



Jeffrey Pearlman
Director, New York State Authorities Budget Office
240 State Street #2076
Albany, NY 12220

September 7, 2017

Re: Complaint alleging that the Metropolitan Transportation Authority Board of Directors did not meet its fiduciary duty when it approved components of the New York Crossings Initiative, including \$42m in decorative towers at bridge and tunnel entrances, in accordance with Public Authorities Law.

Dear Director Pearlman:

Reinvent Albany writes to request that the Authorities Budget Office determine whether board members of the Metropolitan Transit Authority (MTA) have fulfilled their fiduciary duty by undertaking adequate oversight of activities and expenditures for Governor Andrew Cuomo's ongoing New York Crossings Initiative on the MTA's bridges and tunnels.

Specifically, we ask the ABO to investigate the following five matters related to the MTA board's fiduciary duty:

1. Determine whether the MTA board fully examined and understood what it was funding before approving contract amendments for approximately \$42.8 million for decorative towers at bridge and tunnel entrances. Determine whether these contracts fulfill the MTA's mission or key performance indicators, or are part of any planned historical restoration.
2. Review whether large NY Crossings or MTA Bridge and Tunnel expenditures were lumped into other expenditures and approved by the MTA board without a project budget, spending cap, or task or project ID.
3. Examine whether the MTA board fulfilled its fiduciary duty by approving projects in a piecemeal fashion via a series of contract amendments without having a

project budget that effectively establishes a spending limit for the project, as appears to be the case with the decorative towers.

4. Investigate whether the MTA board and staff approve contracts related to NY Crossings in a manner which is consistent with the MTA's procurement rules. The Board may have violated MTA procurement rules by ignoring Article III part B5 of the rules, which requires a resolution by the Board when a Rider is made to an existing General Contract, and a determination by the Board that includes the reasons why it is in the public interest to amend an existing contract instead of securing a service or product through a competitive process.
5. Determine whether the MTA contract amendments/riders are "competitively" awarded. The MTA's own procurement rules recognize that contract amendments/riders are not considered competitive awards. In the attached spreadsheet, we document eight contract amendments that include tasks related to fabricating and installing the decorative towers that are completely unrelated to the deliverables in the original contract. All eight of those amendments appear to be misleadingly listed by the MTA as competitively bid.

New York Crossings was announced by Governor Cuomo on October 5, 2016 and is the umbrella name for a wide range of capital expenditures on MTA Bridges and Tunnels centered around Open Road Tolling, but also including seismic and flood measures and decorative elements including Harbor Lights and art deco towers at bridge and tunnel entrances ("Towers.") Based on MTA documents, we estimate that the total combined cost of the components of NY Crossings will exceed over a billion dollars in public funds.

According to press accounts, public records, and public statements by MTA board members, Governor Cuomo proposed the New York Crossings initiative with little or no review or comment by the MTA board. Based on our review of the minutes of MTA full board and committee meetings since the governor's October 5, 2016 announcement, we see no evidence that the MTA board reviewed or approved an overall budget for the New York Crossings initiative, or reviewed or approved budgets, or expenditure caps, for any of its component elements. Additionally, we see no evidence that the MTA board or staff clearly defined the component elements of NY Crossings, or large sub-components, and assigned them any form of unique identifier.

Despite not having individually identified the components of NY Crossings or approved budgets for them, the MTA board has approved hundreds of millions of dollars worth of contracts for NY Crossings expenditures. Among these expenditures, the MTA board

approved eight separate contract amendments worth \$42.8 million at three board meetings in April, May and June 2017 to fabricate and install decorative Towers at the entrances to all MTA bridges and tunnels. According to page 115 of the April 24, 2017 minutes of the MTA Bridge and Tunnel Committee, the “*Towers will be installed at all nine B&T facilities in order to create a unifying theme for the various bridges and tunnels.*”

Yet, despite an aggregate cost of \$42.8 million, nowhere are the Towers assigned a unique identifier by the MTA and designated as a “Project” or “Task” for budgeting and contracting purposes. This is important because it means the Towers essentially do not exist in MTA Capital Tracking documents. Not assigning the Towers a project ID is very odd because the Towers cost far more than the average MTA Bridge and Tunnel “Project” or “Task.”

