

Office of the Auditor General
Performance Audit Report

**Contractor and Consultant Performance
Evaluation Process**
Michigan Department of Transportation

March 2023

The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

The auditor general may make investigations pertinent to the conduct of audits.

Article IV, Section 53 of the Michigan Constitution



OAG

Office of the Auditor General

Report Summary

Performance Audit Contractor and Consultant Performance Evaluation Process Michigan Department of Transportation (MDOT)

Report Number:
591-0425-22

Released:
March 2023

MDOT utilizes a performance evaluation process for its contractors and consultants to improve quality and performance on construction and design contracts. A completed performance evaluation is required for contractors and consultants upon finalization of a project. A performance evaluation is also utilized to modify the prequalification rating for contractors and to support the qualifications-based selection process for consultants. MDOT completed 3,276 contractor and consultant contracts totaling \$3.5 billion between October 1, 2019 and April 30, 2022.

Audit Objective			Conclusion
Objective: To assess the effectiveness of MDOT's efforts to evaluate contractor and consultant performance.			Moderately effective
Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
Three hundred seventy-five (17%) of 2,259 consultants did not have a completed evaluation, and 956 (51%) of 1,884 completed evaluations were not completed in a timely manner (<u>Finding 1</u>).	X		Agrees
Over 99% of the evaluation questions used to assess contractor and consultant performance were given a rating of 8 or higher, based on a scale of 1 (poor performance) through 10 (best performance), indicating MDOT should assess its performance evaluation processes (<u>Finding 2</u>).		X	Agrees

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March 8, 2023

Mr. Todd Wyett, Chair
State Transportation Commission
and
Bradley C. Wieferich, PE, Acting Director
Michigan Department of Transportation
Murray D. Van Wagoner Building
Lansing, Michigan

Dear Mr. Wyett and Mr. Wieferich:

This is our performance audit report on the Contractor and Consultant Performance Evaluation Process, Michigan Department of Transportation.

Your agency provided preliminary responses to the recommendations at the end of our fieldwork. The *Michigan Compiled Laws* and administrative procedures require an audited agency to develop a plan to comply with the recommendations and to submit it to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We appreciate the courtesy and cooperation extended to us during this audit.

Sincerely,

A handwritten signature in black ink that reads "Doug Ringler". The signature is written in a cursive, flowing style.

Doug Ringler
Auditor General

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AUDIT OBJECTIVES, CONCLUSIONS, FINDINGS, AND OBSERVATIONS

EFFECTIVENESS OF CONTRACTOR AND CONSULTANT PERFORMANCE EVALUATION PROCESS

BACKGROUND

Project managers*, project engineers*, and evaluators* use evaluations to assess contractor* and consultant* performance regarding timely contract* and project completion, adherence to contract requirements, sufficient equipment and personnel resources, subcontractor* management, and quality of work completed. A contractor or consultant who disagrees with their evaluation score may file a written appeal.

Performance evaluation results can affect a contractor's prequalification* status and a consultant's ability to receive new contracts through the qualifications-based selection* (QBS) process. Evaluation scores range from 1 to 10, with 10 exceeding expectations, 8 meeting expectations, and 7 and under not meeting expectations, therefore requiring comments and/or documentation to support a potential appeal (see Exhibits 1 and 2).

For consultants, Michigan Department of Transportation (MDOT) project managers prepare an evaluation at the completion of each contract/project authorization for each firm (both prime contractor/consultant* and subcontractors). After contract closeout*, the Contract Services Division (CSD) reviews the status of evaluations using a tracking spreadsheet. If an evaluation is incomplete, CSD sends notification to the project manager requesting completion of the required evaluation.

For contractors, MDOT engineers* or a delegated evaluator must complete a performance evaluation at the completion of a construction project prior to MDOT completing the final closing steps of a contract.

AUDIT OBJECTIVE

To assess the effectiveness* of MDOT's efforts to evaluate contractor and consultant performance.

CONCLUSION

Moderately effective.

FACTORS IMPACTING CONCLUSION

- MDOT's evaluation process design is consistent with or exceeds the 15 other states' forms and processes reviewed.
- MDOT timely completed over 99% of contractor evaluations prior to project closeout.
- Material condition* relating to outstanding and late consultant evaluations (Finding 1).

* See glossary at end of report for definition.

- Reportable condition* relating to the effectiveness of contractor and consultant performance evaluation processes (Finding 2).

* See glossary at end of report for definition.

FINDING 1

Timeliness of consultant evaluations needs improvement.

MDOT did not always prepare or prepare in a timely manner the required post-project evaluations of consultant performance. In addition, MDOT did not define a required time frame for completing evaluations, which could result in untimely evaluations.

Timely evaluations help ensure feedback to consultants regarding their performance, promote project management/consultant communication, identify and document areas of improvements of consultant performance, improve the overall quality of MDOT projects, and use evaluation ratings in future project selections.

Title 23, Part 172, section 9(d)(2) of the *Code of Federal Regulations** (CFR) requires MDOT to prepare an evaluation summarizing the consultant's performance on a contract. CSD's procedures and instructions for preparing consultant performance evaluations require submission of consultant performance evaluations and require project managers to prepare evaluations for all types of services provided throughout MDOT at the completion of each contract for each consultant working on a project. However, CSD's procedures and instructions do not define the time frame in which evaluations should be completed.

We analyzed 2,493 consultant contracts closed by CSD between October 1, 2019 and April 30, 2022 and the associated performance evaluations completed.

MDOT completed 1,884 (83.4%) of 2,259 expected consultant evaluations. MDOT project managers did not:

17% of consultant evaluations were incomplete.

