



**OFFICE OF THE
INSPECTOR GENERAL**
MASSACHUSETTS

A Review of the MBTA's Police Dispatch Services Contract with IXP Corporation



Supplemental Report

December 27, 2023

Jeffrey S. Shapiro, Esq., CIG
Inspector General
Office of the Inspector General
Commonwealth of Massachusetts

December 27, 2023

Via Electronic Mail

The Hon. Monica Tibbits-Nutt
Massachusetts Department of Transportation
10 Park Plaza, Suite 4160
Boston, MA 02116
Secretary.Tibbits-Nutt@dot.state.ma.us

Phillip Eng, General Manager
Massachusetts Bay Transportation Authority
10 Park Plaza, Suite 3830
Boston, MA 02116
[Peng@mbta.com](mailto:Eng@mbta.com)

The Hon. Brendan P. Crighton, Senate Chair
Joint Committee on Transportation
State House, Room 109-C
Boston, MA 02113
Brendan.Crighton@masenate.gov

The Hon. William M. Straus, House Chair
Joint Committee on Transportation
State House, Room 134
Boston, MA 02113
William.Straus@mahouse.gov

**Re: A Review of the MBTA's Police Dispatch Services Contract with IXP Corporation,
Supplemental Report**

Dear Secretary Tibbits-Nutt, General Manager Eng, Senator Crighton and Representative Straus:

Pursuant to Section 196 of Chapter 46 of the Acts of 2015 (Chapter 46), enclosed please find a report that the Office of the Inspector General (OIG) issued today entitled *A Review of the MBTA's Police Dispatch Services Contract with IXP Corporation, Supplemental Report*.

Under Chapter 46, the Massachusetts Bay Transportation Authority (MBTA or authority) was exempted for a three-year period from the provisions of the Taxpayer Protection Act when contracting with private companies to perform services "similar to or in lieu of" their own employees. The general goal of such privatization contracts is to provide better services at a lower cost.

Chapter 46 also specifies that within 90 days after the complete performance of any contract the MBTA executed under the exemption, the OIG must analyze and report on the fairness and competitiveness of the procurement process, the quality of the services provided by the contract, the expected and actual cost of the contract, and the costs/benefits.

In 2017, the MBTA contracted with IXP Corporation (IXP) to provide police dispatch services for the authority's Transit Police Department. The OIG's Internal Special Audit Unit (ISAU) released its [first report](#) regarding the IXP contract on December 23, 2022. At that time, the ISAU determined that it needed additional information from both the MBTA and IXP to properly evaluate one aspect of its Chapter 46 review: the fairness and competitiveness of the MBTA's procurement process. This supplemental report presents that analysis.

The MBTA is not required to follow the state's procurement law (Chapter 30B of the Massachusetts General Laws). As such, the ISAU used the MBTA's own procurement procedures, per its own procurement manual, to evaluate the fairness and competitiveness of its solicitation of bids for dispatch services. The ISAU found that the MBTA completed some, but not all, of its own internal

procedures for advertising and soliciting responses to the 2017 RFP. The MBTA could not demonstrate that its solicitation and advertising process was fair and competitive.

Further, the MBTA did not complete or maintain records related to its evaluation of IXP's response to the 2017 RFP and therefore could not demonstrate that the evaluation process was fair. Furthermore, communications between the Transit Police and IXP during the evaluation process raise significant concerns of a potential bias in favor of IXP. This raises troubling questions on two fronts – records management and impartiality.

Recordkeeping and records retention are basic functions of any business or organization. It is essential for a public entity to properly record and retain information concerning its decision-making on spending public funds (among other things). This has been a chronic problem at the MBTA and has been documented at length in the OIG's previous reports. The OIG is pleased to have learned that concerted efforts are underway at the authority to address these issues. Nonetheless, the test will be how the MBTA conducts itself during future procurements and with future contract administration and how its actions align with the results from future oversight reviews.

More concerning is the possibility that favoritism influenced the MBTA's selection of IXP to provide police dispatch services. I cannot emphasize enough the need for clear, transparent and fair procedures for the selection of contractors by public entities. It is essential that the public have confidence in government when it conducts public procurements and expends the public's money. In fact, the creation of the OIG resulted from an investigation of government corruption in awarding contracts for public building construction. Based upon the ISAU's investigation, significant concerns were raised regarding whether or not the selection process was fair; furthering that concern, the MBTA's poor recordkeeping and records retention practices meant that the authority could not conclusively demonstrate that its selection of IXP was free from favoritism. That is not acceptable.

In closing, I respectfully request that the recommendations in this review, as well as those in the three previous Chapter 46 reviews, be closely scrutinized by MBTA senior management. As I mentioned in a recent conversation with MassDOT and MBTA leadership, I am encouraged by the action the MBTA's Procurement and Logistics Department is undertaking to review our current and prior recommendations and update internal procurement and recordkeeping procedures. Whether or not my optimism is short lived will be determined by the future actions of the MBTA. The ISAU team looks forward to meeting with the MBTA's procurement and contract administrative teams in the near future to understand the progress and improvements the MBTA has made.

I believe that Secretary Tibbits-Nutt and General Manager Eng will be able to effectively lead their teams in correcting and addressing these issues. The Office of the Inspector General, the ISAU team and I are available to answer any questions that you may have.

Sincerely,



Jeffrey S. Shapiro, Esq., CIG
Inspector General

cc (via email):

The Hon. Michael J. Rodrigues, Chair, Senate Ways and Means Committee
The Hon. Aaron M. Michlewitz, Chair, House Ways and Means Committee
Douglas McGarrah, General Counsel, Department of Transportation
Hayes Morrison, Undersecretary, Department of Transportation
The Hon. Thomas Koch, Chair, MBTA Advisory Board
Brian Kane, Executive Director, MBTA Advisory Board
Jeff Gonneville, Deputy General Manager, Massachusetts Bay Transportation Authority
Kevin Scanlon, Chief Counsel, Massachusetts Bay Transportation Authority
Katie Choe, Chief of Staff, Massachusetts Bay Transportation Authority
Thomas P. Glynn, Chair, MBTA Board of Directors
Kenneth Green, Chief of Police, MBTA Transit Police
Richard Sullivan, Superintendent, MBTA Transit Police
Michael D. Hurley, Clerk of the Senate
Steven T. James, Clerk of the House
State Library of Massachusetts

INSPECTOR GENERAL'S COUNCIL

Chair Susan Terrey – By designation of Secretary of Public Safety and Security

Vice Chair Michael Leung-Tat – By designation of State Auditor

Amy Crafts – By designation of Attorney General

Comptroller William McNamara – By statute

Michael Caira – By Governor's appointment

Rachel Ciocci – By State Auditor's appointment

James Morris – By Attorney General's appointment

Christopher Walsh – By Governor's appointment

OFFICE OF THE INSPECTOR GENERAL'S LEADERSHIP

Jeffrey S. Shapiro, Esq., CIG, Inspector General

Natalie S. Monroe, First Assistant Inspector General

Susanne M. O'Neil, General Counsel

OIG'S INTERNAL SPECIAL AUDIT UNIT

Emily Pedersen, Director (appointed by the Inspector General)

