

STATE OF NEW YORK



Office of the Inspector General Metropolitan Transportation Authority

2010 ANNUAL REPORT

Barry L. Kluger
Inspector General

It's a BIG SYSTEM

HELP US KEEP an EYE ON IT



CALL 1-800-MTA-IG4U or 1-800-682-4448
MAIL Two Penn Plaza, 5th Floor, New York, NY 10121
WWW.mtaig.state.ny.us

CONTENTS



ABOUT THE INSPECTOR GENERAL	1
MESSAGE	1
BRIEF BIO	4
ROLE OF MTA INSPECTOR GENERAL	5
INTAKE, AUDIT, AND INVESTIGATIONS	7
INTAKE AND INTELLIGENCE	7
AUDIT.....	10
INVESTIGATIONS.....	20
OVERSIGHT OF FEDERAL STIMULUS FUNDS.....	31
OUTREACH	33
EDUCATION	33
INTERGOVERNMENTAL COOPERATION	35
VISIBILITY CAMPAIGN	37
APPENDIX ONE: STATEMENT TO CITY COUNCIL	i
APPENDIX TWO: SELECTED REPORT OVERVIEWS	iv
IMPROVING INSPECTIONS OF NYC TRANSIT STATIONS	iv
GOVERNANCE ASSESSMENT OF MTA CAPITAL PROGRAM	
MEGA-PROJECTS	viii
REVIEW OF PARATRANSIT’S CUSTOMER RELATIONS UNIT	xiii
ASSESSING THE MTA CONTRACTOR SAFETY INCENTIVE	
PROGRAM (CSIP)	xix

ABOUT THE INSPECTOR GENERAL



MESSAGE

We continued our work in 2010 to help the Metropolitan Transportation Authority meet its increasing challenges and effect positive change. We conducted investigations to root out fraud and waste by those employed by the MTA or doing business with it. We identified ways to help the MTA save money, and made findings and recommendations both to improve productivity and performance and make operations safer and more efficient.

Based on my 30 years of experience as a prosecutor, the first question I asked upon appointment as Inspector General was how many significant criminal investigations the office was pursuing and with which investigative and prosecutorial offices we had strong, ongoing relationships. Despite our statutory power and duty to provide to appropriate law enforcement officials any information and evidence relating to criminal acts that we obtain, there were few such cases or relationships in 2007. We've come a long way since then.

The MTA Inspector General's Office (OIG) now has numerous partners on the federal, state, and local level, including the United States Attorneys for the Southern and Eastern Districts of New York; the FBI and IRS; the Office of Labor Racketeering and Fraud Investigations in the United States Department of Labor; the state and federal Departments of Transportation; the New York State Attorney General and the State Comptroller; the State Inspector General and the Inspector General of the Port Authority of New York and New Jersey; the New York City Police Department, as well as the New York City Department of Investigation; and the District Attorneys in the 12 counties comprising the MTA Commuter District.

As made clear in these pages, this extensive networking has greatly increased the effectiveness of our investigations. For example, the successful completion of one of our cases, involving disadvantaged business enterprise fraud, stemmed from our positive working relationship with the United States Attorney for the Eastern District. The upshot was that the prime contractor on two major MTA capital projects agreed to a civil forfeiture of \$20 million to the federal government for both the MTA case and a similar case involving a New York City project. The prime contractor also agreed to pay \$1.8 million to the MTA-OIG, representing the cost of the OIG's investigation and the MTA's cost of an outside monitor. Other such cases are nearing completion.

~ ABOUT THE INSPECTOR GENERAL ~
MESSAGE

You will also read about our active partnership with the Office of the New York County District Attorney on a critically important investigation to identify those directly and indirectly responsible for the falsification of New York City Transit (NYC Transit) signal inspection and maintenance records, and determine the nature and extent of any criminal conduct. Further, you will read about how our working relationships with the New York County District Attorney's Office and the New York City Department of Buildings led to an augmented federal investigation and prosecution of a concrete testing lab for mail fraud.

Just as I recognize the value of partnerships with outside agencies, I have maintained since my first Annual Report in 2007 that forging beneficial working relationships within the MTA itself, while again preserving our own independence, was the best way to help the agency and support its customers. To effect meaningful and systemic change, we had to fully understand agency issues; demonstrate our objectivity and fairness; mitigate opposition and resistance to our findings and recommendations; and foster agency cooperation. The pages that follow demonstrate increased agency cooperation and recognition that OIG can help the agency help itself.

For example, during our review of the MTA governance structure relating to MTA mega-projects (*e.g.* Second Avenue Subway), we found that there was room for improvement in how the MTA Board and executive management provide effective oversight. Given the importance of the issue, we shared our preliminary findings and recommendations with MTA Chairman/CEO Jay Walder and members of the MTA Board's Capital Program Oversight Committee (CPOC) to allow them to take action even before issuance of our final report. Thereafter, at the invitation of Chairman Walder, I presented a number of the issues contained in the report directly to the CPOC members. Following this presentation, and based on the findings and recommendations contained in our report as well as those generated by the Authority itself, the Board moved to significantly improve its oversight over the mega-projects.

As another example, in 2010, at the behest of and in collaboration with OIG, the MTA General Counsel's Office completely revised the All-Agency Responsibility Guidelines and Vendor Questionnaire. The MTA Board subsequently adopted the revised questionnaire, which expanded the scope of the integrity assessment.

Sometimes we utilize partnerships both inside and out of the MTA simultaneously. For example, after NYC Transit Procurement personnel contacted us concerning certain suspicious invoices submitted by a contractor, we conducted an investigation and determined that the contractor regularly submitted invoices to the agency that misrepresented the cost of materials and supplies. After referring the matter to the Office of the Suffolk County District Attorney, OIG worked with that office in its application for and execution of a search warrant for the corporation. Thereafter, the two principals and the corporation were charged with felonies. The matter is pending.

~ ABOUT THE INSPECTOR GENERAL ~
MESSAGE

Just as some of our work helps to counter fraud and abuse, some helps to improve performance and make operations safer and more efficient. Thus, in our report on improving inspections at NYC Transit subway stations, issued after a large section of the arched brick ceiling at the 181st Street Station on the IRT **1** Line fell onto the platforms and tracks, we found that managers had learned 10 years before that a portion of the ceiling was at risk of collapse but did not begin a comprehensive assessment of its condition until just two months before the ceiling fell. NYC Transit agreed with all of our recommendations. As a result, inspection protocols have been revised and strengthened and a newly established, high-level inspection task force has begun to compile a list of other hard-to-reach and unique station components that will be subject to regular up-close inspections by maintenance personnel.

In terms of helping the MTA use its money more effectively, we conducted a study of the Contractor Safety Incentive Program (CSIP), designed in 1998 by the MTA Risk & Insurance Management (RIM) department. Under CSIP, RIM offered monetary rewards to contractors when it believed that eventual losses from accident claims would fall below the target established for each construction project. CSIP also allowed RIM to assess financial penalties when it forecast that accident costs would exceed its estimates. During the period reviewed, RIM distributed approximately \$3 million in rewards to and assessed \$500,000 in penalties against contractors associated with 57 NYC Transit construction contracts, resulting in a net program cost of approximately \$2.5 million. CSIP computations for 19 of those 57 contracts resulted in nearly \$750,000 in higher rewards and lower penalties than were supported by the contractors' actual safety performance. RIM is currently implementing our recommendations to mitigate the risk of overpayment.

Regarding our ongoing work, OIG routinely goes beyond the identification of individual wrongdoing and the uncovering of institutional lapses in performance, to identify root causes of past, present, and future fraud, waste, and abuse in the form of weak or missing internal controls. Based on a pattern of its prior findings, OIG this year launched a program to perform in depth risk analyses identifying areas of high risk in the MTA agencies. We intend to perform this work in close coordination with MTA management to afford maximal benefit from our work.

I am very pleased to submit this 2010 Annual Report to you, and am proud of my staff for its diligent work and many accomplishments throughout this year. We look forward to doing even more to help the MTA and its riders in the years to come.

BRIEF BIO

On February 14, 2007, **Barry L. Kluger** was appointed by the Governor to serve as Inspector General of the Metropolitan Transportation Authority. This appointment was confirmed by the New York State Senate on May 30, 2007. Mr. Kluger served in the Office of the Bronx County District Attorney from 1975 until his appointment as MTA Inspector General. In 1989, the Bronx County District Attorney appointed Mr. Kluger to be his Chief Assistant District Attorney. Previously, Mr. Kluger served as Executive Assistant District Attorney, Chief of the Investigations Division and Chief of the Arson and Economic Crime Bureau. Mr. Kluger received his B.A. from City College of the City University of New York and his Juris Doctorate from Brooklyn Law School. Mr. Kluger is a lifelong resident of New York City.

In 2009, two years into his term as MTA Inspector General, Mr. Kluger was elected to the Board of the Association of Inspectors General, a national organization comprised of federal, state, and local members from across the country. In 2010, he was elected 2nd Vice President.

THE ROLE OF THE MTA INSPECTOR GENERAL

Creation of the Office

In 1983, at the request of the Governor, a virtually unanimous state legislature created the Office of the Inspector General specifically within the MTA, but reporting only to the Governor and Legislature, and independent of MTA management and its Board. The Governor's Special MTA Study Panel concluded that among the changes that would help the MTA and the state to improve services and control costs, "Most important of these is the restructuring and strengthening of the MTA's Inspector General function." Indeed, the Study Panel's report declared:

The Panel views the lack of a strong Inspector General function within the MTA as a serious deficiency. A strong Inspector General is needed to hear and act upon complaints about service deficiencies, to audit performance, to assure that appropriate follow-up action is taken on outside audit findings, and to investigate charges of fraud and abuse. . . The Inspector General . . . should be appointed to a fixed term, to assure a measure of independence. However, to be truly effective the Inspector General must also have a close day-to-day working relationship with MTA's top management and with its Board.

Statutory Authority

Public Authorities Law (PAL) §1279 authorizes and directs the MTA Inspector General to independently review the operations of the MTA and its constituent agencies: MTA New York City Transit (NYC Transit), MTA Long Island Rail Road (LIRR), MTA Metro-North Railroad (Metro-North), MTA Long Island Bus (LI Bus), MTA Bridges and Tunnels (Bridges and Tunnels), MTA Bus Company (MTA Bus), and MTA Capital Construction Company (Capital Construction).¹

In terms of the scope of its statutory authority to perform this review, the Inspector General has "full and unrestricted access" to all "records, information, data, reports, plans, projections, contracts, memoranda, correspondence and any others materials" of the MTA (PAL 1279[3]).

¹ As used in this report, unless the context indicates otherwise, the term "MTA" includes the constituent agencies.

~ THE ROLE OF THE MTA INSPECTOR GENERAL ~

The Inspector General also has the following statutory functions, powers, and duties (1279[4]):

- Receive and investigate complaints from any source or upon his own initiative concerning alleged abuses, frauds, and service deficiencies, relating to the MTA.
- Initiate such reviews as he deems appropriate of the operations of the MTA to identify areas in which performance might be improved and available funds used more effectively.
- Recommend remedial action to be taken by the MTA to overcome or correct operating or maintenance deficiencies or inefficiencies that he determines to exist.
- Make available to appropriate law enforcement officials information and evidence relating to criminal acts that he obtains in the course of his duties.
- Subpoena witnesses, administer oaths and affirmations, take testimony and compel production of books, papers, records, and documents as he deems relevant to any inquiry or investigation pursuant to PAL 1279.
- Monitor implementation by the MTA of recommendations made by the Inspector General or other audit agencies.
- Do “all things necessary” to carry out the above functions, powers, and duties.

The Inspector General, who is an ex officio member of the New York State Public Transportation Safety Board (PTSB) with authority to vote on matters involving the operations of the MTA (as per Transportation Law 216[1]), is further authorized and directed to cooperate, consult, and coordinate with PTSB regarding any activity concerning the operation of the MTA.² With respect to any accident on the facilities of the MTA, the primary responsibility for investigation belongs to PTSB, which is required to share its findings with the Inspector General (PAL 1279[5]).

The OIG is required to make annual public reports to the governor and members of the legislature (PAL 1279[6]).

The Inspector General may request from any office or agency of the State of New York or any of its political subdivisions, such cooperation, assistance, services, and data as will enable him to carry out his functions, powers, and duties, and they are authorized and directed to comply (PAL 1279[7]).

² PTSB has a reciprocal obligation, imposed by statute to cooperate, consult, and coordinate with the MTA Inspector General. Transportation Law 219(2).

INTAKE, AUDIT, AND INVESTIGATIONS



INTAKE AND INTELLIGENCE

OIG encourages all interested persons, including MTA employees, outside contractors and members of the public, to report their concerns about the MTA and its agencies. Complaints or comments can be communicated to the Intake and Intelligence Unit of our Investigations Division by email (through our website), postal mail, personally, or by telephone. A Hotline number is publicized (1-800-682-4448 {MTA-IG4U}), staffed during business hours and available to take messages at other times. In addition to its other work, the Unit also created the OIG's successful Visibility Campaign (see page 37).

