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## MTA Debarment Update

Alliance for Fair and Equitable Contracting Today, Inc., a nonprofit formed by five trade associations, including the GCA, the BTEA and the NY Building Congress, has sued the Metropolitan Transportation Authority over rules that debar contractors for delays and cost overruns on MTA projects without regard to the reasons for the delays and cost overruns.

As described in our prior client alert (see [here](#)), the current rules automatically debar firms that are determined to have gone over the MTA approved contract price or time by more than 10%. The rules do not consider mitigating circumstances. Delays and cost overruns are often caused by unforeseen conditions, design errors and omissions, and changes requested by the MTA. The MTA's rules could lead contractors to absorb additional costs they shouldn't be responsible for rather than face the risk of being debarred. As argued in Alliance's action, "Debarment is the death penalty for a public works contractor, and not just in New York. A debarment by the MTA could result in debarment nationwide, given that public and private contractors throughout the country commonly inquire about bidders' debarment history when considering project bids. The Debarment Statute and MTA Regulations thus effectively export an unreasonable law not only throughout New York State, but to all other states as well."

The lawsuit filed against the MTA in federal court (see [here](#)) argues that the authority's regulations are unconstitutional and conflict with federal laws. The lawsuit filed in state court (see [here](#)) argues similarly, and challenges Governor Cuomo's related Executive Order 192 regarding debarment on the grounds that he exceeded his authority because only the state legislature has the power to create a debarment regime.

If you have questions, please contact Steven M. Charney, Gregory H. Chertoff or Paul Monte at 212-382-0909.

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