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INDEPENDENT STATE AUDITOR'S REPORT

ON CERTAIN ACTIVITIES OF THE

MASSACHUSETTS BAY TRANSPORTATION

AUTHORITY

JULY 1, 1995 TO JUNE 30, 2002

**OFFICIAL AUDIT
REPORT**

MARCH 28, 2003

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Our review of the Massachusetts Bay Transportation Authority (MBTA) was conducted to determine the overall effectiveness of its Real Estate Department in overseeing the activities of several private companies contracted to manage the North Station Parking Garage and the South Station Bus Terminal and Parking Garage. These management contracts, awarded in April 1995 and August 1995, respectively, were intended to increase parking revenues and provide professional management and facility maintenance. We also reviewed the MBTA's compliance with the provisions of Chapter 15 of the Acts and Resolves of 1993, "Establishing a Multi-Purpose Arena and Transportation Center."

AUDIT RESULTS

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1. THE MBTA DID NOT PROPERLY OVERSEE THE MANAGEMENT CONTRACTS AWARDED FOR ITS PARKING FACILITIES AT NORTH AND SOUTH STATIONS

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The MBTA did not properly monitor the activities of its private management companies concerning the various parking, cleaning, and security-services subcontracts for the parking facilities at North and South Stations. As a result, several contracts were not awarded through a competitive bidding process, and as contracts expired they were not formally extended or advertised for bid. Moreover, the MBTA did not ensure that annual certified audits were performed for these management contracts as required in the management agreements. Finally, these management contracts were awarded based on a flawed selection process that did not properly consider the proposed budgeted costs to operate these facilities.

2. THE MBTA'S CONTINUED USE OF A PRIVATE MANAGEMENT CONTRACT FOR THE NORTH STATION PARKING GARAGE IS A VIOLATION OF CHAPTER 15 OF THE ACTS AND RESOLVES OF 1993

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Chapter 15 of the Acts and Resolves of 1993 authorized the establishment of a multipurpose arena and transportation center at North Station in Boston. Section 6 of this legislation (dated February 26, 1993) limits the term of the initial private management contract for this facility to two years, after which the MBTA was to have assumed management of the facility; furthermore, it was expressly prohibited from entering into any subsequent management contracts for the facility without prior statutory authorization. We have determined that the MBTA has been in technical violation of this law since September 1, 1997, because it continues to employ the original private management company, selected in September 1995, in a holdover status, and has not itself assumed management responsibilities.

INTRODUCTION

Background

As part of the reconstruction of a new “super-station” at North Station and the economic redevelopment of the surrounding area, Chapter 15 of the Acts and Resolves of 1993 authorized the establishment of a multipurpose arena and transportation center. Included in this plan was the construction of a five-level, 1,275-car parking garage beneath the privately owned Fleet Center. This parking garage was primarily intended to serve as replacement parking for neighboring areas during the construction of the Central Artery Project.

The authorizations for the construction and operation of this facility were provided by the abovementioned legislation as well as a permit and access agreement between the Massachusetts Bay Transportation Authority (MBTA) and the City of Boston. A parking-lease agreement between the MBTA and the New Boston Garden Corporation (NBGC) dated April 16, 1993 gave NBGC the right to lease up to 975 parking spaces for use by NBGC, its sub-tenants, and its employees. The initial term of this lease was 10 years, with an option for nine five-year option periods to renew. The parking-space rents were set at 115% of the market rate both for monthly leases of 125 NBGC spaces and for 850 arena-event spaces. As of June 30, 2002, NBGC had made all payments due under this lease.

The MBTA issued Requests for Proposals (RFPs) in February 1995 for the North Station Parking Garage management contract. Six final proposals were submitted by recognized national and local operators of parking facilities. A selection committee composed of MBTA employees from the real estate, diversity, internal audit, revenue, and construction departments evaluated the submittals based on seven criteria. The committee selected Myers/Central Parking, Inc. as the preferred operator for a base management fee of \$48,000 per year for two years. In April 1995 the selection committee recommended, and the MBTA’s Board of Directors approved, the selection of Myers/Central Parking, Inc. as the parking manager for a term of two years commencing on September 1, 1995 and expiring on August 31, 1997. As of June 30, 2002, Myers/Central Parking, Inc. remains the parking manager in a holdover capacity under the same terms as the expired contract.

