

COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

BOARD OF DIRECTORS

OPEN MEETING AGENDA

TUESDAY, SEPTEMBER 7, 2010
3:00 P.M.

MBTA TRANSPORTATION BUILDING
10 PARK PLAZA
THIRD FLOOR - ROOM 3910
BOSTON, MA 02116

NEAL A. SALLOWAY - COURT REPORTERS
FIVE CARDIGAN ROAD
WEST PEABODY, MA 01960
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	<u>CONTINUED SPEAKERS</u>	<u>PAGE NO.</u>
1		
2	GARY FOSTER - ITEM 11	101
3	WESLEY WALLACE - ITEM 12	108
4	MARK BOYLE - ITEM 13	114
5	ADJOURNED	115
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
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19		
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(Proceedings commencing at 3:05 p.m.)

MR. JENKINS: I should like to call the 1039th open meeting to order.

The public comment period will begin. It looks like we only have at least one person who signed up, Adam Kudlick from Mason Tech.

ADAM KUDLICK

MR. KUDLICK: Good afternoon. I'd like to address Item No. 6, the authorization for execution of a contract with National Railway Supply of Savannah, Georgia for the purchase of 27 sets of traction power substation control batteries and associated equipment for the Power Division at a total cost not to exceed \$2,185,065.

Our concern is my company issued a bid that was nearly half a million dollars less than that that was deemed unresponsive on a technicality that we don't even consider really an issue.

1 Regardless, we've been denied any sort
2 of meeting to explain ourselves. We've appealed.
3 It was just rejected. We've never been offered
4 a meeting. We've repeatedly requested it.
5 They've either been ignored or expressly denied.
6 We would like somehow to be able to present our
7 case to the Engineering & Procurement Department
8 for our bid.

9 MR. JENKINS: Yes.

10 MR. KUDLICK: That's all I have to
11 say.

12 MR. JENKINS: You've wet my appetite.
13 What was the -- What were you rejected for?

14 MR. KUDLICK: We were rejected --
15 there was a terminal that we did not expressly
16 state was by Marine (phonetic) which they did
17 request, and the second thing was a flat-plate
18 battery versus a tubular-plate battery; both
19 items together represent less than two percent
20 of the bid which we offered in writing to replace
21 directly to the specification of the MBTA at no
22 additional cost to the MBTA.

23 MR. JENKINS: Okay. Thank you.

1 MR. KUDLICK: I can certainly copy you
2 on these letters.

3 MS. LOUX: You said both that you were
4 expressly denied and/or ignored.

5 MR. KUDLICK: And ignored.

6 MS. LOUX: So which was it?

7 MR. KUDLICK: It was both. We requested
8 meetings with the engineer as well as with the
9 procurement. One told us to talk to the other.
10 John, in the Engineering Department, Severitus
11 (phonetic), I can't remember how to spell or say
12 his last name; told us all --

13 MS. LOUX: They said, "no meeting,"
14 and then they said --

15 MR. KUDLICK: They said, "no meeting,"
16 at first; and then when we requested the appeal
17 procedure from the buyer, which clearly states
18 that we're owed a meeting, they just didn't
19 return the e-mails or calls.

20 MR. ALVARO: I'm sorry. You said you
21 were denied on appeal, though. Did you file a
22 formal appeal?

23 MR. KUDLICK: We filed a formal

1 appeal. The denial was mailed to the incorrect
2 address which is really kind of inexcusable
3 because they've mailed several things to the
4 correct address, and we've just received that
5 last Thursday.

6 MR. ALVARO: Okay. You've filed an
7 appeal.

8 MR. KUDLICK: Yes.

9 MR. ALVARO: And the appeal was denied?

10 MR. KUDLICK: Yes, without any comment
11 from us.

12 MR. JENKINS: Okay. Thank you.

13 MR. KUDLICK: Thank you.

14 (Interruption by the Court Reporter
15 for spelling: Adam Kudlick, K-U-D-L-I-C-K.)

16 MR. JENKINS: Thank you.

17 The next speaker is Marilyn McNabb.

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MARILYN McNABB

MS. McNABB: Good afternoon, Mr. Chairman, Secretary, Board of Directors and Mr. General Manager.

Today I would like to address on the agenda, No. 8. Item No. 8 is the Kone -- is the maintenance on the Vertical Transportation summary which is an accessibility issue.

Over the past few years, we have had great improvements that have been made in our elevator maintenance which has made this system here at the Authority very reliable.

It does look like it's kind of a hefty price tag, but we need to remember that there has been an increase in elevators; there has been an increase in escalators; and one of the things which the industry does consider the Authority's elevator as outdoor equipment because it's exposed to the New England weather which increases the chance of mechanical failure. It is a cost doing business, and it is expensive, but it is a cost that insures all

1 individuals access to the Public Transportation
2 System, and I would say that this is probably
3 the one contract that will be closely monitored
4 by the riding public. We know individuals with
5 disabilities will be reporting them. We also
6 know that the individuals who have begun to love
7 their elevators, that would package their
8 luggage as well as the folks pushing strollers
9 will be reporting them; and last but not least,
10 that our honest citizens, the elderly will also
11 be helping watch this contract and reporting
12 their outage and how long they've been in the
13 improvement.

14 So I am requesting today that you
15 support Item No. 8 so that we can keep the
16 accessibility to all individuals in the Transit
17 Authority moving forward. Thank you very much.

18 MR. JENKINS: Thank you, Mrs. McNabb.

19 Are there any other public comments
20 who didn't get a chance to sign up and who would
21 like to speak at this time?

22 (No response)

23 MR. JENKINS: Thank you. We will call

1 that section of our meeting to a close.

2 MR. JENKINS: No. 2, the approval of
3 minutes of our August 11th, 2010 meeting. Do I
4 have a motion to allow?

5 MS. LOUX: Motion to approve.

6 MR. JENKINS: Do I have a second?

7 MR. ALVARO: I will second it. Do we
8 have a quorum?

9 MR. JENKINS: Yes, we do.

10 MR. ALVARO: As a point of order, I
11 see General Counsel.

12 I was not here. I don't want to create
13 an undue issue about this. I just wasn't here.
14 So is it appropriate for me to vote on the
15 minutes?

16 (Interruption by the Court Reporter to
17 speak louder.)

18 MR. ALVARO: So if I abstain, --

19 MR. MITCHELL: Either that, or we can
20 just wait until next month and just approve these
21 minutes next month.

22 MR. JENKINS: Why don't we do that?
23 We'll approve them next month. Fine. We'll

1 table that.

2 The second item on the agenda is the
3 General Manager's report, Mr. Davey.

4

5

RICHARD A. DAVEY

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ITEM NO. 2

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MR. DAVEY: Thank you, Mr. Chairman,
9 Members of the Board, Mr. Secretary, members of
10 the MassDot staff and the public.

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I just wanted to give the Board an
update on the accomplishments that we've had in
the month of August, again, around our five
principles and our five initiative safety service
employees fiscal responsibility innovation.
First, on safety, briefly, I want to thank and
acknowledge Chief MacMillan and Randy Clark who
is our Director of Security Initiatives. They
hosted a TSA, FTA security initiatives workshop
here in Boston at the beginning of the month
together with over 60 agencies at the state,
local and federal levels from around the country
to talk about best practices.

1 I've asked the Chief and Randy to
2 prepare an executive session next month, an
3 update for the Board on our security initiatives
4 and that the Board be informed on some of the
5 good work we're doing, and we will ask to do
6 that at executive session next month.

7 I also want to applaud the Transit
8 Police for their quick arrest and apprehension
9 for suspects in the last 30 days. There's been
10 a number of perpetrators on the T engaging in
11 lewd and gross activity. The Transit Police
12 have been very quick to react to those, and we
13 also want to thank our customers who had been
14 using Twitter and our text-now-feed. The T
15 Police have come out with a new text line, TPD,
16 TPD for our customers to give us crime tips.
17 So, again, I want to thank, particularly, Chief
18 MacMillan and his command staff for being
19 proactive on that.

20 On service, as you know, Mr. Chairman,
21 both you and I attended a T Riders Union meeting
22 last month; talked about bus service
23 accessibility, fares, state of repair. I want

1 to thank, on behalf of the Chairman, the T
2 Riders Union for inviting us and noting that I
3 also accepted their invitation to attend a
4 meeting in Chelsea later this year.

5 On August 15th, there was a massive
6 power failure at OCC, not our best day at the T
7 which caused delays on both the Red and Orange
8 Lines. A cross functional team, that I
9 appointed and investigated the incident, came up
10 with over 20 different recommendations in
11 lessons learned how to prevent this from
12 happening again. I can tell you, while I was
13 not happy that it occurred, I was very pleased
14 the team focused on ensuring this doesn't happen
15 again, in particular, looking at making sure
16 that back-up power is in place and our
17 established emergency protocols are activated
18 more quickly.

19 We also established an internal
20 working group on the Green Line. The Green
21 Line, certainly, as we all know, is the most
22 heavily used light rail in America and is an
23 important piece of our system. What I've asked

1 this internal group to do is to look at the
2 operations and how we can improve both
3 operation, vehicle reliability, infrastructure,
4 passenger information and surface verivation
5 (phonetic). So this is just looking at the
6 operation today and how we can improve it.
7 We've had one meeting, and I expect that that
8 group will be working very closely over the next
9 months; and at some point, we'll be asking that
10 whole group to come to the Board and give you an
11 update on how we are doing.

12 On August 19th, we held a join the GM
13 session at Airport Station with Tom Kinton
14 (phonetic) from MassPort, an opportunity for
15 MassDot to show it's working together. Tom
16 hosted us, and we were able to talk to both
17 passengers, not only of the Transit System, but
18 also the airport. We got some excellent
19 feedback which we'll share with the Board a
20 little later.

21 I'll be at Riverside Station this
22 Thursday morning, September 9th from 7:00 to
23 9:00, and I'll be at South Station on September

1 30th from 4:00 to 6:00 talking to customers and
2 seeing how we're doing.

3 Quickly, on some reliability
4 improvement projects, both the North Quincy and
5 Braintree platform rehabilitation projects, this
6 Board approved last month and the previous
7 month, are well underway.

8 Ashmont Station, we've had diversions
9 for the last couple of weekends to accommodate
10 new work at the station which is expected to be
11 completed next year.

12 I, personally, toured Copley Station
13 two weeks ago, and I'm pleased to report that we
14 expect this station to be fully accessible
15 within 60 days, a very critical piece to our
16 commitment on the agreement. And, again, a
17 project this Board had approved several years
18 ago.

19 On behalf of the Governor's Secretary,
20 Mullan and I attended a ground breaking at
21 Wickford Junction in Rhode Island, which is an
22 extension of Rhode Island service south. That's
23 planned to kick off in a couple of years; but,

1 again, a nice project that both the State of
2 Massachusetts and Rhode Island have worked
3 closely on.

4 One thing I want to note for not only
5 the Board's purposes but for the public is to
6 let you know that every two years, the MBTA's
7 Service Planning Department reviews our
8 performance and usage of our system and our
9 services. We recommend changes to our service
10 based on consumer demand and feedback.

11 Over the next two months, we'll be
12 holding eight public workshops in September and
13 October to gather ideas from the public. There
14 will be a brief statement by MBTA staff, and
15 then we will allow the public to give us
16 feedback not only on our surface transportation,
17 obviously, the buses but also on subway and
18 encourage folks to check your website,
19 www.mbta.com for a list of those times and
20 dates.

21 On employees, again, we completed our
22 T-map training program for all executive level
23 employees which lays the foundation for

1 performance-based management within the MBTA. I
2 held my third of my monthly lunches with about a
3 dozen employees to get feedback, to thank them
4 for what they're doing, and Chief Operating
5 Officer, John Lewis, and our Assistant General
6 Manager, Mike Turcotte, were out in the system
7 several days thanking customer service agents
8 for their attentiveness in stations. We're very
9 much focused on ensuring that our stations are
10 clean, they're accessible, that there are no
11 issues out there and thanked them for CSA's
12 really taking ownership now of those stations.

13 I'm pleased to report our Deputy GM
14 for HR Labor & Relations, Bill Perez, started
15 two weeks ago. He's the highest ranking Latino
16 in the Authority's history.

17 I visited Everett's shops last week to
18 thank 15 employees who worked around the clock
19 to fabricate parts for the Beverly drawbridge
20 that had failed. It's a drawbridge that is
21 almost 100 years old. Some of the parts are
22 almost 100 years old. And those employees
23 worked around the clock and had the bridge back

1 up in service in a couple of days as opposed to
2 weeks which had initially been anticipated.

