



OVERSIGHT OF ALL-AGENCY CONTRACT FOR BACKGROUND CHECK SERVICES

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OVERVIEW

The Metropolitan Transportation Authority (MTA) and its constituent agencies hire individuals for a wide range of agency positions. To ensure that new employees have the necessary training, qualifications, and experience to perform their assigned tasks, a number of which are safety-sensitive, MTA requires candidates to undergo a background check to verify their credentials.

In 2013, MTA contracted with Sterling Infosystems, Inc. (Sterling) to conduct these checks for a three-year period, with a budget cap of \$3.17 million. Under this contract, Sterling verifies applicants' reported educational achievements, employment experience, criminal and civil court history and personal qualifications on behalf of MTA Headquarters and each MTA operating agency. MTA projected that Sterling would perform checks on more than 19,000 job applicants and approximately 3,000 consultants over the length of the contract.

The Procurement Division of MTA Bridges and Tunnels (B&T) took the lead in procuring this vendor to conduct background checks on behalf of the MTA as a whole. The role of contract manager, responsible for overseeing contractual disputes and adjustments, has since been transferred from B&T to the Procurement Division of the MTA Headquarters Business Service Center (BSC). At the same time, the BSC Human Resources Department functions as the project manager, coordinating the relationship between MTA and Sterling on all non-procurement matters, such as service quality and billing errors or discrepancies. One human resources representative in each agency serves as the primary liaison with Sterling, BSC, and B&T.

After receiving various complaints, the Office of the MTA Inspector General (OIG) began a review of the utilization of this contract by MTA agencies through June 2014. Although we found problems with the cost, timeliness, and thoroughness of Sterling's performance, we also found that these issues were either caused by or persisted because of inadequate oversight by MTA.

Summary of Findings

Despite their partnership in this joint procurement, BSC and agency liaisons did not jointly inform Sterling of recurring problems, including those involving billings, scope of service and performance. Instead, each agency tried to find a solution on its own or simply accepted the unsatisfactory *status quo* without seeking recourse.

Specifically, OIG found that:

- Sterling's background checks were often incomplete, which caused delays in hiring, but agency personnel were not addressing this issue.
- Background checks were costlier than reasonably expected for two reasons. First, because Sterling performed unnecessary work that inflated the costs and BSC failed to take appropriate action. Second, because the agencies were not adequately informed about what the costs should be and how to budget for them.
- B&T delayed the implementation of customized package options and other desirable contract amendments that would have allowed Sterling to provide services better designed to meet MTA's needs at a lower cost.

To ensure that MTA receives adequate, cost-effective service for the remainder of the contract period, we discussed the following recommendations with BSC and B&T officials, who responded positively to our suggestions:

- The **Project Manager** should: (1) institute better communication channels for agency human resources and finance department representatives and (2) monitor the timeliness of Sterling's work.
- The **Contract Manager** should ensure that the Sterling contract be amended as needed to more effectively and efficiently meet agency needs.

To improve the overall coordination of the next background services contract in 2016, we discussed with BSC leadership two additional recommendations. First, BSC staff members should oversee all procurement and non-procurement matters, rather than sharing this responsibility with another agency. Second, BSC Procurement should incorporate the agencies' needs and preferences in the new contract specifications, e.g. by requiring prospective vendors to itemize the fees that MTA agencies will pay for each level of service.

BSC officials responded positively to these suggestions and explained that beginning in mid-2015, BSC will be wholly responsible for managing the contract for background services, as part of the planned centralization in the BSC of selected procurement functions previously performed by the operating agencies.

Implications for Joint Procurements

The Chief Procurement Officer for the MTA, who reports to the Senior Director of the BSC, is responsible for establishing procurement policies to guide the work of every operating agency within the MTA. The policy of the MTA under this leadership is to encourage the agencies to participate in joint or all-agency procurements whenever feasible, given the opportunities for efficiency of scale. Additionally, BSC will soon be responsible for handling all procurements for

non-core goods and services—those not directly tied to the agencies’ central operational and technical responsibilities—and will regularly be entering into contracts that benefit multiple agencies.

