

July 25, 2006

Hon. Joel I. Klein
Chancellor
New York City Public Schools
Department of Education
52 Chambers Street, Room 314
New York, NY 10007

**Re: Eastco Building Services, Inc.
All Building Services, Inc.
Steven Brown, Debra Dix Brown
SCI Case No. 2004-2765**

Dear Chancellor Klein:

An investigation conducted by this office has substantiated that Eastco Building Services, Inc. (“Eastco”), a company owned by Steven Brown (“Brown”), colluded with All Building Services, Inc. (“All Building”), nominally owned by his wife, Debra Dix Brown (“Dix Brown”) in bidding for four Department of Education (“DOE”) building repair requirements contracts in July 2003. Eastco was awarded one such contract worth up to \$4 million after the company and All Building collusively bid, and this was renewed at the same terms for the following year.¹ In their bids to the DOE, Brown and Dix Brown each falsely declared that the bids submitted by their respective companies were arrived at independently and without consultation. Facts developed during this investigation showed otherwise, however. For example, both firms’ bids were prepared by at least one Eastco executive. In addition, the two companies used the same office, telephones, and personnel interchangeably, entered into subcontracts with each other, and paid each other substantial sums of money. Moreover, according to the couple’s joint tax return, both Eastco and All Building paid income to both Brown and Dix Brown.

¹ The DOE assigned this contract to Eastco after the winning bidder withdrew. Executives of the winning company and the remaining bidders were interviewed by SCI; there is no evidence that any participated in the collusion with All Building and Eastco.

Because of suspicions concerning bids submitted by Eastco and All Building on three \$3.3 million construction contracts with the New York City Department of Citywide Administrative Services (“DCAS”), the New York City Department of Investigation (“DOI”) joined the office of the Special Commissioner of Investigation (“SCI”) in investigating these companies, and determined that their bids for the DCAS contracts also were collusive.

In addition to deceiving the DOE and DCAS, Eastco, in violation of its contractual obligations, failed to cooperate with the investigation conducted by SCI and DOI. Along with All Building, Eastco ignored SCI subpoenas demanding documents seeking to demonstrate the connections between the companies. When advised that SCI obtained an order from the Supreme Court of New York County to enforce the subpoenas, counsel for All Building still refused to produce any documents. Eastco’s attorney proffered a document production which omitted business records showing transactions between the firms.

This matter was referred to SCI in December 2004 after Greg Brooks, Deputy Comptroller of the Office of the New York City Comptroller, wrote to Chancellor Klein and reported that it was highly likely that Eastco was engaged in collusive bidding with All Building in DOE contracts. Brooks noted “inter-relationships between the two companies,” including that:

- The presidents of the two companies are, or were, married to each other;
- the companies use, or have used, the same phone number and address;
- at least one owner/employee appeared to be working simultaneously at both companies; and
- the companies were listed as co-debtors on a 1998 Uniform Commercial Code filing.

Brooks also reported that the two companies submitted bids on at least three DCAS contracts, and that on two of the contracts, All Building’s bid was precisely \$20,000.00 higher than Eastco’s bid. Brooks further noted that “Nancy Avitable appears to currently hold high level positions at both companies.” Identified as Eastco’s secretary, Avitable signed a \$15 million bid submitted to the Department of Design and Construction (“DDC”) in February 2002, which awarded the contract to Eastco. Two years later, the Internet service Lexis U.S. Business Directory / U.S. Private Company Reports identified Avitable as All Building’s owner and vice president of sales. In October 2004, Avitable appeared in Eastco’s entry in the Lexis Executive Directory under the category “Purchasing.” Finally, Brooks reported that Eastco did not disclose its relationship with All Building in its VENDEX filings with the City.

Brooks copied his letter to DOI Commissioner Rose Gill Hearn, who referred the matter to SCI and to DOI’s Inspector General for DCAS.

SCI obtained the material referenced in Brooks's letter, and several additional documents described herein which amply demonstrate that Eastco and All Building frequently act as a single business entity.

