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**INDEPENDENT STATE AUDITOR'S REPORT
ON CERTAIN ACTIVITIES OF THE
WOBURN DIVISION OF THE
DISTRICT COURT DEPARTMENT OF THE
MASSACHUSETTS TRIAL COURT
JULY 1, 2004 TO SEPTEMBER 30, 2006**

**OFFICIAL AUDIT
REPORT
FEBRUARY 13, 2007**

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The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court Departments: the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Probate and Family Court, the Superior Court, and the Land Court. Chapter 211B of the Massachusetts General Laws authorized the District Court Department to establish 62 Divisions, each having a specific territorial jurisdiction, to preside over civil and criminal matters that are brought before it. The Division's organizational structure consists of three separately managed offices: the Judge's Lobby, headed by a First Justice; the Clerk-Magistrate's Office, headed by a Clerk-Magistrate; and the Probation Office, headed by a Chief Probation Officer. The First Justice is the administrative head of the Division and is responsible for preparing the Division's budget and accounting for its revenues; however, the Clerk-Magistrate and the Chief Probation Officer are responsible for the internal administration of their respective offices.

The Woburn Division of the District Court Department (WDC) presides over civil and criminal matters falling within its territorial jurisdiction: the city of Woburn and the towns of Winchester, Stoneham, Burlington, Wilmington, Reading, and North Reading. During the period July 1, 2004 through September 30, 2006, WDC collected revenues of \$3,910,375 and disbursed them to the Commonwealth and those municipalities within its jurisdiction. In addition to processing civil entry fees and monetary assessments on criminal cases, WDC was custodian of approximately 316 cash bails amounting to \$114,160 as of September 30, 2006.

WDC is also responsible for conducting civil motor vehicle infraction (CMVI) hearings. Although WDC does not collect the associated monetary assessment when a motorist is found responsible for a CMVI, it is required to submit the results of the hearing to the Registry of Motor Vehicles, the agency that is responsible for the collections.

WDC operations are funded by appropriations under the control of either the Division (local), or the Administrative Office of the Trial Court (AOTC) or Office of the Commissioner of Probation (central). According to the Commonwealth's records, expenditures associated with the operation of the Division were approximately \$2,374,617 for the period July 1, 2004 to September 30, 2006.

The purpose of our audit was to review WDC's internal controls and compliance with state laws and regulations regarding administrative and operational activities, including cash management, bail funds, and criminal- and civil-case activity for the period July 1, 2004 to September 30, 2006.

AUDIT RESULTS

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IMPROVEMENTS NEEDED WITH CONTRACT MANAGEMENT FOR VENDING MACHINES

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Our audit found that improvements were needed with procurement management for vending machine contracts at both AOTC and WDC. Specifically, our examination determined that since December 17, 2001—when the WDC entered into its current

vendor service agreement—neither the court nor the Commonwealth has received commission income from vending machine services even though court records disclose that commission was income received under the prior vending machine arrangement. Moreover, although AOTC’s Legal Department approved the current service agreement, both the prior and current vending machine arrangements were executed without performing competitive bid procedures. Procurement provisions issued by AOTC require courts to seek competitive bids for these types of contracts to best serve the needs of the public, the courts, and the Commonwealth. The lack of a competitive procurement process may result in the WDC and the Commonwealth not receiving the maximum potential benefit and value from their vending machine arrangements.

INTRODUCTION

Background

The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court Departments: the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Probate and Family Court, the Superior Court, and the Land Court. The statute also created a central administration office managed by a Chief Administrative Justice (CAJ) who is also responsible for the overall management of the Trial Court. The CAJ charged the central office, known as the Administrative Office of the Trial Court (AOTC), with developing a wide range of centralized functions and standards for the benefit of the entire Trial Court, including a budget; central accounting and procurement systems; personnel policies, procedures, and standards for judges and staff; and the management of court facilities, security, libraries, and automation.

