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Inspector General

## Office of the Inspector General

Metropolitan Transportation Authority

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June 28, 2017

Lamond Kears  
Chief Compliance Officer  
Metropolitan Transportation Authority  
2 Broadway, 16<sup>th</sup> Floor  
New York, NY 10004

**Re: Vendor Ethics Violations  
MTA/OIG #2017-07**

Dear Mr. Kears:

The Office of the MTA Inspector General (OIG) has completed an investigation which established that, in his official capacity, Samir Khushalani (Khushalani), a former Principal for Procurement & Operations Advisory of KPMG, LLP (KPMG), violated MTA Vendor Code of Ethics provisions by giving gifts to and performing personal favors for the MTA's former Chief Procurement Officer (CPO), Angel Barbosa (Barbosa). It also appears that Khushalani may have violated provisions of the New York State Finance Law by engaging in prohibited contact with the same CPO during one or more restricted periods regarding open MTA procurements. We recommend that the MTA Chief Compliance Officer conduct an inquiry into the activities of Khushalani and KPMG.

### BACKGROUND

Samir Khushalani joined KPMG approximately 10 years ago. Prior to leaving KPMG in June 2017, he was a KPMG Principal for Procurement & Operations Advisory. In that role, Khushalani directly negotiated and oversaw two MTA contracts since 2014.

In 2009 the MTA Headquarters (MTAHQ) established the MTA Business Services Center (BSC) with the objective of providing consolidated services for MTA headquarters and the six constituent agencies. One of those services was the procurement of goods and services common to all MTA agencies. On October 14, 2013, Angel Barbosa was hired as the MTA's first CPO of the BSC, a position he held until his termination on March 8, 2017. Barbosa's responsibilities included overseeing the consolidation of select procurements for the MTA's agencies. Khushalani had met Barbosa when KPMG was being considered by New York University (NYU) for a contract in or about the summer of 2013 when Barbosa was NYU's Director of Purchasing and Contract Administration.

Following a determination by MTAHQ officials that there was a need for management consultants to provide strategic advice on the approach needed for procurement consolidation within the MTA, Barbosa as CPO entered into contracts with KPMG.

On July 28, 2014, the MTA Board awarded KPMG the Procure to Pay Process Review (P2P) contract after KPMG was chosen by a selection committee which included Barbosa. Post-award, as the head of the requesting and user department for the consulting services, Barbosa was responsible for overseeing KPMG's performance. In the fall of 2014, KPMG was again chosen as the finalist by a selection committee that included Barbosa for the Procurement Transformation Consulting Service (PT) contract, another consulting contract overseen by BSC Procurement. Following the award on December 4, 2014, Barbosa, as the head of the requesting and user department, was responsible for overseeing the contract. As CPO he was also instrumental in approving an additional \$8.2 million in work to KPMG via a series of non-competitive Supplemental Agreements to the PT contract.

Khushalani's MTA-related duties included leading the team that developed KPMG's technical and cost proposals in response to the P2P and PT Requests for Proposal (RFP's). Post-award, Khushalani served as KPMG's Engagement Partner for both contracts, responsible for the overall execution and delivery of the projects' scope, deliverables, and invoicing. Khushalani and Barbosa had frequent contact during the course of the contracts.

## INVESTIGATION

Our investigation included a review of MTA contracts and payment records, MTA and KPMG email and text records, and other KPMG records, as well as interviews of Barbosa, Khushalani and other persons.<sup>1</sup>

### *Khushalani Gifts to and Personal Favors for Barbosa*

OIG's investigation revealed that on six occasions spanning from October 2013 through December 2016, Khushalani gave Barbosa gifts, all but one of which were paid for by KPMG. On October 18, 2013, four days after Barbosa was hired, Barbosa sent an email to Khushalani, advising Khushalani of his new role at the MTA, and the two men agreed to "catch-up" soon. The next day, Khushalani directed his assistant to send Barbosa a bottle of wine along with a congratulatory note.<sup>2</sup> At the time, KPMG was one of eight consulting firms authorized by the MTA Board to bid on as-needed consulting services contracts. This positioned KPMG to potentially receive, as in fact it later did, MTA contracts known as work assignments through a competitive mini-bid process.

