

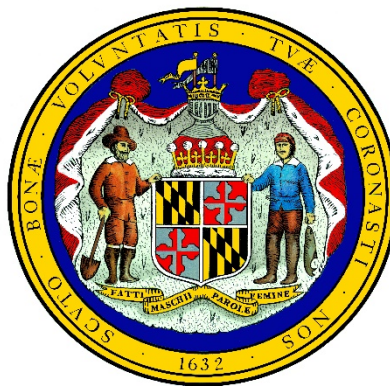
# Audit Report

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## **Maryland Department of Transportation Maryland Aviation Administration**

March 2024

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**OFFICE OF LEGISLATIVE AUDITS**  
DEPARTMENT OF LEGISLATIVE SERVICES  
MARYLAND GENERAL ASSEMBLY

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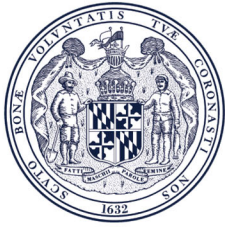
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DEPARTMENT OF LEGISLATIVE SERVICES  
OFFICE OF LEGISLATIVE AUDITS  
MARYLAND GENERAL ASSEMBLY

Gregory A. Hook, CPA  
Legislative Auditor

March 6, 2024

Senator Clarence K. Lam, M.D., Senate Chair, Joint Audit and Evaluation Committee  
Delegate Jared Solomon, House Chair, Joint Audit and Evaluation Committee  
Members of Joint Audit and Evaluation Committee  
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a fiscal compliance audit of the Maryland Department of Transportation (MDOT) – Maryland Aviation Administration (MAA) for the period beginning December 17, 2018 and ending January 31, 2023. MAA is responsible for the operation, maintenance, protection, and development of the Baltimore/Washington International (BWI) Thurgood Marshall Airport and the Martin State Airport, and operates a program to foster, develop, and regulate aviation within the State.

Our audit disclosed that MAA did not establish formal guidelines on acceptable marketing expenses incurred by its concessions management vendor to ensure the fund was used for its intended purpose. Our review of the vendor's reported marketing fund expenses totaling \$2.8 million over a four-year period disclosed payments from the fund totaling \$333,000 that did not meet the stated purpose of the fund or appeared to be of a questionable nature. For example, the vendor used the marketing fund to sponsor a sporting tournament in 2020, 2021, and 2022 with payments totaling \$125,000.

In addition, MAA did not obtain documentation to support the propriety of payments for janitorial and shuttle bus services under two contracts valued at \$205 million. MAA paid \$21.7 million under these contracts as of April 2023.

Furthermore, MAA did not adequately justify a convenience stores contract modification that significantly changed the financial terms and removed the Airport Concessions Disadvantaged Business Enterprise (ACDBE) requirements for one site, which may not have been in the best interest of the State. Additionally, for a second convenience store site, MAA did not monitor the

vendor's compliance with ACDBE requirements and did not sufficiently verify the propriety of rent payments made by the vendor.

Finally, our audit included a review to determine the status of the four findings contained in our preceding audit report. We determined that MAA satisfactorily addressed three of the four prior audit findings. The remaining finding is repeated in this report.

MDOT's response to this audit, on behalf of MAA, is included as an appendix to this report. We reviewed the response to our findings and recommendations, and have concluded that the corrective actions identified are sufficient to address all issues.

We wish to acknowledge the cooperation extended to us during the audit by MAA. We also wish to acknowledge MDOT's and MAA's willingness to address the audit issues and implement appropriate corrective actions.

Respectfully submitted,

A handwritten signature in black ink that reads "Gregory A. Hook". The signature is written in a cursive, flowing style.

Gregory A. Hook, CPA  
Legislative Auditor

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## **Background Information**

### **Agency Responsibilities**

The Maryland Aviation Administration (MAA) is responsible for the operation, maintenance, protection, and development of the Baltimore/Washington International Thurgood Marshall Airport and the Martin State Airport, and operates a program to foster, develop, and regulate aviation within the State. MAA is governed by the Maryland Aviation Commission which consists of ten members, including eight members who are appointed by the Governor with the advice and consent of the Senate, the Secretary of Transportation who serves as the Chairperson, and the Secretary of Commerce who serves as a nonvoting member.

According to the State's records, MAA's expenditures totaled approximately \$270.1 million (special funds of \$252.4 million and federal funds of \$17.7 million) during fiscal year 2022 (see Figure 1 on the following page). Special fund revenue generated by airport operations (such as customer facility charges, airport concessions, and a portion of parking revenue) totaled approximately \$275 million, of which \$227.2 million related to operating revenue and \$47.8 million related to capital financing revenue. The State's Transportation Trust Fund funds the amount by which operating expenditures exceed special fund operating revenue, and funds capital projects as needed.

**Figure 1**

**MAA Positions, Expenditures, and Funding Sources**

<b>Full-Time Equivalent Positions as of June 30, 2022</b>		
	<b>Positions</b>	<b>Percent</b>
Filled	455.0	92.0%
Vacant	39.5	8.0%
<b>Total</b>	<b>494.5</b>	
<b>Fiscal Year 2022 Expenditures</b>		
	<b>Expenditures</b>	<b>Percent</b>
Salaries, Wages, and Fringe Benefits	\$ 55,304,283	20.5%
Technical and Special Fees	2,836,663	1.0%
Operating Expenses	211,996,147	78.5%
<b>Total</b>	<b>\$270,137,093</b>	
<b>Fiscal Year 2022 Funding Sources</b>		
	<b>Funding</b>	<b>Percent</b>
Special Fund	\$252,447,585	93.4%
Federal Fund	17,689,508	6.6%
<b>Total</b>	<b>\$270,137,093</b>	

Source: State financial and personnel records

**Referrals to Our Fraud, Waste, and Abuse Hotline**

During our audit fieldwork, we received two referrals to our fraud, waste, and abuse hotline that included four allegations related to questionable actions involving MAA's procurement and subsequent contract modifications of a convenience stores contract. Based on our determination of the associated risk, we performed a detailed review of the procurement and modifications for this contract which extended our fieldwork until December 2023.

As noted in our findings below, although we did not substantiate any of the allegations, we found that certain components were factually accurate. These components when combined with findings 3 and 4 in this report raise questions about the propriety of the overall procurement of the contract and subsequent modifications, and in our opinion, do not present a compelling case that the contract was in the best interest of the State.

## Status of Findings From Preceding Audit Report

Our audit included a review to determine the status of the four findings contained in our preceding audit report dated December 12, 2019. As disclosed in Figure 2, we determined that MAA satisfactorily addressed three of these findings. The remaining finding is repeated in this report.

**Figure 2**  
**Status of Preceding Findings**

<b>Preceding Finding</b>	<b>Finding Description</b>	<b>Implementation Status</b>
Finding 1	MAA circumvented State procurement regulations by directing its parking services vendor to procure, at a total cost of \$1.7 million, construction work for valet services and six customer service robots.	Not repeated
Finding 2	MAA did not review marketing fund expenses made by its concessions management vendor to ensure the fund was used for its intended purpose.	<b>Repeated</b> (Current Finding 1)
Finding 3	MAA did not always document that bid openings were proper, and did not ensure contract awards were published on <i>eMaryland Marketplace</i> as required.	Not repeated
Finding 4	MAA did not have adequate procedures and controls to ensure that proper deposit verifications were performed.	Not repeated



## Findings and Recommendations

### Concessions Management Vendor Contract

#### **Finding 1**

**Maryland Aviation Administration (MAA) did not establish formal guidelines on acceptable marketing fund expenses incurred by its concession management vendor. Our review of the vendor's reported expenditures disclosed that it used the fund for certain expenses which did not appear to support the intended purpose of the fund.**

#### **Analysis**

MAA did not establish formal guidelines on acceptable marketing fund expenses incurred by its concession management vendor and did not ensure the fund was used for its intended purposes. The vendor provided MAA with annual marketing fund reports and supporting documentation detailing the fund's expenses during calendar years 2019 through 2022. According to the vendor reports, during calendar years 2019 through 2022, marketing fund collections and expenses totaled \$2.5 million and \$2.8 million, respectively.

