

STATE OF NEW YORK



Office of the Inspector General Metropolitan Transportation Authority

2013 ANNUAL REPORT

Barry L. Kluger
Inspector General

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¹ Readers of the electronic version of this Annual Report can press Ctrl + Click on <http://mtaig.state.ny.us/> to go directly to the Home page of our website, or on any of the numbers in parentheses to go directly to that page of this Report.

ABOUT THE INSPECTOR GENERAL



MESSAGE

The Metropolitan Transportation Authority is North America's largest transportation network. According to the MTA, its subways, buses, and railroads provide 2.62 billion trips each year to New Yorkers – the equivalent of about one in every three users of mass transit in the United States and two-thirds of the nation's rail riders. MTA Bridges and Tunnels carry more than 280 million vehicles a year – more than any bridge and tunnel authority in the nation. MTA customers travel on America's largest bus fleet and on more subway and rail cars than all the rest of the country's subways and commuter railroads combined.

The cost of running this huge transportation network is enormous: for 2014, the MTA has budgeted \$13.6 billion for total operating expenses and \$34.8 billion for its Five-Year Capital Plan.

With these billions of dollars and the well-being of MTA riders and employees at stake, the Office of the MTA Inspector General (OIG) provides oversight by investigating fraud and other abuse, conducting audits to help improve performance and make operations safer and more productive, and by working closely with the MTA and its constituent agencies to help them spend money more effectively.

We have continued to develop numerous investigative and prosecutorial partnerships on the federal, state, and local level. As you can read in this report, our extensive networking has greatly enhanced the effect of our oversight. For example, a referral to our office by NYC Transit personnel resulted in our joint investigation with the Office of the New York County District Attorney leading to the felony conviction of a vendor for supplying NYC Transit with counterfeit switches for kneeling buses. Another joint investigation by OIG with several partners led to the successful mail fraud prosecution by the Office of the United States Attorney for the Southern District of New York of the principal of a business that purported to be a disadvantaged business enterprise dealer of construction materials. And our partnerships forged several years ago in the criminal investigation and prosecution of occupational disability fraud committed by Long Island Rail Road retirees and others, has now produced the kind of results that send a powerful message of deterrence to others similarly inclined: During 2013, 28 of the 33 individuals charged with federal crimes pled guilty to the charges and the remaining 5 were convicted after trial. Two doctors and an LIRR facilitator were each sentenced to 8 years in prison and ordered to pay a total of \$339 million in restitution and penalties. A second facilitator, a former federal Railroad Retirement Board manager, was

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sentenced to 5 years and ordered to pay \$62 million. To date, 24 other LIRR retirees have received sentences ranging from probation to 37 months in prison, with additional penalties including full restitution of the occupational disability benefits they fraudulently received, and a 15 percent reduction in their LIRR pension.

While our work with prosecutors demonstrates our strong commitment to fight fraud and other forms of financial wrongdoing, we also took on other insidious forms of abuse: nepotism in public service by a railroad executive; dereliction of duty by railroad foremen and workers; and running a private business on agency time, by an engineering manager at NYC Transit.

As to the nepotism, we investigated the interference by a Metro-North Assistant Vice President (AVP) with the hiring of her relative. Based on our findings, we concluded that the AVP violated several provisions of the MTA All-Agency Code of Ethics. We also referred our findings to the Joint Commission on Public Ethics (JCOPE) regarding corresponding provisions of the New York State Public Officers Law. Additionally, we made recommendations addressing weaknesses in Metro-North's hiring processes that left it vulnerable to nepotism. Metro-North accepted all of our recommendations and, following the issuance of our report, the AVP retired.

Promptly after OIG issued the report and effective immediately, the MTA Chairman/CEO approved an all-agency policy directive entitled "Anti-Nepotism Employment Procedures." The stated purpose of this directive is "[T]o safeguard against the influence of nepotism in employment-related decision-making at the MTA to further ensure that decision-making on employment-related matters is based on merit and qualifications."

Regarding dereliction of duty, we completed productivity reviews in 2013 focusing on two departments at Metro-North. Our reports contained findings reflecting employee misconduct and management failures, as well as recommendations for improvement, all of which we shared with the agency. Indeed, we met with the new president of Metro-North right after he took office earlier this year and shared with him our insights into the long-standing systemic problems like nepotism and productivity that affect the railroad. We also continued to advocate the use of Global Positioning System (GPS) technology to improve management information and provide accountability over a widespread workforce, as well as to avoid the illegal, unhealthy, and costly practice of excessive vehicle idling, which we monitored again this year. The president welcomed our assistance regarding these issues.

And as to running a private business, we found that the manager violated his ethical obligations in a variety of ways and by his actions he also induced his

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subordinates to commit violations of their own. The manager was suspended without pay and eventually resigned. Following our referral to JCOPE, the manager admitted violating the New York State Public Officers Law and agreed to pay a fine. As to the remaining employees, we issued a separate report recommending appropriate discipline. Additionally, we recommended that NYC Transit reinstruct all agency employees, managers, and supervisors regarding their ethical obligations. NYC Transit agreed with our recommendations. Investigations such as this are a routine part of our work and provide extra sets of eyes and ears to the agencies in their ongoing effort to enforce operational, safety, and ethical rules of the workplace.

Just as our work helps to counter fraud and other abuse, we also focus on making travel safer for riders, particularly the disabled. This year, for example, we reviewed a broker car service program that is operated under the NYC Transit Paratransit Division, which has provided invaluable service to disabled riders for 20 years through its Access-A-Ride program. Although Paratransit has used the car service program for the last two years in a successful effort to reduce costs, we launched our review after receiving some complaints regarding the safety of the trips provided by this program. Following the issuance of our report, which validated safety concerns, Paratransit accepted each of our recommendations.

Lastly, I would like to briefly highlight two points about our Intake and Intelligence Unit. First, it staffs our Hotline, receives complaints, provides intelligence-gathering services, and performs vendor integrity screening. In 2013 our Hotline received thousands of calls, including complaints requiring follow up, made by individuals both inside and out of the MTA. Second, while the Unit performs work that may impact millions of riders, sometimes it helps simply by making life better for MTA customers one at a time when they turn to us in need. We've included some of these stories beginning on page 8.

I am very pleased to submit this 2013 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, 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. He presently serves as 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).²

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]).

² As used in this report, unless the context indicates otherwise, the term "MTA" includes the constituent agencies.

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THE ROLE OF THE MTA INSPECTOR GENERAL

The Inspector General also has the following statutory functions, powers, and duties (PAL §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.³ 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]).

³ 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 to Intake and Intelligence, a unit of our Investigations Division. Complaints and inquiries can be communicated as shown in the **How to Contact the Office of the MTA Inspector General** notice (pictured at right), including through a direct email link on our website. Our Hotline is available around-the-clock, staffed during business hours and capable of taking messages at other times. In addition to its other work, Intake and Intelligence also introduced our slogan, “It’s a Big System, Help Us Keep an Eye on It” featured here on our cover.

**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

Customer Service

Hotline:

Consistent with the OIG’s generally broad approach to fulfilling its responsibilities and best serving the public, the Hotline provides customers with a simple, direct, and personal way both to communicate complaints and request information on an individualized basis. In 2013 our Hotline received a total of 4,033 calls.

Complaints:

Among its other contacts, Intake and Intelligence received 1,042 complaints requiring follow up, made by individuals both inside and out of the MTA. Unit staff review each complaint to assess how best to resolve it. Complaints concerning fraud, waste, abuse and the like are referred to the OIG Audit or Investigations Division to resolve alone or in partnership with law enforcement. Other matters are retained for resolution by the Unit itself, generally involving particularized customer service

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problems. The Unit continues to expedite resolution of these problems by directly contacting appropriate MTA agency personnel, rather than by sending complaint paperwork through a lengthy referral process. These customer complaints reflect a range of issues including E-ZPass, MetroCard, commuter railroad ticketing, and Access-A-Ride eligibility.

The following are brief illustrations of some of the ways Intake staff worked to assist MTA customers this year:

- 13-0083-C: The complainant contacted MTA Bridges and Tunnels about erroneous charges to her E-ZPass account that resulted in a negative balance and caused revocation of her account. The charges apparently occurred when the complainant's property—including the E-ZPass—was transported cross-country in moving containers and registered at the tolls when the moving trucks went through (even though the mover separately paid those tolls). The complainant unsuccessfully disputed the charges and associated penalties with the agency, whereupon she complained to the Office of the New York State Attorney General, which referred the complaint to OIG. Intake and Intelligence staff reviewed the complainant's assertions and contacted E-ZPass on her behalf. Thereafter, the agency reversed the revocation and credited the complainant's account for the erroneous charges and penalties.
- 13-0612-C: Complainant mailed a defective MetroCard to NYC Transit but neglected to attach the requisite claim form. Although the complainant was unable to provide Intake and Intelligence staff with a MetroCard serial number, staff contacted NYC Transit, which was able to locate the MetroCard in question and issued a refund.
- 13-0882-C: The complainant had been unsuccessful in previous attempts to secure NYC Transit Paratransit Division's Access-A-Ride (AAR) vehicles with lifts, which she needed because of a disability that made her unable to use cars and mini-vans. When Intake and Intelligence staff made inquiries into the complainant's claims, AAR reviewed the matter and informed OIG that AAR would be able to accommodate the complainant's request for a vehicle with lift capability.
- 13-0860-C: The complainant contacted Access-A-Ride to schedule a trip for the following day. The AAR representative informed the complainant that a trip could not be scheduled because the AAR membership expired as of that day and that a letter would be mailed in the coming week with respect to an appointment for reevaluation. The complainant was also informed that he could not utilize AAR until a reassessment was made. The complainant explained to Intake and Intelligence staff that because the initial evaluation took 12 weeks, the complainant was concerned that the reevaluation would also be prolonged and that

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being without the service would create a serious hardship. The complainant requested an extension of his AAR privileges until the time of his reassessment which AAR initially denied. Intake and Intelligence contacted AAR regarding the circumstances of the individual case. Upon reconsideration, AAR reactivated the account until the reassessment is complete.

