

## Clarification on Prior Questions

3. In connection with your response to question 3, please describe the process that is followed when a conflict of interest is identified and the actions that are or may be taken to resolve such conflict.

**Answer:** As set forth in Metra's Ethics Manual, when a real or apparent conflict of interest is identified, the matter is brought to the Ethics Officer. Then, based on the circumstances, the Ethics Officer will make recommendations on what action should be followed. For example, if there is a conflict of interest in a board member voting on a particular item, that board member will be instructed to recuse him/herself completely from the matter, including participation in any discussions, votes, or other actions related to the item. Another example is related to hiring. If an employee on a hiring committee discovers that he or she has a prior relationship (including family, acquaintances, prior co-workers, etc.) with a candidate, the employee is required to disclose the relationship. Based on the relationship, if it is determined that the employee has a conflict of interest in continuing to serve on the hiring committee, the employee will be removed from the committee. Please see the Exhibit 1a for Metra's Organizational Conflicts of Interest procedure and Exhibit 1b for Metra's Nepotism Policy and Form.

5. In connection with your response to question 5, please provide your recommendation on whether term limits should be imposed on Directors and if so, what said term limit should be.

**Answer:** According to the National Conference of State Legislatures, Illinois is not a term limit state and it is in the majority. To date, only 15 states have term limits. It is likely that the same reasons for and against term limits that apply to the legislature likely apply to the appointment and retention of Transit Board Directors, like Metra. The current Metra Board is diverse in experience, insight, and background, involving areas such as safety/security, finance, politics, transportation operations, business, etc. As such, the Board members bring a broad perspective and guidance to the Executive Director. However, the operation of a commuter railroad involves complicated areas and a great deal of time to master. New Board members are inundated with reading material and new matters, and many of the Directors have full time employment unrelated to Metra, making term limits seem less than ideal. Although we do not recommend term limits, to the extent that term limits are imposed, terms should be long enough to provide the board members sufficient time to learn about railroad operations and be able to provide the guidance and oversight that would be beneficial.

9., 10., 11. In connection with your response to questions 9, 10, and 11, (a) please describe with specificity the internal controls and monitoring related to employment actions or discrimination based upon political reasons or factors. In so doing, we ask that you direct us to the precise policy and page addressing this matter. In addition, please direct us to the pamphlet or material that your agency uses to disseminate policy positions that inform directors and employees that there shall be no discrimination or preferential treatment based upon political reasons or factors. Further, regarding the internal controls implemented to ensure that there is no unlawful discrimination based upon political reasons at your Agency, provided at 10(d) of your September 24 response, please provide a description of the background of these controls, including when they were first implemented and the process by which they were implemented.

**Answer:** (a) Clarification: EEO does not monitor political hiring, and Metra has already provided its internal EEO policies and procedures covering discrimination of protected classes under Title VII and other civil rights laws. Additionally, please see Exhibit 3a(iii) for our Title VI Notice of Protection, which was inadvertently left out of our prior response. Currently, Metra employees are subject to the law and general directives from the past and current interim CEO to continue to comply with the law, including the prohibition on taking political factors into consideration. Moreover, in light of current events, within the last 60 days, Metra's HR Department supplemented an existing certificate form signed by hiring managers and interviewers, certifying that managers and interviewers did not take "political reasons or factors" into consideration. This form will be monitored by the HR Department. See Exhibit 1b.

Further, page E-1 of the current Metra employment handbook states, in part, that "no employee or potential employee of Metra shall be required as a condition of employment, or continued employment, to participate in political activities." Moreover, during the last year, Metra's Ethics Officer has worked on a first ever comprehensive Ethics Manual that which was distributed to Metra employees in January 2014. That manual provides additional information to employees regarding political reasons and factors. For example, it discusses the Hatch Act, the Prohibited Political Activities Act and that employees may not promise anything of value related to Metra, including but not limited to, positions, promotions, salary increases, and other employment benefits in consideration for a political contribution to a political committee, political party, or other entity. See the 11-14-13 Ethics Manual Draft, attached as Exhibit 3a(i).

Also, please see the enclosed relevant portions of the New Board Member Binder material, attached as Exhibit 3a(ii), part of which was submitted to the Task Force as a supplement to our prior submittals, and which was discussed at one of your public hearings. This Exhibit includes an outline of material provided to the Board during our new small group board member "training class." The binder was also provided to existing board members. The material, under Section 2B of the outline involving employment, includes a 2006 legal memo discussing political patronage and advises Board Members of the state of the law; it also includes a copy of 3B.05 of the RTA Act with the prohibitions relating to "political reasons or factors" highlighted in bold. Metra's Law Department uses this material to discuss 3B.05, the *Rutan* case, and how the RTA Act is stricter than the *Rutan* decision. Prior to 2010, before the existence of separate Board Counsel (eliminated in August 2013), the Law Department participated in training sessions with Board members. The 2006 memo reflects a 2006 training session for the then board members. Additional internal control protections created by the Board include the requirement that all jobs be posted unless a waiver is received from the Board. Also, a hotline for complaints has been established. To date, the Board has not consented to waive or deviate from Metra's job posting policy.

(b) Please provide copies of all certifications or reports made by the Executive Director of Metra pursuant to MET 10-07 during the last seven years.

**Answer:** Please see Exhibit 3b.

(c) Please provide copies of all instances of Board consent to waiver or deviation from the agency's job posting policies pursuant to MET 10-14 during the last seven years.