Chapter 15 of the Acts and Resolves of 1993 provides that NBGC make a promissory note payable to the MBTA for \$5,126,000 in return for construction work performed by the MBTA on behalf of NBGC for foundations inserted into the garage walls and for the transfer of certain property rights and easements given to NBGC by the MBTA. The terms of this promissory note, dated April 16, 1993, were as follows:

- Interest rate: 6% per annum, provided that sufficient cash flow is available.
- Principal: repayment in annual installments of 10% of the outstanding principal due beginning on the 11th year and for the next eight years. Any unpaid principal is due in full on the 20th anniversary (April 2013).

As of June 30, 2002, NBGC had made all loan payments to the MBTA under the terms of the promissory note.

The South Station Transportation Center (SSTC) is designed to be a regional intermodal transportation facility. When fully completed, it will provide a rail-passenger concourse serving both Amtrak and MBTA commuter rail lines, a commuter and intercity bus terminal, and an airport bus line; it will also provide access to the MBTA's Red Line rapid transit station and public parking. In addition, foundation supports have been installed to accommodate the planned construction of an office tower above the rail beds and bus terminal.

The bus terminal and parking garage facility consists of 29 bus docks, a 223-space parking garage, and office, retail, and public space. The purpose of the facility was to replace Boston's private bus terminals, reduce traffic congestion by providing an off-street location for private bus-carrier loading and unloading, improve the Logan Airport link shuttle-bus service, and create public parking.

In December 1994, the MBTA issued an RFP for the management and operation of the South Station Bus Terminal and Parking Garage. As with the North Station Parking Garage RFP, a selection committee composed of MBTA employees from various departments was charged with reviewing the proposals submitted, interviewing prospective operators, and evaluating the overall qualifications and management plans for each operator based on seven criteria, including proposed fees.

In August 1995, the MBTA entered into a three-year management contract with the Beacon Property Management Corporation for a total fee of \$485,000. This contract contained an option for a three-year extension at the MBTA's sole discretion.

In December 1997, the Beacon Property Management Corporation merged with Equity Office Properties, Inc., and concurrent with that merger the MBTA authorized a three-year extension of the management agreement with Beacon Properties from May 1, 1998 to April 30, 2001. The management fee was set at \$160,000 per year, adjusted for inflation, with increases not to exceed 10% of the first year's fee over the three-year period.

In February 2002, after a protracted RFP process, the MBTA awarded a new five-year contract to Codman Company, Inc. to manage the South Station Bus Terminal and Parking Garage from February 1, 2002 to January 31, 2007 at a fixed fee of \$99,000 per year (\$495,000 total).

Selected 1999-2002 financial operating results for the North and South Station facilities are listed in the following table:

Selected Financial Operating Results, Fiscal Years 1999 to 2002

	1999	2000	2001	2002	1999-2002 Increase	1999-2002 Increase (%)
North Station Facility						
Revenue	\$4,254,572	\$4,658,530	\$4,703,126	\$5,785,888	\$1,531,316	36
Expenses	<u>1,072,637</u>	<u>1,284,107</u>	<u>1,354,526</u>	<u>1,423,060</u>	<u>350,423</u>	33
Operating Surplus	<u>\$3,181,935</u>	<u>\$3,374,423</u>	<u>\$3,348,600</u>	<u>\$4,362,828</u>	<u>\$1,180,893</u>	37
Selected Expenses:						
Parking	\$537,909	\$602,155	\$627,297	\$723,487	\$185,578	34
Cleaning	\$ 14,845	\$ 28,245	\$ 29,579	\$ 29,621	\$ 14,776	100
Security	\$113,805	\$136,347	\$146,155	\$147,477	\$ 33,672	30
Maintenance	\$172,344	\$198,126	\$220,520	\$165,136	\$ (7,208)	-4
Management Fee	\$ 48,400	\$ 48,400	\$ 48,400	\$ 48,400	\$ 0	0
South Station Facility						
Revenue	\$2,514,272	\$2,719,254	\$2,932,913	\$2,818,684	\$ 304,412	12
Expenses	<u>2,296,327</u>	<u>2,529,835</u>	<u>2,772,964</u>	<u>2,599,910</u>	<u>303,583</u>	13
Operating Surplus	<u>\$ 217,945</u>	<u>\$ 189,419</u>	<u>\$ 159,949</u>	<u>\$ 218,774</u>	<u>\$ 829</u>	0

Selected Expenses:

Parking	\$269,771	\$308,966	\$323,897	\$325,338	\$ 55,567	21
Cleaning	\$368,800	\$417,710	\$442,050	\$436,722	\$ 67,922	18
Security	\$621,503	\$635,939	\$753,018	\$727,019	\$ 105,516	17
Maintenance	\$801,054	\$592,243	\$663,836	\$557,821	\$(243,233)	-30
Management Fee	\$160,000	\$164,000	\$175,413	\$142,890	\$ (17,110)	-11

Audit Scope, Objectives, and Methodology

Our audit covered the period July 1, 1995 to June 30, 2002 and was conducted in accordance with applicable generally accepted government auditing standards for performance audits.

