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INSPECTOR GENERAL

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February 10, 2011

Joseph J. Costanzo  
Administrator  
Merrimack Valley Regional Transit Authority  
85 Railroad Avenue  
Haverhill, MA 01835

Re: ARRA Funded Projects and Internal Controls

Dear Mr. Costanzo:

Thank you for meeting with Massachusetts Office of the Inspector General (OIG) regarding Merrimack Valley Regional Transit Authority's (MVRTA's) use of American Recovery and Reinvestment Act (ARRA) funds. MVRTA received more than \$7.9 million in ARRA funds for construction of the new Amesbury Transportation Center and the new MVRTA office and maintenance facility in Haverhill.

As we explained at our meeting, the OIG is reviewing ARRA-related grants to identify potential vulnerabilities to fraud, waste, and abuse and other risks that could negatively impact the accountability, transparency, and anti-fraud mandates contained in the statutory language and interpretive guidance of ARRA. Our review of the provided documents should not be construed as an audit, investigation, or a comprehensive programmatic review. We intend these reviews to assist recipients of ARRA funding to identify and address risks.

The federal government has determined that the receipt of ARRA funds places a recipient at high risk for waste, fraud and abuse. Further, the recent theft of MVRTA fares by a MVRTA's contractor's employee signaled existing internal control weaknesses. For these reasons, we reviewed MVRTA's existing internal controls, including procurement practices, and is providing recommendations on how these controls may be strengthened. Based on our review, we have identified the following findings and recommendations.

1) ARRA Procurement. We have reviewed the bid documentation you provided for the construction of MVRTA's ARRA funded projects, and we note that you are procuring these construction projects under M.G.L. chapter 149, the public building construction law. Our review of the documentation has not revealed any material defects in either procurement.

However, we recommend that MVRTA revise its Purchasing Manual dated September 10, 2010 to reflect all necessary statutory requirements and sound control practices. The manual states that "[c]onstruction contract solicitation and administration requirements will not be covered in detail in this Manual." Federal Transit Administration (FTA) regulations, namely 49 CFR 18.36, state that grantees will use their own procurement procedures which reflect

applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and regulations. Therefore, MVRTA should include the statutory requirements of chapter 149 and the applicable federal laws in the purchasing manual. We recommend that all MVRTA staff and contractors managing this procurement have a strong understanding of the requirements of chapter 149, and if necessary, attend construction procurement training. Free downloadable guides to chapter 149 and chapter 30B are available on our website at [http://www.mass.gov/ig/igpubl\\_manuals.htm](http://www.mass.gov/ig/igpubl_manuals.htm). In addition, an introductory Online Bidding Basics training course is available on the OIG's website at [http://www.mass.gov/ig/mcppo/bb\\_online.htm](http://www.mass.gov/ig/mcppo/bb_online.htm).

2) Procurement of Management Services. The current management services contract for all of MVRTA's operations is in year 4 of its 5 year term and terminates on June 30, 2012. You indicated that the current contractor has held this contract since 1983 and there have been no competing bidders since that time. Because no other vendor has bid on the contract, there is no way to determine whether MVRTA is getting the best price for management services. You indicated in our meeting that there are only a very small number of companies that provide transportation management services in Massachusetts, and that they tend to avoid a competitor's territory. If you have any reason to believe that this avoidance by vendors is indicative of collusion, bid-rigging or other vendor misconduct that unfairly or illegally restrains free and open competition, please inform this office immediately. The OIG recommends that you consult with MassDOT, FTA, other regional transit authorities and other transportation experts who might be able to advise you on how to introduce more competition into MVRTA's procurement processes.

3) Post Theft Risk Assessment. In June 2010 the state attorney general charged the contractor's general manager for MVRTA with stealing fares from the authority's deposit vault. The general manager was a long time employee of MVRTA's management services contractor. In response, the contractor replaced the general manager, reviewed cash handling practices, and is in the process of upgrading the fare box system whose vulnerability led to the alleged theft. You informed us that no changes were made to the contract between MVRTA and the management services provider as a result of the theft. Although the contractor has taken some action in response to the theft, we believe that these measures are inadequate to address the theft of fares by the employee of a contractor that has held the management contract since 1983. The theft of fares by the general manager revealed serious weaknesses in internal controls at MVRTA and demands comprehensive action to remedy vulnerabilities that may have existed for many years. We are concerned that MVRTA's public officials have not taken significant action to address these vulnerabilities. High risk contracts require greater oversight and MVRTA should consider completing a risk assessment to identify vulnerabilities in the provision of management services by its contractor to identify how the theft occurred and how to prevent future theft. MVRTA should also consider more frequent and targeted external audits.

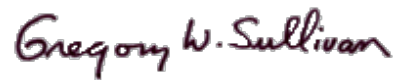
4) Anti-Fraud Measures. MVRTA adopted a fraud awareness and prevention policy in May 2010, after the theft of fares by its contractor. The policy explicitly applies to MVRTA's contractors. We recommend that MVRTA require employees of its contractors to sign an acknowledgement that they received and understand the policy. In addition, MVRTA should require "key employees" of the contractor to receive training on the state ethics law, M.G.L.

chapter 268A. The ethics law is referenced in MVRTA's purchasing manual (section 2.1.1) but MVRTA should explicitly require employees and contractors to follow its requirements and any guidance provided by the State Ethics Commission as a condition of employment. MVRTA also maintains a code of conduct in its personnel policy and has an accounting procedures manual that is reviewed annually by the administrator and outside counsel. We recommend that MVRTA revise these documents to include reference to the requirements of chapter 268A as well as MVRTA's anti-fraud policy. Anti-fraud policies are important for accountability, transparency, and maintenance of a robust control environment. MVRTA should review its anti-fraud policies regularly and train all employees in these policies and fraud awareness. In addition, MVRTA should require its contractors to follow these policies and train the contractor's employees as well. We would be willing to review and comment on any draft policies or documents MVRTA or its contractors may produce.

5) Amendments to the Management Services Contract. You indicated that you do not expect to make any changes to the management services contract unless recommended by counsel. We found that section 48 of the contract allows MVRTA to amend the contract terms in the event that any state or federal agency makes recommendations affecting its provisions. To that end, we recommend that the contract be amended as soon as practicable to require the contractor to adopt internal controls, to train its employees to comply with such controls, and to require approval of its internal control procedures by MVRTA annually. At a minimum, the contractor's internal controls should include ethics and conduct policies, anti-fraud policies, cash handling procedures, personnel procedures, recordkeeping procedures, an anonymous internal reporting system with whistleblower protections, and written acknowledgements by employees that they have read and understand all policies and procedures. In addition, all employees of the contractor who handle cash should be bonded.

Again, thank you for meeting with us and for your prompt response to our document requests. Please do not hesitate to call us if you have any questions or if we may be of assistance in carrying out the recommendations in this letter.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive, slightly slanted style.

Gregory W. Sullivan  
Inspector General

cc: Christopher W. Kelly, Assistant Attorney General