

STATE OF CONNECTICUT



*AUDITORS' REPORT
BRADLEY ENTERPRISE FUND
MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF
PUBLIC SAFETY AND TRANSPORTATION
FOR THE FISCAL YEAR ENDED JUNE 30, 2011*

AUDITORS OF PUBLIC ACCOUNTS
JOHN C. GERAGOSIAN ❖ ROBERT M. WARD

Table of Contents

INTRODUCTION	1
COMMENTS	1
Background	1
Audit Objective and Methodology.....	2
Results of Review	3
Subsequent Events	5
CONDITION OF RECORDS	6
Conflict with State Laws.....	6
RECOMMENDATION	10
CONCLUSION	11

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AUDITORS OF PUBLIC ACCOUNTS

State Capitol
210 Capitol Avenue
Hartford, Connecticut 06106-1559

JOHN C. GERAGOSIAN

ROBERT M. WARD

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AUDITORS' REPORT BRADLEY ENTERPRISE FUND MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF PUBLIC SAFETY AND TRANSPORTATION FOR THE FISCAL YEAR ENDED JUNE 30, 2011

We have conducted an audit in accordance with Section 2-90b of the General Statutes. This statute requires an annual audit of reimbursements made from the Bradley Enterprise Fund to the Department of Public Safety (the Department of Emergency Services and Public Protection effective July 1, 2011) for the cost of Troop W security operations at Bradley International Airport (Airport) for the fiscal year ended June 30, 2011. The audit consists of determining if these reimbursements were made in accordance with Section 21 of Public Act 09-07, September Special Session. This public act required that a memorandum of understanding (MOU) be entered into by the Department of Transportation (DOT) and the Department of Public Safety (DPS) so that all associated costs incurred by DPS in providing security services at the Airport be paid from the Bradley Enterprise Fund.

COMMENTS

BACKGROUND:

The Bradley Enterprise Fund was created by the enactment of Section 15-101p of the General Statutes. DOT is responsible for preparing the annual budget of the fund. Revenue estimates are based on rates, rents, fees and services established by the commissioner of DOT in accordance with Section 15-101m of the General Statutes. Expenditure estimates are for operating costs, scheduled bond payments, and required reserves and sinking funds. The 2001 Bond Indenture for bonds outstanding is considered when preparing the budget to ensure that debt service requirements are met. The indenture requires that the state "will at times prescribe, fix, maintain and collect rates, fees, and other charges for the services and facilities furnished by the Airport in an amount sufficient to pay all of the Airport's operating expenses as they become due and payable and to pay all debt service requirements on the bond outstanding when due and payable."

We were informed that the budget has to be prepared months in advance of the beginning of the upcoming fiscal year since several parties must approve the budget. Components of the budget are required to be approved by the airlines serving the airport in accordance with the Signatory Airline Agreement. Section 15-101nn (2) of the General Statutes requires that the budget also be approved by the Bradley Board of Directors. The commissioner of DOT then submits the budget under his signature to the Office of Policy and Management (OPM) for its approval as required by Section 15-101m (b) of the General Statutes. The same day a copy of the budget is submitted to OPM, a copy of the budget is submitted through the Legislature's Office of Fiscal Analysis to the joint standing committee of the General Assembly having cognizance of matters relating to appropriations and the budgets of state agencies. The approved budget is also submitted to the joint standing committee through the Office of Fiscal Analysis.

A MOU was entered into by DOT and DPS for security services at the Airport and was signed by Commissioner Joseph Marie (DOT) and Commissioner John Danaher III (DPS) on September 23, 2009. One of the key terms was that the number of law enforcement officers on site had to be in compliance with the federally approved Bradley Airport Security Program (ASP) and Airport Certification Manual. Dispatcher service would be provided 24 hours a day, seven days a week. Another key term was that in "no event will the DOT's payment to DPS in any fiscal year exceed the budget for law enforcement services and dispatch services" unless both parties agree to extra services or if there are unforeseen events that could lead to extra costs. It should be noted that Public Act 09-07, which became effective October 5, 2009, was passed within two weeks of the signing of the MOU.