The objectives of this audit were to

- Determine whether the contract selection process used by the MBTA was open, documented, and in accordance with its own regulations and applicable state laws
- Review the reasonableness of the contract terms and conditions
- Review the reasonableness of the operating expenses incurred to properly manage the facilities in question
- Determine the adequacy of the MBTA's monitoring of the financial and operational activities of the management companies

The audit methodology included reviewing (1) RFP selection-process files; (2) executed management contracts and applicable subcontracts for each facility; (3) MBTA and management company correspondence; (4) monthly operating statements and supporting documentation for receipts and disbursements submitted to the MBTA for review and approval; (5) proposed annual operating budgets for each facility; and (6) Chapter 15 of the Acts of 1993.

We also conducted site visits to determine whether each facility is being properly maintained. In addition, we interviewed MBTA officials and representatives of the current management companies.

AUDIT RESULTS

1. THE MBTA DID NOT PROPERLY OVERSEE THE MANAGEMENT CONTRACTS AWARDED FOR ITS PARKING FACILITIES AT NORTH AND SOUTH STATIONS

The Massachusetts Bay Transportation Authority (MBTA) did not properly monitor the activities of its private management companies in the awarding of various parking, cleaning, and security-services subcontracts for the parking facilities at North and South Stations. As a result, several contracts were not awarded through a competitive bidding process, and as contracts expired they were not formally extended or advertised for bid. Moreover, the MBTA did not ensure that annual certified audits were performed for these management contracts as required in the management agreements. Finally, these management contracts were originally awarded based on a flawed selection process that did not award the contract to the lowest responsible bidder and did not properly consider the proposed budgeted costs to operate these facilities. Instead, the MBTA based its selection on subjectively computed scoring for the seven criteria used for the evaluation of the management proposals.

North Station Original Management Contract Award

The MBTA issued Requests for Proposals (RFPs) in February 1995 for the North Station Parking Garage management contract. Six final proposals were submitted from recognized national and local operators of parking facilities. A selection committee composed of MBTA employees from the real estate, diversity, internal audit, revenue, and construction departments evaluated the submittals based on seven criteria and a point system. The maximum number of points totaled 600 and were weighted as follows:

Criteria	Points	Weight (%)
Quality and Responsiveness of Proposal	90	15
Project Approach	90	15
Managerial Approach	120	20
Equal-Opportunity Compliance	90	15
General Capabilities	60	10
General Evaluation	60	10
Price	<u>90</u>	<u>15</u>
Total	<u>600</u>	<u>100</u>

A review of the six management proposals submitted to the selection committee revealed that the operator selected by the committee, Myers/Central Parking, Inc., had submitted the third-lowest management fee (\$96,800) and the highest proposed operating budget (\$1.9 million) for the two-year contract. The firm that had submitted the lowest management fee (\$67,500), with a proposed operating budget of \$1.3 million, was ranked last by the committee. The failure of the MBTA to award the contract to the lowest bidder was not in the best interests of the Commonwealth's taxpayers and undermined the credibility of the selection process, calling into question whether it was open, competitive, and fair.

In April 1995, the selection committee recommended, and the MBTA's Board of Directors approved, the selection of Myers/Central Parking, Inc. as the parking manager for a term of two years commencing on September 1, 1995 and expiring on August 31, 1997. As of June 30, 2002, however, Myers/Central Parking, Inc. remains the parking manager in a holdover capacity under the same terms as the expired contract.

South Station Original Management Contract Award

In December 1994, the MBTA issued an RFP for the management of the bus terminal and parking garage at South Station for three years. Two responses were received and reviewed by the MBTA's South Station Transportation Center (SSTC) Bus Terminal Selection Committee, composed of seven MBTA employees representing six departments.

We attempted to review the bids received; however, the MBTA was unable to provide the original bid submitted by the firm it selected to manage the facility. A review of available documents showed that the losing firm, South Station Terminal Management Company, Inc., had submitted the lowest bid (\$1,725,000) for the three-year period, whereas a revised bid from the winning firm, Beacon Property Management Corporation, was \$1,751,181, or \$26,181 higher. Moreover, the revised bid by the Beacon Property Management Corporation was characterized by MBTA management in a staff summary submitted to the MBTA Board of Directors as a "significant reduction from their original service fee proposal."