**Answer:** To date, there have been none.

14. In response to question 14, you wrote that a whistleblower may contact the “Ethics Officer” amongst other entities. For your agency’s Ethics Officer, please identify (a) the process for selection and hiring the individual to hold this office; (b) the performance and factors considered for any employment action taken in connection with this position, including, but not limited to a change in salary, promotion within the office, or termination from the position; (c) identify (i) the individual currently serving in this position and (ii) the individuals to have held this position for the last seven years; (d) the background and history for this office, including the creation of the position and its enabling resolution; and (e) any reports or findings issued by this office in the last seven years. This material can be provided in a manner to redact information considered “private” under Illinois FOIA and other related laws.

**Answer:** (a) When there is a vacancy, Metra’s Human Resources Department advertises the Ethics Officer position, both internally and externally. The Ethics Officer must be an attorney with at least 7 years of legal experience, part of which must include ethics. After resumes are initially screened by the HR Department to assure that the minimum qualifications are met, they are forwarded to the Law Department evaluation team. Recently, the evaluation team was comprised of the incumbent Ethics Officer, the Assistant General Counsel (who supervises the Ethics Officer administratively) and a senior level attorney. The resumes were also vetted through Metra’s employment attorney. When the top candidates are selected, they are interviewed with pre-determined questions, which include ethics-related questions. When a top candidate is selected by the team, the selection is reviewed by the Human Resources Department and the EEO Department. It is also vetted with the General Counsel, who may or may not join the interview process. Since under the Ethics Act, the appointment of the Ethics Officer is done by the Board of Directors, the top candidates are identified by the Law Department. Resumes of those selected candidates are supplied to the Board along with a written memo outlining the content of the interviews and a recommendation of the top candidate. The Board then has the opportunity to ask questions. Thereafter, the candidate is given a conditional offer of employment, subject to appointment by the Board. After the candidate successfully passes the background check and the physical test, the candidate is officially appointed by the Board at the designated Board meeting, at which time there is time for further discussion of the candidate before the appointment occurs.

The past Ethics Officer was hired after a public posting from April 25, 2011 through April 29, 2011. The selected candidate was hired on June 20, 2011 with the job title of Senior Attorney in the Corporate Area of the Law Department. Metra’s standard recruitment and selection procedures were followed to fill this position. The Board of Directors approved the designation of the Ethics Officer at the June 10, 2011 Board Meeting.

(b) Since the Ethics Officer is a high ranking Law Department attorney, the Ethics Officer’s performance is reviewed by the Assistant General Counsel and the General Counsel. The Ethics Officer is not precluded from seeking other openings in the Law Department. The Ethics Officer may perform other legal work to provide for a richer work experience and some variety of assignments — to the extent possible based upon work load and the Ethics Officer’s request. Because of the sensitivity and ranking of the Ethics Officer position, while the CEO has the authority to terminate employees, it is contemplated that the CEO would consult with the Board of Directors based on their authority to appoint the Ethics Officer. Performance issues would be brought up in closed executive session as permitted under the Open Meetings Act.

(c) The position was held by Suzy Choi-Lee through December 30, 2013. She was in the position from June 2011 forward. She has resigned, effective early 2014, to join her husband who is working in California. Prior to that time period, the Ethics Officer was the prior General Counsel, Michael Noland. On December 13, 2013, the Board of Directors approved the appointment of Skip Benz as the new Ethics Officer, effective December 30, 2013. Metra has also provided for an overlapping period where Ms. Choi-Lee will remain on staff to assist in transitioning assignments and training the new Ethics Officer.

(d) The position of Ethics Officer was originally created under the Illinois Ethics Act in November 2003. Consistent with the Act, Metra passed ordinance MET 04-05, naming the General Counsel as the "Ethics Advisor." Effective July 1, 2011, the Ethics Act was amended, requiring the Ethics Officer to be appointed by the Board. In June 2011, the Board appointed Suzy Choi-Lee and on December 13, 2013, it appointed Skip Benz.

(e) As to issues or findings issued by the Ethics Officer in the last seven years, the Ethics Act exempts from FOIA any documents generated by an ethics officer under the Ethics Act. See 5 ILCS 430/20-95(a). As such, we are precluded by law from providing such information.

15. In response to question 15, you wrote that Metra has numerous investigations, audits, analyses, or reviews potentially relevant to our request. (a) For the last seven years, please provide copies of all: (i) Procurement System Reviews; (ii) EEO compliance reviews; and (iii) any related documentation regarding DBE matters.

**Answer:** Please see the 2006-2007 Response to the FTA, attached as Exhibit 5a(i)(1), as well as a letter from the FTA regarding the PSR Final Report, attached as Exhibit 5a(i)(2), and a series of Metra responses to the FTA Final Report, attached as Exhibits 5a(i)(3) through 5a(i)(13), which encompasses Metra's responses to the FTA Final Report.

Please see the attached Exhibit 5a(ii), which includes the EEO Compliance Review Final Report dated October 2011, as well as related correspondence.

Metra has been unable to find anything responsive to (iii) for the time period in question, other than materials which would be otherwise exempt, or would be possessed in a greater state of completeness by IDOT, such as the FTA's Unified Certification Program review.

