



Carolyn Pokorny
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Addendum
to
MTA/OIG #2019-01

Ethics Violations in MNR Department of Procurement and Material Management

On January 31, 2019, the Office of the MTA Inspector General sent Metro North Railroad (MNR) its findings of an improper relationship between James Berlangero (Berlangero), Category Acquisition Manager in the Department of Procurement and Material Management (P&MM) and MNR vendor WRS Environmental Services, Inc. (WRS). See attached report dated January 31, 2019.

In response to the OIG's investigation and report, James Berlangero resigned from his position effective February 26, 2019. The OIG also referred the Berlangero matter to the New York County District Attorney's Office (DANY) for possible criminal prosecution. On January 17, 2020, Berlangero was arraigned on charges of Corrupting the Government in the First Degree, a class B felony, in violation of New York State Penal Law (PL) §496.05; Bribe Receiving in the Second Degree, a class C felony, in violation of PL §200.11; and two counts of Contracts and Agreements for Monopoly and in Restraint of Trade, class E felonies, in violation of New York State General Business Law §§ 340 and 341. WRS and 2 WRS corporate officers, to wit: Michael Rodgers and Thomas Willis were also criminally charged and indicted. The criminal matters are on-going.



Barry L. Kluger
Inspector General

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January 31, 2019

Catherine Rinaldi
President
MTA Metro-North Railroad
420 Lexington Avenue
New York, NY 10170

**RE: Ethics Violations in MNR
Department of Procurement and
Material Management
MTA/OIG #2019-01**

Dear Ms. Rinaldi:

The Office of the MTA Inspector General (OIG) is currently investigating allegations concerning an improper relationship between James J. Berlangero (Berlangero), Category Acquisition Manager in the Department of Procurement and Material Management (P&MM), Metro-North Railroad (MNR), and MNR vendor WRS Environmental Services, Inc. (WRS). WRS presently holds two MNR service contracts, 99124 and 55150, for which Berlangero handled both the solicitation and award, and for which he now serves as contract manager. While our investigation is ongoing, given the sensitive nature of Berlangero's duties we now advise you that we have found evidence that Berlangero's conduct in connection with WRS violated MTA and MNR policies and procedures. Based on the results of our investigation to date, we recommend that MNR end Berlangero's involvement in all matters pertaining to WRS and impose discipline on him, as it deems appropriate, up to and including termination.

To begin, we found that Berlangero's misconduct affected the award process of contract 99124 in that he failed to properly perform his duties in accordance with MNR procedures and sound procurement practice. We found serious irregularities and deficiencies in the selection process for contract 99124. For example, Berlangero issued the Request for Proposal (RFP) in October 2017 without first obtaining an internal estimate of costs, and in February 2018, months after receipt of proposals, he apparently generated a purported "engineer's estimate" that was then placed in the contract award folder. Berlangero also failed to maintain a log of confidential information received from the vendors including, the proposals and their pricing data, in violation of MNR Operating Procedure 36-018, Sensitive/Confidential Information. As there was no record to document when the proposals were received, it was not possible for OIG staff to determine whether proposers complied with the submission deadline.

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During the course of the OIG's review of contract 99124, Berlangero advised OIG staff that the selection committee was comprised of only one other voting member besides himself. We found evidence that Berlangero proceeded to contract award despite never receiving an evaluation narrative or scoring sheet from that other member. Additionally, OIG found no sign-in record documenting that the two-person voting "committee" and its non-voting technical advisor had met, other than to attend the oral presentation of WRS.

Even more troubling, in May 2018, after learning of our request for records pertaining to contract 99124, Berlangero created, after-the-fact, selection committee documents including an evaluation narrative for the other voting member and a completed scoring sheet bearing the member's name typed onto the signature line. Berlangero then directed that member to affix his name to the purported evaluation. We found Berlangero also wrote a recommendation memorandum in the name of the committee's non-voting technical advisor, directed him to initial that memorandum, and also to initial a version of the same memorandum that was backdated to the prior year. Berlangero thereby caused false and misleading documents to be provided to OIG as official records, in violation of MTA All-Agency Code of Ethics (Code of Ethics) section 1.07(*Cooperation with Audits and Investigations*).

We also found that in May 2017, while serving as contract manager for WRS' contract 55150, Berlangero engaged in personal dealings with WRS. Specifically Berlangero had WRS conduct soil testing services at his residence and thereby created, at minimum, the appearance that he could be improperly influenced in his duties, in violation of Code of Ethics section 4.02 (*Public Trust*). Berlangero's conduct regarding and relationship with WRS also reflected his personal interest, in violation of the conflict of interest provisions of Code of Ethics section 4.01 (*Conflicts of Interest/Recusal*), as well as MNR Operating Procedures 36-002 (*Vendor Relations (IV)(A)(5)*), and 36-005 (*Awarding Contracts by Sealed Competitive Bids (V)*).

We further found that on at least 17 occasions between the years 2015 and 2018, Berlangero sent via his MNR email account confidential or otherwise non-public information to email addresses outside MNR. The information Berlangero improperly sent included vendor pricing proposals and selection committee scoring sheets and narratives, and was sent without the permission of MNR General Counsel, in violation of Code of Ethics section 4.03 (*Confidential Information*), MTA All-Agency Policy Directive 11-033 (*Computer and Social Media Usage*), MNR Operating Procedures 36-002 (*Vendor Relations*) and 36-018 (*Sensitive/Confidential Information*), and the terms of the conflict of the interest/non-disclosure form Berlangero executed in connection with the selection process for contract 99124.

Based on the above results of our investigation to date, we recommend that MNR end Berlangero's involvement in all matters pertaining to WRS and impose discipline on him, as it deems appropriate, up to and including termination.

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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,



Barry L. Kluger

cc: Richard Gans, General Counsel, MNR
Andrew Paul, Vice President Labor Relations