



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

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Official Audit Report – Issued August 27, 2012

Review of Massachusetts Bay Transportation Authority's Real Estate Management Activities

For the period July 1, 2008 through June 30, 2010



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The Massachusetts Bay Transportation Authority (MBTA), which was established in 1964 in accordance with Chapter 161A of the Massachusetts General Laws, provides bus, bus rapid transit, light rail, heavy rail, commuter rail, ferry, and demand responsive public transportation services to 175 cities and towns in the Massachusetts Bay region, including the City of Boston. Our audit of the MBTA was conducted to assess the effectiveness of its monitoring of Transit Realty Associates, LLC (TRA), which acts as its contractor to manage the MBTA's real estate activities. The audit focused on selected transactions, conducted by TRA and approved by the MBTA, to determine whether these activities were in conformity with the scope and terms of the real estate management contract between the two entities. In addition, we determined whether all fees and commissions paid to TRA by the MBTA were appropriate, whether all acquisitions and dispositions of property were done in compliance with MBTA policies and procedures as well as state laws, and whether accurate records of all TRA transactions were being properly maintained by the MBTA and TRA. Finally, we reviewed whether the MBTA implemented our prior audit recommendations contained in audit report No. 2001-2513-3.

Based on our audit, we have concluded that, except as noted in the Audit Findings section of this report, during the period July 1, 2008 through June 30, 2010, the MBTA maintained adequate controls over its real estate management contractor and complied with applicable laws, rules, and regulations for the areas tested.

AUDIT RESULTS

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1. PRIOR AUDIT RESULTS RESOLVED

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Our prior audit (No. 2001-2513-3) of the MBTA noted deficiencies in the areas of (a) the monitoring of rental adjustments granted by the TRA, (b) unnecessary design and development fees, and (c) the awarding of design contracts. Our current audit indicated that these prior issues have been adequately addressed.

2. PRIOR AUDIT RESULTS UNRESOLVED - IMPROVEMENTS NEEDED IN METHODOLOGY USED TO PROCURE REAL ESTATE MANAGEMENT CONTRACT

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During our prior audit, we noted that the MBTA used a selection process to award the then most recent property management contract that did not use price as the final criteria when awarding this contract. As a result, TRA, which was the second-lowest bidder, was again awarded this property management contract. Accordingly, we recommended that the MBTA adopt the standards of the Commonwealth's Uniform Procurement Act, Chapter 30B of the General Laws, which would help reduce the cost of MBTA services by requiring the MBTA to procure services from the lowest responsible bidders. However, during our current audit, we determined that the most recent property management contract for the five-year period ending July 31, 2012 was again awarded by the MBTA to TRA, this time as the sole bidder, in the amount of \$9,217,426, plus lease and license fees and sales commissions. In awarding this contract, the MBTA chose not to adopt a procurement process that uses price as the final determining factor, but

instead utilized a “best value” procurement process followed by both the Commonwealth’s Operational Services Division (OSD) and the Federal Transit Administration (FTA), which uses a combination of qualifications and price as the basis of award. However, we determined that the MBTA procurement process did not properly consider price as an evaluative factor and also used new, restrictive experience criteria that may have discouraged other firms from bidding on the contract. With only one bid received (from the incumbent firm TRA), competition, a key requirement of the best-value process used by OSD and FTA, was lacking. Therefore, a proper weighing of price and qualifications from competing firms as the basis for this contract award was impossible.

INTRODUCTION

Background

The Massachusetts Bay Transportation Authority (MBTA), which was established in 1964 in accordance with Chapter 161A of the Massachusetts General Laws, provides bus, bus rapid transit, light rail, heavy rail, commuter rail, ferry, and demand responsive public transportation services to 175 cities and towns in the Massachusetts Bay region, including the City of Boston. On April 24, 1996, the MBTA notified the Office of the State Auditor (OSA) of its intent to award a privatization contract for its real estate activities that at the time were being handled by its own employees. In order to privatize its Real Estate Department, the MBTA had to comply with Chapter 296 of the Acts of 1993, the Commonwealth's privatization law. This law, which became effective on December 15, 1993, applies to all state agencies and independent authorities seeking to outsource a service performed by state or authority employees that has a service contract value of \$100,000 or more.