We learned through our review that problems involving the Sterling contract resulted in part because the BSC, B&T, and agency liaisons did not have a clear understanding of, and agreement about, their individual and collective roles and responsibilities in the context of this *joint* procurement. This uncertainty led to confusion about who should alert Sterling to time-sensitive matters in general and substantive contractual issues in particular. Thus, while the contract was a good candidate for a joint procurement—given the agencies’ shared need for background check services—we found that MTA was not well positioned for the effort to achieve its goals from the start.

Although BSC will be responsible for managing non-core joint procurements in the future, joint procurements of *core* goods and services will continue to be managed at the agency level. To improve the agencies’ performance in this area, given the lessons-learned from their experience with Sterling, we recommend that the MTA Chief Procurement Officer develop and distribute to every operating agency guidelines defining the roles and responsibilities of staff members involved in a joint procurement.

Summary of Agency Response

In his response, the Senior Director of the BSC confirmed that BSC’s Human Resources and Procurement departments accepted all of our recommendations and have already integrated many of them into the agency’s process for managing the contract.” Additionally, BSC management informed us that the agency plans to further implement our recommendations regarding future contracts for background check services and other joint procurements.

BACKGROUND

Rather than entering into separate service contracts for background checks, the MTA agencies procured and administered the Sterling¹ contract as a joint procurement. Ideally, this arrangement facilitates the abilities of agencies with similar needs to leverage their buying power and streamline the procurement and administration processes. And ordinarily, for efficiency reasons, the related roles of contract manager and project manager are assigned to a single agency. In this procurement, however, those roles were split between B&T and BSC (specifically to managers in their procurement and human resources departments respectively); in part because the contracting process began while BSC was in a formative stage and assigning both roles to the new entity seemed unduly burdensome. As explained by procurement officials, the management responsibilities were allocated as follows:

Contract Manager (B&T Procurement Division): This manager was to publicize the Request for Proposals (RFPs), supervise the competitive bid process, and facilitate contractual negotiations with Sterling and other potential vendors. Once the contract was executed, the manager retained two primary duties: (1) to negotiate any necessary contractual amendments; and (2) to pursue legal remedies in the event that Sterling failed to meet its obligations. The contract manager reported to the Chief Procurement Officer (CPO) of the division's Service Unit.

Project Manager (BSC Human Resources Department): This manager was to coordinate all of the non-procurement aspects of the relationship between MTA and Sterling since the contract's execution. For example, if agencies expressed significant or continuing dissatisfaction with some element of Sterling's work, the project manager was responsible for raising the issue with the vendor and seeking its resolution on behalf of the agencies collectively. If the problem touched on contractual matters, this manager was to consult with the contract manager regarding the appropriate action. The project manager reported to the Human Resources director.

Agency Human Resources Liaisons: These individuals connected Sterling to their respective agencies and were also the link between their agencies and BSC. In accordance with MTA standard practice, the liaisons were expected to discuss day-to-day issues directly with Sterling without involving BSC; examples might include delayed background checks or invoice errors. Also by practice, according to agency staff familiar with joint procurements, if the deficiencies persisted, the agency representative was expected to inform the BSC project manager, who was responsible for canvassing the other agencies to determine the extent of the problem.

As part of our review, we interviewed the human resources and finance department staff members at each agency who were most closely involved with Sterling's work, and we also met with the Sterling managers overseeing the account. Further, we examined key documents from

¹ As of May 1, 2014, Sterling's legal name is SterlingBackcheck.

the competitive bid process, including proposals from Sterling and other vendors, along with the final contract itself. Additionally, we analyzed Sterling's monthly invoices and compared the agencies' actual costs to the prices established by the contract. Based on our interviews and documentary analyses, we made the findings that follow.

FINDINGS

In any joint procurement, clear understanding by each agency of its roles and responsibilities, as well as inter-agency coordination and cooperation and the free flow of communication, are essential tools for addressing concerns about service. If, as shown below, management and agency representatives do not coordinate and communicate appropriately amongst themselves and the vendor regarding performance and other concerns, the MTA may not be able to hold the vendor accountable for its deficiencies.