Intelligence Support

As described above, unit staff provides a valuable intelligence-gathering function in performing preliminary assessments of complaints, which staff may refer to Audit or Investigations, or retain for follow-up by the Unit itself. Additionally, unit staff performs proactive case developments and other reviews. This year staff responded to 164 requests for intelligence searches in support of OIG investigations, audits, and reviews.

The Unit also conducts background checks for a variety of law enforcement agencies including the New York City Police Department and the New York City Department of Investigation. In 2013, the Unit conducted 132 background checks, 25 percent more than in 2012.

Vendor Integrity Screening

The OIG has been an active member of the Lower Manhattan Construction Integrity Team (LMCIT), and supports the goal of ensuring that all construction projects within its jurisdiction proceed with integrity, and are free of corruption and wrongdoing. This year Intake and Intelligence performed 125 vendor screenings for LMCIT.

The Unit also continues to assist the MTA General Counsel by providing certain information regarding those vendors under consideration for MTA contract awards requiring the approval of the MTA Chairman/CEO. When an MTA agency considers awarding a contract to a vendor with “Significant Adverse Information,” the OIG provides an in-depth integrity report that is an essential part of the decision-making process by the General Counsel. This year, Intake and Intelligence provided the General Counsel with 23 such in-depth integrity reports.

AUDIT

The Audit Division (Audit) of the OIG conducts in-depth audits and reviews of a wide variety of policy initiatives, programs, and service-related activities of MTA agencies. The auditors assess whether MTA operations are safe, effective, and efficient, and make recommendations for improvement wherever possible. The division is comprised of highly experienced auditors, most of whom have a graduate degree in a related field. Audit provides significant support to the OIG Investigations Division, regularly assists and consults with the MTA Auditor General and other audit and investigative units throughout federal, state, and local government, and has provided valuable analytical assistance for a wide range of audits, investigations, and reviews of agency, employees, and vendors.

In 2013, Audit completed a number of significant reports reflecting analyses, evaluations, findings, and recommendations designed to increase safety, improve worker productivity, address weaknesses in contract processing and procurement, and make service more efficient. These reports and other work are described below.

REPORTS

Productivity of Road Machinists in Metro-North Railroad's Work Equipment Division (MTA/OIG #2013-05)

The maintenance of track and supporting structures along Metro-North's vast right-of-way is carried out by crews who utilize specialized equipment and tools in performing their work. Road machinists from Metro-North's Work Equipment Division (Work Equipment) are responsible for ensuring that all of the equipment and tools used by track personnel in their daily work assignments are regularly inspected and properly maintained. They often accompany track crews to the work site so that they can quickly respond to an equipment malfunction. Unlike those performing particular duties each day at the same facility, road machinists might work at various locations over a wide area throughout any given day, and are expected to perform their duties with minimal supervision.

OIG evaluated the performance and management of road machinists in Work Equipment over a total of 45 tours of duty. We conducted field observations of the road machinists, analyzed payroll and work production records, conducted interviews, and utilized information obtained through an Automatic Vehicle Location Monitoring (AVLM) system, which uses GPS.

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The results of our analysis were disturbing. During 22 percent of the tours that OIG analyzed, road machinists performed no productive work at all. For example, instead of working, but while getting paid, one road machinist spent most of four consecutive tours of duty at food and retail establishments, in his own home, in his vehicle at the far end of a Metro-North commuter parking lot, or visiting a family business. We also found that one road machinist repeatedly clocked in at a location close to his home at the start of his tour of duty, instead of at his assigned quarters as required. Because his assigned quarters were at least an hour's drive from his residence, clocking-in near his home effectively allowed him to commute on company time.

Besides the lack of integrity and failed work ethic of the idle road machinists, OIG also found that ineffective management by the foremen and supervisors allowed this inactivity to take place over what were often consecutive tours of duty. Indeed, we calculated that a total of about 100 hours in work time were used by the employee described above for travel, because lax supervision allowed this practice to persist uncorrected for several months. While at least one Work Equipment foreman used the term "honor system" to describe the relationship between foremen and the road machinists they supervise, an honor system is simply not an acceptable alternative to effective management and careful oversight.

OIG recommended that Metro-North require that Work Equipment foremen and their supervisors:

- Monitor timekeeping records to ensure that road machinists are clocking-in at their assigned location;
- Conduct random spot checks to ensure that road machinists are where they are supposed to be;
- Ensure that road machinists have an adequate work plan for their tour of duty, and confirm that the machinists performed all work assigned;
- Verify authorized overtime periods; and
- Require that Work Equipment supervisors utilize Metro-North's AVLM system to monitor their road machinists on a daily basis as AVLM becomes more fully operational in 2014.

With the assistance of OIG, Metro-North took disciplinary action against the employees identified by the audit. Metro-North also established a process that requires foremen and supervisors to sign-off on work assignments that have been completed by the road machinists, and instructed Work Equipment supervisors and foremen to conduct and document regular on-site field inspections of these machinists.

Additionally, Metro-North established a formal verification process for overtime authorizations and reinstructed foremen to check timekeeping records to ensure that road machinists are swiping in and out at their assigned locations rather than at locations close to their homes. Lastly, the agency indicated that it was reviewing managerial staffing levels in the Work Equipment Division and would require that supervisors utilize AVL M to monitor the work of road machinists as that system becomes more operational at Metro-North.

Improving Safety Controls in the MTA NYC Transit Paratransit Broker Car Service Program

(MTA/OIG #2013-18)

The NYC Transit Paratransit Division (Paratransit) has provided transportation to disabled riders for 20 years through its Access-A-Ride program (AAR). Since 2011, in a successful effort to reduce costs, Paratransit has used a car service broker to provide about 20 percent of all rides for Paratransit customers.

In early 2013, after receiving some complaints regarding the safety of the trips provided by the broker service program, and given the vulnerability of the Paratransit customer base, OIG initiated an audit focusing on the safety of riders in vehicles operated under the broker program. As part of that process, OIG auditors reviewed 1,090 safety check sheets completed during the period August 2012 to June 2013 by the four staff members of Paratransit's Safety and Performance Unit, a group created to conduct undercover ride checks of AAR drivers. Significantly, our review found that:

- Drivers on 392 trips—36 percent of all trips reviewed—were recorded as driving dangerously. In fact most were violating one or more traffic laws, including 28 percent who were either texting or talking on a cell phone while driving, 6 percent who were speeding, 4 percent went through a red light, and 2 percent who did not obey a stop sign.
- Safety violations and excessive cell phone use observed by undercover riders were not being reported by Paratransit to the broker. As a result, drivers were never disciplined for the violations.
- Despite its claims, the broker had not actually implemented elements of its safety programs.
- The broker was not reporting accidents and injuries to Paratransit as required by its contract.

Certainly, whether Paratransit is transporting its customers directly or by means of the Paratransit broker car service, Paratransit must ensure that its customers have a transportation service with effective safety controls in place. Specifically, in terms of its

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broker car service, OIG recommended that Paratransit: enhance the operation and functioning of its Safety and Performance Unit in terms of gathering, recording, and analyzing data accurately and completely regarding the performance of broker drivers; require that this unit promptly report safety violations to the brokers; and institute meaningful oversight of the broker car service program.

Indeed, in October 2013, before completion of the report, OIG sent a letter to the NYC Transit Vice President in charge of Paratransit, alerting him to our preliminary safety findings and recommendations, concluding as follows:

We believe that the undercover rider program can be an effective tool to improve the safety of Paratransit rides, provided that all violations observed are promptly disclosed to [the broker], and are monitored to ensure that the drivers are appropriately disciplined. Accordingly, and for the betterment of its riders, Paratransit should immediately establish and implement the procedures necessary to accomplish that result.

In his written response to the OIG report, NYC Transit Senior Vice President Darryl Irick accepted each of our five recommendations. In particular, he asserted that Paratransit had instituted the following improvements to address our concerns: Revised and developed internal controls regarding undercover ride check sheets; provided detailed summaries of observations to the brokers on a weekly basis, with a required one-week response; provided immediate reports to the brokers, with an expectation of an expedited response in instances where egregious findings are observed; recently began sending brokers a summary of safety issues identified during undercover check rides to which they are required to respond; and Paratransit will be working with brokers to develop their safety programs and to ensure proper reporting of accidents, which the agency will now be tracking in a database.

Regarding the Safety and Performance Unit, the focal point of our report, Mr. Irick noted that aside from collecting statistics through undercover rides on the broker car service providers, the Unit has a number of “other significant responsibilities,” several of which were apparently put in place after our review.

We were encouraged by the agency’s acceptance of our recommendations. Going forward, we will continue to monitor Paratransit’s implementation of these recommendations to assess whether and to what extent the agency has achieved the ultimate goal of our report: to ensure that Paratransit and its Safety and Performance Unit are most effectively promoting the safety and well-being of Paratransit riders.