- a. Prepare a performance evaluation for 375 (16.6%) of 2,259 consultants. As of April 30, 2022, these evaluations were outstanding between 120 days and 5.3 years.
- b. Promptly prepare 956 (50.7%) of 1,884 consultant performance evaluations. These evaluations were prepared between 91 days and 3.9 years after contract completion*.

* See glossary at end of report for definition.

The following table summarizes the number of outstanding and completed consultant evaluations during our audit period:

Number of Days After Contract Completion	Consultant Evaluations			
	Outstanding as of April 30, 2022		Completed as of April 30, 2022	
	Number	Percent	Number	Percent
91 to 180 days	13	3.5%	158	16.5%
181 to 270 days	5	1.3%	174	18.2%
271 to 365 days	16	4.3%	88	9.2%
1 to 1.5 years	56	14.9%	270	28.2%
1.5 to 2 years	51	13.6%	150	15.7%
2 to 3 years	110	29.3%	101	10.6%
3 to 4 years	103	27.5%	15	1.6%
More than 4 years	21	5.6%	0	0.0%
Total	375		956	

CSD monitors whether project managers complete evaluations as part of the contract closeout process, which averages 1.2 years after the end of a contract. CSD's tracking sheet indicated 176 evaluations could not be completed because the project manager is no longer employed by MDOT. Outstanding evaluations for this length of time increases the likelihood evaluations will not be completed and, therefore, cannot be used when considering the consultants for future projects.

We identified requirements used by other states ranging from 30 to 90 days after the completion of work, the project managers' acceptance of the work, or the end of the contract. Establishing a reasonable time frame for project managers to prepare evaluations would help ensure more timely evaluations.

We consider this finding to be a material condition because of the significant number of evaluations not completed or still outstanding more than a year after contract completion. Evaluations are a key element in determining the potential use of consultants for future projects.

RECOMMENDATIONS

We recommend that MDOT prepare the required consultant performance evaluations in a timely manner.

We also recommend that MDOT define due dates for completion of evaluations.

**AGENCY
PRELIMINARY
RESPONSE**

MDOT provided us with the following response:

MDOT agrees with the recommendations. By March 31, 2023, MDOT will review and update its procedures to include defining due dates to ensure timely preparation of consultant performance evaluations.

FINDING 2

Contractor and consultant performance evaluation processes need improvement.

Ratings of 8 or higher were given for over 99% of all evaluation questions.

MDOT should assess the effectiveness and design of its current contractor and consultant performance evaluation processes.

Contractor performance evaluations are required for all construction projects procured through MDOT's bid letting* process. According to MDOT's 2020 Standards Specifications for Construction Manual Section 102.01, prime contractor and subcontractor performance is evaluated at the completion of each project or at the end of each year for multiple year projects. These evaluations are used as a basis for modifying a contractor's prequalification rating for bidding on future MDOT projects. Prequalification ratings affect the dollar amount of future MDOT projects on which the contractor is qualified to bid (see Exhibit 1).

Consultant performance evaluations are required at the completion of each contract/authorization for all prime and subcontracted vendors according to CSD's procedures and instructions for preparing consultant performance evaluations. These evaluations are used to determine a "past performance score" which is added to the scoring during the selection/award process for consultant contracts (see Exhibit 2).

We analyzed ratings for 9,901 contractor evaluations and 1,773 consultant evaluations from October 1, 2019 through April 30, 2022.

Project managers, project engineers, or evaluators gave ratings of 8 or higher for 99.6% and 99.1% of all survey questions completed for contractors and consultants, respectively.

MDOT data disclosed the following frequency of individual evaluation question ratings:

Rating	Contractors		Consultants	
	Number	Percent	Number	Percent
1	2	0.0%	4	0.0%
2*	3	0.0%	1	0.0%
3*	7	0.0%	6	0.0%
4*	12	0.0%	15	0.1%
5	55	0.0%	17	0.1%
6*	120	0.1%	31	0.2%
7*	349	0.3%	89	0.5%
8	55,055	44.7%	4,089	23.1%
9*	54,510	44.3%	9,181	51.9%
10	12,975	10.5%	4,263	24.1%
Total completed questions	123,088	100.0%	17,696	100.0%
No answer or not applicable	24,177		3,580	
Total questions	147,265		21,276	

* Rating undefined in MDOT guidance.

* See glossary at end of report for definition.

We surveyed 48 of 1,175 individuals (236 project managers, 363 project engineers, and 576 evaluators) responsible for completing consultant and/or contractor performance evaluations on October 15, 2021 and July 27, 2022 and received 32 valid responses.

Our review of evaluation ratings, survey results, and MDOT evaluation documentation disclosed:

- a. Evaluation rating scales are partially undefined and inconsistent. MDOT established parameters for rating contractor and consultant performance with defined ratings for 10, 8, 5, and 1 with 10 being reserved for the best performance and 1 being reserved for poor performance. This leaves 6 (60%) of 10 ratings undefined, relying on professional judgment for interpretation. In addition, the contractor evaluation rating scale is inconsistent based upon key words used in the rating definitions. Contractor evaluation rating definitions contain inconsistencies between questions. For example, even though the ratings are clear for each defined rating number, they are inconsistent for the term "usually," which represents a 5 in one question and an 8 in another question.
- b. Low utilization of ratings of 7 and below. Less than 1% of all ratings are 7 and below, implying nearly all MDOT contractors and consultants met or exceeded expectations. Documentation is required for consultant evaluations and encouraged for contractor evaluations to support a low performance rating; however, MDOT policy encourages but does not require comments to support documentation for a rating of 8 and above.
- c. Lack of requirements to document informal appeals resulted in adjusted scores. Therefore, it would be difficult for MDOT to determine if scores were appropriately adjusted and ensure evaluators are consistently applying the rating scale to the performance rendered.

