



Carolyn Pokorny
MTA Inspector General

Office of the Inspector General
Metropolitan Transportation Authority
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March 31, 2021

Via Electronic Mail

Sarah E. Feinberg
Interim President
New York City Transit
2 Broadway, 30th Floor
New York, NY 10004

**Re: NYCT Executive's Disclosure of
Confidential Information to Vendor
During Procurement Process
MTA/OIG #2021-02**

Dear Ms. Feinberg:

The Office of the MTA Inspector General (OIG) investigated allegations, brought to our attention by New York City Transit (NYC Transit), that an MTA Headquarters executive, NYC Transit Senior Advisor, and Chief of System-wide Accessibility, Alexander Elegudin (Elegudin), disclosed confidential Selection Committee information to Curb Mobility, LLC (Curb Mobility), a provider of taxi technology, during the procurement process, in an attempt to help Curb Mobility land a multi-million dollar contract award.

In addition, the OIG found that a NYC Transit Director, a subordinate of Elegudin and member of the Selection Committee, unwittingly set this chain of events in motion when she, mistakenly believing she could discuss Selection Committee deliberations with Elegudin, told Elegudin that Curb Mobility was not going to win a contract award because its prices were too high. Elegudin immediately disclosed this confidential Selection Committee information to Jason Gross (Gross), Vice President of Mobile at Curb Mobility. In an apparent attempt to give Curb Mobility a chance to change its pricing figures and submit a new offer, Elegudin sent multiple emails to NYC Transit and Procurement Executives, claiming that the RFP's Scope of Work needed to be changed, and therefore, all bidders must be allowed to resubmit their Best and Final Offers (BAFOs). As further described below, Gross scrambled to correct and possibly

later resubmit a revised BAFO to NYC Transit Procurement, and had several calls with Elegudin over the next two weeks to discuss ways to fix Curb Mobility's BAFO.¹

Since Elegudin is no longer employed by NYC Transit effective November 1, 2020, we recommend that this letter be placed in his personnel file.² We also recommend that NYC Transit review the Director's conduct for any action, such as counseling and training on her obligations as a selection committee member, as it deems appropriate. Furthermore, Curb Mobility's conduct violated the MTA Vendor Code of Ethics. Accordingly, we recommend that NYC Transit review and address the conduct of Curb Mobility as it may deem appropriate, including but not limited to holding a responsibility hearing.

Elegudin, and possibly the Director's, conduct also appears to violate the New York State Public Officer's Law, and the conduct of Curb Mobility may violate the New York State Lobbying Law, Legislative Law Article 1-a. Accordingly, we are forwarding this matter to the New York State Joint Commission on Public Ethics (JCOPE) for action as it may deem appropriate.

I. BACKGROUND

A. Access-A-Ride

For more than 20 years, and in accordance with the Americans with Disabilities Act of 1990 (ADA), NYC Transit's Paratransit division (Paratransit) has provided transportation to riders with disabilities through its Access-A-Ride program (AAR). Customers rely on AAR to commute to their jobs, keep medical appointments, and generally travel throughout the city. Customers take millions of trips each year, and AAR operates 24 hours per day, 365 days per year.

Elegudin's System Accessibility Group sought to reduce cost and expand service to disabled passengers through broker car services, including taxis and for hire vehicles that were certified and ADA compliant. As broker services perform other types of trips, overhead costs would not be absorbed solely by the MTA and specialized trips could be scheduled around conventional services. Toward that goal, broker service contracts were awarded to Curb Mobility and another vendor in early 2019. As the program demand exploded, NYC Transit determined that it needed to increase the use of shared rides through an expanded pool of broker-based car service providers and the addition of power lift-equipped vehicles for oversized and motorized wheelchairs. Therefore, on April 17, 2020, NYC Transit issued a Request for Proposal number 310504 for Broker-based Car Service for Paratransit (the RFP), inviting

¹ OIG notes that, according to the MTA Vendor Code of Ethics, NYC Transit appointed a NYC Transit employee as the RFP Designated Point of Contact (Designated Contact) – the only person with whom Curb Mobility and all other bidders were to communicate about all RFP related matters. Elegudin was not the Designated Contact.