MTA Capital Construction Company's Administration of the General Engineering Consultant Contract (GEC) for East Side Access
(MTA/OIG #2013-10)

The MTA Capital Construction Company (Capital Construction or MTACC) is a subsidiary agency formed to manage MTA system expansion ventures known as the mega-projects. MTA's East Side Access (ESA) mega-project will connect the LIRR with Grand Central Terminal in Manhattan. Extensive tunneling, excavation and systems work is required to create the new lines and terminal point. Effective administration of the GEC contract for the design of ESA is an important part of controlling project cost. In 2013, an OIG audit found both problems and improvements in MTACC's administration of this contract.

Earlier, the OIG had noted weaknesses in MTACC's processes for the review and approval of cost and scope-of-work increases involving the GEC contract. That review focused on a \$91 million contract modification (mod) in 2009 that retroactively covered numerous scope changes and other cost factors. MTACC had not followed existing procedures governing the authorization of additional work or the issuance of contract mods. In particular, the agency had authorized GEC to perform significant amounts of out-of-scope work without first executing contract mods to fund that work. When MTACC funded the work retroactively, MTACC failed to document that it had performed the required internal estimates or conducted cost negotiations. OIG discussed these issues with MTACC, and the agency stated that it would take steps to address them.

To follow up on MTACC's assurances, in 2013 we conducted an in-depth review of MTACC's current procedures governing the issuance of contract mods. The audit assessed the adequacy of formal procedures and whether or not contract changes were being negotiated and executed in a timely manner, as well as whether required approvals were being obtained. We also reviewed other controls that MTACC had recently implemented to control the cost of service contracts.

In the 2013 OIG review, our primary concern was whether MTACC had a clear and timely process for reviewing and approving contract modifications. This included insuring that *before* any new work is authorized, it is indeed new, within scope, necessary, and reasonably priced. We found that by 2013, Capital Construction had significantly improved its management of the GEC contract and resolved a number of previously-identified issues in the following ways:

- Instituted new controls to limit the use of retroactive contract mods regardless of value and reported a significant decrease in the number of retroactive mods executed.

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- Improved enforcement of existing contract terms and procedures governing scope changes. As a result, OIG found, Capital Construction now adequately reviewed and timely processed proposed new work.
- Enhanced its procedures to prevent payment to GEC for unauthorized work, and implemented new procedures to ensure that progress payments would more closely reflect the actual percentage of work completed.
- Identified potential areas of cost reimbursement from GEC for contested billings.

However, in 2013, MTACC was still in the process of enacting an adequate set of policies and procedures to govern the consultant contract modification process. The agency has not fully complied with existing procedures, and others have fallen into disuse or become outdated without being replaced. MTACC also has no formal procedures covering key aspects of its processes. This patchwork of practices and procedures needs to be conformed, updated, codified in writing, and carried out.

We have presented our findings and recommendations to MTACC, many of which the agency has already accepted and the rest remain under active discussion.

Controls Over the Civil Service Exam Process at MTA Bridges and Tunnels
(MTA/OIG #2013-06)

MTA Bridges and Tunnels is one of only two MTA agencies that have civil service job titles and hire employees through the civil service testing process. In the past, the OIG issued several investigative reports finding improprieties or irregularities in the civil service examination and hiring processes utilized by the other MTA agency, including deficient security over the development of exam questions and answers.

Historically, civil service exams were written, administered, and graded by the New York City Department of Citywide Administrative Services (DCAS). Bridges and Tunnels' only involvement in the process was to supply DCAS with a small number of employees to assist DCAS with preparing the exam questions. These employees were known as subject matter experts, who had direct knowledge about and experience with the position(s) for which the exams were prepared. In 2011, Bridges and Tunnels assumed responsibility for developing and administering its own civil service exams.

OIG conducted an assessment of the agency's civil service examination development process to determine whether Bridges and Tunnels has established effective internal controls to ensure from the outset that examination materials, including potential and selected exam questions and answers, are properly secured.

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While Bridges and Tunnels established confidentiality agreements to discourage members of the exam development team from disclosing exam information to other employees or prospective exam candidates, in our view the security of exam information would be further enhanced by requiring the members to disclose any relatives and close friends taking or scheduled to take the exam under development. Additionally, each department seeking to hire candidates previously had been allowed to establish its own exam security practices. OIG recommended that these practices be standardized and formalized in writing to ensure a consistent and reliable process.

Bridges and Tunnels agreed and developed a *Civil Service Exam Process and Security Procedure* incorporating our recommendations. This procedure, implemented in November 2013, addressed potential conflicts of interest in the preparation of civil service exams, and established guidelines for proper security over the exam materials during the preparation process.

FOLLOW-UP ON RECOMMENDATIONS FROM PREVIOUS REPORTS

Improving the Management of Crews in the MTA Long Island Rail Road's Structural Maintenance Division (MTA/OIG #2012-05) (Follow-up)

This 2012 OIG report, utilizing information obtained through the LIRR's Automatic Vehicle Location Monitoring (AVLM) system to locate vehicles in real time, and run historical reports on vehicle location, noted that on any given day the five- or six-person crews that maintain the LIRR's vast network of stations, bridges, and facilities dispersed over 700 miles of track may be scattered among several work locations. While effective management of this dispersed workforce is certainly critical to ensuring productivity and a cost-efficient maintenance operation, our original examination of three construction projects performed by crews from LIRR's Structural Maintenance Division—staircase replacements at the Great Neck and Deer Park stations, and a fence installation along a roadway in Manhasset—revealed that these workers were often not productively engaged, and that their performance problems are systemic.

Our original findings also indicated that low expectations on the part of the supervisors in charge of the projects with regard to the amount of time that the crew was expected to spend at the job site each day, reduced the productivity of the crews. Further, because division managers and project supervisors did not employ project schedules and budgets to plan and monitor the projects, they could not ensure that the projects would be completed in a timely and efficient manner.

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The agency accepted our recommendations in 2012. As follow up in 2012 and 2013, OIG met with agency officials and reviewed revised and newly created procedures to determine what specific actions LIRR took in response to our recommendations. Our review found that LIRR has enhanced management oversight as follows:

- Supervisors are now required to ensure that crews have gathered all needed materials and tools and are ready to leave for the work site within 30 minutes of the start of their shift.
- For long-term jobs, and where space permits, the agency will place a trailer at the work site and require that crews assigned to the job report directly to that site at the start of their shift.
- Management requires the development of work scopes, budgets, and schedules for construction jobs where the crew is expected to spend 30 straight calendar days on the project. LIRR reported that four projects completed in 2013, including staircase replacements at the Floral Park and Little Neck stations, met the criteria and were tracked by Structures management.
- Crew foremen are now required to file a daily report documenting their work activities.
- Supervisors are expected to prepare a written status report for review by the Principal Engineer of the Structures Department at least once every 30 days.

LIRR management also explained that supervisors have been trained in the use of LIRR's AVLM system and are expected to use it to monitor their crews. OIG contends that using AVLM as a management tool is critical to cost-effectively monitor a far reaching workforce and equipment. OIG will continue to monitor the use of AVLM at the agencies and will continue to provide information to managers on best practices.

Improving Structural Inspections at MTA New York City Transit
(MTA/OIG #2012-11) (Follow-Up)

In this 2012 report, OIG found that NYC Transit had not inspected some critical subway structures and stations on a regular and timely basis, and in some cases had not inspected certain critical structures for decades. The overlooked structures we found included steel supports at elevated stations, and hard-to-reach structures such as truss bridges, underwater structures, and high or hidden ceilings. The audit also found that NYC Transit had not been inspecting abandoned sections of stations that provide structural support for the active sections of the stations; indeed, agency officials did not even have an inventory of these abandoned structures.

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In our report, we made seven recommendations designed to make structural inspections broader in scope as well as more timely and effective. NYC Transit agreed with all of our recommendations, and within a few months had implemented most of them.

In January 2014, OIG performed a review to determine the status of the remaining recommendations. NYC Transit informed OIG that the consultant engineers hired by the agency to inspect hard-to-reach structures had not yet completed the inspections. NYC Transit confirmed that once the consultant engineers complete the inspections and provide their reports, the agency plans to reassess the current inspection frequencies of these structures, based on the engineers' findings. In general, the structures are currently scheduled to be inspected on a five-year cycle.

As for the abandoned facilities that still serve a structural purpose, NYC Transit confirmed that by the end of December 2013 it had completed its inventory, identified 38 such facilities, and conducted initial inspections of all of them. OIG had previously recommended that NYC Transit set an inspection cycle for these assets and determine who would conduct the inspections. Based on their experience with the 2013 inspections, the agency decided to inspect the structures annually and to use in-house staff (rather than consultants) to perform the inspections.

**The Lightning Strike and Long Island Rail Road Service Disruption,
September 29, 2011**

(MTA/OIG #2012-01) (Follow-Up)

In 2012, the OIG issued its report detailing the causes of a 12-hour LIRR service disruption in September 2011. The event resulted from a lightning strike that disabled the LIRR signal system west of the Jamaica railroad station. Several hours later, a LIRR worker inadvertently disabled the signal system east of that station. The OIG found that the LIRR, together with its signal system designer, shared responsibility for the outage. Our report included recommendations, accepted by both LIRR and MTA, as to measures LIRR could implement that would help prevent a recurrence, mitigate the duration of future outages, and improve communication with passengers.