Kimberly Stanley, Deputy Director

Matthew Boyle, Investigator

James Devoe, Lead Investigator

Rachel Hale, Investigator

Marisa Janeczek, Compliance Specialist

Jesmeen Khan, Investigator

Colin Long, Policy Analyst

Nicholas O'Neill, Lead Counsel

Harley Songin, Investigator

Jarrett Taylor, Coordinator/Investigator

TABLE OF CONTENTS

Executive Summary.....	7
Evaluation of the MBTA’s Procurement Process	10
I. Police Dispatch Services Procurement Process.....	11
A. February 2016 Procurement.....	11
B. June 2017 Procurement.....	13
II. Finding 1: The MBTA completed some, but not all, of its internal procedures for advertising and soliciting responses to the 2017 RFP. The MBTA could not demonstrate that its solicitation and advertising process was fair and competitive	15
A. Independent Cost Estimate	15
B. Adequate Competition.....	16
C. Clear, Accurate and Complete Specifications.....	16
D. Experience, Bonding and Qualification Requirements	17
E. Advertising and Publicizing	17
F. Adequate Number of Sources Solicited	18
G. Conclusion.....	19
III. Finding 2: The MBTA did not complete or could not provide relevant records related to its evaluation of IXP’s response to the 2017 RFP. Communications between the Transit Police and IXP raise significant concerns of potential bias in favor of IXP in the evaluation process.	20
A. Technical Evaluation	20
B. Price Evaluation	25
C. Final Selection.....	26
D. Conclusion.....	26
Conclusion.....	28

EXECUTIVE SUMMARY

The Massachusetts Bay Transportation Authority (MBTA or authority) issued a request for proposals (RFP) in 2017 that resulted in a contract with IXP Corporation (IXP) to provide police dispatch services for the MBTA Transit Police Department (Transit Police). The procurement was pursuant to a three-year “privatization waiver” that the Legislature enacted through Section 196 of Chapter 46 of the Acts of 2015 (Chapter 46). That legislation exempted the authority from the requirements of the Taxpayer Protection Act (TPA) from July 1, 2015 through July 1, 2018. The TPA, passed in 1993, established a process that state agencies must follow in hiring a private company to perform services previously provided by agency employees.

The 2015 privatization waiver requires the Office of the Inspector General (OIG), within 90 days after the complete performance of any contract the MBTA executed pursuant to Chapter 46’s exemption, to report on (1) the competitiveness and fairness of the procurement process resulting in the contract; (2) the quality of services provided by the contract; (3) the expected and actual cost of the contract; and (4) whether the cost of the contract exceeded the benefits derived from the contract.

On December 23, 2022, the OIG’s Internal Special Audit Unit (ISAU) released its first report regarding the MBTA’s contract with IXP. That report, [A Review of the MBTA’s Police Dispatch Services Contract with IXP Corporation](#), focused on three of the four areas that the OIG is required to review under Chapter 46: quality of services, expected and actual costs, and costs and benefits. The ISAU determined that it needed additional information from both the MBTA and IXP to properly evaluate the fairness and competitiveness of the MBTA’s procurement process and deemed a more in-depth analysis of records to be in the public’s best interest.

At the OIG’s request, the MBTA and IXP provided additional materials and correspondence created during the procurement process for the ISAU’s review.¹ The present report supplements the original report and focuses exclusively on Chapter 46’s dictate that the OIG evaluate the fairness and competitiveness of the MBTA’s procurement of police dispatch services.² The ISAU’s findings and recommendations resulting from its analysis of the police dispatch procurement process are as follows:

¹ To complete its review of the competitiveness and fairness of the MBTA’s procurement for police dispatch services, the ISAU evaluated relevant MBTA and IXP documents, including requests for proposals; proposals submitted; proposal evaluation records; presentations, minutes and other materials from Fiscal and Management Control Board meetings; contract documents and amendments; and emails and other correspondence. The ISAU also reviewed the MBTA’s annual reports to the Legislature for 2016 through 2018, as well as the MBTA procurement manual and available documents the MBTA developed during the procurement process. Lastly, the ISAU interviewed current and former MBTA employees, including employees from the MBTA Procurement Department and the Transit Police. The ISAU also met with IXP senior management regarding the procurement, the contract and the services the company provided.

² The ISAU’s December 2022 report presents additional background information related to the OIG, the MBTA, the MBTA Transit Police, the TPA, the history of the Transit Police’s dispatch functions, and the MBTA’s decision to privatize dispatch services and contract with IXP.

Finding 1. The MBTA completed some, but not all, of its internal procedures for advertising and soliciting responses to the 2017 RFP. The MBTA could not demonstrate that its solicitation and advertising process was fair and competitive.

The MBTA has wide latitude to determine its procurement process and is not required to follow Chapter 30B of the Massachusetts General Laws. For this review, the ISAU used the MBTA's procurement manual criteria as the applicable measure of fair and competitive procurements. Based on its investigation and analysis under the MBTA's own manual, the ISAU found that the MBTA completed some, but not all, of its internal procedures for advertising and soliciting responses to the 2017 RFP for police dispatch services. The procurement fell short in several key elements. The MBTA could not demonstrate that its solicitation and advertising process was fair and competitive.

Finding 2: The MBTA did not complete or could not provide relevant records related to its evaluation of IXP's response to the 2017 RFP. Communications between the Transit Police and IXP raise significant concerns of potential bias in favor of IXP in the evaluation process.

The MBTA could not show that its evaluation process was fair and competitive since the authority did not complete or maintain relevant records. Moreover, communications between Transit Police and IXP employees raise significant concerns of potential bias in favor of IXP in the evaluation process.

Recommendations: In reviewing the MBTA's procurement for police dispatch services, the ISAU identified necessary measures for the MBTA to strengthen its procurement processes.

The ISAU recommends that the MBTA:

1. Comply with all procedures outlined in its procurement manual and in any solicitation for supplies or services, including requirements related to independent cost estimates, adequate competition, evaluations of both technical and price proposals, and circumstances that can lead to a potential bidder's disqualification.
2. Encourage and solicit a wider pool of proposals. When seeking supplies or services similar to those that the MBTA previously solicited or procured, ensure that all prior bidders are alerted.
3. Consider the size and complexity of a contract when determining how long to advertise a solicitation.
4. Instruct employees of the circumstances in which they may and may not communicate with vendors outside of the formal procurement process, as such communications may lead to an appearance of or actual bias in favor of a particular bidder.
5. Improve recordkeeping relating to procurements and contract administration. As a first step, develop record retention policies and procedures, and train employees on effective records management. Ensure that records related to the proposal evaluation process are retained.

6. Provide training to employees on state record retention schedules and maintain documents in a central procurement or contract file to allow for prompt and complete production. Especially when an employee is leaving the MBTA, ensure that employee work records are properly transferred and/or archived to retain critical required documents and comply with state record retention requirements.
7. Address exemptions in the MBTA's procurement process by: (a) updating the MBTA's procurement manual with specific guidance on when and how the MBTA may depart from the provisions of the manual for procurements that do not involve federal funds, including the specific provisions of the manual to which this discretion applies; (b) documenting all exemptions from the provisions of the MBTA's procurement manual, including the justifications for such exemptions, for procurements that do not involve federal funds; and (c) considering whether to adopt separate state and federal procurement policies.

Although this review focused on one MBTA service contract, the ISAU's recommendations should be extrapolated across all existing and future contracts executed by the authority. The ISAU reminds the MBTA's leadership, finance and procurement staff that there are four "live" contracts for privatized services yet to be reviewed under the 2015 exemption. While the MBTA cannot re-do the procurement process for those contracts, its leadership can effectively manage their administration and oversight during the remaining life of the contracts, plus any applicable extensions or option-year terms.

EVALUATION OF THE MBTA'S PROCUREMENT PROCESS

To complete its required review, the OIG evaluated the competitiveness and fairness of the MBTA's procurement of police dispatch services.³ Fair, competitive and open bidding procedures not only create equal opportunity for companies seeking to do business with the government, but also produce better value for government agencies.⁴

The MBTA's [procurement manual](#) sets out MBTA policies and procedures for obtaining goods and services. The MBTA makes the manual publicly available on its website, providing vendors with information on the MBTA's procurement rules and decision-making principles underlying invitations for bids or requests for proposals (RFP).

