

**AUDIT REPORT:**  
**Identifying and Managing Significant Adverse Information During**  
**Vendor Selection at MTA Bridges and Tunnels**

**MTA/OIG Report #2007-10**



**Barry L. Kluger**  
**MTA Inspector General**  
**State of New York**

**October 2007**



## IDENTIFYING AND MANAGING SIGNIFICANT ADVERSE INFORMATION DURING VENDOR SELECTION AT MTA BRIDGES AND TUNNELS

**Barry L. Kluger**  
MTA Inspector General  
State of New York

The Office of the MTA Inspector General has completed an audit of MTA Bridges and Tunnel's (B&T) procedures for handling "significant adverse information" regarding potential contractors, obtained during the contractor selection process. Prior to awarding a substantial contract, MTA agencies are required to consider whether a vendor is "responsible." A responsible vendor must have the integrity, technical qualifications, performance record and financial resources to carry out the contract. This Office (OIG) sampled nine 2005 B&T contracts each valued over \$250,000 to ascertain whether the MTA and B&T procedures for evaluating a vendor's integrity were followed.<sup>1</sup>

Overall, we found that B&T is adhering to procedures that require identifying and evaluating significant adverse information in a bidder's background and obtaining approvals prior to finding the vendor responsible with significant adverse information. However, there were some instances where important information and required steps were overlooked and other instances where controls could be tightened to ensure better compliance with requirements. We made several recommendations to help assure the completeness of the responsibility determination process, to improve oversight of contractors who are selected despite the existence of significant adverse information, and to assure that the status of the responsibility determination is clear, if MTA Board (Board) approval must be sought prior to completion of the determination.

### SUMMARY OF FINDINGS

B&T is generally in compliance with MTA and agency procedures for designating contractor information as "significant adverse information," conducting additional investigation of the information as required, and obtaining approvals from the agency and/or from the MTA Executive Director before finding that the contractor is responsible despite significant adverse information. (See page 4.)

The databases searched for information on contractor capabilities and performance, both internal to MTA and external, were not always up to date; some of the missing information was the responsibility of B&T. Some of the database searches were not as complete as required. In two instances, contractors who are required to self-report any potentially adverse information occurring after the contract is signed, failed to self-report. In two instances, approval was sought from the Board for contracts before the responsibility determination was completed; in one of these cases the Board was clearly notified of the incompleteness. B&T maintains that the responsibility determination is only required to be complete before the contract is awarded, not before approval is sought. In our opinion, the practice of seeking Board approval prior to completion of the responsibility determination should be avoided. (See pages 4-10.)

---

<sup>1</sup> The objectives, scope and methodologies employed in this report are contained in Appendix A. The Appendix specifies the sampled contractors and the number of the contract whose responsibility determination we reviewed. The audit was performed in accordance with Generally Accepted Government Auditing Standards.

Procedures require assessment of financial information, required to be supplied by the bidder, to determine the capacity of the bidder to assume the financial responsibilities of the contract, including obtaining performance bonds. In some instances, the required financial information was not supplied by the bidder and this assessment was not completed. (See pages 10-11.)

We explored with B&T staff, the possibility of an annual search of a recognized database for all contractors found responsible despite significant adverse information. As the contract goes forward, the agency needs a means of monitoring the significant issues it noted. An annual review would permit B&T to monitor the issues and to check on the contractor's compliance with self-disclosure requirements; B&T staff agreed. (See pages 7-8.)

The audit recommendations can be found on page 11.

## **BACKGROUND**

MTA constituent agencies, including B&T, spend millions of dollars annually procuring necessary goods and services. Pursuant to the Public Authorities Law<sup>2</sup> and MTA policy, each agency takes steps to ensure, prior to contract award that a vendor is "responsible" particularly in terms of its ability to successfully carry out the terms of the contract and the integrity of its business practices. On occasion, businesses are deemed responsible—despite the existence of significant adverse information—because of some unique capability and B&T or other MTA agencies will choose to contract with such a firm. Under MTA Guidelines, which were approved by the Board in 1997, agencies must obtain approval of the agency's president and the MTA Executive Director to proceed with a contract of \$250,000 or more when significant adverse information has been found.

