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STATE AUDITOR'S DETERMINATION  
OF THE  
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY'S  
PROPOSAL TO PRIVATIZE  
PROPERTY MANAGEMENT AND REAL ESTATE DEVELOPMENT ACTIVITIES

**OFFICIAL AUDIT REPORT**

**JUN 10 1996**

**ISSUED BY THE  
Department of the State Auditor**

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## INTRODUCTION

### Background

Chapter 296 of the Acts of 1993, the Commonwealth's privatization law, outlines the process that must be followed by agencies and applicable Authorities seeking to contract for a service that is presently performed by state or Authority employees. The law, which became effective December 15, 1993, applies to contracts that have an aggregate value of \$100,000 or more.

Pursuant to this law, a specific process must be followed to demonstrate and certify to the State Auditor that (a) the agency complied with all provisions of Chapter 7, Section 54, of the General Laws and all other applicable laws, (b) the quality of the services to be provided by the designated bidder is likely to equal or exceed the quality of services that could be provided by regular employees, (c) the total cost to perform the service by contract will be less than the estimated in-house cost, (d) the designated bidder has no adjudicated record of substantial or repeated noncompliance with relevant federal and state statutes, and (e) the proposed privatization contract is in the public interest in that it meets applicable quality and fiscal standards. The State Auditor has 30 days to approve or reject the agency's certification.

The process that the agency must follow includes preparing a detailed written statement of service, estimating the most cost-efficient method of providing those services with agency employees, selecting a contractor through a competitive bidding process, and comparing the in-house cost and the cost of contract performance. The agency must also ensure that the private bids and private contract, if ultimately awarded, contain certain provisions regarding wages, health insurance, the hiring of qualified agency employees, nondiscrimination, and affirmative action.

The Massachusetts Bay Transportation Authority (MBTA) has a Real Estate Department (RED) that manages all of the real estate property owned by the MBTA. Presently, the RED consists of 26 employees, plus support from five attorneys in the Legal Department, specialized outside counsel, and one Revenue Department staff person. The functions proposed by the MBTA to be privatized include: (1) facilities management; (2) disposition of property; and (3) development of property. These functions

are presently staffed by 20 employees in the RED, and are supported by two attorneys in the Legal Department and one staff person in the Revenue Department. The remaining six employees are assigned to the Authority's Acquisitions Department, which is not part of this privatization proposal.

The RED activities proposed by the MBTA for privatization include:

- Tenant administration and leasing for concessions, land leases, utility easements, and master lease agreements;
- Surplus property disposition;
- Licensing and permitting; and
- Development.

On April 24, 1996 the MBTA notified the State Auditor of its intent to award a privatization contract for these activities. As required by law, the notification was accompanied by a certification signed by the General Manager of the MBTA and the Secretary of Administration and Finance, and by documentation subject to review and determination by the State Auditor in accordance with state laws and applicable guidelines issued by the State Auditor.

#### Scope, Objectives, and Methodology

The objectives of this review were to determine whether the MBTA has complied with Chapter 296 of the Acts of 1993, the privatization law, including the quality and compliance requirements of the law, and whether the cost of performing these property management and real estate development activities by contract would be less than the estimated cost for performing these services in-house with MBTA employees.

To meet these objectives, we examined the written statement of services for these property management functions, the management studies of the present in-house functions, the Request for Proposals (RFP), the summary of bids received, the successful proposal, and the proposed privatization contract. We also examined the cost forms and supporting documentation submitted by the MBTA and compared the estimated cost of contract performance with the estimated cost to perform the services in-house with MBTA employees. We traced and verified all of the cost elements listed in the cost forms to

the supporting documentation. We also interviewed MBTA management officials and toured the facility where the function is presently performed.

Our review was limited to those functions presently performed in-house and the proposed additional functions related to (1) the property inventory system; (2) the lease management enhancements; and (3) the establishment of a joint property development program as contained in the MBTA's RFP dated December 18, 1995. Our review did not include an examination of the additional contractual functions and related costs of future joint development activities and the parking garage program, as contained in the draft contract dated April 10, 1996 between the MBTA and the designated contractor, and therefore we did not render an opinion on those functions and activities.

## DETERMINATION

Based on our review, we have concluded that the MBTA has complied with Chapter 296 of the Acts of 1993 in reaching its decision to award a privatization contract for the management of its real estate activities, a service which had previously been performed in-house with MBTA employees.