² Had Elegudin still been a NYC Transit employee, OIG would have recommended discipline, up to and including termination.

proposers to submit bids. The proposed contract was for a 3-year term with an option for NYC Transit to extend the contract for up to 2 additional years totaling approximately \$579 million.³

B. The Parties

In June 2018, NYC Transit hired Elegudin in the Department of Systemwide Accessibility under the Office of the President. NYC Transit tasked Elegudin, a long-time disability advocate, to put fresh eyes on the Paratransit system, and along with his staff, recommend ways to better serve the disabled community. He completed his JCOPE ethics training in June 2019.

Curb Mobility was an MTA vendor providing paratransit services to NYC Transit under a separate contract. To date, the MTA has paid Curb Mobility in excess of \$63 million under this contract which ends in February 2022. Curb Mobility is the client of a registered lobbyist with JCOPE for the 2019-2020 registration period. Since 2016, Jason Gross has been Head of Mobile at Curb Mobility.

In November 2018, NYC Transit hired the Director, also an experienced paratransit advocate, to support Elegudin in his mission to improve services to the disabled community. The Director reported directly to Elegudin in the Department of Systemwide Accessibility. The Director completed the MTA Ethics training and annual certification in August 2019.

II. INVESTIGATION⁴

A. The Paratransit Broker-Based Car Service Procurement

On April 17, 2020, NYC Transit issued RFP 310504 for broker-based car services for Paratransit, with a submission deadline of June 15, 2020. The initial contract term was 3 years, with NYC Transit having the option to award contracts to more than 1 bidder and extend the contract terms for up to 2 additional years. The NYC Transit Procurement Department appointed a Procurement Staff Analyst as the designated point of contact (Designated Contact), to be the only NYC Transit employee that bidders were permitted to contact with questions or other issues relative to the procurement during the restricted period.⁵

³ NYC Transit rescinded the RFP on or about December 11, 2020. NYC Transit issued a revised RFP to the public on December 24, 2020.

⁴ OIG reviewed NYC Transit procurement records for the RFP including Selection Committee materials, email communications, non-disclosure agreements, and internal memoranda. In addition, the OIG reviewed records from Curb Mobility related to the RFP, including email communications, procurement submission documents, and Gross's text, email, and phone communications. The OIG also reviewed Elegudin's and the Director's personal financial and cell phone records, and the contents of their respective MTA-issued cellular phones and email communications.

⁵ The restricted period ran from April 17, 2020 until the final award of the contract.

Eleven companies submitted proposals to NYC Transit. The Selection Committee eliminated 4 proposals upon review. Another proposer was eliminated after oral presentations. The remaining 6 proposers entered contract and price negotiations with NYC Transit's Legal Department and Cost-Price Unit. By July 29, 2020, the remaining proposers submitted interim price proposals to the Selection Committee, and their BAFO, by August 19, 2020. At the Selection Committee meeting held on August 27, 2020, each committee member presented their recommendations of the 4 companies that should be awarded a contract. On September 4, 2020, the Selection Committee voted to award contracts to 4 proposers, which did not include Curb Mobility.

Five NYC Transit employees sat on the Selection Committee, hailing from Paratransit, the Department of Systemwide Accessibility, the Departments of the Chief Financial Officer, and Procurement. All Selection Committee members signed a confidentiality agreement that prohibited each member from discussing or revealing any information concerning the selection proceedings to anyone who was not also participating in the selection. Elegudin was a technical advisor to the Selection Committee, and also signed a confidentiality agreement.