In our 2013 follow up, LIRR has confirmed that most recommendations have been fully implemented, including:

- Each signal hut now houses a full complement of essential replacement parts available to responders of outages;
- LIRR enlisted the help of the signal system designer (with oversight provided by MTA's Independent Engineering Consultant) to identify "lessons learned" and implement technical improvements to eliminate failure from the same cause;

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- All LIRR personnel who install, operate, maintain, and/or troubleshoot signal equipment have received additional training on installed equipment including troubleshooting procedures;
- Training manuals, coupled with emergency contact information, service agreements, and warranty information have been compiled and are now available in accessible locations; and
- The Quality Control/Quality Assurance function has been made independent of the construction department, thus ensuring objectivity.

However, LIRR is still in the process of finalizing a procedure that ensures coordination between LIRR and the original designer of equipment when modifications are made to original designs, as well as completing a review of all projects that would benefit from the improvements identified during this exercise.

In response to our concerns about staffing during emergencies, LIRR revisited its decision to rely primarily on existing agency staff to provide adequate personnel coverage during major rush-hour service disruptions. OIG followed up in 2013 to determine what actions were taken and found that the agency created seven permanent positions of Customer Ambassador dedicated solely to the dissemination of information to riders. These employees work a split shift, meaning that they are on duty for four hours during the morning rush period, are relieved for four hours in the middle of the day, and then return to work for an additional four hours during the evening rush. Additionally, some managerial staff will supplement the Customer Ambassadors during emergencies. Equipped with tablet computers and smart phones, Customer Ambassadors and other emergency staff can obtain up-to-date information from apps specifically created for them. While LIRR has not yet incorporated the Customer Ambassador role in its Emergency Action Plan, the agency intends to evaluate the program after one year and expand it if warranted.

Elevator and Escalator - Follow Up on Recommendations
(MTA/OIG Report #2012-09) (Follow-Up)

In July 2011, OIG issued its report entitled, “Ineffective Use of Remote Monitoring Technology for New York City Transit Elevators and Escalators” (MTA/OIG #2011-08), containing our findings and ten recommendations for improvement, all of which NYC Transit accepted unequivocally. NYC Transit later reported to the Office of the MTA Auditor General that it had implemented all of the recommendations. However, our 2012 follow up review and our subsequent monitoring determined that more was

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required to achieve full implementation of four recommendations which highlighted three primary areas of deficiency:

- Databases remain inconsistent and inaccurate;
- Managerial oversight of internal controls remains insufficient; and
- Quality assurance remains deficient.

We found that management needed to look beyond simply ensuring that staff is completing compliance tasks, and confirm further that new procedures were working as implemented and that the agency was achieving the goal of generating consistent, useful, and accurate information.

After extensive discussion between the OIG and NYC Transit, the agency agreed to strengthen internal controls for the inspection and routine maintenance of elevators and escalators by periodically checking and confirming that:

- Preventive maintenance and inspection schedules are established for each type of equipment;
- Equipment is inspected and maintained in compliance with the established schedules;
- Trouble calls are reported to central offices and recorded in logbooks and/or databases; and
- Supervisory sign-off occurs on all completed preventive maintenance and inspection forms.

Department staff assured the OIG that to help ascertain that equipment is working properly and to enhance quality assurance, superintendents and senior management work more closely together to identify and remedy root causes for all discrepancies discovered during audits. OIG will continue to monitor the implementation of these new procedures.

Excessive Idling of Highway Vehicles at Long Island Rail Road and Metro-North Railroad
(MTA/OIG #2012-06) (Follow-Up)

In 2012, OIG calculated that the LIRR and Metro-North vehicle fleets idled illegally for a combined total of over 20,000 hours each month at a cost that likely exceeds \$800,000 annually. OIG made a number of recommendations to prevent such idling in the future, including that Metro-North install Automatic Vehicle Location Monitoring technology on its highway fleet, use this tool to monitor vehicle idling, and

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establish enforcement procedures for violation of vehicle idling rules. Metro-North accepted our recommendations. OIG has consistently advocated the use of AVL technology to improve management information and provide accountability over a widespread workforce.

In response to our advocacy, in October 2013, Metro-North joined LIRR and Bridges and Tunnels, in a joint procurement with a vendor to expand and obtain greater efficiencies regarding implementation of AVL in their respective highway fleets. This is the first AVL contract for Metro-North and the second for LIRR and Bridges and Tunnels. Metro-North is currently installing the vendor's AVL devices in its fleet and expects the system to be operational this year. Thereafter, OIG will follow up on the progress of LIRR and Metro-North with respect to monitoring and preventing illegal idling.

Minimizing Additional Work Orders on NYC Transit Capital Projects
(MTA/OIG #2012-10) (Follow-Up)

NYC Transit Capital Program Management rehabilitated 12 stations and segments of the elevated steel structure on the West End Line (the West End Rehabilitation), which carries the  train in Brooklyn. The work was completed by the end of 2012, with the contracts' cost to repair the structural steel having increased by at least \$5.2 million.

During this original 2012 review it became clear that the problems OIG encountered on this project were systemic. OIG found that CPM did not ensure that the construction contracts provided the contractors with sufficient design details for certain repairs. Consequently, critical repair work not included in the construction contracts had to be added later as Additional Work Orders (AWOs), which increased costs and engendered delays. This approach resulted in nearly \$1.4 million in AWOs and contributed to 12 months of project delays.

CPM had hired a design consultant to conduct specific inspections and to develop a design for the construction work in order to determine at the outset which work to include in the construction contracts. However, OIG found that the consultant did not perform all contractually required inspections. CPM also did not provide sufficient oversight of the design consultants. As a consequence, needed repair work was overlooked by the consultants and therefore not included in the bid proposal, resulting in another \$1.6 million in AWOs.

In response to the report, NYC Transit agreed to move forward with all of OIG's recommendations to decrease the number of AWOs and as outlined in last year's report, the agency took steps to do so in 2012. However one recommendation was still outstanding. In the 2012 report, OIG recommended that NYC Transit assess the consultant hired to design the West End Rehabilitation for additional costs attributable to

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inspection and design mistakes, and assign the consultant an “Unsatisfactory” performance rating.

At that time, NYC Transit assured OIG that it would review the AWOs for the project, and if it found that the consultant was responsible for design errors or omissions that led to the need for the AWOs, the agency would reflect this outcome in the MTA All-Agency Contractor Evaluation database and would also explore the feasibility of claiming damages against the consultants. However, this has not yet happened. According to senior CPM managers, they are currently preparing a follow-up report on the AWOs and a recommendation regarding the contractor’s evaluation to CPM executives. OIG will continue to monitor the agency’s decisions and actions on this matter and will follow up accordingly.

INVESTIGATIVE AND GENERAL SUPPORT BY AUDIT

Complaint on Overtime in HVAC Department

The OIG received an anonymous complaint alleging that one-quarter of the employees in the Heating Ventilation and Air Conditioning (HVAC) unit of the NYC Transit Infrastructure Subdivision (Infrastructure) of the Maintenance of Way Division (MOW), received unnecessary overtime pay. The complainant also stated that employees falsified payroll records to receive the overtime.

To evaluate the validity of the complaint, Audit reviewed the timekeeping and payroll records maintained by the HVAC unit to document employees’ work and overtime payments through a one-year period from May 2012 to May 2013, focusing on the five highest overtime earners. While these employees earned a significant amount of overtime, we determined that the overtime claimed by these employees was mostly attributable to Superstorm Sandy emergency clean-up and the increase in the demand for cooling support in “communication rooms.” These rooms are locations where NYC Transit houses the electronic equipment needed to control the security surveillance cameras and subway count-down clocks. NYC Transit management directed the HVAC unit to ensure that adequate cooling is available for these sensitive pieces of equipment at all times, and authorized it to hire six more full-time employees to service the communication rooms. However, because of delays in the hiring process, no new employees were hired and the additional work load was done by existing employees on an overtime basis. Our review found that management controls over the distribution, monitoring, and processing of overtime are generally adequate and the complaint was unsubstantiated.

Post-Sandy Overtime Abuse Allegation at Coney Island Yard

In response to allegations received, OIG investigated potential overtime improprieties during the post-Superstorm Sandy time period at NYC Transit’s Coney Island Yard Maintenance Shop. Specifically, it was alleged that employees were receiving overtime pay for time that they did not work.

As part of the investigation, OIG auditors reviewed the overtime reports for the shop and assisted with the interviews of agency officials. OIG found that there were two primary situations in which overtime pay was granted during the relevant time period: (1) the first 24-hour period after the Superstorm, when day-shift personnel were held overnight to ensure proper staffing levels in case the night-shift failed to appear because of weather conditions; and (2) occasional overtime during the subsequent two months.

Our investigation found no evidence to substantiate the allegations of unearned overtime. The agency officials confirmed that employees were permitted to leave Coney Island Yard and to be on “standby” status during the two days after the initial 24-hour period. This unusual arrangement was necessary, they explained, because the Coney Island Yard lost electrical power and lights creating a hazardous environment given the pits in the ground and dangerous machinery. In addition, the bathrooms were dark and non-functioning. Significantly, these “standby” employees were paid on straight-time, not overtime.

Review of LIRR Internal Controls over Valuable Metals

Following the discovery of employee thefts of copper at the LIRR in 2012,⁴ OIG auditors and investigators reviewed the agency’s existing controls over valuable metals. Our staff then identified relevant policies and processes to prevent the future theft of these metals and discussed implementations of these safeguards with agency officials.

LIRR reported to us that it is tightening controls by improving documentation regarding the use of such metals and by creating secure locations for their storage. We provided feedback to the agency on its new policies and procedures, and continue to consult with LIRR in its efforts to improve controls.

