

2 Broadway  
New York, NY 10004  
212 878-7000 Tel

**Patrick J. Foye**  
Chairman and Chief Executive Officer

**RECEIVED**  
EXECUTIVE CORRESPONDENCE



**Metropolitan Transportation Authority**

State of New York

JUL 06 2021

OFFICE OF THE STATE COMPTROLLER  
THOMAS P. DiNAPOLI  
COMPTROLLER

June 24, 2021

Honorable Andrew M. Cuomo  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

Honorable Thomas P. DiNapoli  
Office of the State Comptroller  
59 Maiden Lane, 31<sup>st</sup> Floor  
New York, NY 10038

RE: Response to Final Report #2018-S-70 – Management of Capital Projects

Gentlemen:

On December 14, 2020, the Office of the State Comptroller issued the above referenced audit report. As required by Section 170 of the Executive Law, I am providing you with the attached response which addresses the recommendations contained in the report.

Additionally, I will be working with staff to ensure that management is following up on and enforcing the audit's recommendations, where appropriate, and requesting regular, interim reports to that effect.

A copy of the final audit report is attached for your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Pat Foye".

Patrick J. Foye  
Chairman and Chief Executive Officer

c: Anni Zhu, Chief of Staff to the MTA Chairman and Chief Executive Officer  
Michele Woods, Auditor General, MTA Audit Services

Attachment

*The agencies of the MTA*

MTA New York City Transit  
MTA Long Island Rail Road

MTA Metro-North Railroad  
MTA Bridges and Tunnels

MTA Construction & Development  
MTA Bus Company



June 16, 2021

**VIA ELECTRONIC MAIL**

Patrick J. Foye  
Chairman and Chief Executive Officer  
Metropolitan Transportation Authority  
2 Broadway  
New York, New York 10004

Re: 180 Day Response to the Office of the New York State  
Comptroller Audit Report 2018-S-70, dated December 2020

Dear Chairman Foye:

In accordance with the requirements of Executive Law Section 170, what follows is a summary of the actions taken by MTA Construction & Development Company ("MTA C&D") to implement the recommendations contained in the Office of the New York State Comptroller Report on the Long Island Rail Road's ("LIRR") Management of Capital Projects (the "OSC Report"). In situations where the recommendations were not implemented, an explanation of the reasons why implementation was not possible are included.

As an initial matter, it is important to remind the OSC that the Metropolitan Transportation Authority ("MTA") is in the midst of an agency-wide reorganization, aimed at simplifying its complex organizational structure. Several transformative measures in support of this reorganization have already occurred, including the centralization of the MTA agencies' construction and development functions into MTA C&D. As a result of this centralization, the capital projects that were previously handled by LIRR are now handled by MTA C&D, making MTA C&D the appropriate entity to provide this response.

By way of background relative to the MTA C&D organization, MTA C&D was established as an MTA subsidiary agency in December 2019 in an effort to strengthen capital project management throughout the MTA agencies and to implement the NYS legislative direction to use design-build delivery for all MTA agency capital projects \$25 million and above. Although still in its infancy as an agency, MTA C&D has already been effective in maintaining continuity on over 500 capital projects, with roughly 250 in active construction during the COVID-19 global pandemic. Equally as impressive, the new MTA C&D organization is already raising the bar on capital project delivery by achieving the highest pace of Americans with Disabilities Act capital project completions in history, accelerating roughly \$2B worth of capital projects, and carrying out among the highest dollar levels of contracts awarded – all while navigating through a world-wide pandemic, the likes of which haven't been seen in over 100 years.

