



## **PERFORMANCE EVALUATIONS OF CONSULTANTS WORKING ON MTA CAPITAL PROJECTS**

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### **INTRODUCTION**

In 1998, as the culmination of work by an all-agency committee led by the MTA Office of Construction Oversight (OCO), the MTA adopted guidelines for an All-Agency Contractor Evaluation (ACE) system (the ACE Guidelines) to uniformly obtain and record reliable information on the performance of consultants and contractors working on MTA capital projects. These Guidelines require that capital project managers at each agency issue interim evaluations every six months after contract award and a final evaluation at the conclusion of the work for all contracts valued at \$250,000 or more. These performance evaluations are later used by MTA agencies, together with other information, during pre-award background checks on prospective consultants and contractors to establish their “responsibility.” The purpose of the responsibility determination is to obtain reasonable assurances that the consultants and contractors have the integrity, ability, and capacity to fulfill the contracts’ quality, safety, and scheduling requirements.

To ensure that all contracts and evaluations are entered into the ACE system, each agency appoints an ACE Administrator charged with monitoring compliance with the ACE Guidelines. As for the MTA as a whole, OCO is responsible for the oversight of the agencies’ use of the ACE system.

While managers have routinely evaluated all contractors, in order for this process to function effectively the MTA must also evaluate the performance of all consultants for each contract for which they are retained. Consultants create the designs for many of the MTA’s capital construction projects. These designs are the foundations of such projects because they reflect the drawings and specifications necessary for advertisement, bidding, awarding, and performance of the contracts. Consultants also perform construction management services, such as site management, cost estimating, and scheduling. When evaluating consultants, the Guidelines require evaluators to assess and rate two separate performance indicators—quality and management.

As part of the ongoing efforts by the Office of the MTA Inspector General (OIG) to assess and strengthen the effectiveness of the ACE process, we performed a compliance audit at four MTA agencies and found, as documented in the next section, that three of the agencies failed to

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evaluate the performance of a number of the consultants they hired to work on the capital program. This failure represents a missed opportunity to enhance the quality of consultants retained throughout the MTA. In response to our report, the MTA agencies agreed to consistently evaluate consultants for the capital program, and OCO confirmed it will track compliance to be sure the evaluations are regularly performed.

### FINDINGS

As noted, our audit reviewed consultant contracts at four MTA agencies—MTA Bridges and Tunnels (B&T), the Long Island Rail Road (LIRR), Metro-North Railroad (MNR), and New York City Transit (NYC Transit)—for the three year period beginning July 1, 2010 through June 30, 2013, for all or part of which these contracts were active.

OIG found that during this time period, except for B&T, which had evaluated all of its consultants according to ACE Guidelines, the agencies had failed to evaluate the performance of some of the consultants working on capital contracts. As shown in Figure 1 below, the LIRR did not evaluate 8 percent of its consultants; Metro-North did not evaluate 21 percent; and NYC Transit did not evaluate the performance of 29 percent.

**Figure 1: Percent of Consultant Contracts Not Evaluated in ACE  
(July 2010 – June 2013)**

<i><b>Agency</b></i>	<i><b>Consultant Contracts</b></i>	<i><b>Not Evaluated in ACE</b></i>	<i><b>Percent Not Evaluated</b></i>
<i><b>NYC Transit</b></i>	65	19	29%
<i><b>MNR</b></i>	24	5	21%
<i><b>LIRR</b></i>	38	3	8%
<i><b>B&amp;T</b></i>	80	0	0%

## NYC Transit

At NYC Transit, OIG found that 19 of 65 consultant contracts (29 percent) were not evaluated. Of these 19, OIG found that two of the contracts had been managed by MTA Bus but were later transferred to the NYC Transit Capital Program Management Department (CPM). The CPM officials now responsible for the management of these contracts, could not explain the lapse, but committed to evaluating these contracts going forward. However, it was CPM that overlooked the remaining 17 contracts.

Ten of these contracts overlooked by CPM managers are known within NYC Transit as “job shopper contracts.” Companies under contract with NYC Transit provide the agency with temporary staff to work on NYC Transit capital projects. When we first told CPM management that department staff had not evaluated the consultants supplying CPM with temporary personnel, these officials told us that the ACE evaluation criteria are not usually relevant to such contracts. We then contacted a senior manager in the MTA’s Office of Construction Oversight, which oversees the ACE program for MTA Headquarters. He insisted that the ACE Guidelines do not exempt job shopper contracts from ACE evaluation requirements and that the ACE evaluation criteria were sufficient for these contracts. Subsequently, the OCO official met with NYC Transit construction management and procurement officials, who then agreed to evaluate job shopper contracts in ACE.

The remaining seven consultant contracts that CPM failed to evaluate were for as-needed design services, also known as indefinite quantity (IQ) contracts.<sup>1</sup> CPM explained that prior to 2011, when the contracts were awarded, department managers had believed that they were not required to evaluate IQ contracts in the ACE system. The department informed OIG that it had subsequently corrected this misconception and updated the appropriate procedures. They also noted that while these seven contracts had been active during the three year time period we reviewed, all of the contracts had expired by the end of 2012. CPM officials further noted that all current IQ contracts for as-needed consultant services have been regularly evaluated, and they committed to continue to do so in the future.

