



Barry L. Kluger
Inspector General

Office of the Inspector General

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July 11, 2018

Phillip Eng
President
MTA Long Island Rail Road
93-02 Sutphin Blvd., 3rd Floor
Jamaica, NY 11435

**RE: Ethics Violations in LIRR
Department of Program
Management
MTA/OIG #2018-37**

Dear Mr. Eng:

The Office of the MTA Inspector General (OIG) has completed an investigation which established that Daniel J. Knote, Jr. (Knote), Project Manager, Department of Program Management (DPM), Long Island Rail Road (LIRR), engaged in improper communications with Richard C. Semenick (Semenick), Rail Section Manager/Associate Vice President of the consulting firm Henningson Durham & Richardson, Inc. (HDR), during and concerning an ongoing procurement. It also appears that Semenick may have violated provisions of the New York State Finance Law by engaging in prohibited contact with Knote during a restricted period regarding that procurement. We recommend that LIRR impose discipline on Knote, as it deems appropriate, up to and including termination. We further recommend that the LIRR conduct an inquiry into the activities of Semenick and HDR. Based on the results of this and a prior OIG investigation,¹ we also recommend that LIRR provide supplemental ethics instruction for DPM project management staff, with particular emphasis on confidentiality and communications during restricted periods or outside of official channels, and continue to ensure that Semenick does not participate in LIRR projects. It also appears that Knote may have violated New York State Public Officers Law § 74.3 subdivisions c and h, and we will forward our findings to the New York State Joint Commission on Public Ethics (JCOPE) for its consideration, in accordance with its jurisdiction, for action as it deems appropriate.

¹ See MTA/OIG # 2017-02. As a result of this prior investigation LIRR directed HDR that until further notice Semenick was not to participate in ongoing or future contracts or proposals for its projects.

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BACKGROUND

Daniel Knoté was hired by the LIRR in October 1993 as a Car Appearance Maintainer and was thereafter promoted six times, attaining his present position of Project Manager in June 2007. Semenick was hired by LIRR in 1985 and retired from the railroad in 2010 as Assistant Chief Engineer-Maintenance of Way. He subsequently became Rail Section Manager/Associate Vice President in the New York City Office of HDR, a consulting firm which provides services on various projects to LIRR and other MTA agencies.

LIRR contract number 6052 provided for General Engineering Consulting (GEC) services. Two Requests for Proposal (RFP) were issued within that contract to acquire the services of a Resident Engineer (RE) and Construction Inspector (CI) to support DPM's Colonial Road Expansion Project (Colonial Road), involving replacing a bridge and extending the pocket track in Thomaston, New York. The first RFP was issued on September 15, 2014, with a submission response date of October 2, 2014. The LIRR Contract Administrator and designated point of contact for the solicitation was John Latterner (Latterner) of the Procurement and Logistics Department (P&L). Knoté was the project manager for the Colonial Road RFP and a member of its Technical Evaluation Committee (TEC). Resumes furnished by the proposers were reviewed and assessed by Knoté and the other TEC members, with some candidates also being interviewed.

Finding no suitable RE candidates among the proposals received, LIRR reissued the RFP with minor revisions (the second RFP) on December 15, 2014, with a submission due date of December 31, 2014. Following completion of the TEC's evaluation of the candidates, on February 20, 2015, LIRR issued a directive-and-approval to STV, Inc. to provide the RE and, on March 24, 2015, LIRR issued the directive-and-approval to AI Engineers, Inc. to provide the CI. HDR did not submit a proposal in response to either RFP.

INVESTIGATION

During 2017 LIRR held vendor Special Responsibility hearings with HDR and Semenick, pursuant to the findings and recommendations of OIG Letter Report #2017-02. That report addressed an unrelated series of interactions between Semenick and a LIRR Assistant Chief Program Officer. In follow-up to those hearings, OIG staff reviewed the contents of Semenick's HDR email account and discovered a series of email messages concerning Colonial Road, transmitted between Semenick and a person identified as "D" and "Dan" who communicated via a personal email account. We determined that the personal account belonged to Knoté, LIRR's Colonial Road project manager. Our ensuing investigation included review of these messages; messages between Semenick and other HDR staff concerning his communications with Knoté; LIRR procurement-related documents; Knoté's LIRR email account and telephone records; and interviews of Knoté and Latterner. We also conferred with LIRR's Law and P&L Departments.