MAA did not have formal guidelines for appropriate use of the marketing funds which are contributed by concessionaires based on a percent of their gross receipts. The vendor contract states that the purpose of the marketing fund is to allow the vendor to cover the cost of marketing and promotional activities (such as customer service and satisfaction training, advertising, and special event promotions) intended to potentially have a positive impact on the sales of the entire concessions program. Without specific guidelines, the purpose defined in the contract is subject to interpretation and could be used by the vendor for activities that are not consistent with the intent of the fund.

Our review of the vendor marketing fund reports during these years disclosed expenses categorized as community relations totaling \$394,431, and we determined that approximately \$333,000 of these expenses were of a questionable nature. For example, the vendor disclosed payments totaling \$125,000 to sponsor a sporting tournament held in Baltimore during calendar years 2020, 2021, and 2022, and \$30,000 to sponsor a gala at a museum in 2019 and 2022. The vendor's report indicated that these payments would have a positive impact on the community and a potential economic impact on the airport. Although MAA advised that it reviewed the report, MAA did not question the reasonableness of this assertion in conjunction with the stated purpose of the fund or obtain vendor documentation indicating the effectiveness of these events on the entire concessions program.

A similar condition was commented upon in our preceding audit report, including the use of marketing funds to sponsor a sports tournament. In response to that report, MAA reviewed the \$552,000 expenses we questioned (which included \$391,000 categorized as community relations) and recovered \$262,000 from the vendor, including certain payments for community relations. In addition, MAA indicated that it would closely monitor the marketing fund and reported expenses, and recover unauthorized expenses from the vendor. However, as noted above, MAA could not adequately justify certain expenses, including payments for community relations.

### **Recommendation 1**

**We recommend that MAA**

- a. establish formal guidelines on allowable community-related expenses to ensure that they appear to have a direct relationship or benefit to the concessions program consistent with the stated purpose of the fund;**
- b. review the annual marketing fund reports and obtain supporting documentation to ensure the fund was used as intended (repeat); and**
- c. immediately pursue recovery of all fund expenses that are inconsistent with the stated purpose of the fund, including the identified payments noted above (repeat).**

## **Contract Monitoring**

### **Finding 2**

**MAA did not obtain available supporting documentation to verify the propriety of amounts paid on two contracts for janitorial and shuttle bus services.**

### **Analysis**

MAA did not obtain available supporting documentation to verify the propriety of amounts paid for certain contracts. Specifically, our test of three multi-year contracts valued at approximately \$250 million related to the operations of the airport (janitorial, shuttle bus, and parking services) disclosed that MAA did not obtain supporting documentation to ensure the propriety of amounts paid on two contracts (janitorial and shuttle bus) valued at \$205 million. MAA paid the vendors primarily based on hourly labor charges without obtaining available supporting documentation (such as time records of hours billed for the janitorial contract and bus route logs for the shuttle bus contract) to verify the propriety of these payments. The respective contracts provided MAA access to these documents upon request. We obtained the supporting documentation for certain charges from the two vendors for five invoices covering activity during the period

from October 2022 through January 2023 and did not identify any material improper payments.

MAA entered into a five-year contract for janitorial services effective September 2022, valued at approximately \$130 million, and a five-year contract for shuttle bus services effective September 2021, valued at approximately \$75 million. According to the contract terms, approximately 85 percent and 100 percent of the respective contract values are based on hourly labor charges. According to MAA records, as of April 2023 payments for the janitorial and shuttle bus contracts totaled \$11 million and \$10.7 million, respectively.

## **Recommendation 2**

**We recommend that MAA obtain available supporting documentation to verify the propriety of amounts invoiced by vendors, at least on a test basis, including those noted above.**

## **Convenience Stores Contract**

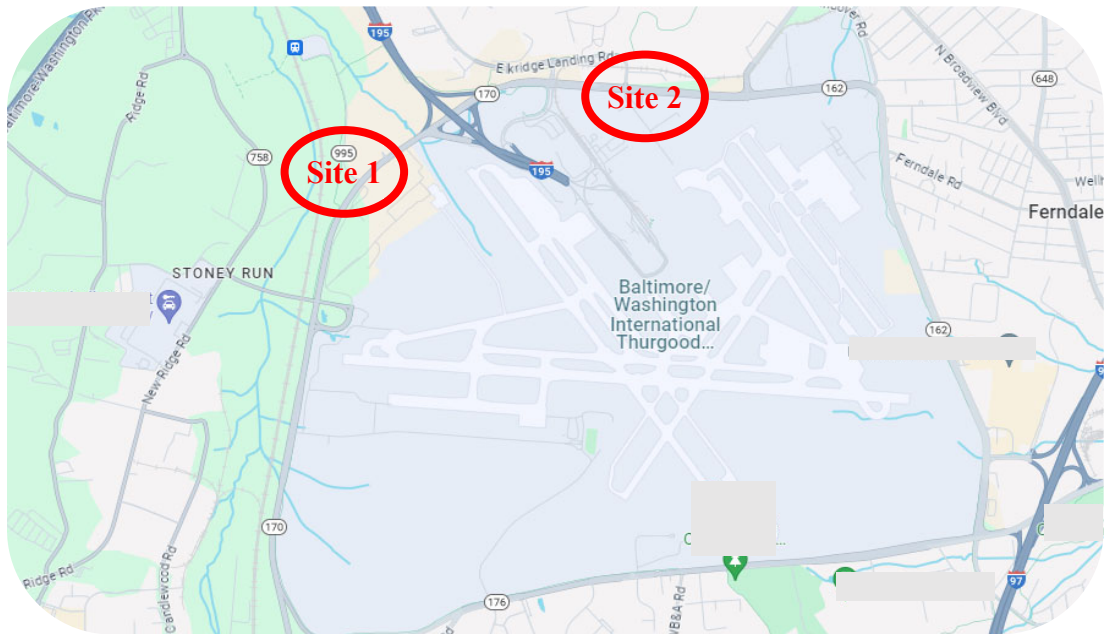
### **Background**

We received two referrals to our fraud, waste, and abuse hotline that included four allegations pertaining to questionable actions by MAA involving the procurement<sup>1</sup> and modification of a convenience stores contract. The procurement was initiated in March 2019 for two convenience store sites at the Baltimore/Washington International Thurgood Marshall Airport (BWI). See Figure 3 on the following page for the two sites' approximate locations. The Request for Proposals (RFP) and subsequent contract provided for the design, development, financing, construction, management/operation, and maintenance of a convenience store with a gas station (Site 1). The RFP also provided for the redevelopment, management/operation, and maintenance of the existing convenience store and gas station (Site 2). MAA received proposals from three vendors, but subsequently rejected two vendors after concluding the proposals did not meet the technical and/or financial requirements of the RFP.

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<sup>1</sup> As a revenue-producing contract to benefit the public at a State transportation facility, this procurement was exempt from the requirements in Division II of the State Finance and Procurement Article of the Annotated Code of Maryland and State procurement regulations.

**Figure 3**  
**Location of the Two Convenience Store Sites**



Source: Google Maps and MAA's records

After receiving approval from the Board of Public Works (BPW) in January 2020, MAA awarded the contract to the remaining vendor, which was also the incumbent vendor at Site 2. The resultant contract included a 25-year term for Site 1 beginning after construction of the new facility, and a 10-year term for Site 2 commencing immediately upon execution of the contract. Rent under the contract was based on the greater of 5.75 percent of gross sales or minimum monthly guarantees of \$10,000 for Site 1 and \$7,500 for Site 2. Although the contract contained no State Minority Business Enterprise participation goals, the vendor was required to maintain Airport Concessions Disadvantaged Business Enterprise<sup>2</sup> (ACDBE) participation during the contract that was equal to 25 percent of total gross revenues. See Exhibit 1 for the Board of Public Works agenda item and meeting transcript for the convenience stores contract.