Review of Inventory Controls at NYC Transit Bus Depots

Following thefts of bus parts at two NYC Transit bus depots, OIG auditors and investigators conducted a preliminary review of inventory controls at the MTA, including

⁴ See OIG website at http://mtaig.state.ny.us/summary/13-01_summary.htm

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NYC Transit bus depots. OIG reviewed relevant MTA agency policies and procedures, previous MTA Audit Services reports on MTA inventory controls, and Audit Services' scheduled inventory control audits in 2013. OIG also interviewed NYC Transit investigators and managers about the thefts, as well as about new security and procedures that would be implemented at the bus depots.

OIG confirmed that inventory controls were generally improved throughout the MTA as a result of Audit Services' diligence, and improved specifically at NYC Transit bus depots through that agency's active efforts to improve those controls.

FASTRACK Complaints

NYC Transit's FASTRACK initiative allows employees to perform uninterrupted maintenance of the subway system by completely suspending train service over a segment of a subway line in order to access tracks, signals, cables, lighting, third rail components and platform edges. Following receipt of complaints regarding customer communications during FASTRACK periods, OIG auditors visited eight stations along the **A**, **C**, and **E** routes over two FASTRACK days in July to observe whether NYC Transit made sufficient information available to passengers using those lines. Specifically, auditors wanted to ensure that customers were informed about: (1) the reason for the service disruption; and (2) alternate travel options.

FASTRACK information is conveyed to riders by signage, platform announcements, posters, pamphlets, and conductors, in accordance with specific customer service plans determined by Department of Stations' protocol and general procedures for track outages. Our auditors compared those plans with their real-time observations in July, and concluded that NYC Transit acted accordingly and provided adequate on-site customer information at all stations. We found that information was conveniently available to customers on the MTA website, pamphlets were at station booths, and posters lined most street-level entrances. OIG auditors observed that station agents and conductors were responsive to on-site customer inquiries, and that platform announcements were clear and informative regarding both the reason for the diversion and alternate means of travel.

Small Business Mentoring Program

As an offshoot of an investigation reported below (page 36), OIG auditors tested some functions handled by the contractor hired by the MTA to administer the SBMP, to determine if the program is providing equal opportunity to the participants. Specifically, we reviewed the contractor's procedures involving contract award methods, distribution of participant bidding opportunities, and background checks. The OIG found that the contractor fairly and competently administered both participant selection and the bidding process.

Capital Cost-Estimating at New York City Transit

OIG surveyed cost estimates prepared by consultants for the NYC Transit station rehabilitation program after OIG learned of significant cost increases in 25 station projects funded during the 2005-2009 Capital Program. To understand what was driving these increases, OIG prepared a case study analysis of one station rehabilitation project, the East 180th Street Station Rehabilitation. Our analysis identified cost increases that NYC Transit's Capital Program Management department (CPM) had not explained at the time, and still could not readily explain. In one instance, the consultant, for some reason not now apparent, had projected that this rehabilitation's cost would increase by more than 50 percent (\$18 million) although the project's design and scope had not changed at all between the two estimates. OIG interviews also revealed that CPM was not utilizing its own in-house cost-estimating staff to review and approve the estimates produced by these consultants.

When OIG brought these concerns to CPM's attention, its managers informed us that CPM's own in-house staff now prepares 99 percent of all cost estimates for capital projects. CPM increased in-house involvement because of its concerns that consultants did not have enough familiarity with NYC Transit's unique work environment to prepare accurate estimates. CPM managers also told OIG that CPM now documents and explains in a single page the major factors causing variances between cost estimates. OIG verified this information, and further recommended that CPM adopt these informal practices as formal procedure. OIG also recommended that CPM prepare guidelines to ensure that in-house cost-estimating staff review and approve any cost estimates prepared by outside consultants in the future. CPM agreed with our recommendations.

Monitoring of LIRR Mechanics

In 2013, OIG conducted a proactive review of five mechanics with problematic histories in LIRR's Maintenance of Way Division. Specifically, OIG utilized the information contained in vehicle history reports available on LIRR's Automatic Vehicle Location Monitoring System and payroll and timekeeping records, to determine if these employees repeated past behavior in arriving late to work or leaving work early while claiming that they worked a full tour or overtime. Based on the AVL data and timekeeping records, OIG auditors found one employee whose reported payroll hours and AVL data raised concerns. OIG presented its findings to LIRR management for its further review and action.

INVESTIGATIONS

The Investigations Division (Investigations) receives and investigates complaints, from within and outside the MTA or upon its own initiative, concerning alleged 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, we refer matters to appropriate law enforcement and other governmental officials for further investigation, in which the division routinely participates, and/or for criminal or civil enforcement. The division is comprised of experienced investigators and forensic experts who work together with attorneys, with additional subject matter expertise and analytical support by OIG Audit. Besides 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, consisting of attorneys, investigators, forensic accountants and analysts, and an engineer. CFU concentrates on deterring and detecting frauds by contractors engaged in the construction, rehabilitation, and maintenance of MTA facilities. We highlight below CFU's substantial efforts to reduce fraud, both in terms of its investigative work with prosecutors, as well as its oversight and training regarding construction fraud. 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 and other investigations in various areas, including suspect construction practices; procurement-related fraud; prevailing wage and other labor law violations; disadvantaged, minority, and women's business enterprise fraud; employee theft of time and property; double billing; overbilling; and pension fraud. Below is a sampling of our investigations and other work performed by the division in 2013, including the sharing of information and evidence with various federal, state, and local law enforcement agencies, as well as an update regarding certain matters from 2012.

SELECTED INVESTIGATIONS REFERRED TO PROSECUTORS

NYC Transit Vendor Pleads Guilty to Supplying Counterfeit Switches

NYC Transit contracted with an electronics company to provide brand-specific kneeling sensors that allow the steps in buses to be lowered for mobility-impaired

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passengers. After some of the sensors failed to work properly, NYC Transit proactively and commendably referred the matter to the OIG, which led to our joint investigation with the Office of the New York County District Attorney (DANY). Aided by a court-ordered search warrant, OIG and DANY investigators discovered evidence that the switches for the sensors were counterfeit. The owner pled guilty to the class C felony of Grand Larceny in the Second Degree, was sentenced to serve 30 days in jail, and paid restitution to NYC Transit in the amount of \$330,000. The corporate entity pled guilty to Identity Theft in the Third Degree, a class A misdemeanor, and paid a fine.

Principal of DBE “Pass-Through” Pled Guilty to Mail Fraud and Was Debarred

The principal of a certified Disadvantaged Business Enterprise (DBE)⁵ purporting to be a dealer of construction materials (but not actually supplying anything), pled guilty to mail fraud, was sentenced to three years supervised release, and paid a forfeiture of \$52,347. The case was prosecuted by the Office of the United States Attorney for the Southern District of New York, following a joint investigation by the United States Department of Transportation Inspector General, the New York State Department of Transportation (DOT), and the Port Authority of New York and New Jersey Inspector General. Although the guilty plea related to work on the Cross Westchester Expressway, a DOT project, the OIG participated in this investigation because the principal’s company was listed as a supplier on certain MTA projects.

Contractors on that project allegedly used the DBE as a “pass-through,” meaning they ordered materials directly through manufacturers or suppliers, but put the paperwork through the DBE firm in order to wrongfully claim DBE credit. The investigation into those contractors continues.

The DBE was debarred by the Federal Highway Administration and may no longer participate in federally funded projects.

Three Managerial Officials of Prime Contractor Pled Guilty

Following a joint investigation by the OIG with the Port Authority of New York and New Jersey OIG, the United States Department of Transportation OIG and the United States Department of Labor, Office of Labor Racketeering and Investigations, and

⁵ A Disadvantaged Business Enterprise is a company certified pursuant to the federal DBE Program to perform work or act as a dealer or broker of materials. To be certified as a DBE, a firm must be a small business owned and controlled by one or more individuals classified by law as socially and economically disadvantaged. Each federally-assisted state and local transportation agency is required to establish contract-specific DBE subcontracting goals. In order for a prime contractor to take credit towards its DBE goal, the DBEs it uses must actually perform the work with its own workforce, must supervise its workforce, and order and pay for its own materials.

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the Office of the New York County District Attorney, two owners and a project manager of a prime contractor on a LIRR project pleaded guilty to Offering a False Instrument for Filing in the Second Degree in relation to false DBE Progress Reports it filed with the LIRR. Specifically, the three employees claimed DBE credit for work purported to have been done by a DBE, but actually performed by the prime contractor. Additionally, the corporation entered into a deferred prosecution agreement and agreed to forfeit \$6.3 million.

Prevailing Wage Violations by Tree-Trimming Company

The LIRR contracted with a tree-trimming company to provide tree removal services along its right of way. A review by OIG of the company's certified payrolls for the duration of the LIRR contract determined that the company was not paying its employees the prevailing rates for wages and benefits as required by the New York State Labor Law. Following a joint investigation with the Office of the Nassau County District Attorney, the company agreed to pay restitution of more than \$23,000 to 38 employees for unpaid wages and benefits as part of a non-prosecution agreement. Additionally, the company agreed to pay \$2,500 towards the costs of OIG's investigation.

Five NYC Transit Employees Prosecuted for Stealing Bus Batteries

OIG assisted the MTA Bus Company in an investigation into the theft of bus batteries from the JFK bus depot. As part of the investigation, cameras were installed within the depot, which OIG investigators then monitored. The MTA Police Department arrested five NYC Transit employees on charges involving grand larceny, petit larceny, and criminal possession of stolen property. The case is being prosecuted by the Office of the Queens County District Attorney.

