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October 11, 2018

Mr. Andrew Byford
President
MTA New York City Transit
2 Broadway, 30th Floor
New York, NY 10004

**Re: Improper Disclosure of Cost
Estimates by an MCSS Employee
MTA/OIG #2018-36**

Dear Mr. Byford:

The Office of the MTA Inspector General (OIG) has an ongoing review of New York City Transit's (NYC Transit) policies and practices with respect to the confidentiality of the agency's cost estimates for capital construction projects. To date we have notified NYC Transit that both a consultant and an employee emailed confidential cost estimates to their own personal email accounts as well as to parties who were not authorized to receive such estimates. In response to OIG's findings NYC Transit dismissed the consultant (Shridhar, OIG Report #2017-13) and took disciplinary action against the employee (Aguila, OIG Report #2018-02).

This letter shall serve as the OIG's final report on the matter that was previously presented to MTA in a draft letter dated June 1, 2018, regarding another consultant, Nasser Ahmed, an employee of Management Systems Concepts and Services, Inc. (MCSS). We found that Ahmed transmitted cost estimates and other confidential documents to his personal email account and to parties who were not authorized to receive such materials. By transmitting confidential material Ahmed violated NYC Transit policies governing confidentiality, and the terms of the agency's contract with MCSS. In NYC Transit's June 22, 2018 response the agency indicated that it had Ahmed's services at NYC Transit terminated.

Procedures Governing the Confidentiality of Cost Estimates

NYC Transit has an Indefinite Quantities contract (IQ Contract) with MCSS to supply cost estimators to supplement the staffing in NYC Transit's Estimating Unit (Estimating), a subdivision within NYC Transit's Department of Capital Program Management (CPM).¹ These

¹ NYC Transit's contract with MCSS is Contract CM-1538, "Indefinite Quantity Contract to Provide Cost Estimating and Cost Control Support Personnel." NYC Transit also has IQ contracts with three other staffing firms to supply cost estimators.

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MCSS employees assigned to Estimating prepare construction cost estimates and cost estimates for Additional Work Orders (AWO) for various NYC Transit projects under the direction of a NYC Transit Estimating manager.

NYC Transit's IQ Contract with MCSS specifies how its employees are to manage MTA information, and their own work products including cost estimates. According to the contract:

The Consultant [including its principals, members, directors, officers and employees] and [its subcontractors, suppliers, consultants and agents, as well as their principals, members, directors, officers, employees, agents and consultants] shall keep confidential all information furnished to it (them) by the Authority or otherwise learned or derived by it (them) about or in connection with this Project, any other MTA/Authority project or contract or MTA/Authority policies, procedures, operations, or infrastructure...

Confidential Information includes, but is not limited to, specifications, drawings, plans, diagrams, sketches, renderings and other technical data and information, as well as all designs, maps, surveys, design calculations, shop drawings, charts, photographs (including "progress photographs") and CADD materials and media.

The IQ Contract also states that:

The Consultant shall maintain confidentiality of cost estimates.

Confidential Information pertaining to this Project... must be appropriately safeguarded by the Consultant from disclosure to anyone who is not so authorized by the Authority to have access thereto

Neither the Consultant nor any of the above-mentioned individuals or entities may sell, transfer, disclose, display or otherwise make available to anyone any part of such Confidential Information without the prior written consent of the Authority.

Further, NYC Transit Project Management Procedure 207 (PMP 207) governs how AWO's are to be handled. Specifically, regarding estimates it states the following:

3.1 Preparation, Control and Distribution of AWO Estimates...

Each page of the original AWO cost estimate... prepared in either the Construction Manager's Office or by Cost Estimating... is to be marked "CONFIDENTIAL-CONTRACT COMPETITION SENSITIVE" and is never to be given to the Contractor.

The original AWO cost estimate... and work sheets used in the preparation of the estimate shall be kept secured when not in use, until negotiations with the Contractor have been satisfactorily completed. No additional copies are to be made.

Further, on August 10, 2017, in response to OIG's findings regarding the mishandling of confidential cost estimates by Shridhar, a consultant assigned to Estimating, NYC Transit's Senior Director for Cost Estimating (Senior Director) issued a memorandum entitled "*Back to Basics*" *Procedural Refresher* to all Estimating Managers, which stated:

All Estimates and Memorandums must be marked Confidential. The estimate should not be sent to any individual not on the distribution list,² to or from a Personal E-mail address.

The Senior Director instructed all Estimating Managers to "make sure that you and your staff read the 'Back to Basics' memo... and Follow the updated procedures and guidelines."

Ahmed Failed to Maintain Confidentiality of Estimates and Supporting Information

Nasser Ahmed began working as a consultant for Estimating on November 6, 2017, and was assigned to a manager in Estimating. He was engaged by NYC Transit for one year, and holds the title of Cost Estimating Engineer – Level III. On November 6, 2017, Ahmed was assigned by his manager to update the cost estimate for project *C-40900 Fire Suppression System in Signal Relay Rooms and Tower-Phase 2* (Fire Suppression Project) to reflect the addition of a compressor room to the project's design.