The MBTA certified that the quality of services to be provided by the contractor is at least equal to or greater than that which had been provided by MBTA employees, that the designated contractor has no adjudicated record of noncompliance with relevant statutes, and that the cost of having the work performed under contract will be less than the estimated cost of having the work performed in-house with MBTA employees. We therefore approve the MBTA's certification in each of these required areas.

As summarized in Exhibit A, the cost of performance for the five-year period of the contract is estimated to be \$8,526,886, or \$206,257 less than the estimated cost of \$8,733,143 to perform the work in-house with MBTA employees. Accordingly, we approve the MBTA's certification and awarding of the subject contract to the designated contractor.

We also reviewed the MBTA's compliance with certain other statutory provisions of the privatization law.

- (1) Section 54(2) of the law contains certain requirements related to the wages to be paid by the contractor to individuals who will be employed under the contract. Our review determined that the MBTA wage requirements contained in the Request for Proposals (RFP) were not in accordance with the requirements of this section. However, upon review of the contractor's bid submission, it was determined that the wages intended to be paid by the contractor were higher than the MBTA's salary requirements in the RFP, and therefore the contractor's bid was in compliance with the law.
- (2) Section 54(3) requires the contractor to offer available positions to qualified MBTA employees who are being terminated as a result of the privatization. The contractor has demonstrated compliance with this requirement by conducting interviews and reviewing resumes. Furthermore, the contractor indicated that six MBTA employees would be hired under the contract.
- (3) Our review also determined that the contractor intends to comply with the health insurance requirements of Section 54(2).

Exhibit AMBTAPrivatization of Property Management  
Cost Comparison  
Five-Year Period Ending June 30, 2001

In-House Cost Estimate as Adjusted (Exhibit B)	\$8,733,143
Contract Performance Costs as Adjusted (Exhibit C)	<u>8,526,886</u>
Estimated Cost Savings over Five Years	<u>\$ 206,257</u>
Estimated Annual Savings	<u>\$ 41,251</u>

Exhibit B

MBTA  
Privatization of Property Management  
In-House Cost Estimate  
Five-Year Period Ending June 30, 2001

	<u>Per MBTA</u>	<u>Audit Adjustments</u>	<u>Adjusted Cost Estimate</u>
Direct Costs			
Personnel	\$ 7,329,461	\$ (96,497)(1) (1,034,168)(2) 883,000 (3)	\$7,081,796
Materials and Services	389,570	-	389,570
Other Direct Costs			
Rent	250,000	-	250,000
Depreciation	175,014	(112,500)(2)	62,514
Maintenance	-	-	-
Utilities	17,212	-	17,212
Insurance	5,131	-	5,131
Other*	1,608,668	(1,000,000)(2) (60,900)(4)	547,768
Total Direct Costs	<u>\$ 9,775,056</u>	<u>\$(1,421,065)</u>	<u>\$8,353,991</u>
Indirect Costs			
Departmental	\$ 379,152	-	\$ 379,152
Executive Office	-	-	-
Central Services	-	-	-
Total Indirect Costs	<u>\$ 379,152</u>	<u>-</u>	<u>\$ 379,152</u>
Total In-House Costs	<u>\$10,154,208</u>	<u>\$(1,421,065)</u>	<u>\$8,733,143</u>

(See Notes in Exhibit B-1)

\*Consists of legal and consultant costs related to joint development projects that the MBTA estimates it would incur if the work was to remain in-house.



MBTA

Privatization of Property Management  
Notes for In-House Cost Estimate  
Five-Year Period Ending June 30, 2001

## NOTES:

- (1) Represents net reduction of MBTA estimated in-house personnel costs, as follows:

○ One position eliminated – November 1995	\$ (303,698)
○ One position not accounted for by MBTA	200,055
○ Salary adjustment for one position	<u>7,146</u>
Net Reduction	<u>\$ (96,497)</u>

- (2) The MBTA estimated that the in-house cost of three functions that were not presently done by its employees (but were included in the proposed contract) would be as follows:

○ Personnel Costs	\$(1,034,168)
○ Consultant Services	(1,000,000)
○ Equipment Depreciation	<u>(112,500)</u>
Total	<u>\$(2,146,668)</u>

This \$2,146,668 projected amount was deleted because it could not be supported by the MBTA.