On November 8, 2013, three weeks after that initial gift, Barbosa and Khushalani met in person, at which time Barbosa informed Khushalani of a current solicitation for consulting services for BSC Procurement. Khushalani reported to KPMG colleagues that from his conversation with the MTA CPO, he learned there were future business opportunities including, an open RFP for P2P and an RFP for a PeopleSoft upgrade that would soon be released, and that Barbosa would add

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<sup>1</sup> KPMG has fully cooperated with the investigation.

<sup>2</sup> KPMG records reflect that Khushalani reported the wine as an expense valued at \$82.18.

KPMG to the bidders list. On that same day, a member of Barbosa's BSC staff invited KPMG to submit a proposal for P2P which KPMG eventually did.

Some weeks after the above described conversation, Khushalani sent a gift basket to Barbosa's office, prompting Barbosa's administrative assistant to send an email to Khushalani dated December 6, 2013, that stated: *"We are in receipt of your nice gift. Unfortunately, we are unable to keep this gift because of MTA Policy. Can you please send me an address that I can forward the box to"* Khushalani replied, *"I totally understand"* and added that his assistant would provide an address to send the box to. Prior to giving this reply however, Khushalani texted Barbosa, asking for his home address. Days later Khushalani followed up with another text to Barbosa asking whether he had received the gift at home.

Thereafter, despite having previously acknowledged to Barbosa's assistant that he understood MTA policy prohibited such gifts, Khushalani sent a gift basket to Barbosa's home during each December of 2014, 2015 and 2016. When interviewed by OIG staff, Khushalani admitted sending Barbosa about five or six gifts. He stated that the first gift (in October 2013) was intended to "reignite" their business relationship and get "back on the radar screen" for any future procurement work Barbosa might need in his new MTA position. Khushalani added that every holiday season thereafter he sent Barbosa a gift basket as he did for all his clients, which Khushalani valued in the \$100 to \$200 range.<sup>3</sup> Khushalani claimed that he always gave his clients gifts of appreciation, that other partners did it, and that the practice was customary in the consulting industry.

Additionally, we learned that on August 27, 2015, Khushalani had received a complimentary bottle of wine, which he later instructed a subordinate working onsite at BSC to leave inside Barbosa's office. The subordinate reported back that although Barbosa had personally accepted the wine, Barbosa's administrative assistant returned it a few minutes later. When the subordinate stated he would redeliver the gift, Samir instructed him not to, writing in a text message, *"Do not need him to get into trouble."* We also found that a third KPMG employee under Khushalani and the subordinate employee who attempted to deliver the wine to Barbosa discussed the incident in the following email exchange:

*"Hi Amy-Yes, that is the bottle Samir gave me and the only wine bottle I have ever kept in my office space! I tried to sneak into Angels [sic] office, but he was right there so I handed it to him, and then his admin got it back to me. I tried to deliver it, but didn't know how with everyone around his office."*

*"Thanks Sid. Not a problem. But you should bear in mind that as a public sector client they can't accept gifts at all, so make sure to exercise discretion in a scenario like this."*

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<sup>3</sup> KPMG records reflect the cost of the 2014 basket at \$103.90 exclusive of sales tax and shipping.

When interviewed, Khushalani asserted that he did not recall reading or seeing the MTA Vendor Code of Ethics, had not dealt with public sector clients before, and did not think there was anything wrong with what he was doing at the time. Khushalani stated that he knew MTA employees were not allowed to accept meals, and further admitted he read Barbosa's assistant's December 2013 email message informing him of the MTA's gift policy; however, Khushalani claimed he misinterpreted the email to mean only that MTA employees could not accept gifts at the office. When confronted about the second gift of a bottle of wine, Khushalani claimed he wanted the bottle given discreetly to avoid the appearance of having alcohol in the workplace, although he had previously sent wine to Barbosa's office.

We also learned that in addition to tangible gifts, Khushalani extended benefits to Barbosa in the form of personal favors. On June 6, 2015, Barbosa emailed Khushalani from his personal email account: *"Hey Samir, This is my personal email. My sister's resume is attached. Eternally grateful if something could work out for her."* Barbosa attached the resume of his sister who lived in California. This email was sent while KPMG was not only providing services under contract to the MTA, but at a time when there was potential for receiving additional MTA contracts. Khushalani responded that he would make some phone calls and provide an update.