Based on the tables included in the *MTA Bridge and Tunnel Capital Projects Milestones* in the January 2017 committee minutes (p.54) the average Bridge and Tunnel “Project” costs \$18 million and the average “Task” costs about \$2.4 million. (Tasks are elements of Projects.) Thus, the expenditures the MTA board approved for the Towers cost more than three times what the average project cost and close to eighteen times what the average “Task” cost.

It is also odd that the decorative Towers were not flagged by the staff or board for special attention and review. The Towers do not help fulfill the MTA’s mission or key performance indicators, and are not part of any planned historical restoration. Yet, the \$42.8 million spent to date on the Towers was approved without any presentation from the MTA staff to the board, without any discussion by the board and without a budget line item, spending limit or a competitive bidding process.

In the Authorities Budget Office’s March 2014 review of a complaint against the Town of Montgomery IDA, the ABO wrote that the “failure to fulfill fiduciary duties can include: “not examining issues fully.” In the case of the decorative Towers, MTA board minutes suggest the MTA board did not “examine” them, does not know how much the “Towers” will ultimately cost, and may not even know what the Towers are.

The Towers are not among the largest NY Crossings expenditures, but they are a documented example of the MTA board approving piecemeal expenditures worth tens of millions of dollars that are subsumed in larger contracts for unrelated tasks, without competitive bidding, without explanation and without any approved project budget. The Towers contracts also suggest that the MTA board is not following the MTA’s own

procurement rules, which require an explanation of why it is in the public interest to amend an existing contract rather than undertaking a competitive bidding process.

Thank you for acting on our concerns. We are happy to further explain our concerns and provide additional information via phone or email.

Thank you,

John Kaehny
Executive Director

Please see additional sources on the following page and attached.

End Notes and Attachments

Attached Excel file includes:

1. Links to MTA Bridge & Tunnel Committee minutes reviewed by Reinvent Albany;
2. Dates of contract amendments for decorative Towers and document cite;
3. Project and Task numbers of MTA Bridge/Tunnel projects drawn on to fund Towers; and
4. Descriptions of contract amendments including Towers.

Description of decorative NY Crossing “Towers”

(Note that the Towers are specifically described separately both below and elsewhere in MTA documents as distinct from the gantries holding cameras necessary for Open Road Tolling or ORT.)

Page 115, April 24, 2017 Minutes of MTA Bridge and Tunnels Committee:

http://web.mta.info/mta/news/books/pdf/170424_1130_B&T.pdf

“As part of the New York Crossings initiative B&T is embarking on full implementation of cashless all-electronic ORT at B&T facilities. The implementation required necessary civil, structural and electrical infrastructure construction work to install ORT gantries prior to the installation of E-ZPass tag readers, cameras, system software and integration that were performed by others. Additionally *architectural enhancements* at the HCT have *commenced, which include towers at the tunnel entrances* and architectural mesh installed above the gantries, are intended to screen and enhance the appearance of the ORT gantry system. *Similar towers will be installed at all nine B&T facilities in order to create a unifying theme for the various bridges and tunnels.*”



New decorative Tower at MTA Queens Midtown Tunnel, Manhattan side.

Article III, Part B5 MTA Procurement Rules

http://web.mta.info/mta/compliance/pdf/Procurement_Guidelines.pdf#page=4

Riding an Existing Contract. The item is available through an existing General Contract between a vendor and any of the following and the resolution adopted by the Board includes a determination that, and the reasons, why, it is in the public interest to do so:

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a. An Authority or any other public authority provided such General Contract had been awarded through a process of competitive bidding or a competitive request for proposals;

It is hereby determined that competitive bidding is inappropriate and, because of the likelihood that a competitive process will not result in better commercial terms, that it is in the public interest to purchase an item through an existing General Contract of the State of New York, The City of New York, a different Authority, or any other public authority, where price and other commercial terms specified in such General Contract are satisfactory to the Authorized Officer. Such a determination shall be documented in writing by the Authorized Officer.

MTA Mission

http://web.mta.info/mta/compliance/pdf/MTA_Mission_Statement.pdf

The Metropolitan Transportation Authority (MTA) preserves and enhances the quality of life and economic health of the region it serves through the cost-efficient provision of safe, on-time, reliable, and clean transportation services.

MTA Key Performance Indicators

For B&T: http://web.mta.info/persdashboard/agencies/tbta/dashboardytd_pf.htm