- (3) We used the designated contractor's projected amount of \$883,000 to perform the same additional functions in Note 2. The privatization law requires the MBTA to submit a written estimate of agency employees providing the subject services in the "most cost-efficient manner." There was no demonstrated reason why the MBTA could not perform these projected functions as cost-efficiently as the contractor.
- (4) The MBTA estimated that fees for the services of outside legal counsel would be \$530,900 to handle the increased and complex joint development activities that are anticipated. The designated contractor's bid amount included \$470,000, or \$60,900 less, for these anticipated legal fees. There was no demonstrated reason why the MBTA could not procure or perform these projected functions as cost-efficiently as the contractor.

Exhibit CMBTA

Privatization of Property Management  
Contract Performance Costs  
Five-Year Period Ending June 30, 2001

	<u>Per</u> <u>MBTA</u>	<u>Audit</u> <u>Adjustments</u>	<u>Adjusted</u> <u>Contract</u> <u>Performance</u> <u>Costs</u>
Contract Price	\$16,178,000	\$ 952,237(1)	\$7,130,237
Contract Administration	1,230,000	-	1,230,000
Transition Costs:			
Unemployment Benefits	193,290	(115,192)(2)	78,098
Retirement Benefits	67,200	-	67,200
Other	215,250	30,351(3)	150,351
		(95,250)(4)	
State Income Tax	<u>(129,000)</u>	-	<u>(129,000)</u>
Total Contract Costs	<u>\$ 7,754,740</u>	<u>\$ 772,146</u>	<u>\$8,526,886</u>
Estimated Increased Lease Revenue	<u>(\$5,184,000)</u>	<u>\$5,184,000(5)</u>	<u>          -</u>

(See Notes in Exhibit C-1)

MBTA

Privatization of Property Management  
Notes for Contract Performance Costs  
Five-Year Period Ending June 30, 2001

## NOTES:

- (1) Represents additional fees to be paid by the MBTA to the contractor over and above the MBTA's submitted base contract price.
- |  |                  |
|--|------------------|
| ○ Commissions income payable to the contractor for surplus land sales based on 10% of gross proceeds | \$510,427        |
| ○ Concessions income payable to the contractor for existing leases                                   | 277,758          |
| ○ Appraisal fees reimbursed to the contractor for surplus land sales                                 | <u>164,052</u>   |
| Total Increase   | <u>\$952,237</u> |
- (2) Represents a reduction in the MBTA's estimated unemployment compensation costs, as follows:
- |  |                    |
|--|--------------------|
| ○ Reduction in estimated costs for seven positions @\$10,738 each to provide for (a) contractor hirings of six current employees and (b) adjustment for one position eliminated by the MBTA in November 1995 | \$ (75,166)        |
| ○ Additional reduction based on determination per the Department of Employment and Training that the average length of stay on unemployment insurance is presently 16.3 weeks (the MBTA used 26 weeks)       | <u>(40,026)</u>    |
| Total Decrease   | <u>\$(115,192)</u> |
- (3) Represents actual additional costs for legal and outplacement services incurred by the MBTA above its estimate:
- |                   |                  |
|-------------------|------------------|
| Actual per Audit  | \$ 150,351       |
| Estimate per MBTA | <u>120,000</u>   |
| Total Increase    | <u>\$ 30,351</u> |
- (4) Represents the contractor start-up costs for June 1995 that will not be incurred due to time limitations preventing implementation of the proposed contract prior to July 1, 1996.
- |                |                    |
|----------------|--------------------|
| Total Decrease | <u>\$ (95,250)</u> |
|----------------|--------------------|

- (5) The MBTA estimated that revenue would increase by \$5,184,000 because the selected contractor would be more successful in collecting rents than the MBTA would be if it continued to manage this function. We disagree. There is no acceptable or demonstrated reason why MBTA management cannot increase revenues by holding itself to the same standard of performance expected from the contractor and by using the same updated tenant ledger that will be used by the contractor.

In addition, the MBTA's in-house estimate contains three new positions recommended by its management study. These positions were added specifically to perform these additional functions such as increasing lease revenue and maintaining the property inventory system. Given the new positions and the updated tenant ledger available for the first time, it is inconsistent of the MBTA to project additional revenues for the contractor but not for itself.