

Reinvent Albany • Citizens Budget Commission
Permanent Citizens Advisory Committee to the MTA (PCAC)
Riders Alliance • TransitCenter • Tri-State Transportation Campaign

VIA EMAIL

December 11, 2019

Board of Directors
Metropolitan Transportation Authority

Re: Mandatory Debarment of MTA Contractors is Bad Policy and Must be Changed

Dear Members of the MTA Board,

Our groups write to express our strong opposition to the Metropolitan Transportation Authority's (MTA) emergency debarment regulations, which go beyond the legislative mandate and automatically debar contractors from doing business with the MTA if their projects go over budget or schedule by more than ten percent.

We agree that the MTA must take aggressive steps to ensure that projects come in within budget and on-time, and that contractors must be held accountable; however, mandatory debarment is bad policy. It discourages companies from taking on work with the MTA, reducing the pool of vendors and expertise available for the MTA to draw upon. We are also concerned that contractors who are still willing to do business with the MTA may have to reflect the new risk of possible debarment as they make bidding decisions. The MTA already faces enormous challenges as it seeks to deliver on its largest ever capital plan at nearly \$55B, and mandatory debarment is an unnecessary additional hurdle.

The FY 2019-2020 state budget legislation¹ required the MTA to develop regulations on debarment. Instead of public discourse and Board input, emergency regulations were formulated and voted on behind closed doors in May – retroactive to April – and have subsequently been renewed through December. The regulations go beyond the law and mandate debarment, which is a blunt and ineffective solution to a very complex project delivery problem at the MTA, as it creates enormous risk for contractors. This risk is further exacerbated by Executive Order 192, which bars state agencies and authorities from selecting companies that have been debarred with any other state agency or authority.² The emergency regulations are also retroactive to April, affecting contracts that were already in place, without allowing for any discussion or negotiation with the contracting community or independent academic experts.

¹ Public Authorities Law Section 1279-H. <https://www.nysenate.gov/legislation/laws/PBA/1279-H>

² Governor Andrew Cuomo. Executive Order 192. February 15, 2019. <https://www.governor.ny.gov/news/no-192-executive-order-imposing-continuing-vendor-integrity-requirements-state-contracts>

At the November 12, 2019 meeting of the MTA Board's New York City Transit Committee, it was revealed that three vendors did not submit proposals on a \$38.8 million design-build contract for station accessibility upgrades, citing the "excessive risk" because of contract terms, including debarment.³ Contractors are reasonably not willing to take on the risks associated with working with the MTA, as there are factors in delivering projects that are not wholly within their control. This is a direct example of reduced competition, in this case for a design-build project, which was supposed to be a cure for the MTA's project delivery problems.

For these reasons, we ask that the MTA Board work with MTA staff to revise the regulations to not mandate automatic debarment, but rather follow the law to allow the MTA discretion to take into consideration the circumstances of each project and the pool of vendors able to perform the particular work.

Sincerely,

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³ MTA Board Books, New York City Transit Committee, November 12, 2019. See page 57.
<https://new.mta.info/document/12151>