### **MTA All Agency Responsibility Guidelines**

The MTA Guidelines provide policy and procedures for the responsibility determination process during the vendor selection process. An agency identifies a vendor either through a bid process for competitive contracts or through other processes for non-competitive contracts. During the selection process, vendors are required to submit information about themselves such as statements of:

1. Cash Flow and Balance Sheet.
2. General business experience, stability and record of performance and technical expertise.
3. Size, capacity, and capability of the firm in relation to the work to be done.
4. Whether or not the bidder is barred from any federal, state, local, or other public or governmental entity contract.
5. Risks associated with the project in general.
6. Any other factors considered relevant by the agency.

In addition to the information required from the vendor, the MTA Guidelines provide that contract managers may conduct independent research to assess responsibility. This additional review may include

---

<sup>2</sup> New York State Public Authorities Law §559 and §2879.

an evaluation of the proposed vendor's past performance with MTA agencies and a search of various databases that may give indications of significant adverse information.

### *Eliciting Significant Adverse Information*

The MTA Guidelines provide for administering a "Responsibility Questionnaire" designed to elicit information related to the firm's ethical behavior. An affirmative answer to any of the following questions by the prospective vendor or any entity (which includes parent, subsidiary or affiliate vendors) or specified affiliate or key personnel, may be deemed "significant adverse information."

1. Has (the vendor) been convicted by plea or verdict of guilty, or pleaded no contest to a felony or misdemeanor?
2. Has (the vendor) a pending indictment or other information on a crime currently before a grand jury or court?
3. Is (the vendor) the subject of a pending investigation?
4. Was (the vendor) disqualified from entering into any contract with a public entity?
5. Has (the vendor) within the past five years, refused to answer any question regarding a bid or contract with any federal, state, or local government entity, any public authority or any other public entity when called before a grand jury or any other forum which is empowered to compel attendance and testimony of a witness?
6. Has (the vendor) been disqualified from selling or submitting bids to, or receiving an award from, or entering into any contract with any New York public entity or public authority because of refusal to testify about transaction with a New York public entity when called before a grand jury?

The MTA Guidelines also require the vendor to inform the agency if there is a change to any of the answers provided to the Responsibility Questionnaire during negotiations or during the contract. For example, if a bidder is awarded a contract and is later debarred by the City of New York, the contractor must inform B&T of this change in their status. The MTA Guidelines indicate that "any information so obtained shall be included in the agency's contract records, and shall be taken into account in the management and the administration of the contract."

According to the MTA Guidelines, in addition to any affirmative answers to the above six questions, an unsatisfactory final performance evaluation on any MTA agency contract within three years, or an uncured interim unsatisfactory rating on any MTA contract may also constitute significant adverse information.

### **B&T Responsibility Procedures**

Agencies are not precluded from requiring contractors to provide more information or data than set forth in the MTA Guidelines. Additionally, agencies are free to create their own procedure as long as it is viewed as supplementary and not in place of the MTA Guidelines. On September 30, 2005, B&T issued its Procurement & Materials Department Procedure No. 130 (P&M 130) related to responsibility which provides for internal procedures for evaluating bidders and obtaining the necessary approvals.

P&M 130 includes a responsibility matrix to be used by contract managers to determine how extensive the background check should be. For contracts greater than or equal to \$250,000, an extensive database

search is required. In terms of handling significant adverse information, P&M 130 is very clear. If the information provided by the bidder is significant adverse information, a full responsibility check is to be performed regardless of the value of the contract. B&T contract managers employ the services of an in-house database search group known as the Procurement Operations Unit to conduct some of the background research.