MDOT's evaluation process provides contractors and consultants the opportunity to discuss and appeal a rating. Positive and negative score changes can occur based on discussions, further review, additional support documentation, and informal and formal appeals.

- d. Performance evaluations, as currently written, may not be as effective as other alternative methods at addressing contractor and consultant performance issues.

We asked survey participants if they thought the performance evaluation process was effective at correcting performance issues. They responded:

	<u>Count</u>	<u>Percent</u>
No	14	43.8%
Somewhat	13	40.6%
Yes	5	15.6%
Total responses	<u>32</u>	

Other methods MDOT utilizes to address performance issues include issuing interim evaluations during the contract/project period; assessing monetary charges; issuing a notice of noncompliance with contract requirements (form 1165); or referring the contractor or consultant to the Prequalification Committee, Contractor Performance Evaluation Review, or Construction Field Services Division (CFS).

MDOT utilized evaluation scores on an individual vendor basis and had not analyzed the effectiveness of the evaluation process as a whole to identify potential weaknesses or patterns. MDOT began a contractor performance evaluation lean process improvement review in early 2021 and intends to start a similar review for the consultant performance evaluations in early 2023.

Contractor and consultant performance evaluation guidance needs improvement to ensure consistent application of the rating scale in order to provide meaningful feedback for contractors and consultants. In addition, other methods which provide performance feedback may be more effective in improving contractor and consultant performance, communication between MDOT and its vendors, and the quality of contractor and consultant work.

RECOMMENDATION

We recommend that MDOT assess the effectiveness and design of its current contractor and consultant performance evaluation processes.

**AGENCY
PRELIMINARY
RESPONSE**

MDOT agrees. Given the length of MDOT's preliminary response, the response and our auditor's comments to Finding 2 are presented on page 23.

SUPPLEMENTAL INFORMATION

UNAUDITED
Exhibit 1

CONTRACTOR AND CONSULTANT PERFORMANCE EVALUATION PROCESS Michigan Department of Transportation

Contractor Performance Evaluation Questions and Scoring Criteria

Questions/Scoring Criteria

A. Organization and Management

Q1: To what degree are the Contractor's project management personnel available and given the authority to execute the directions of the Engineer?

Ratings

- 10 - Management personnel are always available and execute the directions of the Engineer.
- 8 - Management personnel are usually available and comply with the directions of the Engineer.
- 5 - Management personnel are sometimes available and sometimes offer resistance to the directions of the Engineer prior to compliance.
- 1 - Management personnel are routinely not available and disagree or disregard the directions of the Engineer most of the time.

Q2: To what degree are the Contractor's management personnel competent and effective in scheduling the work and organizing construction operations, including being punctual in starting and completing the work on the project and meeting critical intermediate phases in accordance with the contract?

Ratings

- 10 - The Contractor is very competent in scheduling work and is very punctual starting the project and meeting all contract dates. The contractor always informs the Engineer of his schedule of operations. The Contractor always provides updates to the progress schedule and/or critical path as required by the contract.
- 8 - The Contractor schedules work operations carefully and meets all contract dates. The Contractor usually informs the Engineer of his work schedule. The contractor usually provides updates to the progress schedule and/or critical path.
- 5 - The Contractor schedules the work, but often fails to follow the schedule. Contract dates are not always met. Updates to the progress schedule and/or critical path are provided only after requests from the Engineer.
- 1 - The contractor does not use a work schedule or if one exists it is seldom used or followed. Contract dates are not met.

Q3: To what degree does the Contractor furnish required documentation and reports in a timely manner? This includes, but is not limited to, certification of materials, delivery tickets, invoices, progress schedule, shop drawings, material sampling, request for extensions of time, contractor staking, and Contractor Quality Assurance/Quality Control (QA/QC) plans and documentation.

Ratings

- 10 - The Contractor always furnishes all paperwork, documentation, reports, information, plans, etc., as required on time without MDOT request.
- 8 - The Contractor furnishes all paperwork, documentation, reports, information, plans, etc., as required on time with minimal request.
- 5 - The Contractor must be asked numerous times to furnish required paperwork, documentation, reports, information, plans, etc. Paperwork is sometimes late.
- 1 - The Contractor typically does not furnish the required paperwork, documentation, reports, information, plans, etc., or is usually late and must be asked in writing.

This exhibit continued on next page.

Q4: To what degree does the Contractor comply with the direction of the Engineer and follow the project authority as detailed in Division 1 of the Standard Specifications for Construction?

Ratings

10 - The Contractor always follows chain of authority and always complies with the directions from the Engineer. The Contractor actively and cooperatively participates in the resolution of issues on the project.

8 - The Contractor follows the chain of authority and complies with the directions from the Engineer.

5 - The Contractor usually follows the chain of authority and complies with the direction from the Engineer after repeated notification.

1 - The Contractor occasionally follows the chain of authority and complies only upon written direction from the Engineer.

Q5: To what degree does the Contractor comply timely with all appropriate wage rates, labor, EEO, and D.B.E laws and regulations, submit accurate certified payrolls, and promptly pay all subcontractors?

Ratings

10 - The Contractor always complies with the MDOT contract specifications relating to Labor Standards/Wage-Rate Compliance, prompt payment, EEO laws and regulations, and appropriate D.B.E. regulations. Payrolls and other required documentation are accurate and submitted on time.

8 - The Contractor complies with MDOT contract specifications relating to Labor Standards/Wage-Rate Compliance, prompt payment, EEO laws and regulations, and appropriate D.B.E regulations. The Contractor promptly resolves any issues after notification by the Department. Payrolls and other required documentation are accurate and submitted on time.

5 - The Contractor usually complies with the MDOT contract specifications relating to Labor Standards/Wage-Compliance, prompt payment, EEO laws and regulations, and appropriate D.B.E regulations. The Contractor resolves any issues only after repeated notification by the Department.