The process that the MBTA followed to comply with the privatization law included preparing a detailed written statement of real estate services, estimating the most cost-effective method of providing those services with MBTA personnel, selecting a contractor through an open and competitive bid process, and comparing the true in-house costs to the costs that would be incurred by contracting out the real estate services to the selected outside contractor, Transit Realty Associates, LLC (TRA).

The real estate services proposed by the MBTA to be privatized included asset management, disposition of property, and property development. The specific activities for these functions encompassed the following:

- Tenant administration and leasing for concessions, land leases, utility easement, and master lease agreements
- Disposition of surplus property
- Granting of licenses and permits for access and entry
- Establishment of joint development opportunities
- Consulting

Chapter 296 allows the OSA 30 days to either approve or reject an agency's or authority's privatization contract. Accordingly, the OSA, after reviewing the MBTA's submission for compliance with certain statutory provisions and the estimated costs to perform the real estate services in-house versus the estimated costs to be incurred by the proposed privatization contract between the MBTA and TRA, determined that the MBTA had complied with Chapter 296 of the Acts of 1993 in reaching its decision to privatize the management of its real estate activities.

Effective June 28, 1996, the MBTA and TRA executed a five-year contract to manage its real estate activities. The signed contract, which expired on July 31, 2001, provided for the payment of the following fees and commissions:

Based Asset Management Fees:	\$6,178,000 (five year total)
Lease Commissions and Fees:	6% for year 1 and 3% for each year thereafter, including renewals
Licenses and Leases under One Year:	One month's rent
New Income Production Fee:	10% of excess of total revenues collected over a predetermined annual calculation base
Surplus Property Sales:	10% of gross sale price
Joint Development Fees:	5% of gross revenues, 10% of excess total revenue, and 10% of "value creation"
Parking Garage Program:	5.5% master developer fee, 20% savings incentive fee and management fee of \$22.50/space/year. Design and engineering fee-7% of the estimated construction costs

Upon the conclusion of the original contract between the MBTA and TRA, a new Request for Proposals (RFP) was issued in August 2000 to again select a manager for its real estate activities for the next five-year period from August 1, 2001 through July 31, 2006. The services detailed in the August 14, 2000 RFP again focused on the three main real estate categories of asset management services, disposition services, and consulting services.

Three firms responded by the October 27, 2000 deadline, and their proposals were evaluated based on the following criteria:

Qualifications and Experience	Maximum of 15 points
Effective Management Plan	Maximum of 30 points
General Evaluation	Maximum of 15 points

Total Non-Price Score	Maximum of 60 points
Price Proposal	Maximum of 40 points
Total Possible Points	Maximum of 100 points

The MBTA's evaluating committee, by using this evaluation methodology, determined TRA to be the winner with a total score of 80.25 out of a possible 100 points. The second-ranked firm evaluated by the committee received a score of 74.2; however, its bid was approximately \$941,000 lower than TRA's. On July 16, 2001, the MBTA Board of Directors awarded a five-year contract to TRA to manage the MBTA's real estate activities for the period August 1, 2001 through July 31, 2006. At the conclusion of this contract, the MBTA voted to extend the original term of the TRA contract for an additional year until July 31, 2007.

On September 28, 2006, the MBTA issued an RFP for real estate management services for the period August 1, 2007 through July 31, 2012. This RFP again solicited services for the three aforementioned major real estate services categories: asset management services, disposition services, and consulting services. In addition to the stated five-year term, the contract provides for two optional terms of two years each. The RFP was publically advertised and listed on the MBTA website.

The RFP informed all prospective bidders that the selection criteria to be used under the RFP would no longer include price in the formal scoring of each firm's submittal, but that price may be considered as one of the final determining factors for award. Specifically, the MBTA stated the following in its RFP:

The MBTA has determined that it is in the public interest, for the purposes of this procurement, that evaluation factors relating to the Offeror's qualifications, experience, and management plan are more important than the proposed Asset Management Fee. Therefore, the MBTA may select an Offeror who offers an Asset Management Fee higher than the lowest Asset Management Fee among the responsible, eligible and qualified Offerors.

A copy of the RFP was sent to 19 firms, seven of which attended a pre-bid conference. However, only one firm, TRA, submitted a proposal by the submission deadline of December 14, 2006.

