



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued November 28, 2018

Independent State Auditor's Determination on Massasoit Community College's Proposal to Privatize Its Food Services





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Making government work better

November 28, 2018

Dr. Gena Glickman, President
Massasoit Community College
1 Massasoit Boulevard
Brockton, MA 02302

Dear Dr. Glickman:

I am pleased to provide this review of Massasoit Community College's proposal to privatize the management and operation of its campus food services. This report details our objectives, scope, and methodology, as well as our determination based on our review. My audit staff discussed the contents of this report with management at Massasoit Community College.

This office has determined that Massasoit Community College has complied with all provisions of Massachusetts General Laws c. 7, §54 and all other applicable laws; therefore, this office has no objection to your request to privatize the management and operation of your campus food services.

I would also like to express my appreciation to Massasoit Community College for the cooperation and assistance provided to my staff during our review.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue horizontal line.

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

MCC	Massasoit Community College
MGL	Massachusetts General Laws
OSA	Office of the State Auditor
RFP	Request for Proposal

EXECUTIVE SUMMARY

Massachusetts General Laws (MGL) c. 7, §§52–55, 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 \$571,542 or more.¹

Pursuant to this law, a specific process must be followed to demonstrate and certify to the State Auditor that (1) Massasoit Community College (MCC) has complied with all provisions of MGL c. 7, §54 and all other applicable laws; (2) the quality of the services to be provided by the designated bidder is likely to satisfy the quality requirements of the written statement of services and equal or exceed the quality of services that could be provided by college employees; (3) the total cost to perform the services by contract will be less than the estimated in-house cost; (4) the designated bidder has no adjudicated record of substantial or repeated noncompliance with relevant federal and state statutes; and (5) the proposed privatization contract is in the public interest in that it meets applicable quality and fiscal standards. The State Auditor has 30 business days (with the authority to extend the review an additional 30 days) to approve or reject the college’s certification.

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

MCC is part of the system of public institutions of higher education established by MGL c. 15A, §5. In accordance with MGL c. 15A, §22, MCC operates under the direction of a board of trustees, whose responsibilities include establishing policies necessary for the administrative management of personnel, staff services, and the general business of the college. MCC’s president is responsible for implementing the policies set by the board, in accordance with the policies and guidelines established by the Massachusetts Department of Higher Education and the MCC board bylaws.

1. Pursuant to MGL c. 7, §53, the Privatization Law threshold, set at \$500,000 in 2009, is adjusted as of January 1 each year according to the Consumer Price Index as calculated by the US Bureau of Labor Statistics.

MCC proposes to privatize the management and operation of its food services on its Brockton and Canton campuses, which serve its students, faculty, staff, and visitors. MCC is seeking a vendor for the complete management and operation of its food services, as stated in the MCC Request for Proposal.

These services include but are not limited to the following:

- operating and managing all functions of the food service facilities and conference center² in a manner deemed to be in the best interest of MCC's students, faculty, and staff
- providing food services that enhance the academic, social, and collegial environment by attracting a large number of students, faculty members, and staff members to dine together as a way of facilitating informal discussions and enhancing the breadth of the academic experience
- supplying food that supports good nutrition and wellness with the use of high-quality ingredients and fresh preparation methods, while also being culturally informed and making provisions for special dietary needs to serve those with medically imposed dietary restrictions and food allergies
- providing menu pricing that considers and competes with off-campus food venues, along with catering pricing that is competitive with off-campus caterers and encompasses a price range that is inclusive of various consumer groups
- providing competent, skilled, and properly trained individuals to ensure quality performance of duties
- developing, implementing, and managing a food service marketing program
- having a website for MCC food services that is available to MCC's students, faculty, staff, and campus visitors and provides online food and beverage ordering for the campus cafes and catering

On June 25, 2018, MCC notified the Office of the State Auditor (OSA) of its intent to privatize its campus food services. However, OSA did not receive the required certification, signed by MCC's president and the Secretary of the Executive Office for Administration and Finance, until September 20, 2018. This certification begins the 30 business days in which OSA has to either approve or reject this privatization proposal.