Steven Brown

Steven Brown, accompanied by attorney Richard Milman, was interviewed at SCI under oath on two occasions. At the first meeting, Brown testified that he is the sole owner of Eastco, located at 130 Brook Avenue in Deer Park, NY. Brown said that he also owns other firms at that address: Westco Building Services, Yore Supply Company, Eastco Management, Inc. and EBS Trucking Inc. According to Brown, he established All Building as a janitorial services company. He claimed that he was uncertain whether he sold or gave the firm to his wife, Debra Dix Brown, in the 1990s, but asserted that she is now the sole owner.² Brown said that he believed that there were documents concerning the transaction by which ownership of All Building was transferred from him to his wife, and his attorney agreed to provide them to SCI. As of this writing, no such documents have been produced, nor has Brown's counsel explained why he has not produced them. Brown said that he does not know the identity of any corporate officers of All Building other than his wife, and although he reported that the firm's offices are located in New Jersey, he claimed he did not know the address. Brown testified that he was "not sure" where All Building was located when he owned the company. He maintained that he could not describe his wife's day-to-day involvement with All Building, or the frequency of her visits to the New Jersey office.

Brown acknowledged that Eastco had subcontracted work to All Building, but claimed that he did not know the last time that this was done.

Brown was shown Eastco's July 2003 bid to the DOE for general construction in western Brooklyn, and acknowledged that he was "involved" in its preparation, with Raj Durbal, Eastco's "technical writer," who calculated the amounts in the bid. With respect to the attached insurance bond, issued by Gulf Insurance Company, the same insurer which bonded All Building's bid, he acknowledged his signature and the notarization by Emily LaLima, whom he described as Durbal's secretary. When shown All Building's bid for the same DOE contract, Brown denied having seen it previously, and said that he did not recognize the handwriting on the document, except for his wife's signature, which appears as "Debra Dix." LaLima appears as the notary in the All Building bid, and Brown claimed that he could not explain why the Eastco employee performed this task. Brown said that he was not aware that All Building had bid on the same contract until Durbal informed him after the bids were opened. He claimed to be unaware of how Durbal learned this information.

² Brown confirmed that he resides with Dix Brown.

Brown was asked about Craig Bowes, and replied that he was previously employed by All Building. According to Brown, he did not know what Bowes's position was at All Building, or when he was employed at that company. Contrary to Bowes's subsequent testimony (detailed below), Brown denied that Bowes has any relationship to Eastco, and said that he did not know whether Bowes was ever an officer or employee of his firm.

When shown the Eastco bid to DCAS referenced in Brooks's letter, Brown acknowledged his signature on the document and LaLima's notarization of the attached Gulf Insurance Company bond. Brown said that he and Durbal calculated the bid. He claimed that he was unaware that All Building bid on the same contract until after the bids were opened and announced. The All Building bid was shown to Brown, who was asked to explain why in all but two of fourteen bid categories, All Building's sums on the bid were the same as Eastco's, and that when all categories are tallied, All Building's total bid was precisely \$20,000.00 more than Eastco's. Brown replied that there was a "plausible explanation," but then his attorney interjected and said that "he needs to explore his spousal privilege on that."

Before the SCI and DOI investigators concluded their first interview of Brown, the matter was adjourned at his attorney's request. The following day, Brown's attorney advised that he would not return to complete the interview.

Craig Bowes

Craig Bowes, a former employee of Eastco and All Building, appeared at SCI pursuant to subpoena, and was interviewed under oath. He testified that he was first employed by Eastco in 1991, was eventually promoted to executive vice president and general manager, and that in 1999, Brown placed him on the All Building payroll in the same title until he was laid off in September 2004.³ According to Bowes, Brown directed him to run operations at All Building, but told him that his responsibilities and office location at Eastco were to remain the same. Bowes said that Brown told him that he placed All Building in Dix Brown's name to enhance its prospects in obtaining government contracts as a woman-owned enterprise.⁴ According to Bowes, Dix Brown had no operational responsibilities at All Building. He testified that he occasionally saw Dix Brown at the Eastco Deer Park office on social visits to her husband, but never saw her at the All Building New Jersey office which appears as its address in the DOE bids.

³ Payroll records obtained by subpoena from ADP, a payroll services company, confirm that Bowes was employed by All Building.

⁴ SCI obtained a copy of All Building's "Contractor's Qualifications and Financial Information" filed with the U.S. General Services Administration dated April 14, 2004 and bearing the name and apparent signature of Debra Dix. A checked box appears alongside the statement, "The offeror represents as part of its offer that it is a women-owned small business concern." The document also identifies Bowes as executive vice president of All Building.