The Selection Committee met on the morning of August 27, 2020 to discuss its final contract award recommendations. NYC Transit Procurement led the meeting, during which the Selection Committee members discussed and deliberated the proposers' submissions and pricing plans. At approximately 11:00 a.m., the Director texted Elegudin and told him that Curb Mobility's proposal was "totally shitting the bed," its presentation was sub-par, and its proposal had the highest prices. In response, Elegudin asked if Curb Mobility would get a "BAFO chance," or an opportunity to submit a revised BAFO. The Director replied that "BAFO is done. This is the final pricing. It almost feels like [Curb Mobility doesn't] want a renewal."

Within an hour, Elegudin emailed several senior NYC Transit employees, asking to reopen the RFP, and permit bidders to resubmit BAFO's. The purported reason for Elegudin's request, according to his emails, was that the RFP did not sufficiently address COVID-related emergency response plans. Elegudin, upset that Curb Mobility was going to lose the Paratransit contract, called Gross at 1:20 p.m. and revealed what the Senior Director had told him, namely that Curb Mobility "was out." By 1:45 p.m., the Selection Committee reviewed all the bidders' submissions and price analyses, and unanimously agreed that Curb Mobility should not be awarded a contract.

Within a half hour, Gross began to text and call the NYC Transit Designated Contact and Elegudin. The Designated Contact told the Selection Committee (while the Selection Committee meeting was still ongoing) that Gross seemed anxious to speak with her and excused herself to take his call. Gross asked the Designated Contact for permission to resubmit Curb Mobility's BAFO. He claimed that he was on vacation when he discovered Curb Mobility submitted incorrect pricing figures in its BAFO. The Designated Contact told Gross she would have to speak to her superiors about Gross's request. When she returned to the Selection Committee videoconference, she advised the members to ignore the conversation for purposes of the meeting, as there was no new information to consider at the time. She and other committee

members had already thought Curb Mobility was too reliant on Gross, and his call only fostered that perception.

Concerned by the coincidental timing of Gross's call to the Designated Contact, the Director texted Elegudin to ask if he had called Gross after she and Elegudin's text conversation about Curb Mobility. Elegudin denied having contacted Gross. At 4:19 p.m., Elegudin sent a follow up to his earlier email to senior NYC Transit Procurement and Paratransit personnel, again requesting for the addition to the RFP's emergency response plans via a new Scope of Work and proposed that NYC Transit allow the proposers to resubmit their BAFOs.

B. Interviews

1. Alexander Elegudin, Senior Advisor for the Department of Systemwide Accessibility

The OIG interviewed Elegudin on October 20, 2020. He accepted the NYC Transit Senior Advisor position in the summer of 2018. Prior to that, he practiced patent law, co-founded a not-for-profit entity, and was the accessibility program manager at the New York City Taxi and Limousine Commission (TLC). While at TLC, Elegudin met both the Director and Gross.

Elegudin noted that prior to the RFP, NYC Transit used only 2 broker-based car service providers to perform the majority of the MTA's trips for disabled passengers. Elegudin thought that having only 2 providers was risky. For example, if 1 provider could no longer provide the service, the remaining vendor would be unable to fulfill the demand. Therefore, Elegudin sought to add additional broker-based car service providers. According to Elegudin, his persistence with MTA executives and board members eventually led to the issuance of the RFP.

Elegudin explained he served as the RFP technical adviser. NYC Transit Procurement personnel, specifically the Designated Contact and her supervisor, updated him "fairly regularly" on Selection Committee issues. He virtually attended a couple of the proposers' presentations. Elegudin acknowledged that he digitally signed a confidentiality or nondisclosure agreement. He agreed that he "couldn't discuss confidential information with regard to the proceedings."

According to Elegudin, during a meeting of the RFP Selection Committee on August 27, 2020, at approximately 11:00 a.m., the Director texted Elegudin to advise him that the Curb Mobility proposal was likely dead in the water. He texted in response to ask if Curb Mobility would get another "BAFO chance," i.e., an opportunity to submit a revised Best and Final Offer to win a contract. Elegudin acknowledged to the OIG that he was very upset because Curb Mobility was going to lose the contract. He stated that Curb Mobility had the most experience of all the proposers with a track record of providing essential transportation service to the members of the disabled community.

