



Metropolitan Transportation Authority

State of New York

May 31, 2023

Hon. Kathy Hochul
Governor
The Capitol
Albany, NY 12224

Hon. Thomas P. DiNapoli
Comptroller
State of New York
59 Maiden Lane, 31st Floor
New York, NY 10038

RE: Response to Final Report #2019-S-52 – Selected Aspects of the All-Agency Contractor Evaluation System

Dear Governor Hochul and Comptroller DiNapoli:

On November 16, 2022, the Office of the State Comptroller issued the above-referenced audit report. As required by Section 170 of the Executive Law, I am providing you with the attached response which addresses the recommendations contained in the report.

A copy of the final audit report is attached for your convenience.

Sincerely,

A handwritten signature in blue ink that reads "Janno Lieber".

Janno Lieber

c: Laura Wiles, MTA Chief of Staff
Michele Woods, Auditor General, MTA Audit Services



May 19, 2023

VIA ELECTRONIC MAIL

Janno Lieber
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-52, dated November 2022**

Dear Chair Lieber:

In accordance with the requirements of Executive Law Section 170, what follows is a status update of the actions taken by MTA Construction & Development ("MTA C&D") in response to the New York State Comptroller's ("OSC") recommendations regarding compliance with the all-agency contractor evaluation ("ACE") system, as set forth in Audit Report 2019-S-52 (the "Report").

The Report contained an audit of ACE compliance by the MTA operating agencies -- Long Island Rail Road, the Metro-North Commuter Railroad, New York City Transit and the Triborough Bridge and Tunnel Authority -- for the period from January 2016 through March 2020. Since the issuance of the Report, the MTA has continued to consolidate the management of the MTA's capital program under MTA C&D, which is now responsible for awarding and managing all MTA capital program construction contracts and administering the contractor evaluation system. For that reason, MTA C&D is providing this 180-day response.

Summary

In line with the large-scale transformational changes that have been occurring throughout this organization, in September 2021, MTA C&D has replaced the longstanding ACE system that is the subject of this audit with a new construction contractor review system, entitled the Contractor Evaluation System ("CES"). This system is a complete redesign of ACE, thereby mooted many of the ACE-specific recommendations that were contained in the Report.

That said, in creating this new system, MTA C&D incorporated many of the key findings and recommendations made by the OSC in connection with this audit and the preceding audit of ACE compliance, such as: (i) basing the new system on objective metrics and processes; (ii) clearly defining the scope of contracts reviewed under the system; (iii) creating one

standard policy for all system users: (iv) requiring the system data utilized, and reviews provided, to be completed by agency staff with personal knowledge of the contractor's performance; (v) requiring the evaluator to maintain backup documentation for all levels of review; and (vii) enhancing the training for system users and administrators.

More specific status updates to the OSC's recommendations contained in the Report are as follows:

Recommendation No. 1

Update the Responsibility Guidelines to include procedures containing specific requirements regarding what records should be prepared and maintained to document the proper consideration of all applicable ACEs during the responsibility review, as well as follow-up procedures to be used when ACEs are not available for review.

MTA C&D Response to Recommendation No. 1

In the MTA operating agencies' response to the Report (the "Initial MTA Response"), they advised that the recommended actions were already part of their business operations, so there was no need to take further action in connection with this recommendation. To that end, the agencies provided the OSC with a copy of the MTA responsibility review team's vendor review checklist and noted that there was already a procedure in place to resolve situations where an ACE review does not appear in the system.

MTA C&D continues to follow the established process with the CES, making it compliant with the recommendation. Further, following the issuance of the Report and in the spirit of this recommendation, the MTA vendor responsibility team issued a reinstruction protocol memo to their staff reminding of the procedure for handling missing evaluations, including outreach to project staff to obtain a copy of the evaluation or documenting a reason why the evaluation was not completed.

Recommendation No. 2

Prior to approval of responsibility determinations, require additional independent supervisory review when the initial responsibility review indicates ACEs were "Not Found" on the vendor checklist.