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Prohibited Contacts – Emails

On January 30, 2015, a time when the Colonial Road RFP procurement process was ongoing, Semenick emailed to Knote's personal email address the resume of John R. Mandeville, Jr., with the subject line "Potential Candidate" and the below message:

Dan,

Attached is John's resume.

Heavy track

Was a former B&B mechanic at Amtrak also..... [sic]

He has been around many bridge replacements, along the corridor and is experienced with safe means and methods constructing over a live RR.

I would not send this to you if I wasn't confident John could help you.

Semenick forwarded that message within HDR to Steven Scaglione (Scaglione), Construction Services Manager/Associate Vice President and Frederick Mohrmann (Mohrmann), then-Director of Construction Management Services, and copied three other HDR managers, including Senior Vice President/Area Manager Thomas McLaughlin. Semenick wrote:

Steve/Fred,

Dan Knote (PM for LIRR Colonial Road) called and said:

"Rich I'm hurting on my project and need you to get me a CI....we advertised again and only got one person from STV who is simply not gonna work.....you have to help me out here....."[sic]

I sent him the resume above, former Amtrak, can handle the work, and I spoke with John Mandeville and he is certainly willing to take it. He now works for HNTB part time and says he is lucky if he gets 5 hours a week and it's not cutting it.

I told Dan Knote I will hire John Mandeville if he thinks he will take him.....so, let's see. Dan will run this by the "Committee" and let me know.....he will then have procurement re-advertise and we will submit.....[sic]

Steve – how quick can we hire him if this goes to the next level??

One step at a time here....[sic]

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On February 2, 2015, the following messages were transmitted:

Knote to Semenick:

Rich, Thanks for the resume but we are looking for an inspector with the required certifications.

Semenick:

Ok.....I tried..... Will the solicitation be readvertised?

Knote:

I have not been able to get in touch with the contract administrator but I will let you know.

Semenick:

OK....I can put out a “company wide” calling if you do....[sic]

Semenick then forwarded the above exchange to Scaglione and Mohrmann, and copied another HDR staff member, noting:

I am communicating with the LIRR PM via **personal email**...(emphasis added)

He may very likely re-advertise Colonial Road

Can we resort to Aerotek² to try to fill this role if he does??

Later on February 2nd, Semenick emailed Knote the resume of an individual named Steven Kaufman, with the subject line “Re: Potential Candidate,” and stated:

Dan, Would this person work out for you.....??

Semenick then sent a message to Senior Vice President McLaughlin and Scaglione, stating:

Ok..I passed his CV to the LIRR PM.....Let’s see...

Knote responded to Semenick:

² Aerotek is a staffing and recruitment agency.

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I would say hands down winner, I just have to figure how to get RFP sent back out

The following day, February 3, 2015, the following messages ensued.

Knote to Semenick:

Question is he working for PB now?

Can you substitute him for your original guy Marcus Brown or maybe Marcus is not available anymore³ you may want to speak with who ever from your office is dealing with Jack Latterner on the procurement the plan right now is to review the original inspectors submitted but they might not be available since they were submitted in October [sic]

Semenick:

He works for PB now and we would hire him. (EXTREMELY CONFIDENTIAL)

HDR did not propose on Colonial Road. I don't know of a Marcus Brown??

Semenick forwarded the above message to Scaglione and Mohrmann, with the comment: The "saga" continues.....

Knote responded to Semenick:

Procurement is giving me a hard time I will keep you posted

Semenick responded "OK" and then forwarded Knote's message to McLaughlin and Scaglione, copied to Mohrmann, with the comments:

The LIRR likes Kaufman.....let's see if LIRR can re-advertise....
Still some risk here with the transitions.....

At another point that morning, Semenick forwarded Knote's "*Procurement is giving me a hard time*" message to Scaglione and Mohrmann, with the comment:

The typical Procurement jam..
Being we didn't propose initially on Colonial Road CM opportunity.....it's a struggle to get Jack Latener [sic] to re-up it....

³ Knote told OIG staff that he must have been confused when he wrote that, as he knew that HDR had not submitted a proposal and Marcus Brown was the candidate proposed by Parsons Brinckerhoff (PB).

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On February 5, 2015, Knoté wrote Semenick:

Rich, Procurement will not allow me to accept new resumes until we have interviewed all candidates and determined none are acceptable. Final interviews are scheduled for week of 2/23/15. I'll keep you posted.