The MBTA's Procurement and Logistics Department (Procurement Department) is responsible for managing solicitations for goods and services contracts valued at more than \$50,000.⁵ The end-user department – here, the Transit Police – assists the Procurement Department with the solicitation process, developing a description of the needed services and participating in the evaluation of the proposals received.⁶

Fair, competitive and open bidding procedures not only create equal opportunity for companies seeking to do business with the government, but also produce better value for government agencies.

The MBTA conducted two full procurement processes for police dispatch services, the first commencing in February 2016 and the second commencing in June 2017.⁷ The Fiscal and Management Control Board (FMCB) did not vote to authorize the execution of the contract resulting from the MBTA's first RFP, but instead deferred action. The MBTA ultimately undertook a second full procurement process that resulted in the contract with IXP.

³ For the reader's convenience, the introductory information herein is largely reproduced from the ISAU's original report, *A Review of the MBTA's Police Dispatch Services Contract with IXP Corporation*, released December 23, 2022. It has been revised to include additional information the ISAU has learned since that date.

⁴ For simplicity, the ISAU uses the term "company" in this section to refer broadly to all entities interested in MBTA procurements, including government agencies, county governments and nonprofit organizations.

⁵ *MBTA Solicitations Overview*, MASS. BAY TRANSP. AUTH., <https://www.mbta.com/business/mbta-solicitations-overview> (last visited November 11, 2023).

⁶ MASS. BAY TRANSP. AUTH., *MBTA Procurement Manual* (2017), Chapter 3, at 9-10, 28-29.

⁷ During its review, the ISAU learned that in addition to the two above-referenced full procurement processes for police dispatch services, the MBTA also issued an RFP for police dispatch services in May 2017 that was canceled shortly thereafter. In an email to IXP on June 13, 2017, the MBTA stated that there had been an error in the bid posting, specifically that the technical specifications were incorrect. The MBTA then issued the June 2017 RFP that was the primary subject of the ISAU's review. Because the canceled RFP did not lead to a full procurement process, the ISAU did not include it within its review.

I. Police Dispatch Services Procurement Process

A. February 2016 Procurement

On February 16, 2016, the MBTA issued the first RFP for police dispatch services (the 2016 RFP) on the authority's Business Center website, which allows prospective bidders to view open MBTA procurement requests. According to MBTA employees, when the authority advertised a new RFP on the Business Center, it sent a notification to every company that had signed up to receive information about MBTA procurement opportunities. In this way, 1,199 companies received notice in 2016 that the authority was accepting proposals for a third party to handle police dispatch services.⁸

The OIG believes the notice of the 2016 police dispatch RFP was not tailored to reach appropriate, qualified vendors.

The original deadline for responding to the 2016 RFP was March 15, 2016. The authority extended the deadline twice through addenda to the RFP, resulting in a final submission deadline of April 14, 2016.

Three companies – IXP, G4S Secure Solutions (G4S) and the Essex County Regional Emergency Communications Center (ECRECC) – submitted proposals to the MBTA in response to the 2016 RFP. The MBTA formed an evaluation and selection committee (2016 committee) to review and evaluate the three proposals. The 2016 committee consisted of one employee from the Transit Police and two employees from the MBTA's Procurement Department.⁹

The MBTA provided the ISAU with a report summarizing the police dispatch services procurement process (internally called a "staff summary"). The 2016 committee deemed that the G4S and IXP proposals complied with the technical criteria in the RFP. The staff summary stated that the committee considered ECRECC's proposal to be non-compliant and, as a result, disqualified ECRECC from the procurement.^{10,11} After the technical evaluation, MBTA employees reviewed the accompanying price proposals from IXP and G4S. MBTA procurement documents provided to the ISAU did not contain the original price proposals, although the MBTA did provide a document comparing and summarizing the two companies' price proposals.

The MBTA did not retain the proposals that G4S and ECRECC submitted in response to the 2016 RFP.

⁸ Because companies across numerous industries requested information on open MBTA procurements, the companies the MBTA notified were not restricted to a particular industry and did not all provide similar services. For example, the list of notified companies included providers of office furniture and other office supplies. The OIG believes the notice of the 2016 police dispatch RFP was not tailored to reach appropriate, qualified vendors.

⁹ An email from the Transit Police to the MBTA's Procurement Department stated that the Transit Police would be represented by two employees on the committee, but records from the evaluation process reflect the involvement of only one Transit Police employee.

¹⁰ MASS. BAY TRANSP. AUTH., *Staff Summary*, at 3-4 (July 18, 2016).

¹¹ The ISAU could not verify the justification for disqualification. The MBTA did not retain the proposals that G4S and ECRECC submitted.

According to the comparison document, G4S's initial proposed cost was \$1,128,941 for each year of the contract, and IXP's proposed cost was \$2,496,288 for each year.¹²

Following the price evaluations, the staff summary states that MBTA employees met with IXP in May 2016 and requested a best and final offer.¹³ IXP's final proposed cost was \$2,029,476 for each year of the contract. Email communications between IXP and the MBTA also reflect this request and final proposed price. According to MBTA staff, the authority did not request a best and final offer from G4S.

The 2016 committee selected IXP's revised proposal to recommend to the FMCB for approval. While the 2016 committee noted that IXP's proposal was not the lowest-priced, technically acceptable offer, it determined that IXP's proposal offered additional technical merit justifying the higher cost. Thus, the 2016 committee deemed the proposal to be the "most advantageous to the MBTA, with price and other factors considered."¹⁴ This reasoning for awarding the contract mirrored language included in the 2016 RFP.¹⁵

The MBTA reported that it sent letters to both ECRECC and G4S notifying them that their bids were not selected.¹⁶ The letters advised the companies that the MBTA found their proposals to be non-responsible and non-responsive, which was accurate regarding ECRECC's proposal, but inaccurate as to G4S's proposal.¹⁷

At the FMCB meeting on July 18, 2016, Procurement Department and Transit Police employees recommended that the FMCB approve hiring IXP to handle police dispatch services for a three-year term, with two additional one-year options. FMCB meeting minutes reflect that "[three board members] had concerns on how this action would fit with the overall financial plan for the MBTA and said additional benchmarking was needed. The board members also needed more information regarding the public process that was followed. The chair deferred action on this matter and asked [the two employees] to return to the board at a later date to address their concerns."¹⁸

¹² MASS. BAY TRANSP. AUTH., *Price Proposal – Vendor Comparison*, at 1. Because the MBTA could not provide the actual price proposals, the ISAU could not verify the accuracy of this information.

¹³ A best and final offer is the lowest price a company is willing to offer for the proposed services.

¹⁴ MASS. BAY TRANSP. AUTH., *Staff Summary*, at 4-5 (July 18, 2016).

¹⁵ MASS. BAY TRANSP. AUTH., *RFP 21-16: Public Safety Dispatch Services*, at 13 (2016) ("For purposes of this procurement, all evaluation factors other than price, when combined, are more important than the lowest price. Therefore, the MBTA may select other than the lowest price, technically acceptable offer if it is determined that the additional technical merit offered is worth the additional cost relative to other proposals received.").

¹⁶ The MBTA provided letters to the ISAU that the authority purportedly sent to G4S and ECRECC. However, the ISAU could not conclude with a reasonable degree of certainty that the MBTA sent the letters.