1 - The Contractor occasionally fails to comply with the MDOT contract specifications relating to Labor Standards/Wage-Rate Compliance, prompt payment, EEO laws and regulations and appropriate D.B.E regulations. Areas of noncompliance are not resolved.

B. Resources

Q6: To what degree does the Contractor have adequate and sufficient equipment to keep the project on schedule? Does the equipment meet the requirements of the specifications and efficiently provide a quality product?

Ratings

10 - The Contractor has sufficient equipment to complete the project ahead of schedule. All equipment meets or exceeds the specification requirements.

8 - The Contractor has sufficient equipment to complete the project on schedule. All equipment meets the specification requirements.

5 - The Contractor usually has adequate and sufficient equipment to complete the project on schedule. On some occasions, the Contractor has to be notified to provide equipment that meets the specification requirements.

1 - The Contractor does not have adequate and sufficient equipment to complete the project on schedule. The contractor has to be given written notification to provide equipment meeting the specification requirements.

Q7: To what degree does the Contractor have competent and sufficient personnel to keep the project on schedule?

Ratings

10 - The Contractor has competent and sufficient personnel to complete the project ahead of schedule.

8 - The Contractor has competent and sufficient personnel to complete the project on schedule.

5 - The Contractor usually has competent and sufficient personnel to complete the project on schedule. Occasionally, the Contractor's personnel demonstrate lack of knowledge and skills.

1 - The Contractor does not have competent and sufficient personnel to complete the project on schedule.

This exhibit continued on next page.

C. Work Performance

Q8: To what degree does the Contractor have good safety practices? Does the Contractor comply with MIOSHA requirements and follow their own safety program?

Ratings

10 - The Contractor takes the initiative to ensure the safety and health of the employees. They always comply with and sometimes exceed MIOSHA requirements. Safety equipment and devices are in excellent condition and are used by all the Contractor employees. MIOSHA issued no citations. The contractor always follows their safety program.

8 - The Contractor ensures the safety and health of the employees and complies with MIOSHA requirements. Safety equipment and devices are in good condition and are used by the Contractor's employees. The Contractor immediately carries out any requests by MDOT or MIOSHA for changes in safety measures. MIOSHA issued no citations. The Contractor follows their safety program.

5 - The Contractor usually ensures the safety and health of the employees and usually complies with MIOSHA requirements. Safety equipment and devices are in average condition and are sometimes not used by Contractor's employees. The contractor carries out requests by MDOT or MIOSHA for changes in safety measures after written notification. MIOSHA may have issued citations.

1 - The Contractor's safety and health practices are unsatisfactory. MIOSHA issued the Contractor citations. The Engineer imposed stoppages of work for safety issues. The Contractor only reluctantly makes changes requested by MDOT or did not make the change.

Q9: To what degree did the Contractor comply with contract requirements for maintaining traffic?

Ratings

10 - Traffic control devices are in excellent condition, in proper position, clean, and serviced regularly. The Contractor continually monitors and meets all traffic control requirements. Any job site conditions which affect the traveling public are addressed immediately (even after hours) with no direction from the Engineer. Traffic regulators are competent and effective.

8 - Traffic control devices are in good condition, placed properly, maintained and working effectively. The Contractor monitors and meets all traffic control requirements. Deficiencies are immediately corrected with minimal notification by the Engineer. Traffic regulators are competent and effective.

5 - Traffic control devices usually meet the minimum requirements. The Contractor usually monitors and meets the traffic control requirements. The deficiencies are only corrected upon notification from the Engineer. Traffic regulators are usually competent and effective.

1 - The Contractor has numerous traffic control deficiencies which are corrected only upon written notification from the Engineer. Safety shut downs may be issued for non-compliance.

Q10: If applicable, to what degree does the Contractor meet the contract requirements for Contractor Quality Control (CQC)?

Ratings

10 - The Contractor exceeds the contract requirements. The Contractor exceeds the approved CQC plan. The Contractor documentation is excellent and always provided on time.

8 - The Contractor meets the contract requirements. The Contractor always follows the approved CQC plan. The Contractor's documentation is satisfactory and is provided on time.

5 - The Contractor meets the contract requirements only after notification of deficiencies by the Engineer. The Contractor follows the approved CQC plan after notification by the Engineer. The Contractor documentation is poor and/or is not timely.

1 - The Contractor does not comply with contract requirements even after notification of non-compliance from the Engineer. The Contractor follows the approved CQC plan after notification by the Engineer. The Contractor documentation is unsatisfactory and/or is not timely.

This exhibit continued on next page.

Q11: To what degree does the Contractor provide a quality product?

Ratings

- 10 - The quality of the materials and workmanship exceeds the contract requirements and is excellent.
- 8 - The quality of the materials and workmanship meets the contract requirements.
- 5 - The quality of the materials and workmanship meets the minimum contract requirements after notification from the Engineer.
- 1 - The quality of the materials and workmanship may not meet the minimum contract requirements even after notification from the Engineer.

Q12: To what degree does the Contractor properly notify and coordinate work with utility companies, railroads, property owners, local units of government, and Contractors working on adjacent projects?

Ratings

- 10 - The Contractor exceeds expectations on project coordination. The Contractor always schedules and conducts operations in a timely manner that does not interfere with the work or damage the property of others. The Contractor always provides advance notifications to all potentially affected parties prior to commencing work and does whatever is necessary to cooperate with them and to protect their existing facility or property.
- 8 - The Contractor meets expectations on project coordination. The Contractor schedules and conducts operations in a timely manner that does not interfere with the work or damage to the property of others. Any problems created are immediately corrected. The Contractor provides proper notification and cooperates with each affected party.
- 5 - The Contractor usually meets expectations on project coordination. The Contractor usually schedules and conducts operations in a timely manner that does not interfere with the work or damage the property of others. Corrections are made only after notification from the Engineer. The Contractor does not cooperate fully with or give proper notification to all affected parties.
- 1 - The Contractor does not schedule and conduct operations in a timely manner. The Contractor's operations frequently interfere with the work or damages the property of others. The Contractor does not provide the proper notification nor make an effort to cooperate with the affected parties.

