

**From:** Elizabeth Marcello <[elizabeth@reinventalbany.org](mailto:elizabeth@reinventalbany.org)>  
**Sent:** Wednesday, November 16, 2022 11:50 AM  
**To:** esd.sm.ESD <[ESD@esd.ny.gov](mailto:ESD@esd.ny.gov)>  
**Subject:** Re: Comments for November 17 Empire State Development Directors Meeting

You don't often get email from [elizabeth@reinventalbany.org](mailto:elizabeth@reinventalbany.org). [Learn why this is important](#)

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Apologies - I accidentally attached a draft! Here is the final copy. Thank you!

On Wed, Nov 16, 2022 at 11:48 AM Elizabeth Marcello <[elizabeth@reinventalbany.org](mailto:elizabeth@reinventalbany.org)> wrote:  
Hello,  
Please see the attached comments for the November 17 ESD Directors meeting, agenda item V.C. Penn Station Area Civic and Land Use Improvement Project.

Thank you for the opportunity to submit written comments.

Best regards,  
Elizabeth

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Elizabeth Marcello, Ph.D.  
Senior Research Analyst  
Reinvent Albany  
c: [REDACTED]  
<http://www.reinventalbany.org/>



## **Testimony to Meeting of the Directors of the New York State Urban Development Corporation d/b/a Empire State Development**

**November 17, 2022**

Reinvent Albany advocates for transparent and accountable New York State government and has closely followed the Penn Station Redevelopment project.

We are testifying to put on record our concerns about Empire State Development's ongoing refusal to publish important findings and data produced by Ernst & Young Infrastructure Advisors, LLC ("Ernst & Young") that could give elected officials and the public a clearer understanding of the Penn Station Redevelopment project.

The New York State Freedom of Information Law says:

*"The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality."*

Unfortunately, in the case of the Penn Station Redevelopment project, ESD acts as if it is not guided by this basic philosophy and seems to have forgotten that in strong democracies, governments work for the public — not businesses and campaign contributors. Our sense is that ESD deliberately uses consultants like Ernst & Young to avoid disclosing embarrassing or inconvenient facts to the public and elected officials. One way ESD does this is by claiming the "trade secret exception," which holds that the consultant's analysis or modeling is exempt from public disclosure because it would hurt the consultant's business. We ask ESD to make an honest commitment to transparency instead of coming up with endless excuses about why the public cannot be told how our tax dollars will be spent.

Under consideration by the Directors is a second amendment to ESD's contract with Ernst & Young, which extends the contract to December 2023 and adds an additional \$300,000. If approved, the contract will run through December 2023 at a cost not to exceed \$1,200,000.

The scope of the initial contract between Ernst & Young and ESD is described in the approval made by the [ESD Board on March 26, 2020](#) as follows:

- Develop a financial tool to be used by ESD to calculate projected financing revenues
- Assist ESD in identifying feasible options for potential revenue sources to fund improvements within the Empire Station Complex
- Assist ESD in evaluating various strategies for financing improvement
- Survey best practices in different financing, procurement, and project delivery paths
- Provide strategic financial advice to assist in stakeholder conversations
- Provide other financial advisory services for the project as requested by ESD

When the contract was first amended at [ESD's July 2021 Board meeting](#), the following was added to the scope of work:

- Evaluate various strategies for financing improvements in the Empire Station Complex District and advise ESD on best practices in different financing, procurement, and project delivery paths, including identification of federal and local funding sources and requirements, and financial modeling of various alternatives.
- Provide financial analysis and advisory services with regard to Penn District real estate development, including development and refinement of financial tools and models, to assist in conversations and negotiations with local stakeholders.
- Provide other financial analysis, advisory services, and other strategic advice as requested by ESD.

Reinvent Albany is very aware of the changing economic landscape surrounding the Penn Station Redevelopment project and the need for ongoing financial analyses, especially in light of the [recent announcement by Vornado](#) that it will be delaying development.

The stated goal of ESD's Penn Station redevelopment project is to fund the State's share of Penn Station renovations and potential expansion. Incredibly, given the amount of public attention the Penn Station project has gotten, ESD has still not disclosed an analysis that shows exactly where it thinks the money is coming from and the economic and financial assumptions its thinking is based on.

On January 7, 2022, ESD denied a Freedom of Information Law (FOIL) request filed by Reinvent Albany seeking records related to Ernst & Young's scope of work. ESD claims that disclosure of the records would impair present or imminent contract awards, presumably with developers.

We again urge this Board of Directors to work hard on actually being transparent. You live in a democracy. Act like it. Stop shrouding the Penn Station Redevelopment project in a cloak of secrecy and confidentiality.

Show the public what you intend to do with our money.

Thank you for the opportunity to submit written testimony. Please send any questions to Elizabeth Marcello at [elizabeth \[at\] reinventalbany.org](mailto:elizabeth@reinventalbany.org).

**From:** Layla <[REDACTED]>  
**Sent:** Wednesday, November 16, 2022 10:58 AM  
**To:** esd.sm.ESD <[ESD@esd.ny.gov](mailto:ESD@esd.ny.gov)>  
**Cc:** Barbero Vikki <[REDACTED]>; Ford Aaron <[REDACTED]>  
**Subject:** Comments & Questions- Directors Meeting - 11/17/2022

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Dear Chair Law, Director Knight and ESD directors,

Thank you for the opportunity to submit comments and questions in writing ahead of 11/17/2022 ESD Directors Meeting.

1- ESD is requesting Authorization to Amend the Contract with Ernst & Young Infrastructure Advisers, LLC to Continue to Provide Financial Advisory Consulting Services in Connection with the Pennsylvania Station Area Civic and Land Use Improvement Project; and Authorization to Take Related Actions

The original contract with Ernst & Young Infrastructure Advisers, LLC was entered into under **cost-sharing agreement with a private developer** involved in the Pennsylvania Station Area Civic and Land Use Improvement Project.

**Does this amended contract aim to continue the cost-sharing agreement?**

If the contract with Ernst & Young Infrastructure Advisers, LLC is still entered into in a cost-sharing agreement with a private developer, we respectfully ask that this be reflected in the resolution so as to accurately and transparently inform the public.

2- It has been reported that although the previous contracts with the consultant were entered under a cost sharing agreement with a private developer with interest in the area, the cost was covered by ESD for 100% of the contract.

Can you clarify whether said private developer with whom the cost sharing agreement was made fulfilled its financial commitment?

If they didn't, Can you clarify whether an amendment was made to the previous contracts to authorize ESD to cover 100% of the cost?

3- The amended contract includes that EYIA would "Provide financial analysis and advisory services regarding Penn District real estate development, including development and refinement of financial tools and models, to assist in conversations and negotiations with local stakeholders".

- Can you clarify who the local stakeholders are and whether they are also a party entered into the cost-sharing agreement?

- Can you clarify, under the cost-sharing agreement framework, what access to data, reports, analyses, is given to the party or parties sharing the cost?

- Can you clarify, to the best of your knowledge, who EYIA client is and whether they have more than one client for this scope of work?

- Can you describe what safeguards and provisions are in place to prevent and address any conflicts of interest that may arise?

4- Can you clarify whether the consultant, EYIA will act as municipal advisor to ESD in any bond issuances in connection with the Penn Station Civic Improvement Project?

5- We urge ESD to make any statistical reference, data set, and financial analysis prepared by the consultant available to the public, in the spirit of the freedom of information act.

Thank you for the opportunity to submit written comments and questions.

Best regards,

Layla Law-Gisiko  
Chair Land Use, Housing & Zoning  
Manhattan Community Board Five