On March 8, 2007, the MBTA Board of Directors voted to award this latest real estate management contract to TRA for a five-year period, with two optional two-year extensions. The original term of

this contract expires on July 31, 2012 and provides for compensation payments to TRA based on the following fees and commission schedule and certain reimbursable expenses:

Based Asset Management Fees	\$9,217,426 (five year total)
Lease Commissions and Fees	6% of year 1 and 3% for each year for the next four years
Licenses and Leases under One Year	One month's compensation to the MBTA
Surplus Property Sales, Long Term Leases, and Long Term Easements Commissions	10% of the net sales price up to \$2.75 million of the net sale price; sliding scale from 4.5% to 1% for portion of net sales price over \$2.75 million
Transition Commission	Partial percentage fee scale based on status of transaction at end of the service agreement
Consultant Services	Principal \$250/hour Senior staff \$175/hour Junior staff \$100/hour Admin. staff \$60/hour

Gross revenues, total payments incurred, and net revenues realized by the MBTA during our audit period for the two fiscal years ended June 30, 2009 and 2010 were as follows:

	<u>Fiscal Year 2009</u>	<u>Fiscal Year 2010</u>
Gross Revenues to the MBTA	\$21,464,993	\$16,794,024
Payments:		
Third Parties	\$ 623,003	\$ 299,467
Escrow Accounts	<u>17,574</u>	<u>292,088</u>
Subtotal	\$ 640,577	\$ 591,155
Payments to TRA:		
Annual Fee (August-July)	\$ 1,774,211	\$ 1,817,438
Lease/License Fee	249,263	253,029
Consulting Service	244,918	163,200
Disposition Fee	677,350	1,050,882
Third Party Cost Paid	<u>340,548</u>	<u>237,914</u>
Subtotal	<u>\$ 3,286,290</u>	<u>\$ 3,522,463</u>
Total Payments	<u>\$ 3,926,867</u>	<u>\$ 4,114,018</u>
Net Revenues to the MBTA	\$17,538,126	\$12,680,006

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, we performed an audit of certain aspects of the MBTA's administration of its real estate management contract with TRA to ensure compliance with all contract provisions. The audit, which covered the period July 1, 2008 through June 30, 2010, included an examination of the management controls in place to properly review and approve all activities of the private contractor to efficiently and effectively manage the MBTA's real estate properties.

We conducted this performance audit in accordance with applicable generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.¹

Our primary audit objectives were to determine compliance with contract provisions in the following areas:

- Determine whether all commissions and fees paid for concessions, leases, and disposition of surplus property are accurate, proper, and in accordance with contract terms.
- Determine whether applicable laws regarding public advertisement and bidding were complied with for all property dispositions.
- Determine whether the MBTA is properly monitoring its real estate accounts receivable collections and adjustments made by TRA.
- Review the selection process used for awarding the August 1, 2007 through July 31, 2012 real estate management contract for compliance with applicable laws for public advertisement and bidding.

In addition, we conducted a follow-up review of prior audit results and recommendations for corrective actions contained in our prior audit report No. 2001-2513-3.

In order to achieve our audit objectives, we conducted the following methodology:

¹ Generally accepted government auditing standards require that organizations be free from independence impairments with respect to the entities they audit. Although the OSA approved the MBTA's original contract with TRA in 1996 pursuant to Chapter 296 of the Acts of 1993, the law does not require the OSA's involvement with approving any subsequent renewals of the contract. Therefore, given the scope and objectives of this audit, as well as the time period reviewed, this circumstance did not interfere with our ability to perform our audit work and report the results thereof impartially. This disclosure is made for informational purposes only.

- Reviewed the management contract terms to determine eligible commissions to be paid to TRA for concession leases, licenses, and property dispositions and whether the amounts paid conformed to the contractual commission schedule and contained evidence of MBTA review and approvals prior to payment.
- Reviewed property sales documents to ensure that all property sales were in compliance with laws and MBTA regulations regarding public advertisement and bidding.
- Interviewed the MBTA's Director of Real Estate and responsible employees at TRA to determine the management and reporting controls in place to properly oversee the activities of TRA on behalf of the MBTA.
- Reviewed monthly management reports prepared by TRA and submitted to the MBTA and tested major transactions against supporting documents maintained at the offices of the MBTA and at TRA.
- Reviewed and tested new lease agreements and renewals executed during our audit period for advertisement, bid, and lease payments.
- Reviewed and tested monthly cash receipts and disbursements, executed contracts and licenses, accounts receivable balances and adjustments, and expenses incurred by TRA and reimbursed by the MBTA.
- Reviewed the procurement process utilized by the MBTA for awarding the August 1, 2007 through July 31, 2012 real estate management contract.
- Conducted a follow-up review of prior audit results to determine whether the MBTA has implemented our recommendations for corrective actions and obtained documentation and tested these areas for current compliance.