Troop W had provided security services to Bradley International Airport for several years without a formal agreement as to the number of staff needed or the cost that would be paid for by the DOT through the Bradley Enterprise Fund. Prior audits of DPS issued by our office recognized that over the years, Troop W's costs at the airport had far exceeded its reimbursements from the Bradley Enterprise Fund. For example, our audit report for DPS for the fiscal years ended June 30, 2007 and 2008, reported costs incurred by Troop W were \$8,935,983 and \$7,111,772 for those respective years; however, reimbursements for those same respective years were \$3,686,270 and \$3,893,732. The General Fund absorbed the unreimbursed costs of \$8,467,753 for the two fiscal years as it has absorbed the unreimbursed costs in other fiscal years. Fiscal year 2011 is discussed below in the Results of Review section of this report.

AUDIT OBJECTIVE AND METHODOLOGY:

Our audit objective was to determine whether the reimbursement requested by DPS and reimbursed by DOT was in accordance with the MOU. Our objective was also to determine whether the MOU was in compliance with Public Act 09-07.

Our methodology included reviewing the terms of the MOU and obtaining the approved Bradley Enterprise Fund budget for fiscal year ended June 30, 2011. We also obtained the invoices submitted by DPS for reimbursement to determine if these invoices contained only Troop W costs. We reviewed Core-CT records to determine the amount of reimbursement from the Bradley Enterprise Fund.

RESULTS OF REVIEW:

A MOU was entered into prior to the passage of Public Act 09-07. We found during our review that DPS proposed an amendment in November 2009, to the original MOU. Its position was that Public Act 09-07, specifically states “all associated costs incurred shall be paid out of the Bradley Enterprise Fund.” DOT informed the DPS that an amendment was not needed because the MOU in place already “meets the spirit of the law.”

Our review found that DPS submitted invoices totaling \$7,539,939 and was reimbursed for \$4,883,772, leaving a shortfall of \$2,656,167 for fiscal year 2011. The budgeted amount by DOT for security services was \$4,883,772. DPS was informed of the proposed budgeted amount in an email dated March 9, 2010, but had budgeted \$7,197,938 for Troop W and was aware that there would be a projected deficit of \$2,314,166.

Each invoice from DPS stated that the “invoice is submitted in accordance with Section 21 of Public Act 09-07, September Special Session, for reimbursement of all associated costs incurred by DPS for the provision of state police services at the Airport.” DOT is only paying DPS based on the language in the MOU, which is for services to meet the federally approved ASP.

The MOU required DOT to pay DPS one-twelfth of the security budget within 30 days following the end of the month. DPS submitted invoices to DOT on a quarterly, instead of a monthly basis.

The Bradley Airport Administrator is responsible for directing staff and operations at the Airport. The administrator is also one of the airport security coordinators at the Airport. Airport security coordinators are designated employees of the Airport, not state police officers or civilian employees and are required by federal law to receive specific training. It is the airport security coordinators that prepare the ASP that is approved by the Transportation Safety Administration. This plan details the number of law enforcement personnel that are necessary in the day-to-day operations of the Airport. DPS has no legal responsibility in providing input for the ASP, but has consistently provided more staff for security than required by the ASP. As a result, the invoices submitted to the DOT show higher costs than budgeted. This is the main reason why the General Fund has had to absorb the additional cost of Troop W. We were informed that under federal law, the Airport can only pay for the law enforcement services that are required under the ASP; to do otherwise would place DOT and the Airport in violation of federal revenue diversion laws and/or federal grant and Airport sponsor assurances. Revenue diversion laws prohibit the use of airport revenue for payments that exceed the fair and reasonable value of those services at the airport.

We did not find any federal or state law that would give DPS the authority to determine the number of staff it should provide to the airport. We were informed by DPS that, although its commissioner is ultimately responsible for assigning staff to the Airport, it has been the responsibility of the deputy commissioner or colonel to determine this number. We found documentation that DOT notified DPS prior to the beginning of fiscal year 2011, of the number of staff required and the dollar amount that would be reimbursed for staff and other associated costs.

We were informed that DOT and the Airport's view has been and remains that, if DPS chooses to, or has their own protocols and requirements causing them to exceed the required number of personnel in the ASP, thereby exceeding the proposed budget provided to them, then DOT does not object to the additional officers. However, DOT insists that DPS must absorb these costs since it otherwise would place DOT and the Airport in the position of possibly violating the Revenue Diversion Act.

We have not disclosed the number of law enforcement officers required at the Airport because the ASP is considered sensitive information and by federal regulation, its contents cannot be disclosed to the public. It appears that DPS has at least provided the number of staff required by the ASP.