(b) With regards to the Hillard Heintze Inspector General Semiannual Report for 2011, please indicate whether your agency has taken any action in connection with the recommendations included therein at page 10, under the section titled "Grounding Ethics Deeply Within Metra's Culture," or at page 12, under the section titled "Conducting Internal inquiries and Enforcing Discipline." If so, describe those actions and provide copies of any related documentation.

**Answer:** (b) The Hillard Heintze report indicated that the greatest challenge for the Board and the new Executive Director was to instill ethics and integrity so deeply into the fabric of the organization that employees refuse to tolerate unethical behavior in any form. Affirmative steps have been taken in this regard, as follows:

First, with few exceptions, employees take an annual ethics training, which is an interactive online training program providing ethics rules and scenarios. The training also requires

employees to analyze ethics questions based on scenarios they may face in real life. Employees answer each question and are given an explanation of the right and the wrong answers. Each year, the Ethics Officers from each transit agency works collaboratively to update the training content, including changing the scenario questions to ensure that the training remains relevant and applicable. Please see Exhibit 5(i) for a copy of the training program script from 2013.

Second, Metra created an Ethics Manual which will be disseminated to all employees in January 2014. The Manual will be available in paper form as well as online. The Manual is a comprehensive set of all applicable ethics policies and rules that guide ethical behavior across Metra. The Manual includes citations that allow employees to know where the policy or rule originated from, and an appendix of every statute that is cited in the Manual. See Exhibit 5b(ii) for a copy of the Ethics Manual.

Third, Metra created the Compliance Hotline for employees to call or email reports of potential ethics violations, such as non-compliance with rules or regulations; inaccurate records; theft, inappropriate vendor conduct, or misuse of Metra resources or work time. The reports can be made anonymously. When a Hotline report is received, the Audit department works with the Ethics Officer to review and investigate the allegations. Please see Exhibit 5b(iii) for the notice regarding this Hotline.

Lastly, Metra's Ethics Officer is in constant contact with employees. Employees are encouraged to and frequently do contact the Ethics Officer for ethics related questions. As needed, the Ethics Officer reaches out to employees individually or collectively when ethics related information needs to be disseminated.

(c) Further, in connection with Metra Requisition 49410 and Purchase Order S21424 as discussed in the memorandum sent by Alex Clifford to the Metra Board of Directors on October 12, 2012, or any related review, please indicate the status of any assessment by Hillard Heintze of the Metra Police Department, and provide copies of the final report, memorandum, assessment or similar analysis.

**Answer:** This report is not subject to disclosure under the Illinois Freedom of Information Act, and is exempt under 7(1)(f) as a record proposing policies and actions. However, in the interest of transparency, Metra is considering releasing the report, and at such time, will make such Report available to the Task Force.

16. In response to question 16, you referenced a number of ordinances. (a) Please indicate which ordinances, specifically, relate to the Blackman Kallick findings regarding (i) a lack of documentation for salary increases, (ii) a lack of correlation of performance reviews and compensation, (iii) a lack of oversight for contracts in connection with community & legislative affairs, (iv) instances of incompleteness and/or inconsistency with procurement files, and (v) a possible lack of controls for purchase orders under \$10,000.

**Answer:** 16a(i) MET 10-07 addresses documentation specific to salary increases.

In response to the Blackman Kallick findings, 16a(ii) has focused on amending Metra's overall compensation structure through a classification and compensation study, which has been implemented in part, to date, and in which Metra continues to implement. Further, Metra intends to implement a pay-for-performance review process in 2015, after guidelines are

published and managerial training is provided to ensure Metra's fair, non-biased implementation of this type of review process. See Exhibit 6a(ii) for the classification and compensation ordinances.

16a(iii) Metra has established oversight for contracts in connection with community and legislative affairs. Metra solicits proposals through the competitive Request for Proposal (RFP) process. The selection of the consultant(s) for the Community and Legislative contracts is based on the selection criteria established in the RFP. Once the selection of the consultant process is completed, the recommendation to award the contract is submitted to the Board through the consent agenda. Metra's Board of Directors review the consent agenda and take appropriate action.

The contract is awarded based on the approval of the Board. The vendor submits monthly reports detailing the tasks performed on the issues related to Metra accompanied by monthly billings with details of the work performed.

16a(iv) Metra did not have issues with inconsistency in the Procurement files, though a hasty review by the FTA was made difficult due to the number of documents contained in some files. To address this issue for future reviewers, Metra has begun tabbing the relevant sections and documents in order to readily identify those materials. Additionally, Metra has addressed the potential issue of incompleteness to files by instituting standard checklists for all procurements. As the issue was that of being able to hastily review the file, rather than that of incompleteness or inconsistency, Metra has no ordinance relevant to this point.

16a(v) Please see Exhibit 6a(v) for Metra's Informal Quotations and Award procedure covering the purchase of materials/services at a value of \$10,000 or less.

(b) Regarding the Hillard Heintze Inspector General Annual Report for 2010, please indicate what steps your agency has taken in connection with Advisory Memoranda Nos. 2010-2, 2010-3, and 2010-4 and provide copies of any related documentation.

**Answer:** 16(b) Advisory Memorandum 2010-2 (Improving the Discipline and Enforcement Process). Within the last 13 months, Labor Relations has lost key staff due to terminations and retirements. The Labor Relations Staff has been involved in contract negotiations and has not worked on updating any policies or procedures related to discipline and enforcement.