<sup>2</sup> The federal ACDBE Program is administered by the Federal Aviation Administration under 49 U.S.C. 47107(e). According to C.F.R. Title 49 Subtitle A Part 23, primary airports are required to set goals for participation by disadvantaged businesses of at least 10 percent in airport concessionaires. ACDBE participation is calculated on an airport-wide basis, and goals are not required for each contract awarded by an airport. The law does not penalize airports for failing to meet overall goals, but they must administer their ACDBE program "in good faith." Regardless of the provisions in the federal law, MAA's establishment of specific performance requirements in the vendor's contract were intended to be enforceable.

MAA subsequently executed two modifications to the contract, both of which were approved by the BPW. The first modification executed in February 2021 eliminated the federal ACDBE requirements on Site 1, changed the rent on Site 1 to a fixed annual amount of \$400,000 (subject to \$20,000 increases every 5-year period), and approved the subletting of Site 1 to another vendor. The modification also retroactively changed the financial terms for Site 2 by eliminating the minimum monthly guarantee and basing rent payments solely on 5.75 percent of gross sales during the period from April 2020 through December 2020 (in consideration of COVID-related travel reductions impacting operations). A second modification was executed in September 2021 that extended the pre-construction period of the contract for Site 1 to coincide with the execution of the sublease in August 2021.

In December 2021, a formal protest was submitted to MAA by one of the rejected vendors, which among other concerns, raised issues with the modified financial terms and ACDBE participation goals in relation to its own proposal. This protest was rejected by MAA, which primarily cited the vendor's noncompliance with the RFP's financial proposal requirements as the reason that vendor's proposal was rejected. As of October 2023, almost four years after the contract's initial approval, construction and redevelopment had not commenced on Site 1 and Site 2, respectively. We were advised by MAA that Site 1 construction delays were primarily related to jurisdictional zoning issues between MAA and Anne Arundel County, and the delays with Site 2 were due to litigation between the vendor and its prior subcontractor at that location under the previous contract.

#### Referrals to Our Fraud, Waste, and Abuse Hotline

Based on the referrals to our fraud, waste, and abuse hotline, our Fraud Investigation Unit reviewed four allegations pertaining to questionable actions by MAA involving the aforementioned procurement and modifications of the contract. The concerns raised in the referred allegations primarily related to Site 1, which as noted above, had not started construction. Our review of the specific allegations disclosed the following:

#### **Allegation 1 - MAA improperly rejected a vendor's proposal because it requested a waiver of the ACDBE goal and intentionally deceived the vendor by stating the ACDBE goal was mandatory.**

Based on our review of the procurement documentation, the primary reason that MAA rejected the vendor's proposal was because the vendor's proposed revenue contribution did not meet the criteria in the RFP and would produce lower revenue to the State than the awarded vendor. Although the vendor's failure to provide sufficient evidence of good faith efforts to meet the ACDBE goal was a

contributing factor in MAA's rejection of the vendor, it was not presented by MAA as the primary reason for the rejection. In other words, the revenue contribution issue alone was deemed by MAA as sufficient basis for the rejection. Our review also did not disclose any evidence to support that MAA intentionally deceived the rejected vendor by claiming the ACDBE goal was mandatory.

**Allegation 2 - MAA made false statements to the BPW by indicating that federal ACDBE rules did not permit a waiver of the requirement and that it had to select the awarded vendor because it was the only vendor to meet the requirement. In addition, MAA did not give one of the bidding vendors an opportunity to demonstrate it had used good faith efforts to achieve the ACDBE goals.**

Based on our review of the BPW meeting transcript where the contract was approved, MAA stated that the ACDBE rules impacted the number of vendors that were interested in bidding on the contract and that one of the losing vendor's failure to meet the ACDBE requirement was a consideration in the rejection of the vendor's proposal<sup>3</sup> (see Exhibit 1). MAA also stated that the vendor was disqualified because it included a condition in its financial proposal that violated the terms of the RFP. We further noted that during the bid evaluation process, this vendor was provided opportunities to submit evidence of its good faith efforts to meet the ACDBE goal. Initially, MAA negatively assessed the vendor's efforts of good faith during the technical evaluation but ultimately decided to accept the vendor's ACDBE efforts and moved forward with an evaluation of the vendor's financial proposal.

**Allegation 3 - MAA significantly modified the terms of the awarded contract from the original RFP requirements based on negotiations with the winning vendor that were already occurring when the initial contract was presented to the BPW for approval.**

Based on our review, we concluded that the first modification did make significant changes to the terms of the contract, but based on available documentation, we did not find evidence that MAA negotiated these changes with the awarded vendor concurrently with the initial contract's presentation to BPW for approval. As noted above, the first modification eliminated the ACDBE goal at Site 1, changed the financial terms for the Site 1 rent payment from a percentage of sales to a fixed monthly payment, and allowed the awarded vendor

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<sup>3</sup> During the BPW meeting, MAA agreed with the Governor's statement that other vendors interested in bidding on this procurement had "dropped" due to the ACDBE requirement and that the winning vendor was the only qualifying bidder because its proposal met the ACDBE requirement.

to sublet Site 1 to a third-party vendor. The modification also retroactively eliminated the minimum monthly payment on Site 2 for the period from April 2020 through December 2020 and based payments solely on 5.75 percent of gross sales.

From our review of available documentation, it appears that these changes were developed several months after the initial contract was approved by the BPW. We did note that there was an erroneous effective date of February 24, 2020, included in the first modification, which may have resulted in the allegation. As further detailed below, this date was a typographical error and the actual effective date of the modification was February 24, 2021.

**Allegation 4 - MAA waited a year after the modification was executed to obtain approval from the BPW.**

As noted above, the effective date on the first modification was recorded as February 24, 2020. We were advised by MAA that this was a typographical error, and the actual effective date was February 24, 2021. Our review of the related documentation substantiated that the modification was executed on February 24, 2021, which occurred after BPW had approved the modification.

Although we did not substantiate any of the allegations in their entirety, we found that certain components of the allegations were factually accurate. These components when combined with the findings noted below raise questions about the propriety of the overall procurement of the contract and subsequent modifications, and in our opinion, do not present a compelling case that the contract was in the best interest of the State. Our review did not identify any matters that warranted a referral to the Office of the Attorney General's Criminal Division but did identify contractual procurement and monitoring deficiencies that we believe require corrective action by MAA, as further described in the findings below.

**Finding 3**

**MAA did not adequately justify a contract modification that significantly changed the financial terms and removed the ACDBE requirements for Site 1. Our review of the support for the modification disclosed that the changes may not have been in the best interest of the State.**

**Analysis**

MAA did not adequately justify a contract modification that significantly changed the financial terms by lowering State revenue attainment for the entire term of the contract and removed the ACDBE requirements for Site 1. Our review of the

support for the modification disclosed that the changes may not have been in the best interest of the State.

#### Change in Financial Terms

MAA modified the terms of the contract in a manner that may not have been in the best interest of the State by applying a limited short-term financial projection to the entire 25-year term of the contract. In February 2021, MAA modified the financial terms for Site 1 from a percentage of sales to a fixed monthly fee. MAA’s justification for modifying the contract was primarily based on its projection that convenience store sales would be reduced by 50 percent due to the impact of the COVID-19 pandemic. As a result, MAA calculated that over the initial five-year period of the contract, revenue it was to receive under the original contract terms would decrease from \$3.2 million in its original projections to \$1.6 million. Under the modified financial terms, MAA projected that revenue it would receive during the same period would total \$2 million.

Our review disclosed that this modification may not have been in the best interest of the State. Specifically, MAA changed the financial terms of the entire 25-year contract term based on the 5-year projections during the COVID-19 pandemic that forecasted 50 percent lower convenience store sales. However, as noted in Figure 4 below, which is based on data posted on the BWI website, post-COVID travel is rebounding and increasing. Furthermore, a subsequent modification extended the amount of time the vendor had to construct the site, which would further minimize the impact COVID-19 would have on convenience store sales. As noted above, as of October 2023 construction on Site 1 had not commenced.

