



Office of the
Inspector General
Commonwealth of Massachusetts

Gregory W. Sullivan
Inspector General

A Review of International
Tourism Fund Contract
Awards 2005-2007

February 2008



The Commonwealth of Massachusetts
Office of the Inspector General

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February, 2008

Dear Senator Therese Murray:

This report encompasses a detailed review of contracts between the Massachusetts Office of Travel and Tourism and the Massachusetts International Marketing Partnership, Inc (Tourism Massachusetts). Our investigation focused on determining the propriety of both the expenditures made on behalf of the Commonwealth by Tourism Massachusetts and the selection process that resulted in establishing Tourism Massachusetts as the vendor for these services. The review was conducted in response to your request for a comprehensive analysis of this entire matter beginning with the enactment of section 60 of Chapter 141 of the Acts of 2003.

Objectives of our review included: determining whether all funds were properly accounted for; determining whether any payments were made to or on behalf of state employees including legislators; understanding the circumstances surrounding the competitive procurement process; and, determining how the contract came to be awarded to Tourism Massachusetts. The financial examination included a validation of the expenditures reflected in the financial records to the supporting documentation including vendor invoices.

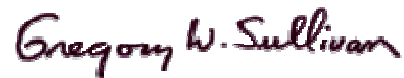
Through our review we found that all funds expended by Tourism Massachusetts have been accounted for properly. There is no indication that any of these funds were used to pay for trips, meals, or to provide other benefits for state employees, including state legislators. Our review found that the 2004 International Tourism Fund (ITF) procurement process failed to select a non-profit international tourism vendor after long-term troubling issues were identified during a due-diligence review of the legal status of the Massachusetts International Trade Council, Inc. (MITCI), the agency responsible for administering the ITF and awarding the contract. These unresolved legal issues resulted in the resignations of all three of MITCI's Board members. Without a functioning board a contract could not be awarded. This failure by MITCI to provide a timely contract award prompted the legislature to earmark funds to Tourism Massachusetts, which at that time represented a reconstituted organization of two of the

three bidders to MITCI's failed competitive procurement process. These two bidders had cumulatively received 11 of the 12 recommendations of the procurement Advisory Committee, established in section 60 of Chapter 141 of the Acts of 2003.

This Office's review found no evidence of impropriety in the awarding of the ITF contracts or in the expenditure of funds by the contract vendor under the contracts.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive, slightly slanted style.

Gregory W. Sullivan
Inspector General

cc: Representative Daniel E. Bosley
Secretary Daniel O'Connell, Housing and Economic Development
Undersecretary Gregory Bialecki, Housing and Economic Development
Executive Director Christa Bleyleben, Massachusetts International Trade Council
Executive Director Betsy Wall, Massachusetts Office of Travel & Tourism
Mr. William MacDougall, President Tourism Massachusetts

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Executive Summary

This report highlights the results of this Office's review of two international tourism promotion contracts awarded through the International Tourism Fund (ITF) to the Massachusetts International Marketing Partnership, Inc., hereinafter referred to as Tourism Massachusetts, for services provided between April 2005 and May 2007. This review was conducted upon request of State Senator Therese Murray.

The following are the highlights of the review:

- all funds have been accounted for properly;
- no funds have been misappropriated or otherwise expended for purposes other than those specified in the contracts;
- no funds were used to pay for trips, meals, or other benefits for state employees, including state legislators;
- the 2004 ITF procurement process failed to select a non-profit international tourism vendor after "long-term troubling issues" were identified during a due-diligence review of the legal status of the Massachusetts International Trade Council, Inc (MITCI), the not-for-profit entity acting under the name of Massachusetts International Trade Council (MITC). Legal counsel unexpectedly identified the following problems that effectively disrupted and ultimately terminated the procurement:
 - counsel opined that MITCI is a "state agency" and "government entity" subject to state conflict-of-interest and open-meeting laws, notwithstanding MITCI officers' presumption that it was exempt as a private, non-government corporation;
 - counsel opined that Board member Mitchell Adams was obligated to resign immediately to avoid a Chapter 268A "dual-employment" conflict-of-interest violation because he held a position at the Massachusetts Technology Park Corporation;
 - counsel opined that the legal authority of the MITCI board was in doubt because its current members had never received gubernatorial

appointment, as required by MITC's originating Executive Order, but instead had been appointed by previous board members in accordance with corporate bylaws;

- counsel opined that the officers and staff of MITCI had never been appointed by the Governor, as required by MITC's originating Executive Order, which stated that the "Chairman, members and staff . . . shall serve at the pleasure of the Governor and shall be appointed by the aforementioned Governor;"
- counsel opined that MITCI had potential compliance issues under the unrelated business income provisions of the Internal Revenue Code;
- Upon receipt of the aforesaid advice of counsel, Board member Mitchell Adams first sought a conflict-of-interest waiver from the governor to allow him to serve on the board and failing to receive such waiver he subsequently resigned his position to avoid a "dual-employment" conflict-of-interest violation;
- Citing "confusion and uncertainty" concerning "the sources of authority for the appointments and continuing status of MITC's Directors," Board member Chris Supple resigned his position immediately upon learning of the above-cited concerns;
- In the weeks immediately following the resignations, MITCI's president and executive director Robert Ward attempted to refute the legal interpretation that MITCI is a state agency whose directors and employees, including himself, are subject to gubernatorial appointment. He attempted to convince the remaining Board member, Professor Mark Mason of Columbia University, to appoint two other Board members, an appointment that counsel had previously opined would be unauthorized;
- On December 7, 2004, Pamela Dashiell, General Counsel to the Massachusetts Attorney General's office, opined that MITCI is a state agency;
- Eight days later, Professor Mason submitted his resignation, stating that "his decision was difficult given the issues facing the organization."
- Notwithstanding the legal advice cited, MITCI president Robert Ward then asked Professor Mason, who had already resigned, to name Ward himself as Mason's

successor on the Board, which Professor Mason declined to do; Ward then asked Mason to name attorney Richard Chute - the attorney who had originally written the MITCI bylaws in question - to replace Mason on the Board. Chute declined, stating that few persons will be willing to become a Director under these circumstances;