HOW TO CONTACT THE OFFICE OF THE MTA INSPECTOR GENERAL

Telephone: (212) 878-0000

24-Hour Complaint Hotline:
1-800-MTA-IG4U (1-800-682-4448)

Walk-In or Mail: Office of the MTA Inspector General
Two Penn Plaza, 5th Floor
New York, NY 10121

Website: www.mtaig.state.ny.us

The Intake and Intelligence Unit's analysts perform the preliminary assessment of complaints. They also provide intelligence analysis and vendor research to assist OIG and law enforcement investigations, as well as in response to requests from MTA agencies. Among their duties, the analysts gather information from public records and other sources to detect associations, patterns, and trends needed for the successful resolution of audits, investigations, and reviews.

In 2010, Intake and Intelligence processed 1,146 complaints from individuals both inside and out of the MTA. Those complaints deemed appropriate for internal audit, investigation or other review, either alone or in partnership with law enforcement, were retained by OIG or resolved directly by the unit itself. Other complaints, best handled by MTA agencies, were referred accordingly and tracked as appropriate by OIG.

Further, Intake and Intelligence responded to approximately 430 information requests – 43 percent more requests than last year – from the Lower Manhattan Construction Integrity Team, of which OIG is a member. Intake and Intelligence continues to serve as point of contact for requests for assistance from government agencies and law enforcement entities, such as the New York City Police Department and the New York City Department of Investigation.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INTAKE AND INTELLIGENCE

Additionally, Intake and Intelligence undertook a number of initiatives to provide better, more effective service to OIG auditors and investigators and the public at large. To improve efficiency and conserve resources, for example, the unit upgraded to a scan and e-mail based referral system. This reduced the volume of paperwork forwarded to MTA agencies and slashed referral time by a full 50 percent. This new system also enhanced OIG's ability to search its complaint database, achieving greater speed and flexibility, while reducing the space needed to store paper files. Furthermore, this system increased the information available online to all OIG staff members. We now electronically capture requests for "Significant Adverse Information" (see below), so that they are better documented and tracked.

As reflected above, Intake and Intelligence continues to increase and refine its efforts in support of the complaint process, whether to resolve the specific concerns of an individual, or to expedite the resolution of systemic issues affecting the public at large.

**UPDATE ON VENDOR INTEGRITY
SCREENING INITIATIVE**

For some years the MTA General Counsel has requested that OIG conduct criminal background checks and performance reviews, to supplement those conducted by the agencies, regarding vendors under consideration for MTA contract awards that required the approval of the MTA Executive Director/CEO. OIG provided this information to MTA executive management to assist its "due diligence" review of a vendor's "responsibility" before finalizing contract award determinations.

A determination of "responsibility" depends on several factors: the vendor's business integrity, financial capacity, and ability to complete the contract on time and within budget. Traditionally, responsibility determinations were made during the procurement process through the use of a questionnaire filled out by prospective vendors. This questionnaire, along with the background check, was used to identify areas of "Significant Adverse Information," which potentially could result in disqualification of the vendor.

Since his appointment in 2007, the Inspector General has focused on how the MTA and its constituent agencies utilized their own background checks and made responsibility determinations. Indeed, that year OIG issued a report entitled "Identifying and Managing Significant Adverse Information During Vendor Selection at MTA Bridges and Tunnels."

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INTAKE AND INTELLIGENCE
Update On Vendor Integrity Screening Initiative, Continued

In 2008, we first reported on our initiative to strengthen vendor responsibility determinations across all MTA agencies. This undertaking, which was lead by Intake and Intelligence and included representatives from all of these agencies, continued through 2009.

In 2010, at the behest of and in collaboration with OIG, the MTA General Counsel's Office completely revised the All-Agency Responsibility Guidelines and Vendor Questionnaire. The MTA Board subsequently adopted the revised questionnaire, which expanded the scope of the integrity assessment. The types of Significant Adverse Information impacting a vendor's responsibility now include civil judgments (*e.g.* for personal injuries, false claims, and anti-trust violations), as well as non-criminal violations (*i.e.* worker compensation experience ratings and OSHA violation information). At the same time, to promote thoroughness and uniformity, guidelines have been established, concepts clarified, and background screening centralized. Indeed, the MTA Procurement departments and the MTA Business Service Center (BSC), in conjunction with OIG, as part of this consolidation, are in the process of implementing a unified online responsibility questionnaire database.

When fully implemented, the consolidation will have significant benefits for agency and vendor alike. To begin, having one central unit responsible for vendor screening, with one database, will allow the agencies to acquire and share information from vendors more expeditiously. Sharing, in turn, will help ensure that the information acquired is accurate and complete, thereby improving the decision making process agency-wide. Lastly, the online questionnaire will streamline the bidding process by allowing vendors to respond to one questionnaire online, make changes, and/or update their information, and submit the same information for multiple bids to multiple agencies.

OIG will continue its work with the procurement departments and the BSC to ensure that the responsibility process is as fair, effective, and efficient as possible.

AUDIT

The Audit Division (or Audit) of the OIG conducts in-depth audits and reviews of a wide variety of business, performance, and service-related activities of MTA agencies. The auditors assess whether MTA operations are safe, efficient, and effective, and make recommendations for improvement wherever possible. All Audit reports undergo a quality assurance review to ensure that findings and conclusions are appropriately supported. The Division is comprised of highly experienced auditors, most of whom have a graduate degree in a related field. The Audit Division regularly consults with the MTA Auditor General and other audit and investigative units throughout federal, state, and local government.

In 2010, Audit completed a number of significant reports, reflecting analyses and evaluations designed to improve the safety, quality, and cost effectiveness of MTA operations and customer service. Audit was also instrumental in providing analysis for a wide range of investigations. Further, we followed up with the agencies as to the status of past OIG recommendations not previously implemented. Finally, we have previewed here certain ongoing work of particular public interest.

REPORTS

Governance Assessment of MTA Capital Program Mega-Projects (MTA Inspector General Report #2010-04)

In the 1980s, the MTA embarked on a statutorily-authorized multi-billion dollar capital program to rebuild and enhance its physical infrastructure. As part of its legal obligation, the MTA Board of Directors established the Capital Program Oversight Committee (CPOC) to monitor the implementation of its five-year capital programs. To help CPOC members understand the often technical subject matter of capital projects, the law required that CPOC utilize an independent engineering consultant (IEC).

While OIG found that the governance structure now in place is essentially sound, there is room for improvement in how the MTA Board and executive management provide effective oversight. For example, it is clear that the MTA must use its independent engineer more effectively and demand accountability from its subsidiary, Capital Construction. We shared our preliminary findings and recommendations with MTA Chairman/CEO Walder and members of CPOC to allow them to take action even before our final report.

In July 2010, at the invitation of Chairman Walder, the Inspector General presented a number of the issues contained in this report directly to the CPOC members. At that meeting the IG stressed the importance of moving toward a risk-based approach

to oversight and of ensuring that Capital Construction and the engineering consultants provide the Committee members with the critical analyses necessary for the members to perform that function.

Following this presentation, and based on the findings and recommendations contained in our report as well as those generated by the Authority itself, the Board moved to significantly improve its oversight over the mega-projects. Specifically, MTA management has focused the independent engineering firm on areas of higher risk and built greater accountability into the reporting process. Further, based on our attendance at MTA Committee meetings led by Chairman Walder and review of project reports, we have observed clearer presentations and more focused discussions among Committee members and agency staff regarding issues that might affect the “critical path” (to project completion) and budget.

Assessing the MTA Contractor Safety Incentive Program (CSIP)
(MTA Inspector General Report #2010-01)

The MTA utilizes Owner Controlled Insurance Programs (OCIPs) to obtain bulk rate savings for insurance coverage against personal injury and property damage claims associated with the construction projects for NYC Transit, LIRR, and Metro-North. To reduce its insurance costs, the MTA, through its Risk & Insurance Management (RIM) department, designed a Contractor Safety Incentive Program (CSIP) in 1998. Under CSIP, RIM offered monetary rewards to contractors when it believed that eventual losses from accident claims would fall below the target established for each construction project. CSIP also allowed RIM to assess financial penalties when it forecast that accident costs would exceed its estimates.

OIG conducted a review of the CSIP program. During the period reviewed, RIM distributed approximately \$3 million in rewards to and assessed \$500,000 in penalties against contractors associated with fifty-seven NYC Transit construction contracts, resulting in a net program cost of approximately \$2.5 million.

Although RIM uses industry accepted standards for estimating potential losses, we found that its methodology for determining whether a contractor is eligible for safety incentives is too imprecise. As a result, RIM’s CSIP computations for 19 of the 57 contracts we reviewed resulted in \$722,322 in higher rewards and lower penalties than were supported by the contractors’ actual safety performance – overly generous incentives equal to almost 30 percent of the net program costs.

We recommended that RIM substantially improve its methodology for assessing contractor eligibility for safety incentives. If this is not possible, we recommended that the program be discontinued, and the MTA initiate negotiations with contractors to

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
AUDIT
Reports, Continued

remove or at least reduce the Authority's contractual incentive obligations from current contracts still covered by CSIP.

In light of our findings and recommendations, RIM devised procedural modifications that it expects will mitigate the risks that arise from utilizing interim claim values. RIM agreed to assess the impact of these changes to determine if they have actually reduced the risks and then ultimately determine whether the program warrants future extension.

RIM also agreed with, and implemented, our second and third recommendations, which were:

- Create internal controls to improve the accuracy of data and calculations used to compute incentives; and
- More closely scrutinize safety monitor inspection charges submitted to the MTA for reimbursement.

Improving Inspections of NYC Transit Stations (MTA Inspector General Report #2010-05)

On August 16, 2009, at 10:18 p.m., a large section of the arched brick ceiling at the 181st Street Station on the IRT  Line fell onto the platforms and tracks. Fortunately, no one was hurt by the falling bricks, but subway service to that station had to be suspended for two weeks while the station ceiling was temporarily secured. NYC Transit managers had learned in 1999 that a portion of the ceiling at 181st Street was at risk of collapse. However, it did not begin a comprehensive assessment of the ceiling's condition until June 2009, just two months before the ceiling fell.

OIG examined how the condition at the 181st Street Station went unaddressed for nearly 10 years and what lessons could be learned from this event. We also examined two other recent incidents where the failure of a critical station component could have resulted in serious injury or death: the partial collapse of the hung metal ceiling at the Bowling Green Station on the / Line, and the collapse of a concrete platform panel at the 18th Avenue Station on the  Line.

Each of the three incidents reviewed during this audit indicated weaknesses in the adequacy of NYC Transit's station inspections.

- Although NYC Transit's Department of Capital Program Management (CPM) was responsible for hiring a consultant to inspect the condition of the historic curved

~ INTAKE, AUDIT, AND INVESTIGATIONS ~

AUDIT

Reports, Continued

ceiling and finding a permanent solution to the problem, CPM inexplicably did neither.

- Annual inspections by maintenance personnel and a one-time comprehensive survey by capital program consultants failed to question the presence of the temporary wooden shield measuring 400 square feet that had been installed in 1999 to protect the public from falling bricks.
- Some critical station components, specifically concrete platforms at elevated stations and ceilings with hung metal panels, are not subject to structural inspection by any unit of NYC Transit.
- There is no communication between NYC Transit Maintenance of Way inspectors and CPM's station consultants who perform major system-wide reviews of NYC Transit's stations. As a result of this lack of communication, compounded by the weaknesses in station inspections noted above, NYC Transit's capital program for stations is likely to omit projects in critical need of repair or renovation.

OIG recommended and NYC Transit agreed to implement more thorough inspections and to better coordinate the transmission of information between maintenance and capital program personnel. Hung metal ceilings and the station ceilings from which they are suspended are now included on the list requiring regular inspections. Inspection protocols have been revised and strengthened and a newly established high-level inspection task force has begun to compile a list of other hard-to-reach and unique station components that will be subject to regular up-close inspections by maintenance personnel.

Review of Paratransit's Customer Relations Unit
(MTA Inspector General Report #2010-06)

NYC Transit's Access-A-Ride program, which is administered and operated by its Paratransit Division (Paratransit), provides transportation services to over 130,000 customers who are unable to use the public bus and subway system to commute to their jobs, keep medical appointments, or generally travel throughout the city.

As part of its community outreach program, Paratransit's Customer Relations Unit (CRU) processes complaints about the Access-A-Ride program that have been telephoned into NYC Transit offices from riders as well as from the public at large. During the period of our review, CRU processed 1507 "Reckless Operator" complaints and 87 "Injured Customer" complaints alleging that Access-A-Ride van operators had performed unsafely in various ways.

Our findings were disturbing. For example, CRU did not refer 60 of the 87 Injured Customer complaints for investigation even though the complainants specifically

~ INTAKE, AUDIT, AND INVESTIGATIONS ~

AUDIT
Reports, Continued

alleged that their injuries had resulted from their operators' performance errors. And as to the assertion by Paratransit that its "safety net" backed up CRU, we sampled 30 of those 60 unrefereed complaints and found that 19 of them (63 percent) were never flagged or investigated by anyone.

We also found that CRU did not request that carriers investigate 102 (nearly 70 percent) of the 148 Reckless Operator complaints we sampled, even though these complainants clearly described unsafe practices by the operators, including driving dangerously, failing to adequately fasten customer seat belts and wheelchairs restraints, and failing to assist riders with limited mobility into and out of the vans. We were particularly concerned that CRU summarily closed four complaints that alleged that operators fell asleep while behind the wheel of their vehicle.

