



Barry L. Kluger  
Inspector General

## Office of the Inspector General

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March 25, 2015

Craig Stewart  
Senior Director, Capital Programs  
Metropolitan Transportation Authority  
2 Broadway,  
New York, NY 10004

**Re: MTA/OIG #2009-08  
MTA/OIG #2009-15**

Dear Mr. Stewart:

In December 2009, this office issued two reports, respectively titled “Assessing the Effectiveness of the MTA All-Agency Contractor Evaluation (ACE) Program” (2009-08), and “Program Design Deficiencies in the MTA All-Agency Contractor Evaluation (ACE) Program” (2009-15). Within these reports, we made numerous findings and 13 recommendations, all designed to help the MTA and its constituent agencies use ACE properly to achieve its two basic goals: as a management tool to correct poor performance and as a procurement tool to screen high-risk vendors seeking MTA contract awards. As we wrote at the time:

By examining the findings made in this report and adopting its recommendations, the MTA can make the ACE system more effective, objective and fair. By doing so, the MTA will be better equipped to promptly detect contractor performance problems; initiate remedial actions to improve the quality and timeliness of the work; and share evaluation data among the constituent agencies to prevent future contract awards to those vendors who fail to perform in a satisfactory manner.

For its part, the MTA agreed. For example, the Authority assured us that going forward ACE evaluators would more accurately rate contractors based on merit, leaving the “business decisions” regarding those evaluations to MTA top executives. The Authority also agreed to require post-final evaluations whenever poor performance is identified after contract closings. Further, the MTA agreed to a change regarding subcontractor evaluations. Although subcontractors appear on MTA job-sites, benefit from MTA insurance policies, perform the bulk of the work on capital projects, and bid on some projects as prime contractors, MTA Guidelines did not require the agencies to prepare either interim or final evaluations of subcontractors for the ACE system. While stopping short of agreeing to implement our recommendation as written, the Authority assured us it would institute a process for evaluating subcontractors on ACE “by exception”—that is, explaining how they did not perform in a Satisfactory manner.

Recently, we revisited ACE in accordance with our statutory powers and duties to monitor the implementation by the MTA of previous recommendations made by this office and other audit agencies. Five years ago, when we issued our reports, we found an institutional reluctance to rate contractors other than as Satisfactory. Indeed, of 2,579 interim and final performance evaluations entered in ACE by the constituent agencies, only 0.7 percent received Overall Unsatisfactory ratings, and 4.4 percent received an Overall Marginal, while 94.8 percent received Overall Satisfactory. At that time, the MTA agencies rarely performed post-final evaluations and, as noted, there was no existing mechanism for evaluating subcontractors. Upon our current review, then, we expected to see a vastly different approach to contractor evaluation, one in which ACE evaluators and the senior managers who review and approve their work no longer harbored reluctance to rate contractors' work as Marginal or Unsatisfactory. We also expected to see appropriate post-final evaluations, as well as some exception-based evaluations of subcontractors. Based on our current interviews and analysis, however, utilization of ACE falls far short of these expectations. Consider this:

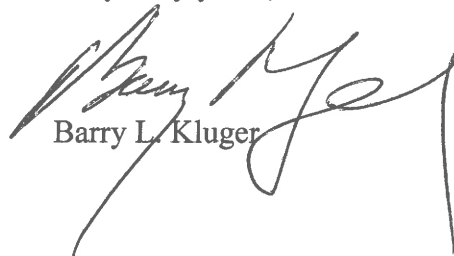
- While staff at NYC Transit, the MTA's largest constituent agency, told us of no change at all in agency practices for administering ACE and offered no evidence that contractor performance had actually improved during the past five years, the percentage of Overall Satisfactory ratings for 2013-2014 somehow *increased* to 97.8 percent of the total ratings, while Overall Marginal *dropped* to 1.8 percent and Overall Unsatisfactory ratings constituted only 0.3 percent of the total.
- Recent interviews revealed that some high-level managers still allowed what they perceived to be agency "business decisions" to override their true assessments of contractor performance, which effectively usurps the power and duty of MTA's top executives to adequately review and properly accept or reject contract awards in the future.
- While the MTA amended its ACE Guidelines to require post-final evaluations as recommended by the OIG, to date not one such evaluation has been entered in ACE.
- Since our 2009 reports, NYC Transit has not made a single exception-based report regarding a subcontractor, even though officials of the NYC Transit Capital Program Management Department easily recalled for us subcontractors, working in the elevator, signals, and floor-tiling specialties, with a history of poor performance such that CPM itself declines to approve them as subcontractors on its own projects. Additionally, LIRR, Metro-North, and Bridges & Tunnels not only have never issued a single exception-based evaluation of a subcontractor, none of them has even finalized a form for doing so.

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In short, while ACE provides an unsurpassed opportunity to improve the effectiveness and efficiency of the Authority's utilization of prime and subcontractors and despite what we see as a continued pressing need for such improvement, our recent preliminary findings call into question the value of the ACE program *as presently utilized* when balanced against the resources that are dedicated to it. Given this continuing need, top executives must not concede defeat to the misguided forces of institutional reluctance or even indifference. Rather, the agency should strive for an institutional embrace of the letter and spirit of *true* evaluation, the kind designed to help the Unsatisfactory and Marginal performers meet expectations and help those who are now Satisfactory to get even better. This level of evaluation will be evidenced by finely-honed assessments and ratings of the four underlying performance indicators—quality, management, safety, and scheduling—along with recorded observations and carefully detailed comments.

I look forward to discussing this matter with you at your earliest convenience.

Very truly yours,



Barry L. Kluger

cc: Thomas Prendergast  
Michael Wetherell