This new MTA C&D business structure and functionality is further defined by the New York Public Authorities Law Section 1279-e mandate that the MTA transform and consolidate duties and functions amongst the MTA agencies. That transformation has been guided by the Alix Partners "MTA Transformation Plan", which identifies the centralization of construction and development functions across MTA agencies and across the lifecycle of capital projects. The focus of this Transportation Plan is on five foundational principles, which are intended to drive improved performance through business efficiencies: Centralize, Simplify, Standardize, Plan, and Empower. MTA C&D has been working to advance all five of these principles:

Centralize – MTA C&D's staff is comprised of approximately 2,000 employees from across the MTA agencies, all of whom were fully integrated into the C&D organization by September 2020, with the majority of the centralization effort occurring while the agency was simultaneously trying to navigate through the COVID-19 pandemic. Among other benefits, this centralization effort streamlined the agency into five departments: Planning, Development, Contracts, Delivery, and Operations. This consolidation of capital program staff was the first step to achieving greater efficiency and effectiveness of the capital program.

Simplify – MTA C&D has catalogued over 2,600 pertinent existing agency policies, procedures, guidance, and technical specifications related to the MTA capital program to identify differences and commonality in processes, eliminate duplication, and close any gaps. These 2,600 documents have been categorized by common topics with the goal of creating a consolidated set of governing capital program principles across the entire MTA relying upon best practices.

Standardize – The third version of the MTA C&D Lifecycle Delivery Guidance has been completed and serves as the foundation for all other MTA capital project guidance documents. Data validation is ongoing within the MTA's capital program data systems to ensure the most accurate information is available and current, and that it conforms to the Lifecycle Guidance. Additionally, capital project requirements and design criteria, contract terms and conditions, and contract specification language are all being finalized so that the MTA's capital program contractors, suppliers, fabricators, and consultants are utilizing consolidated Design-Build standards across the capital program, with the goal of reducing risk to capital project budgets and schedules.

Plan – The MTA C&D Planning, Development and Delivery Departments, in coordination with the MTA operating agencies, are working together to evaluate each operating agency's asset conditions and needs in order to prioritize the most critical assets for improvement and identify system expansion opportunities. MTA C&D's Development Department has also been working to further refine the identified priorities by grouping the various improvements into larger bundled projects in an effort to further drive cost and resource efficiency within the capital program.

Empower – Following the success of the Long Island Rail Road Expansion Project, MTA C&D is expanding this organizational model, empowering MTA C&D's Delivery project leaders, known as Project and Program Chief Executive Officers ("PCEO"s), to deliver projects, or groups of projects, through delegation of authority and accountability. PCEOs have been identified across all Delivery Department business units to ensure optimized project performance for safety, cost, schedule, and quality.

## STATUS OF RESPONSE TO OSC REPORT RECOMMENDATIONS

### Recommendation No. 1:

Work with the MTA to calculate and include in the budget an inflation factor for projects that begin in subsequent years of the Capital Program.

MTA C&D Response to Recommendation No. 1: In LIRR's November 4, 2020 response to the OSC Report (the "LIRR Response"), LIRR represented that, as part of the transition of LIRR capital projects over to MTA C&D, guidelines and procedures were being developed to unify estimating practices across the MTA, including those relating to program and project budgeting. MTA C&D adds that it is currently in the process of developing those new guidelines and procedures to ensure consistency and best practice across the entire capital program. MTA C&D also notes that, as part of its standard budgeting process for the five-year capital program, the agency receives direction from the MTA to incorporate inflation assumptions into all project budgets, and that appropriate budgets will be assigned to projects when the five-year capital program is developed.

### Recommendation No. 2:

Use the Estimating Unit for all project budget estimates. Develop the capacity within the Estimating Unit to prepare budget estimates in a shortened period of time in an emergency.

MTA C&D Response to Recommendation No. 2: In the LIRR Response, LIRR represented that it had already implemented this recommendation as part of its business operation. MTA C&D adds that estimators have been assigned to each business unit within MTA C&D's project delivery group (the "Delivery Group") to support the development of budget estimates. In addition, estimating standards are being developed at MTA C&D through an estimating program oversight area, with the goal of ensuring conformance and consistency throughout all MTA capital projects.

### Recommendation No. 3:

Comply with all the Procedures examined and listed in Exhibit B [to the OSC Report].

MTA C&D Response to Recommendation No. 3: In the LIRR Response, LIRR represented that it has already implemented this recommendation as part of its business operation. MTA C&D adds that, as noted above, it is in the process of developing capital program management procedures to ensure consistency and best practice across the MTA capital program. MTA C&D will ensure compliance with its new procedures.