Therefore, just as with the North Station facility, the MBTA did not award this management contract to the low bidder. Similarly, this shortcoming was the result of a subjective selection process that did not give proper weight to the importance of the proposed management fee. On March 29, 1995, the MBTA Board of Directors approved a three-year, \$1,751,181 contract with the Beacon Property Management Corporation to manage the SSTC Bus Terminal facility for the period May 1, 1995 to April 30, 1998.

In December 1997, Equity Office Properties, Inc., purchased control of the Beacon Property Management Corporation and assumed the management duties at the South Station Bus Terminal, and the existing management agreement between the MBTA and Beacon was extended to April 30, 2001.

In June 2001, after a new RFP process, the MBTA recommended that Equity Office Properties be awarded a new five-year contract to manage the South Station Bus Terminal, despite the fact that its proposed management fee was \$915,000, or \$115,000 more than the \$800,000 proposed by the other bidder, the Codman Company, Inc. of Boston. However, in October 2001, the MBTA's Director of Real Estate, after discussions with the Office of the State Auditor (OSA) regarding the process used to select the preferred operator, decided to rescind this award and moved to re-bid the contract using an RFP process that more fairly considered the lowest-cost proposal.

In February 2002, the Codman Company, the sole bidder under the re-bid process, was awarded a contract to manage the facility at a total cost of \$495,000 for the five-year period ending January 31, 2007. This re-bidding realized a savings to the MBTA of \$420,000 compared with Equity Office Properties' original bid of \$915,000, and a savings of \$305,000 compared with Codman's original bid of \$800,000.

According to MBTA officials, for all future procurements the MBTA has decided to use the selection committee only to ensure that all proposed bidders are qualified to provide the necessary services. Once that has been established, the final award will be based on the lowest bid.

Subcontracts

Our review of the various subcontracts awarded by the management companies at the North and South Station facilities indicated that some were not properly documented in either the MBTA's or the management company's files to ensure that they were awarded on an open and competitive basis, or were not re-bid as the original contracts expired. Specifically, the following subcontracts had such exceptions:

Subcontract Service	Contract Value per Year	Exception
South Station:		
Parking	\$250,000	No contract selection documentation in files for periods 5/95-1/97, and contract not re-bid since expiring on 11/30/00.
Cleaning	\$350,000	No contract selection documentation for period 10/95-8/97. Contract not re-bid since expiring on 10/31/00. RFP issued by Codman Company on 5/23/02.
Security	\$600,000	No contract selection documentation for the periods 5/95-6/97 and 2/00-9/02.

Annual Certified Audit

In accordance with the North and South Station facilities' operating specifications developed by the MBTA and accepted by the respective facility operators, an annual certified audit of the financial operations of each facility is to be provided by the operator to the MBTA upon the request and at the expense of the latter. Our review revealed that the MBTA had not requested such annual certified audits for the North Station garage facility for fiscal years 1998 through 2002. However, certified audits were requested and received for the South Station facility every year since the assumption of management operations.

Also, we determined that to date the MBTA has not performed any internal audit reviews of these management contracts. This lack of both internal and external audits of the financial and operational performance under these management contracts limits any assurance that revenues collected under these contracts and expenditures charged to them were accurate, allocable, and allowable under the terms of the contracts.

Since these operations are cash-oriented and generate revenues of approximately \$8 million per year, it would be prudent for the MBTA to independently ensure that proper controls over the receipt and recording of cash are in place and enforced by the operators to safeguard against the possible misappropriation of MBTA funds.

Recommendation

The MBTA should:

- Continue to use its RFP selection committees only for pre-qualification and award all future management contracts strictly through sealed-bid competitions
- Improve oversight of the activities of the management companies to ensure that all subcontract services are procured in an open, documented, and competitive manner
- Require annual certified audits of contract activities for each facility
- Consider periodic internal audit reviews of contract compliance

Auditee's Response***North Station Original Management Contract Award***

Since the Original Request for Proposals (RFP) was issued in 1995, the MBTA has modified its selection process whereby management contracts are awarded to the lowest qualified bidder through sealed bid competitions. A selection committee is now used only to pre-qualify those prospective bidders.

South Station Original Management Contract Award

Again, the MBTA is now awarding management contracts based upon the lowest bid following a pre-qualification process.