- Lacking board membership necessary to continue with the ITF procurement, and lacking the means within MITCI itself to appoint replacement board members, on January 3, 2005, MITCI president Ward notified Senator Murray that MITCI will take the necessary steps to return the ITF monies to the Commonwealth's General Fund as soon as practicable. MITCI officials referred the matter to Secretary of Economic Development Ranch C. Kimball. It is unclear whether and to what extent MITCI President Ward disclosed to Secretary Kimball the controversy surrounding Ward's own questionable appointment status, or that of the Board members;
- On January 4, 2005 Secretary Kimball sent a letter to Ways and Means Chairpersons Senator Therese Murray and Representative John Rogers requesting that the \$2 million ITF funds be transferred to the Massachusetts Office of Travel and Tourism (MOTT), the agency that the legislature had previously determined should not be responsible for expending the funds;
- Senator Murray responded to Secretary Kimball by letter on January 21, 2005 stating that the correct course of action would be for the administration to reappoint previous board members or appoint new members to the MITCI Board of Directors as a "quick and rather simple action would allow the Board of Directors [as chosen by the Governor] to award a contract to a successful bidder" to end "months and months of inaction" while "we continue to lose \$1 million per month in international tourism revenues." Notwithstanding Senator Murray's request, the administration did not agree to make such reappointments or new appointments, deciding instead to transfer the full \$2 million appropriation out of the ITF account to the general fund and thereby terminate the procurement process;
- Five days later, on January 26, 2005, the Governor submitted an economic

stimulus bill to the legislature in the form of a supplemental budget request. Within three weeks of receiving the bill, the House and subsequently the Senate passed the supplemental budget with an amendment that transferred the \$2 million ITF fund to MOTT, specifically directing that MOTT grant \$2 million dollars to Tourism Massachusetts for international tourism marketing efforts. Tourism Massachusetts, the contract awardee, was a reconstituted entity of two bidders to MITCI's now-cancelled competitive procurement process, which two firms (Tourism Massachusetts and Massachusetts Lodging Association) had cumulatively received 11 of the 12 recommendations of the procurement Advisory Committee, established in section 60 of chapter 141 of the acts of 2003. This reconstituted organization had an 11 member board comprised of 5 board members from Tourism Massachusetts, 5 board members from the Massachusetts Lodging Association, and 1 board member was independent of both these organizations;

- The Department of Business and Technology (DBT) accordingly entered into a contract with Tourism Massachusetts. Upon subsequently renewed legislative appropriation in each of the following two years, DBT extended the contract for fiscal FY06 and was negotiating the FY07 contract when Governor Romney eliminated the appropriation through emergency budget cuts;
- In February 2007, an article appeared in a Boston newspaper in which unnamed sources raised questions about the awarding of the ITF funds in the above-described process. This Office's review has determined that that the assertions of impropriety cited by the unnamed sources in the article were unsubstantiated, as follows:
 - an assertion that the winning vendor had been deemed ineligible by MITCI staff during the RFP process due to excessive overhead expense was unsubstantiated by the facts. Furthermore, such conclusion would be erroneous under Commonwealth accounting standards, as easily verified by prior accounting practices;
 - an implication that MITCI board members resigned in order to curry favor with members of the legislature was contradicted by the documentary

evidence summarized above;

- an assertion that millions of ITF dollars were missing was inaccurate, and in fact all funds have been accounted for;
- an allegation that legislators including Senator Murray traveled to Russia through a grant from Tourism Massachusetts and a specific accusation that Senator Murray was traveling to Italy on state-paid “junkets” were proven false by a detailed review of Tourism Massachusetts expenditures. In addition this Office reviewed Senator Murray’s passports covering the time periods from June 12, 1996 through June 11, 2006 and August 7, 2006 through the present and found no evidence of any entries into Italy by Senator Murray during this eleven (11) year time period;
- the unnamed parties making assertions in the newspaper article would likely have been aware –but apparently failed to disclose- the well-documented legal controversy that led to the breakdown of the ITF procurement, including a documented opinion by the General Counsel to the Attorney General that MITCI is in fact a state agency, validating the reasons behind the MITC board member’s resignations.

This Office’s review found no evidence of impropriety in the awarding of the ITF contracts or the expenditure of funds by the vendor under the contracts.

This Office recommends that the Administration rectify the status of the Massachusetts International Trade Council’s Board of Directors and staff that led to the controversy underlying this report, either by making gubernatorial appointments pursuant to Executive Order 169 of 1979 or by terminating direct appropriations to a state agency that claims to be a self-appointed corporation.

Environment – Fiscal Budgets

Highlighted below is the history of competing legislative and executive branch priorities regarding international travel and tourism promotion in the FY2004 budget.

During the 2003 legislative session, the governor and the state legislature were confronted with a funding gap of more than \$2 billion in the upcoming 2004 state budget. As they worked to address the budget crisis, one of the hundreds of issues of contention that arose among the three branches of government was the funding of travel and tourism promotion, and particularly of international tourism promotion. More specifically, three issues came into dispute in this regard; 1) whether or not to repeal the Massachusetts Tourism Fund, as was being proposed by Governor Romney; 2) whether to include specific language for international tourism promotion in the Office of Travel and Tourism budget account; and, 3) how much to appropriate for travel and tourism promotion in the three travel and tourism line-items.

The following is a summary of the history of deliberations on these three tourism-related issues during the FY2004 budget debate:

- In his proposed FY2004 state budget, Governor Romney called for repeal of the Massachusetts Tourism Fund (MGL Chapter 10: Section 35J), a dedicated fund from which 35 percent of revenues from the hotel and motel room tax had been dispensed for the purpose of funding national and international tourism promotion and related purposes since the fund was created in 1991. The Governor's proposal would have terminated the fund and redirected the revenues to the state Stabilization Fund, along with those of many other so-called minor funds. The Governor's budget also proposed eliminating language from the FY2003 budget in the Office of Travel and Tourism line item that had specifically addressed international tourism promotion by striking the following: "provided further that not more than \$2,000,000 of the amount appropriated herein shall be

expended for international marketing and tourism promotion and administration." To fund tourism promotion in FY2004, the Governor proposed direct line-item appropriations totaling \$17,881,599 in line items 7007-0900 through 7007-1000, a proposed reduction of \$1,334,337 from the prior year budget level.