¹⁷ The MBTA Procurement Manual explains that a "responsive" proposal is one that conforms to the material requirements of the request for proposals. MASS. BAY TRANSP. AUTH., *MBTA Procurement Manual* (2017), Chapter 3, at 72. It also states that a "responsible" contractor is one who possesses the ability to perform successfully under the terms and conditions of the proposed procurement. *Id.* at 73.

¹⁸ Fiscal and Management Control Board, *Meeting Minutes*, at 4 (July 18, 2016).

Ultimately, the MBTA and Transit Police did not proceed with the 2016 RFP and issued a revised RFP instead.

B. June 2017 Procurement

The MBTA issued a revised RFP for police dispatch services on June 22, 2017 (2017 RFP). The authority posted this RFP on [COMMBUYS](#), the state's official procurement system managed by the Commonwealth's Operational Services Division.¹⁹ Companies interested in doing business with state agencies can view open bids on this public website and sign up for electronic notifications of bid opportunities for selected categories of goods or services.

Ultimately, the MBTA and Transit Police did not proceed with the 2016 RFP and issued a revised RFP instead.

When the MBTA posted the 2017 RFP on COMMBUYS, the system sent email notifications to 33 companies interested in solicitations for police services. The recipients included IXP, but did not include G4S and ECRECC. MBTA employees stated that, to their knowledge, the authority did not directly notify G4S, ECRECC or any other potential vendors by other means. The MBTA staff who handled the solicitation have since left the MBTA, and current MBTA procurement staff did not find records of the MBTA posting the solicitation to any specialty media such as trade publications.

The 2017 RFP differed from the 2016 RFP in a few key respects.

The 2016 RFP stated that the MBTA was seeking a company to handle all of the police dispatch center's call-taking and dispatch functions. To that end, the 2016 RFP required minimum staffing of five telecommunicators during two daytime shifts, with one of those telecommunicators serving as a working supervisor, and three telecommunicators during the overnight shift. Additionally, the 2016 RFP required the winning bidder to staff the monitor room with one of the telecommunicators.²⁰

Two of the three companies that submitted proposals in response to the 2016 RFP were not notified of the revised 2017 RFP.

In the 2017 RFP, on the other hand, the MBTA indicated that it was seeking a company to handle a smaller portion of police dispatch functions, and the revised RFP reflected reduced staffing requirements. Specifically, the 2017 RFP removed the monitor room duties from the scope of work and required the successful bidder to provide only three telecommunicators for each of the three shifts. Further, the 2017 RFP no longer sought an onsite working supervisor, instead specifying an on-call manager to be available 24 hours per day, 7 days per week. The 2017 RFP detailed enhanced reporting

¹⁹ By the time the 2017 RFP was issued, the MBTA had transitioned from posting solicitations on its Business Center to posting on COMMBUYS, which allows solicitations to be targeted to companies with an interest in particular types of solicitations.

²⁰ The monitor room is located within the Transit Police dispatch center. The room contains specialized equipment for communications and video surveillance. The monitor room operator conducts criminal records checks and warrant checks for officers in the field and observes video surveillance. When needed, the operator also answers intake calls.

requirements on staffing levels and employee training certifications, but eliminated the need for a performance bond.²¹

The deadline for responding to the 2017 RFP was July 14, 2017, or 22 days from the date the MBTA posted the RFP on COMMBUYS. IXP was the only company to submit a bid, proposing a fixed-price annual rate of \$999,000 for each of the five years of the contract term, *i.e.*, the three-year original contract period and two potential option years.²²

The MBTA was unable to provide the ISAU with many of the records relevant to the evaluation and decision-making process.

The MBTA formed a new evaluation and selection committee (2017 committee) to evaluate IXP's proposal. The 2017 committee consisted of one employee from the Transit Police and two MBTA employees representing the Procurement Department, although the Transit Police employee and one of the two individuals representing the Procurement Department were different from those who sat on the 2016 committee. The MBTA was unable to provide the ISAU with many of the records relevant to the evaluation and decision-making process.

After the 2017 committee's evaluation of the proposal, the MBTA and IXP negotiated a lower annual rate of \$965,024.

On September 11, 2017, the MBTA's chief transformation officer and the 2017 committee's Transit Police employee made a presentation to the FMCB board recommending the approval of IXP's proposal. The MBTA employees noted that IXP's proposal was the sole submission for the procurement, that the proposal met the technical criteria of the 2017 RFP, and that the 2017 committee's recommendation was unanimous.

The FMCB voted to authorize the MBTA's general manager to execute an agreement with IXP for a five-year period in an amount not to exceed \$4,825,120.²³

The contract officially commenced on September 25, 2017.²⁴ After a transition period, IXP fully assumed its duties in the police dispatch center on January 6, 2018.

²¹ A performance bond is a financial guarantee obtained from a contractor to ensure completion of all contractual obligations.

²² In its price proposal, IXP stated that the "MBTA's cost will be the same in month #60 as it is in month #1." IXP CORPORATION, *Public Safety Dispatch Services Proposal – Price Proposal*, at 2 (July 14, 2017).

²³ Although the FMCB's vote did not explicitly reference yearly costs, the five-year not-to-exceed amount is consistent with the \$965,024 reduced annual rate negotiated by the MBTA and IXP.

²⁴ The signed contract states that the contract commenced on September 25, 2017. However, correspondence from the MBTA to IXP titled "Notice to Proceed," which notified IXP that it should proceed with work pursuant to the contract, is dated October 4, 2017.

II. Finding 1: The MBTA completed some, but not all, of its internal procedures for advertising and soliciting responses to the 2017 RFP. The MBTA could not demonstrate that its solicitation and advertising process was fair and competitive.

To determine whether the MBTA conducted a fair and competitive procurement, the ISAU examined the procurement process in relation to the key elements outlined in the MBTA's Procurement Manual.²⁵ These elements address requirements and procurement best practices to ensure that the MBTA conducts fair and competitive procurements. Where appropriate, the ISAU also looked at whether the MBTA followed the procurement process outlined in the 2017 RFP itself.

The manual states that all procurements must comply with the policy and procedures set forth therein and that "individual procurement elements are applicable to each procurement."²⁶ The following sections summarize the ISAU's assessment of whether the MBTA completed each key procurement element.

A. Independent Cost Estimate

The procurement manual states that an independent cost estimate (ICE) is "essential information for procurement planning" and is a "procurement element. . . applicable to each procurement action."^{27,28} The manual adds that an ICE is an "estimate that is completed before proposals are received to assist in the cost analysis of the contractor's proposal once it is received," and is "especially critical whenever there is no price competition (*e.g.*, . . . where only one price proposal is received)."²⁹ The MBTA did not provide documentation demonstrating that it completed an ICE as required by the procurement manual.³⁰

²⁵ For purposes of this review, the ISAU used the version of the procurement manual that was in effect at the time of proposal evaluation in 2017. The MBTA has subsequently updated portions of the manual.

²⁶ MASS. BAY TRANSP. AUTH., *MBTA Procurement Manual* (2017), Chapter 1, at 6. The manual also states that "for those procurements that do not involve federal FTA grant funds, it is within the MBTA's discretion to depart from the FTA Circular 4220.1F and this Procurement Manual ... based upon the general counsel's determination that it is in the best interest of the MBTA to do so." *Id.* at 3.

²⁷ MASS. BAY TRANSP. AUTH., *MBTA Procurement Manual* (2017), Chapter 3, at 54.

²⁸ *Id.*, Chapter 1, at 6.

²⁹ *Id.*, Chapter 3, at 52, 54.

³⁰ Current Procurement Department employees stated that the MBTA would have used the price proposals received in response to the 2016 RFP as the ICE for the 2017 procurement and that no separate ICE was completed. The procurement manual does allow for this type of ICE, stating that the results of prior procurements for the same items may serve as an ICE as long as inflation is factored in for prices more than six months old. MASS. BAY TRANSP. AUTH., *MBTA Procurement Manual* (2017), Chapter 3, at 52.

