



January 21, 2020

Board of Directors
Metropolitan Transportation Authority

VIA EMAIL

Re: MTA Must Bring Back Quarterly Change Order Reporting To Ensure Transparency for Millions of Public Spending

Dear MTA Board Directors,

At the June 2019 meeting, you voted with no public discussion to eliminate quarterly change order reports issued to the Capital Program Oversight and Finance Committees. **Eliminating change order reports was a step backwards for transparency, and as fiduciaries of the MTA, you should bring these reports back.**

In 2018 alone, 171 change orders worth at least \$111 million were reported to the Board in these quarterly change order reports.

Quarterly change order reports are an important transparency tool and were first provided to the MTA Board beginning in 2013 after the threshold for board approval of change orders was raised to \$750,000. The MTA Finance Committee books have noted¹:

“Contract Change Order Report - Change orders that would have required Board approval prior to the July 2013 Governance Committee measure increasing the approval threshold to \$750,000 are included in this quarterly report, for information only.”

In June 2019, the Board approved increasing the threshold for Board approval of change orders to \$1 million as required by the state budget, but oddly simultaneously eliminated the quarterly reports, with no public discussion of this change. The decision to stop providing the quarterly reports was buried in changes to the procurement guidelines:²

¹ See Finance Committee materials from June 2019, page 18
http://web.mta.info/mta/news/books/pdf/190624_1330_Finance.pdf

² Ibid, page 72

“Since change orders below \$1 million will no longer generally require Board approval, the reports that are currently submitted quarterly to the Finance Committee and the CPOC Committee of change orders between (a) \$250,000 and \$750,000 and (b) over \$250,000 and over 15% of the adjusted contract amount will be eliminated.”

There are very few windows into the change order process at MTA - which was opaque even with these quarterly change order reports.

Reinvent Albany examined quarterly change orders reports issued from January 2018 to June 2019 (when they were eliminated), and for that 18 month period found that they have highlighted major cost increases. For example:

1. 261 change orders worth nearly \$153M were reported for contracts originally valued at \$9.5B. This was approximately 44 change orders each quarter.
2. The most change orders reported for a single contract was 394 for a Second Avenue Subway contract, with many others showing hundreds of change orders.
3. When taking prior modifications (also reported in the change order reports) together with new change orders, contracts originally valued at \$9.5B had a total increase of nearly \$2.5B, a 26% change.
 - a. The largest total increase in a contract was by \$491 million for East Side Access Engineering Consultants, with 126 change orders on a contract originally valued at \$140M - a 350% increase.

It is also worth noting that in at least one instance where the Board authorized staff to make change orders without your approval - the Judlau L Tunnel contract from 2017 - MTA staff they said that they would still report changes via these quarterly reports³:

“For the sake of transparency, all change orders over \$250,000 issued for this project will be reported to Capital Program Oversight Committee consistent with the procedures for change orders valued between \$250,000 - \$750,000.”

With the elimination of these quarterly change order reports, the Board is no longer being briefed on amendments to the L tunnel contract, which has been the focus of considerable public attention.⁴

³ See April 2017 MTA Board book, page 8, http://web.mta.info/mta/news/books/archive/170403_0930_Board_%20Special.pdf

⁴ Nessen, Stephen. “MTA: Cuomo's L Train Fix Is Saving Money, Trust Us.” Gothamist. January 17, 2020 <https://gothamist.com/news/mta-cuomos-l-train-fix-saving-money-trust-us>

Again, we ask the MTA Board to ensure that staff reinstates these important transparency measures. Quarterly change order reports are important tools for flagging possible cost overruns and contracts that have mutated away from their original purpose. Contract amendments between \$250,000 to just under \$1 million should be reported to the MTA Board, reflecting the increased threshold.

Sincerely,

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