To ensure that all unsafe operators are promptly identified, investigated, and addressed, we recommended that Paratransit give priority to processing Injured Customer and Reckless Operator complaints. More particularly, we recommended that Paratransit automatically refer all Injured Customer complaints for formal investigation of the operators' role in such incidents. Regarding Reckless Operators complaints, we recommended that Paratransit institute (1) formal standards for assessing these complaints; and (2) sufficient internal controls to ensure that all appropriate complaints are referred for investigation. We also recommended that Paratransit review its contract management procedures to ensure that (1) safety investigations are being conducted as warranted and in a thorough and professional manner; and (2) drivers found to have violated the agency's safety procedures are promptly terminated, suspended, or subject to other appropriate action.

MTA Bus, which oversees Paratransit operations, accepted our audit's findings and agreed to implement our recommendations.

Investigative and General Support by Audit

Auditors assist investigations by providing subject matter expertise and analysis. For example, in 2010 auditors reviewed and found discrepancies in vendor invoices for electrical supplies and anomalies in lab reports on material quality; matched databases to isolate ineligible pension recipients; provided expertise on track inspections programs and inspection reports; traced how and when new Paratransit drivers in the Access-A-Ride Program are screened for criminal histories; and analyzed potential fraudulent overtime schemes in both NYC Transit and the railroads. Further, auditors worked on a major effort in conjunction with the Investigations Division to analyze voluminous records throughout the subway system to isolate a pattern of falsified reports. These coordinated efforts between OIG divisions were highly successful and continue to be the model used in the office to most efficiently pursue various types of cases and reviews.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~

AUDIT
Reports, Continued

Auditors also analyze concerns raised by complainants that may present systemic issues, often resolving them and affecting institutional change without the need for a full audit report. For example, a rider called to complain that rotted wood was visible below the Dyckman Station on the Bronx-bound side. This station was slated for a full renovation to begin shortly. Nevertheless, based on OIG input the platform was inspected and repairs made to ensure that the weight-bearing sections would function safely immediately.

Additionally, multiple complaints were received by OIG regarding the deterioration of bus service provided by the College Point Depot. Inquiries and follow-up meetings by auditors with bus managers resulted in a complete analysis of the routes experiencing problems and adjustments were made to improve reliability of service. In a separate case, complaints were received that “unsafe buses” were being placed in service by a Manhattan depot. Records were reviewed by auditors and meetings held with the General Manager, resulting in a determination that some buses with mechanical defects had been put in service inadvertently. The General Manager immediately directed that all buses with work orders pending be clearly marked as “out of service.” By expediting our study and analysis, and working cooperatively with agency personnel, we addressed the problems swiftly and cost-effectively.

**FOLLOW-UP ON RECOMMENDATIONS
FROM PREVIOUS REPORTS**

On an ongoing basis OIG monitors MTA implementation of recommendations from our past audits and investigations. Additionally, Public Authorities Law §1279(6) requires that the MTA give quarterly reports to the Inspector General (with copies to the Governor and Legislature) outlining the status of each of the recommendations made by the Inspector General in his final reports. While there are a few older recommendations that we continue to monitor until they are completely implemented, since 2008 the MTA agencies have been far more responsive to OIG recommendations and now implement most in a timely fashion. Below are some highlights of what we have found this year.

**Assessing the Effectiveness of the MTA All-Agency
Contractor Evaluation (ACE) Program**
(MTA Inspector General Report #2009-08)

**Program Design Deficiencies in the MTA All-Agency
Contractor Evaluation (ACE) Program**
(MTA Inspector General Report #2009-15)

In 2009, we made recommendations designed to promote a more accurate and timely identification of poor performing companies, including a prohibition against overrating, and incorporation in the ACE system of evaluations of subcontractors (who

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
AUDIT
Follow-Up on Previous Reports, Continued

perform some 70 to 80 percent of the work involved in capital contracts). We also made a recommendation based on our finding that a year after completion of the 100th Street bus depot, NYC Transit discovered that several portions of the building's brick façade had not been properly tied to the building's steel structure and were falling to the sidewalk. Although the cause of this problem was attributed to poor quality work performed by the contractor, the contractor's final Satisfactory rating remained uncontroverted because there was no practice at that time to conduct evaluations after construction was completed. Our recommendation calls for post-final evaluations to be conducted where poor performance is identified after contract closure.

In 2010, the MTA revised its All Agency Guidelines and developed measures to implement all of our recommendations fully except the one regarding subcontractors. While the agencies agreed to increase their exception-reporting of problematic subcontractors, still under discussion as of this writing is our recommendation for the collection of that information in a central repository and expanding reporting to include regular assessment of all subcontractors, even those performing satisfactorily.

Review of MTA's Capital Program Dashboard Prototype

During 2009, in an effort to improve the transparency of its multi-billion dollar Capital Program, MTA developed a prototype for a web-based Dashboard Report. The report was to provide the status of individual capital projects, as well as an assessment of the overall delivery of the Capital Program.

As part of OIG regular monitoring of the MTA Capital Program, OIG staff assisted the Dashboard developers by reviewing and commenting on the Dashboard prototype and providing MTA with examples of best practices. MTA accepted our recommendations to make the online tool more user-friendly and to include additional information. That tool is now available on MTA's website and can be found in the lower right hand corner of the home page. It can also be accessed by manually entering the following web address (or, for those reading this electronically, by clicking on it):

www.mta.info/capitaldashboard/10_14/CapitalDashBoard7.html.

PREVIEW OF SELECTED 2010 ONGOING WORK

MTA Mega-Projects Review

As a follow up to OIG's 2010 report on mega-project governance (see page 10), the Audit Division is finishing a review of pre-construction issues relating to three such mega-projects: East Side Access, Second Avenue Subway, and the Fulton Street Transit Center. These three combined have experienced cost increases and project completion delays since the MTA reached funding agreements with the federal government beginning in late 2005. For example, Fulton Street is 65 percent over budget at \$1.4 billion and is slated to finish four years late in 2014.

The review was structured to identify what accounts for the cost increases and schedule delays for these projects, explain the root cause of the problems, and determine if MTA is learning lessons from its experiences. OIG Auditors have assessed whether construction costs were accurately estimated when budgets were first developed, whether the overheated construction market was a factor in driving up individual contract costs, and whether that market reality was considered by management in determining a procurement strategy for the various contracts.

Winter 2010 Blizzard

On December 26, 2010 and the early hours of December 27, over two feet of snow fell on the New York metropolitan area accompanied by high winds. Transit service was dramatically curtailed on both buses and subways. Approximately 650 buses got stuck in the snow and some 500 people were stranded on trains overnight.

OIG initiated its own review in the days immediately after the storm to determine whether and when plans were put into action, and whether any such plans were adequate. Our review will address whether the internal review by MTA adequately identifies all the major weaknesses in its performance and makes substantive reforms. OIG will specifically focus on the capability of MTA Bus to respond to emergency conditions; NYC Transit's handling of the stranded trains during the blizzard; and the reasons for the reported communication breakdowns both internally between operators and supervisors, as well as externally with passengers, the media, and the public at large.

Change Orders on Capital Projects

Construction contract change order negotiation, pricing, justification, and accountability are the focus of current work in the Audit Division. Change orders account for significant capital expenditures each year. For example, in 2009, at NYC Transit alone, there were 588 change orders worth 28.8 million related to 87 contracts. According to our preliminary analysis of a sample of these change orders, a significant

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
AUDIT
Preview of Selected 2010 Ongoing Work, Continued

portion of them could be attributed to design errors or omissions, which should be charged back to the design firm. Other change orders were apparently initiated to accommodate user requests. Both categories (design errors/omissions and user requests) are often controllable or avoidable.

Our comprehensive review, involving both audit and investigative components, will assess MTA management's effectiveness in controlling change orders and appropriately pricing out additional work, and will determine whether and to what extent errors on the part of third-party design firms are being charged back to those who made the mistakes.

Elevators and Escalators

Audit is finalizing a report on the performance of the Elevator and Escalator (E&E) department at NYC Transit, which is responsible for maintaining and reporting on the availability of 369 elevators and escalators in the transit system. In response to increasing outages and entrapments, E&E procured a universal remote monitoring system for its equipment in 2007. It was hoped that this purchase and installation would provide a constant stream of operational and diagnostic information on the condition of every elevator and escalator, and enable maintenance staff to make more timely responses to equipment outage.

The OIG is now reviewing the department's implementation and use of the monitoring system with particular emphasis on whether it quickly alerts personnel to actual and potential elevator entrapments of customers and provides accurate information. We are also studying the system's ability to assist management in monitoring the deployment of resources.

Risk Analyses of Internal Controls

In conducting both its investigations and audits, OIG routinely goes beyond the identification of individual wrongdoing and the uncovering of institutional lapses in performance. In all of its work, OIG looks for root causes of past, present, and future fraud, waste, and abuse in the form of weak or missing MTA agency internal controls.

Based on a pattern of its prior findings, OIG this year launched a program to perform in depth risk analyses identifying the areas of high risk in MTA agencies. OIG is assessing the agencies' existing internal controls in these high risk areas, to discern any fundamental weaknesses and vulnerabilities as well as deviations from best practices utilized in both the public and private sectors.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
AUDIT
Preview of Selected 2010 Ongoing Work, Continued

We have collected and begun to review those risk assessment reports prepared by the various MTA agencies as mandated by the New York State Internal Control Act, and have augmented these with other factors identified by OIG's audits and investigations, to more fully assess potential risks. We intend to perform this work in close coordination with MTA management to afford maximal benefit from our work.

INVESTIGATIONS

The Investigations Division (or Investigations) examines allegations of criminality, fraud, waste and abuse, as well as safety, service, and management deficiencies. The Division's priorities are the detection and deterrence of fraud and the protection of MTA assets. In accordance with our statutory powers and duties, matters are referred to appropriate law enforcement and other governmental officials for further investigation, in which the Division routinely participates, and/or for criminal or civil enforcement.

Investigations is comprised of experienced investigators, forensic experts, and attorneys who work together on investigations, with additional subject matter expertise and analytical support by OIG Audit. Aside from the expertise of the staff and the Inspector General's statutorily authorized "full and unrestricted access" to all information and materials of the MTA, Investigations has a host of additional tools available to it. These include the statutory authority to subpoena witnesses, administer oaths, take testimony, and compel the production of records and other documents relevant to any inquiry or investigation.

Within the Investigations Division there is a specialized Construction Fraud Unit (CFU), established by the Inspector General in 2008. CFU concentrates on detecting frauds by contractors engaged in the construction, rehabilitation, and maintenance of MTA facilities. Also within the Division is the Intake and Intelligence Unit, which is at the front lines of receiving complaints from the public (see page 7).

The Division is engaged in numerous ongoing criminal investigations in various areas, including suspect construction practices, procurement-related fraud, prevailing wage, and other labor law violations, disadvantaged and minority business enterprise fraud, bribes-for-jobs and other hiring fraud. Below is a sampling of our numerous investigations involving the sharing of information and evidence with various federal, state, and local law enforcement agencies.

SELECTED INVESTIGATIONS REFERRED TO PROSECUTORS

Prime Contractor Disadvantaged Business Enterprise (DBE) Fraud

Based upon information received from an independent monitoring firm hired by the MTA Department of Corporate Compliance, OIG's Construction Fraud Unit initiated an investigation into DBE fraud by a prime contractor on two major Capital Construction projects. The investigation determined that the prime contractor and various conspirators improperly applied for and received \$9 million in DBE credit for seven different subcontracts covering a variety of goods and services. The scheme used the DBE firms

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INVESTIGATIONS
Selected Investigations Referred To Prosecutors, Continued

as “pass through” companies that purported to provide these goods and services that were actually provided by non-DBE firms.

CFU referred the case to the United States Attorney for the Eastern District of New York for continued joint investigation. The prime contractor subsequently entered into a non-prosecution agreement and agreed to a civil forfeiture of \$20 million to the federal government for both the MTA case and a similar case involving a New York City project. The prime contractor also agreed to pay \$1.8 million to the MTA-OIG, representing the costs of the MTA’s monitorship and the OIG’s investigation.

This matter shows that as part of an effective enforcement strategy, monitorships, and investigations can literally pay for themselves.

Falsification of Signal Inspections

OIG received information that despite its investigative findings and recommendations in 2000 and 2005, there were again serious problems concerning the inspection and maintenance of NYC Transit switches and signals. Thereafter, during the course of its third investigation, the OIG again found evidence indicating that signal maintainers were falsifying records and supervisors pressured workers to finish large quantities of work though the supervisors knew or should have known that the assigned work was impossible to complete in the time available.

The OIG is now engaged in a partnership with the Office of the New York County District Attorney to identify those directly and indirectly responsible for the falsification, and determine the nature and extent of any criminal conduct. (See Inspector General’s Statement to the City Council, page i [Appendix].)

Theft of Time by Metro-North Employees

OIG received allegations that two Metro-North Track Inspectors were spending several hours of their work day at home without authorization. Surveillance of these individuals by OIG Investigators confirmed that one of them did indeed spend as much as four hours a day at home while claiming to be at work.