3 On fiscal responsibility, as I've
4 mentioned before, the T's goal across the
5 Authority is to beat our operating budget by two
6 percent. We are tracking that on a monthly
7 basis providing a report to the Finance and
8 Audit Committee and this full Board at the end
9 of each quarter. So I expect to bring the
10 report to you later this fall.

11 Finally, on innovation, as you know,
12 we'll be holding an event this Thursday morning
13 to announce that we've completed our real time
14 bus launch which is exciting. That will occur
15 throughout the system but, certainly, will be
16 announced Thursday morning.

17 We have already transitioned to our
18 heavy rail real time data feeds. You'll be able
19 to, on an application, we hope soon, look to see
20 where we are on the Blue, Red and Orange lines
21 as well.

22 We've also been piloting a project
23 with MIT students and employee ID's now work as

1 a Charlie card. There's a Charlie chip inside,
2 and about 1,000 student I.D.'s and employee
3 I.D.'s that are used both as a monthly pass and
4 also as a stored-value chip. So rather than
5 carrying two cards, you can carry one. We hope
6 to use that pilot as an opportunity with some of
7 the other colleges and universities in the
8 Boston area over the coming years.

9 And, finally, just an update on how
10 we're doing by pay by phone. We now have almost
11 9,000 customers signed up, and that covers
12 23,000 spaces; so over one-third now of our
13 customers utilizing our parking spaces in the
14 system have signed up.

15 Last, I want to mention, although
16 Hurricane Earl, ultimately, was much to do about
17 nothing, thankfully, I want to thank the entire
18 team of operations, support staff, operations
19 support, maintenance-of-way, who, last week,
20 spent countless hours cleaning culverts, catch
21 basins, checking pump rooms. We had trains and
22 buses ready to go; and for the first time, I
23 think, again, in a long time, perhaps ever, the

1 MBTA sent four buses and ten employees down to
2 Bourne Thursday evening into Friday to stage
3 them in case of an evacuation of the Cape was
4 required.

5 So I want to thank the entire team for
6 rallying; and as I said, thankfully, it was much
7 to do about nothing, but we were ready, Mr.
8 Chairman. That's all I have.

9 MR. JENKINS: Thank you, Mr. Davey.
10 Any questions or comments of Mr.
11 Davey? If not, we'll move on to the next item,
12 and that's Items 3 through 5, and Mr. Frank
13 DePaola will come forward.

14
15

16 FRANK DePAOLA

17 ITEM NO. 3

18

19 MR. DePAOLA: Good afternoon, Mr.
20 Chairman, Mr. Secretary, Members of the Board,
21 Mr. General Manager.

22 This first item requests the Board to
23 award and authorize the General Manager and Rail

1 & Transit Administrator to execute the contract
2 entitled, "Old Colony Commuter Rail Tie
3 Replacement Project," with J.F. White
4 Contracting Company for an estimated sum not to
5 exceed \$34,862,150.

6 During the normal maintenance and
7 operations of the Old Colony Railroad, a
8 determination was made that the concrete ties
9 were deteriorating to a point of failure along
10 the entire length of the Middleboro, Plymouth,
11 Kingston and on the main line between Boston and
12 Braintree.

13 Emergency repairs and extensive speed
14 restrictions have been addressed by the MBCR to
15 continue operations. However, continued
16 failures of the ties have made it necessary for
17 us to address this issue with a complete tie
18 replacement.

19 The work of this project consists of a
20 complete tie replacement along the track
21 right-of-way in the following areas: On the
22 Plymouth Line, 26 miles extending from Braintree
23 to Plymouth; on the Kingston Branch, another 1.7

1 miles to Kingston; on the Middleboro Line, 25
2 miles extending from Braintree to Lakeville; and
3 on the Main Line, four miles between Boston and
4 Braintree.

5 On June 25th, 2010, the Authority
6 advertised this project. A total of 17 firms
7 obtained plans and specifications.

8 On August 12, four bids were opened.
9 J.F. White Contracting Company was the lowest
10 responsible and eligible bidder. This low bid
11 is \$159,000 lower than the engineers' estimate.
12 It has been reviewed by the MBTA staff and our
13 design consultant and both recommended accepting
14 J.F. White Contracting Company's bid.

15 Funds for this action are available
16 from within MBTA Revenue Bond Funds. Every
17 attempt will be made to pursue federal
18 participation for the cost of this effort.

19 This contract has a five percent DBE
20 goal. The contractor has identified five
21 percent DBE participation.

22 The SOMWBA certified firms
23 participating in this contract are: Olmstead

1 Contracting, Taibbi Equipment, JP Concepts,
2 Atlantic Bridge & Engineering and Tri-State
3 Painting.

4 I recommend approval of this item.

5 MR. JENKINS: Is there any discussion?

6 MS. LOUX: We have approval.

7 MR. ALVARO: Second.

8 MR. JENKINS: Discussion?

9 MR. ALVARO: Frank, this kind of --
10 this whole three to five kind of fell out of the
11 sky on top of our heads a few months ago. Have
12 we had to re-prioritize other capital projects
13 as a result of this massive expenditure?

14 MR. DePAOLA: Yes. We actually have
15 -- we're putting together -- at the FTA's
16 request, we're putting together a list of
17 projects that were dropped from last year's CIP.
18 Unfortunately, most of them were bridge
19 replacement contracts because we couldn't afford
20 the local match to move those forward with a
21 demand for this project is putting on the
22 budget.

23 MR. ALVARO: Bridge?

1 MR. DePAOLA: Bridge repair,
2 replacements, yes.

3 MR. ALVARO: We're just going to what,
4 defer those a year or --

5 MR. DePAOLA: Well, what we've been
6 doing is we're actually putting out a contract
7 to do emergency repairs. We've been actually
8 patching things to keep things safe and operable
9 just like Rich described the repair that our own
10 staff did to the Beverly drawbridge. There's
11 repairs going on in Gloucester draw. We have a
12 lot of bridges with a lot of repairs going on,
13 but it's -- we're getting by with patches. It
14 would be nice to replace these bridges; but
15 funding being what it is, we're doing the best
16 we can.

17 MR. ALVARO: What do we think our
18 chances are of getting that 80 percent FTA
19 funds?

20 MR. DAVEY: Mr. Director, the FTA
21 continues to be curious about not only how we're
22 proceeding but our cost-recovery efforts. I
23 will say that they, too, are investigating. The

1 U.S. Department of Transportation is also
2 investigating to see whether they have a claim
3 because they, too, funded the initial project.
4 I think they want to be helpful, but they're
5 also cognizant that they have not typically
6 contributed to the same project twice as was
7 expressed to us, but they are trying to be
8 helpful.

9 So our next goal is to describe to
10 them, not only what projects, as Frank said, are
11 being deferred; they've asked us for that
12 information; but then also once we have a final
13 cost, to submit a request.

14 MR. ALVARO: And, Mr. General Counsel,
15 chances of recovery against the fellows who put
16 us in this situation?

17 MR. MITCHELL: I would like to defer
18 that to executive session --

19 MR. ALVARO: Okay.

20 MR. MITCHELL: -- where it's a matter
21 of litigation.

22 MR. ALVARO: Okay.

23 MR. DAVEY: Well, we are in

1 litigation.

2 MR. MITCHELL: Yes.

3 MR. JENKINS: So if you were to
4 handicap it, what do you think the chances of us
5 getting this FTA funding?

6 MR. DAVEY: Less than 50 percent.

7 MR. MULLAN: It should be better
8 because as Rich points out, the FTA is not in
9 the business of funding the same project twice;
10 neither is the MBTA. So the point being made to
11 our federal partners, who have been very
12 cooperative, is that we both -- we both suffered
13 losses here; and in the absence of a clear and
14 unequivocal law on the -- this project should be
15 funded by the federal government because it has
16 merit, but it is -- Rich is right; it is an
17 uphill battle. It will be discussed again on
18 Thursday at which time Louisa, Rachele and Susan
19 Brian (phonetic) have a meeting with our federal
20 partners on -- we're meeting this Thursday, and
21 this is on the agenda. So we'll continue to
22 keep the Board apprised of our efforts.

23 MR. DAVEY: They have been an

1 advocate, and I'm sure they'll continue to work
2 with us and want more information. So it is an
3 uphill battle. I think they're trying to find a
4 way to help us.

5 MR. JENKINS: Very good. Other
6 discussion? Those in favor?

7 MR. ALVARO: Aye.

8 MS. LOUX: Aye.

9 MR. JENKINS: Opposed?
10 (No response)

11

12 FRANK DePAOLA

13 ITEM NO. 4

14

15 MR. DePAOLA: This next item requests
16 the Board to approve and authorize the General
17 Manager and Rail & Transit Administrator to
18 execute Amendment No. 6 to a contract entitled,
19 "Engineering and Construction Phase Services for
20 Fitchburg Commuter Rail Line Improvement
21 Project," with HNTB Corporation for an estimated
22 sum not to exceed \$693,395.

23 This amendment provides for additional

1 Phase III through Phase IV, Design Services, and
2 Phase V, Construction Phase Services, for the
3 redesign of the Littleton Station. The scope of
4 work will modify the double-track portion at
5 Littleton Station to provide a center island
6 platform with an overhead ramp structure on a
7 widened right-of-way instead of the original
8 dual side platforms on the existing
9 right-of-way.

10 100 percent of the funds for this
11 action will be available from a Federal Stimulus
12 Grant. This contract has an 18 percent DBE
13 goal. This amendment contains 32 percent DBE
14 participation.

15 SOMWBA certified firms participating
16 in this amendment are: Bryant Associates,
17 Keville Enterprises, Lozano, Baskin &
18 Associates. The overall DBE participation to
19 date is 18 percent.

20 I recommend approval of this item.

21 MR. JENKINS: Do we have a motion to
22 approve?

23 MR. ALVARO: So moved.

1 MS. LOUX: Second.

2 MR. JENKINS: Discussion?

3 What are we talking about jobs here?

4 MR. DePAOLA: When we build -- when we
5 go to the station construction, the station
6 construction will probably employ a couple
7 thousand people. This is a redesign of the
8 station because the stimulus grant gave us the
9 opportunity to change it and change the level of
10 use at the station.

11 MR. JENKINS: So we get to
12 construction; what; 20, 30 jobs?

13 MR. DePAOLA: Correct.

14 MR. JENKINS: When?

15 MR. DePAOLA: Probably 2012, early
16 2012.

17 MR. JENKINS: So it's awhile. Okay.

18 MR. DAVEY: How many folks are out
19 there now, Frank? We are doing work?

20 MR. DEPAOLA: Oh, yeah. The MBCR is
21 out there now working on the double track,
22 probably a crew of around 18 to 20 employees.
23 About 18 to 20 people out there now, and it will

1 pick up as we get into the signal work.

2 MR. JENKINS: All right. Those in
3 favor?

4 MR. ALVARO: Aye.

5 MS. LOUX: Aye.

6 MR. JENKINS: Opposed?

7 (No response)

8

9

FRANK DePAOLA

10 ITEM NO. 5

11

12 MR. DePAOLA: And this next item
13 requests the Board to approve and authorize the
14 General Manager to execute Change Order No. 15
15 to a contract entitled, "Orient Heights Car Yard
16 & Maintenance Facility Reconstruction,
17 Re-Advertisement-Phase II, East Boston, Mass.,"
18 with S&R Construction Enterprises for a sum not
19 to exceed \$1,375,206.

20

21 This change order will provide for
22 labor, materials and equipment for the car wash
23 and immediate safety and operational critical
work at the project. The safety critical work

1 includes extending the mezzanine fall protection
2 to the end of Track Nos. 12-15 tracks east and
3 west ends of the car house, adding a center
4 mezzanine for fall protection at 13-14 tracks.
5 The operation critical work includes a rollup
6 door on Track 11 East and replacement of the
7 doors at Track No. 15 and No. 12 east end rollup
8 doors; painting an old section of the car house,
9 resurfacing and coating car house cement floors;
10 and replacing the sump pump for the wheel truing
11 machine.

12 Funds for this action are available
13 through 80 percent federal funds and 20 percent
14 MBTA Revenue Bond Funds. This contract has a 17
15 percent DBE goal, and the total DBE participation
16 to date is 16.7 percent.