Subcontractor Entered into a Non-Prosecution Agreement; Paid Substantial Forfeiture

A joint investigation by the OIG with the United States Department of Transportation OIG and the United States Department of Labor, Office of Labor Racketeering and Investigations, and the IRS Criminal Investigation Division focused on the use of a pass-through DBE on a NYC Transit project by a large corporate subcontractor. Following that investigation, the contractor entered into a non-prosecution agreement with the Office of the United States Attorney for the Eastern District of New York and agreed to forfeit \$850,000 and pay \$100,000 to the OIG to cover our cost of investigation.

OTHER SELECTED INVESTIGATIONS

Abuse of Time, Falsification of Records and Gross Lack of Productivity by Foremen and Employees of the Structures Division of Metro-North Railroad (MTA/OIG #2013-16)

During the course of review regarding the Work Equipment Division, a part of the Metro-North Maintenance of Way Department, OIG focused on the conduct of foremen and crews spanning four different trades from the Structures Department (Structures), another unit of Maintenance of Way.

Specifically, we found that over a five-month period from April to August 2013, each and every Structures foreman who OIG investigated abused his position by engaging in non-work related activities during business hours, used his Metro-North vehicle inappropriately, involved members of his crew in the abuses, and subsequently filed false timesheets for himself and his crew. We also found that every crew member accompanying each foreman participated actively or passively in these improprieties.

While our report did not attempt to cover every act of wrongdoing OIG observed, it did reflect the extensive surveillance and data review we conducted and revealed compelling evidence of serious misconduct, for which we recommended appropriate discipline. Toward that end, we made available to Metro-North management, for disciplinary purposes and lessons-learned reviews, the detailed video surveillance recordings made and GPS tracking data compiled by OIG investigators to support their findings.

OIG recommended that Metro-North impose appropriate discipline, up to and including termination, on the foremen and acting foremen named in the report for their misconduct. We also recommended that Metro-North impose appropriate discipline on the named crew members.

Based on OIG's findings, Metro-North suspended 6 employees without pay and started disciplinary proceedings against 4 foremen and 9 crew members (including 3 acting foremen). Eight crew members (including 2 acting foremen) signed waivers and agreed to be disciplined; one foreman retired before he could be disciplined and full disciplinary hearings were conducted for the remaining 3 foremen and 1 crew member/acting foreman. At the conclusion of the hearings, Metro-North terminated the 3 foremen (one was reinstated pursuant to an internal appeal). Internal appeals on the two terminated foremen and a decision on the crew member/acting foreman are currently pending.

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Deficiencies in the Management of Field Crews in the Metro-North Structures Division

(Supplement to MTA/OIG #2013-16) (See above)

In the wake of OIG's investigation of Structures foremen and field crews, OIG emphasized to Metro-North that the repeated misconduct found among these crews reflect systemic and long-standing managerial deficiencies and absence of internal controls that allow employee wrongdoing to persist.

OIG interviews of supervisors and managers regarding Structures management, supervision, and recordkeeping practices confirmed that written records of work performed by crews often did not exist and Structures management did not track the performance of crews. As a result, managers and supervisors could not ensure that field crews are productive and accountable.

OIG also concluded that the misconduct and lack of management oversight found during our investigation of Structures field crews were not confined to this Department, as evidenced by our prior report regarding road machinists in the MOW Track Department, and by the preliminary findings of our ongoing investigation into another MOW department. Indeed, our investigators found that workers in that department were not required to document their work.

Going forward, we have had positive conversations with the Metro-North President, Senior Vice President of Operations and Chief Engineer about the value of improving recordkeeping practices, more closely monitoring foremen and supervisor performance, and using tools like GPS more extensively, to help the agency better manage its workforce. We will continue our work with Metro-North to help affect positive change.

Metro-North Railroad Assistant Vice President Influence in the Hiring of a Relative
(MTA/OIG #2013-01)

In 2012, the Office of the New York State Comptroller (OSC) conducted an audit and issued a report regarding the functioning of the Metro-North Railroad On-Board Services Unit. During the audit, OSC questioned the referral in 2008 by the Metro-North Operations Services Department Assistant Vice President (AVP), of her relative to be hired into that unit, which was within the AVP's chain of command. Perceiving a conflict

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of interest and potential violation of the New York State Public Officers Law, OSC referred the matter to the OIG.⁶

Based on the findings of our investigation, most significantly the AVP's final approval of the hiring of her relative (who resigned during the ensuing investigation), we concluded that the AVP violated the Metro-North Operating Procedure governing employment of relatives, as well as the broader provisions of the MTA All-Agency Code of Ethics prohibiting nepotism, conflicts of interest, and violations of the public trust. Additionally, we referred our findings regarding the AVP's conduct to the Joint Commission on Public Ethics for such action as it deemed appropriate pursuant to corresponding provisions of the New York State Public Officers Law.

In our report, we made four recommendations addressing weaknesses in Metro-North's hiring processes that left it vulnerable to nepotism. Specifically, we recommended that:

- When a hiring or employment decision arises relating to a "Family Member" or "Relative" of an employee who might otherwise become involved in the hiring process, that employee must be recused in writing, signed by the employee, the employee's supervisor, and the agency ethics officer, and that recusal must be retained in retrievable fashion within the files of Human Resources or other appropriate department.
- Metro-North should institute a "conflicts check" to determine whether any Metro-North employee participating on an interview panel has a familial relationship with the candidate to be interviewed or whether any such employee reports to a supervisor who has a familial relationship with the candidate. Human Resources (or other appropriate department) should document each hiring action with a certification that at the relevant time periods, the employees who interviewed and evaluated the applicant were not related to the applicant and did not report to or work with the applicant's relative. That certification, signed by the employee, attesting to the absence of any such relationship and acknowledging the employees' duty to disclose actual or potential violations pursuant to section 1.05 of the MTA Code of Ethics (Duty to Disclose), must be retained in retrievable fashion within the files of Human Resources (or other appropriate department).

⁶ In addition to our investigation regarding the hiring of the AVP's relative, we conducted a separate investigation, pursuant to the OSC referral and consistent with our own powers to uncover abuses and service deficiencies, to determine whether the employees of the Metro-North On-Board Services Unit properly performed their jobs. We discuss that report (MTA/OIG #2013-09) immediately below.

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- Human Resources or other appropriate Metro-North department should justify the hiring of a Metro-North employee's relative in a written memorandum. This memorandum should detail the new employee's relevant skills, credentials, and experience, as well as any other factors establishing that the successful candidate was chosen on the basis of merit and qualifications. This memorandum must be signed by the head of Human Resources (or other appropriate department) and retained in retrievable fashion within that department's files.
- Metro-North must promptly commence ongoing training of all individuals, at all levels, who are involved in the hiring process. This training should be designed to help ensure that these individuals fully understand and comply with all applicable requirements and obligations to avoid nepotism, conflicts of interest, and violations of public trust, as well as the duty to disclose any actual or potential violations pursuant to the MTA All-Agency Code of Ethics.

Metro-North accepted all of our recommendations. Following the issuance of this report, the AVP retired.

On September 30, 2013, promptly after OIG issued the report and effective immediately, the MTA Chairman/CEO approved All-Agency Policy Directive 11-051, entitled "Anti-Nepotism Employment Procedures." The stated purpose of this Directive is "[T]o safeguard against the influence of nepotism in employment-related decision-making at the MTA to further ensure that decision-making on employment-related matters is based on merit and qualifications." By the express terms of the Directive, the Chairman/CEO declared that "MTA has a zero tolerance policy with respect to nepotism in hiring and promotion decisions."

On-Board Services Unit
(MTA/OIG #2013-09)

Following our investigation of the Metro-North AVP discussed immediately above, the OIG investigated further to determine whether the employees of the Metro-North On-Board Services Unit performed the assigned tasks for which they were paid, which primarily involved riding trains in order to monitor crew performance in areas such as fare collection and passenger safety. As part of their duties, the members of this unit were required to log the results of each train observation by making entries into a database.

OIG found that each of the four members had various discrepancies and/or entries of questionable accuracy appearing in his or her logs. These included data entries reporting observation of the operation of specific trains, where the train timetables conflicted with the times of other documented activities of the members and/or the making of other data entries. Additionally, in the case of the member of the team who

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resigned during the investigation (see related report above), we found field observations that were contradicted by GPS mobile telephone location data.

In response to our findings, Metro-North issued formal letters of warning to the three remaining employees for submitting inaccurate reports. Earlier, Metro-North had taken a number of corrective actions, including disbanding the Unit and reassigning its former supervisor to non-supervisory duties. He subsequently retired.

Ethics Violations by NYC Transit Engineering Manager
(MTA/OIG #2013-17; #2014-04)

The OIG received an anonymous complaint alleging that for years a managerial employee in NYC Transit's Department of Subways, Maintenance of Way Engineering, has been running a private engineering business on agency time and using agency equipment, and has been assisted in that business by a subordinate employee.

We found that the manager, a long-time employee, had incorporated a private engineering business in 2003, and that he was engaged in that business. In 2006, this individual was promoted to a managerial position at NYC Transit, at which point he became obligated under MTA ethics policy and state regulations to request and obtain approval from the New York State Joint Commission on Public Ethics (JCOPE) in order to continue his dual employment / outside activity. He did not do so, however, even after repeatedly attending ethics training during the ensuing years.

