



Office of the Inspector General

Commonwealth of Massachusetts

Gregory W. Sullivan
Inspector General

MBTA Procurement of Commuter Boat Services

January 2003

Introduction

In response to a complaint, the Office conducted a limited review of the procurement by the Massachusetts Bay Transportation Authority (MBTA) of a five-year contract to provide commuter boat services from Hewitts Cove Marina in Hingham to Rowes Wharf in Boston. The Office reviewed documents provided by the MBTA and interviewed the following MBTA officials: the Assistant General Counsel, the Acting Director of Materials Management, the Deputy Chief Operating Officer of the Operations Directorate, and the Manager of Private Carrier Services. The Office appreciates the MBTA's assistance and cooperation during the course of this review. A confidential draft of this report was provided to the MBTA General Manager on December 23, 2002. The General Manager's response is included in the appendix to this report.

The Office's review of the procurement process found that the MBTA had given careful consideration to the challenge of procuring the five-year commuter boat service contract within the constraints of a limited service provider market and appeared to have conducted a fair process. However, the review also identified several procedural deficiencies that reduced the transparency and accountability of the procurement process. While the MBTA's process generally complied with MBTA procurement procedures contained in the Materials Management Department's manual entitled *Materials Policies & Procedures* (April 1998) and resulted in a contract with a contractor that the MBTA regards as responsible, the weaknesses identified by the Office could, if left uncorrected, undermine the fairness and effectiveness of future MBTA service procurements. This report discusses the deficient practices identified by the Office's review and offers corrective recommendations.

Background

The MBTA first conducted a procurement for the commuter boat service over a year before the contract was scheduled to start, in order to provide prospective bidders with sufficient time to develop a vessel fleet and respond to the invitation for bids (IFB). The MBTA used a two-phase procurement process as detailed in the *Policies and*

Procedures. However, the MBTA canceled the procurement on June 29, 2001. According to the Manager of Private Carrier Services, the process was canceled because none of the bids met the IFB criteria.

The MBTA readvertised the commuter boat service contract in September 2001 as IFB No. 133-01. Two bidders submitted responses to the Phase I IFB on October 25 and October 26. The MBTA reviewed the Phase I submissions and sent clarification letters to both bidders. On November 26, 2001, one bidder withdrew from the competition. The MBTA requested a Phase II cost bid from the remaining bidder. On January 3, 2002, the MBTA Board of Directors voted to award the five-year contract obligating the MBTA to pay compensation not to exceed \$5,476,228 over five years to Harbor Cruises LLC, the sole remaining bidder who was also the incumbent service provider.

Procedural Issues

The Office's limited review identified the following procedural deficiencies in the MBTA's most recent procurement of commuter boat services:

Contract award schedule. The IFB did not include a schedule for the contract award. The *Policies and Procedures* do not require an award schedule to be included in IFBs. However, for procurements that require major investment in capital equipment, such as vessels, more information regarding the contract award schedule would clearly assist prospective bidders in planning and identifying time-related risks to bidders. While some bidders may be familiar with the timing of the MBTA's contracts, the lack of a contract award schedule in the IFB could disadvantage bidders that are unfamiliar with the MBTA contracting process.

Evidence of financial condition and capacity. The evaluation of bidders' financial condition is an important component of the selection process for most service contracts. However, the IFB for commuter boat services did not require bidders to provide financial statements or other evidence of their financial condition and capacity to fulfill the contract. MBTA officials interviewed by the Office stated that because of the limited service provider market, the MBTA primarily considered the ability of bidders to provide

vessels as evidence of their financial condition and capacity to perform. In the Office's view, contracts of the length and value of the commuter boat service contract warrant submission of some evidence, other than ownership of boats, that a bidder's financial condition is sound and that the bidder has sufficient resources to provide the capital equipment, the staff, and other essential elements necessary to perform the contract.¹

Price evaluation. The IFB lacked a clear rule for determining the lowest price. The MBTA asked bidders to submit annual contract compensation amounts and stated in the IFB that the five-year contract compensation would be the basis of the contract award. However, in the case of this bid, only one bidder advanced to Phase II; thus, the MBTA was not required to select among multiple cost bids. However, if more than one bidder had advanced to Phase II and submitted cost bids, identifying the lowest price could have been problematic in the absence of a clear decision rule based on a comparison of the present value of the bids. The procurement could thus have been vulnerable to protests by unsuccessful bidders.