**Figure 4**  
**BWI General Passenger Statistics**

	2022	2021	2020	2019	2018	2017	2016
Average Number of Passengers per Day	62,479	51,694	30,613	73,956	74,372	72,245	68,641
Total Commercial Passengers per Year (millions)	22.8	18.9	11.2	27.0	27.2	26.4	25.1
Percentage Change from the Previous Year	+20.9%	+68.4%	-58.5%	-0.6%	+2.9%	+5.0%	+5.5%

Note: Percentages have been rounded.

Source: BWI website

MAA also considered several other factors in deciding on the modification including the volatility of fossil-fuel prices and the shift toward electric vehicles, which may impact the convenience store’s revenues. However, in our opinion,



these factors were not COVID-related and were known to be relevant future issues at the time of the original contract procurement.

#### Elimination of ACDBE Requirements

MAA also eliminated the ACDBE requirements on Site 1 without having documentation that it was in the best interest of the State or minority business enterprises to do so. According to MAA management, it removed the ACDBE requirements because the vendor claimed that other franchise chains were unwilling to bid on the opportunity to sublet the site from the vendor due to the ACDBE requirements and percentage of sales payment structure. MAA could not provide documentation that it had evaluated the vendor's efforts to meet the ACDBE requirements or had obtained support for the vendor's assertions.

Given the concerns noted above and the fact that work on Site 1 had still not started as of October 2023, we believe that MAA should have either maintained the existing contract terms or cancelled the contract (or at least the portion related to Site 1) and rebid the contract with new terms. We were advised by MAA that procuring separate contracts for Sites 1 and 2 was considered prior to the initial procurement of this contract, but it was ultimately decided to combine the sites into one contract based on the results of a revenue study commissioned by MAA in 2017.

#### **Recommendation 3**

**We recommend that MAA**

- a. after consulting with legal counsel, perform analyses of the aforementioned contract and determine whether it is in the best interest of the State to cancel and reprocure the contract or separate the two sites into separate contracts; and**
- b. in the future, maintain documentation to support that any contract modifications are in the best interest of the State.**

#### **Finding 4**

**MAA did not monitor the vendor's compliance with ACDBE requirements and did not sufficiently verify the propriety of rent payments made by the vendor for Site 2.**

#### **Analysis**

MAA did not monitor the vendor's compliance with ACDBE requirements and did not sufficiently verify the propriety of rent payments made by the vendor for Site 2.

#### MAA Did Not Monitor Compliance with ACDBE Requirements

MAA did not monitor the vendor's compliance with ACDBE requirements for Site 2. The contract provided that the vendor was to maintain an ACDBE participation of 25 percent of projected total gross revenues and submit to MAA quarterly and annual reports of ACDBE participation. The contract further provided that if the ACDBE requirements were not met and the vendor did not provide MAA with documentation that it made good faith efforts to achieve the requirements, then MAA could impose a fine of \$350 per day.

Our review disclosed that MAA did not obtain the required quarterly and annual reports from the vendor. Specifically, we noted that the vendor operated without certified ACDBE participation during the period from October 31, 2022, through August 8, 2023, and MAA could not provide documentation that it had received and evaluated documentation of good faith efforts by the vendor to achieve the requirement. Therefore, based on our calculation, MAA could have assessed fines totaling \$98,350.

#### MAA Did Not Sufficiently Verify the Propriety of Rent Payments

MAA did not sufficiently verify the propriety of rent payments made by the vendor for Site 2. The contract required the vendor to submit independent audit reports to MAA each year with an opinion on the completeness and accuracy of revenues collected by the vendor and payments due to MAA. Our review disclosed that MAA suspended the audits during calendar years 2020 through 2022 because of the COVID-19 pandemic and did not implement other procedures to routinely verify the propriety of rent payments which resulted in certain improper payments going undetected.

Specifically, MAA only reviewed two payments from April 2020 to December 2022 and mistakenly verified that those two rent payments were in accordance with the prior (pre-January 2020) contract with the vendor, rather than the current contract. Since MAA did not sufficiently verify the propriety of the rent payments, it did not identify that all the vendor's rent payments for Site 2 during the period from April 2020 through December 2020 were based on the financial terms of the vendor's prior contract with MAA, rather than the January 2020 contract resulting in overpayments by the vendor of approximately \$94,000. While MAA did not identify that these vendor payments were incorrect, the overpayments were eventually corrected in February 2021 when MAA processed adjustments to account for the retroactive changes in financial terms included in the first contract modification.

**Recommendation 4**

**We recommend that MAA**

- a. monitor compliance with all contract requirements, including ACDBE participation;**
- b. take appropriate action for instances of noncompliance with contract requirements, including those noted above; and**
- c. verify that all rental payments are accurate in a timely manner.**

## **Audit Scope, Objectives, and Methodology**

We have conducted a fiscal compliance audit of the Maryland Department of Transportation (MDOT) – Maryland Aviation Administration (MAA) for the period beginning December 17, 2018 and ending January 31, 2023. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine MAA's financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance and risk. The areas addressed by the audit included procurements and disbursements for architectural and engineering, construction, revenue, and operating contracts; operating expenditures; as well as cash receipts. Furthermore, we reviewed the procurement and subsequent contract modifications of a convenience stores contract based on referrals received on our fraud, waste, and abuse hotline. We also determined the status of the findings contained in our preceding audit report.

Our audit did not include certain payroll support services (such as processing of personnel transactions and maintenance of employee leave records) provided by MDOT – The Secretary's Office to MAA. These payroll support services are included within the scope of our audit of MDOT. Our audit also did not include an evaluation of internal controls over compliance with federal laws and regulations for federal financial assistance programs and an assessment of MAA's compliance with those laws and regulations because the State of Maryland engages an independent accounting firm to annually audit such programs administered by State agencies, including MAA.

Our assessment of internal controls was based on agency procedures and controls in place at the time of our fieldwork. Our tests of transactions and other auditing procedures were generally focused on the transactions occurring during our audit period of December 17, 2018 to January 31, 2023, but may include transactions before or after this period as we considered necessary to achieve our audit objectives.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, tests of transactions, and to the extent practicable, observations of MAA's operations. Generally, transactions were selected for testing based on auditor judgment, which primarily considers risk, the timing or dollar amount of the transaction, or the significance of the transaction to the area of operation reviewed. As a matter of course, we do not normally use sampling in our tests, so unless otherwise specifically indicated, neither statistical nor non-statistical audit sampling was used to select the transactions tested. Therefore, unless sampling is specifically indicated in a finding, the results from any tests conducted or disclosed by us cannot be used to project those results to the entire population from which the test items were selected.

We also performed various data extracts of pertinent information from the State's Financial Management Information System and MDOT's Financial Management Information System (such as revenue and expenditure data), as well as from the contractor administering the State's Corporate Purchasing Card Program (credit card activity). The extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability. We determined that the data extracted from these sources were sufficiently reliable for the purposes the data were used during this audit. Finally, we performed other auditing procedures that we considered necessary to achieve our objectives. The reliability of data used in this report for background or informational purposes was not assessed.

MAA's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records; effectiveness and efficiency of operations, including safeguarding of assets; and compliance with applicable laws, rules, and regulations are achieved. As provided in *Government Auditing Standards*, there are five components of internal control: control environment, risk assessment, control activities, information and communication, and monitoring. Each of the five components, when significant to the audit objectives, and as applicable to MAA, were considered by us during the course of this audit.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes findings relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect MAA's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report also includes findings regarding significant instances of noncompliance with applicable laws, rules, or regulations. Other less significant findings were communicated to MAA that did not warrant inclusion in this report.

The response from MDOT, on behalf of MAA, to our findings and recommendations is included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise MDOT regarding the results of our review of its response.