Semenick responded "10-4" and a series of emails within HDR ensued, concerning posting a position that Kaufman could apply for. In one, Scaglione wrote to an HDR recruiter, in part,

An immediate hire is dependent on if the LIRR Colonial Road Project indeed gets re-advertised. If not – we still want to keep him in the hopper for a future hire for LIRR work.

McLaughlin was among those copied on the above message.

Additionally, review of Semenick's HDR email account revealed a message dated January 27, 2015 in which Semenick, in part, enumerates to McLaughlin five future projects at LIRR, and listed the LIRR's expected staffing needs and approximate time frames for each procurement. As to one project, Semenick comments, "still getting bits and pieces here... June time frame at the moment." McLaughlin could have reasonably inferred that Semenick was receiving such information on an unofficial basis from within LIRR.

Interview of Knoté

On February 16, 2018, OIG staff interviewed Knoté who stated that Semenick was his supervisor in or about 1993-1994 when Knoté was a carpenter in LIRR's Buildings and Bridges Department and Semenick was Principal Engineer of Structures. He indicated that while they have had occasional contact since Semenick left LIRR they are not friends. Knoté stated he did not remember calling Semenick in late January 2015, nor did he remember making statements to Semenick similar to those Semenick quoted in his January 30, 2015 email to Scaglione and Mohrmann. Knoté stated however, that he recalled seeing Semenick a few times after his LIRR retirement at the Hillside Support Facility and on one such occasion, possibly in January 2015, they happened to meet, unplanned, in the cafeteria.

Knoté told OIG staff that Semenick asked him how Colonial Road was going, to which Knoté answered that no qualified people were submitted [in response to the RFP]. Knoté denied asking Semenick to send him candidates or saying something to the effect of, "you have to help me out," and could not offer a reason why Semenick would say that he did. Knoté stated that while it was possible that he mentioned to Semenick that it was odd that LIRR did not get any qualified

people, he claimed he did not remember saying anything like “we advertised again and only got one person from STV who is simply not gonna work.”⁴

It appears that the latter quote Semenick attributed to Knote was based on specific confidential information that Knote provided to him. The reissued RFP did, in fact, yield only one new CI candidate, proposed by STV, who the TEC eliminated from further consideration due to lack of railroad experience. Additionally, only two firms proposed new RE candidates under the second RFP, one of which was later withdrawn, leaving for consideration just one person from STV. The TEC interviewed that STV candidate just four days before Semenick’s January 30th description of their conversation.

Knote initially told OIG staff that he did not remember how matters were left at the end of his conversation with Semenick. When shown the resume of Mandeville (as discussed in Semenick’s January 30, 2015 email) and asked why Semenick sent it to him, Knote stated he did not know why, other than that he had told Semenick that they were not getting good candidates. Knote denied asking Semenick to send the resume.

When asked how Semenick obtained Knote’s personal email address, Knote initially stated he did not know, but subsequently admitted that he provided it to Semenick for the purpose of having Semenick send him potential candidates. Knote believed that Semenick asked him for his email address and said something to the effect of, “Let me see if I can find some people.” When asked whether he had used his personal email address to communicate with Semenick in order to conceal their communications Knote denied that was the reason, but also replied that he was not sure why [he used his personal email address].

Knote acknowledged that at the time he received Kaufman’s resume, the RFP selection process was still ongoing. When asked why he engaged in emails with Semenick while the TEC process was underway, Knote stated, “maybe I was trying to be nice to Rich;” Knote claimed he did not otherwise know the reason for his actions, as everyone on the TEC liked the CI candidate submitted by AI Engineers and Knote knew the RFP would not be reissued. Knote admitted that he was aware that everything had to go through Procurement and offered that he should have told Semenick from the outset.

Despite his email comments suggesting he was contacting P&L, Knote asserted that he did not actually try to convince Latterner to re-advertise the RFP (i.e., a third issuance). Knote stated he was unsure if he had any conversations with Latterner during the period of the email exchanges, but claimed that he was not doing anything to get a third RFP issued. Knote also denied telling Semenick it was “a struggle” to get Latterner to issue another RFP. When asked to explain his

⁴ Knote did remember asking Semenick why HDR did not submit a candidate for Colonial Road, and that Semenick responded that there was a lot of work going on in the industry and no one was available for HDR to put in.

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comment that Procurement would not allow him to accept new resumes, Knote stated that he did not ask Latterner if LIRR could accept new resumes, rather he wanted Semenick to know that LIRR could not accept new resumes.

Procurement Confidentiality Certification

Knote admitted that he did not receive approval from anyone to discuss the open procurement with Semenick despite knowing that he was obligated to do so. Knote acknowledged that on October 8, 2014, he signed a standard LIRR Confidentiality Statement form, which provided in pertinent part:

I, the undersigned, a participant in the procurement process for Contract No.: 6052B-01 – Colonial Rd certify that I will not discuss or reveal any information concerning these procurement proceedings to anyone who is not also participating in the same procurement process; information may be provided only to those participating in the same procurement process, but only to the extent that such information is required in connection with such proceedings on a need to know basis. Should the need arise to discuss the information with someone not participating in the procurement process, prior approval must be received from the Contracting Officer and this certification must be completed and signed.

Knote, who served on a number of TECs during his LIRR career, also admitted that Latterner had cautioned him not to have pre-award contact with proposers.

While Knote claimed he was trying to identify better candidates, he did admit that his conduct was improper. Referring to Semenick and himself, Knote stated, “We both should have known better.”

Interview of Latterner

Latterner confirmed that he was the designated point of contact for the RFPs and that he had cautioned Knote against pre-award contacts with proposers on more than one occasion. He said it was his practice at initial TEC meetings to review with the members their obligations under the Confidentiality Statement. Latterner was not aware of Knote being in contact with any proposers pre-award but had a limited recollection that at some point, Knote stated something like, “we need to contact them,” to which Latterner responded, “No, not-pre-award.” Latterner did not remember the context; the exchange apparently occurred during either the first or second RFP.

ANALYSIS

Knote

MTA All-Agency Code of Ethics

Knote repeatedly communicated with Semenick about an ongoing procurement during the restricted period and outside of official channels. Moreover, Latterner, LIRR's official point of contact for the procurement, had specifically instructed Knote not to communicate with proposers during the restricted period. Knote's series of communications suggested his willingness to try to manipulate and restart the RFP process. His actions in this regard, starting with providing his personal email address to Semenick, created at minimum an appearance of impropriety. His continued conduct provided the impression that he was willing to violate applicable rules and his position of trust. This was compounded by the impression Knote gave that he would be favorably disposed toward HDR's pre-identified candidate, a competitive advantage to HDR, should it be given another opportunity to submit a proposal.

Section 4.02 of the Code of Ethics, Public Trust, provides in part that:

- (a) Employees shall not engage in a course of 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. Employees shall avoid even the appearance that they can be improperly (1) influenced in the performance of their official duties or (2) induced to violate the public trust or impair their independence of judgment in the exercise of their official duties.
.....
- (c) Employees shall not by their conduct give 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.

Knote's conduct as detailed above could have provided a reasonable basis for the impression that Semenick could improperly influence Knote or unduly enjoy Knote's favor in the performance of Knote's official duties, or that Knote was influenced by Semenick, thus creating an appearance of impropriety. Additionally, Knote, a member of the TEC, was required by LIRR policy and the MTA All-Agency Code of Ethics to maintain the confidentiality of the selection process and refrain from unauthorized disclosures. Section 4.03 of the Code of Ethics, Confidential Information, provides that:

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Employees shall not disclose Confidential Information without the permission of the General Counsel of the MTA Agency at which such individual is employed for any purpose, or use such information to further their personal interests.

Knote's obligation to maintain confidentiality was explicitly stated in the Confidentiality Statement he signed in advance of his communications, and is further set out in LIRR policy.

LIRR Corporate Policy & Procedure

Corporate Policy & Procedure PL-015, Procurements by Competitive Negotiations, provides in part that:

V (A) Procedure (C) 4. Confidentiality:

- a. Each member of the Evaluation Committee (Member) and each Advisor shall sign the latest standard Confidentiality Statement that, among other things, (i) precludes discussing any aspect of a Proposal with anyone not authorized by the Procurement Officer and (ii) certifies that the Member does not have, and will disclose, a conflict of interest. ...
- b. The Procurement Officer shall determine whether Members are authorized to discuss specific aspects of the Proposal with other individuals and whether such individuals need to sign a Confidentiality Statement.
- c. Maintaining Confidentiality of Proposals and the evaluation process is each Member's and Technical Advisor's Responsibility.
- d. From the date of issuance of the RFP, until the Contract is awarded, all communications with Prospective Proposers shall only be conducted by the Procurement Officer unless written permission is given to other committee or advisory members.

Semenick/HDR

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

In multiple instances described above Semenick communicated with Knote concerning an RFP during the restricted period, for which Knote was not the designated point of contact. Semenick did so as an agent of, and with the knowledge of others in, HDR management. Semenick was an LIRR employee for 25 years and his employer HDR is a vendor experienced in doing business with MTA agencies; both should have been aware of the prohibitions against such conduct, including New York State Finance Law §139-j and §139-k.

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Section 139-j (2)(a) 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 such governmental procurement, a person or persons who are knowledgeable about the procurement and who may be contacted by offerors relative to the governmental procurement.

“Restricted period” is defined in section 139-j (2) (f) in part 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 ... 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 offers 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 part that:

Each offerer that contacts a governmental entity about a governmental procurement shall make only 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 offerors 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 additionally contains restrictions on contacts during the procurement process that require compliance with the New York State Finance Law's requirements. Vendor Code of Ethics, Section 2.01, Designated Point(s) of Contact, provides in part 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 or entity acting on the Vendor's behalf ... should ensure that its contacts with the MTA are in compliance with the requirements of the State Procurement Lobbying Law.

Latterner was the RFPs' designated contact. The restricted period of the procurement began, at the earliest with the original September 15, 2014 issuance of the first RFP, or at the latest with the issuance of the second RFP on December 15, 2014, and ended with the last directive-and-authorization to proceed (functionally, the contract award) on March 24, 2015. Semenick's communications with Knoté about the procurement during late January and early February of 2015 fell within the restricted period and were required to be directed to Latterner.

It appears that Semenick and Knoté communicated about an on-going LIRR procurement, on multiple occasions, during a restricted period with the intent to influence the LIRR's conduct or decision regarding the RFP procurement.

FINDINGS

1. Knoté engaged in a course of conduct that could raise suspicion among the public that he was likely engaged in acts in violation of the public trust when he communicated with Semenick in secret and outside of official channels about an RFP, in violation of MTA All-Agency Code of Ethics, Section 4.02.
2. Knoté's conduct created the appearance of impropriety in that it appeared Knoté could cause the RFP process to be restarted in order to permit HDR to submit a candidate and thus provide HDR a competitive advantage, in violation of MTA All-Agency Code of Ethics, Section 4.02.
3. Knoté provided Semenick with confidential information concerning the evaluation process of an RFP during the restricted period, in violation of MTA All-Agency Code of Ethics, Section 4.03.

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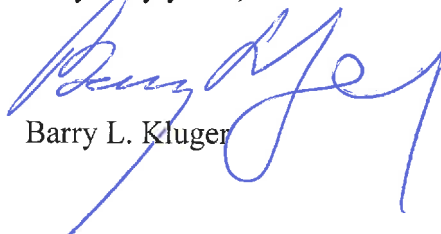
4. Knote communicated with Semenick without authorization and disclosed confidential information about an RFP during the restricted period, in violation of LIRR Policy & Procedure PL-015 and the terms of the Confidentiality Statement he executed.
5. Semenick communicated with Knote about a pending procurement solicitation for which Knote was not the designated contact, in violation of MTA Vendor Code of Ethics, Section 2.01.
6. Semenick appears to have violated provisions of New York State Finance Law Section 139-j by communicating with Knote during the restricted period about an ongoing procurement process for which Knote was not the designated point of contact.

RECOMMENDATIONS

1. LIRR should impose discipline on Knote, as it deems appropriate, up to and including termination.
2. The LIRR should conduct an inquiry into the activities of Semenick and HDR with respect to the violation of the MTA Vendor Code of Ethics including any improper disclosures of confidential LIRR information relative to future procurements, and continue to ensure that Semenick does not participate in LIRR projects.
3. The LIRR should conduct an inquiry into the activities of Semenick and HDR with respect to the possible violation of the New York Finance Law.
4. LIRR should provide supplemental ethics instruction for DPM project management staff regarding interactions with vendors and potential vendors, with particular emphasis on confidentiality and communications during restricted periods or outside of official channels.

As always, we appreciate your continued courtesy and cooperation. Please advise me within 30 days of any actions you take pursuant to this letter. 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,



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cc: Mark Hoffer, General Counsel, LIRR
Stephen Papandon, Ethics Officer, LIRR
Lamond Kearse, Chief Compliance Officer, MTA