A series of KPMG internal emails some involving Khushalani, were transmitted about Barbosa's sister throughout June and July 2015. KPMG records reflect that Khushalani spoke with and forwarded the sister's resume to the managing partner in KPMG's Orange County, California office and so informed Barbosa. That partner in turn forwarded the resume to a KPMG Associate Director (AD) of operations services in Los Angeles, in an email bearing the subject title of "FWD: MTA Client Request," which read in part, *"Attached is the resume of the sister of a major advisory client (MTA) executive. She is looking for a low level position and we would like to help her out if possible (at least a good faith interview for an appropriate position if we have one)."* The AD wrote back to Khushalani and other KPMG officials that, *"Recruiting has spoken with [the sister] and has arranged an informational meeting/tour with her in the LA office this Thursday. We will be introducing her to other BPG leaders as well as taking her out to lunch."*

Barbosa subsequently emailed a message to Khushalani that stated, in part, *"Really strange news. They are trying to place my sister in some sort of support role that involves cleaning. I assume she would be an administrative support person or something like that."* Khushalani responded, in part, that he would make inquiries and did so. When Khushalani was told that the AD had interviewed the sister and that once an operations position became available he would strongly consider her, Khushalani pressed the matter further, asking in part, *"Is there anything we can do in the short-term? Marketing support, perhaps? Temp position?"* KPMG subsequently invited the sister to apply for a different position, for which she interviewed but was ultimately not hired.

Khushalani admitted that in another instance, Barbosa asked if Khushalani could forward the resume of Barbosa's son to someone who could help the son obtain an internship at a sports management firm. In March 2016, at a time when KPMG was performing work under Barbosa's

purview, Khushalani complied with this request by forwarding the son's resume within KPMG. Ultimately however, the other KPMG officials did not pass along the resume to a sports management firm.

## ANALYSIS

### *MTA Vendor Code of Ethics - Gifts<sup>4</sup>*

MTA Code of Ethics Chapter 1: Definitions, states that,

“Gift” means the transfer, without equivalent consideration, of anything or benefit, tangible or intangible, having more than nominal value, including, but not limited to, loans, forbearance, services, travel, gratuities of any kind, favors, money, meals, refreshments, entertainment, hospitality, promises, tickets to entertainment or sporting events, weekend trips, golf outings, loans of equipment, or other thing or benefit. A Gift need not be intended to influence or reward any individual or entity.

MTA Vendor Code of Ethics, Section 4.01, Zero Tolerance, provides that:

No Vendor may offer or give any Gift, directly or indirectly, to an MTA Employee. Similarly, no Vendor may offer or give any gift, directly or indirectly, to any family member of an MTA employee where such Gift is made because of the Vendor's relationship with the MTA Employee.

OIG staff found that Khushalani's signed and typed name appears on a MTA Vendor Code of Ethics Proposer's Certification of Compliance form dated March 14, 2014. By signing this form, Khushalani, on behalf of KPMG as Proposer certified, in part, that KPMG “has notice of all of the terms of the Code” and “No gift, as defined by the Code, has been or will be offered . . . in connection with this RFP or any resultant contract.”

Contrary to Khushalani's certification, he gave gifts to Barbosa and engaged in activities designed to benefit Barbosa and his family members on several occasions and thereby violated MTA Code of Ethics provisions. As discussed in detail above, Khushalani's conduct occurred during periods in which he and KPMG were actively engaged in MTA work, and while engaging in negotiations for additional contracts with the MTA.

When interviewed, Khushalani, who claimed that he did he not recall reading the MTA Vendor Code of Ethics, stated that he rarely reads or signs forms that appear to be standard language and that his assistant often applied his electronic signature to such forms.

***New York State Finance Law Restrictions on Contacts During the Procurement Process (New York Lobbying Law)***

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<sup>4</sup> The enclosed Attachment I, Exhibits A through M, are messages in which prohibited gifts and favors are discussed.

During our investigation OIG also found that on several occasions Khushalani and Barbosa discussed RFPs during restricted periods, for which Barbosa was not the designated point of contact. OIG staff reviewed two Bidder's/Proposer's Affirmation and Certification forms; one for P2P dated March 14, 2014, and one for PT dated August 29, 2014, both of which bear Khushalani's signed and typed name, on behalf of KPMG as the "Bidder/Proposer." By signing these forms, Khushalani affirmed, on behalf of KPMG, that KPMG "understands and agrees to comply with the policy regarding permissible contacts as required by the New York State Finance Law §139-j and §139-k." Section 139-j governs restrictions on contacts during the procurement process, while Section 139-k governs disclosure of contacts and responsibility of offerers.

