

SECURITIES AND EXCHANGE COMMISSION

FORM 10-K/A

Annual report pursuant to section 13 and 15(d) [amend]

Filing Date: **2005-05-02** | Period of Report: **2004-12-31**
SEC Accession No. **0001193125-05-091947**

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FILER

ACTUATE CORP

CIK: **1062478** | IRS No.: **943193197** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **10-K/A** | Act: **34** | File No.: **000-24607** | Film No.: **05789757**
SIC: **7372** Prepackaged software

Mailing Address

701 GATEWAY BLVD
SUITE
SOUTH SAN FRANCISCO CA
94080

Business Address

701 GATEWAY BLVD
SUITE
SOUTH SAN FRANCISCO CA
94080
6504252300

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K/A
Amendment No. 1

ANNUAL REPORT
PURSUANT TO SECTION
13 OR 15(d)
OF THE SECURITIES
EXCHANGE ACT OF
1934

For the fiscal year ended
December 31, 2004

OR

TRANSITION REPORT
PURSUANT TO SECTION
13 OR 15(d)
OF THE SECURITIES
EXCHANGE ACT OF
1934

Commission file number
0-24607

Actuate
Corporation

(Exact name of registrant as
specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

94-3193197
(I.R.S. Employer
Identification Number)

701 Gateway Boulevard
South San Francisco, California 94080
(Address of principal executive offices)

(650) 837-2000
(Registrant's telephone number,
including area code)

Securities registered pursuant
to Section 12(b) of the Act:
None

Securities registered pursuant
to Section 12(g) of the Act:
**Common Stock, \$.001 par
value**
(Title of each class)

Indicate by check mark
whether the registrant (1) has
filed all reports required to be
filed by Sections 13 or 15(d)
of the Securities Exchange
Act of 1934 during the
preceding 12 months (or for
such shorter period that the
registrant was required to file
such reports), and (2) has
been subject to such filing
requirements for the past
90 days.

Yes No

Indicate by check mark
if disclosure of delinquent
filers pursuant to Item 405 of
Regulation S-K is not
contained herein, and will not
be contained, to the best of
registrant's knowledge, in
definitive proxy or
information statements
incorporated by reference in
Part III of this Form 10-K or
any amendment to this
Form 10-K.

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act).

Yes No

Based on the closing price as reported on the Nasdaq Stock Market as of the last business day of the Registrant' s most recently completed second fiscal quarter (June 30, 2004), the aggregate market value of the voting stock held by non-affiliates of the registrant was approximately \$150,256,000. Shares of common stock held by each executive officer and director and by each person who is known by the registrant to own 5% or more of the outstanding Common Stock have been excluded in that such persons may be deemed to be affiliates. Share ownership information of certain persons known by the Company to own greater than 5% of the outstanding common stock for purposes of the preceding calculation is based solely on information on Schedule 13G filed with the Commission. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of February 28, 2005 there were 61,964,776 shares of the Registrant' s common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

The information called for by Part III is incorporated by reference to specified portions of the registrant' s definitive Proxy Statement for its 2005 Annual Meeting of Stockholders filed with the Securities and Exchange Commission on April 21, 2005.

Explanatory Note

In reliance upon the Order of the Securities and Exchange Commission under Section 36 of the Securities Exchange Act of 1934 (Release No. 50754, November 30, 2004) (the "SEC Order"), Actuate Corporation omitted from its annual report on Form 10-K filed on March 16, 2005 its management's annual report on internal controls over financial reporting required by Item 308(a) of Regulation S-K and the related attestation report of the registered public accounting firm required by Item 308(b) of Regulation S-K. Actuate Corporation is filing this Form 10-K/A (Amendment No. 1) to provide the information that was omitted from its annual report on Form 10-K pursuant to the SEC Order. Item 9A is amended to provide the omitted information.

In accordance with the rules of the Securities and Exchange Commission, updated certifications of the principal executive officer and principal financial officers pursuant to Exchange Act Rule 13a-14(a) have been filed as Exhibits 31.1 and 31.2. In addition, an updated consent of KPMG LLP has been filed as Exhibit 23.1.

No other information included in the annual report of Form 10-K is amended by this Form 10-K/A. Unaffected items have not been repeated in this Form 10-K/A and Actuate Corporation has not updated the disclosure made in its Annual report on Form 10-K to reflect events occurring after its filing on March 16, 2005.

ITEM 9A. EVALUATION OF DISCLOSURE CONTROLS AND PROCEDURES

(1) Management's Report on Internal Control Over Financial Reporting

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected.

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2004, and this assessment identified the following material weakness: The Company's policies and procedures did not require review and approval by the relevant senior accounting personnel at the parent company level of journal entries for material nonrecurring transactions originating at the foreign subsidiary level. The absence of this control resulted in a failure in the Company's year-end financial statement close process to ensure that original assumptions made in determining the amount of a restructuring charge had not changed as of year-end. As a result of this deficiency, a material error in accounting for the amount recorded for a restructuring charge originating at a foreign subsidiary level occurred. This material error in accounting was corrected by reducing the restructuring charge and the related accrued liability prior to issuance of the Company's 2004 consolidated financial statements.

In making its assessment of internal control over financial reporting, management used the criteria issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control-Integrated Framework. Because of the material weakness described above, management's conclusion is that the Company did not maintain effective internal control over financial reporting as of December 31, 2004.

The Company's independent registered public accounting firm, KPMG LLP, has issued an audit report on management's assessment of the Company's internal control over financial reporting. That report appears below.