**Exhibit 1**  
**Board of Public Works Agenda Item and Meeting Transcript**  
**for the Convenience Stores Contract**

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**Auditor Note:**  
The Board of Public Works agenda reflects information that was revised by Maryland Aviation Administration as noted by yellow highlighted information.

**REVISED**

**DEPARTMENT OF TRANSPORTATION**  
**ACTION AGENDA**  
**January 29, 2020**



**1-GM. MARYLAND AVIATION ADMINISTRATION**  
***General/Miscellaneous: Lease and Concession Contract***

**Contract ID:** Lease and Concession Contract for the Design, Development, Financing, Construction, Management/Operation and Maintenance of a Convenience Store with Gas Station and Redevelopment, Operation and Maintenance of an Existing Gas Station and Convenience Store at Baltimore/Washington International Thurgood Marshall (BWI Marshall) Airport; *MAA-LC-20-018*

**Contractor:** PMG BWI Airport Plaza Developers, LLC  
Woodbridge, VA

**Contract Description:** Lease and Concession Contract granting the non-exclusive right to Contractor to (for Site #1) design, develop, finance, construct, manage/operate and maintain a Convenience Store with Gas Station and (for Site #2) to redevelop, operate and maintain an existing Gas Station and Convenience Store at BWI Marshall.

**Contract Term:** Pre-Construction Period which shall begin as of the effective date of the Contract (February 15, 2020) during which time Contractor shall obtain all necessary approvals and permits from appropriate federal, State and local government agencies to commence construction/reconstruction on the Sites Nos. 1 and 2 facilities. The Pre-Construction Period shall end with Contractor obtaining all necessary approvals and permits or upon one hundred eighty (180) days following the effective date of the Contract, whichever date is earlier; and

Construction Period commencing upon the end of the Pre-Construction Period and shall end upon the earlier of the scheduled completion date for each Site or Contractor's commencement of operations at the leased premises, whichever date is earlier. The scheduled completion date for Site No. 1 is 1-1/2 years after the commencement of the Construction Period. For Site No. 2, the scheduled completion date for redevelopment of the existing facility is one year after the commencement of the Construction Period; and

Operational Period shall commence upon the end of the Construction Period on the Date of Beneficial Occupancy and will run for a period of (1) 25 years for Site No. 1, and (2) 10 years for Site No. 2.

**Procurement Method:** Competitive Sealed Proposals (Single acceptable proposal received)

**ACDBE PARTICIPATION:** 25%

**Exhibit 1**  
**Board of Public Works Agenda Item and Meeting Transcript**  
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**REVISED**

**DEPARTMENT OF TRANSPORTATION**  
**ACTION AGENDA**  
**January 29, 2020**



**1-GM. MARYLAND AVIATION ADMINISTRATION (cont'd)**

**Amount:** Contractor shall pay 5.75% of monthly gross revenues (bid item) derived from the sale of all fuel, automotive products, food, beverage and retail items (i.e., all sales) against a Minimum Monthly Guarantee (MMG) of \$10,000.00 for Site No. 1, and \$7,500.00 for Site No. 2 for the first year of the Operational Period, whichever amount is greater. Following the first contract year, the MMG will be based on the total monthly Percentage Rent paid to Maryland Department of Transportation Maryland Aviation Administration (MDOT MAA) during the previous 12-month period, multiplied by 85% and divided by 12.

The estimated value from this contract is listed below:

PMG Total Revenue for term of contract	\$386m
MDOT MAA 5.75% Total Rent Revenue	\$22.2m
Total Maryland Sales Tax Revenue	\$5.8m

**Requesting Agency Remarks:** MDOT MAA issued a Request for Proposals No. MAA-RFP-19-001 (RFP) on March 14, 2019. The RFP sought proposals from interested and qualified firms to lease property for the financing, design, construction, management and operation a new Convenience Store with Gasoline Station (designated as "Site 1"), as well as the redevelopment, operation/management, and maintenance of an existing gasoline station and convenience store (designated as "Site 2," site of the Airport's current Shell Gasoline Station and Convenience Store) at BWI Marshall.


The RFP for the subject Contract was advertised in local publications, e-Maryland Marketplace, and sent directly by electronic mail notice to approximately 69 companies who may have had interest in developing gasoline station with convenience store at BWI Marshall. Approximately 138 RFP documents were downloaded from MDOT MAA's website with a total 14 companies registered for the concession opportunity. Three sealed proposals were received and determined to be reasonably susceptible to be accepted based on their Initial Technical Proposal submissions.

After thorough review of the documents, MDOT MAA requested further clarification of the financial information and requested the proposers to submit revised technical proposals. The RFP required financial statements that were prepared by a CPA and based on GAAP basis. It was determined that one proposer (Proposer 1) failed to submit, after two requests, sufficient financial documentation. The proposer provided unaudited, non-GAAP internal accounting statements, which did not meet the Mandatory Qualifications of the RFP and was rejected.

The two remaining proposals met the Mandatory Qualifications and provided clarification for certain technical information requested. Thus, the two remaining proposals were determined to be acceptable. The Financial Offers of the two acceptable proposers were opened and ranked. However, Proposer 2 had conditioned its financial offer by altering the required percentage of sales on the financial proposal form. Thus, MDOT MAA rejected Proposer 2's financial offer, and ultimately its entire proposal, since it had altered the financial proposal form, which was in violation of the RFP requirements.



**Exhibit 1**  
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<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="background-color: yellow; padding: 2px 5px; border: 1px solid black;"><b>REVISED</b></div> <div style="text-align: center;"> <b>DEPARTMENT OF TRANSPORTATION</b>  <b>ACTION AGENDA</b>  <b>January 29, 2020</b> </div> <div style="text-align: right;">   <small>MARYLAND DEPARTMENT OF TRANSPORTATION, MDOT 3</small> </div> </div>										
<b>1-GM      <u>MARYLAND AVIATION ADMINISTRATION</u> (cont'd)</b>										
<i>(Qualified) Proposals:</i>										
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%;">Technical Ranking</th> <th style="width: 33%;">Financial Offer Ranking</th> <th style="width: 33%;">Overall Ranking</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">[...]</td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;"><b>1</b></td> <td>5.75% of total gross sales Derived from the sale of all fuel, automotive products, food, beverage, and retail sold at the facilities</td> <td style="text-align: center;"><b>1</b></td> </tr> </tbody> </table>	Technical Ranking	Financial Offer Ranking	Overall Ranking	[...]			<b>1</b>	5.75% of total gross sales Derived from the sale of all fuel, automotive products, food, beverage, and retail sold at the facilities	<b>1</b>
Technical Ranking	Financial Offer Ranking	Overall Ranking								
[...]										
<b>1</b>	5.75% of total gross sales Derived from the sale of all fuel, automotive products, food, beverage, and retail sold at the facilities	<b>1</b>								
PMG BWI Airport Plaza Developers, LLC was determined to be reasonably susceptible for award.										
This type of revenue-producing contract at a transportation facility is outside the scope of the State Procurement Law (State Finance and Procurement Article §11-202(3); COMAR 21.01.03.03.B(1)(d). However, the Lease and Concession Contract and any modifications must be approved by the Board of Public Works because the Contract constitutes a use of State Property under State Finance and Procurement Article, §10-305.										
<i>Resident Business:</i> Yes										
<i>MD Tax Clearance:</i> 19-2904-0000										
<div style="border: 1px solid red; padding: 10px; margin: 0 auto; width: 80%;"> <u>Auditor Note:</u> See pages 4 to 10 of Exhibit 1 for excerpts of meeting transcript.         </div>										
<hr/> <b>BOARD OF PUBLIC WORKS ACTION– THIS ITEM WAS:</b>										
<div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;"> <b>APPROVED</b>  <div style="border: 1px solid red; border-radius: 50%; width: 100px; height: 40px; margin: 0 auto;"></div> </div> <div style="text-align: center;"> <b>DISAPPROVED</b>  <div style="border: 1px solid red; border-radius: 50%; width: 100px; height: 40px; margin: 0 auto;"></div> </div> <div style="text-align: center;"> <b>DEFERRED</b>  <div style="border: 1px solid red; border-radius: 50%; width: 100px; height: 40px; margin: 0 auto;"></div> </div> <div style="text-align: center;"> <b>WITHDRAWN</b>  <div style="border: 1px solid red; border-radius: 50%; width: 100px; height: 40px; margin: 0 auto;"></div> </div> </div> <div style="display: flex; justify-content: space-around; align-items: center; margin-top: 10px;"> <div style="text-align: center;"> <b>WITH DISCUSSION</b> </div> <div style="text-align: center;"> <b>WITHOUT DISCUSSION</b> </div> </div>										

**Exhibit 1**  
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Excerpt of Meeting Transcript from the January 29, 2020  
Board of Public Works Meeting

Auditor Note: The transcript included unrelated discussion about other topics at the airport. We did not include the transcript for these unrelated topics in the Exhibit.