BSC Did Not Address Sterling's Performance Problems

Virtually every background check must include verification of an applicant's educational credentials and employment history; other elements may include research into an applicant's criminal background, driving record, credit score and more. Sterling might perform a dozen or more checks for a single applicant.

OIG found that Sterling frequently began a particular element of a background check but failed to complete the step. Sterling labeled such elements "unperformable" and reported this outcome to the agency. However, in our view, many of these so-called "unperformable" items could have been readily completed had Sterling made reasonable attempts to gather the information.

For example, an MTA Metro-North Railroad (MNR) applicant's educational degree was not immediately verifiable because her college had changed its name. Sterling contacted the candidate, who sent a copy of her transcript and explained the name change. Nevertheless, Sterling reported to MNR that it was unable to validate the degree and stopped further work on the applicant. However, after agency staff contacted the renamed college, which provided an official transcript, the background check was eventually completed.

Because most agencies will not hire a candidate until his or her background check is complete and satisfactory, this confusion was not just an inconvenience. Importantly, agency staff reported to OIG that Sterling's excessive incomplete checks resulted in significant hiring delays.

For some reason, agency representatives did not share their individual experiences involving "unperformable" checks with each other or the BSC project manager. Instead, some agencies acted independently to rectify the poor service. For example, when one agency liaison approached a Sterling representative and requested that the company contact applicants five times to obtain missing information, rather than the standard three, the representative agreed. A different agency liaison asked the same Sterling representative to contact applicants by phone rather than email, and again the representative agreed. However, other agency liaisons to Sterling apparently did not even ask for such expanded service and continued to receive an excessive number of incomplete background checks.

During the first several weeks of the service period, the project manager communicated with agency liaisons and Sterling representatives as they implemented the new background check

system. While MTA employees and Sterling communicated about implementation details, for the next five months, the group of liaisons did not meet regularly or hold conference calls to identify significant shared concerns or to give feedback on the vendor's performance to the project manager. As a result, she did not learn about Sterling's failures and the consequent hiring delays. Notably, though, the contract had performance standards, e.g. completing education verifications in an average of three business days. By tracking performance, BSC could have commenced timely and appropriate remedial action, including the levy of a financial penalty as authorized by the contract. After receiving various complaints and identifying Sterling's uneven service levels and the agencies' inconsistent responses to them, OIG informed the agencies, BSC, and B&T about the situation. Thereafter, in November 2014, agency liaisons reported some improvement in Sterling's completion rate, including fewer "unperformable" elements.

Lack of Coordinated Action by MTA Staff Led to Persistent Excessive Costs

The cost of every background check includes access fees charged by the jurisdictions and institutions holding the records. The contract calls these types of charges "out-of-pocket" expenses, meaning that Sterling pays them in the course of its work and is reimbursed by MTA.

The largest driver of these expenses is New York State's \$65 charge per name to access its criminal records. Most MTA applicants undergo this records check. The contract states that Sterling should run this check on "all names used" by an applicant, which in MTA staff members' interpretation includes maiden and other names *provided by* the applicant. However, during the first year of the contract Sterling ran this check on *all* so-called "alias names," including blatantly misspelled versions that had become linked to the applicant's Social Security Number.

Agency liaisons believed these extra checks were unnecessary for most titles and that the additional charges were driving up their expenses without adding value. Acting unilaterally, certain B&T staff members, including finance representatives and the liaison from B&T Human Resources, withheld payment for five months because they did not feel the charges were justified. Notably, these staffers did not notify the other agencies' liaisons, the project manager, or the contract manager of their decision not to pay.²

OIG learned that when a Long Island Rail Road (LIRR) liaison complained to Sterling about what he believed were excessive criminal checks, the vendor agreed to stop performing the checks on names not provided by an applicant. But while Sterling's responsiveness was good news for LIRR and could have benefited the other agencies as well, LIRR staffers did not share their information with BSC, B&T, or the representatives at the other agencies. Consequently, for many months, those agencies continued to pay for unwanted name checks.