- *Guidance for supervisors is absent.* In 2012, Labor Relations provided general labor relations training for field supervisors.
- *Investigations often lack depth, quality and consistency.* The Labor Relations Department is sending its Labor Relations Specialist for basic labor relations training, which includes training for investigations. The Labor Relations Department has instituted counseling sessions for investigations. The Labor Relations Department has instituted counseling sessions before discipline for the purpose of building the relationship between the employee and their supervisor. This action has resulted in a reduction in investigations.
- *The "leniency" reinstatement and appeals process includes serious deficiencies.* Except to the extent required under collective bargaining agreements, Metra no longer allows "leniency" reinstatements.

Advisory Memorandum 2010-3 (Reinforcing the Importance of Ethics and Integrity) recommended the creation of a Metra Ethics and Integrity Committee. While Metra did not create an ethics “committee,” a new Ethics Officer was appointed in June 2011 as required by the Ethics Act. The Ethics Officer is charged with overseeing all matters related to ethics at Metra, including the items recommended in Advisory Memorandum 2010-3. Please refer to our response to 15(b) for the steps Metra has taken in improving ethics policies and awareness.

Advisory Memorandum 2010-4 (Making Hiring and Promotion More Transparent). Below are three common observations listed in AM 2010-4 and some responses enacted by HR:

1. Common Observation #1: “Metra employees are continually passed over for promotion due to cronyism, nepotism or political favoritism.”
  - a. This statement is untrue at least as of February 2011.
  - b. Mandatory posting of all vacant noncontract positions are now on Metra’s website.
  - c. Created and published a Metra Nepotism Policy.
  - d. Provided for annual performance reviews, feedback and goal setting.
  - e. Revised the tuition reimbursement policy.
  - f. Eliminated the practice of exploratory interviews. All applicants are directed to apply to Metra’s website at [www.metrarail.com](http://www.metrarail.com). HR will not accept random resumes that are hand delivered or mailed in to the HR Department.
  - g. Workforce Planning committee now starts the framework for creating employee career paths.
  
2. Common Observation #2: “Management is always switching the organizational structure around to justify undeserved promotions or salary increases.”
  - a. This statement is untrue at least as of February 2011.
  - b. Posting of Metra organizational chart on website.
  - c. During the compensation study, any adjustments in salary or grade for existing noncontract employees were reviewed and conferred by the compensation consultant.
  
3. Common Observation #3: “Metra managers are regularly hired and promoted without regard to professional credentials and qualifications.”
  - a. This statement is untrue at least as of February 2011.
  - b. HR has a standard qualification process for all noncontract position applicants.
  - c. A selection Committee meeting is conducted before noncontract hires.
  - d. Developed Management Training Program (Management Pro)

(c) For your agency’s Chief Audit and Compliance Officer, established pursuant to MET 12-02, please identify (i) the process for selection and hiring the individual to hold this office; (ii) the performance and factors considered for any employment action taken in connection with this position, including, but not limited to a change in salary, or promotion within the office, or termination from the position; (iii) identify (A) the individual currently serving in this position and (B) the individuals to have held this position for the last seven years; and (iv) any reports or findings issued by this office in the last seven years.

**Answer:** (c)(i) and (ii) Please note the Board of Directors is considering amending and restating the Chief Audit and Compliance Officer (CACO) Ordinance, Met 12-02, which was originally

passed in January 2012, at its January 17, 2014 Board meeting. Please see Metra's website for the latest or final ordinance. The CACO position is currently vacant. The prior CACO position was filled by the Board after the Board advertised for and interviewed candidates. Final action regarding termination and employment is performed by the Board. Going forward, an amended ordinance would contemplate including additional details, such as requiring increasing communications with the entire Board, and formalizing an ethical standard. The position will likely be a Chief Audit Officer (CAO) position and it is a combined position of the duties of the prior Chief Audit and Compliance Officer and the Head of Audit. Metra staff has been in consultation with the RTA's Deputy Director of Audits, and Ernst and Young regarding this new position. The new position will also incorporate generally accepted government audit standards.

(c)(iii) Mr. Richard Capra held the CACO position from its inception until his resignation, effective November 1, 2013. The CAO position is currently vacant.

(c)(iv) The position only existed from February 1, 2012 forward. Any reports or findings responsive to this question would be listed under Additional Information Item 2 below.

(d) In connection with MET 12-31, please provide copies of any rules, minutes, reports, presentations to, findings, or work product of the (i) Audit and Finance Committee, (ii) Employment Practices Committee, and (iii) Executive Committee, related to hiring, firing, or promotions of executives or employees, and purchasing and procurement. (iv) Further, please provide copies of the Ernst & Young Executive Compensation Review of 2010 and the Blackman Kallick Risk Assessment dated November 5, 2010.

**Answer:** (d)(i) Please see the attached Exhibit 6d(i) for the requested Audit and Finance Committee materials.

(d)(ii) Please see the attached Exhibit 6d(ii) for the requested Employment Practices Committee materials.

(d)(iii) Please see the attached Exhibit 6d(iii) for the requested Executive Committee materials.

(d)(iv) Please see the attached Exhibit 6d(iv) for the Ernst & Young Executive Compensation Review, as well as a copy of the Metra Summary and Response. The requested Blackman Kallick Risk Assessment was a draft of the final report previously provided in our October 1, 2013 response. The ordinances referencing the November date appear to be referencing the draft in error. If the task force would like to see the draft, we could provide it. While the draft is not identical to the final report, the findings are substantially the same.