Q13: To what degree does the Contractor submit the necessary documentation to permit timely closeout and finalizing of the project?

Ratings

- 10 - All required documentation is accurate, concise, complete. The Contractor exceeds expectations for submitting timely documentation.
- 8 - All required documentation is accurate, concise, complete and submitted timely.
- 5 - All documentation is submitted for project closeout after notification of deficiencies.
- 1 - Notification for project documentation is required and delays project close out.

Q14: To what degree does the Contractor meet the environmental requirements of the contract?

Ratings

- 10 - The Contractor exceeds the environmental requirements and provides required documentation without prompting by the Engineer.
- 8 - The Contractor meets the environmental requirements and provides required documentation without prompting by the Engineer.
- 5 - The Contractor meets the environmental requirements and provides required documentation only after notification by the Engineer.
- 1 - The Contractor meets environmental requirements only after repeated notification from the Engineer. The engineer may issue orders to stop work, hold up payments, or have work completed by others.

This exhibit continued on next page.

D. Subcontractor Management

Q15: To what degree does the Contractor coordinate work with Subcontractor's work, exercise authority over Subcontractors, provide notice of Subcontractor work schedule and ensure that Subcontractors are in compliance with contract requirements?

Ratings

10 - The Contractor exceeds expectations in exercising authority, coordinating and monitoring work operations of their Subcontractors to ensure the schedule and specifications are met and that all documentation is submitted in a timely manner.

8 - The Contractor always exercises authority, coordinates and monitors work operations with their Subcontractors to ensure the schedule and specifications are met, and that all documentation is submitted in a timely manner.

5 - The Contractor usually exercises authority, coordinates and monitors work operations with their Subcontractors to ensure the schedule and specifications are met, and all documentation is submitted in a timely manner. Any problems are corrected immediately upon notification by the Engineer.

1 - The Contractor does not sufficiently exercise authority, coordinate or monitor work operations with their Subcontractors to ensure the schedule and specifications are met, and that all documentation is submitted in a timely manner. Problems are corrected only upon notification by the Engineer.

Source: The OAG obtained evaluation questions and rating scale from MDOT.

CONTRACTOR AND CONSULTANT PERFORMANCE EVALUATION PROCESS
Michigan Department of Transportation

Consultant Performance Evaluation Questions and Scoring Criteria

Questions/Scoring Criteria

Q1: Was the vendor in control of the services provided to MDOT?

Scoring Criteria: Rating Description

- 10 - Vendor displayed outstanding knowledge and control of the services and provided superior advice and counsel to the department that improved MDOT's project approach, including but not limited to communication with the public, coordination with local governments, or the project management considerations.
- 8 - Vendor was always knowledgeable and in control of the services and clearly met the department's expectations.
- 5 - Vendor was usually knowledgeable and in control but required guidance from department personnel.
- 1 - Vendor demonstrated no control over the services, and the project was harmed.

Q2: Did the Vendor communicate adequately with the department staff?

Scoring Criteria: Rating Description

- 10 - Vendor provided superior communications with the department, communicating in a thorough, concise, and timely manner; and clearly exceeded the department's expectations by identifying problems and helping to define choices faced by the department.
- 8 - Vendor always communicated with the department in a thorough, concise, and timely manner and clearly met the department's expectations.
- 5 - Vendor usually communicated with the department in a thorough, concise, and timely manner. Department personnel occasionally had to initiate and clarify communications to move project forward.
- 1 - Communication was lacking and the project was harmed.

Q3: Was the Vendor Responsive to Requests from the Department, including requests for information and requests to make changes in the work?

Scoring Criteria: Rating Description

- 10 - Vendor anticipated the need for information or changes and proactively initiated action.
- 8 - Vendor was always responsive and promptly complied with all requests.
- 5 - Vendor was usually responsive or was occasionally resistant to requests for information or minor changes.
- 1 - Vendor was unresponsive and the project was harmed.

Q4: Did the Vendor follow good safety Practices?

Scoring Criteria: Rating Description

- 10 - Vendor took the initiative to ensure the safety and health of the employees. Safety equipment and devices were in excellent condition and were used by all vendor employees.
- 8 - Safety equipment and devices were in good condition and were used by vendor's employees. Vendor immediately carried out any requests by MDOT for changes in safety measures.
- 5 - Vendor usually ensured the safety and health of employees. Safety equipment and devices were in good condition and were used by the vendor's employees. Vendor carried requests by MDOT for changes in safety measures after written notification.
- 1 - Vendor's safety and health practices were unsatisfactory. MDOT imposed stoppages of work for safety issues. Vendor reluctantly made changes requested by MDOT or did not make the change.

This exhibit continued on next page.

Questions/Scoring Criteria

Q5: Did the Vendor meet deliverable date requirements?

Scoring Criteria: Rating Description

- 10 - Acceptable deliverables were always received more than 15% ahead of schedule.
- 8 - Acceptable deliverables were always within the schedule.
- 5 - Acceptable deliverables were usually received no more than 10% behind schedule.
- 1 - Acceptable deliverables were usually received more than 25% behind schedule.

Q6: Did the Vendor coordinate work with subvendor's work, exercise authority over subvendors, provide notice of subvendor work schedule, and ensure that subvendors were in compliance with contract requirements?

