



The Commonwealth of Massachusetts
Office of the Inspector General

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Dear Mr. Foy:

I am writing in regard to the current Greylock Glen development process. The Office has reviewed a draft Request for Proposals (RFP) (undated) for an "Outdoor Recreation and Environmental Center Facility at Greylock Glen" submitted by you to the Office in January 2004, prepared by the Massachusetts Development Finance Agency (MassDevelopment). This Office's review raises concerns regarding the implementation of the selection process proposed in the RFP and MassDevelopment's role as possible financier in any future development at the Greylock Glen site.

Specifically, the solicitation is too open-ended to permit meaningful competition. One of the most important principles of fair competition or careful cost control is that the awarding authority define its own needs with as much specificity as possible.¹ The current RFP does not meet this standard of practice. For example, the RFP (page 4) does not denote the availability of an amount of acreage, but rather states that

Respondents should note that project submissions need not propose using the entire 1,063 acre Site. . . . The successful Respondent will be expected to work out with the Commonwealth whether the entire Site, or just a portion of it, will be leased.²

With such vague specifications regarding this fundamental component of any real property transaction, it will be impossible for respondents to develop realistic competing proposals and for the awarding authority to implement a meaningful selection process. Moreover, because the RFP selection criteria are standardless, they provide little guidance to possible respondents or to evaluators as to how proposals will be compared on this and other issues.

In fact, many significant decisions regarding the actual project would be left to an open-ended negotiation process. For example, besides proposing to negotiate the site to be leased, the RFP (page 33) states that MassDevelopment

¹ See Datatrol, Inc. v. State Purchasing Agent, 379 Mass. 679, 698-699 (1980) (specifications for a publicly procured contract must be sufficiently specific to put competitors on common footing).

² The RFP states that a 99-year lease is anticipated.

reserves the right to negotiate with any and all proponents, including single respondents or development teams (including, without limitation, by negotiating with all or a combination of different development teams), . . . MassDevelopment reserves the right to recommend a single respondent or multiple respondents.

Such a process as described above, would not promote open and fair competition. It is unlikely that any respondent would put together a serious proposal knowing that most major terms and conditions would be subject to negotiation by MassDevelopment after submissions are opened and reviewed. Any resulting accord based on the current draft RFP will be open to challenges of favoritism, waste, and abuse, thereby undermining the integrity of the competition.

The RFP includes many problematic and conflicting provisions regarding the financial components of the anticipated projects. Considering that the two previous processes resulted in the selection of developers that ultimately failed to garner sufficient financial backing to bring a project to completion, this third process should focus on obtaining a viable project. The current draft of the RFP does not engender confidence that this will occur.

For example, the MassDevelopment RFP (page 26) calls for an "implementation plan and project timetable" to be submitted, including a

Financing Plan, which provides a statement of the proposed method of financing the project, and sufficient information to demonstrate respondent's ability to finance the project. . . . Any requested funding from the Commonwealth or MassDevelopment needs to be clearly indicated.

MassDevelopment, however, anticipates the possibility of being a funding source to the successful respondent(s). According to the draft RFP (page 6)

. . . MassDevelopment will consider requests for financing for the project (e.g., tax-exempt bonds for non-profits, loans and loan participations). [Footnote inserted by MassDevelopment: Financing must be separately applied for by the Respondent.] Any required financial assistance or support from the Commonwealth of Massachusetts or MassDevelopment needs to be identified clearly in submitted proposals, and applications for such assistance will be opened and considered only after provisional designation of a successful respondent. Because of the competitive nature of the developer selection process, Respondents are requested not to contact MassDevelopment with financing inquiries during the RFP process.

The related "Financial Qualifications" evaluation criterion states (page 29)

Evidence of the ability and resources to carry out proposal and successfully operate the program with financial sustainability; verified ability to secure necessary financing for project completion; ability to succeed in creating a self-

supporting project; evidence of market feasibility for project; minimization of risk and public subsidy.

