MTA Bus' concerns about V.I.V. with the Procurement representative who ultimately awarded the contract to V.I.V. Eskenazi told OIG that Reality's bid was not responsive because it bid mechanical mortar removal. Eskenazi was surprised when OIG informed him that V.I.V. had bid the same method of mortar removal.⁴ OIG asked whether the contract should have been awarded under these circumstances. Procurement responded to our request by sending an e-mail from Clifford Slater, Assistant Chief Procurement Officer, in which he quotes an e-mail from an MTA Bus Architect saying that "it was reasonable to believe that none of the bidders bid on the hand removal technique." Notably, the bids range from \$825,000 to as high as \$1,789,500. It appears that the decision to waive the hand removal requirement was done on an *ad hoc* basis, without inquiring whether other bidders bid the hand removal of the mortar. This decision was made in contravention of NYC Transit Materiel Policy IV-A.9, which states that a bid is only responsive when it conforms to the technical specifications of the contract.

OIG pointed out to Patel that V.I.V. had not only held Militiadou out as a V.I.V. employee at the Qualification Hearing, but had submitted a resume that reflected that he was a V.I.V. employee, and was identified as an employee on V.I.V.'s SBMP application, submitted a year earlier. Patel told OIG he was not troubled by these inconsistencies, offering that employment in small companies is often "fluid," and that Militiadou may have worked there, left and come back.

⁴ Lambert reported to OIG that when he spoke to Vitale on July 9th about the award decision, Vitale was stressing Reality's having not bid the mortar removal specification as they were written in the bid documents.

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When Patel was asked if he thought Grillias' inconsistencies caused any concern about her integrity, he told OIG that he was satisfied with her new proposed management team.

FINDINGS

- 1) The SBMP, through TDX and MTA, selects contractor participants, vets the responsibility of the contractor participants, selects bidding opportunities for participating contractors based on their background. TDX will submit a recommended list of bidders to OCO, which will in turn review/approve and forward the list of bidders to the Agency. Upon receiving the list of bidders, the Agency will issue the Invitation to Bid to each bidder acceptable to the Agency. For NYC Transit contracts, the Procurement Department will send the bid packages to the selected bidders. Qualification Hearings are generally attended by a representative of TDX, a representative of the Agency Procurement Department and the Agency construction management team. After the Qualification Hearing, TDX writes a recommendation to OCO, which either accepts or rejects the recommendation. OCO will then send its recommendation to the Agency Procurement Department. We were told by a NYC Transit Procurement representative that TDX makes the determination that a contractor is both responsible and technically qualified, and will award the contract based on OCO's recommendation. In the case of MTA Bus, the Agency personnel who oversee the project and ultimately sign off on the project get a seat at the table at the qualification hearing, but have no formally recognized role in selecting the contractor through NYC Transit Procurement and do not appear to have the ability to reject a contractor.
- 2) The contract for the Façade Repairs at the Flatbush Avenue Depot was awarded to a contractor that MTA Bus representatives had strong reservations about and expressed those reservations to NYC Transit Procurement prior to the award. However, those reservations were not deemed significant enough to add \$90,000 to the cost of the contract by TDX or OCO, and were not discussed in the memorandum recommending awarding the contract to V.I.V.
- 3) There were three different qualification hearings held prior to the award of the contract, but only two people participated in all three hearings. One of those participants played no role in making the decision to award the contract and had to leave the country immediately after the hearings concluded. There was a significant failure to share concerns and reach a consensus on the award of this contract to V.I.V. among all of the stakeholders.
- 4) Neither of the contractors invited to participate in the Qualification Hearings had properly bid the specifications of the contract. At the first Qualification Hearing TDX staff and Department of Buses staff, in the presence of the Procurement

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Specialist, agreed to waive the hand removal of the mortar, contrary to NYC Transit Procurement policy. They relied on the fact that an earlier SBMP contract for nearly identical work had allowed the mechanical removal of mortar. Notably, the mortar removal specification had been the subject of an RFI on a nearly identical earlier Department of Buses contract. Nevertheless, the purportedly antiquated mortar removal specification was not discovered by the staff of TDX, NYC Transit Procurement, or MTA Bus before the contract was put out to bid. Moreover, NYC Transit Procurement staff present at both meetings failed to object to waiving the requirement at the hearings or raise the issue that neither contractor's bid was responsive to the bid specifications. Other than the next lowest bidder who bid the same specifications, no investigation was done to try to determine whether any of the other bidders had properly bid the specifications. Moreover, the NYC Transit Procurement representative who attended both of the qualification hearings had to leave the country prior to the award and thus the procurement representative who sent the award letter to V.I.V. believed that V.I.V. had properly bid the mortar removal specification, and Reality had not.

RECOMMENDATIONS

- 1) OIG recommends that all qualification hearings for Small-Business Mentoring Program contracts be recorded or transcribed.
- 2) OIG recommends that the Agency Procurement Departments implement procedures to ensure that it receives appropriate input from both the OCO and the construction management team of the MTA Agency for whom the work will be performed before the SBMP contract is awarded.
- 3) OIG recommends that when a SBMP contractor's bid is unresponsive because it does not properly bid the contract specifications, the Agency Procurement department comply with its policies governing non-responsive bids before awarding the contract.
- 4) OIG recommends that if multiple Qualification Hearings must be held on a contract, the same personnel should attend all of the Qualification Hearings for that contract.

Agency Response

The MTA provided a response to the OIG on December 3, 2012. The Senior Director of Capital Programs stated that MTA agrees with each of the recommendations made by the OIG. The report was circulated to the procurement staffs at the MTA Agencies and reviewed by the Small-Business Mentoring Program Steering Committee Meeting held on November 19, 2013. The Senior Director indicated that his response reflects the consensus of the agencies' comments.

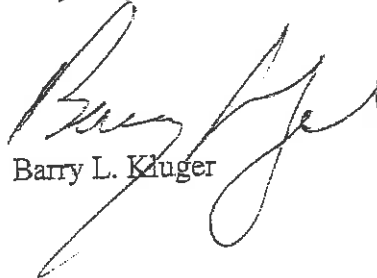
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He noted the following in response to each recommendation:

- MTA and its agencies will record or transcribe all SBMP contract qualification hearings.
- OCO is implementing a process where the agency formally reviews and concurs with the Mentor Construction Manager (MCM) and OCO recommendation for award.
- The agency procurement departments agree to comply with their policies governing non-responsive bids before awarding the contract.
- Where multiple Qualification Hearings must be held on a contract, agencies will be sure to use the same invitation list of attendees representing the agency, MTA-OCO, MCM and the bidder for all of the contract Qualification Hearings. Any subsequent hearings will include as many of the original participants as possible.

As always, we appreciate the courtesy and cooperation afforded to us by you and your staff. If you have any questions please do not hesitate to call me or Assistant Deputy Inspector General for Investigations Deirdre Power at (212) 878-0008.

Very truly yours,



Barry L. Kluger

cc: Catherine Rinaldi
Michael Garner