Following our investigation we referred the matter to the Office of the Westchester County District Attorney. One employee was arrested and charged with Grand Larceny and other crimes. On December 15, 2010, the employee pleaded guilty to Petit Larceny, a class A misdemeanor, and resigned from Metro-North. He was also ordered to pay the railroad approximately \$1,900 in restitution, and a \$300 fine.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INVESTIGATIONS
Selected Investigations Referred To Prosecutors, Continued

The other Metro-North Track Inspector admitted to OIG Investigators that he had spent time away from work without authorization. Following disciplinary charges and a hearing, the employee was terminated.

Testing Lab Mail Fraud

As a result of a prior working relationship with OIG on materials-testing, the New York City Department of Buildings (DOB) alerted OIG that certain concrete materials might actually have been the subject of a false report filed with LIRR. During a subsequent joint investigation it was determined that the lab had indeed submitted false concrete field reports to the LIRR through the mails – a federal crime.

OIG, in cooperation with DOB, brought this evidence against the lab to the Office of the United States Attorney for the Eastern District of New York, which then augmented its ongoing investigation regarding this lab. OIG Computer Forensic Investigators assisted in the execution of a search warrant at the testing laboratory, acquiring the contents of one of the lab's computers. Thereafter, the lab's president pleaded guilty to mail fraud, a felony, in satisfaction of all potential charges arising from that investigation. He was sentenced to 3 years probation, \$500 restitution, and \$500 court fee. Additionally, the lab's director resigned and the lab's license to test concrete in the City of New York has been suspended.

OIG informed the LIRR and the MTA Office of Construction Oversight of the fraudulent report and suspension. In turn, LIRR informed OIG that the concrete that was the subject of the fraudulent report was used as part of a curb and sidewalk and that no remediation was required.

Fraudulent Billing by Fencing Corporation

NYC Transit Procurement personnel contacted OIG concerning certain suspicious invoices submitted by a fencing contractor. OIG conducted an investigation and determined that the contractor regularly submitted to NYC Transit invoices that misrepresented the cost of materials and supplies, often altering its supplier's bills to reflect higher-than-actual costs. The loss to the agency resulting from these misrepresentations is approximately \$50,000.

After referring this matter to the Office of the Suffolk County District Attorney, OIG worked with that office in its application for and execution of a search warrant for the corporation. In October 2010 the two principals and the corporation were charged with Grand Larceny, Scheme to Defraud, and Submitting a False Instrument for Filing. The matter is pending.

OTHER SELECTED INVESTIGATIONS

Healthcare Issue and Ancillary Arbitration Compensation Arrangement (MTA Inspector General Report #2010-08)

MTA Chairman/CEO Walder asked OIG to review the circumstances surrounding a 2008 decision by NYC Transit regarding employee health contributions and NYC Transit's 2009 compensation arrangement with the neutral Arbitrator.

Regarding the healthcare issue, after the 2005 transit strike the MTA successfully negotiated an agreement obligating NYC Transit employees to contribute to the cost of their healthcare. While the rate of contribution increased in 2007, it was not increased in 2008. The decision not to seek an increase was made by the former President of NYC Transit, who joined the agency after the strike and the agreement on healthcare. In making his decision, the president did not consult with the MTA Labor officials who negotiated the healthcare contribution provision, nor had he informed the Transit Committee and/or the full MTA Board. While we found neither violations of law nor of MTA rules or regulations, our report concluded that the former president's decision was not fully informed. We also concluded that the issues surrounding the healthcare contribution provision were of such significance that the Board, as policymaker, should have been informed, even in the absence of any technical reporting requirement.

As part of our report, we described the statutory requirements and MTA management and governance structures existing both before and after the 2008 healthcare decision. We noted that at Chairman Walder's request in December 2009, while our investigation was still in progress, the Board adopted Labor Relations Corporate Governance Guidelines specifically giving an increased role to the Board in its oversight of labor-management issues. The stated Purpose of the Guidelines is to "Ensure that the Board is kept apprised of material developments affecting collective bargaining and in furtherance of the Board's oversight of MTA management with respect to the collective bargaining matters of the MTA Agencies." Now that such requirements are in place, the Board should be fully informed whenever significant labor issues like healthcare arise in the future.

Regarding the Arbitrator, in January 2009, eight days before the Transit Workers' contract was to expire, the MTA Director of Labor Relations and the former union president jointly triggered the creation of an arbitration panel. They selected a particular individual, then employed by a private law firm, as the neutral member of the panel. He said he would compute his and his law firm's fees using his firm's discounted hourly rate for non-profit organizations and would then donate his own portion to charity. This agreement was not reduced to writing and no discount was applied.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INVESTIGATIONS
Other Selected Investigations, Continued

In our report we criticized MTA/NYC Transit for failing to identify with precision and in writing the actual fee to be charged under the law firm's discounted rate. Inasmuch as the MTA had not paid the law firm at the time of our writing, we also recommended that before paying the MTA demand a full accounting of all fees and disbursements. The MTA accepted our recommendation and challenged the firm's undiscounted bill. The matter is pending.

Qualifications for Paratransit Drivers

OIG conducted a review of Paratransit's practices regarding criminal background checks of drivers employed by the 17 private entities that transport passengers in the Access-A-Ride program. In particular, we focused on measures taken by these entities to prevent individuals with statutory disqualifying criminal convictions (*e.g.* homicides, assaults, sex, drug and weapons offenses, and drunk driving) from transporting the vulnerable population that uses Access-A-Ride.

While we confirmed that during the period reviewed Paratransit complied with the relevant laws and regulations, we found that the rules themselves allowed operators with disqualifying convictions to drive Access-A-Ride vehicles before their criminal records were detected. Indeed our review revealed that the undetected offenses included homicide, sexual abuse, drug trafficking, and weapons possession. Additionally, we found that some Access-A-Ride carriers delayed submission of operators' records to the state Department of Motor Vehicles for vetting beyond the maximum period permitted in the regulatory scheme, and that Paratransit's procedure for monitoring compliance with the timeliness of the submissions was inadequate.

OIG recommended to Paratransit officials that they go beyond existing legal requirements and require confirmation of no disqualifying convictions before allowing an individual to operate an Access-A-Ride vehicle. Paratransit agreed with the recommendation and, in a memo dated September 23, 2010 to all Paratransit carrier contract managers citing our investigation, directed compliance effective October 1, 2010. OIG will continue to monitor the ongoing implementation of this recommendation.

Kick-Back Investigation

CFU assisted the Office of the United States Attorney for the Eastern District of New York and the Office of the Inspector General for the United States Department of Transportation, in the investigation and prosecution for mail fraud of the former Vice President of an MTA prime contractor.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~

INVESTIGATIONS

Other Selected Investigations, Continued

The fraud involved a scheme to deprive his employer of money and the right to honest services by soliciting kickbacks and inflated bids from a debris removal subcontractor on a project involving the Bronx Whitestone Bridge. In addition, he solicited the same subcontractor to inflate its bids to other companies competing with his employer so that his company could underbid them on other MTA contracts.

The former Vice President was convicted of mail fraud after trial, ordered to pay a \$500 special assessment and sentenced to three months home confinement, five years probation, and 500 hours of community service.

Stealing Time by NYC Transit Employee

OIG received an anonymous complaint alleging that a New York City Transit Car Appearance Supervisor was claiming hours and overtime which he did not earn. During the period of our surveillance, we confirmed that the supervisor arrived at work late or left early.

When confronted with this evidence the employee initiated retirement procedures. OIG intervened and notified NYC Transit, which in turn charged the supervisor with gross misconduct and theft of wage. During the ensuing disciplinary proceedings the supervisor stipulated to a suspension/deduction of pay from his final check before retiring. This payment satisfied the suspension penalty through the use of a 30% fine in lieu of suspension.

Additionally, the supervisor repaid NYC Transit for the unearned overtime during the period he was under surveillance by OIG.

MTA All-Agency Code of Ethics Violations

Internal Security Department

(MTA Inspector General Report #2010-03)

OIG investigated anonymous allegations of favoritism against the Director of MTA Bridges and Tunnels' Special Investigations Division within the agency's Internal Security Department.

Our investigation established that the Director had a close and ongoing relationship with a female employee in his reporting line. We also found that the Director neither informed his supervisors about this relationship nor recused himself from decision-making regarding the employee's work assignments. We found further that the Director's actions created a conflict of interest in violation of the MTA All-Agency Code of Ethics.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INVESTIGATIONS
Other Selected Investigations, Continued

Based on our findings, we recommended that the female employee be reassigned to a unit outside the Director's reporting line and that the Director be disciplined for his ethical violation. The Director was reprimanded and reassigned to another division within the Internal Security Department.

Fraudulent Certificates of Insurance

Following our finding that an Access-A-Ride vendor submitted fraudulent, Certificates of Insurance to NYC Transit, OIG referred the matter to the New York State Department of Insurance. Based on that referral and other evidence, the Department of Insurance cited the insurance broker for Untrustworthiness and/or Incompetence to Act as an Insurance Producer in violation of the Insurance Law. A hearing on those charges was completed on January 21, 2011. We are currently awaiting the hearing officer's decision.

Metro-North Employees Substance Abuse

OIG conducted an investigation into an anonymous allegation that marijuana and alcohol were used during working hours by three Metro-North employees in the Supervisor's Room on the lower level of Grand Central Terminal. Working in conjunction with detectives and uniformed officers from MTA Police, OIG investigators found the identified employees at the referenced location with two small plastic bags containing alleged marijuana, along with paraphernalia and a bottle of whiskey. All three employees were issued criminal court summons for Unlawful Possession of Marijuana.

Disciplinary charges were filed against the employees in accordance with Metro-North's Substance Abuse Policy and General Safety Instructions. As a result, two employees were terminated and a third was suspended for 53 days.

Gambling at Bus Depot

OIG investigated an anonymous complaint that illegal gambling was taking place at the Jackie Gleason Bus Depot in Brooklyn. While investigating the complaint, OIG was invited to join an ongoing federal criminal investigation regarding this activity being conducted by the FBI and the United States Attorney for the Southern District of New York. Three individuals who were current or former employees of the NYC Transit Department of Buses (Buses) were among those charged with federal gambling offenses.

A retired bus operator and one still employed by Buses were convicted of conspiracy and running an illegal gambling operation. The retired Bus Operator received five years probation and a \$1.15 million penalty. The current Bus Operator received three years probation, was ordered to pay a financial penalty of just over \$150,000, and was subsequently dismissed by NYC Transit. The other Buses employee, who was

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INVESTIGATIONS
Other Selected Investigations, Continued

suspended for more than five months, entered into a deferred prosecution agreement and paid a \$6,000 penalty.

Dual Employment Violation/Vehicle Misuse

In September 2009, OIG received information that a LIRR Supervisor was using his agency vehicle to commute to a second job in Suffolk County in violation of LIRR's vehicle use policy. The second job was as an employee of Suffolk County.

Although conflicting times and dates appeared on the LIRR and Suffolk County attendance records, these discrepancies were explained by the County employer. Based on this, the Office of the Suffolk County District Attorney determined there was insufficient evidence to bring criminal charges.

However, the OIG found that the employee violated several agency rules, including using an agency vehicle to commute to a second job, claiming unearned compensation time, and failing to seek permission to engage in outside employment. In lieu of disciplinary actions, the employee chose to resign from the LIRR. By doing so, he forfeited 181 days of pay worth more than \$80,000.

UPDATES FROM 2009 ANNUAL REPORT

Construction-Material Testing Company

OIG continued to work as part of an investigative task force with the New York County District Attorney, the New York City Department of Investigation, the Inspector General of the Port Authority of New York and New Jersey and others. The investigation, which began in 2008, has thus far resulted in the indictments of two construction-material testing companies and eight of their employees, for various crimes related to the testing of building materials.

In 2010, a jury convicted one of the testing companies and two of its principals, the President/CEO and the Vice President in charge of the Engineering department, of Enterprise Corruption and other crimes. The principals were sentenced to indeterminate state prison terms having maximums of 21 and 18 years respectively, and the president and the company were further ordered to pay approximately \$2 million in total restitution. That amount included restitution to the MTA for almost 90 percent of its out-of-pocket expenses for re-testing and remediation. Additionally, a professional engineer employed by the lab pleaded guilty to Offering a False Instrument for Filing in the First Degree, Scheme to Defraud in the First Degree, and Conspiracy in the Fourth Degree, all felonies, and was placed on probation for five years, forced to pay forfeiture of more than \$138,000, and had his Professional Engineer's license revoked.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INVESTIGATIONS
Updates from 2009 Annual Report, Continued

As to the indictment of a second company and its laboratory director, in 2010 the company and its director each pleaded guilty to a class E felony charged in the indictment.

Further, in 2010 the efforts of the task force resulted in the execution of four additional search warrants on other materials testing companies. The joint investigation is continuing.

Meanwhile, throughout the investigative process we monitor efforts by the MTA Office of Construction Oversight, NYC Transit, Capital Construction and Bridges and Tunnels to identify projects for which the testing companies were engaged, so that the agencies could promptly examine critical areas with potential safety implications and conduct appropriate retesting. We also cause the affected MTA agencies to re-evaluate and revise the Quality Assurance methods they employ with respect to materials testing laboratories.