Subcontracts

South Station:

Parking: The South Station Bus Terminal was opened to the public on October 28, 1995. The first year of parking management was provided under a license agreement. This mechanism was utilized to provide a property management company and the MBTA time to experience the operation of a new facility and to develop specifications to go out to bid during the first year of operation. Standard Parking managed the parking from October 1995 to November 1998 under the license agreement. In December of 1998 Standard Parking operated the facility, after it was selected over Allright Parking, through the public bid process. The contract expired on November 30, 2000 and Standard Parking has been the operator

at will since that time. The Codman Company will advertise a new Request for Proposals by July 2003.

Cleaning: Similar to the parking license, cleaning services were provided under a one 1-year license during the first year of operation of the facility. This license continued for an additional 10 months, at which time the services were publicly bid by Beacon Properties. The Codman Company assumed management of the South Station Bus Terminal on February 1, 2002, publicly bid the cleaning contract in May of 2002 and awarded the contract to Empire Cleaning, the low bidder beginning September 1, 2002.

Security: From the opening of the South Station Bus Terminal on October 28, 1995 until June 1997, security at the bus terminal was also under a license agreement. From June 1997 to February 2000, security was under contract through a public bid process. Allied Security was held over until the security contract was publicly bid by the Codman Company on September 5, 2002. Allied Security was the low bidder and was awarded the contract.

In summary, MBTA management will insure that all subcontracts awarded by the management companies will now be based on an open and competitive process.

Annual Certified Audit

Beginning with FY [fiscal year] 02, the MBTA has asked that an annual audit be performed on the financial operations at North Station, as is the practice for the South Station facility. The firm of KPMG is in the process of completing the FY 02 audit for the North Station parking facility. Periodic internal audits of the management contracts will also be considered.

2. THE MBTA'S CONTINUED USE OF A PRIVATE MANAGEMENT CONTRACT FOR THE NORTH STATION PARKING GARAGE IS A VIOLATION OF CHAPTER 15 OF THE ACTS AND RESOLVES OF 1993

Chapter 15 of the Acts and Resolves of 1993 authorized the establishment of a multipurpose arena and transportation center at North Station. Section 6 of this legislation (dated February 26, 1993) limits the term of the initial private management contract for this facility to two years, after which the MBTA was to assume management of the facility; furthermore, it was expressly prohibited from entering into any subsequent management contracts for the facility without prior statutory authorization. We have determined that the MBTA has been in technical violation of this law since September 1, 1997, because it continues to employ the original private management company in a holdover status and has not itself assumed management responsibilities as required.

Section 6 (a) of Chapter 15 states:

The parking garage to be constructed in connection with the North Station Transportation Center may be managed and operated by the Massachusetts Bay Transportation Authority, and said Authority may contract for the management, operation or setting of fees, fee collection, security services, cleaning and maintenance for said parking garage; provided, however, that if the Authority contracts for the management of said garage, said contract shall expire no more than two years after its date of execution, at which time, said Authority shall assume management of the garage and shall not enter into any subsequent management contracts for said garage without prior statutory authorization.

MBTA officials stated that every year since 1997 the MBTA has filed proposed legislation to amend Chapter 15, Section 6 (a) to allow the MBTA to re-bid the management contract for the North Station garage. However, each time, the proposed legislation has expired in committee. The proposed legislation submitted by the MBTA would require the MBTA to demonstrate that hiring a private management company is the most efficient method of managing and operating the facility. We inquired whether the MBTA has compiled an analysis of private versus in-house management costs that might demonstrate operating-cost savings via private management and therefore improve the chances of legislative approval for the proposed legislation. MBTA officials stated that such a cost study has not been prepared for the Legislature's consideration.

The inability of the MBTA to obtain legislative approval to re-bid the holdover contract unfairly rewards the current management company by keeping it in a no-bid, holdover status; and results in the MBTA's remaining in technical violation of the law.

Recommendation

The MBTA should resubmit proposed legislation to amend Chapter 15, Section 6(a), of the Acts of 1993. In addition, the MBTA should prepare, and forward to the Legislature for consideration and comment, a detailed cost analysis that demonstrates provable cost savings from the use of a private management company rather than in-house management. Such an analysis would strengthen the MBTA's position that continued private management of this facility is indeed warranted.

Auditee's Response

The MBTA will again submit proposed legislation to amend Chapter 15, Section 6(a), of the Acts of 1993. The MBTA will also evaluate the preparation of a detailed cost analysis, for Legislative consideration and comment, that demonstrates provable cost savings from the use of a private management company rather than in-house management. Such an analysis would strengthen the MBTA's position that private management of this facility is indeed warranted.