



Governor Cuomo’s MTA “Disaster” Declaration Suspends Anti-Corruption and Environmental Safeguards

*Action comes 8 months after largest bid-rigging scandal in state history,
and is legally questionable.*

Governor Cuomo’s recently released Executive Order 168 Declaring the MTA an Emergency Disaster suspends multiple state laws which ensure a fair, transparent and accountable contracting process designed to prevent corruption and establish a level playing field for vendors, according to analysis by Reinvent Albany. The action comes 8 months after the largest bid-rigging scandal in state history.

“It’s hard to justify removing these anti-corruption standards coming on the heels of the biggest bid-rigging scandal in state history.” said John Kaehny, Executive Director of Reinvent Albany. “How does any of this help the MTA fix a subway service meltdown that has been decades in the making.”

“Laws should only be suspended in very rare circumstances,” said Alex Camarda, Senior Policy Consultant for Reinvent Albany. “While the MTA has serious maintenance and repair issues that need to be addressed, it’s hard to see how dispensing with a fair contracting process results in the MTA delivering better services to New Yorkers.”

The Executive Order released on June 30th suspends a number of sections of Public Authorities Law, Finance Law, and the Environmental Conservation Law as they apply to “contracts, leases, licenses, permits or any other written agreements.” Those laws collectively do the following:

- Establish competitive bidding policies and procedures for purchasing products and services, construction, and construction services;
- Require the awarding of contracts to the lowest responsible bidder;
- Require publication of procurement opportunities in newspapers, the New York State Contract Reporter, and other venues;
- Require sealed bids as part of the competitive bidding process;

- Establish an MTA small business mentoring program designed to provide opportunities for small businesses to be mentored on competing for and doing business with the MTA;
- Prohibit collusion by vendors in bidding for contracts, requiring vendors to certify under penalty of perjury they did not collude in, for example, establishing bid prices or take other actions to reduce competition;
- Establish procurement guidelines for marketing to Minority and Women Business Enterprises (MWBES) and awarding contracts and subcontracts to MWBES.
- Engage in marketing and establishing opportunities for New York State businesses and employees to receive subcontracting work when foreign companies are awarded contracts;
- Allow for comptroller review of contracts exceeding \$1 million or more in value when contracts are not competitively bid or paid for with state funds;
- Require authorities adopt a prompt payment policy identifying procedures for paying vendors for contracted work;
- Establish a restricted period after a solicitation has been made during which offerers or their lobbyists may only engage in limited contact with state agencies;
- Require potential vendors to disclose instances in which they were found to be non-responsible vendors during the last four years; and
- Establish the State Environmental Quality Review Act (SEQRA) which requires agencies to do an environmental impact statement when taking action with significant impact on the environment, and balance environmental impacts with economic and social factors.

The Executive Order also raises questions about whether the MTA's problems truly rise to the level of a "disaster." Under Section 20 of Article 2-B of the Executive Law, a disaster is an "occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made causes, including, but not limited to, fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, wind, storm, wave action, volcanic activity, epidemic, air contamination, terrorism, cyber event, blight, drought, infestation, explosion, radiological accident, nuclear, chemical, biological, or bacteriological release, water contamination, bridge failure or bridge collapse." Yet the Governor's Executive Order cites three subway derailments, the F train being stuck between stations, signal switch trouble, a home signal problem, and a track circuit failure in justifying the disaster designation.

The Executive Order additionally temporarily suspends the law until further notice while Sections 28 of Article 2-B of the Executive Law cited in the Executive Order only

allow for suspension of law for up to 6 months, albeit with renewal, which can be overturned by a concurrent resolution of the legislature.

Former Assemblymember Richard Brodsky in an interview with Politico New York has called the Executive Order, “flat-out illegal.”