- In its version of the FY2004 budget, the House concurred with the Governor's proposal to repeal the Massachusetts Tourism Fund. Unlike the Governor's budget, the House's version included the international tourism marketing language that had been included as part of the FY2003 budget but had not been included in the Governor's FY2004 budget proposal. The House provided direct appropriations of \$11,381,211 for tourism promotion in line items 7007-0900 through 7007-1000, along with an added provision that the Office of Travel and Tourism could raise and expend an additional \$5 million raised from non-governmental sources, bringing total authorized tourism spending to \$16,381,211.
- In its version of the FY2004 budget, the Senate rejected the Governor's and the House's proposed repeal of the Massachusetts Tourism Fund, instead supporting continuation of the fund as a dedicated source of tourism promotion funding. The Senate also included in its budget the international tourism marketing language that had been included in the FY2003 budget but had been deleted in the Governor's FY2004 proposal. The Senate recommended tourism appropriations totaling \$19,463,987 in line items 7007-0900 through 7007-1000, substantially more than that provided in either the Governor's or the House's versions. The Senate version represented a proposed net increase in spending on tourism promotion of \$247,151 over FY2003 levels and an increase of \$1,581,488 and \$3,081,876 respectively over the Governor's and the House's versions.
- The legislative Conference Committee concurred with the Senate in rejecting the Governor's and the House's proposed repeal of the Massachusetts Tourism Fund. The Conference Committee also included the international tourism

marketing language that had been eliminated in the Governor's proposal. The Conference Committee appropriated \$15,507,532 in tourism line items 7007-0900 through 7007-1000. Subsequently, the Senate and House adopted these provisions in the FY2004 budget and submitted them to the Governor.

- Governor Romney used his line-item veto authority to reduce tourism line items 7007-0900 through 7007-1000 to \$11,804,821, a reduction of \$3,702,711 from the amount approved by the legislature and a reduction of \$7,411,115 from total amounts included in the FY2003 budget.
- Subsequently, on July 16-17 2003, the Senate and House overrode the Governor's line item vetoes of the tourism accounts, restoring \$3,702,711 in appropriations to bring the final tourism funding to \$15,507,532.

Following passage of the FY2004 budget, MOTT took steps to respond to the deep cut in its line-item budget (a reduction of \$4,169,725 from the FY2003 level). MOTT eliminated nine staff positions and announced plans to reduce spending on travel and tourism marketing by 44% on the domestic side (to \$3.1 million) and by 69% on the international side (to \$500,000).

According to internal MOTT documents, MOTT officials recognized that their decision to make disproportionately deep cuts in international marketing had elicited a strong adverse reaction from business owners, especially those from tourist-dependent Cape Cod. A Department of Economic Development briefing document explains in detail the reasons why MOTT did not agree to reallocate spending towards international travel and tourism. The department's briefing document explained, as follows:

"Do the numbers and it's clear that international cuts were the deepest. Why? We looked at the 2003 forecasts - the U.S. Department of Commerce projected a 4% decline in inbound travel to the US in 2003; the Travel Industry Association (TIA) projected a 2.8% increase in domestic travel, fueled by short, close-to-

home trips. We pondered the uncertainty of air travel with the then impending war, And we took stock of the relative contribution of domestic and international visitor spending to the state's economy - in calendar year 2002, 87% and 13% respectively."

Shortly after MOTT announced its decision to make its deepest cuts in international tourism promotion, the state senate made another attempt to provide funds specifically for international tourism promotion by including a \$2 million international marketing initiative in the legislature's economic revitalization package. The House subsequently concurred with the proposal. The provision called for funding to be provided not to MOTT, but to an agency that would have to expend the funds on international rather than domestic tourism, the Massachusetts International Trade Council. Senator Murray in an October 2003 interview with the Cape Cod Times attributed most of the economic loss associated with the drop in foreign tourism to MOTT. In a May 2005 interview with the Boston Globe, Murray again reinforced *"that [MOTT] had failed to demonstrate an interest or ability in marketing Massachusetts to international tourists."*

In response to the legislature's adoption of the \$2 million international marketing initiative, Governor Romney vetoed the provision on November 26, 2003. As the date approached for legislative consideration of the veto, MOTT officials - in an internal memo dated January 3, 2004 - identified the reason for the state senate's inclusion of the \$2 million international funding provision as having been the discontent of Cape Cod business leaders, as follows:

"I [Judith Judson, Chief of Staff of the Department of Business Technology] spoke with Art Canter [President, Massachusetts Lodging Association] on Wednesday and he basically said that Sen. Murray is responding to a small contingent led by Deb Catania [Chair of Cape Cod Chamber of Commerce International Tourism Committee] on the Cape who are disappointed that their business from international travelers has declined considerably this year. Therefore I do not think that it is a good idea to discuss the reasons/decisions

behind MOTT's spending plan in FY04."

In mid-January 2004 the legislature voted to override the Governor's veto of the international tourism language in the economic stimulus bill, thereby mandating that \$2 million would be expended in FY04 on international tourism, notwithstanding the administration's preference for emphasizing domestic rather than international tourism marketing in FY04.

Chapter 141 of the Acts of 2003, Section 60 (an economic stimulus bill) enacted by the legislature, established the International Tourism Fund (ITF) and charged the Massachusetts International Trade Council with the administration of the ITF and any subsequent awarding of contracts from such fund. The legislation provided that the Massachusetts International Trade Council would award a contract to a non-profit organization to supply international marketing and tourism promotion services on behalf of the Commonwealth. A competitive procurement process was required for the selection of the vendor. The legislation also established an advisory board with which the Massachusetts International Trade Council was required to consult in establishing a scope of services and selection of a non-profit vendor. The Massachusetts International Trade Council in consultation with this advisory board would award the contract to the successful non-profit respondent to a formal Request for Proposals (RFP). The legislation also mandated that the contract award not exceed \$2,000,000 and would be funded from the ITF.