On the one hand, a respondent is requested to submit a verifiable financing plan. However, on the other hand, the RFP calls for respondents to submit financing plans based on unsubstantiated funding sources, including an unknown MassDevelopment or Commonwealth commitment. To assist respondents in preparing proposals and to maintain a level playing field it is important to provide as much information as possible. To that end, if MassDevelopment or the Commonwealth is planning to offer financial or other incentives to possible respondents other than the infrastructure improvements already completed and identified in the RFP, then those incentives should be placed on the table for all possible respondents to review.

The process outlined in the RFP calls for MassDevelopment to participate in reviewing proposals, including financial terms. According to the RFP, however, after a respondent is selected that respondent could apply to MassDevelopment for funding consideration for its proposal. This process would preclude any pretense of a fair selection process, since MassDevelopment would have a financial interest in the outcome of the selection process.³ Overall, a process in which significant financial details, including further state investments, are left to negotiations after proposals are opened and reviewed is vulnerable to fraud, waste, and abuse.

The Office notes that based on the RFP and draft master plan the scope of the entire project has changed from previously envisioned developments. Apparently substantial public support may be necessary to complete the anticipated project.⁴ In the Office's view, the scope change warrants a reconsideration of the 99-year lease term. To dispose of 1,063 acres of valuable state land for 99 years based on unknowns, speculation, and an operating and management plan, including an "operating pro-forma" for only the first five years of operation as called for in the RFP (page 27), is unacceptably risky and provides little or no definitive benefits to the Commonwealth. Moreover, as drafted, the RFP (page 27) calls for an unknown return to the Commonwealth: respondents are requested to "propose a lease payment to be made to the Commonwealth under the lease that is based on a percentage of the revenue generated for respondents at the Site from any and all sources of revenue."⁵ In

³ MassDevelopment may also have a vested interest in the outcome of the selection process in that it has been involved, in conjunction with the Town of Adams, in developing a "multi-sector comprehensive economic revitalization strategy for Adams" and has invested financially in public and private projects in the Town of Adams. (page 8 of RFP)

⁴ Considering the past and potential future state investment at the state-owned Greylock Glen site and its proximity to Mt. Greylock State Reservation, a cost-benefit analysis may show that a publicly-constructed and controlled environmental center, including trail systems, etc. could be carried out more effectively and efficiently by state conservation and recreation entities.

⁵ "Revenue" is undefined.

the context of the problematic financial issues contained in the RFP, this is a meaningless request.

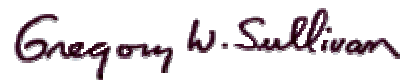
The RFP includes a notice that the Greylock Glen master plan is being amended and will be made available to the public at a later date. A draft of the proposed master plan is to be included with the RFP. On a precautionary basis, the Office notes that according to Chapter 676 the master plan should form the basis for the solicitation process. Issuance of the RFP prior to acceptance of the master plan could lead to schedule adjustments and addenda, especially if the public process of producing the final master plan takes more time than anticipated and yields changes to the current draft master plan. Furthermore, the Office notes that according to Chapter 676, Section 6, a report, including the revised master plan, must be submitted to the General Court prior to any acquisition by any respondent of any land at Greylock Glen.

In sum, this Office recommends that the Department of Conservation and Recreation conduct the selection process in accordance with appropriate state procedures, in consultation with the Division of Capital Asset Management, the state's agency established to handle such real property development and transactions. To avoid any real or apparent vulnerability to favoritism, waste, or abuse, the Office recommends that MassDevelopment be precluded from any future financial or post-selection development responsibilities with regard to the site if MassDevelopment participates in the selection process in any way.

In addition, to preserve public confidence in the selection process for a developer of Greylock Glen, the Office recommends that the RFP be amended to address the issues identified above.

Please feel free to contact me if you have any further questions.

Sincerely,



Gregory W. Sullivan
Inspector General

Cc: Secretary Ellen Roy Herzfelder, Executive Office of Environmental Affairs
Commissioner Katherine Abbott, Department of Conservation and Recreation
Commissioner David Perini, Division of Capital Asset Management
Interim Executive Director David T. Slatery, MassDevelopment