Revenue control system. The IFB required bidders to have "an automated control and accounting system for the distribution of commuter boat tickets and passes, and the collection of revenue. . . ." The IFB stated: "the proposed control system will be reviewed and must be approved by the Authority prior to implementation of ticket sales." (page 10). In Attachment J to the IFB, labeled "Operation of Hingham and Boston Ticket Offices," the MBTA included similar language regarding the required control system, although the attachment stated that the MBTA would review and approve the control system "prior to selection of this portion of the service operation." However, there is no evidence that the MBTA required either bidder to submit a written description

¹ Requiring the successful bidder to provide a performance bond is another method of ensuring that the bidder will meet its contractual obligations. The *Policies and Procedures* state: "Careful consideration should be given by the Buyer as to whether or not the foregoing bonding requirements are utilized. There should be a balance as to guarantees to the Authority and the associated costs involved. The Buyer must use his/her best judgment. . . ." (page 29). MBTA officials interviewed by the Office indicated that for a contract such as the commuter boat service contract – with the associated capital equipment and service requirements – it would be too costly to bidders (and, thus, to the MBTA) to require a performance bond.

of its automated control and accounting system or that the MBTA formally evaluated and approved any such system during the selection process.

In an interview with the Office, an MBTA official stated that the automated control and accounting system to be used by the selected contractor had been evaluated and orally approved prior to initiation of the service. The official noted that the contractor had completed the MBTA's written "Pass Program Agreement" that pertains to retail sales of passes on a month to month basis as required in the contract.

The MBTA also requires that the contractor's accounting books and records be made available to certain public officials for examination, that the contractor submit monthly reports, and that annual audits occur. These are appropriate controls. Nevertheless, in procurements such as this, bidders' revenue control systems should be reviewed prior to the selection of a contractor to ensure that the selected contractor's system contains the necessary internal controls to track and report revenues and to reduce the risks of error and fraud.

In fiscal year 2001, the commuter boat service generated approximately \$3,177,858 in ticket and pass sales, according to an annual audit of the service commissioned by the MBTA. For FY 2003, according to the Phase II cost bid submitted to the MBTA, the bidder estimated that the commuter boat service would generate \$4,471,000 in passenger revenues. Thus, the selected contractor is responsible for accepting, managing, and reporting millions of dollars in revenues. Because revenues are factored into the calculation of the subsidy paid by the MBTA to the contractor, it is especially important for the MBTA to ensure the accuracy of the reported revenues.

Documentation and record-keeping. The Office's review disclosed that the MBTA did not fully document its decision-making process or maintain a complete file for the commuter boat service procurement. As a result, the documentation reviewed by the Office did not provide reasonable assurance that the procurement process was fair. Only after conducting interviews with MBTA officials who participated in the procurement and selection process was the Office able to conclude that the process was fair.

In January 2002, the Office requested that the MBTA provide certain documents or information relating to the commuter boat service. The initial procurement documents provided to the Office by the MBTA in February 2002 showed that seven individuals or their designees were approved to participate on the MBTA's selection committee for the commuter boat services. The documents included a blank evaluation checklist that was apparently developed to assist the evaluators in determining whether bidders met the Phase I pass-fail criteria that determined which bidders would be eligible to submit a Phase II cost bid. The MBTA also provided one completed (but undated) evaluation checklist for one bidder and one partially completed (but undated) evaluation checklist for the other bidder. No summary notes, minutes, or written conclusions were provided to the Office.

In response to the Office's query regarding the apparent incompleteness of the documents provided to the Office, the MBTA provided additional documents related to the procurement in April 2002, including notes summarizing selection committee meetings and one bidder's withdrawal letter. The additional documents provided further insight into the procurement process. However, only after interviewing MBTA officials responsible for the procurement was the Office able to evaluate the process by which the MBTA awarded the contract to the sole bidder providing a cost bid. In the Office's view, whether using a bid process with pass-fail criteria or a more complicated proposal process, the procurement file should include detailed records of every phase of the procurement process and fully document the MBTA's evaluation and selection process.

