



IMPROVING RELEVANCE OF CONTRACTOR PERFORMANCE EVALUATIONS – FINAL REPORT

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I. OVERVIEW

In October 2019, the MTA Chairman asked the Office of the MTA Inspector General (OIG) to review the integrity of MTA procurement systems to ensure that the Capital Program’s funds will be spent efficiently and effectively. To this end, OIG assessed the All-Agency Contractor Evaluation (ACE) system and found that ACE, which has underperformed since its inception, continues to disappoint. As we previously reported,¹ capital project managers have a history of rating subpar vendors in ACE as “satisfactory” in evaluations, creating “evaluation inflation” in the ACE system. There is a strong risk that this practice persists. Accordingly, ACE does not meet the purpose of the evaluation system and, more importantly, does not provide the performance information that the MTA needs when making contracting decisions. In light of the changes to the MTA and its processes occurring as part of the agency’s reorganization, OIG recommends that the MTA take this opportunity to fundamentally revisit its contractor evaluation system.

In its response, the MTA agreed that there are issues with the ACE system that are ripe for attention and agreed with the OIG’s recommendation to fundamentally revisit the ACE system as part of the agency’s ongoing transformation.

II. BACKGROUND

A. ACE’s Purpose

The MTA’s ACE system records and tracks contractor and consultant performance for capital contracts in excess of \$250,000. ACE was designed to achieve 3 goals:

1. To establish an effective, objective, and fair evaluation system that will enable agency managers to track contractor performance throughout the life of capital projects;
2. To accurately and promptly identify those vendors who do not meet contractual requirements, in order to protect the Authority’s interests and initiate timely steps to improve contractor performance; and

¹ See MTA/OIG Report #2009-08, [Assessing the Effectiveness of the MTA All-Agency Contractor Evaluation \(ACE\) Program](#), and MTA/OIG’s March 2015 letter, [Follow-up on Reports #2009-08 and #2009-15](#).

3. To immediately disseminate among the MTA's constituent agencies the names of unsatisfactory vendors before such vendors can receive additional contract awards.

Past OIG reports found that ACE struggles to fulfill these goals, especially in identifying contractor performance accurately and promptly.

B. The ACE Evaluation Process

ACE requires capital project managers (Evaluators) to prepare interim evaluations of contractor performance every 6 months following a contract award and to issue a final evaluation at the conclusion of the work. Each agency appoints an ACE Administrator charged with monitoring compliance. The general oversight of the ACE system is the responsibility of the MTA Office of Construction Oversight (OCO), which established ACE Guidelines for the system.

Evaluators are required to assess and rate 5 separate performance indicators: (1) quality, (2) management, (3) safety, (4) scheduling, and (5) Minority/Women/Disadvantaged Business compliance. As to each indicator, Evaluators have 3 rating options:

- Satisfactory** - for performance that consistently meets or exceeds contractual requirements;
- Marginal** - for performance that occasionally fails to meet contractual requirements; and
- Unsatisfactory** - for performance that frequently fails to meet contractual requirements.

In addition to rating each performance indicator, Evaluators provide an *overall* performance rating that takes into account the ratings of the individual performance indicators. Evaluators must notify contractors of any deficiencies in their performance in writing and give them time to correct the problems.

To help ensure the integrity of the procurement and contracting process, agency procurement officials are required to consider a contractor's past overall Unsatisfactory rating or pattern of overall Marginal ratings in the ACE system when judging the same vendor's fitness for future contract awards. While the MTA agencies are not specifically prohibited from awarding contracts to vendors with existing Unsatisfactory ratings or a pattern of Marginal ratings, agency procurement officials are required to obtain authorization from the agency president and/or the MTA Chairman/CEO before awarding contracts to such vendors.²

² These requirements are included in the MTA's All-Agency Responsibility Guidelines, which guide the MTA and its agencies in assessing contractors' responsibility in the performance of contracts. These responsibility guidelines establish standards of compliance and procedures for remedying non-compliance with contractual and ethical obligations to the MTA.

III. FINDINGS

A. Few Contractors are Rated Less-than-Satisfactory in ACE

In 2009 and 2015, OIG reviewed the ACE system and found that due to institutional reluctance, MTA agency Evaluators rarely issued less-than-Satisfactory overall ratings of contractors. The OIG has since updated this information for the most recent 4 years. Unfortunately, this data from 2016 through 2019 shows that the problem persists—and if anything has become worse.

Our data shows that less than 1% of contractors are found to be Unsatisfactory. Over 95% of companies have been found Satisfactory—the highest rating—since at least 2013. OIG consistently has expressed skepticism that our contractors have been so laudable. In our original (2009) report, OIG found cases where companies clearly were performing unacceptably, but MTA Evaluators rated them as Satisfactory regardless.

Exhibit 1.
Overall ACE Evaluations for Select Years

	2006 - 2008	2013 - 2014 ³	2016	2017	2018	2019
Total Evaluations	2,579	1,699	1,372	1,430	1,600	1,582
Percentage Satisfactory	94.8%	97.8%	95.8%	95.2%	97.0%	97.2%
Percentage Marginal	4.4%	1.8%	3.4%	4.3%	2.7%	2.4%
Percentage Unsatisfactory	0.7%	0.3%	0.8%	0.6%	0.3%	0.4%

B. Opportunity to Improve the System

During its 2019 session, the State Legislature passed a law directing the MTA to “identify common functions and assign, transfer, share or consolidate” those functions between the MTA and its subsidiaries and affiliates.⁴ Accordingly, the MTA prepared a “Transformation Plan” with the assistance of a consultant that recommended a reorganization and the streamlining of businesses processes. Critical among the process reforms was the centralization of the Construction and Development function across agencies and the lifecycle of capital projects. This new consolidated entity would be accountable for planning, development, and delivery of capital projects across the MTA. The MTA views these planned improvements as especially important considering its anticipation of carrying out the agency’s 2020-2024 Capital Program. The MTA Board approved the Transformation Plan in July 2019.

³ Data is for January 1, 2013 through October 22, 2014.

⁴ See [Public Authorities Law section 1279-E](#).

As such, this reformulated and centralized Construction and Development function requires a contractor evaluation tool that effectively evaluates contractor performance. Unfortunately, ACE continues to suffer from deficiencies in application identified herein and in past reports that permit unsatisfactory contractor performance to be overrated. The system, as currently used, is not considered a useful tool by many project managers nor does it have sufficient integrity to inform contracting decisions. OIG is concerned that the current system may limit the agencies' ability to flag poor-performing vendors.

Transformation provides an opportunity to rethink and, ultimately, remake the ACE system at a time when the MTA is reforming many of its processes. MTA Construction and Development and OCO should take this opportunity to devise a system that prizes accuracy and provides the vital information the agencies need to ensure their contractors are responsible and perform well.

IV. RECOMMENDATION

1. As part of the MTA Transformation, MTA Construction and Development and OCO should revisit the contractor evaluation system so that the MTA has accurate information to use when selecting future contractors.

Agency Response: Agreed. The MTA Chief Development Officer concurred that there are issues with the ACE system that are ripe for attention. He also agreed with the OIG's recommendation that the MTA revisit the ACE system as part of the agency's ongoing transformation.

Additionally, he stated that the MTA is developing more objective metrics and processes to better track contractor performance and that the agency will incorporate these metrics and processes into a revised contractor evaluation system to be rolled out in the third quarter of 2021. Furthermore, the MTA Chairman committed to working with agency staff to ensure that the agency will implement the report's recommendation.