Based on our audit we have concluded that, except as noted in the Audit Findings section of this report, during the period July 1, 2008 through June 30, 2010, the MBTA maintained adequate controls over its real estate management contractor and complied with applicable laws, rules, and regulations for the areas tested.

AUDIT RESULTS

1. PRIOR AUDIT RESULTS RESOLVED

Our prior audit (No. 2001-2513-3) of the Massachusetts Bay Transportation Authority (MBTA) noted deficiencies in the areas of (a) the monitoring of rental adjustments granted by Transit Realty Associates, LLC (TRA), which acts as the MBTA's contractor to manage its real estate activities; (b) unnecessary design and development fees; and (c) the awarding of design contracts. Our current audit indicated that these prior issues have been adequately addressed, as discussed below.

a. MBTA Monitoring of Rental Adjustments Granted by TRA Improved

Our prior audit of tenant leases and licenses maintained by TRA disclosed that a credit in the amount of \$275,000 for the installation of fiber optic cable was incorrectly granted by TRA against the first year's license fees from a national communications company. Accordingly, we recommended that the MBTA's Director of Real Estate review and approve all tenant billing adjustments and the supporting documentation provided by TRA prior to making the actual adjustments to the tenants' accounts. During our current audit we noted that the MBTA properly reviewed and approved all contractual credit adjustments made by TRA. Specifically, our examination of all credit adjustments made by TRA during the audit period revealed that the MBTA's Director of Real Estate properly reviewed and approved each credit adjustment for contractual write-offs and accounting errors before these items were recorded in the MBTA's accounting records.

b. Policies and Procedures to Ensure the Financial Feasibility of Proposed Projects Prior to Incurring Substantial Design and Development Fees

Our prior audit report recommended that the MBTA review the causes of an apparent breakdown in its decision-making process that resulted in \$1.8 million in MBTA funds being spent for the design and development of several parking garages by TRA before it was determined whether the facilities were actually financially feasible. During our current audit, we determined that the scope of services for the most recent contract with TRA no longer includes development services to be provided by TRA. Instead, the MBTA will conduct all future parking garage development activities utilizing MBTA staff.

c. Improvements to Ensure That All Design Contracts Are Awarded in an Open and Competitive Manner

Our prior audit report determined that the MBTA approved the awarding of a \$1.2 million parking garage design contract to a firm owned by a principal of TRA on a noncompetitive basis. During our current audit, we determined that the scope of services for the most recent contract with TRA no longer includes development services to be provided by TRA. Instead, the MBTA will conduct all future parking garage development design activities utilizing the MBTA's staff to issue and manage its customary Request for Qualifications for design services, which includes public advertisement of the work requested, a screening committee to rank and select the preferred designer, and a negotiation process to establish a mutually agreed-upon design fee. As a result of the MBTA's actions, this issue has been resolved.

2. PRIOR AUDIT RESULTS UNRESOLVED – IMPROVEMENTS NEEDED IN METHODOLOGY USED TO PROCURE REAL ESTATE MANAGEMENT CONTRACT

During our prior audit, we noted that the MBTA used a selection process to award the then most recent property management contract that did not use price as the final criteria when awarding this contract. Instead, the MBTA used a five-criteria process, of which price represented only 40% of the total elements to be ranked. As a result, TRA, which was the second-lowest bidder, was again awarded this property management contract. Accordingly, we recommended that the MBTA revise its procurement process to ensure that all future property management contracts are awarded to the lowest-cost qualified bidder. To accomplish this objective, we recommended that the MBTA adopt the standards of the Commonwealth's Uniform Procurement Act, Chapter 30B of the Massachusetts General Laws, which would help reduce the cost of MBTA services by requiring it to procure services from the lowest responsible bidders. We also recommended that the duties of the MBTA's selection committee for this contract be strictly limited to determining that each potential bidder possessed the necessary qualifications to perform the needed services and that, once bidders have been deemed qualified by the selection committee, the lowest bid should be the sole deciding factor.