Contract managers are responsible for reviewing documentation provided by the bidder and obtained from the database searches and must investigate any questionable results. If the bidder is ultimately judged by the contract manager to be “responsible notwithstanding the existence of significant adverse information,” according to P&M 130 the contract manager must document the basis for the finding in a memorandum. B&T contract managers explained that in such a case, when judging a bidder’s responsibility and drafting the subsequent memo, they consult with several departments and the Office of General Counsel. Approval for the contract award is then sought from the B&T President and MTA Executive Director, as required, through a significant adverse information memorandum.

### **COMPLIANCE WITH RESPONSIBILITY GUIDELINES**

Overall, we found that B&T staff is aware of and in compliance with the procedures as set forth in P&M 130 and the MTA Guidelines. Contract managers are requesting and reviewing contractor information. Background checks are performed on a timely basis and indications of ethical problems are investigated accordingly. All nine contracts were found to have responsibility determinations and the contracts were awarded after the responsibility determination was completed. Contract managers requested additional information from the contractors in addressing both adverse and significant adverse information as required. Two contractors, Ahern Painting Contractors, Inc. (Ahern Painting) and Kiewit Constructors, Inc. (Kiewit), were found responsible with significant adverse information. We found that for Ahern Painting and Kiewit, the information was properly treated as significant adverse information: approvals were obtained and the determination was documented according to procedures. We also found that B&T created a detailed procedure (P&M 130) and associated forms on how to address responsibility determinations in general. The requirements of this procedure were usually adhered to by contract managers. However, we have concern about the quality of background searches as it relates to the information available on the databases, contractors’ compliance with self reporting requirements and the disclosure of responsibility determinations.

#### **Database Search Issues**

Many sources are available to contract managers when determining responsibility of bidders. Reliable and verifiable contractor performance information on B&T contracts and other MTA agency contracts is essential for a thorough responsibility review. A list of resources to be used is identified by P&M 130 Responsibility Matrix.<sup>3</sup> While these resources were consulted as required, the MTA sources were not always complete. We found that updates to certain databases do not occur and there appears to be no mechanism in place to identify instances where updates have not been made.

We recommended B&T test, on a random basis, the completeness of the background checks to identify areas where information is missing, incomplete, or needs further action in order to ensure that all responsibility determination requirements have been met by contract managers.

---

<sup>3</sup> Responsibility Matrix lists the following sources: VENDEX, NYCT Debarred Vendor List and Vendor Information and Transit Advisory List (VITAL) Report, “The Repository Listing,” Federal General Services Administration Excluded Party List, Agency Capital Evaluation System/COPES, Financial Report (D & B)/Financial Statements, Lexis Nexis—P&M 130, page 7/44 and 39/44.

*B&T has accepted the recommendation. In response to the draft report, B&T has indicated that, during 2008, they will include testing as part of their internal control plan.*

### ***The MTA Repository List Not Complete***

According to Section 9.3 of P&M 130, bidders found responsible with significant adverse information are to be included in the “List of Contractors Found Non-Responsible, Responsible with Significant Adverse Information, or in Default.” This list, referred to as “The Repository List,” is maintained by MTA Staff. Agency personnel are required to post the information as it becomes known.

Two contractors in our sample, Ahern Painting and Kiewit, were found responsible notwithstanding significant adverse information by B&T. However, we found that B&T did not add Kiewit to “The Repository List.” This does not appear to be a problem isolated to B&T.<sup>4</sup>

We recommended B&T ensure that all bidders found responsible with significant adverse information are added to “The Repository.”

*B&T has accepted the recommendation. In response to the draft report, B&T has implemented a mechanism to ensure that bidders found with significant adverse information are added to The Repository.*

### ***Agency Capital Evaluations System (ACES) Incomplete***

Agencies are required to evaluate various attributes of contractors on an interim basis and post those results in ACES.<sup>5</sup> At B&T, evaluations must be recorded in ACES at least every six months. We found that B&T is not complying with this requirement as there were two contractors in our sample, Parsons Brinckerhoff Quade & Douglas, Inc. (Parsons), a member of a joint venture with Weidlinger Associates Inc., and Ahern Painting, with two contracts collectively, where we found issues with the recording and timeliness of evaluation postings.