COMPTROLLER FRANCHOT: Item 1.

TREASURER KOPP: Yes, exactly. Item 1.

COMPTROLLER FRANCHOT: Yeah. So this is a lease and concession contract, Mr. Secretary, for the design, development, and financing, construction management, and maintenance of two gas station and convenience locations within the BWI Marshall complex. I guess my concern is how did we end up after a competitive bid RFP, how did we end up with a single bid contract to an out-of-state developer?

GOVERNOR HOGAN: That's a very good question.

MR. SLATER: Good morning. We have Executive Director for Maryland Aviation Ricky Smith, as well as our superstar Director of Commercial Development Jaimine Erskine.

MR. SMITH: Good morning, Governor, Treasurer, Madam Comptroller. So the Airport spent a number of years trying to figure out ways to expand our non-airline related revenue base. And so we have a five-acre lot that's on Amtrak Way. It's adjacent to the Amtrak station across from Northrup Grumman, where there are hundreds of employees who look for gas station related services. And it's also close to our rental car facility, where we also have customers that are in dire need of gas station facilities. So we decided to launch a procurement to entice a developer to come in and offer gas station services, as well as convenient food services at that location.

So during the procurement, we initially did a survey to try to get a feel for what the marketplace would want in order to find ourselves an attractive procurement. And so in that survey, the feedback we got was, one -- if I can back up a little bit, we also have another gas station on the north side of the Airport. That lease is expiring and so we had both considerations that we had to deal with. And so, the feedback we got from the survey was that the marketplace would rather have the

**Exhibit 1**  
**Board of Public Works Agenda Item and Meeting Transcript**  
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**Auditor Note:**

We shaded the meeting transcript to highlight the comments explaining the reasons for selecting the winning bid and the ACDBE participation requirement.

two combined as one solicitation because they didn't want the competition, and also the economies of scale would make it a more attractive opportunity for them.

And so when we put it out on the street, we actually got three responders. One of the responders modified its financial condition, its financial offer, to include a condition which violated the procurement requirements in the RFP. And so that firm was disqualified. The other one did not offer a financial proposal.

MS. ERSKINE: The financial offer that they had was actually not sufficient so it didn't fill the mandatory requirements of the RFP.

MR. SMITH: And so we were down to just one. The one firm that we are recommending is the firm that currently operates the gas station, the BWI gas station on the north side of the Airport. This firm also operates gas stations across the country at airports. They specialize in airport related gas station developments. And so that's how we came down to one. Our preference –

GOVERNOR HOGAN: My understanding is, and correct me if I'm wrong, this is a very unique situation. Because unlike a typical State procurement, we're dealing with federal law that required this, the Airport Concession Disadvantaged Business Enterprise, ACDBE participation –

MR. SMITH: Correct.

GOVERNOR HOGAN: -- of 25 percent.

MR. SMITH: Correct. So all airport –

GOVERNOR HOGAN: Which is, only applies to these airports, right?

MR. SMITH: That is correct, Governor.

GOVERNOR HOGAN: And so the bid went out. I think maybe Royal Farms and Wawa both were interested.

MR. SMITH: That's correct.

GOVERNOR HOGAN: And as soon as they said they had to comply with this federal law, they both dropped.

**Exhibit 1**  
**Board of Public Works Agenda Item and Meeting Transcript**  
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MR. SMITH: Including Sheetz as well, yes.

GOVERNOR HOGAN: And only one, who only does airports –

MR. SMITH: That's correct.

GOVERNOR HOGAN: -- is the only bidder. Because no one else can meet that requirement.

MR. SMITH: That's correct.

GOVERNOR HOGAN: So it has nothing to do with State procurement or our bid process. It's federal law.

MR. SMITH: Right. Their structure just doesn't allow for participation in the Airport Concessions Disadvantaged Business Enterprise.

COMPTROLLER FRANCHOT: No, that would explain why 11 of the 14 that were interested did not bid.

GOVERNOR HOGAN: Yeah.

COMPTROLLER FRANCHOT: But I guess my question is, was that identified when you first went out and surveyed the group?

MR. SMITH: So that was not identified as an issue when we did the survey. But after we did the procurement, we did follow up with a couple firms and they identified the ACDBE requirement as an issue that they just could not –

GOVERNOR HOGAN: That's a pretty aggressive goal. That seems to be hard for any, you know, there are not very many companies that can comply.

MR. SMITH: So the 25 percent goal is the goal that's on the existing gas station –

MS. ERSKINE: Correct.

MR. SMITH: -- contract that we have. And so we thought it would be obtainable.

COMPTROLLER FRANCHOT: And that's the incumbent –

GOVERNOR HOGAN: -- incumbent protection -- (Laughter.)

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COMPTROLLER FRANCHOT: -- to steal my lines. No. No, I guess my question, Mr. Administrator, is did you give any consideration after the two of the three bids were ruled unresponsive, and you ended up with the incumbent with the single bid contract that's before us, did you give any consideration to rebidding this? And perhaps splitting it into, rather than both of them together, separately? And try to produce some competition?

MR. SMITH: So we did give that consideration. There were two factors. One, the marketplace had already told us that combining the two would make it most attractive. Second, we have an existing procurement and we have an existing contract, a lease, with the gas station company on the north side of the Airport that is expiring. As a matter of fact, I believe it's on a month-to-month now.

MS. ERSKINE: Mm-hmm.

MR. SMITH: And so we needed to complete the procurement in time to satisfy that contract.

COMPTROLLER FRANCHOT: Okay. But this is a fairly lucrative contract, because, and it's important to the State. We get 5.75 percent of the gross sales goes to the State. So how long are these leases going to be in this obviously attractive, high traffic, busy location? How long are the leases for?

MR. SMITH: So there are two terms. The term for the new location, the Amtrak location, is 25 years. The term for the existing location on the north side is ten years, because the Airport's expansion plans extends the terminal into that area. And so we want to have the flexibility to end that contract, get out of that contract to support the expansion.

TREASURER KOPP: When you issued it, what were your projections or assumptions about the long term profits?

MR. SMITH: Well going into the procurement, we didn't necessarily have a –

TREASURER KOPP: How much do you get now on the one north –

MR. SMITH: On the existing gas station -- yeah, we don't have it off the top of our head. I think it's -- I don't know the number off the top of my head.

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GOVERNOR HOGAN: Can I ask you this? There were 14 potential bidders. Eleven of them just dropped out right away because they said we can't comply with this federal law.

MR. SMITH: Right. Correct.

GOVERNOR HOGAN: The other ones tried to bid and couldn't comply. How far off were the bids? The one, the only bidder that could meet the federal, was that, financially was that a much different bid from the ones who couldn't comply?

MS. ERSKINE: No, well the ones that submitted a bid, and Royal Farms was one of those bidders, because they conditioned their proposal, we were counting fuel sales and non-fuel sales. And that was part of the RFP, that was a requirement. And so the condition to say, you know, a lot of large companies don't want to give up their fuel (indiscernible). And so that was one of the concerns that we had, that, you know, we're not actually maximizing the revenue to the State.