17. In response to question 17, you wrote "See Exhibit 17." Please indicate whether you intend to provide a response to items 17(g)-(i), or refer us to the responsive material previously provided.

**Answer:** Question 17 requested copies of materials used to train (1) officers and employees; and (2) directors on:

- (g) any conflict of interest provisions;
- (h) any "statement of economic interest" provisions;
- (i) any requirements to report information to OEIG.

Conflict of interest provisions are contained in the annual ethics training (employees training as well as board member training), the code of ethics in the employee handbook, ethics ordinance MET 04-05, bidding regulations MET 12-03, and the Ethics Manual. These materials, excepting the Ethics Manual and the Ethics Training Script, are included in Exhibit 7(i). The Ethics Training is attached previously as Exhibit 5b(i), and the Ethics Manual is attached previously as Exhibit 5b(ii).

Statement of economic interest provisions are contained in the annual ethics training (employees training as well as board member training), the code of ethics in the employee handbook, and the Ethics Manual. In addition, each year, employees who are required to file are contacted and provided information on filing their statement and employees are always encouraged to contact the Ethics Officer with any questions.

Lastly, employees are provided with information on reporting matters to the OEIG through the following avenues:

- 1) The Ethics Manual contains section 14.8 on “reporting of wrongdoing” where it states that employees are expected and encouraged to report any alleged wrongdoing to either the Ethics Officer, the compliance hotline, the OEIG, or any law enforcement agencies. This section also provides information on how information can be submitted to the OEIG.

- 2) Under the “Ethics” tab in the employee portal (internal website for Metra employees), there is information on contacting the OEIG to report any possible ethics violations (copy of web page is attached as Exhibit 7(ii)). This information is again shared under the Audit Department information in the employee portal website.

- 3) Previously in 2011 when the OEIG took jurisdiction over Metra, the OEIG provided information to Metra employees about their office and how reports of wrongdoing can be sent to the OEIG, see Exhibit 7(iii). Although it was not required, Metra published this OEIG message on its external website for nearly two years. It was only recently taken down because information on the OEIG is now provided via the “Ethics” tab in the employee portal.

- 4) In November 4, 2011, a memo was sent to all employees from then Executive Director/CEO, Alex Clifford, regarding the OEIG and their published report summarizing key statistics and ethics violation cases. Since the presence of the OEIG was new to the employees, this memo and copy of the OEIG report was sent to employees to provide a better understanding of the Ethics Act the OEIG’s role in investigation all allegations. A copy of the memo and attachment is enclosed as Exhibit 7(iv).

- 5) Every month, the OEIG publishes a newsletter containing information about their office. Metra forwards this newsletter to all employees ensuring that employees are well aware of the OEIG’s presence and responsibilities under the Ethics Act. A copy of the most recent newsletter is enclosed as Exhibit 7(v).

19. In response to question 19, you wrote that Metra does not have any such rules concerning contacts between officers, employees, or directors and elected officials, or their representatives, concerning official business, but that, instead, Metra has a general practice of coordinating contacts through the

Government Affairs Office. Please provide copies of any correspondence or notes, records, or logs regarding communication between the Government Affairs Office and elected officials, or their representatives, regarding hiring, firing, or promotions of executives or employees, and purchasing and procurement, during the last three years. Further, please describe any known exceptions to this general practice, and provide any correspondence or notes, records, or logs regarding communications between Metra officers, employees, or directors and elected officials, or their representatives, regarding hiring, firing, or promotions of executives or employees, and purchasing and procurement, during the last three years. The responsive material can be provided in a manner to redact information considered “private” under Illinois FOIA and other related laws.

**Answer:** Attached as Exhibit 8(i), please find Procurement’s Procedure regarding vendor contact. All Metra contact with prospective vendors must be made only by the Materials Management Department, except as provided. Purchases under \$500.00, as covered in Direct Purchases (PU-13-RC), and Procurement Card Purchases for Materials and Services (PU-21-RC), are exempted from this procedure. Generally, Vendor/Contractor contact by any Metra personnel who are not in the Materials Management Department is prohibited, except to allow Metra staff to obtain information concerning potential sources, product availability, product specifications, and Vendor/Contractor qualifications.

Metra is providing redacted copies of the correspondence it was able to locate responsive to this question. It is not providing you information regarding Mr. Clifford’s allegations regarding Mr. Madigan and Patrick Ward, since this has already been publicly vetted. Please note that although other contacts were made, Metra felt no pressure to make a decision based on these contacts. All employment decisions were made in accordance with our policies and no individual included in this response was given preferential treatment, in fact no individual was awarded the position sought. See Exhibit 8(ii). Metra was unable to locate anything regarding purchasing or procurement, however this question as-written is very difficult to answer. Although Metra believes it is providing everything, there simply is no efficient mechanism to search three years of records.

## **Additional Information**

1. Please provide any documents reflecting any contacts by persons outside Metra regarding the hiring and/or promotion and/or granting of salary increases (or requests for hiring, promotion or salary increases) for members of Metra’s senior Executive Team during the last five years. The materials can be provided in a manner to redact information considered “private” under Illinois FOIA and other related laws. The materials should include, but are not limited to, letters of reference and notes or memoranda or emails involving references by outside persons, including but not limited to, elected or appointed officials.