Chapter 211B of the Massachusetts General Laws authorized the District Court Department (DCD), which has civil jurisdiction over money-damage cases involving tort and contract actions; small claims; summary process; civil motor vehicle infractions (CMVI); mental health, alcoholism, drug abuse commitments; and juvenile matters in Districts without a Juvenile Court. Its criminal jurisdiction extends over all misdemeanors and certain felonies. The DCD established 62 Divisions, each having a specific territorial jurisdiction, to preside over the civil and criminal matters that are brought before it. The Division's organizational structure consists of three separately managed offices: the Judge's Lobby, headed by a First Justice; the Clerk-Magistrate's Office, headed by a Clerk-Magistrate; and the Probation Office, headed by a Chief Probation Officer. The First Justice is the administrative head of the Division and is responsible for preparing the Division's budget and accounting for its revenues; however, the Clerk-Magistrate and the Chief Probation Officer are responsible for the internal administration of their respective offices.

The Woburn Division of the District Court Department (WDC) presides over civil and criminal matters falling within its territorial jurisdiction: the city of Woburn and the towns of Winchester, Stoneham, Burlington, Wilmington, Reading, and North Reading. During our audit period, July 1, 2004 to September 30, 2006, WDC collected revenues of \$3,910,375 and disbursed them to the Commonwealth and those municipalities. The majority (approximately 94%) of revenue collected

by WDC was paid to the Commonwealth as either general or specific state revenue—totaling \$3,681,162—as follows:

Revenue Type	Amount	Percentage
General Revenue	\$1,984,814	53.92
Victim Witness	125,679	3.41
Surcharges	124,555	3.38
Indigent Defense	4,715	.13
Counsel Fees	296,041	8.04
Highway Fund	27,057	.74
Drug Analysis Fund	2,970	.08
Head Injury Program	185,440	5.04
Probation Fees	816,066	22.17
Environmental Fees	810	.02
Alcohol Fees	113,015	3.07
	<u>\$3,681,162</u>	<u>100.00</u>

Approximately \$856,461 of those funds consisting of probation supervision and alcohol fees were collected by the Probation Office and submitted to the Clerk-Magistrate’s Office for transmittal to the Commonwealth. The Probation Office collected approximately \$364,324 of restitution money that it paid directly to the parties owed the funds. Beginning July 18, 2006, the receipt and disbursement process was consolidated and is the responsibility of the Clerk Magistrate’s Office.

In addition to processing civil case entry fees and monetary fee assessments on criminal cases, WDC was custodian of approximately 316 cash bails amounting to \$114,160 as of September 30, 2006. Bail in cash (WDC does not accept non-cash forms of bail) is the security given to the court by defendants or their sureties to obtain release and to ensure appearance in court, at a future date, on criminal matters. Bail is subsequently returned, upon court order, if defendants adhere to the terms of their release.

WDC is also responsible for conducting CMVI hearings, which are requested by the alleged violator and heard by a Clerk-Magistrate or judge who determines whether the drivers are responsible for the CMVI offenses cited. WDC does not collect the associated monetary assessment when a violator is found responsible, but it is required to submit the results of the hearing to the Registry of Motor Vehicles, which follows up on collections.

WDC operations were funded by appropriations under the control of either the Division (local) or the AOTC or Commissioner of Probation Office (central). Under local control was an appropriation for personnel-related expenses of the Clerk-Magistrate’s Office and Judge’s Lobby

support staff, and certain administrative expenses (supplies, periodicals, law books, etc.). Other administrative and personnel expenses of the Division were paid by centrally controlled appropriations. According to the Commonwealth's records, local and certain central appropriation expenditures associated with the operation of the Division for the period of July 1, 2004 to September 30, 2006 totaled \$2,374,617¹.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of the financial and management controls of WDC. The scope of our audit included WDC's controls over operational activities, including cash management, bail funds, and criminal- and civil-case activity, for the period of July 1, 2004 to September 30, 2006.

Our audit was conducted in accordance with applicable generally accepted government auditing standards for performance audits and, accordingly, included audit procedures and tests that we considered necessary under the circumstances.