² Significantly, under the prior contract, MNR withheld payment from the vendor, who in turn stopped conducting background checks for all MTA agencies.

It took one year—and the involvement of OIG—for BSC and B&T to resolve this problem on behalf of all the agencies. In September 2014, MTA and Sterling agreed that Sterling would check criminal records only for the names provided by the applicant; all other “alias checks” were put on hold pending review by MTA Headquarters management and legal staff.³

Expansion of the Scope of Services Provided by Sterling was Irregular

When a finance manager at B&T finally asked the project manager why Sterling was checking so many aliases, contrary to the agencies’ understanding of the scope of services, she told him the MTA had agreed to this during a post-contract “scoping” process. In particular, he said he learned that after the budget was approved in July 2013 and the contract executed in August, Sterling asked each agency to complete a “scoping questionnaire”; all of the seven agencies participating in the joint procurement complied.

Then, as OIG found in reviewing written communications among the agencies and between Sterling and BSC, and for reasons that remain unclear to all of the foregoing, the vendor consolidated the agencies’ responses into one final so-called “requirements document” in September 2013. Most notably, even though six of the seven agencies participating in the procurement had made no indication on the scoping questionnaire that Sterling should check all aliases (the seventh did request such checks), the final consolidated document directed Sterling to perform searches on maiden names and aliases: indeed, on “all” names, for “all” years, and for all agencies. Sterling began providing services on October 1, 2013, and—in accordance with the belated “requirements document”—checked all alias names.⁴

During our interview, we asked the project manager about the post-contract questionnaire and its aftermath. However, she could not explain to us why she allowed Sterling to require agencies to complete this questionnaire and consolidate their responses into one new “requirements document” that effectively trumped those contained in the contract. Her permission, tacit though it may have been, effectively authorized the vendor to perform work the agencies did not want or need, without her first consulting with the agencies, the contract manager, or even others at the BSC.

Significantly, the project manager and contract manager did not discuss the “requirements document” despite the questions that document raised about the vendor’s responsibilities. Because of this lack of communication, the B&T Service Unit CPO, who supervised the contract manager, was unaware of the entire scoping process until OIG described it to him. He said that

³ Of course, the downside to checking only those names provided by the applicant is that if he or she previously used another name but failed to report it during the application process, the purpose for that omission was to hide something—and the background check is designed to reveal what an applicant seeks to conceal. Therefore, for some titles, at least, checking *all* names, whether or not provided by the applicant, may well be the most prudent course.

⁴ Sterling charged MTA only the cost of the \$65 out-of-pocket fee for each of these alias checks. Sterling managers told OIG, but apparently never similarly advised the MTA, that they saw no benefit to the MTA from performing these extra checks.

the final “requirements document” should have been treated as a contract amendment, requiring the oversight and approval of procurement and legal staff. Instead, Sterling developed an extra-contractual document that affected the services delivered by the vendor, increased the costs charged to agencies, and generally created confusion over what the vendor was required to do.

OIG shared its discoveries about the scoping process with the agencies. As a result, we learned that through an administrative oversight, the final “requirements document” was never distributed to all of the affected MTA staff, leaving them unaware of the guidelines Sterling was following.

Monitoring of Agency Expenses was Inadequate

Agency liaisons told OIG that in addition to their concerns about Sterling’s performance, they had significant difficulty understanding the vendor’s invoices. Specifically, they found these invoices too unclear and unwieldy—often 50 pages long or more—to review for accuracy.

One source of confusion was the difference between the contract price structure and the presentation of charges in the invoices. While planning for the vendor selection process in 2011-2012, Human resources managers at the MTA operating agencies designed four “packages” comprising the elements most likely to meet the agencies’ expected needs. These packages were described in the RFP and, eventually, in the contract with Sterling. The contract also included prices for each of the packages.