**Answer:** Under the Personnel Record Review Act, Metra employees are not entitled to this material. Thus it would not be proper for Metra to publish this material, which is exempt under FOIA. Regardless, Metra is unable to conduct the search requested given the large number of employees that would be identified as senior leadership during the last five years. Many of the former employee files are contained in cold storage, off-site. As a compromise, Metra’s Human Resources Department conducted a random review of ten Senior Executive Team employee personnel files and no documentation was found responsive to this inquiry.

Please note that Metra recently uncovered boxes of documents dating from the late 1980s to early 1990s which appeared may be responsive to this question. These documents were promptly turned over to the task force once the Metra Law department learned of their existence.

2. Please provide a comprehensive list of all internal or external investigations, audits, analyses, or related reviews of Metra or its employees during the last seven years, including, but not limited to, those conducted by the Metra Inspector General, the OEIG, RTA, Illinois Department of Transportation, and the U.S. Department of Transportation, and whether we may arrange to review these documents. This list and the subsequent materials can be provided in a manner to redact information considered "private" under Illinois FOIA and other related laws. Further, please describe the policy of Metra regarding whether reports of the Metra Inspector General are available for review by the general public.

**Answer:** OEIG investigations are kept confidential from Metra. Although Metra receives request for documents from the OEIG, we are not privy to details or information pertaining to the investigations. In addition, the OEIG has advised that it considers information relating to its investigations to be confidential and exempt under FOIA. Certain findings are published by the OEIG and can be found on its website. To date, the OEIG has made no findings against Metra or any Metra employee.

Generally, Metra's internal investigations are confidential and exempt under FOIA. Hillard Heintze, Metra's previous Inspector General, has several published reports which are available on Metra's website. Please see the attached Exhibit 10 for a listing of all External Audits, a listing of all Metra audits by outside entities, and a listing of all Internal Audits, reviews, analyses, and investigations from the period of 2007 through 2013. Any decision regarding the inspection of an Audit will have to be on a case-by-case basis, to allow Metra an opportunity to determine whether it is appropriate to provide the requested materials. In addition to the materials contained within Exhibit 10, Metra's prior Chief Audit and Compliance Officer informally investigated complaints. No index of these complaint records exists.

3. Please provide copies of any records of discussions by the Metra Board of Directors during the last seven years regarding patronage or any issues related thereto, including, but not limited to, those in Board minutes and presentations to the Board.

**Answer:** Please see our website for all published minutes dating back to May 2009. We have attached, as Exhibit 11, the complete minutes or transcripts from those meetings where we believed there may be something of interest, however Metra lacks the resources to review seven years of minutes. Metra, in accordance with the Open Meetings Act, is not at this time willing to release any closed session minutes. These published minutes involve the ramifications of passing MET 13-03, which was enacted by a 6-5 vote, but subsequently sunsetted. The ordinance involved whether the Board should approve of all hires making more than \$75,000.

4. Please identify the standards and procedures that your agency employs in deciding whether to refer matters to the Office of the Executive Inspector General.

**Answer:** Any alleged violation of the Ethics Act is referred to the OEIG.

5. Please identify the reasons why people and/or entities lobby Metra. In addition, please provide any and all policies, procedures, and controls in place regarding the people and/or entities who lobby Metra.

**Answer:**

The primary reasons why Metra would receive a request from outside the Agency could include a community requesting Metra consider programming a station rehabilitation, a tunnel addition, grade crossing improvement etc. or requesting that Metra look at providing additional transportation to their community.

The process in place is that Government Affairs staff suggest the entity forward a letter of request to Metra's Executive Director/CEO. The Executive Director then schedules a meeting with appropriate Metra departments to consider and evaluate the request.

6. Identify the agency's revolving door policies, procedures, and controls governing the relationship and interactions between the agency and current or departing board members or agency employees, specifically, but not limited to, procurement, lobbying, and other agency issues. Provide copies of any such policies, rules, regulations, or requirements and identify the date of implementation.

**Answer:** Metra follows the revolving door prohibition set forth in the Ethics Act. See 5 ILCS 430/5-45 ("Revolving Door").

Under the Ethics Act, no former employee or board members can, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the employee or board member, during the year immediately preceding termination of State employment, participated personally and substantially in the award of State contracts, or the issuance of contract change orders, with a cumulative value of \$25,000 or more to the person or entity, or its parent or subsidiary.

In addition to this requirement under the Ethics Act, certain employees at Metra are subject to subsection (c) of Revolving Door because they hold positions that, by the nature of their duties, may have the authority to participate personally and substantially in the award of State contracts. These employees are commonly referred to as being on the "C List." C List employees must follow the notification requirement of subsection (f) or Revolving Door which requires C List employees to notify the OEIG of an offer of non-State employment during State employment or within a period of one year immediately after termination of State employment.

Metra's Executive Director, Chief Procurement Officer, and Board Directors are subject to subsection (h) of Revolving Door, and shall not, within a period of one year immediately after termination of office or State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the person or entity or its parent or subsidiary, during the year immediately preceding termination of State employment, was a party to a State contract or contracts with a cumulative value of \$25,000 or more involving the officer, member, or State employee's State agency. However, "person or entity" does not include the US government, the State, municipalities, units of local government, or school districts.

Please see Exhibit 14 for a copy of Metra's Compliance with Federal Lobbying Requirements procedures.