2. The base or required scope of the Request for Proposal was management of MCC's existing dining operations and on-campus catering at the Brockton and Canton campuses. Proposers were also invited to submit alternate proposals that addressed managing and catering for MCC's conference center, adjacent to the Brockton campus. The selected bidder chose not to bid on the conference center operation. Subsequently, effective June 30, 2018, MCC permanently closed the conference center.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of our review was to determine whether Massasoit Community College (MCC) complied with Massachusetts General Laws c. 7, §§52–55 (the Privatization Law), including the law’s quality and compliance requirements, and whether the cost of managing and operating the food services would be less than the estimated cost of performing these services in house with college employees.

To meet these objectives, the Office of the State Auditor (OSA) examined the Request for Proposal (RFP) and the corresponding responses, reviewed the proposed operating agreement between MCC and Lessing’s Food Service Management, evaluated other related documentation, and held discussions with MCC management as well as management from other colleges regarding the quality of services to be provided by Lessing’s.

OSA also evaluated the validity of the revenue and cost analysis³ as well as other documentation⁴ prepared by MCC management that supported the privatization proposal. In addition, OSA compared the anticipated costs per the proposed Lessing’s contract to the projected costs of performing the services in house to ensure that the proposed privatization would result in savings to the Commonwealth. OSA cross-referenced revenue and expenses to supporting documentation, including independently verifying fringe-benefit rates from the Office of the State Comptroller.

Additionally, OSA examined the quality of contract performance by reviewing the MCC RFP as well as Lessing’s RFP response and was able to verify that MCC will monitor contract effectiveness through (1) monthly reviews of financial statements; (2) the naming of an MCC Client Liaison to provide feedback to Lessing’s regarding any questions or concerns related to the food services operation; and (3) regular meetings with Lessing’s management to discuss sales revenue, food/beverage service costs, customer satisfaction survey results, current food trends, menus, pricing, and recent historical data such as customer counts and participation rates.

OSA also held discussions with Lessing’s management and surveyed three other colleges that use Lessing’s to manage and operate their food services. These actions gave OSA significant insight into how

3. The documentation that MCC provided to OSA includes, but is not limited to, in-house consolidated and summarized cost forms, personnel cost worksheets, cost form reconciliation, and related notes.

4. Other documentation includes, but is not limited to, all submitted bids, the bid criteria rating system and scoring matrix, the proposed Lessing’s contract, and certificates of compliance.

Lessing's (1) manages its personnel, (2) operates from day to day, and (3) provides products and services to students, faculty members, and staff members in each of those institutions.

DETERMINATION

Based on our review, we have concluded that Massasoit Community College (MCC) has complied with the specific requirements set forth in Massachusetts General Laws (MGL) c. 7, §§52–55 (the Privatization Law) in reaching its decision to privatize the management and operation of its campus food services, which have been performed in house with college employees.

MCC has certified and demonstrated to the Office of the State Auditor (OSA) that the quality of the services to be provided by Lessing's Food Service Management will equal or exceed the quality of services that could be provided by college employees, that the contract cost of managing and operating the food services would be less than the estimated cost for performing them in house with college employees, that Lessing's has no adjudicated record of substantial or repeated noncompliance with relevant federal and state statutes, and that the proposed privatization contract is in the public interest in that it meets applicable quality and fiscal standards. We therefore approve MCC's certification in each of those required areas.