Here, the results of the 2016 RFP could not serve as the ICE for the 2017 RFP. As previously described, the scope of services requested in the 2017 RFP was different from the scope requested in the 2016 RFP; they were not the "same items" as the procurement manual describes. Even if they were the same, the ISAU received no evidence that the MBTA incorporated inflation, as required for prices more than six months old.

B. Adequate Competition

A competitive procurement process typically results in more than one company submitting an offer or proposal. If the MBTA receives only one proposal, the authority must determine whether there was adequate competition and document the determination in the contract file.^{31,32} Notwithstanding that the MBTA received only one proposal in response to the 2017 RFP for police dispatch services, current MBTA employees reported that the authority did not formally document a determination of adequate competition. Nor did the MBTA issue a sole source justification.³³

Notwithstanding that the MBTA received only one proposal in response to the 2017 RFP for police dispatch services, current MBTA employees reported that the authority did not formally document a determination of adequate competition.

As a result, the MBTA did not demonstrate that there was adequate competition for the 2017 RFP. It is possible that IXP's competitors may have received the solicitation and decided against submitting a proposal for reasons unrelated to the 2017 RFP itself. Yet, the receipt of only one proposal raises concerns regarding the fairness of the solicitation that the MBTA did not sufficiently address.

C. Clear, Accurate and Complete Specifications

Each solicitation must provide a clear and accurate description of the technical requirements for the service to be procured. In competitive procurements, the description should not contain features that unduly restrict competition.³⁴

The language in the MBTA's 2017 RFP for police dispatch services was clear, substantially accurate and complete regarding the technical requirements for the services to be procured. The 2017 RFP clearly provided information on the services the MBTA was seeking. It described the services in a detailed, straightforward manner. The 2017 RFP did specify a small number of requirements that appear to have

The MBTA also provided a document that was circulated among MBTA employees in advance of contract negotiations with IXP in August 2017. The document compared the amount paid to IXP by the city of Danbury, Connecticut, for emergency dispatch services with IXP's proposed costs for the MBTA. While this comparison did allow the MBTA to understand if the rate IXP had proposed was consistent with the rate that IXP charged one other entity, it could not serve as an ICE because it was not completed prior to receipt of proposals, nor was it independent from those proposals.

³¹ MASS. BAY TRANSP. AUTH., *MBTA Procurement Manual* (2017), Chapter 3, at 22.

³² The MBTA can determine if competition was adequate by, for example, asking potential bidders their reasons for not submitting a proposal. One indication of inadequate competition is that the companies' reason for not responding was that the RFP had restrictive specifications or other factors making it so that only one company could respond. Upon a finding of inadequate competition, the MBTA must cancel the procurement or proceed with a sole source procurement. The MBTA should document its determination in the contract file. MASS. BAY TRANSP. AUTH., *MBTA Procurement Manual* (2017), Chapter 3, at 22.

³³ A sole source justification is a "written justification documenting the conditions that preclude competition" in the MBTA's procurement of goods or services. MASS. BAY TRANSP. AUTH., *MBTA Procurement Manual* (2017), Chapter 1, at 36.

³⁴ MASS. BAY TRANSP. AUTH., *MBTA Procurement Manual* (2017), Chapter 1, at 13.

been included in error, but the ISAU believes these minor errors were unlikely to have had any impact on the solicitation or its competitiveness in light of the much more significant remaining scope of services.³⁵

D. Experience, Bonding and Qualification Requirements

Per the MBTA's procurement manual, solicitations should not require unnecessary experience, excessive bonding or other unreasonable requirements for companies to qualify to do business with the authority.³⁶

Overall, the ISAU found that the 2017 RFP for police dispatch services did not contain unreasonable requirements or ask for unnecessary experience. The RFP did specify that as part of its technical evaluation of proposals, the MBTA would place "great emphasis" on the qualifications of the responding companies, as well as "significant weight" on information received from the companies' references.³⁷ The 2017 RFP also required companies to provide details about their size, industry and number of clients, as well as the background of employees who would work with the MBTA.³⁸

Given the importance of successful police dispatch operations, the ISAU did not find this emphasis on prior experience to be unreasonable. Moreover, the 2017 RFP did not state that any particular amount of experience would be disqualifying. Nor did it delineate a specific type or number of previous clients. The 2017 RFP also did not include any overly specific or proprietary requirements that would unnecessarily limit prospective companies.

Finally, the 2017 RFP, unlike the 2016 RFP, did not require companies to supply a performance bond.

E. Advertising and Publicizing

Requests for proposals with an estimated value greater than \$50,000 must be publicly advertised.³⁹ Advertising broadens industry participation and increases competition because all qualified

³⁵ The ISAU concluded that the MBTA most likely included these errors for two reasons. First, as noted earlier, the MBTA scaled back the services it requested in the 2017 RFP. The 2017 RFP appeared to be produced by duplicating the 2016 RFP. Some of the services requested in the 2016 RFP therefore carried over to the 2017 RFP in error. For example, because the 2017 RFP did not envision the vendor handling the monitor room, training employees in the state's Criminal Justice Information System was no longer necessary. The MBTA removed many, but not all, references to that previously desired training. Second, the 2017 RFP also included some service requirements that are only relevant to a primary public safety answering point (PSAP); the Transit Police dispatch center is a *secondary* PSAP. This issue is discussed at greater length in the "Analysis of the Quality of Services" section in the ISAU's original report, *A Review of the MBTA's Police Dispatch Services Contract with IXP Corporation*, released December 23, 2022.

³⁶ MASS. BAY TRANSP. AUTH., *MBTA Procurement Manual* (2017), Chapter 1, at 7-8.

³⁷ MASS. BAY TRANSP. AUTH., *Request For Proposal 90-17: Public Safety Dispatch Services*, at § 5.3, 5.6.1 (2017).

³⁸ *Id.* at § 5.5 (2017).

³⁹ MASS. BAY TRANSP. AUTH., *MBTA Procurement Manual* (2017), Chapter 1, at 14.

vendors receive the same notice of opportunity to respond to the RFP. Publicizing also assists small businesses and disadvantaged firms interested in obtaining contracts and subcontracts.

The MBTA posted the revised RFP for police dispatch services on June 22, 2017. Responses from prospective companies were due on July 14, 2017, giving interested entities just over three weeks (22 days) to assemble and submit proposals.

The MBTA procurement manual does not identify a specific length of time for advertising. To determine reasonableness, the ISAU compared similar procurements, including those conducted for supplies or services under Chapter 30B of the Massachusetts General Laws and the MBTA's prior procurement for police dispatch services in 2016.⁴⁰

The 22-day response period for the 2017 RFP exceeded the two-week minimum required by Chapter 30B, but was significantly shorter than the time allotted for interested bidders to respond to the 2016 RFP. When issuing the 2016 RFP, the MBTA initially gave companies 28 days to submit proposals. The authority later extended this deadline twice via addenda, giving companies 58 days in total.⁴¹

While the ISAU found no evidence that prospective companies had difficulty meeting the submission timeline for the 2017 RFP, the MBTA received only one response. The ISAU could not determine whether the shortened proposal timeframe contributed to the limited response. The ISAU recommends that in future solicitations, the MBTA consider lengthier response times for contracts involving services of such importance to ensure all interested companies have time to prepare and submit a proposal.