17 The SOMWBA certified firms working on
18 this contract are: Algar Construction; Don
19 Martin Corporation; VSB Contracting; MON
20 Landscaping; Woodchucks Building & Home Center;
21 Planning & Development Applications; Thunderbolt
22 Steel; K. DaPonte Construction Corp.; ACE
23 Environment Corporation; and Dagle Electrical.

1 I recommend approval of this item.

2 MS. LOUX: Approval.

3 MR. ALVARO: Second.

4 MR. JENKINS: Discussion?

5 Frank, excuse my -- you explained this
6 before at the last meeting, change order and
7 amendment.

8 MR. DePAOLA: Yes.

9 MR. JENKINS: Give me the difference.

10 MR. DePAOLA: When it's a change --
11 for construction contracts, contracts we use
12 change orders; when it's a professional services
13 agreement, we use amendments.

14 MR. JENKINS: Say the same thing.

15 MR. DePAOLA: They're both change
16 instruments. They just have different titles
17 depending on the types of contract or the type
18 of instrument we're modifying.

19 MR. JENKINS: But the parameters of
20 the job haven't changed?

21 MR. DePAOLA: Well, this -- the
22 original contract here is an addition to the
23 existing car yard maintenance facility. We're

1 getting near the end. S&R is out there
2 mobilized building the addition. Over the life
3 of the contract, the design and building of
4 contract, issues on the existing car house have
5 fallen into disrepair, in particular, the car
6 wash no longer functions, so they have to wash
7 the Blue Line trains outside on the ground.
8 There is not -- in the old part, there is not
9 adequate work platforms for fall protection for
10 the maintenance of the train, and we actually
11 have three rollup doors that are non-functional
12 as well as the sump pump in the pit.

13 So while we have S&R mobilized there,
14 we would like to address these state of good
15 repair items in the existing car house;
16 otherwise, we'd have to take the time, have a
17 consultant put together design bid build
18 documents, go out for bid, and these things
19 wouldn't be addressed until about this time next
20 year.

21 We also save the cost of remobilizing
22 a contract to address these items.

23 MR. JENKINS: Okay.

1 MR. DAVEY: And, Mr. Chairman, if I
2 also may just add, particularly, on the fall
3 protection, and that can't be understated,
4 that's worker safety. That's all about our
5 employees having capability of being on top of
6 those cars and having fall protection.

7 So, again, this has been an emphasis
8 from this Board from the Secretary and myself
9 since starting. So this is an opportunity for
10 us to get that up and running as soon as
11 possible.

12 MR. JENKINS: Okay. Any other
13 discussion? Those in favor?

14 MS. LOUX: Aye.

15 MR. ALVARO: Aye.

16 MR. JENKINS: Opposed?

17 (No response)

18 MR. DePAOLA: Thank you.

19 MR. JENKINS: Items 6 and 7, Mr. Bob
20 Johnson.

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BOB JOHNSON

ITEM 6

MR. JOHNSON: Mr. Chairman, Board Members. Item No. 6 requests ratification of a contract with National Railway Supply to furnish 27 sets of traction power substation control batteries.

This project will be financed entirely with Federal Economic Stimulus funding. National Railway Supply has advised us that this action will preserve two jobs.

An invitation for bid was sent to 12 firms and advertised on June 12, 2010. Three companies submitted bids. Two bids received were non-responsive for not complying with Buy America requirements. Also, one bid received did not meet the bids' technical specifications as well as being non-compliant with Buy America.

National Railway Supply was the only responsive bidder quoting domestic products in meeting the technical specifications.

The Power Division is engaged in an

1 ongoing program to replace the control batteries
2 used in traction substations. The MBTA has a
3 total of 51 substations. In June 2007, the
4 Power Division completed the first phase of the
5 program replacing batteries at 20 substations.
6 This procurement will supply the battery sets
7 needed to complete the program. The existing
8 battery sets are in excess of 20 years old.

9 A separate contract will be executed
10 for installation which is expected to take
11 approximately one year.

12 Substations receive 13,800 volt AC
13 electrical -- electricity that's fed from the
14 power grid and convert it to 500 volt DC for use
15 by our subway vehicles. A substation houses a
16 series of safety relays, sensors and trip cords
17 that detect spikes in power and disable the feed
18 avoiding damage or catastrophic failure. These
19 storage batteries power that safety system.

20 National Railway Supply will meet the
21 four percent DBE goal by using J. Mikulsky
22 Railway Supply.

23 I recommend the ratification of the

1 contract with National Railway Supply in the
2 amount of \$2,185,065.

3 MR. JENKINS: Can I get a motion,
4 please?

5 MR. ALVARO: So moved.

6 MR. JENKINS: Second?

7 MS. LOUX: Second.

8 MR. JENKINS: Discussion?

9 MR. ALVARO: Bob, you heard the issues
10 that have been raised. I've looked through the
11 back-up documentation, and it looks like
12 Maissa (phonetic) was not quite half a million
13 dollars lower but 400 some odd thousand dollars
14 lower; and even with the adjustment of
15 non-domestic content, we're still slightly lower
16 than National Railway Supply; and beyond that,
17 the technical issues, at least what we heard up
18 front here, was that they were willing to make
19 their bids technically compliant without
20 changing their bid. So I guess the question is
21 why don't we want to save 400 and some odd
22 thousand dollars?

23 MR. JOHNSON: Well, really, to

1 maintain the integrity of the bid process, we're
2 not -- we don't really allow bidders to cure
3 their bids after the fact. In this particular
4 case, that tubular versus the flat-plate design,
5 I'm told -- I'm not a technical guy, but I'm
6 told that the compatibility with the other
7 substations that have this flat-plate design and
8 testing equipment and the chargers and that kind
9 of thing that we already have become an issue.
10 Had we -- had we wanted to go forward with that
11 Maissa (phonetic), we would have had to submit a
12 Buy America waiver to FTA in order to move that
13 forward, and that's become a very sensitive
14 issue for these ARRA funded projects.

15 MR. JENKINS: Sensitive or difficult?

16 MR. JOHNSON: Worse than difficult as
17 it seems to be.

18 MR. DAVEY: They've rejected some
19 recent waivers.

20 MR. ALVARO: How much is that process
21 as to the -- how long does it take to get a
22 wavering process?

23 MR. JOHNSON: Well, typically, if it's

1 non-ARRA, it's -- it's -- it's almost rubber
2 stamped. It's very quick for non-ARRA funded
3 procedures.

4 MR. ALVARO: For ARRA projects, how
5 long --

6 MR. JOHNSON: The two that were
7 submitted which -- they basically won't deny
8 them or approve them.

9 MR. ALVARO: Okay. So how long does
10 it take to get --

11 MR. DAVEY: It's months.

12 MR. ALVARO: So --

13 MR. DAVEY: Ten months.

14 MR. ALVARO: So, basically, if we push
15 back and send you back, that's going to set this
16 process back a considerable amount of time.

17 MR. DAVEY: Months, and it's very
18 likely that then we'd be asked to make sure that
19 these three companies or whoever else bid had to
20 pass their suppliers.

21 MR. JOHNSON: That question is also
22 with FTA in Washington whether or not going
23 forward we can expect domestic only, but that's

1 a question that has not been answered for us yet
2 either.

3 MR. ALVARO: Well, I do a little bit
4 of WTO work. I think some foreign allies would
5 have some issues with respect to domestic only;
6 but basically, what you're saying is that -- I
7 mean, as somebody who cares about how much money
8 we spend around here, it's just hard for me to
9 understand why it's a good thing for us to spend
10 400 some odd thousand dollars more notwithstanding
11 the fact that I, you know, viscerally support
12 Buy American initiative. I also support the
13 funding -- MBTA initiative. I mean, is it
14 really -- a half a million dollars for us to go
15 with these guys, with National Railway?

16 MR. JOHNSON: Well, I don't know that
17 I can get that -- I don't know that I can get a
18 waiver. I'm not sure.

19 MR. ALVARO: I mean, what you're
20 saying is that even if we went with Maissa
21 (phonetic), we're probably going to get shot
22 down with ARRA?

23 MR. JOHNSON: Yeah. I think so, yes.

1 Yeah.

2 MR. JENKINS: Can you --

3 MR. DAVEY: And we would have a bid
4 protest likely thrown -- account for the
5 awarding because they were the only ones Bob
6 could actually follow the bid process.

7 MR. JOHNSON: That actually met the
8 technical specs.

9 MR. DAVEY: The technical specs.

10 MR. JOHNSON: And domestic product.

11 MR. DAVEY: So although what was
12 represented, it might have been two or three or
13 four percent -- debate exactly how far off they
14 were on the spec. The bottom line is they did
15 not meet --

16 MR. JOHNSON: They did not meet the
17 technical specifications.

18 MR. DAVEY: Nor did they meet the Buy
19 America requirements.

20 MR. ALVARO: So the answer to my
21 question is -- if the question that I pose to
22 you is that, basically, we don't really save
23 \$400,000 because we lose the ARRA funding, we're

1 out of pocket 100 percent on the contract.

2 MR. DAVEY: Correct.

3 MR. ALVARO: And it's unlikely that
4 we're going to get a waiver.

5 MR. JOHNSON: Yes.

6 MR. ALVARO: It's more than likely
7 that we'll get some litigation from the other
8 party.

9 MR. DAVEY: Correct.

10 MS. LOUX: Mr. General Manager, could
11 you speak in a -- in a bigger -- sort of
12 switching gears here, in the bigger picture of
13 the substations and, you know, we've got
14 batteries 20 years out. What's the surrounding
15 of the structural look like, do you know?

16 MR. DAVEY: Sure. Well, as this Board
17 has continued to push hard, is making sure that
18 we're spending as much capital dollars as we can
19 stated here. So not only has the CIP dedicated
20 99 percent of the state of repair, many of our
21 ARRA projects, in fact, almost all of our ARRA
22 projects are dedicated to the state of repairs.
23 So, I mean, these substations, as Bob mentioned,

1 are 20 years old. They're outdated. If we do
2 not use the ARRA moneys to purchase new ones, we
3 will have to find another resource, capital
4 resource within our own dollars to change them
5 out. I don't know what the useful life of these
6 batteries are, Bob, do you know?

7 MR. JOHNSON: About 20 to 25.

8 MR. DAVEY: Okay. So they basically
9 come to their useful life. And power continues
10 to be a major issue within our subway system for
11 sure, something that we are very much focused
12 on.

13 So, again, I think, although the cost
14 is higher by going with the compliant bidder, you
15 know, as this Board knows process in instances
16 as important as price; in this instance, the one
17 bidder that followed the process and got the
18 manager's recommendation happened to be higher
19 priced.

20 MR. ALVARO: But I think beyond that,
21 Mr. General Manager, based on what we've heard
22 here that you really aren't going to save
23 \$400,000. It's going to cost us \$1.7 million

1 more out of our pockets --

2 MR. DAVEY: That's correct.

3 MR. ALVARO: -- in fact, to support
4 us.

5 MR. DAVEY: That's correct.

6 MR. ALVARO: So, on that basis, I guess
7 with apologies to the taxpayers of the United
8 States of America, I mean, I think the answer is
9 economically something that's 100 percent
10 reimbursement at a higher price, that is,
11 something that gets a zero reimbursement at a
12 lower price.

13 MR. JENKINS: I have a couple of
14 questions. Could you educate us very quickly on
15 what is the Buy America --

16 MR. JOHNSON: Well, in this particular
17 case, it was -- they were non-compliant; they
18 were not providing domestic product.

19 MR. JENKINS: I understand. What is
20 the requirement? What is the --

21 MR. JOHNSON: If it's 25 percent or
22 less expensive, you can lobby FTA to waive the
23 Buy America requirement. In this particular

1 case, it was less than -- greater than 25
2 percent, less expensive than the National Railway
3 Supply bid.

4 If this was funding that was other
5 than ARRA, we would have fired that off to FTA,
6 and they would have sent it right back to us,
7 basically, granting that waiver because of that
8 price differential.

9 MR. JENKINS: And ARRA does not have
10 the 25 percent.

11 MR. JOHNSON: No, it does. It's just
12 so sensitive -- my understanding, politically,
13 that ARRA funding are not --

14 MR. JENKINS: You know, I'm a little
15 confused now because 25 percent, you can get the
16 waiver. They are 25 --

17 MR. JOHNSON: It's actually the
18 funding that's throwing the monkey wrench into
19 this.

20 MR. JENKINS: I understand, but then
21 you're telling me on the ARRA basis of what's
22 the -- what's the waiver amount, and you say 25
23 percent. So they meet both.

