



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

Making government work better

Independent State Auditor's Determination on the University of Massachusetts Dartmouth's Proposal to Privatize Its Campus Bookstore





The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

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January 27, 2014

Dr. Divina Grossman, Chancellor
University of Massachusetts Dartmouth
285 Old Westport Road
North Dartmouth, MA 02747

Dear Dr. Grossman:

I am pleased to provide this review of the University of Massachusetts Dartmouth's proposal to privatize its campus bookstore. This report details our objectives, scope, and methodology and our determination based on our review. My audit staff discussed the contents of this report with the management of the university.

It is the determination of this office that the University has complied with all provisions of Section 54 of Chapter 7 of the Massachusetts General Laws and all other applicable laws and thus this office has no objection to your request for the privatization of your campus bookstore.

I would like to express my appreciation to the University of Massachusetts Dartmouth for the cooperation and assistance provided to my staff during our review.

Sincerely,

A handwritten signature in black ink, appearing to read "Suzanne M. Bump".

Suzanne M. Bump
Auditor of the Commonwealth

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EXECUTIVE SUMMARY

Chapter 296 of the Acts of 1993, as amended, 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 on December 15, 1993, applies to contracts that have an aggregate value of \$535,494 or more.¹

Pursuant to the law, state agencies seeking to privatize certain services must demonstrate and certify to the State Auditor that (1) the agency complied with all provisions of Section 54 of Chapter 7 of the Massachusetts General Laws and all other applicable laws; (2) 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; (3) the total cost to perform the service 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 agency's certification.

The process that the agency must follow includes preparing a detailed written statement of services, 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 University of Massachusetts Dartmouth (UMD) is part of the system of public institutions of higher education under Section 5 of Chapter 15A of the General Laws. A Board of Trustees appointed by the Governor oversees the University and establishes its policies. UMD's Chancellor is responsible for implementing the policies set by the Board of Trustees, in accordance with the policies and guidelines established by the Department of Higher Education.

¹ Pursuant to Section 53 of Chapter 7, 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 U.S. Bureau of Labor Statistics. As of January 2014, the threshold increased to \$543,442, but the change in the threshold amount did not affect UMD's proposal, which was submitted in 2013.

UMD is proposing the privatization of its campus bookstore, which serves its students, faculty, staff, and visitors. UMD is seeking a vendor for the complete management and operation of its campus bookstore, including:

- supporting the academic mission of the university by providing efficient and effective textbooks/course material and services to students and faculty;
- creating and implementing effective strategies to reduce the cost of textbooks/course material to UMD students by offering a strong used-textbook program, a comprehensive textbook-rental program, digital textbooks, and course materials, and by using emerging technologies;
- developing a proactive textbook/course-material and market-share strategy, including communicating and coordinating with faculty regarding the use of digital materials that will allow the bookstore to compete effectively in the challenging university bookstore environment;
- improving the bookstore facility and creating a dynamic, exciting retail environment;
- providing easy access and multiple distribution channels for textbooks/course materials and general merchandise;
- providing excellent customer service;
- supporting the academic mission by providing a general book department that supports faculty and alumni authors, speakers, lecturers, and other campus academic and intellectual events;
- assisting with promoting and branding the university by offering a broad selection of emblematic clothing and gifts;
- providing exceptional value to customers by offering high-quality products and services at fair prices and multiple price points;
- using state-of-the-art technology for bookstore operations;
- improving the bookstore's product selection, including continually expanding and introducing new product lines;
- developing a comprehensive marketing and promotional strategy to reach students, members of the campus community, alumni, visitors, fans, and friends;
- improving textbook adoption rates across academic departments; and
- developing a comprehensive online strategy and mail-order program.

On November 26, 2013, UMD notified the Office of the State Auditor (OSA) of its intent to award a privatization contract for its campus bookstore. As required by law, the notification was

accompanied by a certification signed by UMD's Chancellor and the Secretary of the Executive Office for Administration and Finance, and by documentation subject to review by OSA in accordance with state law and with applicable guidelines issued by OSA.

OBJECTIVES, SCOPE, AND METHODOLOGY

The University of Massachusetts Dartmouth (UMD) sought an organization to operate its campus bookstore in accordance with the highest standards and commercial practices in the college bookstore industry. UMD chose Follett Higher Education Group, Inc. (Follett) to operate the store. The objectives of our review were to determine whether UMD complied with Chapter 296 of the Acts of 1993, as amended (the Privatization Law), including the law's quality and compliance requirements, and whether the cost of operating the campus bookstore would be less than the estimated cost for performing these services in-house with UMD employees.