F. Adequate Number of Sources Solicited

Government entities must solicit proposals from an adequate number of known suppliers. If the procurement is seeking a specialty good or service, the MBTA should consider advertising in specialty media such as trade publications to attract competition.⁴²

For the 2017 procurement of police dispatch services, the ISAU found it likely that the MBTA did not solicit an adequate number of sources. The MBTA published the 2017 RFP on COMMBUYS on June 22, 2017, thereby making the solicitation publicly available. The MBTA also informed the ISAU that the COMMBUYS system sent notice of the solicitation to 33 companies that had elected to receive direct notification for solicitations related to "police services."

The ISAU's analysis found that a number of the 33 companies on the recipient list did not work in the dispatch services field. These included businesses that supplied police uniforms, alcohol monitoring

⁴⁰ Chapter 30B, the Commonwealth's Uniform Procurement Act, establishes uniform procedures for local governments to use when buying or disposing of supplies, services or real property.

⁴¹ One addendum extended the deadline from March 15, 2016, to March 31, 2016; a second extended it from March 31, 2016, to April 14, 2016.

⁴² MASS. BAY TRANSP. AUTH., *MBTA Procurement Manual* (2017), Chapter 1, at 14.

equipment, shooting range equipment, and even paint supplies. Besides IXP, the ISAU could not determine how many of the 33 companies, if any, were qualified to deliver police dispatch services.

Furthermore, the two other companies that submitted proposals in response to the 2016 RFP – G4S and ECRECC – were not on the recipient list. The MBTA had no record of directly notifying those companies of the new 2017 RFP.⁴³

The MBTA inaccurately informed a 2016 respondent company that its proposal was non-responsive and non-responsible.

Additionally, the MBTA may have inappropriately discouraged one of the 2016 bidders, G4S, from submitting a revised proposal in 2017. During the 2016 procurement process, the MBTA inaccurately informed G4S that its proposal was non-responsive and non-responsible. In fact, the MBTA had deemed the company responsive, and its initial proposal was at a significantly lower price than the proposal of its competitor, IXP.

The MBTA could not produce documentation showing that it contacted companies other than those on the direct notification list.⁴⁴ Nor could the authority demonstrate that it advertised in specialty media publications to bolster competition.

For the 2017 procurement for police dispatch services, the ISAU found it likely that the MBTA did not solicit an adequate number of sources.

G. Conclusion

The ISAU found that the MBTA failed to complete some crucial elements of its internal procedures for advertising and soliciting responses to its 2017 RFP. As a result, the MBTA could not demonstrate that its solicitation and advertising process for the RFP was fair and competitive.

The MBTA's receipt of a single proposal raises concerns in itself that the authority's outreach for the 2017 procurement was not sufficient. The MBTA also could not provide documentation that it completed the required determination of adequate competition. Without that analysis, the MBTA could not show that the 2017 RFP had adequate competition or that it was not overly restrictive. The ISAU also found that the MBTA did not notify a sufficient number of potential service providers. In particular, the authority did not alert the two former unsuccessful bidders that a new solicitation had been issued.

⁴³ MBTA staff stated that prior unsuccessful respondents are often not willing to complete the procurement process again. The ISAU could not confirm this assertion. Moreover, the MBTA's skepticism of the companies' continued interest was no reason to deny them the opportunity of submitting a revised proposal.

⁴⁴ As discussed in Finding 2, the ISAU's analysis of the IXP contract uncovered communications between the MBTA, the Transit Police and IXP in the period between the 2016 RFP and the issuance of the 2017 RFP. In email exchanges, some Transit Police employees expressed a desire to work with IXP specifically. Considering the limited outreach by the MBTA, the shortened proposal submission timeframe, and, ultimately, the lack of competition for the 2017 procurement, the ISAU is concerned that the communications reflect the Transit Police's potential bias in favor of IXP and a corresponding lack of desire on the part of the Transit Police to solicit other potential companies to handle police dispatch services.

In the future, the MBTA should, at a minimum, notify all previous bidders for a particular service or supply of the new solicitation. Additionally, the MBTA Procurement Department or procuring entity should research and notify other potential qualifying companies, especially those that might be unaware of a COMMBUYS procurement notification. If the MBTA receives only one proposal, it must determine whether there was adequate competition and document that determination in the contract file. If the MBTA finds a lack of adequate competition, the authority must follow the requirements of a sole source procurement.

III. Finding 2: The MBTA did not complete or could not provide relevant records related to its evaluation of IXP's response to the 2017 RFP. Communications between the Transit Police and IXP raise significant concerns of potential bias in favor of IXP in the evaluation process.

The ISAU used the MBTA's procurement manual and the criteria specified in the 2017 RFP to assess whether the MBTA fairly and competitively evaluated IXP's proposal.

The manual states that RFP solicitations must provide "[a]ll requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals," and that "[a]ll evaluators and reviewers must follow the established criteria when rating the proposals submitted by bidders."⁴⁵ The RFP must also identify the relative importance of all evaluative factors.⁴⁶

Elements of the RFP evaluation process also include assembling a proposal evaluation team and considering both price and technical proposals.⁴⁷

According to the manual, after evaluating the RFP responses, the MBTA is to award the contract to the responsible vendor "whose proposal is most advantageous to the MBTA's program with price and other factors considered."⁴⁸

A. Technical Evaluation

1. Evaluation Committee Members

The MBTA procurement manual requires that the evaluation committee include end-user department staff and other department staff deemed necessary based on expertise.⁴⁹ The ISAU agrees that including an employee from the end-user department (here, the Transit Police) is good practice to ensure the selected vendor's services meet departmental needs.

⁴⁵ MASS. BAY TRANSP. AUTH., *MBTA Procurement Manual* (2017), Chapter 1, at 10.

⁴⁶ *Id.* at 15 (2017).

⁴⁷ MASS. BAY TRANSP. AUTH., *MBTA Procurement Manual* (2017), Chapter 3, at 25, 28-29.

⁴⁸ *Id.* at 24 (2017).

⁴⁹ *Id.* at 28-29 (2017).

During the 2016 procurement, the evaluation committee consisted of one employee from the Transit Police and two employees from the MBTA's Procurement Department. For the 2017 procurement, the evaluation committee included a different Transit Police employee and two MBTA employees representing the Procurement Department, one of whom was also on the 2016 committee.

2. Evaluation Criteria

The 2017 RFP provided that the technical evaluation committee (2017 committee) would review the RFP responses and score them based on the technical criteria outlined in the RFP.⁵⁰

The RFP stated that the 2017 committee would award the contract to the company whose proposal was judged to be most advantageous to the MBTA based on "an integrated assessment of the general considerations and specific criteria... with price and other factors considered."⁵¹ To that end, multiple subsections of the 2017 RFP specified various factors that the 2017 committee would consider in its evaluation.

Section 5.3 provided four "[t]echnical [c]riteria" that the committee would use to score RFP responses: (1) qualifications of entity and key personnel; (2) approach to providing the service; (3) innovative or creative approaches that provide additional efficiencies or increased performance capabilities; and (4) mobilization and transition plan.⁵² Section 5.5 provided seven additional categories of "questions and requests" that proposals needed to address.⁵³ Finally, the 2017 RFP noted numerous other factors that it stated were of particular importance, including that the MBTA would "place great emphasis on the Qualification and Implementation aspects of Respondents' proposals," would "lean heavily on a Respondent's experience with similar organizations and applications," would "base part of its evaluation on the suitability of a Respondent's [proposed] contract for the MBTA's business situation," and would "place significant weight on information gained from discussions with a Respondent's reference[s]."⁵⁴

3. Evaluation Process

The MBTA could not demonstrate that the 2017 committee followed the review process outlined in the 2017 RFP. The MBTA provided documentation of the scheduling of a committee meeting to discuss the technical scoring, as well as a vendor technical evaluation form (evaluation form) for IXP's proposal that outlined the combined scores of the committee members. However, the criteria that the 2017 committee scored on the evaluation form did not correspond to any of the four technical criteria listed in

⁵⁰ MASS. BAY TRANSP. AUTH., *Request For Proposal 90-17: Public Safety Dispatch Services*, at § 5.4 (2017).