Elegudin acknowledged he called Gross at approximately 1:20 p.m. on August 27, 2020 to tell Gross that the procurement process was over, and that Curb Mobility was out. Elegudin then asked Gross "What the hell? Do you [Curb Mobility] not want MTA business anymore?"

Elegudin also told Gross that Curb Mobility's proposal was technically deficient, and its prices were high. Gross asked Elegudin if he (Gross) should call NYC Transit Procurement and fix the pricing. Elegudin responded that "I am not Procurement but if you have better prices, you should tell someone." Gross's final question was "should I say it was a mistake?" to which Elegudin replied, "I don't make those calls. The only thing I can do is talk to executives, but I can't control Procurement." Gross called Elegudin back and told him Curb Mobility definitely had lower pricing numbers, so he planned to resubmit Curb Mobility's BAFO. Elegudin claimed to the OIG that he told Gross that "that is between you and Procurement."

After these conversations with Gross, the Director texted Elegudin and asked if he had called Gross. Elegudin lied to her and said he had not. Elegudin admitted to the OIG that his response was a "mistake." He knew that he had in fact called Gross, and "it was spinning out of control." The Director called Elegudin 2 more times that afternoon. Elegudin said that he did not want to involve the Director, and he could not recall whether he admitted to her that he had called Gross. However, Elegudin acknowledged he told the Director that as the head of the System Accessibility Group, he felt he had to do what was best for people with disabilities. The Director was upset and told him that he had put her in an uncomfortable situation and that she was not going to vote for Curb Mobility. Elegudin told her to do what she thought was proper.

At the conclusion of the OIG interview, Elegudin took responsibility for his actions and apologized for the call to Gross. He stated that he wanted to learn from this incident and move on.

2. The Director of Systemwide Accessibility

On October 12, 2020, the OIG interviewed the Director. She joined NYC Transit and Elegudin's team in the fall of 2018. NYC Transit Procurement appointed the Director, who had previous RFP experience, to the Selection Committee for the RFP. The Director acknowledged that she signed a confidentiality agreement.

According to the Director, on August 27, 2020, the Selection Committee met to review the pricing and technical scores, and also make award recommendations. It became clear to the Director during the meeting that Curb Mobility would not be one of the 4 vendor candidates recommended for an award. The Director stated that Curb Mobility had been given numerous chances during the RFP process to display superior technical ability but had failed to do so. She also noted that Curb Mobility's pricing was the highest of the bidders. The Director acknowledged that once she realized that Curb Mobility was not going to be selected, she texted Elegudin that Curb Mobility was "on the chopping block." Elegudin texted back and asked "how much worse" was Curb Mobility's pricing. The Director responded that Curb Mobility was the highest of the 6 bidders, specifically \$1.00 higher per trip than one bidder and \$2.00 higher per trip than a different bidder.

After the Director's above-described text exchange with Elegudin, the Designated Contact told the Selection Committee members that Gross had called her. Due to the coincidental timing of Gross's call to the Designated Contact during the meeting, the Director

again texted Elegudin to ask if he had called Gross. Elegudin told her that he had not spoken with Gross. The Director told the OIG that Elegudin later admitted to her that he had indeed called Gross during the Selection Committee's August 27, 2020 meeting and had told him that Curb Mobility had to do better in order to be awarded a contract. The Director told Elegudin that he had put her in an awkward spot, but she stood by her decision not to recommend Curb Mobility for an award. Elegudin told the Director that she should do what she felt was proper and he would do what he had to.

The Director noted that she recommended that Curb Mobility should not be awarded a contract under the RFP. She further opined that Elegudin supported Curb Mobility because he honestly believed it was a vendor who served customers well.