MTA C&D Response to Recommendation No. 2

In the Initial MTA Response, the MTA operating agencies advised that the recommended actions were already part of their business operations, so there was no need to take further action in connection with this recommendation. The operating agencies also noted that they require several independent levels of review for ACEs that were "Not Found" on the vendor review checklist, including direct outreach to the ACE Administrator to determine the status of the ACE documents. They further advised that the ACE Administrator review is independent from the project team members who are performing the ACE review.

MTA C&D continues to follow these processes with the CES, making it compliant with the recommendation. In addition, in the CES, the responsibility review team has direct access to all of the information in the system, which can provide helpful insight into the reason why a review cannot be found. That said, if the responsibility review indicates that information is missing from the CES system, the responsibility review team can also reach out to the CES Administrator, who can assist in obtaining and providing the missing information.

Recommendation No. 3

Enforce and monitor procurement staff's adherence to the agency procedures. Require the agency President's approval of a responsibility determination without exception where adverse information or significant adverse information was noted to be filed in procurement file.

MTA C&D Response to Recommendation No. 3

In the Initial MTA Response, the MTA operating agencies advised that the recommended actions were already part of their business operations, so there was no need to take further action in connection with this recommendation. To this end, they noted that the Responsibility Guidelines currently require an agency president's written approval before a contract can be awarded to a contractor with adverse information and significant adverse information.

MTA C&D continues to follow these processes with the CES, making it compliant with the recommendation. In addition, the Responsibility Guidelines were updated in November 2022 to account for adverse information and significant adverse information under the CES.

Recommendation No. 4

Require the agency ACE Administrator to contact the ACE Evaluator when an ACE is not filed within 45 days. Make an entry in the ACE database to indicate the evaluation is delinquent.

MTA C&D Response to Recommendation No. 4

In the Initial MTA Response, the MTA operating agencies disagreed with this recommendation on the grounds that it has been mooted by the implementation of the agency's new contractor evaluation system, which does not include a 45 day time period.

MTA C&D continues to follow these processes with the CES. Indeed, the Administrator of the CES diligently follows up with the evaluators to ensure that the requisite system submissions are made in a timely manner. If submissions are outstanding as of the submission due date, the Administrator continues to follow up and correct the deficiency, but also marks the delinquency in the system.

Recommendation No. 5

Require those performing a responsibility review to contact OCO when an evaluation needed for review is missing from the database.

MTA C&D Response to Recommendation No. 5

In the Initial MTA Response, the MTA operating agencies disagreed with this recommendation on the grounds that it has been mooted by the implementation of the agency's new contractor evaluation system, which OCO is not a part of.

Although MTA C&D has not included OCO in the responsibility review process for the CES, this agency has complied with the spirit of this recommendation in that the new system administrator is contacted when an evaluation needed for review is missing from the system. Indeed, it is now the Administrator, not OCO, that maintains the contractor evaluation files and is the correct contact for those needing a missing evaluation.

Recommendation No. 6

Develop procedures to:

- Include analysis of the ACE category ratings over time to determine whether, in addition to the overall ratings, the categorical assessment reveals significant issues with the vendors' performance.
- Share performance issues found in the responsibility review with the next project manager.

MTA C&D Response to Recommendation No. 6

In the Initial MTA Response, the MTA operating agencies disagreed with this recommendation on the grounds that ACE was never intended to be used as a contract management tool. That said, the MTA operating agencies noted that, under their current business practices, they did share performance issues that were flagged in responsibility reviews with project managers assigned to related contracts.

MTA C&D continues to follow this process with the CES, making it compliant with this recommendation. In addition, MTA C&D is working to build out a function in the CES that will provide a more comprehensive overview of ratings across vendor contracts than was used in connection with ACE.

Recommendation No. 7

Ensure that performance evaluations are completed in accordance with the official ACE Guidelines and agency procedures, regardless of the type of contract. This includes:

- Having ACE Administrators timely identify and assign capital contracts to evaluation teams, tracking all capital to ensure required ACEs are completed and submitted on time, and following up with evaluation teams when evaluations are not submitted timely.
- Accurately reflecting the contractor's performance and sending required notification letters that reflect the same rating and factual information contained in the contractor's evaluation.
- Updating the Guidelines and procedures to establish a time frame for sending notification letters and require the ACE Administrator to verify letters are issued timely.
- Documenting support for contractor performance ratings that reference contract records; requiring support/documents for Satisfactory ratings.
- Developing comprehensive procedures or guidance on how the component ratings should affect the overall category ratings.
- Ensuring that the assigned ACE Evaluator is the individual responsible for day-to-day management of work. If not possible, the role of Evaluator should be assigned to a higher-level project management official with overall responsibility for the contractor's work.
- Ensuring that evidence related to contractor's performance is documented for task-order contracts, using written evaluations for each task order, which are then summarized contract.