Section 139-j 2 provides, in relevant part, that:

Every governmental entity that undertakes a governmental procurement shall: a. at the same time that a restricted period is imposed, designate, with regard to each governmental procurement, a person or persons who are knowledgeable about the procurement and who may be contacted by offerers relative to the governmental procurement.

"Restricted period" is defined in section 139-j 2 (f) as:

the period of time commencing with the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with article four-C of the economic development law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from offerers intending to result in a procurement contract with a governmental entity and ending with the final contract award and approval by the governmental entity and, where applicable, the state comptroller.

Further, Section 139-j 3 provides, in pertinent part, that:

Each offerer that contacts a governmental entity about a governmental procurement shall only make permissible contacts with respect to the governmental procurement, which shall mean that the offerer: a. shall contact only the person or persons who may be contacted by offerers as designated by the governmental entity pursuant to paragraph a of subdivision two of this section

Section 139-k 1 c states:

“Contacts shall mean any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental entity’s conduct or decision regarding the governmental procurement.

***MTA Vendor Code of Ethics***

The MTA Vendor Code of Ethics contains restrictions on contacts during its procurement process that require compliance with the Finance Law’s restrictions. Code of Ethics Section 2.01, Designated Point(s) of Contact, provides that:

Each procurement solicitation issued by MTA will identify the MTA’s Designated Point(s) of Contact for that solicitation as required by the State Procurement Lobbying Law. Once the Designated Point(s) of Contact is/are established, the Vendor and any person acting on the Vendor’s behalf, including without limitation, those providing compensated or uncompensated lobbying, advocacy, consulting or other services should ensure that its contacts with the MTA are in compliance with the requirements of the State Procurement Lobbying Law.

Based on OIG’s investigation, it appears that Khushalani contacted Barbosa on numerous occasions during restricted periods via text and email messages concerning open procurements despite the fact that Barbosa was not the MTA designated contact for those procurements.<sup>5</sup>

***KPMG’s Code of Ethics***

Finally, it should be noted that Khushalani was subject to KPMG’s Code of Ethics. KPMG’s Code of Ethics specifically addresses “Doing Business with Governments” and provides, in relevant part that, its employees should be alert to “Soliciting information from government procurement officials during the request for proposal and selection process . . . Providing gifts or anything of value to a government employee, or a contractor on a government engagement, without contacting the Office of Government Affairs.”

Further, KPMG’s Code of Ethics addresses “Guarding Against Bribery and Corruption” and provides, in part that; its employees should be alert to “Giving or receiving gifts that may raise the appearance of a conflict of interest.”

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<sup>5</sup> The enclosed Attachment II, Exhibits A through M, sets forth Khushalani and Barbosa’s potentially improper contacts during restricted periods.

## FINDINGS

1. Khushalani, an agent of KPMG, violated MTA Vendor Code of Ethics, Section 4.01, by giving gifts to Barbosa, a MTA official with whom Khushalani dealt in his official capacity.
2. Khushalani, an agent of KPMG, violated MTA Vendor Code of Ethics Section 4.01, by providing personal favors for then-CPO Barbosa.
3. Khushalani violated MTA Vendor Code of Ethics, Section 2.01 by contacting Barbosa about RFPs for which Barbosa was not the designated contact.
4. Khushalani appears to have violated New York State Finance Law Section 139-j provisions by contacting Barbosa about RFPs for which Barbosa was not the designated contact.

## RECOMMENDATIONS

1. The MTA Chief Compliance Officer should conduct an inquiry into the activities of Khushalani and KPMG with respect to the violations of the MTA Vendor Code of Ethics.
2. The MTA Chief Compliance Officer should conduct an inquiry into the activities of Khushalani and KPMG with respect to the possible violations of New York State Finance Law.

We will certainly make available to you all evidence obtained during the course of our investigation to assist you in your review of this matter. If you need additional information please feel free to contact me at (212) 878-0007 or Deputy Inspector General Demetri M. Jones at (212) 878-0279.

Very truly yours,

Barry L. Kluger

By:

  
Demetri M. Jones

Deputy Inspector General

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cc: