



Barry L. Kluger  
Inspector General

## Office of the Inspector General

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October 11, 2018

Mr. Andy Byford  
President  
MTA New York City Transit  
2 Broadway, 20<sup>th</sup> Floor  
New York, NY 10004

**Re: Management of Confidential Capital  
Cost Estimates  
MTA/OIG #2018-47**

Dear Mr. Byford,

The Office of the MTA Inspector General (OIG) has completed its review of the New York City Transit (NYC Transit) Estimating unit's (Estimating) policies and practices regarding the confidentiality of cost estimates. Estimating is a subdivision of NYC Transit's Department of Capital Program Management (CPM). Our review was prompted by the findings from an investigation that our office completed in August 2017, regarding the mishandling of confidential NYC Transit cost estimates by an estimating consultant, Chengad Sridhar (Shridhar), who was employed by AECOM and assigned to Estimating (OIG Report #2017-13).

This letter shall serve as the OIG's final report on the matter that was previously presented to MTA in a draft letter dated August 2, 2018. In NYC Transit's August 22, 2018 response the agency indicated that it agreed with the recommendations contained in our draft letter.

Estimating is responsible for establishing baseline construction cost estimates for each phase of a NYC Transit capital construction project, from conceptual design to substantial competition. Cost estimates, and the documentation used by an estimator in the preparation of an estimate, such as design drawings (hereafter estimates or cost estimates), are confidential documents.

As discussed below, our review found that nearly 8 of the 42 estimators who worked on MTA projects from July 2015 to February 2018, and whose email was analyzed for this review, routinely mishandled the cost estimates entrusted to them. Most often they transmitted estimates to personal email accounts. Although there was no indication that estimates were transmitted to construction contractors, these estimators' actions increased the risk of disclosure to unauthorized parties, and undermined confidence in the integrity of the cost estimating process.

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More troubling, we found that two estimators, one an employee and one working for CPM as a consultant estimator, knowingly transmitted estimates to unauthorized parties, specifically a friend and a colleague, respectively. OIG notified NYC Transit under separate cover regarding these disclosures. In response, NYC Transit took disciplinary action against the employee (OIG Report #2018-02), and dismissed the consultant (OIG Report #2018-36).

Overall, we found that the lack of attentiveness on the part of management and some estimators regarding confidentiality increased the risk that NYC Transit cost estimates could be inappropriately disclosed. For example, Estimating's written procedures and guidance pertaining to the preparation of bid and final cost estimates included no instructions regarding confidentiality. Indeed, Estimating first conveyed written and verbal instructions to staff prohibiting estimators from transmitting estimates to their personal email accounts in August 2017 in response to OIG's findings in the Shridhar investigation.

One estimator told OIG that he had transmitted estimates to his personal email so that he could work on them while not at his official work location. He did this until instructed not to do so by management in August 2017. Although laudable in one respect, this estimator's actions could also give rise to suspicions of improper disclosure to contractors, and thereby undermine confidence in the integrity of the estimating process.

Most disconcerting, however, we found that even after Estimating management issued written and verbal instructions to staff not to transmit estimates to personal email accounts, seven estimators continued to do so.

We met with Estimating's senior management on March 2, and April 12, 2018 to convey our findings. Shortly after the March meeting, senior management immediately took steps to minimize the careless handling of confidential documents, such as restricting the business email accounts of all non-managerial staff to help ensure that estimates could not be sent to outside parties. We are encouraged by Estimating's response. However, as discussed in the pages that follow, we recommend that Estimating take additional actions to help reduce the risk that estimates will be inappropriately disclosed.

## FINDINGS

Confidential information includes cost estimates, specifications, drawings, plans, design calculations, maps, photographs, sketches, and surveys.

Notably, Estimating's primary procedural guidelines pertaining to the preparation of cost estimates, Project Management Guideline 201, "Preparation of Capital Bid Estimates" (PMG 201), and Project Management Guideline 204, "Preparation of Final Estimate" (PMG 204) did not include any procedural guidance regarding confidentiality.

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Project Management Procedure 207, "Processing Construction Additional Work Orders (AWOs)," (PMP 207) provides only limited guidance regarding confidentiality, in that it addresses confidentiality only with regard to AWOs, but not bid estimates, final estimates or estimates produced at other stages of a capital project, such as preliminary engineering.

PMP 207 states:

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

The original AWO cost estimate, Schedule Delay Estimate and Impact 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, PMP 207 offers only limited guidance regarding confidentiality, because it is silent concerning whether it is appropriate for estimators to use personal computer equipment in preparing an estimate, or personal email accounts to transmit or receive estimates.

### **Use of Personal Email to Transmit Confidential Information**

A review of estimator correspondence found that five consultants and nine employees sent confidential estimates to their personal email during our review period, eight of whom did so on six or more occasions.<sup>1</sup>

During the course of our review, and in response to OIG's findings in the Shridhar investigation, regarding that estimator's use of a personal email account to transmit estimates, the Senior Director issued a memorandum on August 10, 2017 to Estimating managers. The memo stated that estimates should not be transmitted to personal email accounts and emphasized that estimates must be strictly controlled with respect to dissemination.