MTA C&D Response to Recommendation No. 7

In the Initial MTA Response, the MTA operating agencies advised that the recommended actions were already part of their business operations or were mooted by the new contractor evaluation system, so there was no need to take further action in connection with this recommendation.

MTA C&D continues to follow these processes with the CES, making it compliant with this recommendation. In addition, MTA C&D has implemented a uniform policy for the CES, and the Administrator of that system is responsible for ensuring that the reviews are performed in accordance with the policy requirements. To that end, the Administrator conducts trainings on the policy requirements, sends e-mails to evaluators reminding them of the relevant deadlines and is always available to answer questions.

Recommendation No. 8

Ensure that contractors prepare, submit, and implement corrective action plans for less-than-satisfactory performance.

MTA C&D Response to Recommendation No. 8

In the Initial MTA Response, the MTA operating agencies disagreed with this recommendation on the grounds that it has been mooted by the implementation of the agency's new contractor evaluation system.

MTA C&D also disagrees with this recommendation and reminds the OSC that the CES is not, and was never intended to be, a contractor management tool. Instead, contractors that are performing poorly are managed by the associated MTA C&D construction management team. These construction management teams work to correct the actions of underperforming contractors independently of the evaluation system, while the CES documents the performance of contractors for consideration of future awards.

Recommendation No. 9

Regarding MWDBE ratings:

- Revise Guidelines to provide that, if an Evaluator revises the DDCR-suggested rating, written rationale and support must be prepared/retained.
- Develop clear MWDBE guidelines that address how the contractor's interim MWDBE participation rates should translate to the interim rating of the MWDBE category.
- Ensure that "Unable to Rate" ratings are only given when no MWDBE work has been scheduled or performed during the evaluation period or are otherwise clearly documented and supported.

MTA C&D Response to Recommendation No. 9

In the Initial MTA Response, the MTA operating agencies disagreed with this recommendation on the grounds that it has been mooted by the implementation of the CES.

MTA C&D notes that the CES does not use DDCR ratings, relying on factual data relating to MWDBE goals found on the [New York State Contract System website](#). The CES also does not include an interim rating or an "unable to rate" option.

Recommendation No. 10

Close loopholes which allow contracts to escape ACE by:

- Reassessing various evaluation procedures related to rolling stock capital contracts and select an appropriate, uniform methodology and document the justification.
- Developing a means for integrating other evaluation systems used for capital-funded contracts into the Responsibility Guidelines, including consideration if the review cycle is less frequent than ACE.
- Developing a process for granting exemptions to capital contracts from ACE reviews.
- Requiring OCO be notified when an agency allows an exemption or departure from ACE procedures and document in the ACE database.

MTA C&D Response to Recommendation No. 10

In the Initial MTA Response, the MTA operating agencies acknowledged that loopholes should be closed that would allow construction contracts to escape a review and advised that the recommended actions were addressed under the new contractor evaluation system.

MTA C&D continues to follow the same processes for the CES, making it compliant with this recommendation. In addition, all rolling stock contracts and non-construction based contracts that were previously evaluated under ACE are now evaluated under MTA's VENDEVAL system and a standard exemption has been developed to exclude capital contracts valued at under \$3M and task order valued at under \$1M from input into the CES. Also, the CES Administrator is notified when any exemption or departure from CES procedures is sought, and maintains the documentation associated with these requests in one centralized file.

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

Very truly yours,



Jamie Torres-Springer
President

cc: Steven Loehr, Interim Chief of Staff
Evan M. Eisland, Executive Vice President and General Counsel
Mark Roche, Deputy Chief Development Officer - Delivery
Diane M. Nardi, Senior Vice President and Deputy General Counsel
Melissa Jones, CES Administrator