The legislation limited the advisory board to not more than seventeen (17) members and was representatively structured as follows: the president of the senate or his designee; the speaker of the house or his designee; the chairman of the senate committee on ways and means or his designee; the chairman of the house committee on ways and means or his designee; one member to be appointed by the minority leader of the senate; one member to be appointed by the house; provided, however, that those members shall be broadly representative of the tourism industries in the Commonwealth; one member to be appointed by the Massachusetts Office of Travel

and Tourism; one member to be appointed by the Greater Boston Convention and Visitors Bureau; one member to be appointed by the Greater Springfield Convention and Visitors Bureau; one member to be appointed by the Massachusetts Restaurant Association, two members to be appointed by the Berkshire Visitors Bureau, one of whom shall be from a Berkshire area hotel; two members to be appointed by the Cape Cod Chamber of Commerce, one of whom shall be from a Cape Cod area hotel; one member to be appointed by the Bristol County Convention and Visitors Bureau; and one member to be appointed by the Massachusetts Lodging Association.

This legislation was passed on November 19, 2003 and was subsequently vetoed by Governor Romney on November 26, 2003. However, in mid-January 2004 the legislature overrode the governor's veto and set in motion the establishment of the ITF, institution of the advisory board, and the mandated vendor selection process.

In March 2004 discussions took place between MITCI and the Comptrollers Office that led to the execution of a Subsidy Agreement. This agreement contained specific terms and conditions under which funds were transferred from the Economic Stimulus Trust Fund to the ITF.

The executive officers of MITCI (Mr. Robert Ward; President and Mr. Julian Munnich; Treasurer) issued the RFP in May 2004. Three proposals were received by the June 4, 2004 deadline date. These proposals were reviewed by the Advisory Board and the MITCI officers and in September 2004 a recommendation package was submitted by the officers to the MITCI Board of Directors for the final vendor contract award decision. However, prior to the board taking any action on the matter of awarding a contract each of the three directors resigned their positions on the board. These resignations by the entire board were prompted by unresolved long-term troubling issues identified during a due-diligence review of the legal status of MITCI. According to legal counsel, MITCI as a state agency and government entity is subject to conflict-of-interest and open-meeting laws. The legal authority of the MITCI board was also in doubt because its current members had never received gubernatorial appointment as required by MITCI's

originating Executive Order 169 of 1979, but instead had been appointed by previous board members in accordance with corporate bylaws. In addition the officers and staff of MITCI had never been appointed by the Governor, as required by the originating Executive Order. The resignations of the three member board left MITCI without a functioning board of directors. Without a functioning board, MITCI was unable to proceed with the awarding of a contract. In March 2005, the MITCI officers returned to the Comptroller's Office the \$2,000,000 previously transferred to the ITF fund from the Economic Stimulus Trust Fund thereby terminating and discharging its subsidy agreement with the Comptroller's Office.

In February 2005 and in reaction to MITCI's failure to complete the competitive procurement process the legislature included in the 2005 supplemental budget a direct earmark of \$2,000,000 to Tourism Massachusetts. It is important to note that by this point in time, Tourism Massachusetts had entered into an agreement with the Massachusetts Lodging Association (MLA). Tourism Massachusetts then represented two of the original RFP respondents that cumulatively had received 11 of the 12 Advisory Board recommendations. An eleven member board comprised of five representatives from Tourism Massachusetts, five representatives from the MLA and one neutral member was established in order to provide oversight and direction of the marketing and spending practices of the newly reconstituted entity.

The state budget provided international tourism appropriations to Tourism Massachusetts of \$4,000,000 in FY06 and \$5,000,000 in FY07. Governor Romney vetoed these earmarks as well but in both cases the legislature overrode the governor's veto. The FY07 earmark was later eliminated as a result of emergency budget cuts imposed by Governor Romney through his authority under M.G.L. c.29, § 9. Based on the original FY07 legislative appropriation, Tourism Massachusetts continued its operations and incurred additional expenses prior to the emergency cuts imposed by Governor Romney in November 2006. The incoming Patrick administration upheld the Romney budget cut. The new administration however worked closely with Tourism

Massachusetts so as not to adversely affect tourism efforts, while the latter curtailed its operations.

Review of the MITCI Procurement

The enabling legislation for the ITF provided that the Massachusetts International Trade Council in consultation with the Advisory Board shall award a contract to a non-profit organization to supply international marketing and tourism promotion services. In February 2004, MITCI solicited from the statutorily designated entities their appointments to the Advisory Board. These appointees (see Appendix A) were identified and MITCI convened a meeting of the Advisory Board in April 2004. The Advisory Board met in order to provide guidance to the MITCI officers as to the development and issuance of the Request for Proposals (RFP). Based on this Advisory Board input, a draft RFP was prepared and circulated by MITCI for review by the Advisory Board. Formal notice of the final RFP was published on May 13, 2004. The deadline for proposals was established as June 4, 2004.

Three proposals were received by the June 4th deadline. The three respondents were: Discover New England (DNE); Tourism Massachusetts; and MLA. The MITCI treasurer (Munnich) reviewed these submissions for responsiveness to, and compliance with, the RFP. Munnich initially questioned the eligibility of Tourism Massachusetts as an applicant to the RFP. The enabling legislation required that the contract shall be awarded to a non-profit organization and the RFP further established that an eligible contractor would need to possess status as a non-profit organization as defined by I.R.C. 501(c). At the time, Tourism Massachusetts was incorporated as a non-profit under Massachusetts Chapter 180 and had applied for 501 (c) status but had not yet been approved. The MITCI officers made a determination that the 501 (c) status would be required at time of signing a contract as opposed to at the time of response to the RFP. Given this determination, the MITCI officers in mid-June notified all three respondents that their individual proposals had been found to be qualifying and would be presented to the Advisory Board for review and comment.

Shortly thereafter, the MITCI officers informed the Advisory Board that three proposals had qualified as finalists. The MITCI officers also indicated that these proposals would

be provided to the Advisory Board for review and comment. In addition a formal review session would be scheduled so that the Advisory Board could hear presentations from each of the applicants. After the presentations, the Advisory Board would have an opportunity to provide additional input and comments. Inserted in the process at this time was a statement that the MITCI staff in addition to compiling and sending the Advisory Board input to the MITCI Board of Directors would also provide a staff recommendation to the Board of Directors. The MITCI officers also requested that once the Advisory Board had received the proposals to the RFP and members were able to determine the composition and principals of the applicants, that an "Advisory Board Relationship Disclosure" form be completed and returned to the MITCI staff. Advisory Board members were also encouraged to contact the State Ethics Commission to determine whether their consultancy role would raise any conflict of interest concern.