The OIG found the Director to be cooperative during the entire OIG investigation. Moreover, OIG notes that the Director's text and email communications were consistent with her accounts of the events surrounding the RFP and subsequent disclosure of Selection Committee communications.

3. Jason Gross, Vice President, Head of Mobile at Curb Mobility

On November 13, 2020, the OIG interviewed Gross, the Vice President of Mobile for Curb Mobility. Gross advised that he is a graduate of Harvard University and worked for Curb Mobility and its corporate predecessor for more than 10 years. Gross has been responsible for their mobile business unit since about 2016.

In March 2019, NYC Transit awarded Curb Mobility a broker-based vehicle provider contract. In February or March 2020, Gross learned of a new RFP to add additional broker-based vehicle providers and/or alter the scope of work. He understood that this new RFP would supplant the contract under which Curb Mobility was currently operating. Curb Mobility submitted a proposal to NYC Transit Procurement in early June of 2020.

For the RFP, NYC Transit found Curb Mobility a responsible and qualified bidder, allowed Curb Mobility to make a presentation to the Selection Committee, and then moved them on to the price negotiation stage. During videoconference meetings to discuss price and legal issues, NYC Transit officials explained to Gross that it sought bids for breakdowns of 20%, 25%, and 33% of total business to account for differing numbers of broker service contracts to be awarded, and asked Curb Mobility to submit revised price quotes. Gross stated that at one of the price/cost meetings, an NYC Transit Procurement Price/Cost Analyst described Curb Mobility's pricing as above average under certain metrics. Curb Mobility submitted its BAFO on August 19, 2020, immediately after which Gross left for a family vacation.

On August 27, 2020, while still on vacation, Gross received a call on his cellphone from Elegudin. Elegudin told Gross that "some people evaluating the RFP proposals" liked Curb Mobility, while others did not. Elegudin further stated that Curb Mobility was expensive and that the newer vendors were aggressive in their pricing. Gross alleged that Elegudin did not elaborate as to what aspect of Curb Mobility's pricing was high, but he did tell Gross that Curb

Mobility's record of service under the previous Paratransit contract was not going to be enough to be awarded this contract.

Gross told the OIG he did not understand how Curb Mobility's BAFO pricing was high because he had adjusted prices downward in response to the above-described NYC Transit cost/price analyst's comment. Gross claimed he panicked when he realized he might have mistakenly submitted incorrect and high price numbers within the BAFO. Gross called Amos Tamam (Tamam), Curb Mobility's Chief Executive Officer⁶, told him about Elegudin's call, and posited that he (Gross) might have submitted incorrect pricing numbers.

Gross next reached out to the Designated Contact and told her that he may have made a pricing mistake when he submitted the Curb Mobility BAFO. He asked for permission to resubmit a corrected BAFO. Gross acknowledged that he did not tell the Designated Contact that Elegudin had called him and that was the real reason why Gross discovered the mistake in the BAFO. When the OIG asked why he had not told the Designated Contact the truth, Gross claimed that he was not sure.

After speaking with the Designated Contact, Gross called Elegudin to tell him that he (Gross) had finally spoken to the Designated Contact. A short time later, Gross emailed Curb Mobility's Pricing Specialist and stated he (Gross) discovered the BAFO submission error while he "had been looking at the file." Gross admitted to the OIG that he lied to the pricing specialist because it was Elegudin's call, not Gross's review of the file, that brought Gross's mistake to light. When the OIG asked Gross why he lied to the pricing specialist, Gross said that he was afraid for his job, that "the whole episode was scary", and he did not have time to think things through.