Bowes reported that efforts were undertaken to create the impression that All Building and Eastco were unrelated. A separate telephone line was installed for All Building at Eastco's Deer Park office, and a Post Office box was rented nearby and used as All Building's mailing address. He produced two business cards in his name, one showing his position with Eastco, and the other with All Building. The All Building card indicated a Post Office box address from which, Bowes said, he would collect mail and bring it to Eastco's office. According to Bowes, the telephone number on the All Building card was to the separate line at Eastco, whose employees were directed to answer in the name of All Building. He said that during his employment at All Building, LaLima, an Eastco employee, discovered that the telephone company yellow pages listing for All Building unintentionally showed its address as the same location as Eastco. Bowes testified that he heard LaLima discuss this with Brown and Nancy Auitable, and thereafter an Eastco employee contacted the telephone company and arranged for the Eastco address to be removed from All Building's listing.⁵

Most significantly, Bowes reported that on multiple occasions at Brown's direction, he appeared as an All Building representative at bid conferences concerning contracts on which All Building and Eastco had submitted bids. According to Bowes, Durbal or Chris Sanders appeared at the same conferences on behalf of Eastco. Bowes said that Brown had directed him to arrive at the conferences separately from his Eastco counterparts, and not to speak with them so as to give the impression that they were independent when, in fact, Durbal or Sanders would prepare bids for both companies. Bowes was shown attendance records obtained by SCI for a March 2004 bid conference concerning a contract with DDC. He verified, as indicated in the sign-in logs, that he attended the conference for All Building at which Sanders appeared for Eastco. Bowes said that after attending such bid conferences, he would give bid packets and any other materials he received to Brown or Durbal.

Bowes testified that after his dismissal from All Building, Brown telephoned him on approximately four occasions and asked if anyone had tried to contact him to inquire about All Building or Eastco. Bowes had not been contacted, and so informed Brown. Brown then told him that if he received any such inquires, he should not respond, but instead should contact attorney Howard Fensterman, who represented All Building and Dix Brown in this investigation.

Finally, Bowes was shown three All Building bids which were obtained from DCAS for contracts in December 2003. Each of the bids bears Bowes's apparent signature as an All Building executive in various places throughout the documents, and some of the signatures indicate that they were notarized by Deborah Thompson, whom Bowes identified as being employed by Eastco to handle accounts payable and receivable. Bowes said that he did not sign any of the documents, nor did he authorize

⁵ Verizon subscriber information obtained by SCI indicates that in February 2004 both All Building and Eastco were located at 130 Brook Avenue, Deer Park.

anyone else to do so.⁶ Bowes produced a New York driver license in his name, and allowed SCI to retain a photocopy. The signature on the license does not resemble the signatures in Bowes's name in the All Building bids.

Documentation of attendance at DOE and other bid conferences

Documents subsequently obtained by SCI from the Gordian Group, which managed bids for the DOE, corroborate Bowes's accounts of attendance at a bid conference. One sign-in log from July 14, 2003 shows his presence for All Building, with Anthony Priore attending for Eastco. The documents show that one week later, Durbal attended a follow-up conference for All Building, with Priore again representing Eastco.⁷ Records obtained by SCI show that at a second bid conference for a DDC contract in March 2004, Sanders again attended as Eastco's representative while another Eastco employee, David Roth, appeared for All Building.

Documents demonstrate continued connections between All Building and Eastco

In addition to those documents referenced in Brooks's letter, SCI and DOI obtained the following documents (mainly from third parties) showing the interconnections between All Building and Eastco:

- A June 2001 loan agreement for Eastco from Fleet Bank bearing Brown's apparent signature listing All Building's assets as collateral;
- the 2002 U.S. joint income tax return of Brown and Dix Brown, indicating that each had received income from All Building and Eastco;
- a May 2003 Gulf Insurance joint indemnity agreement for Eastco and All Building bearing the apparent signatures of Brown and Dix Brown for the respective companies;
- an October 2003 check from All Building to Eastco for \$21,600.00 signed by Nancy Avitable, an officer of that company (as verified by her testimony);
- Verizon subscriber information from February 2004 showing the same Deer Park address for both companies;
- an Eastco financial statement dated March 12, 2004 indicating an All Building receivable of \$20,000.00;
- a Dun & Bradstreet Background Report for All Building dated March 18, 2004 stating that Brown is the chief executive officer of the company, which has its headquarters at the same address as Eastco;
- an April 2004 All Building bid document obtained by SCI from the U.S. General Services Administration, bearing the apparent signature of Dix Brown, identifying Durbal as the All Building employee in charge of "business development," and listing a contact telephone number for Durbal which is located at the Deer Park offices of Eastco, according to Verizon database listings;

⁶ Thompson, represented by attorney Kenneth Russo, testified that she is an Eastco employee and, contrary to Bowes, said that he signed the All Building bid in her presence.