Our audit objectives were to (1) assess the adequacy of WDC's internal controls over cash management, bail funds, civil- and criminal-case activity and (2) determine the extent of controls for measuring, reporting, and monitoring effectiveness and efficiency regarding WDC's compliance with applicable state laws, rules, and regulations; other state guidelines; and AOTC and DCD policies and procedures.

Our review centered on the activities and operations of WDC's Judge's Lobby, Clerk-Magistrate's Office, and Probation Office. We reviewed bail and related criminal-case activity. We also reviewed cash management activity and transactions involving criminal monetary assessments and civil case entry fees, to determine whether policies and procedures were being followed.

To achieve our audit objectives, we conducted interviews with management and staff and reviewed available prior audit reports, the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System reports, AOTC statistical reports, and WDC's organizational structure. In addition, we obtained and reviewed copies of statutes, policies and procedures,

¹ This amount does not include certain centrally controlled expenditures, such as facility lease and related operational expenses as well as personnel costs attributable to judges, court officers, security officers, and probation officers since they are not identified by court division in the Commonwealth's accounting system.

accounting records, and other source documents. Our assessment of internal controls over financial and management activities at WDC was based on those interviews and that review of documents.

Our recommendations are intended to assist WDC in developing, implementing, or improving internal controls and overall financial and administrative operations to ensure that WDC's systems covering cash management, bail funds, and criminal- and civil-case activity operate in an economical, efficient, and effective manner and in compliance with applicable rules, regulations, and laws.

Based on our review, we have determined that, except for the issue noted in the Audit Results section of this report, WDC (1) maintained adequate internal controls over cash management, bail funds, and civil- and criminal-case activity; (2) properly recorded, collected, deposited, and accounted for all receipts; and (3) complied with applicable laws, rules, and regulations, for the areas tested.

AUDIT RESULTS

IMPROVEMENTS NEEDED WITH CONTRACT MANAGEMENT FOR VENDING MACHINES

Our audit found that improvements were needed with procurement management for vending machine contracts at both AOTC and WDC. Specifically, our examination determined that since December 17, 2001—when the WDC entered into its current vendor service agreement¹—neither the court nor the Commonwealth has received commission income from vending machine services. Although court records disclose that commission income was received under the prior vending machine arrangement, the requirement for commission payments was not established in the current contract. Moreover, even though AOTC’s Legal Department approved the current service agreement, both the prior and current vending machine arrangements were executed without performing competitive bid procedures. Procurement provisions issued by AOTC require courts to seek competitive bids for these types of contracts to best serve the needs of the public, the courts, and the Commonwealth.

AOTC’s Chief Justice for Administration and Management in January 1994 provided guidance to courts related to the competitive procurement of vending machines. Section 2 of the memo provides the basic provisions for such procurement and states, in part:

*2. **Basic Provisions:** ...Requests for Proposals (RFP's) should include provisions which best ensure that the public will be fairly served and the Commonwealth receives a benefit, and that you will be able to fairly compare the vendors' responses.*

Court personnel were unaware of the requirement to seek requests for proposals for its vending machines. Staff members stated that although the Court and Commonwealth do not benefit from a commission payment, Court employees and the public gain access to snacks and drinks without having to leave the Court premises.

Competitive procurements foster competition among contractors, which usually results in achieving better prices, quality, customer service and public benefit. The lack of a competitive procurement process may result in the WDC and the Commonwealth not receiving the maximum potential benefit and value from their vending machine arrangements.

¹ Vending service agreement for a term of seven years beginning December 17, 2001 through December 16, 2008.

Recommendation

The AOTC Procurement Section of the Fiscal Affairs Department should review its procurement policies to determine whether they properly address current issues dealing with the procurement of vending machines. The Procurement Section should then review the current arrangement to determine whether it is best serving the needs of the public, the Court, and the Commonwealth. If adjustments are necessary, it should provide guidance to WDC regarding how to proceed with this vending arrangement. In addition, vending machine contract procurement policies should be amended to require a comparison of benefits between receiving commission income and other types of benefits (e.g. having access to snack items without the need to leave the court building) that the court could receive, and encourage contracts that maximize benefits to the public, the court and the Commonwealth.

