

New York City MTA inspector general wants reform of agency's contractor evaluation system, ConstructionDive, ft. Erik Ortmann

Erik Ortmann, partner and vice chair of the KD Construction Law practice group, was quoted in an article written by Kim Slowey on potential reform of the MTA contractor evaluation system, published by ConstructionDive on October 16, 2020.

Every six months evaluators rate each category as "satisfactory," "marginal" or "unsatisfactory;" notify contractors of any deficiencies and give them time to correct any problems. Evaluators also assign an overall performance rating to each contractor.

In this latest report, the OIG said that MTA officials agree that the ACE needs revision and that the agency will incorporate the new metrics it has already developed to rate contractor performance into the new system.

While a new system of evaluation might be warranted, said attorney Erik Ortmann with Kaufman Dolowich Voluck in New York, there would be concerns if the MTA made it "an institutional goal" to rate more contractors as unsatisfactory.

"Is there going to be a desire to do that at all costs?" he asked. "Is an element of fairness going to be lost?"

If so, Ortmann said, contractors could eventually challenge changes to the evaluation system they deem unfair or arbitrary in court, a process that would most likely be very time consuming for all involved.