⁷ The Gordian files show that Durbal apparently penned in his name on an All Building business card printed in Sanders's name.

- an April 27, 2004 business loan agreement obtained by subpoena from Suffolk County National Bank (“Suffolk National”) bearing Brown’s apparent signature and listing All Building among the unlimited guarantors on a \$5,000,000.00 loan to Eastco;
- an April 29, 2004 signature card and application for an All Building account obtained by subpoena from Suffolk National identifying “Debbie Dix” as president, Avitable as vice president and secretary, and Robert Rothbort as Controller, with the mailing address and telephone number of the Eastco Deer Park offices crossed off the application, and All Building’s Post Office box and telephone numbers inserted in their place;⁸
- three signature cards and applications obtained by subpoena from Suffolk National also dated April 29, 2004 in the names of Eastco, Westco Building Services, Inc., and Eastco Building Management, Inc., each identifying Brown as president, and Avitable and Rothbort in the same titles as they appear in the All Building account;⁹
- insurance policies issued in July 2004 by Hartford Insurance to both All Building and Eastco;
- an October 2004 All Building check obtained by subpoena from Fleet Bank payable to Eastco in the amount of \$10,000.00;
- a December 2004 ChoicePoint credit report showing the same Deer Park address for both companies;
- a December 2004 check obtained by subpoena from Fleet Bank showing payment of \$77,000.00 by All Building to Eastco and bearing a signature which Avitable later verified as hers; and
- a December 2004 check to All Building for \$91,317.00 drawn on a joint personal account of Brown and Dix Brown and bearing Brown’s apparent signature.

Eastco employees confirm acting on behalf of All Building

Raj Durbal appeared with counsel, Kenneth Russo, pursuant to an SCI subpoena and was examined under oath. After answering some preliminary inquiries, Durbal flatly refused to answer any substantive questions concerning Eastco and All Building, and asserted the Fifth Amendment right against self-incrimination in support of his refusal.

Nancy Avitable, after ignoring SCI’s subpoena, appeared and was interviewed under oath only after being compelled to do so by order of the Supreme Court of New York County upon motion of SCI. She was represented by Milman. Avitable testified that she was first employed by Eastco as a bookkeeper in 1995, became the controller in 1996 or 1997, and was promoted to vice president of Eastco in 2003. She reported that she has been the corporate secretary of Eastco since 1997, that Brown also appointed her

⁸ The same individuals appear with the same titles in the signature card obtained by SCI from Suffolk National for North American Building Services, Inc.

⁹ These three individuals appear in the same titles in Suffolk National records relating to an account opened in July 2004 for Potter Realty LLC.

to that position at All Building, and that she remained in that title after Brown transferred ownership of that company to his wife.¹⁰ According to Avitable, she remains on the Eastco payroll and reports to Brown. However, she acknowledged that she continues to periodically handle accounts payable, checks and invoices for All Building upon request, and that All Building has paid approximately three bonuses of “a few thousand” dollars to her. Avitable testified that Eastco has subcontracted work to All Building. She acknowledged her signature on the December 2004 All Building check to Eastco, but claimed that she did not know the purpose of the payment.

Although Brown denied knowing if Craig Bowes was ever employed by Eastco, Avitable testified that Bowes was working there when she arrived in 1995. She said that she did not recall when he stopped working for Eastco, but his next employment was as All Building’s “operations person” or “general manager.” Avitable claimed that when Bowes took the All Building job, he no longer worked at the Eastco offices. She said that she did not know the location of his All Building workplace.

Robert Rothbort also ignored SCI’s subpoena, necessitating SCI to petition the Supreme Court of New York County for his compliance. The motion was granted, and Rothbort appeared at SCI, represented by Milman. Rothbort testified that he was hired by Eastco in February 2003, and that he reports to Avitable. He said that since joining Eastco, he has also performed tasks for All Building at Avitable’s direction, including handling tax notices and inquiries and insurance matters. Rothbort confirmed his signature on All Building’s bank signature card, and said that he did this at Avitable’s direction “just in case” others were unavailable to handle banking transactions for the company. He acknowledged that he signed “maybe one or two” checks on behalf of All Building.