Moving Company

As we reported in 2009, the company pleaded guilty and agreed to pay restitution. To date, NYC Transit has received over \$150,000.

During the investigation, a second NYC Transit employee was also implicated in the scheme. From approximately 1997 through 2000, this second employee admitted receiving free personal moving services from the company. The employee transferred from that NYC Transit unit in 2000 and did not participate in the scheme when in it resumed in 2005; therefore any possible prosecution for his earlier participation was barred by the statute of limitations.

However, a separate investigation by OIG found that the employee violated the NYC Transit Dual Employment policy, as well as New York State law requiring approval of outside activities. We also found that the employee violated state law regarding financial disclosure. We reported these findings to NYC Transit and recommended discipline. The agency suspended the employee and initiated disciplinary proceedings. The employee resigned effective December 2010.

General Contractor Wage Fraud

As reported last year following our joint investigation with the Office of the New York County District Attorney, an indictment was obtained against a general contracting company, its principals, and three union shop stewards.

During 2010, the president of the company pleaded guilty to one count of Falsifying Business Records in the First Degree, a class E felony and agreed to resign his

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INVESTIGATIONS
Updates from 2009 Annual Report, Continued

position with the company. Three union officials also pleaded guilty to charges relating to the underpayment of wages to union workers.

Pursuant to the plea agreement, the company funded an escrow account in the amount of \$3 million to repay the underpaid workers. The company president funded a second escrow account in the amount of \$500,000 for the same purpose. The escrow agent reports to OIG on the activity of the escrow account on a regular basis and the employees are continuing to receive back wages from these accounts. In addition, the company paid \$1.2 million for the cost of the investigation with OIG receiving \$500,000 and the balance going to the Offices of the New York and Bronx County District Attorneys.

Continuing to the present, the OIG has been in constant contact with the independent monitor previously imposed upon the contractor at the contractor's expense. Thus far, there have been no reports of prevailing wage violations or any other integrity issues involving this company or its personnel.

Passenger Operating LIRR Train

The OIG worked with the MTA Police and the Office of the Nassau County District Attorney to investigate an allegation that a LIRR engineer permitted a passenger to operate a LIRR train. The OIG, with the help of the MTA Police, confirmed the occurrence as well as the identity of the passenger and engineer.

Thereafter, the Nassau County District Attorney charged both individuals with the crime of Reckless Endangerment in the Second Degree and further charged the engineer with the crime of Official Misconduct. The engineer, who had previously been dismissed by LIRR, pleaded guilty to Official Misconduct and was sentenced to a \$500 fine and 50 hours of community service. The charges against the passenger are pending.

Maintenance Supervisor Dereliction of Duty; Inadequate Procedures (MTA Inspector General Report #2009-16)

In 2009, we reported on our investigation substantiating an anonymous allegation that a NYC Transit Maintenance Supervisor spent most of his shift sleeping in the office and leaving early to go to his second job. We made recommendations for disciplinary action of that employee and others, and for strengthening procedures regarding certain systemic issues uncovered during our investigation. The agency accepted our recommendations.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INVESTIGATIONS
Updates from 2009 Annual Report, Continued

In 2010, the Transit Maintenance supervisor received a 30-day suspension and two other employees each received a five-day suspension.

Prevailing Wage Violation

Last year we reported our joint investigation with the Office of the New York State Attorney General to recover more than \$180,000 in underpaid wages from a construction company for work done at the Jamaica Station.

To date, OIG has distributed nearly \$200,000 to the affected workers, including penalties and interest; the remaining undistributed funds were returned to the Attorney General.

OTHER INVESTIGATIVE ACTIVITIES

DBE Task Force

The Office of the United States Attorney for the Southern District of New York asked OIG to take a leading role on a new DBE Task Force that will investigate and file civil actions under the False Claims Act against contractors committing DBE fraud.

The task force is staffed by three Assistant United States Attorneys; support staff from the United States Attorney's Office; two CFU investigators; Special Agents from the United States Department of Transportation Office of Inspector General and the United States Department of Labor Inspector General; an investigator from the Port Authority of New York and New Jersey Office of Inspector General; and two investigators from the NYC Department of Investigation.

The task force has already begun investigations of potential DBE fraud by contractors who do work for the MTA and the Port Authority.

Assistance to NYC Transit Vendor Relations

CFU is often called upon to assist NYC Transit Vendor Relations staff in making responsibility determinations. Its assistance ranges from passing along intelligence to attending and participating in responsibility hearings.

Selection and Review of MTA Audit Services Prevailing Wage Audits

The MTA Auditor General performs a prevailing wage audit on one construction contract each quarter. OIG selects the contract and assists the Auditor General in its review and ultimate report. Additionally, based on our own expertise, we have helped mentor MTA Audit Services personnel in their performance of prevailing wage audits.

OVERSIGHT OF FEDERAL STIMULUS FUNDS

An oversight panel created by former Governor David A. Paterson in 2009 and continued by Executive Order of Governor Andrew M. Cuomo to help ensure that federal stimulus funds (or Stimulus) provided under the American Recovery and Reinvestment Act (ARRA) are utilized with transparency and accountability. The four members appointed to the panel are the State Inspector General (Chair), the MTA Inspector General, the State Medicaid Inspector General, and the State Division of Human Rights Commissioner. According to the Governor, “The panel will provide New York with a coordinated and efficient approach for oversight of ARRA spending.”

The members of the panel designated staff from their respective agencies as members of a working group. This working group meets every two weeks throughout the year to review any complaints received by their agencies related to Stimulus-funded projects/programs. At each meeting in 2010, one or more State agencies that received Stimulus funds appeared before the working group to identify the projects/programs on which they expended such funds and to explain the controls they had in place to protect those expenditures from fraud, waste, and abuse. Over the course of the year, nearly every State agency that received Stimulus funds appeared before the working group.

Additionally, Section 1512 of the American Recovery and Reinvestment Act requires the submission of quarterly progress reports to the Federal Office of Management and Budget on expenditures of Stimulus funds and the creation of jobs. At the request of the Governor, to ensure full compliance with that section, the OIG, together with the New York State Inspector General and the New York State Department of Transportation, provided quality assurance of the submissions of 20 New York State agencies through the first quarter of 2010.

Stimulus-Related Training

To highlight the enhanced scrutiny to be given to the expenditure of ARRA funds across the state, CFU’s lead attorney presented a fraud awareness training class in conjunction with the United States Department of Transportation’s Office of Inspector General at the New York State Department of Transportation in Albany. In addition to this ARRA presentation being Podcast to various agencies throughout the state, it was attended by a large number of investigators and other state and local employees involved in public construction.

OIG's Role as Independent Oversight of MTA Stimulus Projects

Kickoff Meetings

In 2010, OIG staff members attended “kick-off” meetings for six Stimulus-funded construction projects, as well as numerous subsequent progress meetings, where the members spoke to the contractors and project managers about the OIG’s oversight role. Among other rules, the contractors were informed that it is a felony to file a false document with an MTA agency with intent to deceive the MTA, and that any fraud in connection with these projects is also a federal crime, since the Stimulus projects are federally funded. The contractors were also made aware of their obligations related to certified payrolls, Disadvantaged Business Enterprise submissions, and change orders.

Site Visit Program

OIG’s Construction Fraud Unit continued its site inspection program which involves unannounced construction site visits for compliance with legal and contractual requirements including site security. During our unannounced visits we interview workers to determine the identity of their employers, whether workers are being paid the prevailing wage, and whether they have proper identification and proof that they have completed track-safety training. We also examine materials to determine the name of the companies they are shipped to in order to ensure that the proper contractors are actually performing the work. In 2010, OIG performed ten site inspections of MTA Stimulus-funded projects

Finally, as noted above, the OIG selects contracts for a prevailing wage review by the MTA Auditor General. In 2010, two of those audits were on Stimulus projects.

OUTREACH



EDUCATION

A form of information sharing that is particularly important to this office is educational outreach. Since his appointment, the Inspector General has emphasized and personally participated in collaborative outreach and training with MTA subsidiaries and affiliates, as well as with law enforcement and other oversight agencies. OIG both conducts fraud awareness and ethics training and participates in training classes presented by law enforcement, regulatory, investigative, prosecutorial, and other watchdog entities. Notably, we also reach out to contractors and labor representatives.

In 2010 the Inspector General was a speaker on the topic “Contract and Grant Fraud Challenges Facing the States,” at the *Sixth Biennial National Fraud Awareness Conference on Transportation Infrastructure Programs*, jointly sponsored by the U.S. Department of Transportation Office of the Inspector General and the American Association of State Highway and Transportation Officials. The primary conference goals were to sharpen awareness of fraud schemes; share best investigative, audit, and oversight practices; and strengthen working relationships for the attendees, including attorneys, auditors, engineers, contract and procurement officers, investigators, and law enforcement personnel from all levels of government.

The Inspector General also spoke on “IG/prosecutor relationships” at the Annual Conference of the Association of Inspectors General, a national organization comprised of federal, state, and local members from across the country, and at the Subcontractor Trade Association conference in New York on “Prequalification, Vetting and Close Out: A Value Chain.”

Other 2010 highlights include:

- CFU’s lead attorney presented a fraud awareness training class in conjunction with the United States Department of Transportation’s Office of Inspector General (see Stimulus-Related Training on page 31).
- At the request of the NYC Transit Capital Program Management, CFU’s lead attorney gave a presentation entitled “The Warning Signs of Fraud” to officials of that department.

~ OUTREACH ~
EDUCATION

- **OIG, in conjunction with the MTA Department of Corporate Compliance (Corporate Compliance) and the New York State Commission on Public Integrity, presented ethics training to MTA employees. The OIG explained its role in the investigation of ethics violations and the detection, investigation and deterrence of fraud, waste, abuse, and corruption. Our presentation educates employees about how to recognize and respond to “red flags” relating to fraud. We made 26 such presentations to approximately 1,100 MTA employees, encouraging them to report issues of wrongdoing to this office.**

- **OIG also worked with Corporate Compliance to address a loophole in the MTA All-Agency Code of Ethics. Specifically, Code of Ethics section 1.05 (Duty to Disclose) did not require employees to report wrongdoing to OIG. Indeed, it did not even list OIG as a reporting option. Based on our input, the MTA Board amended that provision to specifically require employees to promptly report to this office allegations or information involving corruption, fraud, criminal activity, or abuse.**

INTERGOVERNMENTAL COOPERATION

During 2010, OIG worked with federal, state, and local agencies and task forces, including:

Federal:

United States Attorney for the Eastern District of New York
United States Attorney for the Southern District of New York
United States Attorney for the Northern District of New York
Federal Bureau of Investigation
Internal Revenue Service; IRS Criminal Investigation Division
National Labor Relations Board
United States Department of Justice: Anti-trust and Environmental divisions
United States Department of Labor, Office of Labor Racketeering and Fraud Investigations
United States Department of Transportation Office of Inspector General
United States Railroad Retirement Board Office of Inspector General
Eastern District of New York Federal Construction Fraud Task Force
Environmental Protection Agency Criminal Investigation Division

Interstate Agency:

Port Authority of New York and New Jersey Office of Inspector General

New York State:

Office of the Attorney General
Office of the State Comptroller
Office of the New York State Inspector General
Department of Insurance
Department of Labor
Department of Transportation
Dormitory Authority of the State of New York
New York State Police
Public Transportation Safety Board
Worker Compensation Board
Lower Manhattan Construction Integrity Team

~ OUTREACH ~
INTERGOVERNMENTAL COOPERATION

Local:

Office of the New York City Comptroller
Bronx County District Attorney
Kings County District Attorney
Nassau County District Attorney
New York County District Attorney
Queens County District Attorney
Richmond County District Attorney
Suffolk County District Attorney
Westchester County District Attorney
New York City Department of Investigations and various agency inspectors general
New York City Department of Buildings
New York City School Construction Authority Office of Inspector General
New York City Business Integrity Commission
New York City Police Department
Westchester County Department of Public Safety

Other:

Long Island Labor Advisory Council
New Jersey State Police
Pennsylvania State Police

VISIBILITY CAMPAIGN

Beginning in June 2008, OIG launched a campaign to increase public awareness about the role of this office in providing independent oversight of the MTA and its constituent agencies. The campaign was rolled out in phases.

Phase One. In August 2008, we thoroughly revamped our website (see screen image on next page). The new website is more informative and easier to navigate. To begin, we make clear that the Office of the MTA Inspector General investigates complaints of wrongdoing both by individuals working for the MTA, as well as by those doing or trying to do business with it. We also give the following examples of the many and different types of complaints we handle:

- Construction fraud
- Purchasing irregularities
- Theft of property and/or materials
- Vendor wrongdoing
- Worker compensation fraud
- Time and attendance abuse
- Poor performance
- Waste of money

Perhaps most important, we feature key information, such as our 24-hour Hotline number, more prominently throughout the site, and make it easier to file a complaint.

Phase Two. In January 2009 we rolled out another aspect of our public awareness campaign, beginning with SubTalk advertising posters and train cards. (See SubTalk poster image on page 39.) The SubTalk display mirrors the theme of the website, continuing to increase public awareness of the OIG's role. It also introduced our new slogan, "It's a Big System, Help Us Keep an Eye on It."