**FIGURE 1: Schedule of Contractors without ACES Evaluations**

<b>Contractor</b>	<b>Contract #</b>	<b>Total # of Evaluations Required</b>	<b># Evaluations Recorded in ACES</b>
Parsons	PSC-03-2695C	4	0
Ahern Painting	WBM-316X	3	1

Contract PSC-03-2695C was awarded to Parsons in September 2004 for a period of three years. For the period September 2004 through October 2006, ACES should have reflected four evaluations. We found that contract PSC-03-2695C did not have any evaluations recorded in ACES. The Director of Quality Assurance is responsible for ensuring that evaluations are entered by evaluators in ACES. The current

<sup>4</sup> We found that Kiewit was also found responsible with significant adverse information by MTA Metro-North (MNR) but no update to “The Repository List” was made on that determination.

<sup>5</sup> ACES is used for recording performance evaluations for capital contractors on an interim basis.

Director assumed this role in December 2005. He also stated that the contract was never assigned to a preparer and thus the evaluations were not performed as required. He informed us that his department has an internal program which is supposed to flag these issues, but somehow failed to do so.

The Ahern Painting contract, WBM-316X, was awarded in August 1999 and ended in February 2001. ACES should have reflected three evaluations for the Ahern Painting contract. We found that there was only one evaluation for WBM-316X in ACES. We discussed this with the Director of Quality Assurance who agreed with our observations but was unable to offer an explanation on this contract. This information is vital to all the MTA agencies reviewing bidder evaluations to determine whether there are potential unsatisfactory evaluations. If this information is not up-to-date, reliance may be placed on a contractor that is not meeting contract requirements.

We recommended B&T verify that ACES evaluations are posted as required by performing a review on a periodic basis.

*B&T has accepted the recommendation. In response to the draft report, B&T has taken corrective and preventive measures to ensure contractor evaluations are recorded in ACES.*

A B&T official explained their oversight by saying that databases shared by MTA agencies do not offer complete information regarding vendors. However, the fact that other agencies are not always posting information in these databases does not absolve B&T staff from their responsibility to ensure their bidders are added to The Repository. A mechanism should be implemented by B&T to ensure that bidders found responsible with significant adverse information are included in "The Repository" and that contractor evaluations are recorded in ACES.

### ***Database Searches Have Missed Information***

The MTA Guidelines and the responsibility questionnaire specify three years as the minimum period for which a bidder is required to submit information regarding contracts with other agencies or companies. Additionally, the questionnaire requires bidders to provide information regarding defaults, lawsuits, and type of work performed during those preceding three years. The purpose of these questions is to elicit adverse information. As part of the responsibility determination, contract managers are required to review such data for the preceding three years.<sup>6</sup> We found that the contract manager for the Richmond Elevator contract performed a search in VITAL on April 2005 and indicated that the company was not found.

OIG staff performed a similar search on this company using VITAL lists for October 2003, November 2004 as well as April 2005, and found that Richmond Elevator appeared as ineligible to bid on contracts by the School Construction Authority (SCA) on the 2003 and 2004 lists. The Assistant Inspector General of the SCA explained this listing resulted from performance issues with Richmond Elevator. This advisory listing was no longer present on VITAL lists from the spring of 2005. We reviewed VITAL lists for seven months during 2003, 2004, and 2005 to ascertain whether Richmond appeared on these lists and found them in six out of the seven lists reviewed.

When we discussed this with the contract manager, he agreed that he did not check prior years and had only reviewed the April 2005 listing. He said that he expected that listing to have all updated information. Since this determination was made in October 2003 and appeared in the November 2003

---

<sup>6</sup> P&M 130 specifies the "NYCT Debarred Vendor List and Vendor Information and Transit Advisory List (VITAL) Report" as one of the various sources to be checked.



list, it should have been considered by the contract manager in assessing determinations since it fell within the three years prior to contract award. By relying exclusively on one year's list, the contract manager missed relevant information.