Scoring Criteria: Rating Description

- 10 - Vendor was proactive in exercising authority, coordinating and monitoring work operations of the subvendors to ensure acceptable completion of the scope of services.
- 8 - Vendor always exercised authority, coordinated and monitored work operation with their subvendors to ensure acceptable completion of the scope of services.
- 5 - Vendor usually exercised authority, coordinated and monitored work operations with their subvendors to ensure acceptable completion of the scope of services. Any problems were corrected immediately upon notification by MDOT.
- 1 - Vendor's failure to exercise authority, coordinate and monitor work operations with their subvendors harmed the project.

Q7: Did the Vendor have competent and sufficient personnel with the technical expertise to successfully complete the project?

Scoring Criteria: Rating Description

- 10 - Vendor provided personnel with superior qualifications who were able to complete the scope of services with minimal guidance or expertise given by MDOT.
- 8 - Vendor always provided personnel who were able to complete the scope of services with little more than the normal guidance or expertise given by MDOT.
- 5 - Vendor usually provided personnel who were able to complete the scope of services with little more than the normal guidance or expertise given by MDOT. Occasionally, the vendor's personnel demonstrated lack of knowledge and skill.
- 1 - Vendor did not provide competent and sufficient personnel to adequately perform the scope of services and the project was harmed.

Q8: Did the Vendor have adequate and sufficient resources other than personnel (equipment, manuals, etc.) to fulfill the requirements of the scope of services?

Scoring Criteria: Rating Description

- 10 - All resources exceeded requirements to perform the scope of services.
- 8 - All resources met requirements to adequately perform the scope of services.
- 5 - Resources usually were adequate and sufficient to perform the scope of services. On some occasions, the vendor had to be notified to provide resources to meet requirements.
- 1 - Vendor did not have adequate and sufficient resources to perform the scope of services and the project was harmed.

Q9: Did the Vendor provide a quality work product?

Scoring Criteria: Rating Description

- 10 - Vendor's work was excellent (complete, accurate, and professional in appearance) and MDOT requirements were exceeded.
- 8 - Vendor's work product was acceptable and MDOT requirements were met without a need for MDOT to identify deficiencies.
- 5 - Vendor's work product met minimum requirements after notification of deficiencies from MDOT.
- 1 - Vendor's work product was unacceptable and clearly did not meet MDOT requirements, and the project was harmed.

This exhibit continued on next page.

Questions/Scoring Criteria

Q10: Did the Vendor properly notify and coordinate work with affected parties such as utility companies, property owners, local units of government, and other MDOT areas?

Scoring Criteria: Rating Description

- 10 - Vendor was proactive in initiating and executing notifications and project coordination activities.
- 8 - Vendor always provided proper notification and coordinated with each affected party.
- 5 - Vendor usually coordinated with, or gave proper notification to, all affected parties.
- 1 - Vendor did not provide proper notification nor coordinate with affected parties, and the project was harmed.

Q11: Did the Vendor meet the applicable environmental requirements such as ensuring documentation, enforcement obtaining permits, studies, etc.?

Scoring Criteria: Rating Description

- 10 - Vendor was proactive in initiating and executing activities to meet environmental requirements without prompting by MDOT.
- 8 - Vendor always met environmental requests.
- 5 - Vendor usually met environmental requests.
- 1 - Vendor's failure to meet environmental requests harmed the project.

Q12: To the best of my knowledge, did the Vendor comply with applicable federal, state and local laws and regulations and/or MDOT guidelines and procedures. This includes but is not limited to, compliance with prompt payment to subvendors, submitting accurate and timely invoices, and responding to contractual issues?

Scoring Criteria: Rating Description

- 10 - Vendor displayed outstanding knowledge of applicable federal, state and local laws and regulations. In addition, the vendor was proactive in ensuring they complied with MDOT guidelines and procedures and therefore needed no MDOT intervention.
- 8 - Vendor always knew and complied with applicable federal, state and/or local laws and regulations. In addition, the vendor always followed MDOT guidelines and procedures with normal guidance or expertise given by MDOT.
- 5 - Vendor was usually knowledgeable of applicable federal, state and/or local laws and regulations, but MDOT had to intervene occasionally to ensure compliance. The vendor usually followed MDOT guidelines and procedures but needed more than normal guidance or expertise by MDOT. Any problems were corrected immediately upon notification by MDOT.
- 1 - Vendor failed to comply with applicable federal, state and/or laws regulations and/or the vendor failed to comply with MDOT guidelines and procedures.

Q13. Please discuss how well the Consultant utilized and followed the guidance set forth in the MDOT-ACEC Partnership Charter Agreement.

Source: The OAG obtained evaluation questions and rating scale from MDOT.

CONTRACTOR AND CONSULTANT PERFORMANCE EVALUATION PROCESS

Michigan Department of Transportation

Finding 2 Agency Preliminary Response and Auditor's Comments to Agency Preliminary Response

This section contains MDOT's preliminary response to Finding 2 and our auditor's comments providing further clarification and context where necessary.

Finding 2: MDOT should assess the effectiveness and design of its current contractor and consultant performance evaluation processes.

MDOT provided us with the following response:

AGENCY PRELIMINARY RESPONSE

Both prior to and during the audit, MDOT was aware of opportunities for improvement, and the review and assessment of the consultant and contractor performance evaluation processes were in progress.

Regarding the rating scales (bullet "a"), MDOT disagrees that the rating scale and rating scale definitions are inconsistent. Similar to other evaluation processes, the rating scales and definitions should and do differ based on the question being asked and the evaluation topic. Also, MDOT agrees that not all ratings are defined; however, MDOT disagrees that there is an issue with the rating of "9" not specifically being defined, particularly when the ratings of "8" and "10" are specifically defined. For example, it is reasonable to expect that evaluators have the ability and professional judgement to determine when performance is less than 10 and above 8. It is also reasonable to expect, because of oversight, expectations, and guidance provided by MDOT in past projects as well as throughout the duration of any project, that nearly all contractors and consultants meet and exceed expectations for quality projects, as evidenced by scores of 8-10.