⁵¹ *Id.* at § 5.1 (2017).

⁵² *Id.* at § 5.3 (2017).

⁵³ These categories of "questions and requests" concerned (1) past experience; (2) project management plan; (3) implementation and mobilization; (4) overall project management and team; (5) service-level management approach and tool; (6) reporting and analytics; and (7) diversity and status as a minority- or woman-owned business enterprise.

⁵⁴ MASS. BAY TRANSP. AUTH., *Request For Proposal 90-17: Public Safety Dispatch Services*, at §§ 5.3, 5.6 (2017).

Section 5.3, nor did they match the categories of additional questions and requests in Section 5.5.⁵⁵ The scored criteria did not directly address the numerous factors that the RFP specified as particularly important. Committee members did not elaborate on their scores for each criterion, and left blank the sections on the evaluation form asking for additional information.

The MBTA's procurement manual requires that RFPs identify all criteria that will be used by evaluation committees, along with the relative importance of each criterion. The 2017 RFP did not provide each technical criterion's relative importance. Indeed, the 2017 committee's evaluation form explicitly qualified the scores, stating "[w]eights to be determined."

The MBTA could not demonstrate that the 2017 committee followed the review process outlined in the RFP. The scored criteria did not correspond to the technical criteria specified in the RFP and did not address numerous factors the RFP identified as particularly important.

Part of the ISAU's analysis included reviewing correspondence between the MBTA and IXP before and during the 2017 procurement process. From this review, it appears there was confusion regarding the point at which the prior 2016 procurement process had officially ended. The FMCB did not vote against the 2016 contract on July 18, 2016, but merely asked the MBTA representatives to come back at a future date to address the FMCB's concerns. The MBTA should have formally closed the 2016 RFP in writing and formally notified all interested parties.

Communications between the MBTA and IXP before and during the 2017 procurement process reflect the Transit Police's desire to hire IXP specifically and raise significant questions regarding the objectivity of the 2017 evaluation process.

The ISAU's review of emails demonstrates that employees of IXP, the Procurement Department and the Transit Police continued to correspond and negotiate regarding IXP's proposal until mid-September 2016, under the apparent belief that the FMCB would still be voting on the contract. On September 12, 2016, emails from IXP employees to the Procurement Department and the Transit Police reflect an understanding that IXP believed the FMCB would be voting on the matter that day, asking for updates on the results. A Procurement Department employee responded that the "police dispatch contract is not on the Board agenda." When IXP asked if the matter had been rescheduled, the Procurement Department employee stated that "[t]here is no current date for the reschedule." The next day, "John Smith," the 2016 Transit Police committee member, appeared to notify IXP that the procurement was likely over, stating by email that "the MBTA is now looking at other options at this time" and that "[i]f this changes, I'll let you know."

Despite the apparent ending of the 2016 procurement process, the ISAU discovered that both Smith and "Ken Brown," the 2017 Transit Police committee member, continued communicating with IXP.⁵⁶

⁵⁵ The criteria scored on the 2017 RFP included "Project Understanding," "Service Delivery Capability," "Maintenance Capability," "Project Support Team," "Company Suitability" and "Support Capability."

⁵⁶ The names of the Transit Police employees used herein are pseudonyms.

Those communications reflect the Transit Police's desire to hire IXP specifically and raise significant questions regarding the objectivity of the 2017 evaluation process.

A sample of pertinent email exchanges illustrates the basis of the ISAU's concern:

1. November 2, 2016: Nearly seven months after the original RFP deadline and approximately three-and-a-half months after the FMCB deferred action on the MBTA's recommendation, Smith emailed IXP to request an approximate cost for a revised scope of work. Smith stated that he was "a huge proponent of getting you all into our dispatch center but the continuous issue we are having is cost. The MBTA is looking at other solutions but I'm still interested in bringing IXP on board."
2. November 8, 2016: IXP emailed Smith, providing a revised executive summary of IXP's proposal that responded to the new scope of work and contained two cost options. Smith acknowledged receipt of this proposal and stated he would pass it along.
3. November 29, 2016: IXP emailed Smith to inquire about IXP's latest proposal. Later that day, IXP emailed Brown, copying Smith, and referenced a phone call that IXP stated had occurred between IXP and Brown earlier that day. In the email, IXP provided follow-up information about IXP's latest proposal. Later that day, IXP emailed Brown, again copying Smith, to provide a revised proposal. Brown responded to thank IXP, stating that he would present the proposal to "executive leadership within MassDot [sic]" and would "advocate for its approval."
4. January 4, 2017: IXP emailed Brown, copying Smith, inquiring about the status of the proposal. Brown responded, copying Smith, saying he was advocating for IXP's offer and would be "dealing with the Board very shortly."
5. February 22, 2017: Brown emailed IXP, copying Smith, stating that there was movement on IXP's proposal and that one step remained before they could present it to the FMCB for approval.
6. March 15, 2017: Brown emailed IXP stating that the company's proposal would be presented to the FMCB in April 2017. Brown believed the proposal would pass and suggested that the parties schedule a meeting "to get prepared and ready to go."
7. March 24, 2017: Smith scheduled an in-person meeting between IXP and Brown at Transit Police headquarters for April 18, 2017.
8. April 19, 2017: IXP emailed Brown, copying Smith, thanking Brown for his time on April 18, 2017. IXP stated that they were "excited about getting started and having this operation up and running as soon as possible," adding that "[w]hen the contract is signed you can either fax it. . . or scan and email it" to IXP.

9. May 2, 2017: Smith emailed IXP, stating that “a few days ago I was advised that the MBTA was reviewing the contract and would return it asap for follow up.” He asked if the contract had been returned to IXP. IXP replied that the company had yet to hear anything from the MBTA Procurement Department.
10. May 5, 2017: Brown emailed IXP, copying Smith, advising IXP that he had been told the MBTA would need to reissue the RFP. Brown further explained that “it is my understanding they will have a quick turnaround time of 3 weeks and we should be on track for a July/August start date.” IXP responded, saying they understood and were “[s]tanding by.” Brown emailed to say that IXP would still need to respond to the RFP, to which IXP confirmed that they understood.

While communications with a potential vendor outside of the RFP process are not necessarily impermissible, the referenced communications between IXP and two Transit Police employees are suggestive of a preference for IXP to win the contract in advance of the 2017 RFP process. The Transit Police employees appear to have solicited pricing for a revised scope of work and attempted to get IXP’s resulting proposal approved before the MBTA stopped the informal process and published the 2017 RFP. Although the Transit Police’s continued conversations with one vendor after the 2016 procurement did not directly result in a contract, Brown’s participation on the 2017 committee raises troubling concerns regarding the impartiality of that evaluation. Due to their positions and roles on the evaluation committees, Smith and Brown should have known, or should have been trained to know, of procurement policies and procedures before the procurement was issued, especially with regard to impermissible communications and conduct.

4. Impermissible Communication

In addition to the communications discussed above, the ISAU discovered another problematic email related to the 2017 procurement. Section 2.3 of the 2017 RFP provided that companies interested in the solicitation could ask questions or request clarification from the MBTA by submitting such questions or requests through the COMMBUYS platform before noon on July 3, 2017.

The section also provided that, “[i]nterested vendors should not contact any other employee, selection committee member, Board of Director, or agent of the MBTA concerning the subject matter of the Request for Proposal or related matters. Any Respondents contacting any such person shall be disqualified.”