We also found that the manager violated other ethics rules in that he repeatedly used NYC Transit resources for his private business purposes; caused four lower level NYC Transit employees to assist him by using NYC Transit resources; paid two employees, in violation of the agency's prohibition of business relationships with subordinate employees; and allowed an employee of his outside business to work under his indirect supervision at NYC Transit, in violation of the same prohibition.

In response to our findings, NYC Transit suspended the manager without pay and initiated disciplinary proceedings for dismissal. Both the charges and the penalty of dismissal were sustained following a hearing. The manager appealed but eventually resigned. We also referred our findings to JCOPE, which announced in a settlement agreement dated February 19, 2014, that the manager admitted violating Public Officers Law section 74(3)(d) and agreed to pay a fine of \$1,500.

Regarding the subordinate employees who assisted the manager in his business as referenced above, two of the four have left NYC Transit. As to the remaining two employees, the OIG issued a separate report recommending appropriate discipline. Additionally, we recommended that NYC Transit reinstruct: (1) all NYC Transit employees regarding their affirmative obligation to report wrongdoing pursuant to MTA

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All-Agency Code of Ethics, section 1.05; and (2) all managers and supervisors as to the prohibition against business relationships between employees set forth in MTA All-Agency Code of Ethics, section 8.02. NYC Transit agreed with our recommendations.

Employee Misconduct
(MTA/OIG #2013-14)

OIG investigated and substantiated a complaint that a NYC Transit Track Department Superintendent failed to conduct certain mandatory superintendent-level inspections and falsified reports track inspection reports by claiming that he performed inspections for which he was not even present. Additionally, we found that the Track Superintendent had been observed sleeping at this desk in his office during his work shift hours.

OIG recommended that the employee be disciplined up to and including termination. Prior to the issuance of our report, the Superintendent was demoted to a Maintenance Supervisor 1 (MS1) following a NYC Transit investigation establishing that he had improperly directed subordinates to drive him home to New Jersey while on duty. That charge was combined at a NYC Transit disciplinary hearing with those based on the OIG investigation and the recently-demoted MS1 was then terminated. A panel of arbitrators subsequently sustained all charges, finding him guilty of misconduct, incompetence and neglect of duty, but held that dismissal was excessive in light of his “record” and directed that the former Superintendent be further demoted to an hourly worker. While the panel provided that he could apply for reinstatement to MS1 after 6 months, it noted that NYC Transit had the “unfettered authority” to deny that application.

Second Avenue Subway Soil Disposal
(MTA/OIG #2013-02)

OIG investigated allegations regarding improprieties in the handling and disposal of hazardous and non-hazardous contaminated soil and other material from the Second Avenue Subway Project. The prime contractor and its trucking and disposal subcontractor were contractually responsible for complying with specific environmentally-based handling and disposal requirements.

Specifically, the investigation determined that certain trucking manifests required by MTA to track disposal of the material, did not identify the final destination and/or lacked the delivery certifications regarding the actual disposal facility used. Although MTA Capital Construction hired an environmental consultant specifically to oversee the disposal facility approval process as well as the disposal itself, our investigation confirmed that material from the project was delivered to unlicensed or unapproved sites in New Jersey—performance failures that the consultant did not catch.

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In response to our recommendations, MTACC committed to:

- Requiring a more complete log from the contractor that includes the identity of the disposal facility and whether or not material was accepted, along with a confirmation of that acceptance from the disposal facility.
- Requiring the construction management staff to review completed logs on a weekly basis to ensure that all facilities have been approved, and that all truck loads were accepted.
- Performing regular spot checks of paperwork to ensure that all information is legible and complete, and that all relevant signatures are secured.
- Implementing corrective actions if the contractors do not obtain approvals of facilities prior to disposal, including halting disposal operations until the facilities are approved.

Revenue Booth Station Agent
(MTA/OIG #2013-07)

The OIG investigated an anonymous complaint that a NYC Transit station agent had posted photographs of her token booth work area on the photo-sharing website Instagram while working. The complainant included the photos and also alleged that the station agent allows her friends to evade the fare at stations where she works. Our investigation determined that the station agent posted photographs depicting her cash drawer, MetroCards, the monitor screen and herself with her feet on the token booth counter as well as her text regarding free passage into the subway system. The inappropriate photographs of herself and the interior of her token booth were in violation of NYC Transit rules and the MTA Code of Ethics. While we did not establish that the station agent actually allowed anyone to evade the fare, her posted message gave the impression that she had in fact done so, again in violation of NYC Transit rules and the MTA Code of Ethics. Based upon our recommendation of discipline, the station agent received a 30-day suspension and a “Final Warning” that any future similar violation will result in termination.

Unauthorized Dual Employment
(MTA/OIG #2013-04)

An OIG investigation established that a Computer Specialist with NYC Transit’s Division of Technology and Information Services has been operating an outside business without approval in violation of the MTA Code of Ethics and NYC Transit’s dual employment policy. Specifically, the Computer Specialist admitted owning and operating a business that provided software, technology and other computer-related support services. While he disclosed this outside employment on his required financial disclosure

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statement, he admitted that he did not seek approval for the dual employment because he was concerned that he would be rejected. We referred our findings to NYC Transit, which imposed discipline consisting of a six-week suspension without pay and a “Final Warning.”

Failure to Work Required Time by NYC Transit Maintenance Supervisor
(MTA/OIG #2013-15)

OIG investigated a complaint that a NYC Transit Maintenance Supervisor abused time from NYC Transit. Our investigation determined that the supervisor worked less than his required eight hours on six occasions as a result of lateness, without charging the time to appropriate leave on his time sheets and reporting it to his supervisors. Additionally, the investigation uncovered evidence that NYC Transit lacked appropriate time controls for maintenance supervisors and that NYC Transit maintenance workers require additional training regarding the requirement to swipe their identification passes. OIG recommended specifically that NYC Transit discipline the supervisor for failing to appropriately account for his time, and generally that the agency take action to better enforce its time-keeping rules. NYC Transit accepted all of our recommendations and the supervisor received a 30-day suspension.

False Medical Documentation
(MTA/OIG #2013-11)

An OIG investigation of an anonymous complaint established that an LIRR ticket clerk assigned to Penn Station knowingly submitted to the LIRR false medical documentation to cover a period of absence from duty. The employee provided the LIRR with a medical note that purported to be from a certain hospital in New York City and to be issued by a named registered physician’s assistant. The note explicitly stated that the employee was seen that day at the hospital for a follow-up to a surgical procedure, was given prescriptions for antibiotics and painkillers, and would be able to return to work three days later.

The OIG contacted the hospital and ascertained that the named RPA had left the hospital’s employ over three years prior to the date of the note. During a subsequent interview by the OIG, the LIRR employee confirmed that the assertions in the document she provided to the railroad were not true.

Based on our findings and recommendation, the LIRR brought disciplinary charges against the employee. Prior to trial, the employee resigned.

MTA Small Business Mentoring Program
(MTA/OIG #2013-12)

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OIG received a complaint that a participant in the MTA Small Business Mentoring Program (SBMP) received preferred treatment from the SBMP staff and that SBMP staff ignored MTA Bus Facilities staff's concerns about the contractor's integrity. OIG found no evidence that SBMP staff favored one contractor over another. However, OIG did find certain deficiencies in the SBMP procedures.

To address these deficiencies, OIG recommended that all Qualification Hearings for SBMP contracts be recorded or transcribed. We also recommended that the procurement departments of agencies for which the work will be performed, implement procedures to ensure that before the SBMP contract is awarded, that agency's procurement department receives appropriate input from both the MTA Office of Construction Oversight and the agency's construction management team. Additionally, OIG recommended that when an SBMP contractor's bid is deemed unresponsive because it does not properly reflect the contract specifications, the agency procurement department must comply with its policies governing non-responsive bids before awarding the contract. And finally, OIG recommended that if multiple Qualification Hearings must be held on a contract, the same personnel should attend all of those hearings.

MTA agreed with all of our recommendations.

Compensation and Time-Keeping Policies
(MTA/OIG #2013-13)

The OIG investigated a complaint regarding misconduct by an employee in the Timekeeping Department of NYC Transit. While we found the allegations of misconduct to be unsubstantiated, we determined that a timekeeping employee had been allowed to cash out her accumulated compensatory time, known as OTO, twice in a six-month period prior to separation from service. We sought to determine whether and under what circumstances a non-exempt, non-represented employee may cash out accumulated compensatory time.

OIG questioned both the former controller, the successor acting controller, and the current controller, about the OTO policy delineated in the existing NYC Transit Human Resources Policy/Instruction as it relates to non-exempt, non-represented employees. The former controller stated that employees had been allowed to cash out OTO prior to separation in special circumstances. According to the current controller, the practice has changed in that he interprets the Policy/ Instruction to mean that pre-separation cash-outs are not allowed and that any requests that an exception be made must be forwarded to the Executive Vice President and the President for approval. The Executive Vice President confirmed that interpretation.

We recommended that NYC Transit reinstruct the Office of the NYC Transit Controller not to authorize the cash-out of any compensatory time except as authorized

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by current policy or pursuant to an appropriate waiver and, should such a waiver be granted in the future, to maintain records of the request, supporting documentation, and approval of the waiver. NYC Transit accepted our recommendation.