We reviewed MCC's compliance with the statutory provisions of the Privatization Law and have concluded that MCC has complied with all provisions of the Privatization Law:

1. MCC issued a Request for Proposal (RFP) on March 7, 2018, with an initial response due date of April 11, 2018, for its food services. In response to the RFP, two potential providers submitted bids for review. Lessing's bid was selected. The terms of the proposed contract will not exceed five years.
2. For each position in which Lessing's will employ any person pursuant to the privatization contract and for which the duties are substantially similar to those performed by a college employee, MCC's statement of services includes a statement of the appropriate minimum wage rate⁵ to be paid for that position. Lessing's bid and the proposed privatization contract include provisions specifically establishing the wage rate for each such position, which is not less than the appropriate minimum wage rate. Additionally, Lessing's bid and the proposed contract include provisions for Lessing's to pay no less than a percentage, comparable to the percentage paid by the Commonwealth for state employees, of the costs of health insurance plans for every employee employed for no less than 20 hours per week. Moreover, the proposed contract includes a provision requiring that Lessing's health insurance plan provide coverage to the employee and the employee's spouse and dependent children. It also requires that each bidder submit quarterly payroll records to MCC, listing the name, address, Social Security number, hours worked, and hourly wage paid for each employee in the previous quarter.

5. The minimum wage rate will be the lesser of (1) step one of the grade under which the comparable regular college employee is paid or (2) the average private-sector wage, as determined by the Executive Office for Administration and Finance.

3. The proposed contract between MCC and Lessing's contains a provision requiring Lessing's to offer available positions to qualified college employees whose state employment is terminated because of the privatization contract and who satisfy Lessing's hiring criteria. The proposed contract also contains a provision requiring Lessing's to comply with equal opportunity and affirmative action laws as required by the Fair Labor Standards Act, MGL c. 7, §§52–55, and all other regulations required by federal and state laws.
4. MCC prepared a comprehensive written estimate of the costs for college employees to manage and operate MCC's food services in the most cost-efficient manner. These cost estimates include all direct and indirect costs of college employees, including, but not limited to, personnel costs and other employee benefit costs. MCC also prepared a comprehensive written estimate of the projected revenue for college employees to provide services in house as well as the estimated revenue as stated in the contract. Both revenue estimates include all taxable and nontaxable cafeteria sales.
5. MCC provided notice to the relevant employee organization (the American Federation of State, County and Municipal Employees) on May 8, 2017 and held a meeting on May 22, 2017 with the college employees and the union to discuss the college's intent to issue an RFP before it published the RFP on March 7, 2018. Neither the union nor its employees requested additional information or submitted a bid as a result of this meeting.
6. After soliciting and receiving bids, MCC publicly designated Lessing's as the bidder to which the contract would be awarded.
7. MCC's president and the Executive Office for Administration and Finance provided a certification of compliance with the following requirements detailed in MGL c. 7, §54(7):
 - (i) The agency complied with all the provisions of Section 54 and all other applicable laws.
 - (ii) The quality of the services to be provided by Lessing's is likely to satisfy the quality requirements of the statement of services and to equal or exceed the quality of services that could be provided by agency employees.
 - (iii) The contract cost will be less than the estimated cost of regular MCC employees providing the services, taking into account all comparable types of costs.
 - (iv) Lessing's, and its supervisory employees while in its employ, have no adjudicated record of substantial or repeated willful noncompliance with any relevant federal or state regulatory statute, including, but not limited to, statutes concerning labor relations, occupational safety and health, nondiscrimination and affirmative action, environmental protection, and conflicts of interest.
 - (v) The proposed privatization contract is in the public interest in that it meets the applicable quality and fiscal standards set forth herein.

Regarding the fiscal standards, OSA's financial analysis, as set forth in the attachments to this determination, demonstrates that, over a five-year period, the cost of MCC's food services would be approximately \$2,027,349 if operated in house with college employees, whereas the proposed contract

with Lessing's would cost an estimated \$1,497,942. Thus, the privatization of MCC's food services would provide MCC with a cost savings of \$529,407, a 26% reduction.

For all these reasons, this office has determined that MCC has complied with all provisions of the Privatization Law and all other applicable laws; therefore, this office has no objection to MCC's request to privatize its campus food services.