Emily LaLima also ignored SCI’s subpoena. Her counsel, Kenneth Russo, agreed to produce his client for testimony only after being advised that SCI’s motions to compel the appearances of Avitable and Rothbort were granted. She testified that she has been employed as a secretary for Eastco for five years and that she reports to Durbal. LaLima said that after she received the subject subpoena, Durbal advised her that the matter concerned the fact that Eastco’s bids to the DOE and DDC appeared to be similar to those of another bidder. When asked if Durbal identified the bidder, LaLima refused to answer, asserting the Fifth Amendment right against self-incrimination. She allowed that she is familiar with All Building, but again cited the Fifth Amendment and refused to answer how and when she first became familiar with the company.

LaLima identified Craig Bowes as an All Building vice president whom she met at the Eastco office, and said that he was never employed by Eastco. When asked if Bowes maintained an office at Eastco, she asserted the Fifth Amendment privilege.

¹⁰ Avitable said that she is also corporate secretary of Westco Building Services, Inc., and Potter Realty LLC, also owned by Brown, as well as North American Building Services, Inc., owned by Dix Brown.

LaLima acknowledged notarizing the July 2003 Gulf Insurance document for Dix Brown included with the DOE bids. She admitted that she performed other tasks for All Building, and “probably” notarized other documents for the company, but declined to identify who directed her in this work, again invoking the privilege against self-incrimination. She also declined to answer on Fifth Amendment grounds when asked if there was a separate telephone line at the Eastco offices which she and others were directed to answer in the name of All Building.

David Roth and Anthony Priore, also represented by Russo, appeared at SCI pursuant to subpoena on the same date as LaLima and were examined under oath.

Roth testified that he is Eastco’s Director of Marketing, has been employed by the firm since June 2003, and has attended bid conferences on behalf of Eastco. However, he asserted the Fifth Amendment privilege when asked about his knowledge of All Building, and in response to questions about what companies he has represented at various bid conferences. Roth was shown a photocopy of attendance sheets for a March 2004 DDC pre-bid conference, to which was attached a business card bearing his name, and representing that he was an All Building employee.¹¹ Roth claimed that the documents did not refresh his recollection as to whether he attended the conference. He asserted the Fifth Amendment privilege when asked if he recognized the All Building business card, if he ever possessed such cards, and if ever received calls or faxes at the numbers indicated on that card.

Anthony Priore testified that he has been employed as a Project Manager for Eastco for the past five years, and that he reports to Steven Brown. He stated that he first heard of All Building while attending a DOE bid announcement on behalf of Eastco. Priore said that he knew Chris Sanders as a fellow Eastco employee, and that he has attended bid conferences at which Sanders was also present. Priore was shown attendance sheets with attached business cards indicating that Priore attended a DOE bid conference on behalf of Eastco and that Sanders attended the same conference as an All Building representative. Priore acknowledged that he attended the conference, but stated that he was not certain whether he saw Sanders at the conference. Priore also acknowledged attending a second DOE bid conference on behalf of Eastco when shown photocopies of the attendance sheets to which were attached his Eastco business card. The same sheets also included an All Building business card on which the printed name “Chris Sanders” was replaced by a handwritten “Raj Durbal.” Priore stated that this did not refresh his recollection as to whether he saw Durbal, whom he knows, at the conference.

¹¹ An Eastco business card bearing Chris Sanders’s name was attached to the same attendance sheet.

Chris Sanders was interviewed under oath at SCI pursuant to subpoena, represented by Milman.¹² At Milman's direction, Sanders declined to indicate the source of his attorney's fee.

Sanders said that he has attended bid conferences on behalf of Eastco, and that he reports to Brown. He said that he knew Bowes, but did not recall where he first made his acquaintance. When Sanders was shown the documents from the July 2003 DOE bid conference, including an All Building business card in his name attached to the sign-in sheet, he commented, "It does not mean I attended the bid conference." When asked if he ever possessed All Building business cards in his name, he declined to answer and asserted the Fifth Amendment privilege. He claimed the same privilege when questioned about the following:

- How he knows the name "All Building Services;"
- whether he communicated with Craig Bowes concerning Eastco and All Building;
- if he ever saw Bowes at a bid conference;
- the location of the fax machine bearing the number indicated on the All Building business card in his name; and
- if he attended a bid conference at which David Roth, whom he acknowledged to be an Eastco employee, also was present.

