



A. JOSEPH De NUCCI
AUDITOR

AUDITOR OF THE COMMONWEALTH
STATE HOUSE, BOSTON 02133

TEL (617) 727-2075

97-2509-9

December 11, 1996

Patrick J. Moynihan
General Manager
Massachusetts Bay Transportation Authority
Boston, Massachusetts 02116-3974

Dear Mr. Moynihan:

On November 12, at 4:00 p.m., this office received the Massachusetts Bay Transportation Authority's (MBTA) proposal to privatize the cleaning and maintenance of its bus shelters.

Pursuant to the requirements of Chapter 7, sections 52-55, MGLs, the privatization law, and specifically Sections 54(7) and 55(a), the State Auditor's Office hereby notifies the MBTA of our objection to the awarding of this contract. The MBTA has been unable to resolve two major issues as of today; and, given the MBTA's stated desire that reviews be limited to 30 calendar, rather than business days, the time to resolve these issues has expired.

Specifically, this office cannot approve this proposal as the agency has failed to meet the following requirements of Section 54(7):

1. Pursuant to Section 54(7)(iii), the agency must certify and demonstrate that the proposed contract cost will be less than the estimated cost of keeping the service in-house, taking into account all comparable types of costs.

Based on the presentation of costs estimated by both the MBTA and the proposed outside contractor, it is clear that both costs may be based on a significant variance in the number of shelters that are the subject of this proposal. As of today the MBTA has not resolved this matter. Because this substantial variance remains unreconciled it cannot be demonstrated or determined that the contracting out of the service will result in any costs savings.

This flaw in the Request For Proposal (RFP) calls into question the validity and reliability of the MBTA's procurement process regarding this proposal.

2. Pursuant to Section 54(7)(iv), the agency must certify and demonstrate that the designated bidder and its supervisory employees have historically complied with the relevant federal or state statutes.

The MBTA has not provided sufficient, competent evidence of the proposed contractor's compliance with certain significant relevant regulatory statutes, namely certification of good standing from the state and federal tax collection agencies. Therefore we cannot approve the agency's certification of this component of the approval process.

Therefore, pursuant to Section 55(a) of Chapter 7, MGLs, the State Auditor hereby notifies the MBTA of his objection to the awarding of this contract. Please note that, in accordance with Section 55(d), this objection is final and binding on the MBTA, until such time as a revised certificate free of the above mentioned defects is submitted and approved by this office. This office takes no position at this time on the balance of the material submitted to this office as it was not part of our review. Such material will be subject to review after the MBTA makes a submission in compliance with Chapter 7 and the related Guidelines.

As always, this office is available to discuss our findings and provide further assistance to the agency. In that regard you should contact John Parsons, my General Counsel, at 727-6200 ext. 34.

Sincerely,

A handwritten signature in black ink, reading "A. Joseph DeNucci". The signature is written in a cursive, flowing style.

A. JOSEPH DeNUCCI
AUDITOR OF THE COMMONWEALTH

AJD/gm

cc: Members of the Board of Directors
Executive Director – Advisory Board
Members of the Advisory Board