### Recommendation No. 4:

Require, in writing, that contractors/consultants comply with LIRR Department of Program Management ("DPM") Procedures.

MTA C&D Response to Recommendation No. 4: In the LIRR Response, LIRR stated that it did not accept this recommendation because contractors and consultants are required to comply with the procedures set forth in their contractual documents, and DPM procedures only apply to LIRR employees. MTA C&D adds that its contractors and consultants are required to comply with the terms of their contracts with the MTA. To the extent contractor or consultant

compliance with any aspects of MTA C&D internal procedures would be beneficial to the project, those specific aspects of the procedures are incorporated into the contract documents.

Recommendation No. 5:

Develop a procedure that defines when project redesign can take place and require involved departments' input to effect major change to the project scope and document the results.

MTA C&D Response to Recommendation No. 5: In the LIRR Response, LIRR represented that it has already implemented this procedure as part of its business operation. MTA C&D adds that it is in the process of developing a new procedure to deal with these changes, which will govern all project changes and address this recommendation.

Recommendation No. 6:

Coordinate with the Procurement and Logistics Department to establish a percentage for comparing the Engineering estimates to the bids that would trigger a review of the difference between the estimate and the bid.

MTA C&D Response to Recommendation No. 6: In the LIRR Response, LIRR represented that it has already implemented this recommendation as part of its business operation. MTA C&D adds that it currently compares bids to independent estimates, and does so in coordination with MTA C&D's Contracts Department, which is responsible for C&D procurements. MTA C&D intends to memorialize its process in the new procedures that are under development.

Recommendation No. 7:

Document the justification for the need for FA ("Force Account") overtime.

MTA C&D Response to Recommendation No. 7: In the LIRR Response, LIRR represented that its Estimating Unit incorporates FA overtime into project estimates and scheduling documents based on the project scope. MTA C&D adds that it will require FA estimates to be included and documented in the initial investment decision for a project, along with a statement as to whether the project will be supported through the use of FA overtime. MTA C&D will also require any change from the initial investment decision for FA usage to follow MTA C&D procedure.

Recommendation No. 8: Develop protocols for reassigning FA personnel to other projects that deviate from the original project plan and document the impact to the project schedule in the project records.

MTA C&D Response to Recommendation No. 8: In the LIRR Response, LIRR represented that the majority of this recommendation is already part of its business operations and that LIRR will work to ensure that all FA reassignments relative to capital projects are properly documented. MTA C&D adds that FA labor assigned to support capital projects is managed by the operating agency and, where applicable, is governed by labor agreements. MTA C&D also reiterates that any changes from the initial investment decision for FA usage must follow MTA C&D procedure.

Recommendation No. 9:

Revise and strengthen the Procedures by incorporating terms in procedures used by other MTA agencies, including but not limited to: (a) ISO 9001 and 14001 international standards that specify requirements for a quality management system and international environmental management standards; (b) defining and requiring a project start date; (c) testing materials and compliance with related regulations; (d) using the contract amount to determine the change order limit; and (e) providing a step-by-step Best Value Analysis (“BVA”).

MTA C&D Response to Recommendation No. 9: As noted above, MTA C&D is in the process of developing new procedures to ensure consistency and best practice across the MTA capital program. This process will include a review of similar procedures utilized by other MTA agencies and will incorporate the best practices gained from those documents. That said, in response to each individual recommendation: (a) in the LIRR Response, LIRR represented that it already includes this recommendation as part of its business operations; MTA C&D adds that it intends to strengthen and expand the ISO certifications; (b) in the LIRR Response, LIRR represented that it would work with MTA C&D to incorporate definitions of start dates into MTA C&D’s new procedures; MTA C&D adds that the project milestones, status and phases are identified in the contract documents and will be identified in the MTA C&D project lifecycle; (c) in the LIRR Response, LIRR did not accept this recommendation; MTA C&D agrees and did not implement this change because material testing and compliance requirements are project specific and are included in the contract documents; (d) in the LIRR Response, LIRR did not accept this recommendation because all of the MTA agencies do follow the same change order guidelines set forth in the MTA All-Agency Procurement Guidelines and as articulated in the MTA Board Requirements; MTA C&D adds that using the contract amount to limit the size of change orders is not practical or necessary. MTA C&D’s change management procedures require higher levels of approval as the cost and impacts, including time impacts, of a change increases, ultimately requiring President and then Board approval for the most significant changes; and (e) in the LIRR Response, LIRR did not accept this recommendation; MTA C&D agrees and did not implement this change because there is no need for a step-by-step BVA.

