



September 10, 2021

VIA ELECTRONIC MAIL

John N. Lieber
Acting Chair and Chief Executive Officer
Metropolitan Transportation Authority
2 Broadway, 20th Floor
New York, New York 10004

Re: 180 Day Response to the Office of the New York State Comptroller
Audit Report 2019-S-14, dated March 2021

Dear Janno:

In accordance with the requirements of Executive Law Section 170, what follows is a summary of the actions taken by MTA Construction & Development Company (“MTA C&D”) with respect to the recommendations contained in the Office of the New York State Comptroller’s (the “OSC”) report regarding MTA C&D’s compliance with the all-agency contractor evaluation (“ACE”) system (the “Report”). In that regard, we remind you that MTA C&D is currently developing a new evaluation system to replace ACE and that we believe that many of the concerns raised in the Report will be addressed or will be rendered moot once the new system is implemented.

That said, below are MTA C&D’s updates to the recommendations contained in the Report:

Recommendation No. 1:

Train ACE evaluators and administrators regarding adherence to deadlines, compliance with ACE procedures, retention of documents that support the ACE ratings, guidance for rating common situations for ACE components and best practices for dealing with problem contractors.

MTA C&D Response to Recommendation No. 1:

Training is currently included as part of MTA C&D’s operations, both through quarterly all-agency ACE meetings (which focus on big picture ACE issues) and through informal discussions amongst the MTA’s ACE Administrators (which focus on day-to-day ACE issues). MTA C&D is developing a training program in connection with the rollout of the new contractor evaluation system.

Recommendation No. 2:

Update the ACE procedures to implement a clear process for handling “N/A” ratings, establish a time frame for sending critical documents (e.g., deficient performance letters), and identify patterns in component issues and work with contractors while they are still on site.

MTA C&D Response to Recommendation No. 2:

In connection with the MTA transformation and MTA C&D’s expanded role in managing the MTA’s Capital Program and the consulting and construction contracts funded under that Program, MTA C&D is working to reinvent ACE into a system that focuses more heavily on existing metrics and processes based on clear and concise governing documents. Under this new system, both the “N/A” and component ratings will be removed from the review process, rendering the Report recommendations on these points moot.

With respect to the recommendation that the ACE procedures should establish a time frame for sending critical documents, MTA C&D agrees with this recommendation and intends to include time requirements in the policy that will be issued under the new contractor evaluation system.

With respect to the OSC’s recommendation that MTA C&D should work with contractors to resolve work deficiencies while the contractors are still on site, MTA C&D reminds the OSC that this resolution effort has been (and continues to be) performed as part of MTA C&D’s current operations. Indeed, through daily in-person meetings, phone calls and written correspondence, MTA C&D project staff engage with the contractors to correct deficiencies and, where necessary, work with MTA C&D’s legal representatives to exercise the agency’s contractual remedies. That said, neither the current ACE system, nor the new contractor management system, is intended to be a contractor performance improvement tool. As MTA C&D noted in its initial response to the OSC’s Report recommendations, the agency’s contractor evaluation system is merely a supplement to good project management and is primarily used as one of the factors to determine whether the contractor should be awarded a new contract.

Recommendation No. 3:

Enforce deadlines to ensure compliance with the ACE procedures.

MTA C&D Response to Recommendation No. 3:

MTA C&D replaced its ACE Administrator during the OSC’s audit and its new Administrator has corrected the timeliness deficiencies that were found in connection with the OSC audit. MTA C&D has achieved 100% on-time compliance for each ACE reporting cycle since the new ACE Administrator took over in October 2019.

In addition, the new ACE Administrator has been working with the project teams to ensure that the deficient performance letters required under the existing ACE system are sent out in a timely manner and that all other ACE procedural deadlines existing under the current system are being met.

MTA C&D will continue with this rigid enforcement of all applicable deadlines required under the new contractor evaluation system.

Recommendation No. 4:

Document spot checks of all evaluations.

MTA C&D Response to Recommendation No. 4:

Random spot checks continue to be performed on ACE evaluations by both the ACE Administrator and, since the issuance of the Report, MTA C&D has added additional spot checks by its Quality Control Group. In accordance with the OSC's recommendation, those spot checks are now all being documented. Also, in an effort to ensure that the final evaluation is accurate and aligns with the backup documentation, the Quality Control Group's spot checks are performed before the ACE evaluation for the applicable review period is entered into the ACE system. This allows the project team an opportunity to correct any inaccuracies in the evaluation before the review is finalized.