The MITCI officers coordinated a meeting on August 5, 2004 for the Advisory Board to hear oral presentations and ask questions of the three respondents. Three of the Advisory Board members who could not attend the meeting due to schedule conflicts identified substitute participants as their representatives. Mr. Patrick Moscaritolo (President and CEO; Greater Boston Convention & Visitors Bureau) designated Mr. Larry Meehan (Director of Tourism and Public Relations for the Greater Boston Convention & Visitors Bureau) as the Bureau's representative. The Berkshire Visitors Bureau appointed Mr. Richard Woller of Greylock Discovery Tours to take the place of Mr. William Wilson. Mr. Louis Miller ((the Senate President Appointee) named Ms. Linda McConchie (Executive Director of the Freedom Trail Foundation) to take his place at the review meeting. Due to concerns with a potential conflict of interests, the Massachusetts Office of Travel and Tourism (Executive Director Paul Sacco) appointed Mr. Gerald DiPietro of Tourco to take the place of Sacco on the Advisory Board. Sacco in addition to being a state employee was also on the Board of Directors of DNE, which was one of the respondents to the RFP.

This Office reviewed the documentary record of the 2005 procurement process administered by MITCI for the awarding of the ITF international tourism promotion

contract and conducted interviews of key individuals involved.

Prior to the resignation of the Board members and termination of the procurement process, the Advisory Board created by Chapter 141 of the Acts of 2003 to advise on the procurement reviewed the three bid proposals interviewed the bidders and made selection recommendations. Written recommendations were submitted by fourteen of the Advisory Board members. Twelve of the fourteen recommendations demonstrated support for a specific proposal. These included seven (7) recommendations in support of Tourism Massachusetts, four (4) recommendations in support of MLA, and one (1) recommendation in support of DNE. Of the other two recommendations one did not provide a specific preference and the other one was supportive of either DNE or MLA.

The staff of MITCI referred the Advisory Committee recommendations favoring Tourism Massachusetts, as described, to the MITCI Board of Directors and offered a staff recommendation of the MLA proposal, the Advisory Board's second-highest ranked bidder. In making its recommendation, MITCI staff criticized the Tourism Massachusetts proposal in part because it "proposed to supplant certain operations and contracts of MOTT." MOTT is the agency that had administered international tourism marketing before the legislature directed the funding away from it.

After the procurement process was terminated, the legislature directed in a supplemental budget that the contract be awarded to a newly-restructured enterprise of Tourism Massachusetts and the MLA that represented two of the three bidders to MITCI's failed competitive procurement and that had cumulatively received 11 of the 12 recommendations of the Advisory Committee.

During the procurement process, a representative of the MLA asserted to MITCI staff that the bids of its two competitors' proposals should be deemed ineligible because they included subcontracts with overseas tourism marketing agents. According to the MLA's assertion, such expenses should be considered administrative overhead expenses in excess of the 20% maximum allowable under the bid specifications. Notwithstanding

this suggestion, MITCI staff concluded in its written report to the Board that “the staff finds that all three proposals were substantially responsive to the RFP.” Nothing in the Request for Proposals indicated that such expenses would be considered administrative overhead for the purpose of computing the maximum cap. MITCI staff’s report to the Board addressed the subject of the MLA’s assertion by stating, “*Subject to contractually defining administrative costs and attributing sub-contractors expenses . . . two of the proposals exceed the limit and do not meet the standard to be compliant*” (emphasis added.) The staff report did not make a determination that overseas agents’ contracts were in fact administrative overhead expenses. This Office’s review has determined that MOTT had previously accounted for contracts between itself and the very same overseas agents as consultant services, not as overhead. Following the awarding of the contract, DBT considered whether the overseas agent contracts should be counted as administrative overhead in excess of the 20% limit and authorized the payments, not deeming them to be excess overhead.

The procurement was terminated by the MITCI staff as a direct result of the resignation of all three members of the MITCI Board of Directors following the identification of issues about MITCI’s legal and tax status during the procurement process. Problems came to a head after the General Counsel of the Attorney General opined that MITCI is a state agency. This conclusion was significant because state agencies are subject to the state conflict-of-interest laws and other agency regulations including public record and open meeting laws, while MITCI officers and Board members had always operated under the presumption that MITCI was exempt from such laws and regulations. The issue first came to light after Board member Mitchell Adams asked for a legal opinion as to whether the ITF procurement was subject to the open-meeting law. His legal counsel concluded that it was, but more significantly that MITCI was in fact a state agency, and that the MITCI Board of Directors and staff had not been duly appointed to their positions by the Governor as required by the agency’s originating Executive Order but had instead been appointed by previous Board members in accordance with MITCI’s bylaws drafted in contradiction to the originating Executive Order. A subsequent legal opinion also identified potential compliance issues MITCI faced under the unrelated

business income provisions of the Internal Revenue Code. The identification of these troubling issues led all three Board members to resign.

This Office concludes that the 2005 ITF procurement failed as a result of serious issues discovered during the procurement about the status of MITCI, its Board members, and its professional staff. These problems are ongoing and should be rectified.

Financial Investigation Focus

In order to address the concerns regarding the potential for financial impropriety this Office performed a detailed review of the expenditures made by or on behalf of Tourism Massachusetts. This examination included a corroboration of the expenditures reflected in the financial records to the supporting back-up documentation including vendor invoices. This was done in order to ensure that the payments made were related to the operation of Tourism Massachusetts and to determine if there were any out of the ordinary or “suspicious” payments. In particular we focused our review to ascertain if any payments were made to or on behalf of members of the state legislature or state employees. Due to the sensitive nature of the financial concerns this Office established an audit standard which resulted in a comprehensive review of all (100%) the expenditures made by Tourism Massachusetts from April 2005 through May 2007 and included a detailed examination and verification of these expenditures to the supporting back-up documentation (including vendor invoices) for over 99% of the total dollars expended.