Going Forward. The Intake and Intelligence Unit of the OIG Investigations Division is exploring future strategies for the Visibility Campaign.

WEBSITE SCREEN IMAGE



SUBTALK POSTER IMAGE

OFFICE OF THE INSPECTOR GENERAL
Metropolitan Transportation Authority

Report FRAUD, WASTE, and ABUSE to the MTA Inspector General

- Construction Fraud
- Wage or other Labor Violations
- Unsafe Practices and Conditions
- Employee Misconduct
- False Disability and Injury Claims
- Contractor and Vendor Fraud
- Theft of MTA Property
- Inefficiencies and Waste of Money

It's a BIG SYSTEM HELP US KEEP an EYE ON IT

CALL 1-800-MTA-IG4U OR 1-800-682-4448
MAIL Two Penn Plaza, 5th Floor, New York, NY 10121
WWW.mtaig.state.ny.us

SubTalk

 Metropolitan Transportation Authority *Going your way*

APPENDIX ONE

City Council Hearing on Transit Signal System

Statement of MTA Inspector General Barry L. Kluger
New York City Council
Committee on Transportation³
January 6, 2011

The New York City Transit signal system is a critical part of the subway infrastructure. That system controls the movement and speed of trains, and includes safety features that minimize the risk of train collisions. Under the supervision of maintenance supervisors, Transit signal maintainers are responsible for testing, inspecting and maintaining all signal equipment throughout the system to insure that this critical infrastructure remains sound.

Some ten years ago, the Office of the MTA Inspector General (OIG) conducted an investigation based on allegations that some signal maintainers and supervisors were falsifying inspections and maintenance records. In October 2000, the OIG issued its first report directed to the President of NYC Transit, entitled “Investigation of the Inspection and Testing of NYC Transit Subway Signals During 1999” (MTA/IG #2000-18).

Among its more disturbing findings OIG determined that six maintenance supervisors were on vacation, sick leave, or otherwise off from work during a period in which NYC Transit computer records showed them conducting dozens of inspections. Therefore, the OIG recommended that “the current signal inspection and testing computer system or any future system implemented should be strengthened to ensure accountability, including validating computer data input.” When the agency responded to our recommendation by announcing it had “implemented a bar code system that validates data input via bar code reader,” this office expressed skepticism, noting that the reader “will not provide assurance that particular visual inspections or tests were actually conducted on the equipment.” Five years later, this skepticism, unfortunately, proved justified.

In 2005, the OIG conducted a second investigation, which confirmed an anonymous allegation that employees in the Signals division were again falsifying records. In its report entitled “Signals” (MTA/OIG #2005-62L), this office wrote to the same agency president that its investigation uncovered “A lack of (internal) controls that would act to prevent signal maintainers and their supervisors from falsifying inspection

³ At a Hearing before the City Council, this statement was presented in lieu of personal testimony because the Office of the MTA Inspector General was (and remains at the time of this writing) actively engaged in an ongoing investigation with the Office of the New York County District Attorney concerning certain matters that were the subject of that Hearing.

APPENDIX ONE

City Council Hearing on Transit Signal System, Continued

and maintenance records.” Indeed, OIG confirmed that signal maintainers had easily defeated the barcode reader by obtaining photocopies of bar codes for the signal equipment in their sections, allowing them to scan these photocopies while still in the office, providing the appearance that equipment had been inspected without ever actually conducting the work. At that time this office made seven recommendations designed to strengthen internal controls and ensure accountability.

Given the monumental importance of the safety system to the functioning of NYC Transit, and these repeated breaches of its integrity, it is certainly disturbing that a third investigation was needed, and more than alarming that our preliminary findings strongly indicate that a number of serious problems this office identified a decade ago still exist, including a lack of internal controls, insufficient mechanisms to insure accountability and falsification of signal inspection and maintenance records. We are also concerned that most of the supervisory staff presently assigned to the Signals division were in supervisory positions within Signals in either 2000, 2005, or both and should have been aware of, and responsive to, the findings of OIG’s past reports.

Therefore, pursuant to our power and duty “to make available to appropriate law enforcement officials information and evidence which relate to criminal acts” that we may obtain in carrying out our duties, we are continuing a separate investigation in partnership with the Office of the New York County District Attorney that will seek to identify those directly and indirectly responsible for the falsification, and determine the nature and extent of any criminal conduct. That investigation is ongoing. I tell you this now, consistent with our responsibility to protect the integrity of this investigation, in order to ensure that the riding public is meaningfully informed about our work as a matter of critical importance. In the same vein, I want to share with you my preliminary assessment of the approach taken by NYC Transit, under the leadership of its new president, Tom Prendergast, to the extremely troubling issues discussed here today.

Indeed, because of their extremely pressing nature I personally alerted Mr. Prendergast to a number of these issues even as our investigation continued. I did this so that NYC Transit could immediately begin to take the steps necessary to ensure the safety of the system and its riders. I am encouraged by his response.

Mr. Prendergast acted expeditiously on the safety implications of our findings and promptly formed a Signals Maintenance Task Force consisting of top level managers within NYC Transit and the MTA to address the issues raised by our investigation as well as his own concerns. The Task Force conducted a comprehensive review of the Signals division, and outlined various recommendations for dealing with these issues moving forward. Preliminarily, I find that this Final Report addresses longstanding problems with refreshing candor. It is, I believe, an honest appraisal, frankly acknowledging OIG’s

APPENDIX ONE

City Council Hearing on Transit Signal System, Continued

alert and the need for radical changes in the operation of signals inspections, management oversight, and agency culture. The Report presents a road map and blueprint for corrective action. However, it must be deemed a work in progress. Further review, analysis, and immediate responsive action are still absolutely necessary.

For example, NYC Transit cannot just rely on a repeatedly postponed new computer system, now expected in 2012. My office and the public were previously given assurances that the recommendations regarding signal inspections in the 2000 and 2005 reports were accepted and that corrective action would be taken. Obviously, whatever action may have been taken was not enough. Great expectations were placed on the new computer system planned to be in place first by 2002 and then by 2008, but never installed.

New York City Transit recognizes that a new computer system alone, even if installed, will not solve the deep-rooted problems confronting the agency. However, though we worked closely with the Task Force and I have confidence that President Prendergast will follow through on his plan of corrective action, I want to assure the public that this office will maintain its vigilance, continue its review and investigation and, where appropriate, issue findings and recommendations upon their completion. We will also continue to monitor Transit's present efforts to finally achieve meaningful and lasting improvement in the operation of its Signals division.

APPENDIX TWO

Selected Report Overviews

Improving Inspections of NYC Transit Stations

On August 16, 2009, at 10:18 p.m., a large section of the arched brick ceiling at the 181st Street Station on the IRT **1** Line fell onto the platforms and tracks. Fortunately, no one was injured by the falling bricks and subway service to the station was immediately suspended. New York City Transit (NYC Transit) then temporarily secured the ceiling to protect customers and trains from additional falling debris and reopened the station for subway service on August 31, 2009. NYC Transit budgeted \$16.5 million of its scarce capital funds to clean up the site, run alternate bus service while subway service was disrupted, and provide temporary safety measures that will continue until the ceiling is permanently repaired. To date, \$6.1 million has been expended for these measures.

NYC Transit managers had learned in 1999 that a portion of the ceiling at 181st Street was at risk of collapse. However, it did not begin a comprehensive assessment of the ceiling's condition until June 2009, just two months before the ceiling fell.

The MTA Office of the Inspector General (OIG) examined how the condition at the 181st Street Station went unaddressed for nearly 10 years and what lessons can be learned from this. We also examined two other recent incidents where the failure of a critical station component could have resulted in serious injury or death: the partial collapse of the hung metal ceiling at the Bowling Green Station on the **4/5** Line, and the collapse of a concrete platform panel at the 18th Avenue Station on the **F** Line. Each of the three incidents reviewed during this audit indicates weaknesses in the adequacy of NYC Transit's station inspections. These shortcomings increase the risk of customer injuries and service disruptions. The shortcomings also increase the probability that scarce capital and maintenance dollars will be spent addressing emergency situations. Facing extraordinary pressure to pare spending, NYC Transit simply cannot afford the additional costs associated with emergencies that are clearly preventable.

Station Inspection Program Weaknesses

Weaknesses in NYC Transit's inspection programs were instrumental to the failures discussed in this report:

- During the rehabilitation of the 181st Street Station in 1999-2000, NYC Transit's Department of Capital Program Management (CPM) discovered the distressed ceiling area, and directed the installation of a temporary wooden shield just below it to protect the public from falling bricks. CPM was then responsible for hiring a consultant to inspect the condition of the ceiling bricks, and for obtaining a

APPENDIX TWO

Selected Report Overviews

Improving Inspections of NYC Transit Stations, Continued

permanent solution to the problem. At that time, however, CPM inexplicably failed to pursue a permanent solution, or even hire a consultant to assess the condition of the ceiling.

- Annual inspections conducted by NYC Transit's Department of Subways' Maintenance of Way Division (MOW) subsequent to the 1999-2000 rehabilitation, and an inspection conducted by consultants under contract to CPM in 2007, failed to question the presence of the temporary wooden shield that had been installed to protect the public from falling bricks. The shield's presence should have prompted inspectors to perform an up-close inspection of the area above the shield.
- MOW and CPM conduct their visual inspections of transit stations from the platform or from the tracks. From these vantage points, no inspection could have adequately detected the extent of the ceiling's distress at the 181st Street Station.
- Some critical station components, specifically concrete platforms at elevated stations and ceilings with hung metal panels, are not subject to structural inspection by any unit of NYC Transit. As a result, the risk of component failure is unacceptably high.
- There is no communication between MOW inspectors and CPM's station consultants who perform major system-wide reviews of NYC Transit's stations. As a result of this lack of communication, compounded by the weaknesses in station inspections noted above, NYC Transit's capital program for stations is likely to omit critical projects.

Risk Assessment Weaknesses

An inspection of the 181st Street Station ceiling conducted by MOW in September 2006, which was prompted by concerns that the wooden shield may cause a smoke hazard in case of fire, rediscovered the ceiling problem. Yet, design work needed to begin addressing the problem did not begin until 2009. During this three-year period, MOW and CPM engineers concluded that the ceiling was not in imminent danger of collapse. Based on their assessments, MOW and CPM sought funding for the ceiling repair as a standard capital project, which meant that the project underwent a lengthy planning process that took years to complete. However, it is now clear that the professional judgments regarding the ceiling's stability were inaccurate.

APPENDIX TWO

Selected Report Overviews

Improving Inspections of NYC Transit Stations, Continued

Our review found that neither MOW nor CPM established regular inspections of the site to monitor the ceiling's rate of deterioration. Had data been collected at regular intervals and reviewed by MOW and CPM engineers, their conclusions about the actual conditions of the ceiling could have been better informed. Also, given the elaborate and architecturally rare nature of the ceiling, MOW and CPM may not have had the expertise needed to properly assess the risk of collapse.

Summary of Recommendations

The incidents discussed in this report could have been averted. So that such events do not recur, we recommend that NYC Transit:

- Conduct station inspections that are more thorough and that better coordinate the transmission of information between MOW and CPM;
- Develop a list of hard-to-reach and unique station components that require periodic up-close inspection, as well as the procedures to perform such inspections;
- Require inspections of platforms and other concrete structures on elevated stations on a regular basis;
- Inspect hung metal ceilings and the station ceilings from which they are suspended on a regular basis; and
- Scrutinize the risk assessments of the 181st Street Station ceiling that were conducted between the rediscovery of the problem in 2006 and the ceiling collapse in 2009, so as to evaluate what lessons can be learned from this experience.

Summary of Agency Response

We discussed our findings and recommendations with key MOW and CPM officials throughout the audit. They agreed with our recommendations, and indicated that NYC Transit has recently taken steps to improve its structural inspections of transit stations.

Shortly after the 181st Street ceiling collapse, NYC Transit established an inspection task force to review the inspection protocols pertaining to the structural condition of stations.

APPENDIX TWO

Selected Report Overviews

Improving Inspections of NYC Transit Stations, Continued

MOW has agreed that the ceiling condition at the 181st Street Station should have been identified by its annual inspections. MOW officials have since issued verbal instructions to inspectors regarding obstructions. Specifically, inspectors are to note in their reports when an area to be inspected is not visible because of an obstruction such as the wooden shield installed at the 181st Street Station, so that a more thorough up-close inspection can be performed at a later date. While we commend this action, we recommend that MOW write this directive into its inspection guidelines. We also discussed the matter with CPM, and it has agreed to change its inspection manual to this effect.

In another step designed to better guide the inspection process, the newly established inspection task force has begun to compile a list of hard-to-reach and unique station components that will be subject to regular up-close inspections by MOW. MOW indicated that the ceiling at the 181st Street Station and the similarly designed ceiling at the 168th Street Station on the  Line have been added to the list. MOW and CPM have also agreed that better communication among the inspection groups would ensure more accurate inspections and better prioritization of capital expenditures on stations. To this end, CPM will change its inspection guidelines to ensure that its station consultants obtain the results of MOW's inspections.