However, those contractual package prices had no readily apparent relationship to the pricing on the invoices. Instead, each invoice oddly listed each service (with price) individually, although some were part of a package, or, even more oddly, listed services as part of a base package not described in the contract. OIG found that MNR, LIRR and B&T—unable to reconcile their invoices with the contract prices—could not explain why they paid, on average, between \$180.00 and \$209.00 per applicant instead of the contractual price of \$103.75 for the most frequently used package. Based on our analysis, we concluded that these agencies were paying for some combination of packaged services with supplemental services that the agency knowingly ordered, along with reimbursing Sterling for the out-of-pocket expenses described above.

As noted, B&T staff became so frustrated by the invoices that they refused to pay anything for some five months. While they did seek an explanation from Sterling, they did not communicate their concerns to anyone at the MTA—including appropriate individuals in their own agency—during that time. Other agency liaisons simply paid the invoices even though they knew they did not fully understand them. Neither strategy is appropriate for *any* contract let alone for an all-agency procurement, which always has a project manager responsible for identifying and resolving systemic concerns such as these.

Additionally, as OIG learned, Sterling makes available online management reports that are appropriate for tracking costs. Going forward, we developed detailed suggestions to help agency liaisons use these reports to review their invoices and thereby reduce the likelihood of errors and

excess charges. We also showed staff members how to reconcile the contractual prices with the invoice line items. The fact that the agency liaisons did not already utilize these reports was yet another indication of the inadequacy of their preparation and communication. It remains the responsibility of each agency's management to review the invoices for accuracy, and raise any questions in timely fashion.

Agency Budgeting for Out-of-Pocket Expenses was Uninformed

At least in part because of their unawareness of the actual extent of name-checking performed by Sterling, agencies underestimated the amount of out-of-pocket access fees they would have to reimburse the vendor. For example, MNR set aside less than *five percent* of its budget for out-of-pocket expenses, while LIRR budgeted 58 percent, the highest proportion of any agency. For its part, Sterling executives told OIG that given the size and complexity of the MTA and its constituent agencies, they should expect to pay 50 percent of the overall budget for fees charged by jurisdictions holding records. It does not appear to us, though, that Sterling shared its relevant advice with the MTA or any of the agencies or that anyone on the MTA side noticed the significant differences in how agencies derived their budgetary projections.

Indeed, when OIG brought this matter to the agencies' attention, most representatives were unaware of the potential impact on their budgets. Upon receiving OIG's information, agency management planned to revisit their hiring plans and, if necessary, develop a supplementary budget request to the MTA Board. Had the contract and project managers consulted with the agency liaisons and with Sterling, these liaisons could have created consistent, reasonable estimates based on a shared understanding of valid assumptions. Instead, as in other areas described above, they missed a significant opportunity to mutually acquire knowledge and benefit from their combined experience.

Poor Oversight Resulted in Unneeded Services

Several agency human resources managers informed OIG that the four standard background check packages defined in the contract were not sufficiently tailored to their needs. For example, one package that has most of the services desired by agency human resource departments also includes a review of an applicant's civil court record, which managers described as having little relevance to all but a small group of cash-handling positions. Obtaining this record added an out-of-pocket cost of \$55 to the price and also increased the likelihood of delay. Several agency liaisons told us their agency would benefit from having input in the customization of the packages, with features of more limited utility (e.g. the civil court check) being made available on an "à la carte" or "opt-in" basis. These options would provide the necessary flexibility to supplement the packages for positions with specialized requirements.

We learned that the need for several such refinements arose in the very first months of the contract period; in fact, the contract manager had previously begun drafting appropriate new contract language to meet these needs, but it was never completed. Leaves of absence and other personnel issues contributed to this delay. After OIG alerted the project manager and a newly

assigned contract manager that the package revisions were stalled, B&T took action to finalize the amendments. The contract manager restarted the discussion with Sterling, included agency staff members in the dialog, and in late 2014, prepared revised contract language for formal approval. To date, these revisions have not yet been approved. In a positive development, the project manager convened a meeting of human resources and finance staff members and, as she explained to OIG, plans to hold similar meetings on a quarterly basis going forward.