In performing our investigation this Office worked closely with the certified public accounting firm of Bacall and Conniff, P.C. (B&C) located at 111 State Street (Boston) which provided the ongoing day-to day accounting services to Tourism Massachusetts. Services provided by B&C included payroll, bill paying and bookkeeping services. B&C also prepared periodic financial reports, year end statements and tax fillings. This Office also reviewed the independent audit reports issued for Tourism Massachusetts by the certified public accounting firm of Feeley and Driscoll, P.C. (Feeley) located at 200 Portland Street (Boston).

Tourism Massachusetts through its accountants (B&C) provided this Office with general ledger expenditure details (by account and payee). These general ledger expenditure details became the basis for our line item testing. We reconciled the general ledger expenditures from April 2005 through June 2006 to the Feeley audited financial statements for the corresponding time periods. In addition we reconciled all state funds

disbursed to or on behalf of Tourism Massachusetts from FY05 through FY07 against payments made to service providers identified in the general ledger details. Through this process we were able to determine that all state funds received by Tourism Massachusetts were in fact accounted for through vendor disbursements identified in the general ledger. We then performed a detailed validation of the identified general ledger details against supporting vendor documentation.

Financial and Operational Oversight

The Massachusetts Department of Business and Technology (DBT), a department under the Office of Economic Development, negotiated and executed on behalf of the Commonwealth the contracts with Tourism Massachusetts for the international marketing services mandated by the legislature through its budget earmarks. The contracts provided payment schedules for the earmarks along with conditions that Tourism Massachusetts needed to meet in order to obtain release of the funds. Payments were tied to certain deliverables such as: audited GAAP certified financial statements, limitations on administrative and overhead costs, scope of work documents including operating budgets and program deliverables, and periodic performance reports reflecting measurable program results. Contracts were executed for the \$2,000,000 FY05 and the \$4,000,000 FY06 budget earmarks. The contract for the \$5,000,000 FY07 budget earmark was under negotiation and therefore not executed when Governor Romney eliminated funding for international marketing services through his emergency budget cuts in November 2006.

We noted through our review that DBT in fulfilling its fiduciary responsibilities withheld or delayed payments to Tourism Massachusetts. The primary reason for the delay in payments was that Tourism Massachusetts was often late in providing the required audited financial statements and periodic performance reports. There were also timing delays associated with the resolution of questions posed by DBT through the review of the documents once submitted by Tourism Massachusetts. DBT provided the oversight to ensure compliance by Tourism Massachusetts with the contract terms. Although there were delays in payments, we noted that Tourism Massachusetts eventually fully complied with the FY05 and FY06 contract conditions for payment and therefore DBT released the entire \$6,000,000 in budget earmarks for FY05 & FY06.

Tourism Massachusetts was required through its contract with the Commonwealth to provide periodic audited financial statements of its operations. Our review noted three such independent audit reports issued by Feeley. These three reports covered the

statements of activities and cash flows for Tourism Massachusetts for the following time periods: April 1, 2005 to December 31, 2005; January 1, 2006 to June 30, 2006; and, July 1, 2005 to June 30, 2006. All three Feeley audit reports included a “clean” opinion which indicated that in all material respects the financial statements presented fairly and in conformity with generally accepted accounting principles the financial position of Tourism Massachusetts and the changes in its net assets and cash flows.

Our focus was on validating the financial transactions and not necessarily on determining the operational effectiveness of Tourism Massachusetts. We did however note that as contractually required, Tourism Massachusetts provided periodic performance reports with measurable results to DBT including return on investment measurements. Highlighted in the Feeley audit reports was recognition of “in-kind” donations received by Tourism Massachusetts. These “in-kind” donations reflected in the audited financial statements totaled \$10,201,181 for the period of time from April 2005 through June 2006. An example of these “in-kind” donations include the value of media or press coverage for marketing Massachusetts as a destination which was obtained for free through sponsorship of other marketing initiatives such as familiarization tours which are discussed in more detail later in this report. An industry benchmark report that indirectly addresses the effectiveness of the international marketing efforts for Massachusetts is the 2006 overseas travel to the United States data published by the U.S. Department of Commerce. This U.S. Commerce report shows a 27% increase in overseas visitations to Massachusetts from 2005 to 2006. Massachusetts had the highest percentage increase by far. The state with the second highest percentage increase was Pennsylvania with only a 7% jump in overseas visitations.

Sources of Funds

Tourism Massachusetts received a total of \$11,000,000 in budget earmarks over three fiscal years (\$2,000,000 FY05; \$4,000,000 FY06; and, \$5,000,000 FY07). The \$6,000,000 in earmarks from FY05 and FY06 were disbursed directly by the Commonwealth to Tourism Massachusetts based on the vendor meeting specific contract deliverables as previously indicated. The \$5,000,000 FY07 budget earmark was not disbursed to Tourism Massachusetts since the entire earmark was eliminated by Governor Romney through his Chapter 9c emergency budget cuts implemented in November 2006. At the time of Governor Romney's emergency budget cut (almost five months into the new fiscal year) there was no executed contract between Tourism Massachusetts and the Commonwealth. The contract was under negotiation. The delay in this contract process was primarily related to the fact that Tourism Massachusetts was approximately 7 weeks delinquent in fulfilling the FY06 contract conditions, in particular the submission of audited year end financial statements. DBT was hesitant to embark on contract negotiations for FY07 without having closed out FY06.

During this timeframe, although a formal contract was not in place, Tourism Massachusetts was continuing the international marketing efforts on behalf of the Commonwealth and as such was incurring additional expenses and liabilities. The incoming Patrick administration upheld the Romney emergency budget cuts to Tourism Massachusetts. However, the new administration worked with Tourism Massachusetts in order to provide for a smooth transition of these international marketing services. During this transition, vendors continued to provide marketing related services. The new Patrick administration reviewed and approved all payments for these services. Prior to making these payments, the Executive Office of Housing and Economic Development requested that this Office review and approve the payment methodology. A total of \$2,766,990 was disbursed in FY07 directly by the Commonwealth to approximately seventy (70) vendors. As part of this transition the websites (www.usamass.com and www.usamass.tv) developed by Tourism Massachusetts were transferred to the Commonwealth.

In summary, over the three fiscal years (FY05-FY07), the Commonwealth paid a total of \$8,766,990 (\$6,000,000 to/through Tourism Massachusetts and \$2,766,990 paid directly by the Commonwealth to Tourism Massachusetts vendors) for international marketing services managed and directed by Tourism Massachusetts.