APPENDIX A

Massasoit Community College Privatization of Its Campus Food Services Cost Comparison for Five-Year Period Ending June 30, 2023

	Massasoit Community College Cost Comparison Form	Office of the State Auditor Adjustments	Total Costs, Including Adjustments
In-House Cost Estimate (Net Loss on Operations) (Appendix B)	\$ 2,027,349	\$ 0	\$ 2,027,349
Less Contract Performance Costs (Net Loss on Operations) (Appendix C)	1,497,142	800*	1,497,942
Cost Savings	<u>\$ 530,207</u>	<u>\$(800)</u>	<u>\$ 529,407</u>

* The fiscal year 2019 cost of goods sold on Lessing's proposal was increased by \$800 to correct a typographical error.

APPENDIX B

Massasoit Community College Privatization of Its Campus Food Services In-House Cost Estimate for Five-Year Period Ending June 30, 2023

MCC In-House Cost Estimate*	
Direct Costs[†]	
Personnel	\$ 2,562,315
Wholesale Food/Beverages	2,006,760
Other [‡]	225,652
Total Direct Costs	\$ 4,794,727
Less Total Revenue	2,767,378
Total In-House Costs (Net Loss)	\$ 2,027,349

* These estimates are based on actual fiscal year 2018 costs as of May 25, 2018 with MCC estimated adjustments through June 30, 2018. These costs were projected through 2023 using an annual increase of 1.58%, based on the Higher Education Price Index⁶ five-year average.

† For the purposes of the privatization cost review, only direct costs were included. Indirect costs are incurred whether MCC privatizes its food services or performs the work in house, so they are excluded from the cost-savings calculation.

‡ Other costs include kitchen supplies, laundry/cleaning supplies, office supplies, temporary help, and credit card fees.

6. The Commonfund Higher Education Price Index is an inflation index designed specifically to track the main cost drivers in higher education. This index is issued annually by the Commonfund Institute and is a more accurate indicator of changes in costs for colleges and universities than the more familiar Consumer Price Index. MCC used the average index for two-year public colleges for the five-year period 2011 through 2015. MCC management stated that this was the most current information available for two-year public colleges at the time of submission.

APPENDIX C

Massasoit Community College Privatization of Its Campus Food Services Contract Performance Costs for Five-Year Period Ending June 30, 2023

	Lessing's Proposal	Office of the State Auditor Adjustments	Adjusted Lessing's Cost Estimate
Direct Costs			
Personnel	\$ 2,303,651	\$ 0	\$ 2,303,651
Wholesale Food/Beverages	1,382,430	800*	1,383,230
Other†	452,633	0	452,633
Total Direct Costs	<u>\$ 4,138,714</u>	<u>\$ 800</u>	<u>\$ 4,139,514</u>
Indirect Costs			
Contributions	17,667	0	17,667
Depreciation	75,715	0	75,715
Insurance	22,448	0	22,448
Service Fees	302,859	0	302,859
Taxes, Licenses, and Fees	8,076	0	8,076
General Administrative Costs	94,897	0	94,897
Total Indirect Costs	<u>\$ 521,662</u>	<u>\$ 0</u>	<u>\$ 521,662</u>
Total Direct and Indirect Costs	<u>\$ 4,660,376</u>	<u>\$ 800</u>	<u>\$ 4,661,176</u>
Less Total Revenue	3,163,234	0	3,163,234
Contract Price (Net Loss)	<u>\$ 1,497,142</u>	<u>\$ 800</u>	<u>\$ 1,497,942</u>

* The fiscal year 2019 cost of goods sold on Lessing's proposal was increased by \$800 to correct a typographical error.

† Other costs include but are not limited to kitchen, cleaning, and office supplies; uniforms and laundry; temporary help; credit card and bank fees; marketing and promotional expenses; repairs; maintenance; and postage.