To meet these objectives, we examined the Request for Proposal that UMD issued for this work, the responses received, the proposed operating agreement between UMD and Follett, and quality and compliance information. We also examined the cost forms and documents submitted by UMD supporting the privatization proposal, and compared the estimated revenue from contract management to the estimated revenue from performing the services in-house with UMD employees. We traced and verified all revenue and expenses listed in the cost forms to the supporting documentation and interviewed UMD management officials and bookstore employees. We also spoke with the two union groups representing bookstore employees who are affected by the proposed privatization and toured the facility where the functions proposed to be privatized are presently performed.

DETERMINATION

Based on our review, we have concluded that the University of Massachusetts Dartmouth (UMD) has complied with Chapter 296 of the Acts of 1993, as amended, in reaching its decision to award a privatization contract for the operation of its campus bookstore at UMD, a service that has been performed in-house with UMD employees.

UMD has certified and demonstrated to the Office of the State Auditor that the quality of the services to be provided by Follett Higher Education Group, Inc. (Follett) will equal or exceed the quality of services that could be provided by UMD employees; the revenue enhancement of having the work performed under the management agreement will exceed the estimated revenue of having the work performed in-house with UMD employees; Follett has no adjudicated record of substantial or repeated noncompliance with relevant federal and state statutes; and the proposed privatization contract is in the public interest in that it meets applicable quality and fiscal standards. We therefore approve UMD's certification in each of those required areas.

We reviewed UMD's compliance with the statutory provisions of the Privatization Law and have concluded that the UMD has complied with all provisions of Section 54 of Chapter 7 of the Massachusetts General Laws as follows:

1. UMD prepared a Request for Proposal (RFP), issued on March 15, 2013, with an initial proposal due date of April 16, 2013. The RFP was issued to three national bookstore contract management firms: Barnes & Noble College Booksellers, Follett Higher Education Group (Follett), and Neebo. UMD held a Mandatory Bidders' Conference on March 22, 2013, which representatives from each of the three firms attended. Only Follett submitted a proposal in response to the RFP. The term of the proposed contract will not exceed five years.
2. For each position in which Follett will employ any person pursuant to the privatization contract and for which the duties are substantially similar to the duties performed by a regular UMD employee, UMD's statement of services included a statement of the appropriate minimum wage rate to be paid for that position. Follett'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, Follett's bid and the proposed contract include provisions for Follett to pay not 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 not less than 20 hours per week. Moreover, the proposed contract includes a provision requiring that Follett's health insurance plan provide coverage to the employee and the employee's spouse and dependent children. The proposed contract also requires that Follett submit quarterly payroll records to UMD, listing the name, address, social security number, hours worked, and hourly wage paid for each employee in the previous quarter.

3. The proposed contract between UMD and Follett contains a provision requiring Follett to offer available positions to qualified regular employees of UMD whose state employment is terminated because of the privatization contract and who satisfy Follett's hiring criteria.² The contract contains a provision requiring Follett to comply with a policy of nondiscrimination and equal opportunity for all persons protected by M.G.L. c. 151B, and to take affirmative steps to provide such equal opportunity for all such persons.

UMD, in fact, has demonstrated its intention to go beyond the requirements of the Privatization Law with respect to bookstore employees. UMD has provided the Office of the State Auditor (OSA) with a memorandum detailing a meeting held on December 4, 2013 between the American Federation of State, County, and Municipal Employees (AFSCME) and the UMass Faculty Federation Local 1895 (ESU) (together, the Unions), and UMD regarding a potential 12-month transition plan for those campus bookstore employees wishing to remain UMD employees. UMD has documented its intention to request that Follett incorporate an additional provision into the contract whereby any UMD campus bookstore employee who wishes to remain a UMD employee may remain in his or her current position as an employee of UMD for up to 12 months; during such time, Follett would reimburse UMD for the cost of the employee's payroll and fringe benefits.