Uses of Funds

This Office reconciled the total international marketing services funds paid by the Commonwealth (\$8,766,990 see above) against the expenditure details provided by Tourism Massachusetts which totaled \$8,767,345. These expenditure details reflected how the funds were used (individual payments by vendor). The source of funds tied out to within \$400 of the identified uses of funds. These expenditure details became the basis for our financial audit/investigation. There were in excess of three thousand individual expense line items or payment vouchers which comprised the \$8,767,345 in expenditures. These expenditures or payments were made to over four hundred (400) distinct vendors or contractors. Total payments to individual vendors ranged from \$1.95 (Pay Pal) to \$926,088.89 (First Public Relations).

Financial Audit Findings

This Office performed a detailed validation of the general ledger details against the supporting vendor documentation. The purpose of this review was to ensure that the expenditures were in fact related to the operation of Tourism Massachusetts and that the payments were not made to or on behalf of any state legislators and/or state employees. As previously noted our financial audit included verification of the expenditures to the supporting back-up or source documents, including vendor invoices. Through our review we found no evidence of payments being made to or on behalf of any state legislator or state employee. All payments appeared to be related to the operations of Tourism Massachusetts in providing marketing and tourism promotion services for the Commonwealth.

In order to provide visibility as to how the Commonwealth's money was spent, this Office summarized the payments made by Tourism Massachusetts over the three fiscal years. The summary reflects payments by vendor along with primary expenditure types. Included as Appendix B is a schedule depicting the highest paid vendors. As can be seen through this schedule is that the top ten (10) vendors account for over 65% or \$5,713,969 of the total expenditures (\$8,767,345) and thirty-four (34) vendors (of the 400+ vendors) account for approximately 85% of the total expenditures. Of the remaining vendors, nearly half received less than \$500 each over the three years.

In addition to breaking out the expenditures by vendor/payee this Office categorized the spending by major classification. Payments made for destination public relations and marketing in nine key regional markets accounted for \$4,119,891 or 47% of the total spending. Tourism Massachusetts spent an additional \$1,119,343 or approximately 13% of the total expenditures on website development. The local management team responsible for administering the day-to-day elements of the international marketing services program received compensation totaling \$847,876 (nearly 10% of total spending) over the three fiscal years. These and other major expenditure groupings are discussed in more detail below:

Destination Marketing: Ten regional public relations/marketing firms were hired to promote Massachusetts as a destination for international visitors. These firms represented Massachusetts in their respective countries/regions. In total Tourism Massachusetts spent \$4,119,891 (47% of total spending) through these regional destination marketing firms. These regional organizations along with their geographic regions and associated payments are highlighted below:

First Public Relations – United Kingdom	\$926,089
Cristina Bernadi –South America	\$734,235
Coastal International – Canada	\$665,698
Herzog HC GmbH – Germany	\$612,038
Express Conseil – France	\$405,525
Thema Mondì Nuovi - Italy	\$395,728
Discover Asia Marketing – China/SE Asia	\$109,888
Gate 7 Pty Ltd – Australia	\$107,715
Global Consulting – Japan	\$ 93,278
Access, Inc - Japan	<u>\$ 69,940</u>
Total	\$4,119,891

Website Development: Tourism Massachusetts invested \$1,119,343 in the development of web based interactive marketing communications and technology. This investment included a multi-lingual (English, Japanese, Chinese, Spanish, French, Italian, German and Portuguese) international travel destination website (usamass.com) and an international web based television marketing site (usamass.tv). Several firms/consultants specializing in media communication services including design, production, translation and web marketing were utilized in the development of these sites. These websites have recently been transferred from Tourism Massachusetts to the Commonwealth. Summarized below is a list of the principal (highest paid) vendors and associated payments made by Tourism Massachusetts in implementing these marketing websites.

Tantara Multimedia	\$428,751
The Rendon Group	\$361,832
Robert E. Fields	\$ 65,045
Rapport International	\$ 50,428
Welcome Productions	\$ 44,850
T. Lowe Productions	\$ 41,000
Miles Media Group	\$ 26,985

Corporate Compensation: The staff for Tourism Massachusetts received compensation benefits (salaries, taxes and retirement) during FY05 - FY07 totaling \$847,876 (9.7% of total spending). The majority of these compensation payments (\$707,573) flowed through the payroll and accounting systems administered through B&C during FY05 & FY06. The final \$140,303 was paid by the Commonwealth in FY07 through attorney Daniel Dacey serving as escrow agent. This represented the final settlement payment from the Commonwealth to Tourism Massachusetts staff for unpaid compensation including 401(k) payments. The total three year compensation payments by employee are reflected below:

William MacDougall:	\$341,795
Wendy Moyer:	\$114,439
Lidia Hernandez:	\$ 95,616
Elizabeth Deschenes:	\$ 75,596
Judith Canty::	\$ 49,181
Six Other Employees:	\$ 27,170
Associated Benefits	<u>\$144,079</u>
Total Compensation	<u>\$847,876</u>

Familiarization Program: A key element of Tourism Massachusetts' destination marketing approach was the implementation of a familiarization program. This program recruited travel media, television programs and tour operators permitting them to experience first hand Massachusetts as a travel destination. The benefits or returns

from this familiarization program are the associated media coverage for Massachusetts, generated by the visiting participants back in the targeted markets. Mr. Thomas Shilling was paid \$106,207 in order to manage the scheduling and coordination of the familiarization trips, during this time period.

Marketing Events and Campaigns: During the three fiscal years of operation, Tourism Massachusetts initiated and/or participated in various marketing events and campaigns. In FY05 Tourism Massachusetts initiated a Global Forum/Marketplace which became an annual one day forum and business-to-business marketplace for the Massachusetts tourism industry and international tour operators and travel press. Tourism Massachusetts also participated in the International Pow Wow which is the travel industry's premier international marketplace. The key vendors (reflected in Appendix B) who received payments associated with these and other marketing events and campaigns include: Miles Media Group (\$145,862); Massachusetts Lodging Association (\$135,000); Strategic Solutions (\$116,043); Head of the Charles Regatta (\$115,000); The Rendon Group (\$70,850); Matthew Moyer (\$60,304); Boston Park Plaza (\$53,295); Universal Orlando (\$49,241); Rogers Media Inc. (\$47,614); Boston Marriott (\$43,743) T. Lowe Productions (\$6,129) and Robert E. Fields (\$5,417).