1 MR. JOHNSON: The amount is the same.
2 You have to be less -- you have to be greater
3 than 25 percent less than the domestic supplier.

4 MR. JENKINS: But we've got that.

5 MR. JOHNSON: It's the same for --

6 MR. JENKINS: Well, we've got that.

7 In this case, we've got that, greater than 25
8 percent less, correct?

9 MR. JOHNSON: Correct.

10 MR. JENKINS: So why can't we get the
11 waiver?

12 MR. DAVEY: That gets you to apply for
13 the waiver, Mr. Chairman. Consider the waiver.
14 So a waiver is not automatic. A waiver is not
15 automatic. And in this instance, Bob, I'm
16 looking at the math, this looks like 25 point
17 something. It barely met the --

18 MR. JOHNSON: Correct.

19 MR. JENKINS: But, you know, they're
20 over the threshold.

21 MR. DAVEY: They are over the
22 threshold.

23 MR. JENKINS: They don't say 25.7

1 and so --

2 MR. JOHNSON: Absolutely right.

3 MR. JENKINS: 25.01, then they make
4 the threshold.

5 MR. DAVEY: Correct.

6 MR. JENKINS: So I'm -- I've got
7 issues.

8 MR. ALVARO: I think, Mr. Chairman, I
9 mean, I have the same issues that you're
10 struggling with now, but I think what I'm
11 hearing is, as a practical matter, if we go with
12 the lower price contract, it's going to cost us
13 more because it's highly unlikely that we'll get
14 a waiver from the folks at FTA.

15 MR. JENKINS: Well, I'm not hearing
16 that.

17 MR. JOHNSON: That's exactly the case.

18 MR. JENKINS: That's what you said,
19 but that's not -- that's -- and, actually, you
20 didn't say that, so I'm not hearing that. What
21 I'm hearing is you don't know what they're going
22 to do. You're surmising that it will take two
23 to three months or a couple of months to get a

1 response, and they make come back and say no; so
2 they come back and say no, then --

3 MR. JOHNSON: We're --

4 MR. JENKINS: Let me finish.

5 MR. JOHNSON: Sure.

6 MR. JENKINS: They come back and say
7 no, or they come back and say yes.

8 And so if they come back and say no,
9 then we just go with the plan that you're
10 putting before us today. If they come back and
11 say yes, then we've saved 25 percent on the
12 expenditure that we're going to make.

13 I mean, if this were my two million
14 bucks, my two million bucks, I'd take that --
15 I'd take that risk, and we ought to treat these
16 dollars as if it is our two million bucks that
17 we're spending. So -- so get me past that if
18 you will.

19 MR. MULLAN: You asked a question what
20 the Buy America law is. Buy America law is a
21 federal law that requires that goods used in
22 Public Works -- manufactured goods used in Public
23 Works, including steel, iron, other products be

1 produced in the United States, very
2 straightforward law. It does provide exceptions
3 under certain circumstances including the 25
4 percent.

5 Our experience, not just in transit,
6 but also in highway is very difficult to obtain
7 an exemption with -- in ARRA-funded projects,
8 and that is pretty universal.

9 The only thing I was going to add, Mr.
10 Chairman, is with that point, I mean, it's
11 difficult, if not impossible, to get any
12 circumstance, but you also have a failure to
13 comply with respect to the specs here. And
14 there's a query: What's the delta on that?
15 We've already had presentation where the MBTA
16 will not permit what I would call bid shopping,
17 bid shopping being -- I'm not -- and I see
18 you've got a technical waiver. Can you improve
19 your price a little bit so we can get under
20 that? That's what we call bid shopping which
21 really goes to the integrity of the procurement.
22 Other people would call it buying the job, and
23 we don't -- we don't permit that, so we've got

1 that problem, and we don't know, even though the
2 spread looks like 400, you don't know how much
3 of that is attributable to the failure to comply
4 with the technical spec, and my experience is to
5 have some faith and confidence in the engineers
6 who are behind the procurement.

7 So I don't know how much of that went
8 into that, but I don't think this is just a Buy
9 America issue here.

10 MR. JOHNSON: Oh, it definitely isn't.
11 You know, the technical specification was not
12 met by the --

13 MR. DAVEY: If the Board rejected
14 this, Bob, we would have to rebid this, correct?

15 MS. LOUX: I would call the question,
16 Mr. Chairman.

17 MR. JENKINS: Could you answer the
18 question? Could you answer the General
19 Manager's question?

20 MR. JOHNSON: We would have to rebid
21 this, basically, yeah, and look to see whether
22 or not the spec could be somehow opened up.
23 Perhaps the -- by rebidding it, it doesn't make

1 the Buy America issue go away. It's still ARRA
2 funded. It's become very -- it's become very
3 clear that FTA is not going to be approving ARRA
4 funded Buy America requests. It's really not a
5 question, I don't believe, in anybody's mind
6 going forward. We have a couple over there now
7 that I think we're going to have to basically
8 withdraw and figure out another way to get the
9 job done.

10 MR. JENKINS: Thank you. All the
11 questions?

12 (No response)

13 MR. JENKINS: Those in favor?

14 MS. LOUX: Aye.

15 MR. ALVARO: Aye.

16 MR. JENKINS: Opposed?

17 (No response)

18 MR. JENKINS: Thank you.

19 MR. MULLAN: You might add, Mr.

20 Chairman that, before we vote on 6, you may have
21 already voted, you might want the staff of the
22 MBTA to follow up with this important phase in a
23 professional way.

1 MR. DAVEY: We will do that, Bob.

2 MR. JOHNSON: Absolutely.

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BOB JOHNSON

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ITEM NO. 7

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MR. JOHNSON: Item No. 7 requests your approval of an interim contract with Global Montello to furnish diesel fuel for Bus Operations for a three-month period.

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Global Montello is the incumbent supplier of diesel fuel for Bus Operations. The Board authorized the award of a one-year contract in May 2008 and approved the one-year option a year later. As a result of a dramatic decrease in price, the Acting General Manager approved a no-cost extension of the contract until September 30th, 2010.

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On July 2nd, a new invitation for bid was issued seeking pricing for a new contract. Two companies submitted bids which were opened on July 14, one from Global Montello and one

1 from Sprague Energy.

2 Global Montello did not meet the 5
3 percent DBE goal which Sprague Energy complied.

4 The Office of Diversity and Civil
5 Rights recommended that the Global bid be deemed
6 non-responsive for failure to document good-faith
7 efforts. Global Montello has protested this
8 determination. Currently, the Global appeal is
9 under review.

10 This action is requested to supply Bus
11 Operations with diesel on an interim basis
12 pending completion of the protest review and
13 decision.

14 I recommend approval of an interim
15 contract to Global Montello in the amount of
16 \$4,141,590.

17 MR. JENKINS: Do we have a motion?

18 MS. LOUX: Question. General Manager,
19 are we going to lose money when we sort this
20 out?

21 MR. DAVEY: Are we going to lose
22 money?

23 MS. LOUX: Yeah.

1 MR. JENKINS: What are you talking
2 about, 7? Let's get a motion. Do we have
3 motion to approve?

4 MR. ALVARO: I'll make the motion.

5 MR. JENKINS: Second. Discussion?
6 Bob or John, I don't --

7 MR. JOHNSON: There's a relatively
8 significant increase in the markup which is the
9 foreign piece of the contract which is,
10 basically, the price of fuel that's, you know,
11 in effect at the time of delivery.

12 MS. LOUX: Simple question. Are we
13 going to lose money in the interim?

14 MR. JOHNSON: No, no, not if this is
15 approved, we will not.

16 MR. ALVARO: Okay. Sorry. Finish,
17 Director.

18 MS. LOUX: Yes. Thank you.

19 MR. ALVARO: I know better than to
20 interrupt you.

21 MS. LOUX: I take that as a compliment.

22 MR. ALVARO: You should. You should.
23 Basically, you know, I'm reading the

1 papers here. These guys, the contract they had,
2 they missed their DBE goals; is that correct?

3 MR. JOHNSON: Well, the original-based
4 contract had a five percent DBE goal, and they
5 came with one percent and had good-faith efforts.

6 MR. ALVARO: Okay. They missed the
7 target. And I'm not sure -- you know, that
8 good-faith thing, I need to understand how that
9 works because if one supplier can hit five
10 percent and another one can't, I'm sort of
11 baffled by -- you know, that means the resources
12 are out there to meet the requirement. But let's
13 just put that aside.

14 They -- They did not meet the
15 requirement on the contract they had. They were
16 non-responsive with respect to the requirement
17 on their new bid.

18 MR. JOHNSON: Correct.

19 MR. ALVARO: And were deemed not to
20 have even made a good-faith effort on their new
21 bid.

22 MR. JOHNSON: Correct.

23 MR. ALVARO: And we want to reward

1 them by giving them \$4 million for blowing the
2 DBE targets.

3 MR. JOHNSON: I wouldn't put it that
4 way.

5 MR. ALVARO: Well, I mean, that's what
6 we're doing.

7 MR. JOHNSON: Well, we're just -- not
8 knowing how long this administrative
9 reconsideration process will take, we're just
10 trying to, you know, maintain supply of diesel
11 for the bus ops.

12 MR. ALVARO: No, I understand, and I
13 understand that, you know, if you have to buy
14 the stuff on the spot or whatever, it's going to
15 perhaps cost us a little bit more, though,
16 hearing it's not definitely going to cost us
17 more.

18 I would just say this to you, Bob, if
19 we're just going to ignore the DBE targets, find
20 a way to get around the DBE targets, then we
21 might as well not have DBE targets. So vendors
22 that are, you know, miss their target by 80
23 percent on existing contract, don't even try on

1 the new bid, to me, is not a vendor that is
2 meeting the spirit of what we're trying to do
3 here with respect to DBE's.

4 MR. JOHNSON: I totally understand,
5 and that is actually why the Global bid was
6 deemed to be non-responsive, and we actually had
7 on the August Board agenda, we were going to be
8 bringing in a new base contract for a year and a
9 year option with Sprague who did meet the goal,
10 but then we got this protest and --

11 MR. ALVARO: Okay. So with that
12 straight, why give Global another \$4 million?

13 MR. JOHNSON: We need -- We need
14 diesel. I mean, --

15 MR. ALVARO: Well, yeah, but you can
16 buy diesel elsewhere, Bob.

17 MR. JOHNSON: Yeah. I mean, if this
18 is -- if this is something that you prefer not
19 to move forward in this direction, I could
20 probably reach out to Sprague, see if they could,
21 on a much, you know, smaller quantity, within
22 the General Manager's authorization level, we
23 could probably, you know, go month to month

1 until the -- until the protest has been resolved,
2 and we have some direction.

3 MR. ALVARO: Well, that sounds like a
4 spectacular good idea to me. I don't know about
5 my colleagues on that.

6 MS. LOUX: I mean, so long as what
7 you've got to do -- are we -- are we -- when I
8 say, "Are we losing money?", I mean, is this
9 costing us money by holding this up, Mr. General
10 Manager? And, you know, in effect, we are --
11 since when do we freeze these things and, you
12 know, the people who aren't responding get an
13 upper leg in this process? It doesn't -- it
14 doesn't seem right to me.

15 MR. DAVEY: I think that's right,
16 Director. Unfortunately, the bidder does have
17 the right to protest.

18 MS. LOUX: Yes, but do we have to hold
19 up our processing of it because of it? I mean,
20 or should have the right to protest?

21 MR. JOHNSON: Well, in this particular
22 case, Global, if, you know, the process is
23 upheld, basically, that they did make good-faith

1 efforts, they would -- they would be the, you
2 know, the low responsive bidder if they're able
3 to meet these good-faith efforts.

4 MR. ALVARO: I don't know how you can
5 make a compelling case that you made good-faith
6 efforts when your competitor was able to find
7 five percent.

8 MR. JENKINS: The only thing is, isn't
9 this the same thing as we just talked about?
10 There was a bid, and they didn't meet it. They
11 didn't meet the requirements if you will.

12 MR. JOHNSON: They did not meet the
13 DBE piece of the bid package, that's correct,
14 and they were deemed non-responsive. They were
15 sent a letter saying that they were deemed
16 non-responsive.