Recommendation No. 10:

Strengthen the Reserve account internal controls by: (a) developing procedures for the management of the Reserve account funds; and (b) establishing a dollar threshold that results in additional authorization to transfer funds to and from the Reserve account.

MTA C&D Response to Recommendation No. 10: (a) In the LIRR Response, LIRR represented that it already includes this recommendation as part of its business operations but noted that the current process needs to be documented in a written policy and procedure. MTA C&D adds that that MTA’s Capital Program Management Department has implemented guidelines for Willingness to Assume Risk (“WAR”) certificates, as set forth in the document entitled “Guidelines for WAR Certificates,” which delineates the roles and responsibilities for these transactions. In addition, there are security protocols in place through the MTA’s IMPACT Budget Database and as memorialized in the document entitled “Central Oracle Security Roles & Access Codes,” which delineates the roles of the agencies in the process; and (b) In the LIRR Response, LIRR did not accept the recommendation, noting that all transfers require approval from MTA Capital Program Management Department and that

there is currently not a threshold amount that is exempt from the approval process, thereby making the establishment of a dollar threshold unnecessary. In addition, MTA C&D adds that the MTA's IMPACT budget system operates with controls in place that address the OSC's concern. Indeed, when MTA C&D submits a WAR to transfer funds, the IMPACT Budget Database requires MTA Capital Program Funding Department review and approval before the transfer can occur.

Recommendation No. 11:

Establish a means of tracking changes made to the Reserve project database.

MTA C&D Response to Recommendation No. 11: In the LIRR Response, LIRR represented that it would reach out to the MTA Capital Program Management Department and MTA Information Technology Department to pursue whether IMPACT can show tracking changes made to reserve projects. MTA C&D adds that the MTA IMPACT Budget database tracks all movements between capital projects and that the IMPACT Transfer Report delineates all such transfer and the source of the transfer request.

Recommendation No. 12:

Realign LIRR's Quality Management and Code Compliance ("QMCC") unit to report to the Senior Vice President of Engineering or equivalent to achieve independence.

MTA C&D Response to Recommendation No. 12: In the LIRR Response, LIRR represented that it had already implemented this recommendation as part of its business operations. MTA C&D adds that, to ensure quality independence, quality program directors have been assigned to each business unit within the Delivery Group. MTA C&D also notes that a unified standard is being developed throughout the agency's quality program area, and that this program area will also provide audit and oversight to ensure conformance, consistency, and ISO management.

Recommendation No. 13:

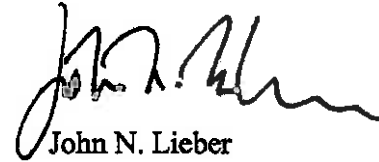
Revise QA Procedure 315 (Project Quality Plan) to state that only LIRR can establish quality requirements for capital projects.

MTA C&D Response to Recommendation No. 13: In the LIRR Response, LIRR represented that it would consider this recommendation in its next procedure review cycle. MTA C&D adds that it includes project specific quality requirements in its contract documents.

\* \* \*

If you need any additional information or have any questions, please feel free to contact me.

Very truly yours,



John N. Lieber

cc: Philip Eng, LIRR President  
Evan M. Eisland, MTA C&D Executive Vice-President and General Counsel  
Mark Roche, MTA C&D Deputy Chief Development Officer - Delivery  
Tom Savio, MTA HQ Director of Construction Oversight