7. Identify Metra's revolving door policy regarding (a) current or departing board members of Metra and their service or business relationships with CTA, Pace, and RTA, and (b) Metra's relationship with current or departing board members of CTA, Pace, and RTA. Provide copies of any such policies, rules, regulations, or requirements and identify the date of implementation.

**Answer:** Please see response to #6 above. The revolving door prohibition contained in the Ethics Act does not prohibit current or departing board members of Metra from serving or having a business relationship with CTA, Pace, or RTA. See 5 ILCS 430/5-45(i). In the event that any such business relationship creates an apparent or real conflict of interest, then a separate conflict of interest assessment will be done and action recommended. However, revolving door prohibitions do not have a ban on such activity. Metra is not aware of any existing business relationship with current or recently departed board members of the CTA, PACE, and RTA.

8. Identify the policies, procedures, and controls in place regarding your agency's (a) procurement process, including bidding and price tracking; and (b) communications between board members or employees and past, current, or potential vendors regarding agency business and procurement. Provide copies of any such policies, rules, regulations, or requirements and identify the date of implementation.

**Answer:** Please see Exhibit 16 for Metra's Procurement Procedures.

9. In connection with procurement, identify the policies, procedures, and controls in place regarding your agency's (a) requirements and goals regarding the involvement of Disadvantaged Business Enterprises ("DBE"); (b) public reporting and disclosure regarding the success or progress of those requirements and goals; (c) agency procedure for validating an entity's DBE status; and (d) communications by and between the agency, or board members or employees thereof, and public officials on behalf of DBEs. Provide copies of any such policies, rules, regulations, or requirements and identify the date of implementation.

**Answer:** (a) Metra's DBE program Metra has an established Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Please see attached Exhibit 17 for a full list of appendices referenced below.

It is Metra's policy to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is our policy to:

- To ensure nondiscrimination in the award and administration of DOT – assisted contracts.
- To create a level playing field on which DBEs and small businesses can compete fairly for DOT assisted contracts.
- To ensure that the DBE program is narrowly tailored in accordance with applicable law.
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
- To help remove barriers to the participation of DBEs and small businesses in DOT – assisted contracts.
- To assist the development of firms that can compete successfully in the market place outside the DBE program.

Metra also has an established annual DBE goal of 21%. This is comprised of a 12% race conscious goal and a 9% race neutral goal. Race neutral DBE participation is defined as identifying opportunities for DBEs to participate as prime contractors through providing technical assistance, unbundling contracts, and assisting with bonding, if applicable. Race conscious DBE participation includes any participation acquired through the use of setting a goal on a contract when there valid sub-contracting opportunity.

B.) Metra reports DBE participation to the FTA on a semi-annual basis using the Uniform Report of DBE awards or commitments and payments, found in Appendix B to the DBE regulations. The Office of Business Diversity & Civil Rights (OBDCR) also reports to Metra's Board of Directors on a monthly and quarterly basis. These reports include all DBE program activities including, DBE files received, consultations, files processed, personal net worth statements reviewed, site visits completed, constructions contracts monitored, professional service contracts monitored, weekly certified payrolls reviewed, applications for payments processed, and outreach events attend.

Currently Metra is issuing a Request for Proposal (RFP) to conduct a disparity/availability study, to identify DBEs who are ready willing and able to participate in US DOT assisted contracts. The purpose of the study is to identify and define the existence and scope of discrimination, if any, and advise on whether there is a significant disparity between socially and economically disadvantage individuals within Metra's contracting industry. This information will be reported to the Federal Transit Administration and will be used to help the Senior Director determine the effectiveness of the current overall DBE goal.

C.) Metra's OBDCR verifies a firm's DBE status in two ways. First, DBE status can be certified when a firm initially applies for DBE Certification. Second, a firm's DBE status must be verified when they are submitted as a subcontractor on a Metra contract with an established DBE goal.

### **Initial Certification**

Metra's OBDCR certifies DBEs according to the criteria set by the US DOT and acts as liaison to the Uniform Certification Process in the State of Illinois. OBDCR verifies or denies certification of firms claiming DBE status, in accordance with established rules and regulations. Businesses wishing to be certified as a DBE must meet the requirements outline on page nine of section 26.5 in Metra's DBE program/policy statement (Appendix A).

The review process for DBE certification begins with an assessment of the submitted application and supporting documentation to ensure all information has been received as required by Federal Regulations. If any items require clarification or are missing, a Request for Information (RFI) letter is sent to the firm requesting the documentation be submitted within an allotted period of time.

The PNW Statement is a separate portion of the application that must be completed by the applicant, and is reviewed by the DBE Auditor II. First, a DBE specialist must review the applicant firm's gross receipts for the past three years. Then the DBE Auditor II will determine if the applicant is under or over the Small Business Administration (SBA) Small Business Size Cap for the type of work the company performs. The DBE Auditor II also reviews an applicant's assets

and liabilities to ensure the PNW is below \$1.32 million. After completion, the PNW is submitted to the OBDCR Director for review and approval.

Once the PNW Statement is approved, an on-site interview is scheduled with the firm. An on-site interview is required by federal regulations and is always conducted by two certification specialists. Certification Specialists travel to the firm and job site to meet with the majority owner to complete a standard questionnaire, tour the facility and take pictures if necessary. A job site visit can only take place if the business is currently working on a project or contract. Upon completion of the on-site interview, specialists complete a Summary/Audit Report to make a recommendation for whether the firm should be certified or not. The file and recommendation is then submitted to the OBDCR Director for the final certification decision. The firm is then notified in writing of the decision. If you are certified, your firm's name and the type of work you can perform will be placed in the Illinois Unified Certification Program Vendor Directory of Certified Firms.