On November 6, Ahmed's manager emailed him a copy of the Preliminary Engineering Estimate for the project,³ and a separate spreadsheet that contained previous estimates of the addition.⁴ All pages of the estimates transmitted to Ahmed by his manager were marked "Confidential." On November 8, 2017, Ahmed emailed the estimates to his personal email account. Similarly, on November 15, 20, 22, and December 1, 2017 he transmitted estimates that he was preparing for the room addition for the Fire Suppression Project to his personal email.

In December 2017, Ahmed transmitted confidential documents relating to two other projects to his personal email. On December 20, 2017 Ahmed sent confidential documents pertaining to AWO #2 for contract D-37467: *PBX Upgrade at 7 Locations in the Boroughs of Brooklyn*,

² The distribution list is limited to the project's Construction Manager and Design Manager, the Senior Director of Cost Estimating, Deputy Vice President of Project Controls, the estimator's Manager, and officials of NYC Transit's Capital Planning and Budget Division. All personnel on the distribution list are NYC Transit employees.

³ The estimate was entitled "Copy of C-40900 Fire Suppression System in Signal Relay Rooms and Tower Phase 2 PE."

⁴ These estimates were included in a single Excel file, and the estimate was entitled "Copy of 239th Street Yard Suppression Room -5."

Queens, Manhattan, and the Bronx to his personal email.⁵ The AWO was in process at the time of the transmittal and was not finalized until April 2018. On December 22, 2017 Ahmed transmitted draft cost estimates for additional design work pertaining to the design of Staten Island Railroad project S-80501, and NYC Transit project W-32557. This AWO was also in process at the time of the transmittal and was not finalized at the time of this report.

As an employee of MCSS, Ahmed was required to comply with the provisions of the IQ contract. Ahmed was therefore required to ensure that all estimates were clearly labeled “Confidential” and safeguard the estimates as stated in the IQ contract and in NYC Transit management procedures and other guidance.

When interviewed on April 11, 2018, Ahmed acknowledged that he sent the aforementioned estimates to his personal email, but claimed that he was unaware of the prohibition against sending emails containing confidential documents to his personal account. He claimed that he first learned that NYC Transit prohibited the practice when his manager emailed him CPM’s Back to Basics memo on January 18, 2018, two months after he was engaged by CPM.

However, during the interview, Ahmed further stated that one of the owners of MCSS, who he knew personally and regarded highly, had probably informed him of the contract’s confidentiality requirements, but he could not recall if or when the owner had done so. Ahmed stated that he sent the emails containing confidential documents to his personal email account to study the documents on his trips to and from work. He claimed he needed the extra time to familiarize himself with the subject matter, and also claimed that he needed to “prove” himself to his superiors as a full-time estimator. He claimed that he did not share the estimates with “anyone outside of the agency.”

Ahmed had an obligation to familiarize himself with NYC Transit’s estimating process, and especially its requirements for confidentiality given the sensitivity of cost estimates and supporting documents. As noted, two of the inappropriate transmissions occurred in late December 2017, more than six weeks after he was engaged by NYC Transit. Further, prior to his engagement as an estimator at CPM, Ahmed claimed in his resume that since 2006 he had worked as an estimator on numerous NYC transit capital construction projects while employed by various consulting firms.⁶ Thus, for Ahmed to claim that he was unaware of NYC Transit’s

⁵ Attached to the email that Ahmed transmitted to his personal email were (1) Amplifying Drawings through 11-21-17 and (2) the scope of work, (3) the Scope Development Information Sheet and (4) in-house Cost Estimate Request Memo.

⁶ For example, according to Ahmed’s resume from July 2015 to November 2015, he was employed by AECOM and worked as a “Communication Estimator” for the South Ferry Station project. During this timeframe he claimed that he was “responsible for negotiating, estimating, and processing additional work orders for South Ferry Station’s communication systems.” Similarly, from October 2006 to June 2014, Ahmed worked for the staffing firm, HEPCO, and claimed that he “provided estimating, design and construction support for various capital

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prohibition against transmitting confidential estimates and supporting documents to or from a personal email account raises serious questions regarding his judgment, if not his credibility and therefore his suitability for the position.

Lastly, and most importantly, Ahmed's initial claim that he did not share confidential information with unauthorized parties is false as detailed below.

Ahmed Transmitted Confidential Documents to Unauthorized Parties

On November 8th, 2017, two days after he began work with NYC Transit, Ahmed received design drawings for the Fire Suppression Project, (project C-40900 highlighted in the previous section) from the project's Design Manager. As previously noted, Ahmed's Estimating Manager directed him to begin work on the compressor room estimate.

Less than an hour after receiving the project's design drawings Ahmed forwarded the drawings to Omar Ahmed with the following message: "See if you can calculate the steel (in Tons) for the room shown on drawing C19, 201&21". When questioned, Ahmed stated that Omar Ahmed was his son. He described his son as a mechanical engineer who is employed by an engineering company named AST Engineering. He further stated that because the estimate involved construction work that he was not familiar with, he asked his son to develop the structural steel calculations for the estimate.

