



Runaway Transportation Costs

by Gregory W. Sullivan

Recent news demonstrates that the state's transportation system has problems that go beyond a shortage of funding. The *Boston Herald* has reported that the MBTA doesn't make public information available about how much they are paying out in pension benefits and who is receiving benefits. A bigger problem is finding a way to address the underlying causes of the current crisis that has Massachusetts transportation agencies on a path to a \$548 million operating deficit by fiscal year 2018.

As the transportation funding debate rages, the MBTA is in the midst of a procurement process to select a company to operate the T's commuter rail system under a five-year \$1 billion-plus contract. According to a news report in the *Boston Globe* on April 4, 2013, one of the bidders for the MBTA's commuter rail contract, Keolis America Inc., threatened in a March 27 letter to the MBTA to withdraw from the procurement competition, complaining of unfairness in the bidding process and claiming that crucial information concerning details of the commuter rail system's high labor and other costs had been withheld from them by the incumbent contractor, Massachusetts Bay Commuter Rail Inc. (MBCR). In discussion with Keolis's representative last week, I confirmed the accuracy of what had been reported.

The MBTA is responsible for collecting information from MBCR and providing it to Keolis. Keolis suggested that the information was being withheld deliberately to put it at a competitive disadvantage. Complaints of this nature by a bidder are not unusual in a procurement involving an incumbent contractor, but what is unusual is how it fits in with the bigger back story about the dismal lack of competition for this lucrative five-year contract, the largest in Massachusetts history, to manage and operate the nation's fifth biggest commuter rail system.

In my previous 10-year service as state Inspector General, one of the statutory functions of my office was to assure that the procurement of public contracts was being conducted on a level playing field, with full and fair competition. These are the essential elements of project procurements that provide best value for taxpayers. The MBTA commuter rail contract is a case study for how not to generate competition for a large contract.

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The commuter rail procurement has suffered from a perception of conflict of interest stemming from the fact that MBCR's founder and chairman is James O'Leary, a former MBTA general manager, and the Patrick administration's Secretary of Transportation, Richard A. Davey, is MBCR's former general counsel and general manager. These facts have caused Secretary Davey to recuse himself from the procurement process.

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When the MBTA put out its Requests for Statements of Interest on this contract in 2012, 25 commuter rail operators provided official responses. Sadly, only two companies ultimately submitted bids: the incumbent contractor, MBCR, and Keolis. It's impossible to know whether the perception of a conflict contributed to the paucity of bidders, but the accusations regarding the procurement's lack of fairness only serve to reinforce the impression, real or imagined, that any competitor to MBCR will face tough going.

Governor Patrick told the *Boston Globe* that he is "very concerned about not having competition in this contract." Everyone should share the Governor's concern, but only the administration can do something about it.

Responding to Keolis's complaint, a MBCR spokesperson said that MBCR had provided 10 gigabytes of information to the MBTA and Keolis, "the equivalent of a bookcase, spanning the length of a football field," and that MBCR had declined to provide information to Keolis that it considered proprietary, according to the *Boston Globe* story. MBTA officials said in a statement that MBCR had satisfied more than 90 percent of Keolis's requests. Since the complaint was made, MBTA officials have been working to get the rest of the information.

MBCR's public reference to having provided data that is akin to the span of a football field ignores the

gigabytes of information withheld. It is especially concerning that the information MBCR has yet to provide relates to labor expenses and benefits, which represent more than 70 percent of commuter rail system costs. It is also worth noting that that 10 gigabytes of data fits on a \$14.99 USB flash drive.

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The costs associated with commuter rail labor agreements and management expenses are an issue of central concern to any potential bidder. No responsible company could possibly bid without understanding the costs to which it would be committed.

Sharing such relevant information up front should have been a central part of the MBTA's procurement process. When MBCR took over commuter rail operations from Amtrak in 2003, it had to honor existing collective bargaining agreements in accordance with the provisions of Section 13(c) of the Federal Transit Act of 1964. The pre-existing collective bargaining agreements included minimum manpower requirements, work assignment rules, and compensation levels that were made binding on MBCR. Anyone interested in an explanation of the myriad reasons why this requirement has and continues to constrain the MBTA from making the commuter rail system more affordable through competitive outsourcing should read "How the Labor Department Can Bring Common Sense to a Rail Contract" (<http://www.heritage.org/research/reports/2002/05/how-the-labor-department-can-bring-common-sense-to-a-rail-contract>) by Charles Chieppo.