Sanders admitted that the mobile telephone number appearing on the All Building business card in his name is assigned to the mobile telephone given to him by Eastco for business purposes. He said that he had never been paid by All Building. Sanders testified that it was "possible" that he attended the two bid conferences for the DDC contract in March 2004, but when shown that agency's records containing his name as attending for Eastco (Roth and Bowes are shown attending for All Building), he said that it did not refresh his recollection as to whether he attended the conference.

VENDEX

Notwithstanding the compelling documentary and testimonial evidence of affiliation of Eastco and All Building, Eastco's Business Entity Questionnaire ("VENDEX") filed with the Mayor's Office of Contracts and containing Steven Brown's apparent sworn certification of August 1, 2000 states:

- Eastco does not share office space, staff, equipment or expenses with any other business (question 5(a));
- Eastco does not control one or more other businesses (question 8);
- Eastco does not have any affiliates (question 9).

In December 2003 and January 2005 filings with the City, Eastco certified that nothing had changed with respect to these matters since its VENDEX filing of August 2000. The

¹² In response to preliminary questions, Sanders stated that he had not discussed with Milman his representation of Eastco and other witnesses in this investigation, and the possible adverse consequences to Sanders resulting from a conflict of interest. SCI investigators offered Sanders (in Milman's presence) the opportunity to discuss this with Milman or any other attorney, and Sanders declined.

affidavit (2003) and certificate (2005) attesting to this bears Brown's apparent signature as notarized by LaLima.

Debra Dix Brown

Only after SCI prevailed in its motions to compel subpoenaed documents from Eastco and All Building did Fensterman agree to produce Dix Brown at SCI to be examined under oath. She acknowledged that All Building had been given to her by her husband, but with respect to nearly every question pertaining to the subject bids and All Building's relationship with Eastco, Dix Brown declined to answer, asserting the Fifth Amendment privilege against self-incrimination and the spousal privilege.¹³ The interview concluded after she claimed these privileges in response to approximately 112 questions.

Steven Brown (second interview)

On the same day as his wife, Brown returned to SCI to be interviewed a second time under oath, again represented by Milman. With respect to nearly all questions regarding the subject bids, and Eastco's relationship with All Building, Brown asserted the privilege against self-incrimination and declined to answer. He claimed the Fifth Amendment privilege in response to approximately 116 questions, including on matters about which he had testified in his prior interview at SCI.

Eastco and All Building failed to cooperate in the investigation

Brown's initial failure to return to SCI was the first of several instances in which he, Dix Brown, Eastco, All Building, and their employees declined to cooperate with the investigation conducted by SCI and DOI. In every subsequent stage of investigation, Eastco and All Building, by and through their officers and agents, obstructed the ability of SCI and DOI to fully investigate this matter.

SCI issued a subpoena to Automated Data Processing Inc. ("ADP"), a payroll processing company that prepares the payrolls for both All Building and Eastco. This subpoena demanded that ADP produce all documents pertaining to Eastco and All Building within its possession. ADP produced Eastco's records, but refused to produce All Building's records, based on an objection by Fensterman, counsel for All Building and Dix Brown. Fensterman then filed a petition for an Order to Show Cause to quash SCI's subpoena.¹⁴ However, at the eleventh hour, Fensterman withdrew All Building's motion to quash, and ADP produced the records.

¹³ The marital privilege is most likely inapplicable to spousal communications regarding business transactions. See N.Y. C.P.L.R. § 4502(b) (McKinney 1992); G-Fours, Inc. v. Miele, 496 F.2d 809, 813 (2d Cir. 1974).

¹⁴ Matter of All Building Services, Inc. v. Condon, (Sup. Ct. N.Y. Co., Index No. 108363/05).

