



The Commonwealth of Massachusetts
Office of the Inspector General

GREGORY W. SULLIVAN
INSPECTOR GENERAL

JOHN W. MCCORMACK
STATE OFFICE BUILDING
ONE ASHBURTON PLACE
ROOM 1311
BOSTON, MA 02108
TEL: (617) 727-9140
FAX: (617) 723-2334

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Mr. Craig P. Coy
Executive Director
Massachusetts Port Authority
One Harborside Drive
Boston, MA 02128-2909

Dear Mr. Coy:

The Office of the Inspector General has for several months been reviewing the Massachusetts Port Authority's 2004 banking services procurement. During that review, my staff has discovered numerous critical procedural flaws, as well as an apparent conflict of interest involving Massport's banking consultant, which marred the procurement process. Specifically, Massport relied solely upon a division of Wachovia Bank in crafting and administering this procurement, a situation that, not surprisingly, led to the choice of Wachovia Bank to provide the authority's checking services. Accordingly, I must recommend that Massport immediately re-procure the Wachovia Bank contract through a fair and open process.

I make this recommendation knowing full well that the present arrangement between Massport and its new checking provider, Wachovia Bank, is vastly superior to the arrangement immediately preceding it. As my staff discovered during the review, for the 26 years prior to the 2004 banking procurement, Massport earned no interest on tens of millions of dollars maintained in its checking account. Based on information provided by Massport and analyzed by this office, since 1990, Massport may have lost more than \$20 million in interest because of its 1978 sole-source banking services agreement with State Street Bank and Trust Co. To make matters worse, Massport paid high fees for this checking account. The only reason this arrangement ended is because State Street forced Massport to act by deciding it would no longer provide such services.

On a positive note, Massport chose to procure these new services on a competitive rather than sole-source basis, and the new services indisputably raised the quality of its banking services while lowering costs.

Unfortunately, this competitive process was fatally flawed, and it remains unclear whether Massport got the best deal it could have gotten.

Our recommendation to Massport to re-bid the “checking” services contract stems from the following series of issues that deeply marred the process from the outset. The issues are as follows:

1) Massport hired a banking consultant to develop its checking account Request for Proposals without the benefit of true competition, a possible violation of Massport’s procurement rules. Authority procurement regulations require the award of professional service contracts for more than \$50,000 using a Request for Proposals (“RFP”) “issued to as many vendors as is reasonably necessary to ensure competitiveness.” In this instance, however, Massport hired Wachovia Treasury and Consulting Services (“Wachovia Consulting”) after soliciting just two firms by private invitation, hardly ensuring competitiveness. The Authority initially set the not-to-exceed dollar value of the Wachovia Consulting contract at \$77,000, well above the \$50,000 figure that should trigger a proper Request for Proposals process. (The Authority later increased that amount to \$197,000.)

2) The other company invited to make a proposal, Public Financial Managers (PFM), was already working as an investment advisor to Massport. PFM submitted a proposal based on parameters set by Authority staff; namely, to create a Request for Proposals to find a new banking services provider. Wachovia Consulting submitted a proposal that sought to vastly expand the parameters set by Authority staff by calling for a wholesale restructuring of Massport’s internal financial bureaucracy. Massport officials, pleased by Wachovia Consulting’s approach, never asked PFM to revise its proposal or to resubmit its proposal using the new, expanded parameters. As a result, for all practical purposes, the PFM proposal was dead on arrival, which means there was no real competition.

3) Massport staff found Wachovia Consulting via a “sales call” from Wachovia Bank, the consultant’s parent company. The Wachovia Bank employee who made the sales call had recently transferred from State Street Bank, where he had worked on the Massport account. He made the sales call to “pitch” Wachovia Bank’s trustee services. Authority staff stated at that time that the Authority needed a banking consultant instead.

4) Wachovia Bank recommended its own subsidiary, Wachovia Consulting, for the job as the Authority’s banking consultant. According to Authority staff, Wachovia Bank also made clear at this sales call its interest in providing banking services to the Authority.

5) During initial discussions with this office, Authority staff stated that they spent six months seeking banking consulting firms, but could only identify two credible providers of such services. This office identified numerous other consultants who, at the time that the Authority retained Wachovia Consulting, may have been able to compete for this consulting contract. Those firms, unlike Wachovia Consulting, are not divisions of major banks that might vie for Authority banking services.

6) In a subsequent interview, Authority staff changed their recollection and stated that the process of choosing a consultant unfolded over the course of one week in the fall of 2003, following Wachovia Bank's sales call by the former State Street Bank employee.

7) Wachovia Consulting's contract required it to: complete a review of Massport's banking and treasury services needs; draft an RFP for the procurement of banking services; choose the banks that would receive the RFP; evaluate all incoming banking proposals; and recommend candidates for final review. Massport allowed Wachovia Consulting to perform these tasks knowing that: a) Wachovia Bank, the parent corporation of Wachovia Consulting, had an interest in obtaining the Authority's banking business; b) this would create an "appearance" issue and a possible conflict of interest for Wachovia Consulting; and c) this could impede fair and open competition if Wachovia Consulting directly or indirectly biased the procurement process toward Wachovia Bank. Massport staff told this office that they engaged in an important conversation about the potential ethical problems inherent in hiring Wachovia Consulting, and the firm's contract with the Authority did contain important stipulations regarding the treatment of confidential data and information. However, the contract did not prohibit Wachovia Bank, the consulting firm's parent company, from competing for Massport's business.