MDOT recognizes the results of the surveys as conveying some helpful insights; however, MDOT does not agree with all of the OAG conclusions and perspectives regarding the survey and associated results. As referenced in the audit report, MDOT utilizes other methods to address performance issues and agrees that other performance evaluation methods could improve the processes.

AUDITOR'S COMMENTS TO AGENCY PRELIMINARY RESPONSE

Throughout the audit, we requested updates from MDOT regarding its progress to improve its performance evaluation processes. We did not receive draft or final copies of updated MDOT policies and procedures, administrative rules, or any other documentation on MDOT's assessments or updates relating to these processes.

While it is true the intent of "9" could be assumed based on the definitions provided for 8 and 10, other definitions are less clear as there is more spacing and needed judgment between rating definitions (such as 2-4 when only a score of 1 or 5 is defined and 6-7 when only a score of 5 and 8 are defined).

Also, a rating scale of 1-10 infers a rating of 5 to 6 as average performing, however, over 99% of all questions were rated 8-10 implying the evaluation scale is really only a 3-point scale or almost all MDOT's contractors and consultants are high performing. It is not reasonable to expect nearly all contractors and consultants meet and exceed expectations. We believe this supports the need to assess the design of the current evaluation processes to ensure it effectively identifies performance issues and areas of improvement.

In addition, some survey respondents indicated the scale could be revised to a smaller scale.

We included the results of one survey question in Finding 2, which noted: 13 (41%) of 32 think the process is somewhat effective and 14 (44%) of 32 said the process was not effective. All other OAG conclusions were based on MDOT evaluation rating scores and MDOT documentation. This indicates there is potential for improvements in the evaluation processes and further emphasizes the need to assess their effectiveness and design.

PROCESS DESCRIPTION

MDOT's contractor and consultant performance evaluation processes assess work on construction and design projects with a goal to document and improve contractor and consultant performance and ultimately improve the quality of MDOT projects.

The evaluation process involves two divisions within MDOT:

- CSD responsibilities include administering the contracting processes for construction contracts, consultant engineering services contracts, and contracts utilizing the DTMB's procurement guidelines, such as routine maintenance, mowing, and janitorial services. These processes include contractor and consultant prequalification, contract advertisement, contract award, contract payment, contract monitoring, and bid letting.
- CFS responsibilities include development and distribution of construction specifications, quality control/quality assurance programs, and construction staff guidance. CFS provides specialized engineering expertise to the regions and other divisions and maintains testing laboratories for all types of highway materials.

MDOT's 2020 Standards Specifications for Construction Manual Section 102.19 requires an engineer to evaluate contractor and subcontractor performance on the contract in accordance with MDOT's written contractor performance evaluation procedures. An evaluation is used as a basis for modifying the prequalification ratings of the contractor and any tier subcontractor. Interim evaluations may be issued at any time during the contract period, and at least one evaluation must be issued at contract completion.

Federal regulation 23 *CFR* 172 requires engineering and design-related service contracts to be selected through a competitive negotiation or QBS process. Federal regulation 23 *CFR* 172.7(a)(1) includes past performance as a factor in determining consultants who demonstrated competence and qualifications for QBS contracts. The performance evaluation should include, but not be limited to, an assessment of the timely completion of work, adherence to contract scope and budget, and quality of the work conducted.

Between October 1, 2019 and April 30, 2022, MDOT closed 1,510 prime consultant contracts totaling \$477.8 million and 1,766 prime contractor construction contracts totaling \$3.0 billion.

AUDIT SCOPE, METHODOLOGY, AND OTHER INFORMATION

AUDIT SCOPE

To examine the records and processes related to MDOT contractor and consultant performance evaluation processes. We conducted this performance audit* in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As part of the audit, we considered the five components of internal control (control environment, risk assessment, control activities, information and communication, and monitoring activities) relative to the audit objectives and determined all components were significant.

PERIOD

Our audit procedures, which included a preliminary survey, audit fieldwork, report preparation, analysis of agency responses, and quality assurance, generally covered October 1, 2019 through April 30, 2022.

METHODOLOGY

We conducted a preliminary survey to gain an understanding of MDOT's operations, activities, and procedures to establish our audit objective and methodology. During our preliminary survey, we:

- Interviewed MDOT management and staff to obtain an understanding of their roles and responsibilities.
- Reviewed State policies, procedures, and laws related to contractor and consultant evaluations.
- Obtained an understanding of MDOT's key processes, systems, and internal control significant to the potential audit objective.
- Identified and compared other states' evaluation forms and processes with the policies and procedures used in Michigan.

OBJECTIVE

To assess the effectiveness of MDOT's efforts to evaluate contractor and consultant performance.

To accomplish this objective, we:

- Randomly sampled 48 of 1,175 individuals (236 project managers, 363 project engineers, and 576 evaluators)

* See glossary at end of report for definition.

who completed contractor or consultant evaluations from October 1, 2019 through April 30, 2022 to conduct a survey regarding evaluation practices.

- Analyzed 2,493 consultant contracts closed by CSD to determine evaluation completion and timeliness.
- Analyzed 1,773 consultant evaluations and 9,901 contractor evaluations to determine the frequency of ratings.
- Analyzed 1,766 construction contracts for evaluation completion and timeliness.
- Randomly and judgmentally sampled 30 of 696 contracts with documentation related to potential performance issues from October 1, 2019 through April 30, 2022 to determine if the final performance evaluations reflected a lower evaluation rating. Potential issues reviewed consisted of, but were not limited to, liquidated damages* assessed, interim evaluations, and notices of noncompliance.
- Randomly sampled 24 of 1,768 prime contractor construction contracts and 24 of 1,510 prime consultant contracts closed by CSD from October 1, 2019 through April 30, 2022 to verify accuracy of data, evaluation completeness, and reasonableness of ratings based on available documentation.
- Analyzed CSD's consultant evaluation tracking sheet to determine appropriate design and implementation.
- We reviewed 15 states' contractor and consultant performance evaluation forms to obtain an understanding of their processes.