Rothbort and Avitable, represented by Milman, Eastco's attorney, simply ignored SCI's subpoenas and failed to appear on the return dates without any explanation.¹⁵ At one point, Milman advised SCI that he represents officers of Eastco, and that he would not produce witnesses subpoenaed for this investigation. He made no effort to negotiate compliance with the witness subpoenas. LaLima, represented by Kenneth Russo, also refused to appear. Accordingly, SCI filed an order to show cause to enforce SCI's three subpoenas.¹⁶ Justice Judith Gische presided over oral arguments in that matter and rendered a decision on the record, ordering Rothbort and Avitable to comply with the subpoenas served on them.¹⁷

Fensterman initially informed SCI that he would resist all attempts to obtain Dix Brown's testimony.¹⁸ Counsel for All Building and Eastco each accepted service of SCI's subpoenas for business records, but simply ignored their demands and made no effort to negotiate compliance. This necessitated SCI's second petition for a court order to enforce its subpoenas in this investigation, which was granted.¹⁹

While SCI's motion to compel compliance with SCI's document subpoenas was pending, Eastco's counsel produced documents purported to be in satisfaction of the subpoena to that company. However, Eastco's production contained no documents specifically demanded by the subpoena which show transactions between the subject companies as evidenced in the witnesses' testimony and in documents obtained from banks and other third parties. Even after being advised that SCI prevailed in its motion to compel, All Building's counsel refused to produce any documents, and he made no effort to negotiate compliance with the subpoena.

Conclusion and recommendations

As detailed above, Eastco and All Building, through Steven Brown and Debra Dix Brown, falsely represented that their bids to the DOE and to DCAS were arrived at independently, when they were in fact, the result of collusion to restrict the competitive process to the detriment of the DOE and DCAS. All Building exists as an alter ego of Eastco, and their operations are interwoven. Brown's initial testimony was incredible as a general matter, and his denial of knowing whether Bowes was ever employed by Eastco was flatly contradicted by Bowes, and does not comport with the testimony of Avitable, who also reported to Brown at Eastco. Underscoring their culpability, Eastco and All Building failed to cooperate with this investigation, ignoring lawful subpoenas, and in the case of Eastco, its contractual obligations with the DOE.

¹⁵ Milman acknowledged that Avitable received the subpoena.

¹⁶ Matter of Condon v. Rothbort, (Sup. Ct. N.Y. Co., Index No. 403321/05).

¹⁷ SCI's petition with respect to LaLima was withdrawn on the date of the hearing. However, SCI thereafter negotiated compliance with her attorney (Russo) for her appearance after Justice Gische granted SCI's motion with respect to Rothbort and Avitable.

¹⁸ Remarkably, Fensterman's law firm is attorney of record for Eastco in a breach of contract suit brought against All Building concerning a subcontract in January 2005 (Sup. Ct. Suffolk Co. Index No. 05-2467).

¹⁹ Matter of Condon v. All Building Services Inc., and Eastco Building Services Inc. (Sup. Ct. N.Y. Co., Index No. 4000110/06).

We recommend that the DOE seek civil damages from these companies, and deny them and any companies with which Brown and Dix Brown are affiliated any future business with the DOE. We are referring this matter to the Chief of the Antitrust Bureau of the Attorney General of the State of New York and to the District Attorney of New York County for whatever action they deem appropriate. We are also forwarding a copy of this report to the appropriate inspectors general of City, State and Federal agencies and public authorities with which All Building or Eastco are doing business, have done business, or are authorized to do business according to documents obtained in this case: The New York City Department of Design and Construction, the City University of New York, the New York City School Construction Authority, the New York City Housing Authority, the Dormitory Authority of the State of New York, the State of New Jersey, the U.S. National Archives & Records Administration, the U.S. Department of Labor, the U.S. General Services Administration, and the U.S. Department of Homeland Security. Eastco apparently does business or has done business with the Suffolk County (N.Y.) Government, and we are forwarding a copy of this report to the County Attorney.

Finally, we are forwarding a copy of this report to the Comptroller of the City of New York, whose office first reported this matter, and to the Mayor's Office of Contracts.

Should you have any inquiries regarding the above, please contact Deputy Commissioner Gerald P. Conroy, the attorney assigned to the case. He can be reached at (212) 510-1486. Please notify Deputy Commissioner Conroy within thirty days of receipt of this letter of what, if any, action has been taken or is contemplated concerning All Building Services, Inc., Eastco Building Services, Inc., Steven Brown and Debra Dix Brown. Thank you for your attention to this matter.

Sincerely,

RICHARD J. CONDON
Special Commissioner
of Investigation for the
New York City School District

By: _____

Gerald P. Conroy
Deputy Commissioner

RJC:GPC:gm

c: Michael Best, Esq.
Theresa Europe, Esq.