17 MR. JENKINS: But -- so I hear you
18 saying -- you tell me whether I heard this right;
19 that you go out, and we can survive without
20 costing us more money until such time as --

21 MR. JOHNSON: Well, if this action --
22 if this action were approved, the markup would
23 be the same as it currently is. If we're -- you

1 know, if we'd like to do something with Sprague
2 on a shorter-term basis while the appeal is
3 being, you know, goes through its process, that
4 will cost us a little bit more money because the
5 markup in the new bid is higher than the markup
6 in the base for the Global bid.

7 MR. JENKINS: It's two percent it
8 looks like to me.

9 MR. JOHNSON: No, it's close to six
10 cents a gallon.

11 MR. JENKINS: It's two percent it
12 looks like to me.

13 MR. JOHNSON: Well, a million seven --

14 MR. JENKINS: I'm doing this up here,
15 so it's not two percent. (Indicating)

16 MR. DAVEY: But, Bob, if it wasn't
17 protest, we'd be in front of this Board asking
18 for authorization.

19 MR. JOHNSON: Last month.

20 MR. DAVEY: Right, for the 6th delta,
21 anyways.

22 MR. JOHNSON: Right. That's true.

23 MR. JENKINS: So, therefore, if I want

1 to put this thought. So, therefore, we could go
2 to Sprague or elsewhere and get it, and it might
3 cost up to six percent more. It might cost up
4 to six percent more over the period that we're
5 talking about.

6 MR. JOHNSON: Well, what I'll do, if
7 that's what the Board --

8 MS. LOUX: I have a suggestion on what
9 to do.

10 MR. JENKINS: Okay. Let's hear it.

11 MS. LOUX: I would like to make a
12 friendly amendment that we empower -- that we
13 approve this pending the General Manager get in
14 and look at this and negotiate it and fix it
15 and, you know, give him the authority to do it
16 because there is a seemingly time when the -- to
17 me, this doesn't pass the smell test, and I'd
18 like the General Manager involved in making sure
19 that the pieces are put together before it
20 passes.

21 MR. ALVARO: I'm not sure how the
22 General Manager can assure that they're going to
23 get the DBE targets when they're saying they

1 can't. They've said in their bid they can't.

2 MS. LOUX: I'm just saying that he
3 should get in and look at the whole situation,
4 assess where we should go, and we should empower
5 him to make a decision that, you know, most
6 benefits the T.

7 MR. MITCHELL: Well, there is a
8 reconsideration being undertaken by --

9 (Court Reporter interrupts for not
10 being able to hear.)

11 MR. MITCHELL: The MassDot Diversity
12 Office is doing a bid review on this as we
13 speak.

14 MR. JENKINS: But, meanwhile, he's
15 asking us to extend this contract to this
16 non-compliant company.

17 Now, we have an amendment on the
18 table. What's the protocol? Do we have to get
19 a second or --

20 MR. MITCHELL: I would say get a
21 second.

22 MS. LOUX: Who made the motion? I
23 made the motion?

1 MR. JENKINS: That was not a motion.

2 MR. MITCHELL: It was a suggestion
3 thought.

4 MS. LOUX: I'm simply trying to say I
5 don't think I made the original motion in the
6 discussion. I was trying to make a friendly
7 amendment to it rather than make a motion as to
8 accept my amendment.

9 MR. ALVARO: I make the motion; and
10 with all due respect, Director, I just have a
11 hard time getting over the DBE shortfall on
12 this.

13 MS. LOUX: I don't think there's a
14 conflict. I'm just saying I'm telling Rich to
15 go fix it.

16 MR. ALVARO: But I don't -- that's why
17 I said earlier, I don't think he can fix -- they
18 haven't said they're going to get more DBE
19 participation. They're just contesting the
20 issue of whether they made good-faith effort or
21 not.

22 MR. JOHNSON: That's true.

23 MR. ALVARO: So if they win, all we're

1 going to wind up with is a contract with a one
2 percent DBE target versus a contract with a five
3 percent DBE target.

4 Nobody is more, you know, sensitive
5 and aggressive on cost issues than I am, but my
6 view is if cost is the only consideration, then
7 DBE targets are irrelevant. I don't think
8 they're irrelevant and, therefore, I cannot
9 support --

10 MS. LOUX: Just to be clear, I'm not
11 making an amendment to say, you know, ignore the
12 DBE. I'm saying that Rich go in and fix the
13 thing.

14 MR. ALVARO: But, Janice, I don't
15 think --

16 MS. LOUX: I just wanted to clarify
17 that.

18 MR. ALVARO: I want to say I don't
19 think it's fixable. That's what I'm saying.
20 But the defect -- the only thing Rich could do
21 would be to say, "Yes, you made a good-faith
22 effort," which gets us with a one percent DBE
23 participation.

1 MS. LOUX: Do you have another
2 suggestion?

3 MR. ALVARO: My suggestion is that we
4 reject this proposal.

5 MR. DAVEY: When is the bid protest
6 expected to be resolved?

7 MR. JOHNSON: I'm not real sure, Rich.
8 I know -- I think the meeting with -- I think
9 MassDot and Bill Cooper are meeting tomorrow, I
10 think, to try to work through the process and
11 the issues at hand.

12 MR. JENKINS: I'd like to call for a
13 vote of this. Those in favor? Those opposed?

14 (Mr. Alvaro and Ms. Loux raised their
15 hands and opposed.)

16 MR. JENKINS: So you figure out where
17 it goes from here.

18 MR. DAVEY: That's the effect of
19 fixing it, anyways. Okay. Thank you.

20 MR. JOHNSON: We'll do that.

21 MR. JENKINS: No. 8, Sean Carney.

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SEAN CARNEY

ITEM NO. 8

MR. CARNEY: Good afternoon, Mr. Secretary, Mr. Chairman, Board Members, Mr. General Manager.

My name is Sean Carney. I'm the Director of Operations Support. I'm here today to ask for funds totaling \$16,319,785.68 in support of the MBTA Vertical Transportation Program.

The MBTA Elevator and Escalator program leading up to 2004/2005 underwent strict scrutiny by the media, advocates and passengers resulting in the Boston Center for Independent Living Agreement represented by the Greater Boston Legal services filing a lawsuit against the Authority.

As outlined in the summary before you, over the last five years, there's been a significant investment made in the support of the Vertical Transportation which has contributed to the increasing of both the

1 reliability and availability of the equipment
2 making the Authority accessible with some of the
3 highest percentages in the country consistently
4 ranging from 98 percent to 100 percent daily.

5 This item requests the Board to ratify
6 and authorize the General Manager to execute
7 funds expended in support of Vertical
8 Transportation to an agreement entitled,
9 "Vertical Transportation Maintenance Agreement,"
10 with Kone, Incorporated for a sum of
11 \$4,344,293.57 and to approve and authorize the
12 General Manager for additional funds not to
13 exceed \$11,975,492.11 for preventative
14 maintenance through the end of the contract on
15 November 12th, 2010 and is for the one-year
16 option through November 12th, 2011.

17 The ratification funds in the amount
18 of \$2,142,543.07 is the previous expenditures.
19 Additionally, \$1,136,411.86 is for current
20 outstanding invoices and \$1,065,338.64 was for
21 emergency repairs outside of the base contract
22 for preventative maintenance for a sum not to
23 exceed \$4,344,293.57.

1 The authorizations for these funds in
2 the amount of \$2,631,524.55 for preventative
3 maintenance until the end of the contract,
4 November 12th, 2010 in the amount of
5 \$9,343,967.56 for the one-year option at a sum
6 not to exceed \$11,975,492.

7 The total ratification, preventative
8 maintenance and the one-year option is for a
9 total of \$16,319,785.68.

10 With the one-year option, Kone has
11 agreed to a three percent -- three percent
12 reduction for extra services. In addition, Kone
13 has agreed to address and perform corrective
14 measures to a long-standing escalator key
15 cylinder issue at no additional cost to the
16 agreement.

17 The result of the escalator key
18 cylinder unification program will result in a
19 savings of \$183,000.

20 Under a six-month extension, Kone,
21 Incorporated would not be able to provide these
22 services or offer a rate reduction.

23 The one-year option allows the

1 Authority enough time to exercise a request for
2 proposal bid process. At the present, the
3 Authority is working diligently to prepare a new
4 technical specification that will address the
5 needs of the Authority while adhering to the
6 BCIL agreement and commitment to accessibility.
7 It is our plan that through the bid process, we
8 will foster interstreet (sic) competition
9 resulting in superior service and competitive
10 rates.

11 The funding for this Board action will
12 be supplied within the Engineering and
13 Maintenance Directorate for fiscal 2011
14 operating budget and request for fiscal 2012
15 budget.

16 Kone has committed to ten percent DBE
17 participation for material components of this
18 contract.

19 I recommend approval of this item.

20 MR. JENKINS: I'm going to -- before I
21 ask for approval, --

22 MR. CARNEY: Yes.

23 MR. JENKINS: -- here, there's a ton

1 of numbers in here, --

2 MR. CARNEY: Absolutely.

3 MR. JENKINS: -- and you just
4 summarized --

5 MR. DAVEY: I certainly can, Mr.
6 Chairman. So what management is asking for is
7 approval for two numbers and ratification of
8 several -- what have been spent.

9 What Mr. Carney is asking for is for
10 this Board to consider, first, is a one-year
11 extension for the Kone contract. The amount is
12 \$9.3 million; \$9,343,967.56. That is a one-year
13 extension for the operating agreement which is
14 set to expire November 12th.

15 The other numbers discussed include
16 the following: One is to -- to fund the current
17 contract. What Mr. Carney didn't specifically
18 mention is the current contract is overspent;
19 it's overspent.

20 MR. JENKINS: Two million bucks.

21 MR. DAVEY: More than that.

22 MR. JENKINS: How much?

23 MR. DAVEY: Well, it's over two

1 million, plus, we're going to need more money
2 to -- that's right -- so it's compounded
3 monthly. Basically, it's 500,000 a month.

4 What happened is this Board
5 authorization occurred in 2005. It was a
6 five-year authorization, and it was essentially
7 expended just about four -- just about four
8 years, four years and two months. There are a
9 couple of reasons for that. One is because we
10 added elevators and escalators to this contract;
11 two, frankly, the higher level of availability
12 and scope that's been added as a result of the
13 BCIL agreement; and three, to be quite frank,
14 this was not a well-managed contract. This was
15 not a well-managed contract. You get an
16 external source and an internal source that were
17 managing this contract. Terminated that
18 contract with the subcontractor who's assisting
19 us, Rich Bates (phonetic). We were not happy
20 with what they were doing, and the internal
21 source that was managing this contract retired
22 earlier this year; and when this was brought to
23 my attention by Sean and a member of his team,

1 John Doherty (phonetic), who wrote this, the
2 bottom line is this was an overspent contract.

3 So we're in a position now where we
4 have, what I would say, an excellent product as
5 Marilyn McNabb has testified earlier. We have
6 one of the best elevator and escalator responses
7 in the country. The problem, however, is that
8 this was an underfunded contract, and it was not
9 managed, and we're trying to fix that now.

10 So what we're requesting is, first, an
11 extension for one year so we can put together a
12 good bid package, create a competitive
13 environment so we can get a good bidding process
14 going forward; two, we need more money to extend
15 this contract the first five years; and then
16 three, I need ratification of this Board for
17 moneys that have already been expended by the
18 past contract manager and for emergency repairs
19 that I authorized three weeks ago, four weeks
20 ago for repairs that had not been completed but
21 were requested and required, I should say, by
22 the Department of Public Safety, and I
23 authorized those under my emergency powers as

1 well.

2 So that is the nature of this contract.
3 That's the summary of what is in front of this
4 Board. I know it's confusing, and that's
5 because it is confusing. This is not -- this
6 was not a well-managed contract is the bottom
7 line, but we need to be mindful that what this
8 does is provide important service to our
9 customers. I know this Board is well aware of
10 that, is very supportive of that; with that
11 said, management has a lot of work to do to get
12 your faith back so we can manage this.

13 MS. LOUX: I'd just like to say, Mr.
14 Chairman, that I fully support the current
15 General Manager's action on taking emergency
16 authority and adding money to fix this problem;
17 but to say that the current -- the past contract
18 was mismanaged was a kind understatement. The
19 previous General Manager, while heralding this
20 as a great achievement of his, couldn't even
21 monitor the consultant that was hired to follow
22 the contract itself and heralded this as one of
23 his shining achievements during his tenure, and

1 the walls have come crashing in; he's spent
2 money without Board approval and made quite a
3 mess exiting out the door.