On July 10, 2017, two days before submitting IXP’s proposal, an IXP employee emailed Brown stating that the employee had tried to call Brown to “be clear on the differences” between the last

The 2017 RFP specified a date by which companies interested in the solicitation could ask questions through the COMMBUYS platform. Seven days past that deadline, an IXP employee contacted an evaluation committee member directly with a clarification on the company's bid. While the ISAU found no evidence that the committee member responded, this communication was in direct violation of the RFP's requirements, and IXP's proposal should have been disqualified from consideration.

proposal – which the employee said IXP made to Brown in person – and the proposal the company was planning to submit. The IXP employee explained that the new RFP required a higher staffing level than IXP had included in its previous proposal, so its 2017 price proposal would be higher. The email did not make clear which prior proposal the IXP employee was referencing. The ISAU received no evidence that Brown responded to this communication.

This email was in direct violation of the requirements of the RFP: not only was the email sent seven days after the deadline for submittal of clarifications, but IXP sent it directly to a 2017 committee member outside of the COMMBUYS platform. By the terms of the RFP, IXP's proposal should have been disqualified from consideration.

B. Price Evaluation

As part of its response to the 2017 RFP, IXP submitted a cost, or pricing, proposal separate from its technical proposal. According to the RFP, the MBTA's contracting officer or designee, in the presence of the MBTA's general counsel or designee, should have opened the pricing proposals after completing the technical evaluation.⁵⁷

During the ISAU's review, the MBTA could not demonstrate that this process occurred in the manner required by the RFP. The MBTA could not provide documents to support the initial price evaluation process, and employees did not have knowledge of the process.

Instead, MBTA staff believed the 2017 committee combined its evaluations of the technical proposal and pricing proposal into one round because there was only a single bid response. The MBTA could not provide documents concerning the opening of the price proposal separately from the technical proposal, nor any documentation regarding the MBTA's initial evaluation of the price proposal.⁵⁸

⁵⁷ MASS. BAY TRANSP. AUTH., *Request For Proposal 90-17: Public Safety Dispatch Services*, at § 2.4 (2017).

⁵⁸ As noted previously, the MBTA provided a price-comparison document circulated in advance of later negotiations with IXP. The document compared IXP's proposed costs for the MBTA against IXP's costs for emergency dispatch services for the city of Danbury, Connecticut.

In its review, the ISAU also discovered a draft of questions for IXP, which appears to have been prepared in advance of a discussion between the MBTA and IXP on IXP's proposal. In the draft, one proposed question referenced pricing information the MBTA received prior to the 2017 RFP process. A Procurement Department employee appropriately asked that the question be stricken; the question did not appear in the final set of questions submitted to IXP.

C. Final Selection

According to the 2017 RFP, the MBTA’s contracting officer or designee would prepare a request for approval by the general manager and the FMCB. The request for approval would contain the evaluation committee’s documentation supporting a final recommendation about the contract award.⁵⁹

For the 2016 procurement, this request for approval took the form of a presentation to the FMCB, accompanied by a document providing extensive information regarding the procurement process and evaluation (internally called a “staff summary”).

For the 2017 procurement, the MBTA could only provide the slides for the oral presentation a Procurement Department employee made to the FMCB regarding the proposed contract with IXP. FMCB minutes reflect that the employee requested approval from the FMCB to execute a contract with IXP.⁶⁰ The MBTA could not provide a staff summary documenting the procurement or evaluation process.

The MBTA could not provide a staff summary documenting the procurement or evaluation process.

Additionally, although the final terms and conditions negotiated by the MBTA and IXP explicitly state that IXP would guarantee the contract price for three years as the RFP required, the MBTA presented the contract to the FMCB as a five-year fixed contract, which was not the case. It is not clear that the FMCB understood that the contract price was not fixed for all five years, as presented. Rather, the contract price was consistent with the RFP requirement. The FMCB voted to authorize a contract “for a five-year period in an amount not to exceed \$4,825,120.00.”

Despite presenting the contract as a five-year fixed contract, the MBTA later approved rate increases during the last two years of the contract without notifying the FMCB that the not-to-exceed amount would, in fact, be exceeded. The final contract cost was \$5,513,712, which was 14.27 percent more than expected at the time of the contract’s execution.

The ISAU has specific concerns that the board may not have understood that the price was not fixed for all five years of the contract.

D. Conclusion

Because the MBTA could not provide relevant records, it could not demonstrate that the 2017 committee weighed the technical criteria outlined in several sections of the revised RFP. Further, the MBTA could not document how the committee evaluated price proposals. The MBTA produced no evidence to show that it fairly and competitively evaluated the technical and pricing elements of IXP’s proposal to provide police dispatch services.

⁵⁹ MASS. BAY TRANSP. AUTH., *Request For Proposal 90-17: Public Safety Dispatch Services*, at § 5.8 (2017).

⁶⁰ Meeting of the Fiscal and Management Control Board, *Meeting Minutes*, at 10 (September 11, 2017).

The ISAU's analysis also uncovered problematic communications between Transit Police and IXP employees prior to the 2017 RFP process that suggested a preference for IXP to win the contract and raised questions on the impartiality of the 2017 evaluation process.

CONCLUSION

Based on its investigation and analysis of the fairness and competitiveness of the MBTA's procurement for police dispatch services, the ISAU found that the MBTA completed some, but not all, of its internal procedures for advertising and soliciting responses to the 2017 RFP. The procurement fell short in several key elements, and the MBTA could not provide evidence to show that its solicitation and advertising process was fair and competitive.

Further, the MBTA could not demonstrate that its evaluation process was fair and competitive since the authority did not complete or maintain relevant records. Moreover, communications between Transit Police and IXP employees raise significant concerns of potential bias in favor of IXP in the evaluation process.

In reviewing the MBTA's procurement for police dispatch services, the ISAU identified necessary measures for the MBTA to strengthen its procurement processes.

The ISAU recommends that the MBTA:

1. Comply with all procedures outlined in its procurement manual and in any solicitation for supplies or services, including requirements related to independent cost estimates, adequate competition, evaluations of both technical and price proposals, and circumstances that can lead to a potential bidder's disqualification.
2. Encourage and solicit a wider pool of proposals. When seeking supplies or services similar to those that the MBTA previously solicited or procured, ensure that all prior bidders are alerted.
3. Consider the size and complexity of a contract when determining how long to advertise a solicitation.
4. Instruct employees of the circumstances in which they may and may not communicate with vendors outside of the formal procurement process, as such communications may lead to an appearance of or actual bias in favor of a particular bidder.
5. Improve recordkeeping relating to procurements and contract administration. As a first step, develop record retention policies and procedures, and train employees on effective records management. Ensure that records related to the proposal evaluation process are retained. Creating appropriate recordkeeping policies is only the first step.
6. Provide training to employees on state record retention schedules and maintain documents in a central procurement or contract file to allow for prompt and complete production. Especially when an employee is leaving the MBTA, ensure that employee work records are properly transferred and/or archived to retain critical required documents and to comply with state record retention requirements.

7. Address exemptions in the MBTA's procurement process by: (a) updating the MBTA's procurement manual with specific guidance on when and how the MBTA may depart from the provisions of the manual for procurements that do not involve federal funds, including the specific provisions of the manual to which this discretion applies; (b) documenting all exemptions from the provisions of the MBTA's procurement manual, including the justifications for such exemptions, for procurements that do not involve federal funds; and (c) considering whether to adopt separate state and federal procurement policies.

Although this review focused on one MBTA service contract, the ISAU's recommendations should be extrapolated across all existing and future contracts executed by the authority.