We recommended B&T instruct contract managers to perform a spot check of NYCT Debarred Vendor List and Vendor Information and Transit Advisory List (VITAL) to ensure that a historical period is covered.

*B&T has accepted the recommendation. In response to the draft report, B&T plans to incorporate the procedure into P&M 130, requiring review of current VITAL lists as well as one VITAL list from each of the two preceding years.*

### ***Reliance on Previous Searches—a Bad Practice***

As required by the Responsibility Matrix, contract managers request an ACES search in order to identify whether there are any unsatisfactory evaluations with a contractor for the preceding three year period. We found that the contract manager for the Kiewit contract did not request an ACES search from the Procurement Operations Unit when he requested the database search as required by P&M 130. We were informed by the contract manager that he relied, instead, on a report generated by MTA New York City Transit (NYCT) Vendor Relations Unit during September 2004. We reviewed the report and found that while there were satisfactory ACES evaluations for the NYCT contract, no supporting documentation was provided and the information was over a year old. As a result, no current review was performed for this contractor using ACES.

### **Contractor Obligation to Self-Report is Not Sufficient**

P&M 130, Section 17.0, provides guidance on the contractor's obligation to self report issues related to their integrity. Contractors are required by the MTA Guidelines—and such language is included in standard contracts—to self-report any information that would change their initial responses to the responsibility questionnaire. Examples of required disclosures would include: criminal convictions or guilty pleas, pending criminal investigations, current debarments, or disqualifications from bidding on public contracts. In order to determine whether B&T was adequately ensuring that their contractors comply with this requirement, we performed an independent verification and found issues with two contractors.

Richmond Elevator was awarded a B&T contract in May 2005 for a period of three years starting July 2005 and ending June 2008. Over a year later in July, 2006, the company was found non-responsible by the NYC Police Department in Richmond's bid as a result of an investigation by the Office of the Special Commissioner of Investigation for the NYC School District. We requested information from the Mayor's Office of Contract Services and learned that Richmond was found in violation of failing to pay prevailing wage rates and falsifying documents related to those wages on the school contract. We asked B&T's Deputy General Counsel whether they were aware of this finding and were told that they were not. As of November 2006, Richmond Elevator had still not reported the NYPD decision to B&T as is required by the terms and conditions of the on-going contract. B&T officials concurred that the Richmond Elevator finding was a concern and that B&T should take some sort of action. Normally, these matters are handled through the issuance of a legal document commonly known as "show cause letter" asking the contractor to explain why their contract should not be terminated. At the close of our audit work, B&T officials had not determined the action it would take but they explained that they could choose to provide additional monitoring of the company's paperwork.



The other issue involved Kiewit. During the responsibility determination for a contract award, Kiewit Contractors disclosed that they were the subject of an investigation related to a previous bid on the Queens Open-Cut Excavation Project. B&T subsequently awarded Kiewit the contract, finding the company responsible with significant adverse information. While B&T had knowledge of the on-going investigation, as of September 2006, they were unaware of any resolution related to this investigation.<sup>7</sup> When we asked B&T officials whether they knew of the outcome of the investigation, B&T's Deputy General Counsel explained that the agency expects the contractors to self report as no follow up is performed by B&T.

Our audit highlighted that there is no mechanism in place at B&T to ensure that contractors are complying with this obligation. There does not seem to be an expectation that known, ongoing concerns such as a contractor being the subject of an open investigation are routinely monitored. Relying on contractors to self-report without oversight of this requirement will not ensure that complete and up to date information is reported and that appropriate action will be taken by B&T.

While relying on companies to self-report does not appear to provide B&T the information they need, OIG auditors recognize that suggesting B&T perform on-going reviews on all contractors is labor intensive and likely not cost-effective. As a compromise, monitoring more "risky" companies (as defined by those with a problematic history or significant adverse information), may be the most cost-effective way to keep B&T reasonably informed of important information. This approach may not identify all developments that companies should disclose, but by being risk-based, it ensures disclosure with the least expense.