However, during our current audit, we determined that the most recent property management contract for the five-year period ending July 31, 2012 was again awarded by the MBTA to TRA, this time as the sole bidder, in the amount of \$9,217,426, plus lease and license fees and sales commissions. In reviewing the process used by the MBTA to award this contract, we noted that

the MBTA did not employ the uniform procurement process that we recommended but instead utilized what it referred to as a “best value” procurement process followed by the Commonwealth’s Operational Services Division (OSD) and the Federal Transit Administration (FTA), which uses a combination of qualifications and price as the basis of award. In addition, the best-value approach is intended to obtain the required services or products in the most efficient and effective manner while also encouraging competition and the positive benefits it achieves in pricing and quality.

We reviewed the selection process and evaluation factors used by the MBTA to award this contract and we determined that, although the MBTA indicated that it used a best-value approach, the procurement lacked both the proper consideration of price as well as evidence that competition was encouraged in the selection process, contrary to both OSD and FTA guidelines. In fact, the only bid received by the MBTA was from TRA, the incumbent management firm, and so a key component of a best value procurement process for competition was lacking and a proper weighing of price and qualifications from competing firms was impossible.

We noted that the MBTA had also included new, restrictive experience criteria in the RFP that may have discouraged other firms from bidding on this contract. For example, the RFP required qualified bidders to have on staff at least one person with a minimum of five years’ experience with transit agency clients and at least one person with a minimum of five years’ experience in railroad right-of-way property management. It should be noted that if these experience qualifications were in place at the time of the original 1996 real estate privatization contract, not even TRA would have met the requirements of the RFP, since TRA lacked such transit experience at that time and only gained this needed experience after it was awarded the initial privatization contract.

Recommendation

- The MBTA should properly consider price in whatever method it deems appropriate in all future RFPs and awards for its real estate management contract.
- If the procurement method used by the MBTA results in no bids received other than from the incumbent firm, the MBTA should reissue the RFP under a different procurement method until two or more bids are received from qualified firms so that

price and qualifications can be fully evaluated for each proposal and an appropriate decision can be made based on an analysis of the tradeoff of qualitative factors and price.

- The MBTA should discontinue the practice of establishing restrictive qualification requirements for prospective bidders that may limit the number of qualified firms, and instead encourage competition and potentially lower costs to the MBTA.

Auditee's Response

The MBTA responded, in part:

Legal and Proper Procurement Method: Pursuant to MGL Chapter 161A, the MBTA's enabling legislation, the MBTA is not subject to the procurement regulations proscribed in MGL Chapter 30B. In procurements which require specialized qualifications and an extensive and specific scope of services, like the Real Estate Services Contract, the MBTA typically uses a "Best Value" procurement method. This method is preferred by the Federal Transit Administration whose rules, regulations and best practices directives inform and control the MBTA's practices, and by the Commonwealth's Operational Services Division which also encourages a best-value approach. The MBTA acted legally and properly.

Further the MBTA does not believe that the "restrictive experience criteria" in the 2007 contract bid package discouraged other firms from bidding.

In the 2007 contract bid package, the MBTA included a more detailed scope of services and required areas of competencies. These competencies are required to properly perform the scope of work. There are a number of ways competent bidders other than TRA could have qualified for the RFP. A number of large real estate firms have capability to perform the majority of this work. Any competency not within their staff could have been acquired through teaming with specialists in various areas, just as TRA did.

The audit comment concerning the management of railroad right of way is mistaken. Railroad right of way is a specific sector within real estate which has its own set of laws, practices and title. Like most other professions, the real estate industry is segmented into specialization niches. The MBTA should seek real estate advisors with experience in handling the various types of real property issues they will face when managing the MBTA's vast holdings. These are specialized areas of expertise and the pool of bidders could have formed teams to perform the work if they did not have all of the expertise in one company. The AGM [Assistant General Manager] of Development and Real Estate provided the auditors with the research he did after the bid process resulted in only one bid and no company indicated that they did not bid due to the qualifications required. In fact, the MBTA thought that CB Richard Ellis' Public Institutions Division was going to team with Guilford Transportation System to bid on the contract and provided an extension of time to the bid due for them to have additional time to prepare a bid. Ultimately, they decided not to bid because they thought the contract would not be profitable enough, quickly enough.