Ensuring that all consultant contracts are evaluated in ACE is important for minimizing the risk that the MTA will enter into a contract with a vendor who has performed poorly on past MTA contracts. During OIG’s review of a 2008 rehabilitation project for an MTA Bus depot, not included in the 19 overlooked contracts discussed above because it preceded our three-year cutoff period, we learned that the MTA Bus Assistant Chief Facilities Officer had concluded that a design consultant used by that agency for a facility repair had produced a faulty design. That fault necessitated additional design work at additional cost to MTA Bus, and unnecessarily delayed the project. The faulty design also required that \$1.6 million in additional construction

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<sup>1</sup> IQ contracts are bid and awarded with a not-to-exceed dollar value and with no requirement that any particular amount of that limit be used. Rather, when a particular project within the scope of an IQ contract is identified, NYC Transit awards the project as a “task order,” which is essentially an authorization to the vendor to proceed under the contract. Each task order has a specific dollar value and scope of work.

work be added to the contract as the project was already underway. OIG learned that the design consultant used by MTA Bus was under contract with NYC Transit, which had the obligation to evaluate the consultant in ACE, and that although the MTA Bus official had complained to NYC Transit, the latter had not evaluated the design consultant. While this design consultant has not contracted with any MTA agency since 2008, this case illustrates why agencies would benefit from an ACE evaluation reflecting the past performance of a potential consultant in the event that consultant bids on future work

### *Weakness in Automated Interface*

Related to ensuring that MTA agencies evaluate all consultant contracts in ACE, OIG found during its audit that the computer interface designed to automatically download new NYC Transit contracts and their associated information into the ACE system was not operating properly. Specifically, OIG found that the interface was not capturing all contracts that needed to be evaluated.

When we spoke with NYC Transit officials, they were not sure how to repair the interface. Indeed, these officials apparently learned about the problem because of the OIG review. Thereafter, we informed the OCO official responsible for the oversight of ACE about the issue. He, in turn, worked with NYC Transit and the MTA's information technology personnel to repair the interface.

### **LIRR**

We found that of the LIRR's 38 consultant contracts, three contracts (8 percent) were not evaluated in ACE. The LIRR's ACE Administrator told OIG that the LIRR relies on the agency's procurement department and construction management personnel to inform him of all new capital contracts that should be evaluated. He asserted, however, that those officials had failed to notify him after awarding these three contracts. He also told us that the three contracts would now be evaluated and that he planned to implement two new back-up processes within the LIRR to ensure that he is informed of all new contracts.

### **Metro-North Railroad**

During our audit, we found that of Metro-North's 24 consultant contracts, five (21 percent) were not evaluated in ACE. The agency's ACE Administrator told OIG that Metro-North relies on an interface between the agency's procurement system and ACE (similar to the system at NYC Transit). The administrator explained that 3 of the 5 contracts were missed because there was a temporary glitch in the interface in late 2011. He further explained that while this glitch was later corrected, the three consultant contracts were inadvertently left out of ACE.

As to the fourth contract, the administrator noted that it was missed in February 2013 because, for reasons unknown, the value of the contract in the agency procurement system was erroneously entered as \$0—meaning that the contract was automatically filtered out of ACE

because the minimum threshold for an ACE evaluation is \$250,000. Even when the contract value was correctly recorded in the procurement system at about \$370,000, there was no mechanism or alert system to belatedly capture the contract for evaluation in ACE.

Finally, the ACE Administrator reported that because the contract was no longer active, the work was completed, and the project manager for the contract had retired, the Administrator had no explanation for why the fifth and last consultant contract in the group was not found in ACE. He also told us that Metro-North capital project managers would now evaluate the consultants' performance for the four remaining contracts. Moreover, in January 2014, the Metro-North procurement department started keeping a log of all newly awarded contracts. The Administrator assured OIG that he will periodically check this log going forward to ensure that he does not miss any new contracts for inclusion in ACE.

### RECOMMENDATIONS

The OIG appreciates the responsive and proactive leadership role that the MTA Office of Construction Oversight provided in furthering and coordinating the agencies' efforts to clarify the ACE requirements. We also appreciate OCO's help in developing methods for solving operational problems, including fixing computer-related glitches, especially in regard to NYC Transit. It must be emphasized, however, that it is the obligation of the individual agencies, not OCO, to obtain and record reliable information on the performance of consultants and contractors working on MTA capital projects. In that regard, we recommend that each agency promptly and going forward:

1. Evaluate in ACE all consultant contracts that are currently active; and
2. Establish procedures to ensure that all new consultant contracts are evaluated in ACE.

Having recognized the value of its recent input, we encourage OCO to continue to provide needed guidance regarding ACE, and recommend that it monitor the efforts of NYC Transit, Metro-North Railroad, and the Long Island Rail Road accordingly.

#### *MTA/Agency Response:*

*In its response, OCO confirmed that it would issue guidance MTA-wide to reflect OIG's recommendations, and that this guidance would be incorporated by NYC Transit, LIRR, and Metro-North into their respective procedures. OCO also confirmed that it will track each agency's compliance with ACE requirements pertaining to consultant evaluations. Further, these agencies individually confirmed their acceptance of our recommendations.*

*Additionally, in its response to our report, NYC Transit identified another potential obstacle to the evaluation of consultant contracts. It noted that agency personnel had been unclear about when to evaluate contracts having a "not-to-exceed" value of at least the \$250,000 threshold for evaluation in the ACE system. That is, whether to evaluate when the first payment obligation*

*under the contract is actually incurred, or only after such obligations actually exceed the ACE threshold. NYC Transit confirmed that it had updated its procedures as follows,*

*IQ consultant contracts are now being entered and evaluated in the ACE system even if their current dollar value has not reached the \$250K threshold for inclusion. This will ensure evaluations are conducted as required.*