We discussed a mechanism by which B&T could "monitor" contractors found with significant adverse information on a periodic basis with B&T Deputy General Counsel. We explored the possibility of performing a database search such as VENDEX or Lexis-Nexis, on an annual basis for those contractors found responsible with significant adverse information, in order to ensure that B&T is knowledgeable of the status of matters that reflect a contractor's responsibility as well as compliance by contractors with disclosure requirements. The Deputy General Counsel commented that B&T could implement such a follow up procedure. As far as open investigations, we believe it would be beneficial for B&T to follow up with the investigative bodies as to the outcome of the investigations to assess whether there were any findings that had implications for the manner in which this contractor was being managed by B&T.

We recommended B&T perform either a VENDEX or Lexis-Nexis search once a year on contractors found responsible with significant adverse information and follow up on issues such as open investigations as appropriate.

*B&T has accepted the recommendation. In response to the draft report, B&T has indicated they will implement procedures, and include them in P&M 130, to perform searches once a year for contractors found responsible despite significant adverse information and to perform follow up on open investigations.*

### **Approvals Given Before Responsibility Determination**

P&M 130 discusses the responsibility determination and reporting obligations for contract managers. Section 8.2 states:

---

<sup>7</sup> OIG contacted the NY State Attorney General's office on September 18, 2006 and learned that the investigation is closed.

“A contract manager’s and supervisor’s signature on a Vendor Responsibility and Responsiveness Review indicates that the responsibility evaluation has been completed. Following this review, a written statement indicating that the proposed contractor is responsible shall be included in the Staff Summary Sheet or Procurement Staff Summary which shall be approved by designated officers.”

We reviewed the documentation for our nine sampled contracts to determine if these disclosure requirements were followed by B&T staff. We found disclosure issues with three contracts. In two instances, we found that B&T did not follow the disclosure requirements nor was the responsibility determination finished when the contract awards were approved by the MTA Board.

In the first of the two cases, Ahern Painting contract #GFM-435B was approved by the Board on June 29, 2005. Even though Ahern Painting’s history was well known to the agency as one that includes significant adverse information, the Staff Summary Sheet indicated that responsibility issues were still pending and did not provide the reason or explanation for the delay. Nor did it specify the nature and seriousness of the responsibility issues that gave rise to the monitoring agreement. The MTA Executive Director approved awarding the contract despite the existence of significant adverse information in early July.

In the second case, Board approval was sought on September 29, 2004 for the Avaya, Inc. contract #03-TD-2664 while the responsibility determination was not completed until March 9, 2005. At the time of the Board approval, Avaya had still not completed their responsibility questionnaire and was refusing to disclose information related to their parent company. The Staff Summary Sheet mentioned that the company had not completed the Responsibility Questionnaire, but B&T staff expected it would do so prior to contract award. It also indicated that the existing contract would expire soon and approval was required to ensure continuation of the services.<sup>8</sup> We were told by the contract manager that there were seven amendments to the previous contract, 96-ITD-2428, during the period September 2004 through April 2005 pending the responsibility determination for the new contract. This enabled Avaya to continue providing services to B&T.

In response to our questions, B&T officials explained their view that the MTA Guidelines allow them to seek approval prior to the responsibility determination because responsibility just has to be determined *before contract award* not before Board or internal *approval to award*. They explained that circumstances, such as the MTA Board recess during August, may require them to seek approval before a responsibility determination has been made. There was also a general concern on the part of B&T officials that the processing of a responsibility determination for a contractor with adverse or significant adverse information can take unacceptably long to obtain the required approvals.

While this is B&T’s contention, the MTA Guidelines do not explicitly provide for this procedure. The MTA Guidelines require that responsibility determinations be noted in Procurement Staff Summary or Staff Summary Sheet requesting approval to award a contract. There is no provision related to approving awards pending a responsibility determination. Without having made the determination, B&T is unable to comply with the MTA Guidelines. B&T’s pursuit of Board approval for Avaya is particularly troubling in that board approval was given six months before a responsibility determination was made.