The inspection task force is also considering how to revise its protocols to include the inspection of concrete components on elevated structures, as well as structural ceilings behind hung metal panels. At this point, which NYC Transit unit will inspect the support structures for the hung metal panels is undetermined. However NYC Transit agreed to our recommendation on this issue.

In order to improve capital project planning, MOW and CPM have agreed to examine the assessments of the 181st Street Station ceiling conducted between 2006 and 2009, to see what lessons can be learned from them. The OIG will continue to monitor these efforts.

Finally, NYC Transit informed us that its inspection task force under the direction of Thomas Prendergast, the new president of NYC Transit, meets regularly to review inspection protocols, and has expanded its focus to include specialized structures such as truss bridges, and underwater structures, as well as, transit stations. We are pleased by NYC Transit's response to our concerns regarding station inspections, and by the more expansive review that the inspection task force is pursuing regarding other NYC Transit structures.

APPENDIX TWO

Selected Report Overviews

Governance Assessment of MTA Capital Program Mega Projects

In the early 1980's, the Metropolitan Transportation Authority (MTA) developed a capital program to rebuild the subway and commuter rail network that had suffered years of neglect and decay. To ensure that capital program dollars were spent effectively, New York State law charged the MTA Board of Directors (Board) with responsibility for overseeing this program. Specifically, the law created a Capital Program Oversight Committee (CPOC or the Committee) that was to consist of Board members.

To help CPOC members understand the often technical subject matter of capital projects, the law also provided that CPOC would be assisted by an Independent Engineering Consultant (IEC).⁴ The IEC advises CPOC on issues affecting capital projects through reports that it provides when the Committee meets on a monthly basis. An MTA Headquarters (MTAHQ) department, the Office of Construction Oversight (OCO), is in charge of directly managing the IEC, which is presently retained under a \$7 million annual contract. Together, these groups and their responsibilities form the governance structure for overseeing the capital program.

Since 1982, the purpose of the MTA's capital program has been largely to restore the MTA's railcars, buses, and other critical infrastructure, and also to maintain those assets in a state of good repair. More recently, however, the capital program has also included several massive system expansion projects known as "mega-projects." The mega-projects currently under construction consist of: Second Avenue Subway (SAS); East Side Access (ESA); Fulton Street Transit Center (FSTC); and 7 Line West Extension (7W). Because of the size and complexity of these projects, the MTA created a subsidiary agency called MTA Capital Construction (MTACC) to manage them. The IEC regularly reports to CPOC on the status of MTACC-managed mega-projects, as it does for major "core" capital program projects managed by the other MTA agencies.

Despite the foregoing, MTACC-managed mega-projects have experienced major budget overruns and schedule delays. Since their inception, three of these mega-projects – SAS, ESA, and FSTC – have experienced cost increases totaling over \$1.93 billion and their eventual completions have been delayed by 2½ to 5 years.

⁴ Specifically, New York Public Authorities Law Title 11, Section 1263(4)(b) states that the CPOC shall use an "independent transit engineering firm." However, this firm is commonly (and contractually) referred to as the "Independent Engineering Consultant."

APPENDIX TWO

Selected Report Overviews

Governance Assessment of MTA Capital Program Mega Projects, Continued

Findings and Recommendations

The failure to complete mega-projects on time and within budget has raised serious concerns about how MTACC has managed these projects and indicates a need for more effective oversight from MTA. To help address these concerns, the Office of the MTA Inspector General (OIG) undertook a comprehensive review, including interviews of MTA Board members and key personnel in the Office of Construction Oversight, the Independent Engineering Consultant IEC, and MTACC, as well as examination of reports, records, and contracts. We found that although the governance structure now in place is essentially sound, its execution can be improved. While the chairman and committee members have increased their scrutiny over mega-projects through the oversight committee, it is also clear that the challenge is enormous and MTA must continually seek to more effectively monitor and oversee these-projects. The OIG shared our preliminary findings and recommendations with the MTA Chairman/CEO Jay Walder and members of CPOC.

In July 2010, at the invitation of Chairman Walder, the Inspector General publicly presented a number of the issues contained in this report directly to the members of CPOC.⁵ At that meeting he stressed the importance of moving toward a risk-based approach to oversight and of ensuring that MTACC and the engineering consultants provide the Committee members with the high-level analyses necessary for the members to perform that function.

Thereafter, at the September CPOC meeting, Linda Kleinbaum, Deputy Executive Director/Administration, shared with Committee members a new proposal for use of the IEC. She explained that over time, the role of the IEC had changed. Where now the IEC was used more and more to monitor capital programs, originally the consultants assisted CPOC in evaluating how projects were managed and regarding the wisdom of various investment decisions. Her proposal was to return to using consultants in a broader capacity to assess the implementation of the capital program. The proposal was developed by MTAHQ staff to be responsive to the issues and concerns raised by CPOC members and the Chair, as well as to those raised by the Inspector General in July.

⁵ This presentation was broadcast and may be viewed on the MTA website at Board Materials » Live Webcasts » Archived Meetings » 7/26 CPOC Meeting.

APPENDIX TWO

Selected Report Overviews

Governance Assessment of MTA Capital Program Mega Projects, Continued

The OIG's findings and recommendations cover four general areas:

1. The respective roles and responsibilities of the IEC and MTACC in the oversight process have not always been clear. As a consequence, the IEC and MTACC have come into conflict. Such conflict has sometimes required MTAHQ intervention, thus hampering efficiency in the oversight process and slowing the acceptance of critical findings and the implementation of appropriate recommendations.

The OIG recommended that as the agency responsible for building the mega-projects, MTACC should have the primary responsibility for reporting on their status. For its part, the IEC should comment on MTACC's reports and alert CPOC to any issues, whether raised in the reports or not, that could cause the mega-projects to experience significant cost increases, serious schedule delays, and/or reductions in project scope.

MTA agreed and will now require MTACC to report on the status of the mega-projects. The IEC will evaluate the MTACC report and provide supplemental information as necessary. If issues are raised that warrant additional monitoring, the IEC will conduct targeted, in-depth analysis.

2. The IEC and MTACC have not always presented project reports to CPOC in a clear, concise, and meaningful fashion. Reports lack elements such as executive summaries and impact assessments that would improve their usefulness. Reporting is often highly detailed, technical, and may dwell on matters that should not rise to Board-level scrutiny. The usefulness of reports is also undermined by the combined effect of MTACC not fully addressing IEC findings and recommendations and the IEC not always tracking open items so that major issues can continue to receive needed attention.

The OIG recommended that reports to CPOC be improved by summaries and impact assessments, as well as by tracking and follow up of key recommendations. Here again the OIG noted that the IEC should both examine and look beyond issues raised in MTACC's project reporting, identifying key issues not included in those reports. In all cases, the IEC should verify actions planned or taken by MTACC to address issues raised by MTACC and/or the IEC.

In response to the Inspector General's concerns, OCO asked MTACC to develop a process and format for reporting on the mega-projects to CPOC. OCO requested that the process provide the IEC with an opportunity to review and comment upon MTACC's reports and that the reports contain charts showing cost and schedule

APPENDIX TWO

Selected Report Overviews

Governance Assessment of MTA Capital Program Mega Projects, Continued

trends. In addition, MTAHQ directed that each MTACC report now discuss some key issues identified in the risk assessments and, importantly, also propose mitigation strategies, befitting MTACC's accountability for managing these critical issues. Recommendations will now be tracked to ensure satisfactory resolution.

3. CPOC has not set expectations and priorities for the IEC. The Committee does not formulate a work plan that is informed by an assessment of what issues carry the greatest risk to the MTA. Presently, the large majority of the IEC's time and resources is devoted to project monitoring and reporting across all areas, rather than risk based monitoring and analyses that would add value by identifying the areas of greatest risk within the mega-projects as well as cross-project issues that MTACC should address.

The OIG recommended that the IEC prepare an annual risk-based work plan that is reviewed with and approved by the Committee. The IEC's focus should shift from project reporting to higher-level analyses that will help inform CPOC about ways to improve project oversight. OIG also suggested MTAHQ consider reallocating its oversight resources to place more emphasis on the mega-projects (as opposed to the core capital program).

Based on similar concerns raised by the Chairman, OCO has directed the IEC to conduct risk assessments, and monitor the projects based on risk. OCO is to present CPOC with a new proposed work plan in October, and seek the committee's approval of that plan. As noted above, the MTA has proposed to CPOC a return to using consulting resources in a strategic capacity. Moreover, the MTA Chairman has directed OCO to revisit the IEC's resource allocation.

4. OCO and CPOC do not evaluate or set formal criteria for IEC performance. At present, there exists no formal performance assessment or criteria to determine whether and how much the IEC is adding value to the oversight and implementation of the capital program.

The OIG recommended that OCO and CPOC formally evaluate the IEC's performance. As part of this evaluation they should determine whether the IEC has satisfactorily implemented its work plan, assess the IEC's contribution to improving oversight of the capital program, and generally verify that the IEC has discharged its contractual obligations. OCO should meet annually with the Chairman and the Chairs of the operations committees of NYC Transit (or Transit), Long Island Rail Road (LIRR), Metro North Railroad (MNR), and Bridges and Tunnels (B&T), who are also

APPENDIX TWO

Selected Report Overviews

Governance Assessment of MTA Capital Program Mega Projects, Continued

members of CPOC, to obtain feedback on the IEC's performance. For its part, the IEC should provide semi-annual status reports on its progress in implementing its work plan, its accomplishments to date, and summaries of the major capital program issues with the status of corrective actions.

MTA HQ and OCO accepted these recommendations and plan to implement an evaluation process for the IEC.

The OIG supports the changes that the MTA has already implemented, and note the active role taken by the Chairman in his dual role as chair of the Board and of CPOC. We suggest that the MTA further consider the findings and recommendations of this report to help bring greater clarity, less conflict, and more effectiveness to the oversight process.

APPENDIX TWO

Selected Report Overviews

Review of Paratransit's Customer Relations Unit

New York City Transit's (NYC Transit) Access-A-Ride program, administered and operated by the Paratransit Division (Paratransit), provides transportation services to over 130,000 customers who are physically unable to utilize the agency's public bus and subway system to commute to their jobs, keep medical appointments, or generally travel throughout the city. This vital program, serving both the elderly and persons with disabilities, has grown enormously in recent years with more than 20,000 scheduled trips provided each day by NYC Transit's fleet of more than 2,000 specially equipped vans⁶ operated by independent carriers under contract to the agency.

As part of its community outreach program, Paratransit's Customer Relations Unit (CRU) processes complaints about the Access-A-Ride program that have been telephoned into NYC Transit offices from customers as well as from the public at large. Between January 2007 and June 2009, the period of our audit review, CRU processed 41,449 such complaints, most expressing dissatisfaction with the schedule of transportation services (i.e., arrival and departure times) provided by the agency. In 1,594 of these cases, however, complainants alleged that Access-A-Ride van drivers (officially referred to as "operators") had engaged in reckless and otherwise unsafe driving behavior, thereby endangering riders, pedestrians, and other motorists. While recognizing the importance of all complaints received by Paratransit, our review focused on the manner in which CRU processed allegations of unsafe operator performance.

NYC Transit classifies unsafe operator complaints into two categories: "Reckless Operator" and "Injured Customer." Of the 1,594 unsafe operator complaints, 1,507 were classified as Reckless Operator. In these cases, callers claimed that operators had driven Paratransit vans in a reckless manner by speeding, running red lights, making improper U-turns, and cutting off other motorists on the road. Reckless Operator complaints also alleged that operators had placed their passengers at additional risk, by failing to adequately fasten customer seat belts and wheelchairs restraints and by not assisting riders with limited mobility into and out of the vans. The remaining 87 unsafe operator complaints (classified as Injured Customer complaints) came from riders who reported having suffered actual physical harm, including serious contusions, sprains, lacerations, and broken bones as a result of their operators' alleged unsafe performance.

When processing these unsafe operator complaints, CRU Analysts make efforts to contact each complainant by phone to obtain a first-hand account of their allegations and

⁶ Under the Access-A-Ride program, carriers also provide "sedan" service, but this is a relatively small part of the program and was not included in our review.

APPENDIX TWO

Selected Report Overviews

Review of Paratransit's Customer Relations Unit, Continued

to offer the agency's regrets for any difficulties the complainants experienced with Access-A-Ride services. Further, when processing Injured Customer complaints the Analysts referred complainants to the insurance administrator for filing personal injury claims suffered as a result of the alleged operator errors.

While CRU is authorized to refer unsafe operator complaints to the carriers for a formal investigation of the operators' performance, it frequently did not do so. Indeed, because CRU did not consider that the complaints alone warranted further review, it closed most of the complaint cases without referral for any investigation as to whether operators had violated the agency's safety procedures for transporting Access-A-Ride customers. Paratransit officials stated that the agency primarily relies on other driver performance indicators (e.g., reviews of official Accident/Incident reports, operator traffic violation histories, and personal injury claims from customers) monitored by other Paratransit units to identify and remove unsafe operators from the road.