4 So I appreciate the fact that this
5 General Manager has dug in and is fixing this
6 and getting us on the road to a prudent
7 management of these contracts.

8 The idea that the violations that
9 existed in the background were never brought
10 before the Board, that they spent past Board
11 regulations is inexcusable and just a sign of
12 the kind of manager that Dan Grabauskas was.
13 Thank you.

14 MR. JENKINS: No questions?

15 MR. ALVARO: I'll make the motion.

16 MR. JENKINS: Okay. Seconded.

17 MS. LOUX: Second.

18 MR. JENKINS: Discussion.

19 MR. ALVARO: I think we know how the
20 Director wants this --

21 (Discussion turns to everyone talking
22 over each other and laughter in the room - not
23 able to record.)

1 MR. ALVARO: Thank you, Mr. Secretary,
2 because I'm glad she did name names, but I
3 didn't want my friend, Bill, to fall under the
4 bus as it were --

5 (Discussion turns to everyone talking
6 over each other - not able to record.)

7 MR. ALVARO: I have a question. I
8 have two questions which are -- one is technical
9 and one isn't.

10 How much has been spent beyond Board
11 approval at this point that you're seeking
12 ratification for?

13 MR. CARNEY: \$4,344,293.57. We really
14 haven't paid what the General Manager authorized
15 yet. We haven't given that check out. So three
16 million.

17 MR. DAVEY: Why don't I take that.
18 So, to answer your question, Director, \$2.1
19 million had been spent, paid, done. An
20 additional 1.1 -- when this issue came to light,
21 staff stopped paying Kone because they knew they
22 didn't have the authorization. However, Kone
23 continued to work in good faith. We owe Kone

1 another \$1.136 million for work they have
2 performed; we have not paid it; but to earlier
3 meetings -- we don't give you an alternative.

4 Finally, I authorized up to
5 \$1.065 million for emergency repairs. Some of
6 that work has begun but not all of that has been
7 spent.

8 MR. ALVARO: Actually, I want to focus
9 on that. I mean, if what I'm hearing is that
10 Kone did a good job but we spent too much
11 money, --

12 MR. DAVEY: Correct.

13 MR. ALVARO: -- so why do we get into
14 a situation where we had to do emergency repairs
15 if these guys were on top of this over a
16 five-year period?

17 MR. DAVEY: Because they are not
18 allowed, Director, to do emergency repairs
19 without Authority approval, and the manager in
20 charge of this, did not authorize them to move
21 forward. There were some projects or some DPS
22 issues that were on a list that dated back almost
23 12 months ago, and they were not authorized for

1 approval to be repaired. When that came to my
2 attention, I immediately instructed the staff to
3 undertake those repairs immediately.

4 MR. ALVARO: Is there anybody still
5 around who was managing this?

6 MR. DAVEY: No.

7 MR. CARNEY: No.

8 MR. ALVARO: So that one person we had
9 that was involved has since retired?

10 MR. DAVEY: Correct.

11 MR. ALVARO: Heads the role --

12 MR. DAVEY: There was a budget manager
13 who also retired and did have some oversight of
14 this at one point.

15 MR. ALVARO: Well, you know, I re-echo
16 Director Loux' comments that this is, I think,
17 critically important work that needs to be done,
18 both because we're legally required to do it,
19 and also because I think it really is, but for
20 the gross mismanagement of the money, I think,
21 you know, the results have been something for us
22 to be proud of. So I would just encourage you
23 guys to make us as proud of you as my managers

1 are of you as, you know, escalator maintenance
2 guys. This is really distressing, and I know
3 there's nobody here to be held accountable for
4 it, but I hope that, with Director Loux, I hope
5 that these are things that are things of the
6 past and not things of the future.

7 MR. DAVEY: And if I may, as part of
8 the BCIL agreement, we were required to outsource
9 some of this oversight. There's talking of
10 BCIL -- plaintiffs and lawyers to let them know
11 that we were not happy with bringing -- having
12 it managed by an outside contractor, looking at
13 bringing it in-house, not only to Sean's team,
14 which is Operations Support, but also to Gary's
15 team, systemwide accessibility.

16 Now, we have, I would say, an
17 independent review to ensure not only the
18 contract is being managed prudently in a fiscal
19 respect but also to make sure that repairs are
20 being effectuated as quickly as possible. So I
21 think going forward, we will have the right team
22 and the right structure in place.

23 And John Davis' group, I have asked to

1 take a more oversight role on the financial end
2 of this that had been largely delegated to folks
3 outside of this office. So with a more
4 cross-functional approach, I would expect a
5 better product, not only in terms of continuing
6 to exceed the 99 percent as seen but also on the
7 fiscal side being more prudent.

8 MR. JENKINS: I have a concern, and my
9 concern is procedural and, that is, it's not
10 directed at you, Mr. Carney, but presenters are
11 here. We have to get the full story; and if we
12 didn't click down a couple of times on this, we
13 don't get the full story, and we're asked to
14 move forward on this with a lot of background
15 information that was very very important to this
16 discussion. So, in the future, I mean, if, you
17 know, there's a story behind a request, this
18 Board needs to know the story behind the request
19 so we can make our deliberations with all the
20 information that's on the table.

21 MR. CARNEY: Absolutely. And I think
22 you need to do it in a timely manner. I need to
23 be more proactive. I've been coming to these

1 Board meetings to make sure that you guys are
2 aware of what's going on -- and way ahead of the
3 time, that way you guys get options.

4 MR. JENKINS: And this -- and this
5 presentation, you know, and even if we were told
6 about this five months ago, that doesn't work.
7 You've got to bring it to our attention, hear
8 the other issues around it. I think you know
9 what I'm talking about.

10 MR. DAVEY: Yes.

11 MR. JENKINS: So are we ready for the
12 vote?

13 MS. LOUX: Yes.

14 MR. MULLAN: Mr. Chairman, I think
15 another issue here is the spec. I agree it was
16 bad and poorly managed, but the spec was bad
17 and, you know, the hours of service that were
18 being provided is now under a five-year funding
19 stream ran out in four years and two months. I
20 think management needs, you know, to do maybe a
21 peer -- maybe not a formal peer review, but I
22 think you've got to take a good hard look at the
23 spec.

1 MR. CARNEY: Well, we're in the
2 process --

3 MR. MULLAN: I understand it got
4 caught, I think, a little bit in timing, right, --

5 MR. CARNEY: Right.

6 MR. MULLAN: -- of it being spec'd
7 before the agreement.

8 MR. MITCHELL: Correct.

9 MR. MULLAN: So -- but I do want to
10 make that point and call it, it was mismanaged,
11 but it was a bad spec to begin with and,
12 therefore, it was improperly priced.

13 MR. DAVEY: That's right, Mr. Chairman,
14 and, specifically, what that -- you know, under
15 the BCIL agreement and just providing
16 transportation services, generally, we should
17 have staff on call when they're servicing the
18 public and, unfortunately, in this spec, we did
19 not. So holidays, weekends, storm events were
20 all extra work. Obviously, we run on holidays
21 and weekends, particularly, after 6:00 o'clock
22 on Sundays.

23 We, in the new contract, we're asking

1 this Board's approval for one year; we're adding
2 two teams of repair inspectors to be out on the
3 property nights and weekends, so it's not
4 additional work; it is part of the scope; it's
5 part -- so the Secretary is correct. This was
6 not entirely -- there were a number of factors
7 to why we're here today. Certainly, the scope
8 of the contract is one. With that said, it is
9 incumbent upon management -- it is incumbent
10 upon us to bring that to this Board. If there's
11 a scope problem or an issue, it is incumbent
12 upon us to talk to the staff, and appreciate
13 Sean and his team for bringing this forward to
14 me to say, "This was not right, and we need to
15 fix it." So, you know, we're trying to
16 encourage more of that; and as issues arise,
17 bringing them, and we will fix them and inform
18 the Board.

19 MS. LOUX: Was it Sean who brought it
20 forward?

21 MR. DAVEY: It was John Doherty
22 (phonetic) and his team who is sitting in the
23 audience.

1 MS. LOUX: Good work.

2 MR. JENKINS: Those in favor?

3 MR. MITCHELL: Point of clarification,
4 Mr. Chairman. There are two separate votes
5 here. For the pleasure of the Board, you can
6 take them jointly or take them separately. One
7 is for the extension, and one is for the
8 ratification. So whatever the Board's pleasure
9 is.

10 MR. JENKINS: Why don't we take them
11 together.

12 MS. LOUX: I make a motion to approve.

13 MR. ALVARO: Second.

14 MR. JENKINS: Those in favor?

15 (A show of hands)

16 MR. JENKINS: Opposed?

17 (No response)

18 MR. JENKINS: Mr. Steve Trychon.

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STEVEN TRYCHON

ITEM NO. 9

MR. TRYCHON: Good afternoon, Mr. Chairman, Members of the Board, Mr. Secretary, Mr. General Manager.

This item is to request the Board of Directors to approve and authorize the General Manager to execute IFB No. 55-10 for the maintenance of the Authority's Transit Police Two-Way Radio Equipment with Comtronics Corporation of Quincy, Massachusetts for a sum not to exceed \$1,141,600.

The MBTA advertised IFB 55-10 in May of 2010. The IFB was for a three-year contract with two separate one-year options for the maintenance and repair of the Authority's Transit Police two-way radio equipment. Comtronics Corporation of Quincy, Massachusetts was the low and responsible bidder.

The preventative maintenance program is performed weekly on the radio voting system and dispatcher consoles and tri-annually on the

1 fixed equipment. The corrective maintenance
2 portion of this contract is based on time and
3 materials. As such, the Authority must plan for
4 anticipated corrective maintenance costs for the
5 Transit Police communications system.

6 The DBE participation goal on this
7 contract is ten percent. Comtronics shall meet
8 this goal by purchasing uniforms and other
9 clothing from MG Products, a certified DBE.

10 Funds for this effort are available
11 from the Systemwide Maintenance and Improvements
12 fiscal year 2011 operating budget.

13 And one more important fact to
14 consider is we're currently operating under a
15 contract extension. Our contract expired in
16 July of 2010. But we had remaining funds
17 available to us under the existing contract, and
18 we were able to work it out with them, so we are
19 currently just maintaining our system as such.
20 So it's important that we get this contract
21 approved.

22 So, in conclusion, the Board of
23 Directors is requested to approve and authorize

1 the General Manager to execute IFB 55-10 with
2 Comtronics Corporation of Quincy, Massachusetts
3 for the maintenance of the Transit Police
4 two-way radio equipment for a sum not to exceed
5 \$1,141,600. Thank you.

6 MR. JENKINS: Motion to vote?

7 MR. ALVARO: So moved.

8 MR. JENKINS: Second?

9 (Show of hands)

10 MR. JENKINS: Discussion?

11 MS. LOUX: Question. So is their
12 uniforms or clothing as a part of this contract?

13 MR. TRYCHON: You know, that's a good
14 question. I would think that Comtronics is
15 probably wearing a uniform when they show up to
16 our site that says, "Comtronics."

17 MS. LOUX: I mean, we seem to be
18 buying radios, and I don't know how the company
19 has satisfied the DBE by buying uniforms in a
20 contract where we're buying radios and equipment.
21 I don't understand how that satisfies --

22 MR. JENKINS: It says, "and other
23 clothing." I agree with you.

1 MS. LOUX: But it's not part of the
2 contract purchase.

3 MR. MITCHELL: I'd also expect that
4 they have to have uniforms to be on site. It
5 would have to be attached to this contract.

6 MS. LOUX: But we're not purchasing
7 uniforms.

8 MR. MITCHELL: But they are. It's an
9 expense against the contract.

10 MR. ALVARO: Actually, I didn't pick
11 up on that, but that's an excellent question.

12 MR. TRYCHON: It's a very nice catch.

13 MR. ALVARO: Well, what's the answer,
14 though?

15 MR. TRYCHON: I don't know.

16 MR. ALVARO: I mean, having just made
17 a speech about DBE earlier, I'm not going to
18 repeat it, but, I mean, if this isn't real, I
19 would like to know that it's not real.

20 MR. JENKINS: There's a hand up in
21 back.

22 MS. LEONARD: I can speak for
23 Comtronics; is that all right?

1 MR. ALVARO: Sure.

2 MR. JENKINS: What was the comment?

3 MR. TRYCHON: She's from Comtronics.
4 Can she speak to the Board?

5 MR. JENKINS: Okay. Sure, you can
6 speak. Why don't you come to the mike so we can
7 hear you and identify yourself, please.