Further, UMD contends that remaining UMD bookstore employees may apply for other newly created or vacant UMD positions and, provided that an employee meets the qualifications for the position, UMD will transfer the employee into that position while working with the respective Union to waive the posting requirements. Additionally, UMD has stated that its Organization Development Office will provide affected campus bookstore employees with

² In a letter to OSA dated January 15, 2014, the UMass Faculty Federation Local 1895 noted that, as of that date, Follett had not yet made any offer of employment to any bookstore employee. UMD has fulfilled its statutory obligation by requiring Follett to comply with this and other provisions of the Privatization Law in the proposed contract.

Resume Writing and Interview Skills workshops during their 12 months of continued UMD employment.

4. UMD prepared a comprehensive written estimate of the cost for regular UMD employees to provide services in the most cost-efficient manner to the campus bookstore. UMD's estimate includes all direct and indirect costs of UMD regular UMD employees, including, but not limited to, pension, insurance, and other employee benefit costs. The Unions did not propose any amendments to either of the CBAs during the time of the RFP posting.
5. UMD provided notice to the relevant employee organizations upon publication of the RFP on March 15, 2013 and held a meeting on March 20, 2013 to discuss the published RFP with the employees and the Unions.³ Following that meeting, on April 16, 2013, UMD offered to establish a Joint Management/Labor Committee with AFSCME, pursuant to its collective bargaining agreement, but AFSCME declined the offer.⁴ Additionally, in order to assist the Unions if they or their members wished to submit a bid, UMD provided copies of the 2003 and 2010 Bookstore Analysis of Operation performed by an outside vendor, College Bookstore Consulting, the same vendor tasked with performing the 2013 Management Study, and, on August 27, 2013, the completed 2013 Management Study. Moreover, UMD twice extended the original bid closing date of April 16, 2013, eventually extending it to June 4, 2013 to allow the Unions to submit a bid. No other requests were made to UMD from the Unions.⁵ UMD did not receive a bid from either the employees or the Unions on behalf of the campus bookstore employees.
6. After soliciting and receiving bids, UMD publicly designated the bidder to which it proposed to award the contract. UMD prepared a comprehensive written analysis of the contract cost based

³ On April 1, 2013 AFSCME filed a grievance stating that UMD had violated Article 21, "Contracting Out," of the CBA by failing to make AFSCME aware of UMD's intentions to issue a RFP prior to the RFP distribution. As a remedy, AFSCME requested (1) that a Special Labor/Management Committee be established in accordance with the CBA, (2) a copy of the Management Study when completed, and (3) an extension of 30 calendar days of the RFP after receipt of the Management Study to come up with and present alternatives before UMD submitted its privatization request to the OSA. That grievance is still pending.

⁴ In an e-mail to OSA dated January 13, 2014, AFSCME implied that it refused UMD's offer because it was only made after the publication of the RFR.

⁵ While the Unions contend that UMD failed to provide them with adequate resources for the purpose of encouraging and assisting current bookstore employees to organize and submit their own bid, the evidence indicates that UMD took steps to facilitate a bid from the employees and that neither the employees nor the Unions had any interest in that option.

upon the designated bid, specifically including: the costs of transition from public to private operation; additional unemployment and retirement benefits, if any; and the process for monitoring and otherwise administering contract performance. Follett did not propose to perform any of the contract outside the boundaries of the Commonwealth.

7. UMD Chancellor Grossman and Secretary Glen Shor of the Executive Office for Administration and Finance provided certification of compliance with the following requirements detailed in the Privatization Law M.G.L. 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 Follett 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 regular agency employees;
- (iii) the contract cost will be less than the estimated cost of regular UMD employees providing the services, taking into account all comparable types of costs;
- (iv) Follett and its supervisory employees, while in the employ of Follett, 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; and
- (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 quality of the proposed services, the Unions have provided information to OSA regarding Follett's recent announcement of its intent to replace some full-time employees at some of its approximately 980 campus bookstores with part-time employees, which, the Unions contend, will lessen the quality of services that the campus bookstore has been providing. While it is unclear whether this change might affect Follett's proposed contract with UMD, we note that the proposed contract would require Follett "to employ all personnel necessary for the efficient operation of a campus bookstore in accordance with

the highest standards and commercial practices in the college bookstore industry and pursuant to the requirements established by the University.”

Regarding the fiscal standards, OSA’s financial analysis, set forth in the attachments to this determination, demonstrates that, over a five year period, the revenue for UMD’s campus bookstore, if operated in-house with UMD employees, would be \$1,713,636, while the proposed contract with Follett would yield an estimated \$2,195,951. As a result, the privatization of UMD’s campus bookstore will increase UMD’s revenues by \$482,315.