CONCLUSION

Managing the dynamic relationship between a vendor and MTA's diverse operating agencies is unquestionably challenging. While OIG found some weaknesses in Sterling's performance, particularly regarding the timeliness and completeness of its background checks, we determined that these shortcomings were exacerbated by MTA's inadequate coordination and oversight of the Sterling contract. We identified several causes that should serve as lessons learned for future joint procurements.

First, in planning for the joint procurement, BSC Human Resources, B&T Procurement, and the agency liaisons did not have a clear understanding of, and agreement about, their respective roles and responsibilities. This uncertainty led to confusion about who should alert Sterling to time-sensitive matters in general and substantive contractual issues in particular.

Second, the project manager had never coordinated a joint procurement before and received no training for her new role. As a result, the vendor's performance was not assessed early in the contract term in order to discover and remediate problems before they became even more serious. In fairness to the BSC manager, we note that during this period she had significant unrelated operational responsibilities in the BSC Human Resources Department, aside from being in a difficult position regarding joint procurements because of her lack of experience and training in that area, and was unable to seek guidance from the director because that position was vacant.

Third, inconsistency in staffing hampered follow-through. The contract manager was responsible for drafting any contractual amendments. When it became clear that she needed to take leave, her supervisor did not adequately prepare for her absence.

In a positive development, as a consequence of increased centralization of "back-office" functions, BSC will soon be responsible for overseeing a significant portion of MTA's contracts, including many that benefit more than one agency. Specifically, BSC's Procurement Services Division will manage the contracts for all non-core goods and services, including background check services. OIG believes that this centralization will improve communication among the MTA agencies, promote accountability, and enhance the ability to reap the full benefits of MTA's non-core agreements.

For core contracts, which include such purchases as subway cars, buses, highly specialized equipment, and technical services, the operating agencies will retain the responsibility for

contract management. Because some of these contracts will be joint procurements—railcars for the two commuter railroads, for instance—OIG believes that certain lessons from the Sterling contract will prove useful in improving those efforts. Therefore we recommend that the MTA Chief Procurement Officer work with the procurement executives of the operating agencies in developing guidelines to ensure that agency staff members understand their roles and responsibilities and to create a more effective budget development process for joint procurements.

Among those whose responsibilities the CPO and executives should more clearly define are:

- Procurement staff members at every MTA agency;
- Committee members charged with developing RFP specifications and selecting vendors;
- Contract managers and project managers overseeing joint procurements; and
- Agency representatives responsible for working directly with vendors.

RECOMMENDATIONS

We make three recommendations to improve the oversight of the Sterling contract:

1. The project manager, together with the Director of BSC Human Resources, should institute and formalize regular meetings and conference calls for agency liaisons to address service deficiencies, review expenditures, and provide timely, detailed feedback to the vendor regarding any systemic or other significant concerns.

Agency Response: Accepted. Regular meetings and calls have been instituted.

2. The project manager and the Director of BSC Human Resources should begin monitoring and reporting on Sterling's compliance with contractual standards for timeliness.

Agency Response: Accepted. This monitoring and reporting have begun.

3. The contract manager should consult with the MTA Legal Department to determine whether any contract amendment is necessary and fully discuss the issues with the various MTA agencies.

Agency Response: Accepted.

We make two recommendations to improve future contracts for background services:

4. The MTA Chief Procurement Officer should direct that the specifications for background services require each prospective vendor to clearly describe its treatment of out-of-pocket expenses in its pricing proposal.

Agency Response: Accepted.

5. The MTA Chief Procurement Officer should ensure that the BSC staff members assigned to oversee the ensuing contract consult with MTA agency representatives at all critical stages of the process.

Agency Response: Accepted.

And we make one recommendation to improve the overall joint procurement process for core goods and services:

6. The MTA Chief Procurement Officer should distribute to procurement executives in the MTA operating agencies, guidelines that clearly define roles and responsibilities for individuals involved in any joint procurement, covering both the pre-and post-award periods.

Agency Response: Accepted, to be completed by mid-2016.