8 MS. LEONARD: My name is Catherine
9 Leonard. I'm the owner of Comtronics
10 Corporation. We are not supplying radios in
11 this bid. We are strictly doing service. So
12 what we are doing is when he calls us, we're
13 repairing -- we repair --

14 MS. LOUX: Could you speak into the
15 mike?

16 MS. LEONARD: I'm sorry. When he
17 calls us, we're repairing your radios; we're
18 reprogramming, doing things like that. So it's
19 a very labor-based contract. So when we buy
20 uniforms, that's where our guys show up.
21 They're in uniforms all marked. Excuse me. I'm
22 nervous.

23 MR. ALVARO: So does the contract

1 require that -- I mean, the vendors, people be
2 in uniforms?

3 MS. LEONARD: Well, I think that any
4 contract, we show up on your -- on your property
5 that we are dressed properly that shows who we
6 are. We have -- we all have I.D. badges that we
7 must wear to come in, and it's difficult
8 sometimes on these contracts to find the DBE
9 goals when we're doing all of the repair work.
10 It's a challenge.

11 MR. ALVARO: Well, that's a different
12 issue.

13 MS. LEONARD: Yes, it is, you're
14 right. You're right.

15 MR. ALVARO: Then what you're saying
16 is we're being charged \$114,000 for contracts
17 that we didn't ask -- for uniforms that we
18 didn't ask for?

19 MS. LEONARD: No. Yeah. No, we spend
20 this money, anyway. This is money that we spend,
21 but what we're doing is that we seek out a DBE
22 company, that is, we make sure -- we go to great
23 lengths to get out and find any DBE contractor

1 we can to give -- to supply us, you know,
2 signage for our cars, signage for the building,
3 uniforms, anything that can help us meet the
4 goal.

5 MR. ALVARO: Okay. I get it. But, I
6 mean, you're saying you would be buying uniforms
7 for these people in any event?

8 MS. LEONARD: Right.

9 MR. ALVARO: If you didn't have this
10 contract, you'd be buying uniforms for your
11 people.

12 MS. LEONARD: Well, if you don't have
13 work, you don't need uniforms, so I --

14 MR. ALVARO: Is this the only contract
15 you have?

16 MS. LEONARD: No.

17 MR. ALVARO: So you have other work?

18 MS. LEONARD: Yes.

19 MR. ALVARO: And if you didn't have
20 this, would you have uniforms?

21 MS. LEONARD: We would have less
22 people working, therefore, have a need for less
23 uniforms, I mean.

1 MR. ALVARO: I'm just trying to
2 understand whether -- I mean, just taking ten
3 percent of your overhead and putting it into the
4 contract to meet the DBE target which, to me, is
5 not the spirit of what we're trying to accomplish
6 here.

7 MS. LEONARD: Well, with -- as far as
8 DBE goals, there's different ways to accomplish
9 them. I know a lot of it is when you purchase
10 from a DBE, that's considered towards your goal;
11 when you help somebody along that's also
12 mentoring as part of your goal. I know it's --
13 I know -- I'm pretty familiar with the State
14 because we do a lot with the Commonwealth of
15 Massachusetts, and we know what these different
16 goals are. I was at DBE for years and years,
17 and it's -- you know, we understand what we need
18 to do to supply people with what they need for
19 contracts.

20 MR. ALVARO: I'm confused.

21 MR. JENKINS: Yeah. I think -- I
22 think we'd like to table this one.

23 MS. LEONARD: Okay.

1 MR. JENKINS: Okay? And I think what
2 you're hearing -- what you're hearing is the
3 intent of it is -- if it's a \$1,100,000
4 contract, --

5 MS. LEONARD: Right.

6 MR. JENKINS: -- then the services
7 that you provide within that contract, the idea
8 is that that requirement would be met from
9 within that \$1,100,000 -- 1.1 million or --
10 \$114,000 worth of -- you're not -- I find it
11 hard to believe you're going to buy \$114,000
12 worth of clothing and uniforms.

13 MS. LEONARD: You'd be surprised what
14 that stuff costs over the years.

15 MR. JENKINS: Will you be buying
16 \$114,000 worth due to this contract?

17 MS. LEONARD: I see what you're
18 saying. But, you know, --

19 MR. JENKINS: Will you?

20 MS. LEONARD: We would find other
21 things to do with it.

22 MR. ALVARO: Okay. But, see, the
23 object of the DBE --

1 MS. LEONARD: Okay. Okay.

2 MR. ALVARO: Before we send you back,
3 I just want it to be clear on communicating to
4 you what the issue is.

5 The object of DBE spending is so that
6 we're spending the money -- the money that
7 otherwise would have been spent on the contract,
8 a portion of that is going to DBE.

9 What I'm hearing here is that \$114,000
10 of uniform costs that was added to the contract
11 to make the DBE target which means, you know, we
12 didn't require --

13 MS. LEONARD: No, no. That's not --
14 that's not the case. We did not add 100,000 put
15 onto the cost of the contract.

16 MR. ALVARO: Okay. But if they didn't
17 have uniforms, wouldn't it cost us \$114,000
18 less?

19 MS. LEONARD: No, no, no.

20 MR. ALVARO: Then where's the ten
21 percent for uniforms? I'm --

22 MS. LEONARD: We don't have --

23 MR. JENKINS: Here's what I understand

1 you're saying.

2 MS. LEONARD: Yes.

3 MR. JENKINS: We're going to -- you
4 know, in the company, when we send folks out,
5 everybody has on a uniform, and so I used to get
6 my uniforms from a non-DBE company. Because of
7 this contract, I'm going to get my uniforms from
8 a DBE company which will allow me to meet my DBE
9 goals. And it's not just for the people who are
10 going to be coming out to us, but it's for my
11 entire company, for all of my folks --

12 MS. LEONARD: Right.

13 MR. JENKINS: -- in a year, and I'm --
14 and I've decided I'm going to switch it from a
15 non-DBE to a DBE vendor to get my uniforms, and
16 that's how I'm hoping to -- Now, now does it --
17 in fact, the cost of it is a very small part of
18 the \$1.14 million that she's going to spend.
19 You know, maybe it's \$5,000 or \$10,000 of that
20 for people who will service us.

21 MR. ALVARO: So the point is then, it
22 really isn't the ten percent DBE participation.

23 MR. JENKINS: Of the \$1.14 million,

1 right.

2 So why don't we table it. You know
3 what our interests -- what our concerns are
4 about and come back and see us next month.

5 MS. LEONARD: Okay.

6 MR. JENKINS: Okay?

7 MR. TRYCHON: Thank you.

8 MS. LEONARD: Thank you for the
9 opportunity.

10 MR. JENKINS: Jody Ray.

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JOHN RAY

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ITEM NO. 10

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MR. RAY: Good afternoon, Mr. Chairman,
Members of the Board, Mr. Secretary and Mr.
General Manager.

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My name is John Ray, and I'm the MBTA
Senior Director of Operations Contracted
Services. I'm here today to present Item No. 10.

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23

The purpose of this staff summary is
to request the Board of Directors to authorize

1 the General Manager to take all necessary actions
2 to extend, first, the Hingham to Boston and,
3 secondly, the Inner Harbor MBTA Commuter Ferry
4 service contracts for six months. These
5 contracts are -- contracts are -- shall commence
6 on July 1st, 2011 and would expire December 31st
7 of 2011.

8 On June 30th of 2011, the existing
9 contracts for both the Hingham to Boston and the
10 Inner Harbor Ferry service routes will expire,
11 and that's June 30th.

12 As supported by the ridership data, the
13 summer months attract the highest daily and
14 monthly ridership on all three commuter boat
15 services. Further, ridership generally reaches
16 its seasonal peak throughout the July 4th holiday
17 week.

18 And since the current service contracts
19 are due to expire this coming July, the potential
20 exists that the MBTA will be in the difficult
21 position of transitioning operations to a new
22 service agreement and possibly to a new ferry
23 operator during the highest ferry ridership

1 period of the year.

2 To minimize the possibility of negative
3 customer impacts, the Authority seeks to enter
4 in a six-month contract for the period of July
5 1st through December 31st for both service
6 routes. Such an agreement would have a
7 termination date occurring during the winter
8 which is also the slowest season for the ferry
9 ridership.

10 The current operating contract requires
11 a DBE participation of ten percent for
12 procurements made by the contractor in each year
13 of the contract and for the life of the contract.
14 There will be no change to this contractor
15 mandate.

16 As the Hingham to Boston and Inner
17 Harbor Ferry Services are currently funded
18 service routes, it is anticipated that operating
19 funds for these services will continue to be
20 made available in the FY2012 Commuter Ferry
21 Services operating budget.

22 The Board may elect not to approve
23 this action in which case we are prepared to

1 move forward over the next nine months to
2 advertise and award the contract effective July
3 1st of 2011.

4 It is recommended that the Board of
5 Directors authorize the General Manager to take
6 all necessary actions to extend the Hingham and
7 Inner Harbor Commuter Boat service including the
8 negotiation and execution of the related
9 agreements through December 31st, 2011.

10 MR. JENKINS: Do I have a motion to
11 approve?

12 MS. LOUX: So moved.

13 MR. ALVARO: Second.

14 MR. JENKINS: Questions, discussion?

15 MR. DAVEY: If I may, Mr. Chairman.
16 So, Jody, the bottom line is you want to realign
17 this contract to be -- to have a transition
18 during the month where we have the least
19 ridership and not when we have, in fact, our
20 highest weekend, correct?

21 MR. RAY: Right, that's exactly what
22 we're looking for.

23 MR. DAVEY: And even if the Board

1 decides that -- chooses not to do that, we still
2 have plenty of time to bid this and do a
3 transition on July 1st, 2011?

4 MR. RAY: Yes.

5 MR. DAVEY: In my packet, it says,
6 "2012."

7 MR. RAY: I'm sorry.

8 MS. LOUX: Mine does, too.

9 MR. DAVEY: So to clarify, it's July
10 1st, 2011 in the alternative section.

11 MS. LOUX: There's not much competition
12 out there.

13 MR. RAY: No, there isn't.

14 MS. LOUX: None that has changed.

15 MR. RAY: Well, what -- we're trying
16 to generate some competition by trying to
17 make -- actually, all three of the commuter boat
18 contracts aligned at the same time period. This
19 gets us a huge -- this would get us a lot closer
20 to that. There's still a third contract out
21 there. We'd like to put -- we're thinking about,
22 actually, putting the three of them together so
23 that the two bidders that we currently have

1 would then --

2 MS. LOUX: Might you just brief us on
3 those plans as you're creating them about the
4 concept of putting the three of them together
5 and where that would get us eventually?

6 MR. RAY: We're still in the
7 discussion process but --

8 MS. LOUX: We're saying for a briefing,
9 Jody.

10 MR. RAY: Oh, yes.

11 MS. LOUX: A briefing.

12 MR. RAY: Yes.

13 MR. JENKINS: Okay.

14 MR. ALVARO: So what's the benefit,
15 Jody, of -- what do we get out of doing the
16 six-month extension?

17 MR. JENKINS: Customer service. Let
18 me see if I understand. Customer service is
19 such that at the height of the peak of the
20 travel season, we don't change on July 1;
21 rather, we get this towards December 31st which
22 is the lowest ridership we get.

23 MR. RAY: Correct. That's all it is.

1 MR. JENKINS: That's all it is, no
2 moneys, no --

3 MR. RAY: July 4th weekend is our
4 highest ridership for our commuter ferries.

5 MR. JENKINS: Those in favor?

6 MS. LOUX: Aye.

7 MR. ALVARO: Aye.

8 MR. JENKINS: Motion granted.

9 Gary Foster.

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GARY FOSTER

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ITEM NO. 11

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MR. FOSTER: Good afternoon, Mr. Chairman, Secretary, General Manager and Members of the Board. My name is Gary Foster. For those of you that I haven't met, I'm the CTO and head of the ITD Department here at the MBTA.

Item 11 requests the approval of a contract with AdvizeX Technologies LLC for the procurement of hardware, software and installation services for an Authority Disaster

1 Recovery and Storage Area Network solution.

2 This proposal will meet our business
3 requirements for online storage, availability
4 and recovery of MBTA mission critical enterprise
5 and departmental applications while providing
6 the following:

7 Ability to configure systems and
8 business applications in a way that would allow
9 recovery from a disaster, power outage, local
10 systems outage or other hazards.