Gross stated his next contact with Elegudin was on either September 1 or September 2, 2020.⁷ During a phone call on an unrelated topic, Gross told Elegudin that he had not heard back from Procurement regarding his request to submit a corrected BAFO. Per Gross, Elegudin told him just to send a revised BAFO to Procurement. Gross stated that he ignored Elegudin's advice and did not resubmit the BAFO nor any documents to NYC Transit Procurement. Gross had a final telephone conversation with Elegudin on September 11, 2020. Elegudin told Gross that he was leaving NYC Transit for another position, and they then discussed matters unrelated to the RFP. According to Gross, this was the last conversation he had with Elegudin.

⁶ The OIG interviewed Amos Tamam, Chief Executive Officer of Curb Mobility, on December 7, 2020. He confirmed that Gross called him on August 27, 2020 and told him about Elegudin's phone call. However, Tamam stated that he did not know about Elegudin's and Gross's continued communications between August 28, 2020 and September 11, 2020, and only found out about them after OIG began its investigation. He also acknowledged that neither he nor any other of Curb Mobility's representatives reported Elegudin's disclosure of confidential communications to either the Designated Contact or someone at NYC Transit.

⁷ Elegudin's telephone records confirm calls between Elegudin's personal cell phone number and Gross's cell phone on September 1, 2020 and September 2, 2020.

Gross admitted that he never reported Elegudin's initial August 27, 2020 phone call nor their subsequent RFP related conversations to the Designated Contact nor anyone else at the MTA. He acknowledged that "I know that I am only supposed to speak with Procurement."

As a result of the OIG investigation, Curb Mobility advised it has taken remedial action, including hiring outside counsel to conduct an internal investigation, updating its Code of Ethics, creating mandatory training modules to prevent improper conduct, and instituting new policies about appropriate behavior and reporting requirements in governmental procurements. As a result of Gross's conduct, he accepted, without challenge, a 2-week unpaid suspension and submitted to counseling provided by Curb Mobility's senior management on appropriate behavior vis-a-vis governmental procurement bids and contracts.

III. POLICIES AND ANALYSIS

A. MTA All-Agency Code of Ethics

1. § 4.02: *Public Trust*

The MTA All-Agency Code of Ethics Section 4.02 states, in pertinent part, that employees shall not engage in a course of conduct that will raise suspicion among the public that they are likely to be engaged in acts that are in violation of the public trust. Further, employees shall avoid even the appearance that they can be improperly influenced in the performance of their official duties or induced to violate the public trust or impair their independence of judgment in the exercise of their official duties.

Here, Elegudin's conduct, specifically the passing of confidential Selection Committee information to Curb Mobility and attempt to request that the NYC Transit change the RFP, created the appearance that he could be influenced in the performance of his official duties. In addition, though to a far lesser extent, the Director's conduct in disclosing confidential Selection Committee information to Elegudin, her boss, may have created the appearance that she could be influenced in the performance of her duties. While we recognize that she mistakenly believed she could discuss Selection Committee deliberations with Elegudin, her actions could lead the public to raise concerns about the NYC Transit procurement process and had the potential to jeopardize public confidence in that process.

2. § 4.03: *Confidential Information*

The MTA All-Agency Code of Ethics Section 4.03 states, in pertinent part, that employees shall not disclose Confidential Information without the permission of the General Counsel of the MTA Agency at which such individual is employed for any purpose, nor use such information to further their personal interests.

Here, both the Director and Elegudin shared confidential Selection Committee information outside the committee. Elegudin's actions in sharing confidential information with Curb Mobility created an appearance that he wanted to give a bidder an unfair advantage in the selection process. The Director's actions, however, should be differentiated from Elegudin's.

Although the Director did share information outside the Selection Committee, she did so with her boss and the technical advisor of the RFP, Elegudin; we found no evidence suggesting she expected that Elegudin would reveal this information to a bidder or anyone else outside the MTA.

B. MTA Vendor Code of Ethics

1. § 2.01 Designated Point(s) of Contact

The MTA Vendor Code of Ethics, Section 2.01, Designated Point(s) of Contact, states, in pertinent part, that each procurement solicitation issued by MTA will identify the MTA's Designated Point(s) of Contact and once the Designated Point(s) of Contact is established, Curb Mobility and any person or entity acting on Curb Mobility's behalf should ensure that its contacts with the MTA comply with the requirements of the State Procurement Lobbying Law.