---

<sup>8</sup> Avaya was determined to have adverse information and approval was required from the Agency President only, not from the Executive Director as would be required by the MTA Guidelines in the event that the adverse information was found to be significant.

We recognize that B&T staff did not act without a reasonable belief that the responsibility concerns would be resolved. In the first case, Ahern Painting was well known to the agency and the MTA Executive Director had twice approved contracting with the company despite its history. In the second case, Avaya, Inc. was a sole provider of maintenance services for a proprietary telecommunications system and, in the near term, there was little risk that based on the responsibility determination, B&T officials would find it necessary to select another contractor. While there were mitigating circumstances in these cases which may have lead B&T staff to seek approval from the Board “prematurely,” in our opinion, agencies should avoid the practice of requesting Board approval before a responsibility determination is final.

### **Responsibility Determinations Made but Not Communicated**

Section 8.2 of P&M 130 requires a statement in the Staff Summary Sheet or Procurement Staff Summary indicating that the proposed contractor is found responsible. In 2005, a joint venture of Parsons was determined to be the lowest responsible and responsive bidder by B&T for a design and support contract. The Staff Summary Sheet presented for Board approval, however, did not include a statement regarding responsibility for either firm. In our opinion the P&M 130 requirement is important to ensure the results are communicated to those individuals who have to approve the contract award.

P&M 130 provides a complete methodology for the responsibility determination. Included in the responsibility determination methodology, are requirements for approvals and disclosure of the responsibility determination. In order to ensure that all requirements have been satisfied, it would benefit B&T to implement a review process to identify areas where information is missing, incomplete, or needs further action to ensure that all responsibility determination requirements have been met.

We recommended B&T complete responsibility determinations prior to requesting Board approval except under extraordinary circumstances which should be stated in the Staff Summary Sheet. If a request for contractor approval must go to the Board prior to determination, document any known adverse information in the staff summary as well as the reason the responsibility determination is pending.

*B&T has accepted the recommendation. In response to the draft report, B&T noted that in April 2006, it had discontinued the practice of submitting a Staff Summary for Board approval before the responsibility determination has been rendered. B&T is deferring to MTA Headquarters’ on-going review and reassessment of the All-Agency Responsibility Guidelines. This reassessment includes consideration of information to be provided to the Board about significant adverse information.*

### **Financial Responsiveness**

Section 5.3 of P&M 130 indicates that evaluation of the responsibility of a bidder includes consideration of financial capability. B&T reviews the financial information in order to assess whether bidders have the financial resources to successfully assume the financial responsibilities of the contract including the ability to secure performance bonds. We were told that contractors may not be awarded a contract if they have negative financial information. Section 5.3.1.2 requires consultation with the Law Department to determine whether a bidder’s apparent lack of financial capacity should be addressed as a responsiveness issue or a responsibility issue.

As stated earlier, bidders are required to submit information about their company including either audited Financial Statements, or if un-audited, Financial Statements with a certification from the corporation’s Chief Financial Officer as to the authenticity of the statements. Also required are a Statement of Cash Flow and Balance Sheet for the previous three years. We found issues surrounding the responsiveness by companies to requirements for financial information, which were not addressed by the contract managers.

For example, Parsons did not submit a Statement of Cash Flow for 2004, 2003, and 2002 as required. Additionally, notes to the Avaya Financial Statements revealed that in March 2003 their parent company, Lucent, had entered into a \$420 million settlement of all pending shareholder and related litigation. This lawsuit should have been considered as an issue related to responsiveness as it raises questions about financial vulnerability of Avaya as it relates to Lucent.

We recommended B&T ensure that contract managers review notes to the Financial Statements in order to identify and address possible significant adverse information.