A review of the most recent labor agreement between MBCR and the Brotherhood of Locomotive Engineers and Trainmen (BLET) explains a lot about why the MBTA is in the financial mess that it's in today. The February 2011 contract grants

BLET employees a cumulative 13.7 percent increase through a series of successive raises through June 2013, including a retroactive pay hike that exceeded the cost of living increases the employees had already received. That rate increase far outstrips increases paid to state employees in recent years.

In a February 2011 contract, MBCR granted BLET employees a cumulative 13.7 percent pay raise through a series of successive raises.

The agreement also included a lump-sum signing bonus of \$1,000 for each engineer and conductor on the payroll. It required MBCR employees to pay only \$100 per month for full-scale family health insurance coverage, even while state employees are required to pay three to four times that for similar coverage. The agreement extended the myriad work rules that allow employees to accumulate expensive overtime hours, a problem that limits MBCR and the MBTA from reining in the commuter rail budget.

Like its predecessor, the current procurement requires the successful bidder to honor existing labor agreements unless they are renegotiated. MBCR has successfully renegotiated some elements of the contract since it began managing the system in 2003.

The Patrick administration and the MBTA considered at least three options before deciding to re-bid the current commuter rail contract for another five-year term. One was to bring commuter rail operations in-house to be run by MBTA employees, which is how the other six largest commuter rail systems in the U.S. are operated. Some of those systems outsource elements of commuter rail operations, however, including maintenance and cleaning.

Another option was to procure an operator in a long-term public-private partnership of up to 30 years that would have included requirements for the operator to finance and carry out large-scale capital improvements. In light of the ongoing debate on Beacon Hill about the extent to which

new tax dollars should be raised to finance MBTA capital improvements, this long-term public-private financing option, which would include purchase of replacement locomotives and coaches for our aging commuter rail fleet, is worthy of reconsideration.

The final option, and the one the administration chose, was simply to seek an operator for another five-year term, deferring effective reform.

The administration's deliberation about which option to choose reveals a lot about the system's underlying problems. The MBTA hired KPMG to conduct an analysis of the in-house option. One of the risks KPMG cited was that compensation rates for T employees are higher than those of their MBCR counterparts. KPMG cited the concern that the current commuter rail employees would likely seek to have their compensation raised to the level of MBTA employees, thereby increasing total system costs. Another concern cited by KPMG was that by taking the commuter rail system in-house, T administrators would become legally constrained by the Pacheco Law, which regulates privatization in Massachusetts, if they were ever to decide to outsource commuter rail operations in the future.

The Patrick administration's commuter rail procurement strategy deliberations about selecting a vendor had a lot to do with a big issue that is not being addressed in the ongoing transportation financing debate: how to bring excessive MBTA labor costs in line with those of regular state employees. Since 70 percent of the T's costs are attributable to labor, addressing that issue head-on obviously represents one of the biggest and most essential opportunities for long-term cost containment. Even if compensation and benefit reforms only apply to new hires, the potential for long-term savings is significant.

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For example, painters for the MBTA make an average of \$79,279 per year; painters in regular state government earn an average of \$46,742, according to

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the *Boston Herald's* "Your Tax Dollars at Work" on-line utility. MBTA customer service employees are paid between \$53,854 and \$61,110 per year; customer service employees for the Massachusetts Registry of Motor Vehicles are paid between \$34,843 and \$45,117. An assistant general counsel at the MBTA makes an average salary of approximately \$85,000; at the Massachusetts Attorney General's Office, Assistant Attorneys General earn an average salary of approximately \$65,000.

Three years ago, the *Chicago Tribune* reported that the Chicago Transit Authority's bus drivers were the third-highest paid bus drivers in the United States. Their analysis cited MBTA bus drivers as being the highest paid. Compounding the labor cost challenge are minimum manpower and other collective bargaining rights that severely limit the ability of transportation administrators to make the system more cost effective.

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As the state considers raising new revenues to support transportation maintenance and repair, the underlying issues of excessive compensation levels and costly work rules at the MBTA and its commuter rail system must be addressed. The current procurement process can be improved by taking the following steps:

- The MBTA should immediately halt the commuter rail procurement and start over using a process designed to maximize competition. Such a process would include making all pertinent labor cost information to bidders at the outset of the process;
- The MBTA should conduct a survey of the 23 companies that submitted statements of interest to ascertain why they opted out of the bidding process; and

- Any new transportation funding legislation should include an initiative designed to bring MBTA and commuter rail compensation in line with that of regular state employees.



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