The statement that TRA would have been unqualified in these areas 15 years ago is misleading. 15 years ago, this was a privatization contract and the successful bidder was required to interview qualified MBTA real estate department staff. The successful bidder was thus able to obtain immediate railroad right of way experience through the hiring of certain members of this staff. Also 15 years ago, the MBTA was the first transit agency in

the nation to act on the realization that it was under-utilizing and not adequately managing its real estate assets. Now other transit agencies around the country are utilizing real estate professionals to assist with the proper management of these assets. The MBTA has invested, through its series of real estate contracts, over those 15 years to create a state of the art asset management program. Just as it would expect its other consultants to be up to date in the most current means and methods, it should expect its real estate consultants to be qualified enough to maintain these systems and to continue to capitalize on the investment made by the MBTA. These investments have produced over \$500 million in cash and non-cash returns for the MBTA – many times what the MBTA had been able to produce on its own and many times its original privatization goal.

Incorrect Conclusion in Prior Audit

The MBTA continues to disagree with the audit report's finding regarding the 2001 contract. The 2001 contract bid process was modified in accordance with several suggestions made by the former Auditor. The proposal of the apparent low bidder (Codman) was inadequate to perform the scope of services and would have ultimately resulted in either inadequate performance or an adjustment to the contract amount. The cost of the real estate services contract base asset management fee is driven primarily by the labor costs of the staffing plan. The Codman bid included a completely inadequate staffing plan (4 FTEs) and that was why it was the lowest bid. The TRA bid and the high bid by Performance Asset Management, both proposed larger and similar (to each other) staffing plans (14+ FTEs). Therefore the MBTA was correct in choosing the bidder that provided a sufficient staffing plan at the lowest cost. The methodology proposed by the audit to "be strictly limited to determining that each potential bidder possessed the necessary qualifications to perform the needed services" and then choosing the lowest bid, would not have recognized that Codman's staffing plan was inadequate to perform the scope of services (since there is no doubt that Codman was a qualified property management firm). This error by Codman in developing an appropriate staffing plan was the genesis of creating a more detailed scope of work and qualifications requirements in the 2007 offering.

For these reasons, the MBTA requests that the audit report designate this Prior Audit Result as "Resolved."

Auditor's Reply

The OSA acknowledges that the MBTA is not subject to the requirements of Chapter 30B of the General Laws. Nevertheless, the most fair and fiscally prudent process to award this contract would have been one in which price played a formal and measurable role. We do not dispute the fact that a "best value" procurement process may have been appropriate for this award. However, as noted above, such a process as described in the FTA's guidance would have included both price as a measurable consideration and a process for the MBTA to determine whether the level of competition for the procurement was adequate, including a review of specifications for undue restrictiveness. Since in this case the MBTA did not provide for either of these conditions, the OSA does not believe that the MBTA effectively utilized a "best value" procurement process in this instance.

In its response, the MBTA states that it does not believe that the restrictive language it included in its contract bid language for this procurement discouraged competition. It further states:

There are a number of ways competent bidders other than TRA could have qualified for the RFP. A number of large real estate firms have [the] capability to perform the majority of this work. Any competency not within their staff could have been acquired through teaming with specialists in various areas, just as TRA did.

Although the MBTA made no attempt to measure what effect this restrictive language may have had on the competition for this contract, the fact that it only received one bid, in the OSA's opinion, is a clear indication that something within the procurement process limited competition. In this regard, the need to team with other specialists to provide certain competencies may not have been a viable option to some bidders and consequently may have created a barrier to competition for this contract. Further, such a barrier was not faced by the TRA during the initial procurement of this contract, since it was allowed to team with the MBTA's existing staff to obtain these competencies.

The conclusion in our prior audit that the 2001 contract in question was not awarded to the lowest bidder is accurate. In its response, the MBTA points to the fact that the firm submitting the lowest cost estimate was not awarded this contract because it submitted what the MBTA deemed to be an inadequate staffing plan. However, it should be noted that for this procurement, the MBTA refrained from establishing a minimum staffing level in the RFP for these services. This lack of guidance may have limited the ability of potential bidders such as Codman from remaining competitive by being able to bid on the same level of staffing as other firms and not be disqualified for this reason.