*B&T has accepted the recommendation. In response to the draft report, B&T indicated that contract managers will review notes to the Financial Statements to identify and address any significant adverse information.*

## RECOMMENDATIONS

B&T should:

1. Test, on a random basis, the completeness of the background checks to identify areas where information is missing, incomplete, or needs further action in order to ensure that all responsibility determination requirements have been met by contract managers.
2. Ensure that all bidders found responsible with significant adverse information are added to “The Repository.”
3. Verify that ACES evaluations are posted as required by performing a review on a periodic basis.
4. Instruct contract managers to perform a spot check of NYCT Debarred Vendor List and Vendor Information and Transit Advisory List (VITAL) to ensure that a historical period is covered.
5. Perform either a VENDEX or Lexis-Nexis search once a year on contractors found responsible with significant adverse information and follow up on issues such as open investigations as appropriate.
6. Complete responsibility determinations prior to requesting Board approval except under extraordinary circumstances which should be stated in the Staff Summary Sheet. If a request for contractor approval must go to the Board prior to determination, document any known adverse information in the staff summary as well as the reason the responsibility determination is pending.
7. Ensure that contract managers review notes to the Financial Statements in order to identify and address possible significant adverse information.

The major contributors to this audit were Elizabeth Keating, Dora Diaz-Crowe, and Marsha Desormeaux

## **APPENDIX A**

Page 1 of 2

### **OBJECTIVES, SCOPE AND METHODOLOGY OF “IDENTIFYING AND MANAGING SIGNIFICANT ADVERSE INFORMATION DURING VENDOR SELECTION AT MTA BRIDGES AND TUNNELS”**

The objectives of this audit were to assess compliance with all policies and procedures regarding that portion of a responsibility determination associated with vendor ethics. Specifically, we sought to determine:

- Whether B&T is considering all requirements, and documenting findings, in designating a contractor responsible notwithstanding any significant adverse information.
- Whether contractors identified as responsible or non-responsible with significant adverse information were handled according to the established procedures.

Our sample consisted of nine contracts (14%) of B&T’s prime contractors who were awarded contracts in 2005 with a value of \$250,000 or more. The nine were selected due to information within OIG that suggested the likelihood that negative information would appear in a background check triggering the follow-up requirements of P&M 130 and the MTA Guidelines. P&M 130 also creates the category of adverse information which means a vendor has problems but ones that do not rise to the level of significant adverse information. For adverse information, approvals are obtained from the B&T President only. The focus of our audit was on significant adverse information procedures as required by the All Agency MTA Guidelines and P&M 130.

*Figure 2* identifies the contractors in our sample and the results of their responsibility determinations, as follows:

**FIGURE 2: Vendors in OIG’s Sample of 2005 B&T Contractors**

<b>Vendor</b>	<b>Contract #</b>	<b>Determination</b>
Koch Skanska, Inc.	TB-64B	Responsible
Angelakis Construction Co.	TNM-332	Responsible
Gabrielli Mack Sales	OP1298	Responsible
Richmond Elevator Co.	04-MNT-2717	Responsible
Parsons Brinckerhoff Quade & Douglas, Inc./Weidlinger Associates Inc.	PSC-05-2736	Responsible with Adverse Information
SEB Services of NY	04-ISD-2707X	Responsible with Adverse Information
Avaya Inc.	03-TD-2664	Responsible with Adverse Information
Ahern Painting Contractors, Inc.	GFM-435B	Responsible with Significant Adverse Information
Kiewit Constructors Inc.	VN Task 9	Responsible with Significant Adverse Information

## **APPENDIX A**

Page 2 of 2

We interviewed all eight contract managers who were charged with the duty of documenting responsibility determinations for the nine contracts that were the subject of the audit. The goal of our interviews was to ascertain whether they were familiar with the procedures as set forth in P&M 130 and the MTA Guidelines and whether they were employing these procedures in performing the responsibility determinations. We also reviewed bid proposals, financial statements, and correspondence between the contract manager, legal department, and contractor, as well as results of database searches in order to ensure that all relevant information was obtained and considered for each contract. We reviewed the contract files to ascertain whether proper approvals were sought for those contracts that were identified as responsible with significant adverse information. Finally, in order to ensure that the Vice President-Procurement and the MTA Board, respectively, were aware of the responsibility determinations, we reviewed Procurement Staff Summary and MTA Board Staff Summaries basic documents used in the approval process.