Professional Services: A total of \$235,148 was paid for accounting, auditing and legal services. B&C received \$135,559 for the various day-to-day accounting services (including bookkeeping, payroll, and financial reporting) it provided to Tourism Massachusetts. The public accounting firm of Feeley was paid \$43,164 for its audit related services. Legal fees accounted for \$56,425 of total spending with Daniel Dacey, Esq. receiving \$45,955 and the firm of March, Moriarty, Ontell & Golder P.C. receiving \$10,470.

Operational/Overhead Expense: The Rendon Company in addition to the \$361,832 received for Website development work and the \$70,850 received for various marketing events and campaigns also received \$92,500 attributed to operational overhead expense. This was primarily related to office rental charges. Tourism Massachusetts

also paid \$53,250 to Northeast Business Trust for insurance coverage.

Other Expenditures: Travel Industry Associates was paid a total of \$44,995 for various industry related memberships. Tambone Associates was paid \$38,188 for public relation services. Transportation related costs included payments to Joseph's Transportation (\$65,546) Newton Airport Express (\$29,435) Boston Elite Coaches (\$21,055) and Don Quijote Tours (\$14,233). The transportation related costs were principally used in the day-to-day running of the familiarization program.

Conclusion

This Office found that all funds appropriated to and expended by Tourism Massachusetts from April 2005 through May 2007 have been accounted for properly and that no funds have been misappropriated or otherwise expended for purposes other than those specified in the contracts. No funds were used to pay for trips, meals, or other benefits for state employees including state legislators.

The contract award process as structured and managed by the executive officers of MITCI broke down because of the confusion, clouded lines of authority, elevated concerns about potential conflict of interests, and potential compliance issues with governmental rules and regulations identified during a due-diligence legal review, triggering the resignations of the entire board of directors. In response the legislature directed a contract award to a reconstituted organization of two of the three bidders to MITCI's failed competitive procurement process. These two bidders had cumulatively received 11 of the 12 recommendations of the procurement Advisory Committee established by section 60 of Chapter 141 of the Acts of 2003.

This Office's review found no evidence of impropriety in the awarding or administration of the contracts awarded through the ITF.

The concerns regarding MITCI's legal status are ongoing. This Office recommends that the Executive Office of Housing and Economic Development ensure a legal structure conforming to the intent and direction of the originating Executive Order or otherwise discontinue direct appropriations to a state agency that claims to be a self-appointing corporation.

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Appendix A: Advisory Board Members

Mr. Louis C. Miller	Senate President Appointee
Representative, Daniel Bosley	House Speaker Appointee
Senator, Therese Murray	Chair, Senate Cmte. on Ways & Means
Representative, Patricia Haddad	House Cmte. on Ways & Means Appointee
Senator, Brian Lees	Senate Minority Leader
Representative, Shirley Gomes	House Minority Leader Appointee
Mr. Paul Sacco	Executive Director; MA Office of Travel and Tourism
Mr. Patrick Moscaritolo	Pres. & CEO; Greater Boston Convention & Visitors Bureau
Ms. Mary Kay Wydra	President; Greater Springfield Convention and Visitors Bureau
Mr. William Catania	Massachusetts Restaurant Association
Mr. William Wilson, Jr.	Pres. & CEO Berkshire Visitors Bureau
Mr. Sayed Saleh	Berkshire Visitors Bureau
Ms. Wendy Northcross	CEO; Cape Cod Chamber of Commerce
Ms. Debra Catania	Cape Cod Chamber Appointee
Ms. Sheila Martines-Pina	Exec. Dir.; Bristol County Convention & Visitors Bureau
Ms. Mary Kelley	Exec. Dir.; Massachusetts Cultural Council
Mr. Jeffrey Saunders	Pres. Board of Directors, Massachusetts Lodging Association

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Appendix B: Payments by Vendor and Expense Type

VENDOR	TOTAL PAYMENTS	EXPENSE TYPE
First Public Relations	\$926,089	Marketing-United Kingdom
Tourism MA/Salaries & Fringe	\$847,876	Corporate G&A
Cristina Bernadi	\$734,235	Marketing-South America
Coastal International	\$665,698	Marketing-Canada
Herzog HC GmbH	\$612,038	Marketing-Germany
Rendon Group	\$525,182	Website/Overhead/Forum/Rent
Tantara Multimedia	\$428,751	Website Development
Express Conseil Limited	\$405,525	Marketing-France
Thema Nuovi Mondì	\$395,728	Marketing-Italy
Miles Media Group	\$172,847	Marketing/Website
Bacall & Conniff, PC	\$135,559	Accounting Services
Mass Lodging Assoc.	\$135,000	Marketing/Posters
Strategic Solutions	\$116,043	Marketing/Events/Pow Wow
Head of the Charles	\$115,000	Events/Marketing
Discover Asia Marketing	\$109,884	Marketing-China/SE Asia
Thomas E. Shilling	\$109,652	Familiarization Costs
Gate 7 Pty Ltd	\$107,715	Marketing-Australia
Global Consulting	\$93,278	Marketing-Japan
Robert E. Fields	\$70,462	Website Development
Access Inc	\$69,940	Marketing-Japan
Joseph's Transportation	\$65,546	Transportation/Forum/Fam
Matthew Moyer	\$60,304	Marketing/Posters
Northeast Business Trust	\$54,865	Operational/Overhead
Boston Park Plaza	\$53,295	Marketing
Rapport International	\$50,428	Website Development
Universal Orlando	\$49,241	International Pow Wow
Rogers Media Inc	\$47,674	Marketing Campaign
T. Lowe Productions	\$47,614	Website Development
Daniel Dacey, Esq.	\$45,955	Legal Services
Travel Industry Associates	\$44,995	Membership
Welcome Productions	\$44,850	Website Development
Boston Marriott	\$43,743	Global Forum
Feeley & Driscoll	\$43,164	Audit Services
Tambone Associates	\$38,188	Public Relations
Subtotal	\$7,466,364	
All Other Vendors	\$1,300,981	
Grand Total	\$8,767,345	