GOVERNOR HOGAN: My point is, if we somehow changed the federal law, is it going to dramatically change the financial revenues to the State by saying we can get other bidders instead of having a one non-bid, no competition contract with somebody that's the incumbent?

MS. ERSKINE: Yeah, if the FAA regulation didn't stipulate the 25 percent, then yeah, I mean, that would certainly open it up.

GOVERNOR HOGAN: Maybe that's what we should work on.

TREASURER KOPP: Of the other airports, do any of these firms, the 11 firms, or the other three, not have facilities at airports?

MR. SMITH: Not every airport has this kind of development. I did a similar development in my previous life in Cleveland. We didn't get a lot of responses to that as well because of the federal requirement, one. Also, this company just seems to specialize in creating relationships with the airport community to drive business at its locations.

TREASURER KOPP: I thank you. I really don't, I mean, I use the train station a lot and the Airport. It is a perfect location for a gas station. I just –

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GOVERNOR HOGAN: Couldn't you also get around that issue by surplussing the property and realizing the value? You know, so you would get the benefit of all that revenue and it wouldn't be part of the Airport concession anymore.

MR. SMITH: So there's a, we're talking a lot about the FAA. So the FAA requires that airports maximize revenues on its properties. So if we, it has been determined that this is the best approach to maximizing revenues in the Airport as opposed to just selling off the property.

GOVERNOR HOGAN: Okay.

COMPTROLLER FRANCHOT: So I have a lot of confidence in the Airport's leadership. Thank you for running a very successful State-owned Airport.

GOVERNOR HOGAN: They are breaking records every month.

MR. SMITH: Mm-hmm.

COMPTROLLER FRANCHOT: Yeah, no, it's –

GOVERNOR HOGAN: Number one Airport in the region.

MR. SMITH: That is correct.

COMPTROLLER FRANCHOT: And they also have good customer service, so thank you guys.

GOVERNOR HOGAN: It keeps beating the heck out of Dulles. I like that.  
(Laughter.)

MR. SMITH: Yeah, we are, we are winning Dulles, yes.

COMPTROLLER FRANCHOT: Let me ask you a question, though, Mr. Administrator. Was there, when you put this out to bid, was it part of the bid RFP that they had to do the Airport Concession Disadvantaged Business Enterprise participation program? That was in the contract?

MR. SMITH: So prior to putting the RFP on the street, we first have to get the FAA to approve the procurement document. And yes, this was included in that solicitation document.

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COMPTROLLER FRANCHOT: Okay. So not to be overly candid, but even though I don't like the single bid contracts given to incumbents, I'm going to vote for this. But part of it's that you guys are apparently on, at all hands on deck with this Coronavirus and you have enough things to deal with up there. That's my basic rationale. Not that it makes any sense to anybody, but that's my view right now. But if you could suggest some ways for us to avoid this particular federal program, whatever it is, that seems to cut down on the ability to have competition, I would be grateful.

GOVERNOR HOGAN: Any other questions on Transportation?

COMPTROLLER FRANCHOT: Move approval.

GOVERNOR HOGAN: Second? Three-nothing. We'll move on to Department of General Services.



Office of the Secretary

March 4, 2024

Gregory A. Hook, CPA  
Legislative Auditor  
Office of Legislative Audits  
The Warehouse at Camden Yards  
351 West Camden Street, Suite 400  
Baltimore MD 21201

Dear Mr. Hook:

Enclosed please find responses to the audit report from the Office of Legislative Audit for the Maryland Department of Transportation (MDOT) Maryland Aviation Administration (MAA) for the period beginning December 17, 2018, and ending January 31, 2023.

If you have any additional questions or concerns, please contact Ms. Jaclyn D. Hartman, MDOT Assistant Secretary of Transportation Investments, by email at [jhartman1@mdot.maryland.gov](mailto:jhartman1@mdot.maryland.gov) or by phone at 410-865-1005. Of course, you may always contact me directly.

Sincerely,

  
Paul J. Wiedefeld  
Secretary

Attachment

cc: Ms. Samantha Biddle, Deputy Secretary, MDOT  
Ms. Jaclyn Hartman, Assistant Secretary of Transportation Investments, MDOT  
Ms. Octavia Robinson, Chief Financial Officer, MDOT  
Ms. Dianna Rosborough, Assistant Secretary of Administration, MDOT  
Mr. Ricky D. Smith, Sr., Executive Director, MDOT MAA

# Maryland Department of Transportation Maryland Aviation Administration

## Agency Response Form

### Concessions Management Vendor Contract

#### Finding 1

Maryland Aviation Administration (MAA) did not establish formal guidelines on acceptable marketing fund expenses incurred by its concession management vendor. Our review of the vendor's reported expenditures disclosed that it used the fund for certain expenses which did not appear to support the intended purpose of the fund.

We recommend that MAA

- a. establish formal guidelines on allowable community-related expenses to ensure that they appear to have a direct relationship or benefit to the concessions program consistent with the stated purpose of the fund;
- b. review the annual marketing fund reports and obtain supporting documentation to ensure the fund was used as intended (repeat); and
- c. immediately pursue recovery of all fund expenses that are inconsistent with the stated purpose of the fund, including the identified payments noted above (repeat).

Agency Response			
<b>Analysis</b>			
<b>Please provide additional comments as deemed necessary.</b>	<p>The marketing fund is established in the contract with the concession management vendor and is comprised of fees paid by sublessees. There are no State funds in the marketing fund. The contract provides for allowed uses of the fund, to include "marketing and promotion of the Overall Concession Program at the Terminal or on any item or service that may enhance the overall passenger experience at the Terminal related to concessions". Specifically, the concessions contract provides for the "<i>types</i> of expenses that <i>may be</i> paid out of the Joint Marketing Fund shall include, <i>without limitation...</i>" (emphasis added). As required by the contract, both the sublessees, who contribute to the fund, and the MAA, receive annual reports on the use of those funds. Stipulating additional requirements regarding the allowed use of these funds requires a contract modification.</p>		
<b>Recommendation 1a</b>	Agree	<b>Estimated Completion Date:</b>	Spring 2024
<b>Please provide details of corrective action or explain disagreement.</b>	<p>The marketing fund is established in the contract with the concession management vendor and the contract provides for allowed uses of the fund. Establishing additional guidelines that further limits the use of funds in the existing contract requires a contract modification. The</p>		

# Maryland Department of Transportation

## Maryland Aviation Administration

### Agency Response Form

	<p>current contract is month-to-month pending completion of the procurement for a new contract. As a compensating control, the MAA holds a monthly meeting with the vendor to review upcoming uses of the marketing fund.</p> <p>In September 2023, the Maryland Department of Transportation (MDOT) issued a request for proposals for the concessions program at BWI Marshall Airport. The request for proposals includes a sample contract that includes additional provisions related to the marketing fund. Under that contract, spending from the marketing fund must be in accordance with the approved annual marketing plan and approved by MAA, spending requires the submission of additional supporting documentation, expenses are subject to audit by the MAA or a certified public accountant to ensure compliance with the terms of the contract, and additional examples of approved uses of the fund are provided.</p>		
<b>Recommendation 1b</b>	Agree	<b>Estimated Completion Date:</b>	Complete
<b>Please provide details of corrective action or explain disagreement.</b>	<p>As noted by OLA, “The vendor provided MAA with annual marketing fund reports and supporting documentation detailing the fund’s expenses during calendar years 2019 through 2022.” The MAA reviews annual and monthly marketing fund expenditures and requested supporting documentation in an effort to ensure that the marketing fund expenditures were consistent with the intended purpose of the fund as provided for in the current contract. Additionally, MAA holds a monthly meeting with the vendor to review upcoming uses of the marketing fund and the vendor is instructed to obtain prior approval from MAA before incurring new expenditures. The allowed uses of the marketing fund as stated in the contract are broad and do not specify prohibited uses. Although the OLA disagrees whether the noted expenses should have been allowed, that does not mean that the expenses were not being reviewed by MAA. As noted above, further limiting the use of funds or changing the requirements of the marketing fund requires a contract modification. The MDOT is currently soliciting for a new concessions contract that includes additional provisions related to the marketing fund.</p>		