OTHER INVESTIGATIVE ACTIVITIES

OIG Role in Monitoring Hurricane Sandy Recovery Efforts

A requirement of the Federal Transportation Administration's \$4 billion Hurricane Sandy recovery grant is that the MTA hire independent monitors. In response, the MTA has established a monitoring oversight committee chaired by the MTA Auditor General. This committee includes the OIG, whose share of the monitoring activities will include:

- Training;
- Integrity screening for vendors;
- General fraud prevention measures including attending project kickoff and progress meetings, and conducting unannounced site visits;
- DBE compliance oversight;
- Prevailing wage reviews;
- Change Order reviews;
- Prompt payment requirements monitoring;
- Targeted audit reviews; and
- Coordination with investigative partners including the Port Authority of New York and New Jersey Inspector General, United States Department of Transportation Inspector General, the New York State Inspector General, and others involved with overseeing Sandy Recovery funds.

Additionally, the MTA is engaging a monitoring firm to perform targeted reviews at the direction of the MTA Auditor General and/or the OIG.

Prevailing Wage Actions

This year we continued our work in support of prevailing wage law enforcement. While a number of investigations are ongoing, others are currently with various prosecutors' offices awaiting indictment or other action. Additionally, the MTA Auditor General performs a prevailing wage audit on one construction contract each quarter that is recommended by our office. We review their findings and refer the results to outside enforcement agencies as appropriate.

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Security and Integrity Compliance

The Security and Integrity Compliance Program involves unannounced inspections by OIG teams of four to ten investigators to test the security of a facility, determine whether staff are present, and performing their required duties, and ensure that staff is following safety protocols.

In 2013, OIG investigators conducted 21 program checks throughout the MTA Commuter District. OIG notified the respective agencies of any improprieties its checks revealed, and made recommendations for disciplinary action as appropriate.

The deterrent value of this long-standing proactive initiative is that employees throughout the entirety of the MTA are well aware that they are subject to unannounced inspections at any time by an independent office providing oversight of the MTA. Over the years, OIG has received positive feedback on this program from upper management; indeed, management has itself referred potential program check sites to the OIG.

CONSTRUCTION FRAUD UNIT

Forfeitures and Settlements

From its inception in 2008 through 2013, CFU's investigations have resulted in monetary recoveries and court ordered forfeitures of over \$65 million from contractors. The majority of the recovered funds went to the United States government, which had funded many of the contracts involved. Contractors have also been required to make substantial payments to underpaid workers. The balance of the money went to the MTA as restitution and to the OIG and its investigative partners to help cover the cost of the investigations.

In June 2012, a portion of the money returned to the MTA was used to fund three outside monitors to oversee high risk areas on three mega-projects: Second Avenue Subway, Fulton Street Transit Center, and East Side Access. MTA Headquarters retained the monitors to conduct document reviews, site inspections, and to ensure contractor compliance. CFU continues to review monitors' reports, identify issues, and communicate with monitors on a regular basis.

Previously, a significant portion of the MTA's share was dedicated to fund aspects of the MTA's Small Business Federal Mentoring Program, which is currently ongoing.

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Construction Fraud Unit, Continued

DBE Task Force

We continue to work with the Task Force on investigating alleged DBE violations with the goal of filing civil actions under the False Claims Act against contractors committing fraud. The task force is staffed with three Assistant United States Attorneys and a paralegal from the Office of the United States Attorney for the Southern District of New York, two members of the OIG Construction Fraud Unit, 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. In 2013, the task force obtained a settlement which resulted in a contractor paying \$936,000 to the United States Attorney's Office, which turned the funds over to the Federal Transit Administration.

Assistance to NYC Transit Vendor Relations

Our Construction Fraud Unit is often called upon to assist NYC Transit Vendor Relations staff in determining whether a low bidding contractor, who may have a questionable background, is a responsible bidder. Our assistance ranges from sharing intelligence to attending and participating in Responsibility Hearings.

Kickoff and Progress Meetings

OIG staff members regularly attended kickoff and progress meetings on construction projects, where the members speak to the contractors and project managers about the OIG's oversight role. Specifically, the contractors are 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 either a state or federal crime, or both, depending on funding. The contractors are also made aware of their obligations related to certified payrolls, DBE submissions and change orders.

Site Visit Program

The Construction Fraud Unit has continued its site inspection program involving unannounced construction site visits to ensure compliance with legal and contractual obligations; including use of appropriate materials, safety obligations, prevailing wage compliance, and limiting site access to approved contractors, subcontractors, and site personnel. We interview workers on site 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.

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Construction Fraud Unit, Continued

Monitors

The CFU chief attended kick-off meetings on MTA monitorship projects, reviewed monitors' reports and provided assistance to MTA agencies. For example, the CFU chief assisted Metro-North Railroad and Bridges and Tunnels in the preparation and review of proposed monitorship agreements with two companies that had been parties to deferred prosecution agreements resulting from our investigations.

UPDATES FROM PRIOR INVESTIGATIONS

LIRR Retiree Occupational Disability Fraud

Since 2009, the OIG has worked jointly with the Office of the United States Attorney for the Southern District of New York, the New York State Attorney General, the Federal Bureau of Investigation, and the Railroad Retirement Board (RRB) Inspector General in a criminal investigation of occupational disability fraud allegedly committed by LIRR retirees. Between October 2011 and September 2012, a total of 33 individuals were charged in a federal court complaint.

During 2013, 28 of the 33 pleaded guilty to the charges and the remaining 5 were convicted after trial. The two doctors and an LIRR facilitator were each sentenced to 8 years in prison and ordered to pay a total of \$339 million in restitution and penalties. The other facilitator, a former RRB manager, was sentenced to 5 years and ordered to pay \$62 million. To date, 24 other LIRR retirees and an office manager for one of the doctors have received sentences ranging from probation to 37 months in prison, with additional penalties including full restitution of the occupational disability benefits they fraudulently received, and a 15 percent reduction in their LIRR pension.

Principals and Manager of Prime Contractor Pled Guilty to False Filing

Following a joint investigation by the CFU, the Port Authority of New York and New Jersey Inspector General, the Office of the New York County District Attorney, and other partners, a Manhattan grand jury indicted a contracting company and its key personnel in 2012 for felonies related to filing false DBE forms and a false certified payroll with the MTA. This year, three defendants pled guilty to one count of Offering a False Instrument for Filing in the Second Degree, a class A misdemeanor, and each was sentenced to a conditional discharge; a fourth defendant pleaded guilty to Criminal Facilitation in the Fourth Degree, also a class A misdemeanor, and is awaiting sentence. Additionally, the corporation entered into a deferred prosecution agreement and paid a forfeiture of \$2 million.

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Updates From Prior Investigations, Continued

Copper Thefts by Long Island Rail Road Employees

In January 2013, as a result of a joint investigation by the OIG, the MTA Police Department, and the Office of the Nassau County District Attorney, a grand jury indicted 17 individuals, 15 of whom were LIRR employees, for various felony and misdemeanor charges, in connection with a scheme to steal new and recyclable copper belonging to the LIRR and sell the stolen wire to a scrap metal company. Fifteen individuals subsequently pled guilty to felony and misdemeanor charges and paid restitution to the LIRR, totaling \$170,000. Following a trial of the remaining railroad employee and another individual, the railroad employee was convicted of Conspiracy in the Fifth Degree, and sentenced to a conditional discharge plus a \$1,000 fine, and ordered to pay \$5,000 in restitution; the other individual was acquitted. All of the convicted employees have been terminated from the railroad. Our investigation is ongoing.

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 provide educational outreach to contractors and labor representatives.

2013 highlights include:

- OIG, in conjunction with the MTA Department of Corporate Compliance, continued to provide ethics and fraud awareness training to MTA employees. An OIG Senior Investigation Attorney explained our ongoing role in the investigation of ethics violations and the deterrence and detection of fraud, waste, abuse, and corruption. Our presentation educates employees about how to recognize and respond to “red flags” relating to fraud. We made ten such presentations to approximately 570 MTA employees this year, encouraging them to report issues of wrongdoing to this office.
- The CFU chief gave a continuing legal education presentation to an audience of over 200 attorneys at the New York County Lawyers Association. The presentation focused on prevention and detection of DBE fraud.
- At the request of the MTA Chief Compliance Officer of a large multinational construction company that had previously paid a multimillion dollar settlement on a DBE fraud case investigated by the OIG, the CFU chief made a presentation at the local headquarters of the company. The presentation was attended by approximately 200 employees, along with staff members of associated joint-venturers and large subcontractors.
- The CFU chief participated in a panel convened by the United States Department of Transportation OIG to provide guidance in the area of compliance to the New York State Department of Transportation and the Federal Highway Administration related to the new Tappan Zee Bridge construction.

INTERGOVERNMENTAL COOPERATION

During 2013, OIG maintained relationships 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 District of New Jersey
Federal Bureau of Investigation
Internal Revenue Service, Criminal Investigation Division
United States Department of Defense
United States Department of Labor, Office of the Inspector General, Office of Labor Racketeering and Fraud Investigations
United States Department of Labor, Wage and Hour Division
United States Department of Transportation, Office of the Inspector General
United States General Services Administration, Office of the Inspector General
United States Postal Inspection Service
Eastern District of New York Federal Construction Fraud Task Force
Federal Highway Administration
AMTRAK Police Department

Interstate Agency:

Port Authority of New York and New Jersey, Office of the 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 Labor
Department of Transportation
Dormitory Authority
Thruway Authority
Joint Commission on Public Ethics
Empire State Development Corporation
Lower Manhattan Construction Integrity Team

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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

Suffolk County District Attorney

Westchester County District Attorney

New York City Department of Investigation

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 Health and Hospitals Corporation, Office of Inspector General