Ahmed acknowledged that none of AST Engineering's employees are authorized to receive confidential NYC Transit documents. Ahmed claimed that he was not sure whether the drawings were confidential, and offered that he did not send his son any estimates or "numbers." However, as detailed in NYC Transit's contract with MCSS, project drawings are confidential documents. Further, Ahmed admitted that he did not seek guidance from his manager regarding the appropriateness of sending drawings to his son, nor did he ask for assistance from his colleagues or manager regarding how to calculate the amount of steel needed for the addition. Ahmed claimed that he "briefly asked some people in the office" regarding the steel calculation, but "they were busy." Notably, both the Vice President and Deputy Chief Engineer for Program Services and the Senior Director for Estimating expressed surprise that Ahmed would need assistance to perform what, they both claimed, was a very basic calculation.

On December 19, 2017 Ahmed emailed Dina Rizk, an MCSS employee and attached a copy of the draft cover memo pertaining to the final cost estimate for NYC Transit project C-40900, the aforementioned Fire Suppression Project. Ahmed transmitted the email with the draft memo as an attachment to Rizk's MCSS email account, and to her personal Gmail account. The email contained the following subject line, "read proof the attached please and return ASAP."

communications projects (PA 87 stations, Fulton Street Station, fire alarm upgrade for 5 bus depots and 16 subway stations)."

The draft cover memo included NYC Transit's final estimate for the Fire Suppression Project. Notably, Rizk was an office administrator, who was not authorized to receive confidential information regarding the Fire Suppression Project, or any other capital construction project. At the time of the email transmission to Rizk, CPM managers expected the project to be bid in March 2018, and awarded in June 2018. Therefore, NYC Transit's final estimate for the project was especially sensitive. Ahmed acknowledged that he knew that the document contained confidential information. He stated that Rizk has a good command of English, so he sent her the memo to review, and correct as necessary before he transmitted it to his manager. He acknowledged that he could have sought assistance from his Estimating Manager or from his colleagues in Estimating before sending the draft memo to Rizk, but did not do so.

Ahmed's transmittal of confidential documents to his son and an MCSS administrator violated NYC Transit's rules governing confidentiality and the agency's contract with MCSS. Those rules clearly prohibit the transmission of confidential estimates and other materials to unauthorized parties. Further, Ahmed's repeated transmittal of confidential materials to his personal email and to unauthorized parties over the first two months of his assignment with Estimating demonstrates his inattention to his responsibility to protect the confidentiality of cost estimates and other confidential documents. Coming from a background in cost estimating on NYC Transit projects he should have been familiar with the prohibition against transmitting confidential materials to unauthorized parties. At the very least, Ahmed should have understood the importance of maintaining confidentiality when preparing cost estimates and asked his supervisor for guidance before he sent confidential materials to the personal accounts of his son and an MCSS administrator. However, he did not do so. Most importantly, he was not candid when questioned regarding his handling of the confidential materials.

Summary of Findings

On several dates in November and December 2017 Nasser Ahmed violated NYC Transit's policies regarding the confidentiality of cost estimates and provisions regarding confidentiality in the agency's IQ Contract with MCSS. He did so by:

- a. Transmitting confidential documents, including cost estimates to his personal email.
- b. Transmitting confidential project design drawings for project C-40900 Fire Suppression System in Signal Relay Rooms and Tower-Phase 2 to his son, who is not authorized to receive such materials.

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- c. Transmitting a draft memo which included the final cost estimate for project C-40900 Fire Suppression System in Signal Relay Rooms and Tower-Phase 2 to the personal and office email of the MCSS Office Manager.

RECOMMENDATIONS

1. NYC Transit should inform MCSS that Ahmed is not to work on any MTA Agency related projects in any capacity.
2. NYC Transit should ensure that all estimating consulting firms, and NYC Transit estimating managers reinforce NYC Transit policies regarding the confidentiality of cost estimates, and related documentation.

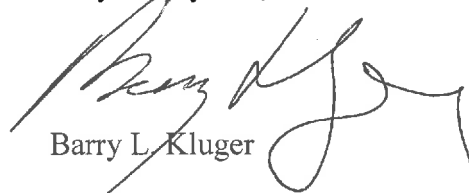
Agency Response

In NYC Transit's June 22, 2018 response the agency indicated that it had Ahmed's services at NYC Transit terminated, and notified his employer, MCSS, that he should not be put forth as a candidate at any MTA agency.

In addition, NYC Transit indicated that it had taken several actions to reinforce appropriate handling of confidential materials, including reinstruction of all estimating managers, employees and consultants in one-on-one discussions, and discussions with the managers of estimating consulting firms.

We appreciate your courtesy and cooperation. Should you have any questions, or need additional information, please contact me at (212) 878-0007 or Executive Deputy Inspector General Elizabeth Keating at (212) 878-0022.

Very truly yours,



Barry L. Kluger

Cc: John O'Grady, Senior Vice President
Griselda Cespedes, Vice President & Deputy Chief Engineer