### **Submission as a Subcontractor**

Prior to the award of a Metra contract with a DBE goal the prime contractor must make good faith efforts to meet the goal by documenting commitments for participation by DBE firms sufficient for this purpose. This information is given to the prime contractor at the time of the pre-bid/pre-proposal meeting (Appendix B).

The prime contractor must submit a completed and signed Schedule A or Schedule D and Schedule C(s) (Appendix C). When validating DBE status of a firm identified as a subcontractor by the prime, OBDCR compliance staff validates the firm's DBE status using the Illinois Unified Certification Program Directory available online.

The firms North American Industry Classification System (NAICS) codes are then crossed referenced with the Schedule A and Schedule C forms provided by the prime contractor to verify the DBE can perform the scope of work listed. This information is used to complete the DBE Credit Worksheet (Appendix D).

Once the DBE is verified and the contract is awarded, OBDCR continues to monitor the contract to ensure DBE participation is real and the DBE is performing a commercially useful function (CUF). An office review (Appendix E) takes place to review the contract agreement between the prime contractor and the subcontractor and to confirm the DBEs scope of work. A site review (Appendix F) is then conducted to ensure the DBE is on-site and conducting the specified scope of work submitted in the contract. A separate sheet is used if the vendor is a trucking firm (Appendix G).

D.) Communication with board members is limited to the information submitted to the members for the monthly and quarterly reports described earlier in question 9(b). OBDCR presents this information to board members in hard copy form and again at monthly board meetings.

OBDCR works with employees through the procurement, engineering and other using departments to confirm DBE goals and exhibits are included in bid packages. We also work with these departments when we set DBE goals for contracts. Participation in pre-bid meetings and

pre-proposal meetings also facilitates communication between OBDCR and other employees at Metra.

Communication with public officials only occurs in the form of general information displayed on our website. OBDCR's outreach efforts are not focused on advocating for or with public officials. OBDCR utilizes community groups and organizations to ensure we provide access and awareness for DBEs. All inquiries or request from public officials are directed to Metra's Community Affairs department.

10. Identify the agency's policies, procedures, and controls in place regarding debarment and suspension of individuals or companies seeking to do business with your agency, including (a) what steps, if any, the agency takes to determine if a vendor or contractor has been debarred or suspended; (b) what practices the agency undertakes to notify the relevant authorities of conduct by vendors or contractors that could lead to debarment or suspension; and (c) what procedures, if any, are in place to share such information with CTA, Pace, and RTA.

**Answer:** Occasionally, Metra has needed to place vendors in breach of specific contracts. Attached for information is Metra's Purchasing Procedure PU-12-RC, Termination of Contracts for Goods and Services by the Procurements Division, as Exhibit 18.

When formally soliciting bids/proposals for goods or services, Metra includes in its solicitation document, Debarment and Suspension Certificates to be completed by bidding/proposing vendors. If the bidding/proposing vendors are subcontracting any of the work and the value of that subcontracted work exceeds \$25,000.00, then the subcontractor identified to perform that work is also to complete a Certificate. These Certificates provide written affirmation by vendors and their subcontractors that they are not debarred or suspended. The statements on the Certificates are subject to the provisions of the Federal False Claims Act.

In addition to collecting debarment and suspension certifications from prospective third party contractors, and subcontractors as appropriate, Metra also checks the Excluded Parties List System (EPLS) prior to awarding any contract or purchase order of any amount. EPLS, which is now part of the System for Awards Management (SAM), is an electronic, web-based system that identifies those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

As stated above, Metra has not found it necessary to debar or suspend any individual or vendor because it has relied upon the EPLS. Therefore, it has not been necessary to notify relevant authorities. However, realizing that such conduct and a subsequent debarment or suspension is possible, Metra's debarment and suspension policy and procedure that is currently being developed will include appropriate notification requirements.

Again, Metra has not found it necessary to debar or suspend any individual or vendor, and therefore, has no relevant information to share with CTA, Pace, and RTA. In general though, vendor information, such as contract performance issues or instances of breach, is routinely shared with the foregoing agencies, upon request. However, given that debarment or suspension information may be valuable to CTA, Pace, or RTA, Metra's debarment and suspension policy and procedure that is currently being developed can incorporate an appropriate method to share such information.

Please see the attached Exhibit 18.

## **12/24/2013 Response**

1. A comprehensive list of all severance agreements, with associated dollar amounts, of any severance agreement your agency has entered into in the last five years.

**Answer:**

1. December 16, 2010; no monetary considerations.
2. February 17, 2012; \$62,500 (representing six months salary), plus \$9,033.03 representing accrued time-off in accordance with law and policy.
3. June 21, 2013; Up to ~\$871,000.

2. A detailed report on your agency's policies, practices, and procedures governing your agency's actions related to severance agreements.

**Answer:** Due to the extremely limited use of such agreements, Metra does not have policies, practices, or procedures with regard to severance agreements. Any such agreements must be handled on a case-by-case basis, incorporating legal and other considerations in the analysis, and must be approved by the appropriate authority. Metra does not enter such agreements lightly, as can be evidenced by the fact that only three exist, with one at no cost to Metra.