For all of these reasons, it is the determination of this office that the University has complied with all provisions of Section 54 of Chapter 7 of the Massachusetts General Laws and all other applicable laws and thus this office has no objection to UMD’s request for the privatization of its campus bookstore.

EXHIBIT A**University of Massachusetts Dartmouth—
Privatization of Campus Bookstore
Revenue Comparison
Five-Year Period Ending June 30, 2017**

Management Agreement Revenue (Exhibit C)	\$2,195,951
In-House Revenue Estimate (Exhibit B)	1,713,636
Estimated Five-Year Revenue Enhancement	\$ 482,315

EXHIBIT B

**University of Massachusetts Dartmouth (UMD)—
Privatization of Campus Bookstore
In-House Revenue Estimate
Five-Year Period Ending June 30, 2017**

	UMD Revenue Estimate	Review Adjustments	UMD Revenue Estimate as Adjusted
College Bookstore Revenue	<u>\$ 19,976,997</u>		<u>\$ 19,976,997</u>
Direct Costs:			
Personnel	3,075,077	(\$127,793) ¹	2,947,284
Cost of Goods Sold	14,041,387		14,041,387
Other Direct Costs:	87,239		87,239
Other Administrative Expenses	230,899		230,899
Facility, Operational Supplies, and Expenses	106,145		106,145
Operational Services	120,925		120,925
Equipment Purchases	21,417		21,417
Equipment, Lease, and Rental Maintenance and Repair	143,065		143,065
Construction	565,000		565,000
Uncollectible Accounts	-		-
Total In-House Costs	<u>18,391,154</u>	<u>(127,793)</u>	<u>18,263,361</u>
In-House Revenue Estimate	<u>\$ 1,585,843</u>	<u>\$ 127,793</u>	<u>\$ 1,713,636</u>

¹. The Office of the State Auditor adjusted the fringe benefit rate to 26.26%, reflecting the fiscal year 2014 fringe benefit and payroll tax rate. (Comptroller Memo FY #2014-02)

EXHIBIT C

**University of Massachusetts Dartmouth (UMD)—
Privatization of Campus Bookstore
Management Agreement Revenue
Five-Year Period Ending June 30, 2017**

Management Agreement Revenue	Per UMD	Review Adjustments	Adjusted Management Agreement Revenue
Commission Receipts	\$ 2,792,294	(\$ 10,041) ¹	\$ 2,782,253
One Time Retail Ready Contribution		100,000	100,000
Textbook Scholarships		50,000	50,000
Total Management Agreement Revenue	<u>\$ 2,792,294</u>	<u>\$ 139,959</u>	<u>\$ 2,932,253</u>
Contract Administration		<u>(\$ 31,049)²</u>	<u>(\$ 31,049)</u>
Transition Costs:			
Loss on Sale of Inventory	149,149		149,149
Total Transition Costs	<u>\$ 149,149</u>		<u>\$ 149,149</u>
Other Revenue:			
Student Honors Awards		(268,046) ³	(268,046)
Total Other Revenue		<u>(\$ 268,046)</u>	<u>(\$ 268,046)</u>
Deduct Continuing Costs			
Operational Services		(288,058) ⁴	(288,058)
Total Continuing Costs		<u>\$ 288,058</u>	<u>\$ 288,058</u>
Management Agreement Revenue	<u>\$ 2,643,145</u>	<u>(\$ 447,194)</u>	<u>\$ 2,195,951</u>

1. The Office of the State Auditor (OSA) recalculated commission receipts in accordance with the terms of the contract: 14.1% of all gross revenue up to \$4,000,000 plus 15.1% of any part of gross revenue over \$4,000,000 annually. OSA also reduced the commission receipts by \$15,539 to account for a projection for software sales, which were included in UMD's estimate but are omitted from the contract.
2. OSA adjusted the Contract Administration amount to account for an estimated 5% of the time that the director of campus services will spend administering the contract.
3. OSA adjusted the management agreement revenue to account for the 25% profit margin that UMD will no longer receive on books purchased by honors-awards students over the life of the contract.
4. OSA adjusted the management agreement revenue to account for UMD's responsibility for the utility costs related to the operation of the bookstore over the life of the contract.