Recommendation No. 5:

Perform evaluations for current and future independent compliance monitoring contracts.

MTA C&D Response to Recommendation No. 5:

As noted in MTA C&D's prior submissions in connection with this audit, independent monitoring contracts are expressly excluded from MTA C&D's ACE procedure because the agency does not contract directly with the independent compliance monitoring firms. Instead, the contracts are entered into between the MTA C&D vendor that is being monitored and the monitoring firm. MTA C&D only evaluates companies that it contracts with directly.

That said, following the OSC's recommendation, MTA C&D did consider whether independent monitoring contracts should be included in the new contractor evaluation system or otherwise evaluated through another forum that would allow the MTA agencies to share their experiences with monitoring firms. Following that review, the decision was made to exclude monitoring contracts from the new evaluation system for the same reasons that they were excluded from ACE. As for consideration of a separate forum to allow MTA agencies to share their experiences with monitoring firms, that is being done through periodic informal evaluations conducted by the MTA's Vendor Relations Group. The next of those reviews will occur later this year, and will include an agency-wide conversation about the performance of the monitors and the documenting of any performance issues for internal MTA use, including for use in removing of the monitor from the monitor pool.

Recommendation No. 6:

Revise the ACE procedures to clarify and support, in writing, which types of contracts are subject to evaluations.

MTA C&D Response to Recommendation No. 6:

The policy for the new contractor evaluation system will include a clear statement as to which types of contracts are under its purview.

Recommendation No. 7:

Ensure training provides clarification on types of contracts subject to the ACE system.

MTA C&D Response to Recommendation No. 7:

As noted in MTA C&D's initial response to the recommendations contained in the Report, MTA C&D's ACE Administrator had proactively been advising the agency's project teams on the types of contracts that fall within the ACE system. This training has continued since the issuance of that response and will continue under the new contractor evaluation system.

Recommendation No. 8:

Ensure documentation in the procurement file supports the rationale for awarding or rejecting a contract (including, but not limited to, additional information from the project management team), as required by the ACE procedures.

MTA C&D Response to Recommendation No. 8:

As noted in MTA C&D's initial response to the recommendations contained in the Report, this has always been, and continues to be, performed as part of MTA C&D operations. This will continue under the new contractor evaluation system.

Recommendation No. 9:

Periodically conduct independent reviews of the procurement file to ensure the rationale for the decision to award contracts is documented.

MTA C&D Response to Recommendation No. 9:

As noted in MTA C&D's initial response to the recommendations contained in the Report, this has always been, and continues to be, performed as part of MTA C&D operations. This will continue under the new contractor evaluation system. Indeed, there are controls in place both within the MTA (as documented through procurement checklist approvals, the sharing of Procurement Staff Summaries amongst agencies, and audits and oversight provided by the MTA Internal Audit Department and the MTA Office of the Inspector General) and external to the MTA (through city, state and federal audits of the procurement process) to perform these reviews.

Recommendation No. 10:

Ensure that staff reviewing vendor responsibility have written procedures that clearly state when the background check starts to make sure that the correct ACE ratings are included.

MTA C&D Response to Recommendation No. 10:

At the time of MTA C&D's initial response to the recommendations contained in the Report, the MTA was in the process of updating its All-Agency Responsibility Guidelines (the "Responsibility Guidelines") to address this recommendation. Those Guidelines were updated in February 2021 and a copy was provided to the OSC. The applicable changes can be found in paragraphs 5 and 6 of the Guidelines.

If you have any questions or need any additional information, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Evan M. Eisland". The signature is fluid and cursive, with a large initial "E" and "M".

Evan M. Eisland
Executive Vice-President,
General Counsel & Secretary

cc: Mark Roche, MTA C&D Deputy Chief Development Officer - Delivery
Cathy Sheridan, MTA C&D Project Manager - Transformation
Diane M. Nardi, MTA C&D Deputy General Counsel
Tom Savio, MTA HQ Director of Construction Oversight