11 Increase our capacity to store
12 information online.

13 Provide synchronized replication of
14 system and business information.

15 Consolidate and standardize storage
16 array technology.

17 Identify system and storage risks and
18 provide solutions that deliver significant
19 operational improvements while minimizing
20 business impact.

21 Also reduce energy consumption.

22 In addition, this disaster recovery
23 capability directly supports and is aligned with

1 our MBTA Continuity of Operations Plan.

2 The total cost of this proposal is not
3 to exceed \$1,695,005.97. An invitation for bids
4 was sent to 20 firms and advertised on the MBTA
5 website. There was one respondent, AdvizeX
6 Technologies.

7 The DBE participation goal for this
8 contract is ten percent. The SOMWBA-certified
9 DBE firm, First World USA, Incorporated, doing
10 business as Terminal Exchange, will provide
11 project management and installation services at
12 a value of \$169,600 or ten percent.

13 Funds for this project are available
14 through the Federal Transit Administration
15 grant, 900584. This disaster recovery grant is
16 the first FTA Transportation Improvement Program
17 grant awarded to the MBTA. The FTA
18 participation is 72 percent of the total cost of
19 the program with a 28 percent match provided by
20 the Authority from its revenue bond funds.

21 I recommend that an award be made to
22 AdvizeX Technologies in the amount of
23 \$1,695,005.97.

1 MR. JENKINS: Motion to approve this?

2 MR. ALVARO: So moved.

3 MR. JENKINS: Second?

4 MS. LOUX: Second.

5 MR. JENKINS: Discussion?

6 (No response)

7 MR. JENKINS: Those in favor?

8 MS. LOUX: I have a question. So we
9 had one respondent to the bid, is that what I
10 heard you say?

11 MR. FOSTER: Yes.

12 MS. LOUX: I was looking for it in the
13 writing, but I didn't see it. So we sent it out
14 to how many people?

15 MR. FOSTER: 20.

16 MS. LOUX: And one respondent? I
17 mean, that says to me -- I mean, this isn't the
18 kind of stuff that usually you have to -- to
19 broaden to get a little competition, is it?

20 MR. FOSTER: I wouldn't say I was
21 shocked, but I was very surprised. We did
22 something like this before, and we did not award
23 it. We received two bids; that was about a year

1 and-a-half ago. I really don't have an
2 explanation of it. I wish we had 10 bids, 20
3 bids.

4 MR. DAVEY: Gary, --

5 MR. FOSTER: It's a low-bid situation.

6 MR. DAVEY: Gary, you speculated,
7 however, that EMC, with respect as such, that we
8 asked for an EMC product. Why don't you explain
9 that a little?

10 MR. FOSTER: Oh, with respect to EMC
11 Clariion, they tend -- what EMC kind of does,
12 which we have nothing to do with, we don't deal
13 with EMC on the bid. You know, value-added
14 resells in the marketplace, many of whom we send
15 this, you know, invitation directly to. EMC
16 tends to offer preferred pricing to -- better
17 pricing to some than others, but the speculation
18 is everyone on the inside of this kind of bar
19 business knew that they had already teamed up
20 with AdvizeX and maybe some other people dropped
21 out. Now, that's speculation. I don't know
22 that for a fact. So there is some, you know, --
23 EMC isn't necessarily offering it to every

1 particular bar for the same price; but, you
2 know, one bid is not ideal. No question about
3 that.

4 MR. ALVARO: So, basically, EMC
5 decides who's going to win the bid.

6 MR. FOSTER: I think that's possible.
7 I'm not -- I don't know that for a fact. I
8 don't want to go that far, but it could be the
9 case. It could be the case.

10 MR. JENKINS: Okay.

11 MR. MULLAN: But you're happy with the
12 price --

13 MR. FOSTER: Yes.

14 MR. MULLAN: -- from your perspective
15 based upon everything that you know?

16 MR. FOSTER: Pleased. We feel it is a
17 good plan; we feel engineering has -- with the
18 lack of bids. The list of 20 is attached, and I
19 actually have calls into 7 or 8 of those
20 companies to find out exactly why they didn't
21 bid. You know, some were -- we're going to go
22 through all 20 if we have to. But I'm trying to
23 get some feedback.

1 MR. DAVEY: You've done due
2 diligence --

3 MS. LOUX: It's a good summary also.

4 MR. JENKINS: That's good for the
5 future to understand what the marketplace is.

6 MR. FOSTER: Yeah. We're trying to
7 figure out if there's something we need to do
8 different. You know, we have a pipeline of
9 these grants coming, and I want to make sure
10 these bids are done right.

11 MR. ALVARO: We asked EMC to bid it
12 directly, and they declined.

13 MR. FOSTER: No, I don't think we
14 asked. I think we just sent it to them. I
15 don't think we expected them to bid. They were
16 on the mailing list.

17 MR. ALVARO: Sent invitation.

18 MR. FOSTER: They are on the mailing
19 list, yes. In theory, they could have bid
20 directly.

21 MR. JENKINS: Those in favor?

22 MS. LOUX: Aye.

23 MR. ALVARO: Aye.

1 MR. JENKINS: Opposed?

2 (No response)

3 MR. JENKINS: Thank you.

4 MR. FOSTER: Thank you very much.

5 MR. JENKINS: Next is Mr. Wesley

6 Wallace, Item No. 12.

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WESLEY WALLACE

10 ITEM NO. 12

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12 MR. WALLACE: Thank you, Mr. Chairman.
13 Good afternoon to you, to Mr. Secretary, Members
14 of the Board of Directors and Mr. General
15 Manager.

16 This action concerns the liability
17 insurance for the Authority. This action
18 authorizes the General Manager or his designee,
19 the Treasurer-Controller, to renew the
20 Authority's liability insurance for a one-year
21 period beginning September 19, 2010 with the
22 Lexington Insurance Company, the Steadfast
23 Insurance Company and XL Europe Limited, with

1 limits of \$67.5 million excess, meaning over, of
2 a \$7.5 million self-insured retention through Aon
3 Risk Services for a total cost of \$4,035,000.

4 Lexington will provide a \$17.5 million
5 layer of coverage above our S-I-R of \$7.5
6 million, and Steadfast and XL will each provide
7 \$25 million of coverage above this 17.5 million.

8 The combination of our \$7.5 million
9 S-I-R and the \$67.5 million insurance layer
10 produces a total of \$75 million as required by
11 our 1994 Enabling Legislation. This law also
12 caps our Massachusetts Commuter Rail liability
13 at \$75 million per occurrence and annually in
14 the aggregate.

15 Insurance coverage, terms, conditions
16 and exclusions and all deductibles all remain
17 the same as under the expiring policy. The only
18 difference this year is that the cost was
19 increased by \$167,000 which amounts to 4.32
20 percent due to a hardening insurance market and
21 worsening claims experience in the rail/transit
22 industry.

23 Two years ago, we conducted an RFP for

1 broker services and Aon, once again, was
2 selected as the best and most qualified of five
3 competitors and was appointed to provide broker
4 services for the three years.

5 This year, we conducted a single
6 broker/multiple carrier market competition in
7 which Aon contacted 15 insurers and ultimately
8 put together the best combination of insurance
9 coverage and cost with three participating
10 insurers.

11 Albert Risk Management Consultants,
12 who also represents many other Massachusetts
13 state agencies, including MassPike and MassPort,
14 acted as our independent consultant and assisted
15 us with this procurement. They agree with our
16 recommendation, and their supporting letter is
17 shown in Tab D.

18 While there is no DBE goal for this
19 procurement, Aon will continue to involve the
20 Market International Insurance Agency, a
21 SOMWBA-certified DBE at a participation rate of
22 10.05 percent.

23 Funds for this expenditure are

1 included in the 2011 operating budget.

2 I, therefore, request that the Board
3 of Directors authorize the renewal of this
4 insurance program.

5 MR. JENKINS: Can I get a motion to
6 approve?

7 MR. ALVARO: So moved.

8 MR. JENKINS: Second?

9 MS. LOUX: Second. One question.

10 I will vote for this, but I have to
11 say that I would really like to see our whole
12 way of doing this relooked at, reorganized,
13 reformed and refreshed. And, you know, if next
14 year this is more of the same, I'm going to vote
15 against it.

16 MR. JENKINS: Could you help me with
17 any -- and help the presenters with any
18 particular area that you have concern about?

19 MS. LOUX: I just think that we're
20 rigid in, you know, who the players are and who
21 the consultants are, and I just don't have a lot
22 of confidence in underlying numbers of the
23 self-insurance and, you know, all the different

1 components that we do. So, you know, I'd like,
2 you know, in an ideal world, that the General
3 Manager have a team of folks that, you know,
4 relook at this and see if there is a better way
5 of us approaching it.

6 MR. JENKINS: Maybe the answer to this
7 is to a bit of education for the Board relative
8 to what is the process; why 75 million which was
9 in the enabling legislation. So that answers
10 that question. You know, why seven and-a-half
11 million or ten percent as the retained liability
12 and self-liability, if you will, and what J.H.
13 Albert plays in it, why he uses insurance
14 advisors, what he pays insurance advisors and
15 those questions. I think Director Loux'
16 questions are, obviously, a very critical part
17 of it and could be explained; just an education
18 session that we are not -- that we're not aware
19 of.

20 MR. DAVEY: We can take that on --
21 offline, Mr. Chairman, certainly, as Mr. Wallace
22 has said, there are some statutory limitations,
23 however, we do have a choice of brokerage, for

1 example. I think that may be one of Director
2 Loux' concerns. I don't know how long Aon has
3 been our broker. Maybe that's what they look
4 at. And I think, certainly, the MassDot reform
5 the Secretary and I have talked about, looking
6 at our insurance programs together, although
7 they are different, but perhaps there's an
8 opportunity there going forward.

9 MR. JENKINS: Other questions or
10 comments?

11 (No response)

12 MR. JENKINS: What's the effective
13 date of this?

14 MR. WALLACE: The 19th, I believe.

15 MR. JENKINS: Of this month?

16 MR. WALLACE: This month, yes.

17 MR. JENKINS: Those in favor?

18 MS. LOUX: Aye.

19 MR. ALVARO: Aye.

20 MR. JENKINS: Opposed?

21 (No response)

22 MR. JENKINS: Thank you. Mr. Boyle,
23 please.

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MARK BOYLE

ITEM NO. 13

MR. BOYLE: Thank you. Good afternoon.
Item No. 13 authorizes a lease with Bank of America for a 362-square foot concession space at Alewife Station in Cambridge.

The proposed lease term is for five years with one five-year option period.

The base rent would start at \$30,000 per year and escalate annually in accordance with the CPI or 2.5 percent whichever is greater.

The space was publicly bid with a minimum offering of \$27,400. Bank of America submitted the only bid.

Bank of America is the current tenant and operates an ATM in the space. They currently pay \$25,608 per year, so this lease represents a modest increase in non-fare rental revenue.

I recommend approval of the proposed lease with Bank of America.

1 MS. LOUX: Motion approved.
2 MR. ALVARO: Second.
3 MR. JENKINS: Discussion?
4 (No response)
5 MR. JENKINS: Those in favor?
6 MS. LOUX: Aye.
7 MR. ALVARO: Aye.
8 MR. JENKINS: Thank you.
9 May I have a motion to adjourn the
10 meeting?
11 MS. LOUX: Motion to adjourn.
12 MR. JENKINS: Second?
13 MR. ALVARO: Second.
14 MR. JENKINS: Those in favor?
15 MS. LOUX: Aye.
16 (A show of hands)
17 MR. JENKINS: Opposed?
18 (No response)
19 (Whereupon the Massachusetts Bay
20 Transportation Authority - Board of Directors -
21 Open Meeting Agenda adjourned at 4:50 p.m.)
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C E R T I F I C A T E

I, Simonne J. Elwood, R.P.R. and a Notary Public, do hereby certify that the foregoing record, Pages 1 through 115, is a complete, accurate and true transcription of my stenographic notes of the proceedings in re: Massachusetts Bay Transportation Authority, Board of Directors, Open Meeting Agenda, taken on Tuesday, September 7, 2010 at the Massachusetts Bay Transportation Authority, Transportation Building, Third Floor, Room 3910, Boston, Massachusetts, according to the best of my skills, knowledge and ability.

Simonne J. Elwood
REGISTERED PROFESSIONAL REPORTER

Dated this ____ day of _____ 2010
My Commission Expires: January 30, 2015