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<b>Recommendation 1c</b>	<b>Agree</b>	<b>Estimated Completion Date:</b>	<b>9/19/2023</b>
<b>Please provide details of corrective action or explain disagreement.</b>	<p>In 2019, MAA directed the vendor to cease all payments that did not comply with the marketing fund requirements and to reimburse the marketing fund for ineligible expenses. On August 17, 2021, the vendor reimbursed \$289,750 to the marketing fund.</p> <p>On September 19, 2023, MAA requested that the vendor reimburse the expenditures from the marketing fund identified by OLA. On January 16, 2024, the vendor disputed that the expenditures identified by OLA did not meet the allowed uses of the marketing fund. As noted above, the allowed uses of the marketing fund as stated in the contract are broad and do not specify prohibited uses. Additional clarification would require a contract modification. The MDOT is currently soliciting for a new concessions contract that includes more specific provisions related to the marketing fund.</p>		

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**Contract Monitoring**

**Finding 2**

**MAA did not obtain available supporting documentation to verify the propriety of amounts paid on two contracts for janitorial and shuttle bus services.**

**We recommend that MAA obtain available supporting documentation to verify the propriety of amounts invoiced by vendors, at least on a test basis, including those noted above.**

Agency Response			
<b>Analysis</b>			
<b>Please provide additional comments as deemed necessary.</b>			
<b>Recommendation 2</b>	Agree	<b>Estimated Completion Date:</b>	3/1/2024
<b>Please provide details of corrective action or explain disagreement.</b>	The MAA will obtain and verify available supporting documentation to ensure payment amounts are proper and invoices or selected items from invoices will be periodically tested. Specific to the shuttle bus contract, MAA will verify bus service hours billed against bus route logs, time record, Automated Vehicle Identifier reports and other supporting documentation. Specific to the janitorial services contract, MAA will request detail report of hours worked and verify other expenses billed for supplies, equipment, and subcontractor services.		

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**Convenience Stores Contract**

**Finding 3**

**MAA did not adequately justify a contract modification that significantly changed the financial terms and removed the ACDBE requirements for Site 1. Our review of the support for the modification disclosed that the changes may not have been in the best interest of the State.**

**We recommend that MAA**

- a. after consulting with legal counsel, perform analyses of the aforementioned contract and determine whether it is in the best interest of the State to cancel and reprocure the contract or separate the two sites into separate contracts; and**
- b. in the future, maintain documentation to support that any contract modifications are in the best interest of the State.**

<b>Agency Response</b>	
<b>Analysis</b>	
<b>Please provide additional comments as deemed necessary.</b>	<p>The decision to modify the contract was one that involved MAA's authority to determine what is best for the operation and maintenance of BWI Marshall Airport. This determination by MAA was approved by the Board of Public Works (BPW). The decision involved balancing potential revenue MAA may receive from a lease modification with the premium product it was to receive in return for the modification, which includes the first Anne Arundel County location for a growing regional company. MAA determined that potentially receiving less revenue and no ACDBE participation on Site 1 (while maintaining the overall 25 percent ACDBE contract goal and for Site 2) in exchange for a superior product that would drive up sales was an appropriate tradeoff and was in the best interest of the State. The details of the modification were submitted to the BPW and were approved, indicating that MAA did adequately justify the modification.</p> <p>As with all solicitations and contracting matters, MAA consulted with legal counsel on this modification. A study conducted by an MAA consultant recommended that the two sites be combined to maximize the economics of the development and resulting value realization to the airport, including customer service quality and revenue.</p>

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<b>Recommendation 3a</b>	Agree	<b>Estimated Completion Date:</b>	10/15/2024
<b>Please provide details of corrective action or explain disagreement.</b>	<p>The decision to modify the contract was based, in part, on the best information available at the time regarding the impacts of COVID-19 on the airport industry and the projected site development timeline. The COVID-19 pandemic had a significant and sustained impact on operations at BWI Marshall Airport. At its lowest point, passenger traffic was down 95 percent. Four years later, passenger operations at the airport are reaching pre-COVID levels. The federal government provided historic levels of federal relief funds to the airline industry and other industries to sustain operations. Without certain contract concessions, many more businesses would have failed.</p> <p>The MAA performed an analyses prior to the contract modification to determine if the modification was in the best interest of the State. Canceling the current contract may create significant financial penalties for the State and further delay development of the sites. However, given the ongoing recovery from the COVID-19 pandemic and the continued delays in the redevelopment of the sites, the MDOT will perform a financial, operational, and legal analyses to confirm that continuing the current contract is still in the best interest of the State.</p>		
<b>Recommendation 3b</b>	Agree	<b>Estimated Completion Date:</b>	3/1/2024
<b>Please provide details of corrective action or explain disagreement.</b>	<p>The MAA will ensure that it retains the supporting documentation utilized to justify contract modifications along with other contract documents.</p>		

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**Finding 4**

**MAA did not monitor the vendor's compliance with ACDBE requirements and did not sufficiently verify the propriety of rent payments made by the vendor for Site 2.**

**We recommend that MAA**

- a. monitor compliance with all contract requirements, including ACDBE participation;**
- b. take appropriate action for instances of noncompliance with contract requirements, including those noted above; and**
- c. verify that all rental payments are accurate in a timely manner.**

Agency Response	
Analysis	
Please provide additional comments as deemed necessary.	<p>The preceding contract between MAA and the vendor included an ACDBE subcontractor. MAA recorded and monitored the incumbent ACDBE performance under the preceding contract's terms and conditions. The contract's participation goal was 25%. On January 29, 2020, the BPW approved the new contract between MAA and the vendor for the development of Site 1 and Site 2 at BWI Marshall Airport. The vendor proposed a new ACDBE subcontractor, which would replace the original ACDBE under the terms of the new contract.</p> <p>When the new contract was awarded, the original ACDBE refused to vacate the leased premises and sued the vendor, alleging improper termination of its agreement. On May 25, 2022, the original ACDBE was granted a preliminary injunction against the vendor. This delayed the performance of the new contract and the redevelopment of Site 2.</p> <p>After the lawsuit was settled, the vendor took over the day-to-day operations of Site 2 and provided MAA with documentation for a replacement ACDBE subcontractor. The new ACDBE subcontractor was approved as an ACDBE by MDOT on August 10, 2023. According to the terms of the contract with the vendor, the contract is divided into three phases: a pre-construction period, a construction period, and an operational period. The ACDBE goal requirement does not begin until the operational period begins. Site 2 is currently under renovation, and in the construction period of the contract. Construction is projected to be completed on April 4, 2024. The renovation schedule for Site 2 was designed to allow the new ACDBE subcontractor to assume operations</p>



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	on the scheduled reopen date of April 4, 2024. Because the vendor is not currently in the operational period of the contract, it is not in compliance with the terms of the contract to assess fines totaling \$98,350.		
<b>Recommendation 4a</b>	Agree	<b>Estimated Completion Date:</b>	4/4/2024
<b>Please provide details of corrective action or explain disagreement.</b>	Upon initiation of the operational period of the Site 2 (April 4, 2024), MAA will record and monitor contract requirements, including ACDBE participation.		
<b>Recommendation 4b</b>	Agree	<b>Estimated Completion Date:</b>	4/4/2024
<b>Please provide details of corrective action or explain disagreement.</b>	Upon initiation of the operational period of the Site 2 (April 4, 2024), MAA will record and monitor contract requirements, including ACDBE participation.		
<b>Recommendation 4c</b>	Agree	<b>Estimated Completion Date:</b>	3/1/2024
<b>Please provide details of corrective action or explain disagreement.</b>	MAA will review and verify invoices and rental payments on a monthly basis.		

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