8) Massport did not advertise for banking services. Instead, the Authority relied upon Wachovia Consulting to recommend a small number of banks to receive the RFP. According to Massport staff, Wachovia Consulting recommended this approach based on "industry practice." Wachovia Consulting only recommended four banks to receive the RFP, one of which was Wachovia Bank. Wachovia Consulting did not recommend many direct national competitors of Wachovia Bank, as identified by Ernst & Young in its annual cash management industry survey. By limiting competition for the contract by limiting the number of invitees, Wachovia Consulting greatly improved the chances for Wachovia Bank to win the contract, whether intentional or not. Authority staff told this office that they did not know why Wachovia Bank received the RFP, but did not protest this choice. According to the Authority's chief financial officer, the Authority allowed the choice of Wachovia Bank because "freezing out a big player [like Wachovia] would only hurt Massport." However, Wachovia Consulting did not seek to invite Wells Fargo or J.P. Morgan, two of the nation's largest treasury service banks, and Massport staff never protested this omission.

9) The Authority instructed Wachovia Consulting to include four other banks on the list to receive the RFP. According to both Authority staff and former Wachovia Consulting staff, the Authority expressly preferred that the banking business go to a local bank and asked Wachovia Consulting to include local banks on the list. The Authority also wanted banks already doing business with the Authority to receive the RFP. Only Wachovia Bank did not meet Massport's evaluation criteria for invitation. The Authority's justification for inviting Wachovia

Bank rested with Wachovia's size. However, as stated previously, the Authority did not instruct that any other bank be invited under this criterion.

10) Upon receipt of proposals responding to the RFP, Wachovia Consulting reviewed, evaluated, and recommended the Wachovia Bank proposal to be a finalist for the Authority's selection. This created a clear conflict of interest and an appearance of bias. The Authority short-listed five banks in total, including Wachovia Bank.

11) The Authority did not inform RFP recipients of the role that Wachovia Consulting played in the procurement process. Only Wachovia Bank knew this information. The Authority only informed the five "short-listed" banks of Wachovia Consulting's involvement in the RFP process after all proposals had been submitted and reviewed. As a result, potential respondents could not object to the role of Wachovia Consulting, or to the submission of a proposal from Wachovia Bank.

12) Wachovia Consulting assisted in the final choice of Wachovia Bank for checking (cash concentration and disbursement) services.

13) The Wachovia Consulting contract provided an opportunity for the company to tailor the RFP to fit the strengths of Wachovia Bank. There is evidence that such tailoring took place. For example, Wachovia Consulting urged Massport to award the contract to a bank that offered internet-based banking services and cutting-edge information technology. Our analysis of the RFP evaluation criteria revealed that, of the banks short-listed, only Wachovia Bank could ultimately provide such services. *Ultimately, only Wachovia Bank could provide the services that Wachovia Consulting convinced the Authority it needed.*

Authority staff insisted that Wachovia Consulting complied with a contract confidentiality provision and that a "firewall" existed between Wachovia Consulting and Wachovia Bank. Unfortunately, the appearance of inherent bias in this procurement tainted the process regardless of whether Wachovia Bank and its consulting subsidiary had a "firewall" between them.

This office is also concerned by the lack of complete documentation related to the banking services procurement. For example, Massport's files contain no narratives or discussion summaries of any portion of the evaluation process. There is only one summary memorandum recommending the choice of vendors. This lack of documentation precludes a complete understanding of the evaluation process, the role of Wachovia Consulting, and the Authority's basis for rejecting and awarding proposals. Both staff interviews and documents reflect a rushed process following months of official inaction once State Street Bank informed Massport that it would no longer provide services to the Authority. Massport staff waited nearly five months to begin the process to replace State Street Bank. And it

appears that the process only began at this point because of a fortuitous sales call by Wachovia Bank.

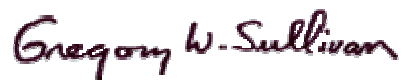
For this procurement, we believe that Massport should have:

- 1) Advertised for, and competitively procured, a banking consultant;
- 2) Expressly barred any consultant's parent company or affiliates from competing for Authority business, thus ensuring objective advice;
- 3) Used a fair, open, and advertised competitive procurement for banking services;
- 4) Informed all potential RFP respondents at the outset of which company the Authority would use as a consultant in the procurement process;
- 5) Maintained clear, thorough records of the evaluation process.

The Authority should consider these concerns for future procurements. We strongly recommend that the Authority re-procure this banking service contract to dispel the appearance of conflicts of interest that tainted this process. These contracts do not reflect a procurement process based on sound business practices, which inherently require the highest standards of objectivity. We also recommend that the Authority develop policies and procedures relating specifically to the procurement and oversight of banking contracts and relationships.

I would like to thank your staff for their cooperation during this review. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Gregory W. Sullivan
Inspector General

cc: Massachusetts Port Authority Board of Directors
Karen Nober, Deputy General Counsel, Massachusetts Port Authority