

RECEIVED APR 12 2013

IN THE MATTER OF MARIO GUERRA, the former Vice President/
Chief Mechanical Officer (CMO) for the Metropolitan Transportation Authority

Respondent

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT

Case No. JCOPE-68

WHEREAS, the Joint Commission on Public Ethics (the "Commission") has authority pursuant to Executive Law §94 to conduct an investigation to determine whether a substantial basis exists to conclude that a violation of the Public Officers Law has occurred, to issue a report of its finding of a substantial basis to conclude that a violation has occurred, and to impose penalties for such violation as provided for in the Executive Law;

WHEREAS, this Settlement Agreement ("Agreement") is entered into by and between the Commission and Mario Guerra ("Respondent");

WHEREAS, the Respondent served as the Vice President/Chief Mechanical Officer (CMO) for the Metropolitan Transportation Authority from in or about December 2010 to in or about January 2012;

WHEREAS, the MTA had initiated procurement plan R179 to select a subway car builder to design, furnish, and deliver 300 new subway cars for use by the New York City Transit Authority;

WHEREAS, Respondent served on the MTA Procurement Selection Committee R179 (the "MTA Selection Committee");

WHEREAS, Bombardier, Inc., a Canadian corporation ("Bombardier") participated in the R179 competitive bidding process and ultimately was awarded the contract by the MTA in March 2012;

WHEREAS, the Office of the MTA Inspector General issued a report, in March 2012, relating to the Respondent's conduct in connection with the R179 procurement plan, in which it found no evidence or reason to believe that Respondent, or any Bombardier employee, corrupted or impacted the integrity of procurement R179 in any way, but referred Respondent's conduct to the Commission for its consideration;

WHEREAS, the Respondent resigned from the MTA on or about January 27, 2012, during the investigation of the MTA Inspector General, and returned to Canada, where he had lived prior to moving to New York to work for the MTA and where he currently resides;

WHEREAS, the Respondent is subject to the provisions as set forth in Public Officers Law §73(5)(a), §74(2) and §74(3)(d), (f) and (h);

WHEREAS, on May 10, 2012, a letter was sent to Respondent alleging violations of Public Officers Law §73(5)(a), and/or §74(3)(d),(f) and (h) which afforded Respondent 15 days in which to respond to the allegations in writing;

WHEREAS, the Commission issued a Notice of Substantial Basis Investigation on May 7, 2012;

WHEREAS, in lieu of appearing in an adjudicatory proceeding that could result in the assessment of a civil penalty against Respondent, the parties to this Agreement have agreed to resolve this matter and avoid further investigation and administrative proceedings;

NOW THEREFORE, in consideration of the mutual covenants made herein, as the final settlement of the violations set forth herein, the parties stipulate and agree that:

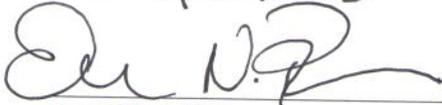
- I. Respondent admits that he violated Public Officers Law §74(3)(f) when, as described in paragraphs (i) - (iv) below, he engaged in discussions about future employment with Bombardier while serving on the MTA Selection Committee, notwithstanding that he ultimately was not hired by Bombardier:
 - (i) On June 23, 2011, while attending a transportation industry golf outing in Toronto, Canada, Respondent had a conversation with an acquaintance he had known for a number of years, the Director of Business Development and Sales for Ontario, Canada at Bombardier, expressing his interest in returning to Canada;
 - (ii) On October 12, 2011, while serving on the MTA Selection Committee, Respondent was contacted by a representative of Bombardier with regard to a possible employment opportunity in Canada. At that time, Respondent knew that Bombardier was one of two companies bidding for R179, which was under consideration by the MTA Selection Committee. The final request for proposal from each bidder was due to be submitted on November 3, 2011;
 - (iii) On or about October 17, 2011, Respondent sent via email a copy of his resume to Bombardier and arranged to meet with Bombardier executives in Toronto, Canada, on November 24, 2011; and
 - (iv) On October 20, 2011, Respondent sent an e-mail to another MTA employee requesting that a competitor of Bombardier be denied an extension of time to submit a proposal for R179. Despite Respondent's request, an extension was granted to November 10, 2011 for all bidders. On the same day, at some point after sending the e-mail, Respondent met with a Senior Vice President and member of the Procurement Executive Committee for R179, recused himself from the MTA Selection Committee, and disclosed that he had been in contact with Bombardier regarding the possibility of future employment.
- II. If Respondent breaches this Agreement, it shall be in the Commission's sole discretion to deem the Agreement null and void in its entirety and issue a new Substantial Basis Investigation Report, which may include additional charges against Respondent, and proceed with enforcement action. As to any new

Substantial Basis Investigation Report or enforcement action by the Commission, pursuant to this paragraph: (i) Respondent waives any claim that such action is time barred by a statute of limitations or any other time-related defenses, provided that such action would not have been time barred if brought on or before the date of this Agreement; and (2) Respondent expressly acknowledges and agrees that the Commission may use any statements herein, or any other statements, documents or other materials produced or provided by Respondent prior to or after the date of this Agreement, including, but not limited to, any statements, documents, or other materials, if any, provided for the purposes of settlement negotiations, or in submissions by Respondent or by counsel on behalf of Respondent, in any enforcement proceeding against Respondent relating to the allegations herein.

- III. The Commission has agreed to the terms of this Agreement based on, among other things, the representations made to the Commission by Respondent. To the extent that representations made by Respondent are later found to be materially incomplete or inaccurate, by the Commission, Respondent shall be in breach of this Agreement under Paragraph II herein.
- IV. Notwithstanding the provisions of this Agreement, Respondent understands and acknowledges that the Commission may investigate other knowing and intentional violations of the Public Officers Law, if any, by Respondent and take any appropriate action.
- V. Respondent waives any statute of limitations or other time-related defenses applicable to the subject of the Agreement and any claims arising from or relating thereto, as well as any right to appeal or challenge the determination or conduct of the Commission relating to this matter in an article 78 proceeding or by any other means.
- VI. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
- VII. Respondent consents to the jurisdiction of the Commission in any proceeding or action to enforce this Agreement.
- VIII. It is understood that this Agreement is not confidential and will be made public within 45 days of its execution in accordance with Executive Law §§94(14) & (19).
- IX. Respondent agrees not to take any action or to make, permit to be made, authorize, or agree to any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Respondent's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Commission is not a party. A violation of this Paragraph constitutes a breach of this Agreement by Respondent under Paragraph II. herein.
- X. This Agreement constitutes the entire agreement between the parties and supersedes any prior communication, understanding, or agreement, whether oral or written, concerning the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth in this Agreement has been relied upon by any party to this Agreement.

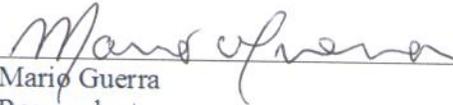
- XI. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
- XII. This Agreement shall become effective upon execution by the Commission or its designee.
- XIII. In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
- XIV. By signing below, Respondent acknowledges reading this Agreement in its entirety, understanding all terms and conditions of this Agreement, and having done so, knowingly, voluntarily, and freely enters into this Agreement.

Dated: April 16, 2013



New York State
Joint Commission on Public Ethics

Dated: April 8, 2013



Mario Guerra
Respondent