(2) Changes in Internal Control Over Financial Reporting

There has been no change in the Company's internal control over financial reporting that occurred during the last quarter of the period covered by this report that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

The Company has taken action to correct the aforementioned material weakness in internal control over financial reporting by adding an additional review procedure that will require senior accounting managers at corporate headquarters to review journal entries relating to material nonrecurring journal entries originating at both foreign subsidiary and domestic levels.

(3) Evaluation of Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company's Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

The Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and the Company's Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures as of the end of the period covered by this report. Based on the foregoing, the Company's Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures were ineffective as of the end of the period covered by this report due to the material weakness identified in Management's Report on Internal Control Over Financial Reporting.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Actuate Corporation:

We have audited management' s assessment, included in the accompanying Management' s Report on Internal Control Over Financial Reporting (Item 9A(1)), that Actuate Corporation did not maintain effective internal control over financial reporting as of December 31, 2004, because of the effect of a material weakness identified in management' s assessment, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Actuate Corporation' s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management' s assessment and an opinion on the effectiveness of the Company' s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management' s assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company' s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company' s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company' s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. The following material weakness has been identified and included in management' s assessment as of December 31, 2004:

The Company's policies and procedures did not require review and approval by the relevant senior accounting personnel at the parent company level of journal entries for material nonrecurring transactions originating at the foreign subsidiary level. The absence of this control resulted in a failure in the Company's year-end financial statement close process to ensure that original assumptions made in determining the amount of a restructuring charge had not changed as of year-end. As a result of this deficiency, a material error in accounting for the amount recorded for a restructuring charge originating at a foreign subsidiary level occurred.

We also have audited in accordance with the standards of the PCAOB the consolidated balance sheet of Actuate Corporation and subsidiaries as of December 31, 2004, and the related consolidated statements of operations, stockholders' equity and comprehensive income (loss), and cash flows for the year then ended. The aforementioned material weakness was considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2004 consolidated financial statements, and this report does not affect our report dated March 16, 2005, which expressed an unqualified opinion on those consolidated financial statements.

In our opinion, management's assessment that Actuate Corporation did not maintain effective internal control over financial reporting as of December 31, 2004, is fairly stated, in all material respects, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Also, in our opinion, because of the effect of the material weakness described above on the achievement of the objectives of the control criteria, Actuate Corporation has not maintained effective internal control over financial reporting as of December 31, 2004, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

/s/ KPMG LLP

Mountain View, CA
April 28, 2005

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K

(a)(3) Exhibits

The exhibits listed on the accompanying Exhibit Index are filed as part of, or are incorporated by reference into, this report.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, we have duly caused this report to be signed on our behalf by the undersigned thereunto duly authorized.

ACTUATE CORPORATION
(Registrant)

By: /s/ DANIEL A. GAUDREAU

Daniel A. Gaudreau
Senior Vice President, Finance and Administration and
Chief Financial Officer

Date: May 2, 2005

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Exhibit Title</u>
23.1	Consent of Independent Registered Public Accounting Firm
31.1	Rule 13a-14(a)/15d-14(a) Certification of the Chief Executive Officer
31.2	Rule 13a-14(a)/15d-14(a) Certification of the Chief Financial Officer

Consent of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Actuate Corporation:

We consent to incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-113545, 333-104101, 333-84582, 333-62600, 333-56906, 333-33720, 333-73015, and 333-59959) and in Registration Statements on Form S-3 (Nos. 333-67220 and 333-34410) of Actuate Corporation of our report dated March 16, 2005, relating to the consolidated balance sheet of Actuate Corporation and subsidiaries as of December 31, 2004, and the related consolidated statements of operations, stockholders' equity and comprehensive income (loss), and cash flows for the year then ended, and the related financial statement schedule, which report appears in the December 31, 2004 annual report on Form 10-K of Actuate Corporation, and our report dated April 28, 2005, relating to management' s assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting as of December 31, 2004, which report appears in this December 31, 2004 amended annual report on Form 10-K/A of Actuate Corporation.

Our report dated April 28, 2005, on management' s assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting as of December 31, 2004, expresses our opinion that Actuate Corporation did not maintain effective internal control over financial reporting as of December 31, 2004 because of the effect of a material weakness on the achievement of the objectives of the control criteria and contains an explanatory paragraph that states that the Company' s policies and procedures did not require review and approval by the relevant senior accounting personnel at the parent company level of journal entries for material nonrecurring transactions originating at the foreign subsidiary level. The absence of this control resulted in a failure in the Company' s year-end financial statement close process to ensure that original assumptions made in determining the amount of a restructuring charge had not changed as of year-end. As a result of this deficiency, a material error in accounting for the amount recorded for a restructuring charge originating at a foreign subsidiary level occurred.

/s/ KPMG LLP

Mountain View, California
April 28, 2005

CERTIFICATION

I, Peter I. Cittadini, certify that:

1. I have reviewed this annual report on Form 10-K/A of Actuate Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operation and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: May 2, 2005

/s/ PETER I. CITTADINI

Peter I. Cittadini
President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

I, Daniel A. Gaudreau, certify that:

1. I have reviewed this annual report on Form 10-K/A of Actuate Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operation and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles; and
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: May 2, 2005

/s/ DANIEL A. GAUDREAU

Daniel A. Gaudreau

Senior Vice President, Finance and Administration and

Chief Financial Officer

(Principal Financial and Accounting Officer)