Here, Gross had contact with someone other than the NYC Transit Procurement Designated Point of Contact and discussed the content of Curb Mobility's BAFO submissions and the Selection Committee's review of the RFP proposals.

C. NYC Transit Rules and Regulations

1. Rule 10: Conduct of Employees

Rule 10 (a) states, employees are required to avoid behavior which would tend to create adverse criticism of the Authority or of the System. Their conduct, whether on or off duty, is required to be such as to merit the confidence and respect of the public and their superiors.

Here, the both the Director's conduct, namely improperly sharing confidential information with Elegudin, and Elegudin's subsequent and more egregious actions, including the disclosure of this information with a bidder on a NYC Transit Procurement contract and attempt to change the RFP, created the appearance of impropriety and could subject the MTA to adverse criticism.

2. Rule 12: Code of Ethics

Rule (12) (a) (4) provides that no NYC Transit employee shall disclose confidential information, without proper authorization or use confidential information to further his/her personal interests. And Rule 12 (a)(10) states, in pertinent part, that no NYC Transit employee [s]hall pursue a course of conduct which will raise suspicion that among the public that he/she is likely to be engaged in acts that are in violation of his/her trust.

Here, as noted above, the Director shared confidential Selection Committee information with her boss Elegudin, but it was Elegudin who in turn improperly shared this confidential information with Gross of Curb Mobility and then attempted to influence the NYC Transit to change the RFP. These actions, particularly Elegudin's, could constitute violations of the

confidentiality provisions and raises suspicion among the public that their actions are in violation of their public trust.

D. New York State Public Officers Law

1. § 74(3)(c)

Public Officer's Law § 74(3)(c) provides, in pertinent part, that a state employee should not disclose confidential information acquired by him/her in the course of his official duties nor use such information to further his/her personal interests.

As noted above, the Director shared confidential Selection Committee information with Elegudin, who then decided to improperly share this confidential Selection Committee information with Gross of Curb Mobility.

2. § 74(3)(f)

Public Officers Law § 74(3)(f) provides, in pertinent part, that no state employee should by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influences of any party or person.

As noted above, Elegudin's conduct, specifically the passing of confidential Selection Committee information and Elegudin's attempt to influence the NYC Transit to change the RFP, created the appearance that he could be unduly influenced in the performance of his official duties.

3. § 74(3)(h)

Public Officers Law § 74(3)(h) provides, in pertinent part that an officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.

As noted above, the Director shared confidential Selection Committee information with Elegudin, who in turn improperly shared this confidential Selection Committee information with Gross of Curb Mobility and then attempted to influence the NYC Transit to change the RFP. By improperly sharing or causing the improper sharing of confidential information with a bidder on a NYC Transit Procurement contract, both the Director and, to a greater extent Elegudin, engaged in conduct that could raise suspicion among the public that they likely engaged in acts that violated the public trust.

E. New York State Legislative Law Article 1-a

1. § 1-n Restricted contacts

The Lobbying Law § 1-n provides, in pertinent part, that during the restricted period of a procurement, no person or organization required to file a statement or report pursuant to the Lobbying Law shall engage in lobbying activities concerning a governmental procurement by a state agency by contacting a person with the procuring entity who has not been designated pursuant to section one hundred thirty-nine-j of the state finance law to received communications relative to the government procurement.

Here, Curb Mobility is a registered client of a lobbyist during the relevant time period at issue. Gross of Curb Mobility contacted or had contact with someone other than the NYC Transit Designated Contact, namely Elegudin, regarding information relative to the RFP during the restricted period of the procurement.