Our random samples were selected to eliminate any bias and enable us to project the results to the populations. Our judgmental sample was selected to ensure representation from each type of potential issue; therefore, we could not project the results to the population.

CONCLUSIONS

We base our conclusions on our audit efforts and any resulting material conditions or reportable conditions.

When selecting activities or programs for audit, we direct our efforts based on risk and opportunities to improve State government operations. Consequently, we prepare our performance audit reports on an exception basis.

* See glossary at end of report for definition.

**AGENCY
RESPONSES**

Our audit report contains 2 findings and 3 corresponding recommendations. MDOT's preliminary response indicates it agrees with all of the recommendations.

The agency preliminary response following each recommendation in our report was taken from the agency's written comments and oral discussion at the end of our fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require an audited agency to develop a plan to comply with the recommendations and to submit it to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

**PRIOR AUDIT
FOLLOW-UP**

Following is the status of the reported findings from our February 2015 performance audit of the Monitoring of Warranties and Road and Bridge Construction Projects, Michigan Department of Transportation (591-0210-14):

Prior Audit Finding Number	Topic Area	Current Status	Current Finding Number
4a	Ensure interim consultant evaluation procedures reflect current management philosophy.	Complied	Not applicable
4b	Prepare final consultant evaluations in accordance with established procedures.	Rewritten*	1

Note: In addition, we followed up the three material conditions noted in our February 2015 performance audit of MDOT's Monitoring of Warranties and Road and Bridge Construction Projects (591-0210-14) in our July 2016 follow-up report (591-0210-14F). We determined MDOT complied with those prior audit recommendations.

**SUPPLEMENTAL
INFORMATION**

Our audit report includes supplemental information presented as Exhibits 1 and 2. Our audit was not directed toward expressing a conclusion on the information in these exhibits.

* See glossary at end of report for definition.

GLOSSARY OF ABBREVIATIONS AND TERMS

auditor's comments to agency preliminary response	Comments the OAG includes in an audit report to comply with <i>Government Auditing Standards</i> . Auditors are required to evaluate the validity of the audited entity's response when it is inconsistent or in conflict with the findings, conclusions, or recommendations. If the auditors disagree with the response, they should explain in the report their reasons for disagreement.
bid letting	The process of advertising projects open for bids, contractors submitting bids, and MDOT reviewing contractors who submitted bids.
CFS	Construction Field Services Division.
<i>Code of Federal Regulations (CFR)</i>	The codification of the general and permanent rules published by the departments and agencies of the federal government.
consultant	An individual or a legal entity contracting with MDOT to provide consultant services.
contract	A written agreement between MDOT and the contractor setting forth the obligations of the parties for the performance of and payment for the prescribed work.
contract closeout (by CSD)	A high-level review of a contract, invoices submitted, and payments made to ensure compliance with contract terms.
contract completion	A term synonymous with contract expiration.
contractor	An individual or a legal entity contracting with MDOT to perform prescribed construction work and supply materials.
CQC	Contractor Quality Control.
CSD	Contract Services Division.
DBE	Disadvantaged Business Enterprise.
EEO	Equal Employment Opportunity.
effectiveness	Success in achieving mission and goals.

engineer	<p>An individual classified as an engineer who is:</p> <ul style="list-style-type: none"> • The director of MDOT, or is designated by the director, acting directly or through authorized representatives, who is responsible for engineering supervision of the construction when the State of Michigan is the awarding authority. • Representing the county when a county is the awarding authority. • Representing the city or village when a city or village is the awarding authority.
evaluator	An individual who worked closely with the construction project delegated to complete the performance evaluation prior to engineer approval.
liquidated damages	Monetary damages paid at a specified rate by the contractor to MDOT for work not completed by the completion dates or within specified time frames.
material condition	A matter that, in the auditor's judgment, is more severe than a reportable condition and could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program. Our assessment of materiality is in relation to the respective audit objective.
MDOT	Michigan Department of Transportation.
MIOSHA	Michigan Occupational Safety and Health Administration.
performance audit	An audit that provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision-making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.
prequalification	A process used by MDOT to determine the work classifications that a contractor is eligible to perform and the maximum contract amount that the contractor's resources enable it to manage.

prime contractor/consultant	A primary individual or a primary legal entity contracting/consulting with MDOT to perform prescribed work and supply materials.
project engineer	The person responsible for leading a construction project from its inception to execution, including the completion of contractor performance evaluations as part of the closeout process on the construction side. Similar to a project manager (see below), however, they usually possess a certification or license for engineering and are involved with construction projects versus consultant services.
project manager	The person responsible for leading a consultant project from its inception to execution, including the completion of consultant performance evaluations.
qualifications-based selection (QBS)	A procurement process for the competitive selection of services under which the most competent consultant or vendor is selected based on qualifications such as knowledge, skill, experience, and other project-specific factors.
reportable condition	A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following categories: a deficiency in internal control; noncompliance with provisions of laws, regulations, contracts, or grant agreements; opportunities to improve programs and operations; or fraud.
rewritten	The recurrence of similar conditions reported in a prior audit in combination with current conditions that warrant the prior audit recommendation to be revised for the circumstances.
subcontractor	An individual or a legal entity performing part of the work through a contract agreement with the contractor.



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