According to the memorandum estimators must not share cost estimates with any personnel not on an approved standard distribution, which is limited to the project's Construction Manager and

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<sup>1</sup> As of January 22, 2018, Estimating was comprised of a senior director, six managers, and 28 estimators, six of whom were consultants engaged through Indefinite Quantities contracts (IQ contracts). Our review encompassed a total of 42 personnel assigned to Estimating during the time period July 2015 and February 2018, including seven consultants who left the unit at some time during the period under review. NYC Transit has IQ contracts with ELLANA, Inc. (CM1536); The Kohl Group, Inc. (CM1537); The Spear Group, Inc. (CM1538); and Management Concept System & Services, Inc. (CM1540) to supplement staffing.

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Design Manager, the Senior Director of Cost Estimating, Deputy Vice President of Project Controls, the estimator's Manager, and officials from NYC Transit Capital Planning and Budget.

In addition, the Senior Director met one-on-one with each of his managers to reinforce the guidance expressed in the memo, and instructed his managers to distribute the memo to their staff, and to meet with them to reinforce the memo's precepts.

However, our review found that seven estimators continued to transmit cost estimates to their personal email accounts even after being instructed not to do so by Estimating management.

### **Use of Personal Computer Equipment**

Some estimators who transmitted estimates to their personal accounts claimed that it helped them to conduct NYC Transit business more efficiently and effectively. For example, one estimator told OIG that in order to prepare for AWO negotiation meetings involving the agency and the project's contractor he would transmit the estimate pertaining to the AWO to his personal email account, and use his personal iPhone to access the estimate so that he could revise the estimate, as necessary, during the AWO meeting. He claimed that he used his personal iPhone, because Estimating did not have mobile computer devices for estimators to use when attending AWO meetings.

We also found that two estimating consultants were without a NYC Transit issued computer for approximately one month after they began working for Estimating. During the time they were without an official computer, the consultants used personal laptops to work on NYC Transit estimates, and transmitted estimates to and from their personal laptops using their personal email accounts. The consultants' manager claimed that when these consultants were assigned to Estimating no computers were available, and that at times it could take up to three weeks to find a computer.

### **Actions Taken by NYC Transit**

In a letter to OIG dated March 19, 2018 regarding OIG Report #2018-02, *Improper Disclosure of Cost Estimates by a NYC Transit Employee*, NYC Transit stated that it had taken the following actions in order to control the unauthorized disclosure of estimates:

- Restricted the business email accounts of all non-managerial staff and consultants to internal-to-NYC Transit only, to ensure that work products cannot be sent to outside parties.
- Provided all non-managerial cost-estimating staff with long-distance telephone service to prevent the use of personal cell phones to communicate with third parties for business purposes.

In addition, NYC Transit stated it was considering revising PMG 201 to include a confidentiality statement requiring that everyone involved in the estimating process (both NYC Transit and third-party staff) sign a confidentiality agreement. NYC Transit was also considering purchasing lap tops for estimators so that work and backup documentation can be accessed and modified in real time, for example, at negotiating sessions. If acquired, laptops would be configured to disallow data transfers to/from external devices. And finally, we believe that Estimating Management should revise PMGs 201, 204 and PMP 207 to include a statement that estimators who violate the agreement could be disciplined up to and including termination.

### **RECOMMENDATIONS**

In addition to the actions already taken by NYC Transit to minimize the risk of disclosure of estimates to unauthorized parties, we recommend that NYC Transit:

1. Revise PMG 201, PMG 204 and PMP 207 to include a requirement that all parties involved in the estimating process sign a confidentiality agreement.
2. Include notice in the confidentiality agreement that estimators who violate the terms could be disciplined up to and including termination.
3. Provide estimators with laptops configured to disallow data transfers to/from external devices.

### **Agency Response**

In its response to our preliminary report dated August 22, 2018, NYC Transit agreed with the audit's recommendations, and indicated that it had taken the following actions:

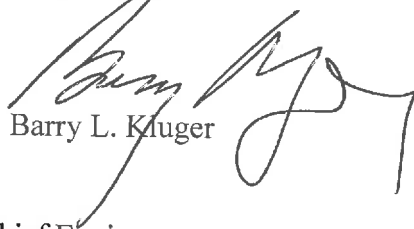
- Project Management Guideline 201, Preparation of Capital Bid Estimates was revised to include requirements regarding confidentiality and a formatted confidentiality agreement.
- Project Management Guideline 204, Preparation of Final Estimates, is under revision and is anticipated to be completed and issued in 2018.
- Project Management Procedure 207, Processing Construction Additional Work Orders. has been revised to include a requirement for a confidentiality agreement to be completed by all persons who handle material designated as confidential.

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NYC Transit also noted that cost estimating staff will be provided with laptops that are appropriately configured to restrict the flow of information to approved sources only. The rollout of the devices is expected to be completed by January 2019.

As always, we appreciate the courtesy and cooperation afforded to us at all times by members of your staff. 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