IV. FINDINGS

1. The Director improperly shared confidential Selection Committee information with her immediate superior and Elegudin shared this information with Curb Mobility, in violation of MTA All-Agency Code of Ethics § 4.03, NYC Transit Rules and Regulations, Rule 12 (a)(4) & (a)(10), and the New York State Public Officers Law § 74 (3)(c).
2. The Director's impermissible sharing of confidential information with her boss, Elegudin, subjected the MTA to adverse criticism and violated the public's trust, in violation of MTA All-Agency Code of Ethics § 4.02, NYC Transit Rules and Regulations, Rule 10, and the New York State Public Officers Law § 74 (3)(h).
3. Elegudin's subsequent decision to share the confidential information with Curb Mobility, and subsequent attempt to influence the RFP, subjected the MTA to adverse criticism, created an appearance of impropriety and undue influence, and violated the public's trust, in violation of MTA All-Agency Code of Ethics § 4.02, NYC Transit Rules and Regulations, Rule 10, and the New York State Public Officers Law §§ 74 (3)(f) & (h).
4. Curb Mobility, a bidder in an ongoing NYC Transit procurement, had impermissible contact with someone other than the designated NYC Transit Procurement Point of Contact, in violation of MTA Vendor Code of Ethics § 2.01 and New York State Legislative Law Article 1-a, § 1-n.

V. RECOMMENDATIONS

1. NYC Transit should place this letter in Elegudin's personnel file.
2. NYC Transit should review the Director's conduct for any action, such as counseling and training, as it deems appropriate.
3. NYC Transit should review and address the conduct of Gross and Curb Mobility as it deems appropriate, including but not limited to holding a responsibility hearing.

A copy of this report will be provided to JCOPE for its review and any action it deems appropriate.

As always, we appreciate your continued courtesy and cooperation. Please advise our office within 30 days of any action you intend to take, and the result of any action taken. In addition, please indicate your acceptance or rejection of each recommendation and the proposed quarter in the calendar year that the recommendation will be implemented. Please be advised that the Office of the MTA Inspector General may publicly disclose this report consistent with its statute and other state law, which may include name(s) of individuals and entities. Should you have any questions, or need additional information, please contact Executive Deputy Inspector General for Legal, Pei Pei Cheng-de Castro at (212) 878-0072.

Very truly yours,

/S/

Carolyn Pokorny

cc: Thomas Quigley, General Counsel, MTA Headquarters
David Farber, General Counsel, NYC Transit
Monica Murray, Chief Administrative Officer, NYC Transit
Kim Moore-Ward, Deputy Chief People and Labor Relations Officer NYC Transit
Monica Stamm, General Counsel, NYS Joint Commission on Public Ethics



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Agency Response
to
MTA/OIG #2021-02

NYC Transit Executive's Disclosure of Confidential Information to Vendor During Procurement Process

In a letter dated April 12, 2021, New York City Transit (NYC Transit) responded and agreed with the Office of the MTA Inspector General (OIG)'s recommendations. NYC Transit filed the OIG's report in Alexander Elegudin's personnel file and on April 9, 2021, NYC Transit's Chief Administrative Officer counseled the NYC Transit Director regarding her obligations as a selection committee member on procurement matters.

On April 14, 2021, NYC Transit Vendor Relations conducted a Special Responsibility Hearing for Curb Mobility, LLC. On May 4, 2021, NYC Transit Vendor Relations found Curb Mobility, LLC non-responsible, and pursuant to Executive Order 192 (EO 192), reported its findings to the New York State Office of General Services (OGS). OGS maintains a list of Non-Responsible Entities on its website. Companies found to be non-responsible remain on the list for 5 years, unless a court of competent jurisdiction determines that the non-responsibility determination was in error, or the Counsel to the Governor issues a waiver. If a bidder is on the list of non-responsible entities, EO 192 precludes New York State agencies and authorities from awarding contracts to a bidder unless the agency or authority obtains a waiver from the Counsel to the Governor. Curb Mobility, LLC intends to appeal the determination.