Summary of Findings

Our review found that Paratransit's summary closing of most unsafe operator complaints without referrals for further investigation represented a lost opportunity to fully utilize unique and pertinent observations of operator safety not always captured by other driver performance indicators. Specifically, we found that most of these unreferred complaints described serious safety allegations that warranted a formal investigation of operator performance:

- CRU did not refer 60 of the 87 Injured Customer complaints for investigation even though the complainants specifically alleged that their injuries had resulted from their operators' performance errors. When we sampled 30 of the 60 unreferred Injured Customer complaints, we found that 11 of these cases were subsequently flagged by other Paratransit units and referred for investigation. In the remaining 19 cases (63 percent), however, the Injured Customer complaints were never flagged or investigated by any Paratransit unit.
- CRU also did not request that carriers investigate 102 (nearly 70 percent) of the 148 Reckless Operator complaints we sampled even though these complainants clearly described serious unsafe driving practices by the operators. We were particularly concerned that CRU summarily closed four complaints that alleged that operators fell asleep while behind the wheel of their vehicle. Since these Reckless Operator complaints apparently did not result in physical injury to the passengers, motorists or other individuals, or damage to the vans or other property,

APPENDIX TWO

Selected Report Overviews

Review of Paratransit's Customer Relations Unit, Continued

the 102 cases closed by CRU were never discovered and investigated by any other Paratransit unit.

Our review also found that CRU did not sufficiently analyze trends in the complaint data to identify operators who had been the subject of multiple allegations of unsafe driving. While CRU maintains a Vehicle Operator Monitoring Log specifically for such trend analyses, 164 of the 235 Injured Customer and Reckless Operator complaints we reviewed (70 percent) had never been entered into the database. This omission significantly undermined Paratransit's ability to conduct trend analyses to identify unsafe operators before accidents occur.

Finally, our review found that CRU did not always promptly contact complainants after the incidents were reported, hampering the agency's ability to both assess unsafe operators complaints and investigate them in a timely manner. Indeed, we found several cases in which CRU waited more than two months to interview customers who reported being injured on Access-A-Ride vans as a result of operator error. Such processing delays further hampered the agency's ability to identify unsafe operators and quickly remove them from the road.

Pursuant to their contracts with Paratransit, the private carriers who employ Access-A-Ride operators have the direct responsibility for monitoring operator performance and conducting formal investigations of any driver suspected of violating Paratransit's safety regulations. While we have focused here on CRU's unduly limited role in processing unsafe operator complaints, we note that another Paratransit unit, Contract Management, has the specific responsibility for overseeing the carriers' investigation of unsafe operators. Given the agency's complaint processing problems identified in this report, as well as the significant risks posed by these operators, we urged Paratransit to review current Contract Management procedures to ensure that all safety investigations conducted by the carriers are appropriately monitored and reviewed by Paratransit. In reviewing these procedures, Paratransit should remain mindful that it has the ultimate authority to require the dismissal of any operator Paratransit considers unfit for Access-A-Ride service.

APPENDIX TWO

Selected Report Overviews

Review of Paratransit's Customer Relations Unit, Continued

Summary of Recommendations

To ensure that all unsafe operators are promptly identified, investigated, and addressed, we recommended that Paratransit:

- Require that CRU automatically refer all Injured Customer complaints for formal investigation of the operators' role in such incidents.
- Institute (1) formal standards for assessing Reckless Operator complaints and (2) sufficient internal controls to ensure that all appropriate Reckless Operator complaints are referred for investigation.
- Require that CRU give priority to processing Injured Customer and Reckless Operator complaints to ensure that all substantive allegations are investigated as rapidly as possible.
- Require CRU Analysts to enter all safety-related complaints on the Vehicle Operator Monitoring Log to facilitate identification of unsafe operators.
- Review Contract Management procedures to ensure that (1) safety investigations are being conducted as warranted and in a thorough and professional manner; and (2) that drivers found to have violated the agency's safety procedures are promptly terminated, suspended, or subject to other appropriate action.

Agency Response

After reviewing a draft of this report, the MTA Bus Company (MTA Bus), which oversees Paratransit operations, accepted our audit's findings and agreed to implement the OIG's recommendations. MTA Bus' response noted that the complaint problems identified in this report occurred during a period when Paratransit's budget for CRU staffing was unable to keep up with the large increases in the volume of both customer services and subsequent complaints received by CRU.

APPENDIX TWO

Selected Report Overviews

Review of Paratransit's Customer Relations Unit, Continued

To provide assurance that MTA budget concerns had not compromised safety, however, MTA Bus stressed that Paratransit's safety net already included the following programs and requirements to identify, retrain or remove unsafe operators:

- Paratransit's Standards and Compliance Unit (SCU) regularly monitors operator performance indicators (including convictions for moving violations) to proactively identify unsafe operators in need of retraining; and
- Paratransit staff performs unannounced radar checks and undercover observations of operators on the road to spot unsafe driving performance.

The MTA Bus response also noted that Paratransit had already required CRU to automatically refer for investigation all unsafe seat belt and wheelchair restraint complaints as a result of the information presented to the agency by the OIG prior to our written report.

Conclusion

One of the key objectives of the Access-A-Ride program is to ensure the safety of the elderly and persons with disabilities who depend upon its services. Paratransit's commitment to passenger safety is evidenced by the Standards and Compliance Unit's monitoring of a wide array of performance indicators used to detect and remove unsafe operators from the road. While SCU monitoring enhances Paratransit's ability to assess its operators' driving performance, our report finds that agency officials are not fully utilizing perhaps the most direct indicator that an operator is dangerous – complaints received by the Customer Relations Unit from the very customers the Access-A-Ride program serves, and from motorists and other members of the general public affected by it.

Lacking any formal written standards or guidelines for assessing unsafe driving complaints made against operators, CRU Analysts do not refer most safety complaints for formal investigation by the carriers. Although the Analysts attempts to contact complainants to obtain their personal accounts of the incidents is essential, and offering the agency's apology has value, we believe that taking safety complaints without referring them for appropriate investigation is simply unacceptable. Failure of follow-up potentially leads to a loss of credibility in what will be seen as little more than a "hand-holding" process, discourages reporting, and leaves unsafe drivers on the road.

APPENDIX TWO

Selected Report Overviews

Review of Paratransit's Customer Relations Unit, Continued

In its response to this report, MTA Bus noted that as part of its safety net Paratransit requires that all operators found to have improperly secured their customers via seat belts and wheel chair restraints are removed from revenue (passenger) service until they are retrained in safety procedures. However, while customer complaints could provide the most effective identification of deficient operator performance, CRU's summary closing of these complaints significantly reduces the likelihood that unsafe operators will be identified and retrained. By choosing to accept and implement OIG recommendations, Paratransit has recognized the need to tighten its safety net and continually assure the safety of its riders in every way possible.

We are encouraged by the agency's response and will continue to monitor implementation of our recommendations.

APPENDIX TWO

Selected Report Overviews

Assessing the MTA Contractor Safety Incentive Program (CSIP)

The Metropolitan Transportation Authority (MTA) utilizes Owner Controlled Insurance Programs (OCIP) to obtain bulk rate savings for insurance coverage against personal injury and property damage claims associated with the construction projects of three of its constituent agencies – New York City Transit (NYC Transit), the Long Island Rail Road (LIRR), and Metro North Railroad (MNR). To further reduce its insurance costs, the MTA, through its Risk & Insurance Management (RIM) department, oversees contracts with several outside safety management firms that regularly inspect the three agencies' construction sites to detect safety violations that could lead to construction accidents.

Seeking to reduce the cost of accident claims even further, RIM conceived and designed its Contractor Safety Incentive Program (CSIP) in 1998. Under CSIP, RIM offered monetary rewards to contractors when it believed that eventual accident costs would fall below the target established for each construction project. CSIP also allowed RIM to assess financial penalties when it forecast that accident costs would exceed its estimates.

The Office of the MTA Inspector General (OIG) conducted a review of the CSIP program. During the period reviewed, RIM distributed approximately \$3 million in rewards to and assessed \$500,000 in penalties against contractors associated with 57 NYC Transit⁷ construction contracts, resulting in a net program cost of approximately \$2.5 million.

Inappropriate CSIP Program Design

Although RIM uses industry accepted standards for estimating potential losses, we found that its methodology for determining if a contractor is eligible for safety incentives is too imprecise. As a result, RIM's CSIP computations for 19 of the 57 contracts we reviewed resulted in \$722,322 in higher rewards and lower penalties beyond what was supported by the contractors' actual safety performance. The \$722,322 portion of the

⁷ Since 2005, NYC Transit has been the only MTA constituent agency participating in CSIP. According to RIM officials, MNR and LIRR previously opted out of the program.

APPENDIX TWO

Selected Report Overviews

Assessing the MTA Contractor Safety Incentive Program (CSIP), Continued

incentives computed for these 19 contracts, representing almost 30 percent of the net program costs, resulted from the following causes:

1. Underestimated Accident Claim Losses

Because many accident claims are not settled until years after the construction work has ended, RIM relied on interim estimates of the eventual total Accident Claim Losses (ACL) on the project to perform its eligibility computations. Our tests found, however, that these interim ACL values frequently underestimated the final claim costs and thus provided an inaccurate indicator of contractors' eligibility for CSIP incentives. In this regard, we identified six contractors who were overpaid more than \$525,000 in safety rewards and 10 others who were undercharged \$140,000 in safety penalties because RIM procedures utilized interim accident costs to compute CSIP incentives.

2. Computation Errors

Apart from underestimation of accident claim values, in at least three instances RIM made errors in computing the CSIP incentives, resulting in an additional cost of more than \$56,000. In one of these cases, a single computation error caused RIM to pay more than \$23,000 in undeserved safety incentives to a single contractor.

3. Under-Utilized Computation Time

Although the MTA retains the contractual right to delay issuing reward incentives for up to 18 months after the close of contracts, RIM computed most CSIP incentives within six months after the close of the contracts. We found that more than \$34,000 in reward payments could have been avoided if RIM had utilized the full 18-month window to update the contractors' accident costs.

It should be noted that our findings may not capture the full extent of CSIP losses, as RIM could not provide any documentation to support their incentive computations for 16 additional contracts worth \$129.3 million, which we sought to review. These record keeping deficiencies prevented our analysis of the appropriateness of the rewards paid and penalties assessed for the 16 contracts.

Commensurate with its policy to offer financial incentives to contractors who can contain the cost of accident claims against the MTA, RIM bears the responsibility of ensuring that recipients actually merit the CSIP rewards and penalties they receive.

APPENDIX TWO

Selected Report Overviews

Assessing the MTA Contractor Safety Incentive Program (CSIP), Continued

While acknowledging that most CSIP incentives that we reviewed were properly computed and merited by the contractors' safety performance, we believe that RIM's reliance on interim accident cost data generated within 18 months of the contracts' closing to predict the final cost of claims virtually assures that a significant number of contractors will either be over-rewarded or under-penalized. As such, we advise the Authority to discontinue CSIP incentives on future construction projects unless RIM can devise new procedures to substantially improve this program. We further recommend that the MTA initiate negotiations with contractors already awarded approximately \$2 billion in NYC Transit capital contracts still covered by CSIP to remove or at least reduce incentive obligations from the Authority.

Verifying Safety Monitor Charges

In addition to our review of CSIP, we examined RIM's process for scrutinizing the inspection invoices of safety management firms employed by the MTA's outside insurance broker. Our review identified several deficiencies in inspection invoices submitted during the last quarter of 2008, including 116 instances of missing inspection reports, duplicate report components, and computational errors related to invoices submitted during this period. Following a detailed review of the discrepancies, RIM provided missing substantiation and clarified inaccuracies to establish that fortunately only a nominal over-billing for inspection services had actually occurred. Upon our recommendation, RIM has also adopted several major changes in its invoice review process to ensure that future charges are properly supported.

Recommendations

1. Unless RIM can substantially improve its methodology for assessing contractor eligibility for safety incentives, the MTA should abolish the CSIP program for all future contracts and should initiate negotiations with contractors to remove or at least reduce the Authority's contractual incentive obligations from current contracts still covered by CSIP.
2. To further limit the possibility of incentive overpayments to contractors still covered by CSIP, RIM should institute the following internal controls:
 - Senior RIM managers must verify the existence of documentation for all construction cost and ACL data employed for computing safety incentives as well as the accuracy of the computations themselves;

APPENDIX TWO

Selected Report Overviews

Assessing the MTA Contractor Safety Incentive Program (CSIP), Continued

- RIM must retain documentation to support all CSIP incentive computations; and
 - Final CSIP reward payments should be issued no earlier than the end of the 18-month consideration period.
3. RIM and its insurance broker must more closely scrutinize safety monitor inspection charges submitted to the MTA for reimbursement, and certify that such charges are properly documented, complete, and accurate.

We supplied a draft copy of this report to both MTA and RIM officials for their review of our findings and recommendations. With regard to our first recommendation, RIM officials agreed to re-assess their current guidelines for determining safety incentives and to seek alternative procedures that could mitigate the financial risks associated with contractors still covered under the CSIP program. They also agreed that, pending their re-assessment, all CSIP program provisions have been removed from contracts under the 2005 – 2009 MTA Capital Program that have not yet been awarded. The agency fully accepted our second and third recommendations and has agreed to implement such procedures as part of its internal controls for both CSIP and the inspection of MTA construction sites.