Contract execution date. The IFB stated that the contract for commuter boat services would be executed "within 30 days after the date of notification" to the successful bidder. The MBTA Board of Directors voted to award a contract on January 3, 2002. However, the MBTA's records provided to the Office contained no documents or correspondence evidencing a formal award to the selected contractor. In April 2002, our Office requested a copy of the executed contract from the MBTA, which advised the Office that the contract had not yet been executed. Although the contractor began operating the commuter boat service in July 2002, the MBTA did not provide a copy of the signed contract until September 2002. The contract provided to the Office was

undated. MBTA officials stated in an interview that the contract was executed prior to the contract start date.

Recommendations

The Office offers the following recommendations to assist the MBTA in improving the transparency and accountability of future MBTA procurements and contracts.

1. All solicitations should include a reasonable contract award schedule as well as any other relevant information regarding the timing of the MBTA's contract approval process.
2. For major contracts, the MBTA should require bidders to submit audited financial statements for the last fiscal year, or a reasonable substitute deemed acceptable to the MBTA and an explanation of why audited financial statements are unavailable, to assist the MBTA in evaluating bidders' financial condition and capacity. The MBTA should also adopt clear, reliable standards for assessing each bidder's financial condition and capacity on the basis of the audited financial statement.
3. All solicitations for multi-year contracts should state a clear rule for award. For example, the solicitation could include a formula to calculate the present value, require bidders to bid an annual price to be escalated using a published index, or solicit prices that will remain constant throughout the contract term.²
4. For any future procurement that includes a cash management component, the IFB should request detailed information and specify criteria consistent with the procurement method that would enable the MBTA to evaluate each bidder's capacity and plans to handle and account for service revenues received during the provision of services. Alternatively, the IFB could include specific cash management and internal control procedures as a contract requirement. The MBTA should consider directly monitoring each contractor's revenue collection and cash management procedures by, for example, implementing methods to verify reported passenger counts, as a supplement to the information reported in the annual audit.
5. The MBTA should institute more systematic record-keeping procedures for future procurements and amend the *Policies and Procedures* to detail systematic record-keeping requirements for each procurement. Regardless of whether bids are

² The *Policies and Procedures* (page 27) relative to IFBs, allow solicitations in which "the bidder shall specify the basis of any possible escalation, the effective date of any possible escalation, and the maximum percentage, if any, of increase which shall be applicable." The Office does not recommend this approach. Inviting bidders to propose their own escalation formulas can unnecessarily complicate bid price comparisons, engender disputes, and undermine fair competition.

evaluated by an individual or by a review committee, the MBTA should prepare and retain written memoranda and meeting minutes, as appropriate, summarizing the progress of the procurement process and the rationale underlying evaluation and selection decisions. All records pertaining to a specific procurement should be maintained in a central procurement file.

6. All MBTA service contracts should be signed and dated prior to the initiation of the contracted services.

This page intentionally left blank.

Appendix: Response of the MBTA General Manager



Massachusetts Bay Transportation Authority

Mitt Romney
Governor

Kerry Healey
Lt. Governor

Daniel A. Grabauskas
Secretary and MBTA Chairman

Michael H. Mulhern
General Manager

January 10, 2003

RECEIVED

JAN 15 2003

OFFICE OF THE INSPECTOR GENERAL

Mr. Gregory W. Sullivan
Inspector General
The Commonwealth of Massachusetts
John W. McCormack State Office Building
One Ashburton Place
Boston, Massachusetts 02108

Dear Mr. Sullivan:

Appropriate staff have reviewed your office's draft report of a five-year contract award for commuter boat services.

Overall, it is the MBTA's opinion that it is in compliance with its Materials Policies & Procedures. I would like to take this opportunity to inform you that our procurement policies have been recently revised and address several of the issues presented in the draft report.

The MBTA concurs with your office's judgment "that the MBTA had given careful consideration to the challenge of procuring the five-year commuter boat service contract within the constraints of a limited service provider market and appeared to have conducted a fair process."

We also recognize the draft report highlights several areas that need improvement. Recommendations put forth by your office to improve upon existing policies and procedures will be reviewed and implemented where appropriate and applicable.

The MBTA appreciates this opportunity to respond to the draft report and to improve our procurement practices.

Sincerely,

Michael H. Mulhern
General Manager