Auditee's Response

The Clerk-Magistrate provided the following response:

In December, 2001 this office, after consultation with the Fiscal Affairs Department of the Trial Court, entered into a vending service contract with [selected vendor name] to provide this court with vending machines for both cold drinks and snacks. The audit report states that this office failed to comply with the competitive bid process in negotiating this service contract, however the purchasing coordinator did make several futile attempts to obtain additional vendor participation.

Prior to entering into this contract, the court established certain specifications for prospective vendors. First, that the vendor be able to provide both cold drinks and snacks as it was essential that both services be available, as this building caters not only to court staff, but also to citizens completing their jury service and to a community service program. Second, since space was also an issue as the machines were to be installed within the jury pool room, it was a priority that the vendor be able to install smaller machines than our current contractor. After detailing the specifications of our proposal, the purchasing coordinator from this office did initially contact several vendors to submit bids, however most vendors were unable to meet our specifications or deemed the project to be unprofitable based upon the limited volume of business that our current vending service was earning. As a result, all vendors, except [selected vendor name] declined to submit bids.

The second issue set forth in the audit report is that the current vending contract fails to establish a provision for commission income to be paid to the Commonwealth. Prior to the execution of the current contract, the Commonwealth did receive commission earnings of approximately \$32.00 per month, however the quality of service and the product cost offered by our previous vendor was severely inadequate. Due to the commencement of our jury session, this court requires access to affordable vending machines as this building has no other on-site food service facilities available to citizens awaiting jury selection. [Selected vendor name] was able to comply with the specifications set forth in our proposal and agreed, if commission was waived, to

maintain all products at an affordable price, so with the approval of the Trial Court no commission fee was negotiated. The result of this contractual relationship is that the vendor has continually maintained clean, working machines with affordable products, unlike prior vendors utilized by this court division.

Based upon the foregoing, I believe that this office has substantially complied with the competitive procurement process and that the Commonwealth and the Trial Court are receiving maximum value for the services provided by [selected vendor name].

Auditor's Reply

We concur with the Clerk-Magistrate's viewpoint that vending machine services provide an important need, as well as a practical convenience, that serves both the public and the Court. Our report correctly states that the court requested and received approval from the AOTC/Legal Department concerning its vending service agreement. However, as detailed below, we differ with the Court and its opinion that it substantially complied with vending machine procurement policies and procedures promulgated by the AOTC and that the Commonwealth and the Trial Court are receiving maximum value from this procurement.

With respect to compliance with vending machine procurement policies and procedures, we requested, but did not receive, the court's procurement files (e.g., bid information or Request For Proposal (RFP), vendor proposals, the service agreement, bid tabulation sheets, etc.) for this contract. The Court's response indicates that specifications were developed and provided to prospective vendors. However, the Court could not provide us with evidence that specifications were developed and provided to prospective vendors. We were only provided a copy of the current vendor service agreement and an inter-office memorandum from the AOTC/Legal Department that supported management's signing of the service agreement. The Legal Department made no comment as to whether the selection of the vendor resulted from a valid bid or RFP process. While AOTC's procurement process requires courts to forward—to the Procurement Section of the Fiscal Affairs Department—procurement documents that include, a competitive bid form, the vendor's proposal, and the RFP, and that the Court retain copies of all documents, the absence of procurement information indicates that contract management needs improvement. Moreover, without procurement information, the court cannot demonstrate that a valid competitive bid and solicitation for responses from vendors known to deal with public-use machines took place, and that it is receiving the maximum benefit and best value for vending services.

With respect to receiving the maximum benefit from this procurement, we acknowledge that the Court and the Commonwealth do receive the benefit of access to drinks and snacks. However, no financial benefits (i.e. commissions) are paid to the Commonwealth. Examinations conducted by our office at other court locations disclosed that this same vendor is paying monthly commissions on comparably priced products at those courts. Therefore, we believe that commission payments at the Woburn District Court are also appropriate.