The ASP is not required to take into account the structure of a state police troop. Federal law requires law enforcement personnel to have arrest authority, be identifiable, have a firearm and be authorized to use the firearm, and have completed a training program as prescribed by the state. Troop W is commanded by a state police lieutenant. A master sergeant, the troop's executive officer, is second in command, and in the absence of a troop commander, assumes the duties of that commander. The annual budget of the Bradley Enterprise Fund does not include either of these positions in its budget. The budget only includes staff below these levels. DPS included higher ranking officers when submitting invoices to DOT.

The MOU requires at least monthly meetings between the troop ranking officer or his designee and the Airport Administrator or his designee. We were informed that the lieutenant usually meets with the Airport Administrator or his designee, but that there have been meetings with officers other than the lieutenant.

Based on our review of Public Act 09-07, it appears that the intent of the legislation was for all of the costs incurred by DPS to be reimbursed by the Bradley Enterprise Fund. The fiscal note for this public act projected a savings of \$2,500,000 for the General Fund. We were unable to determine why, within two weeks of the signing of the MOU, legislation was proposed and enacted when a MOU was already in place. We were informed by employees at both departments that they did not know who provided the fiscal note for this public act.

It appears that even after the passage of this public act, OPM approved the budget of the Bradley Enterprise Fund based on DOT's projected costs, which were significantly lower than the reimbursement requests of DPS. We were provided with emails in which OPM inquired as to whether the Bradley Enterprise Fund budget was in compliance with Public Act 09-07, prior to its approval of the budget. DOT informed OPM that a MOU was in place and that the MOU detailed the staff and budget structure for the Airport's security requirements.

We believe that Public Act 09-07 should be revisited since the Bradley Enterprise Fund's budget is reviewed and approved by several parties. DOT and DPS had entered into a MOU two weeks prior to the passage of Public Act 09-07, after several years of not having an agreement in place. This MOU specifically provided for the number of security personnel required and the cost to be paid by the Bradley Enterprise Fund. The approved budget was in conformance with the MOU. Both departments had different interpretations of Public Act 09-07. The Airport Security

Coordinator should be consulted as to whether law enforcement officers in excess of the number required in the ASP are necessary.

Subsequent Events:

The DPS consolidated Troop W with Troop H (Hartford) effective March 9, 2012. We were informed by the commissioner of the current Department of Emergency Services and Public Protection that his department is still providing the required number of staff for law enforcement services at the Airport on a 24 hour a day basis.

Public Act 11-84, established the Connecticut Airport Authority (CAA) effective July 1, 2011. This public act details many of the duties and responsibilities that may be transferred from the DOT to the CAA, including responsibility for the Airport's annual operating budget.

CONDITION OF RECORDS

Our review revealed the following:

Conflict with State Laws:

Criteria: Section 21 of Public Act 09-07, September Special Session, requires that a MOU be entered into by DOT and DPS to provide that all associated costs incurred by DPS for providing security services at the Airport shall be paid for by the Bradley Enterprise Fund.

Section 15-101m of the General Statutes states that management of the airport is assigned to DOT and that DOT is assigned the task of preparing the annual budget for the Bradley Enterprise Fund.

Section 15-101nn of the General Statutes provides the Bradley Board of Directors with the authority to approve the annual capital and operating budget of the Airport.

Section 15-101m (b) of the General Statutes requires that OPM approve the budget of the Bradley Enterprise Fund on a yearly basis. The approved budget is then submitted to the joint standing committee of the General Assembly having cognizance of matters relating to appropriations and budgets of state agencies.

Federal regulations state that, in order to operate an airport, an Airport Certification Manual and ASP must be adopted. The ASP must be approved by the TSA and must describe law enforcement support at the Airport.

Federal regulations require an airport security coordinator(s) for the ASP. The Bradley Airport administrator and his assistant are the airport security coordinators.

The MOU entered into by the DOT and DPS states that the number of law enforcement officers required at the Airport must be in compliance with the federally approved ASP and Airport Certification Manual. It further states that in “no event will the DOT’s payment to the DPS in any fiscal year exceed the budget for law enforcement services and dispatch services.”

One of the provisions of the Indenture of Trust for the Airport’s General Airport Revenue Bonds provides that the state will levy rates and charges to airlines and other users of the Airport sufficient to generate net operating revenues to pay for operating expenses, debt

service requirements, and to make any required deposits to the debt service reserve account.

Condition:

A MOU was entered into by DOT and DPS on September 23, 2009. This MOU was not revised after Public Act 09-07 was passed on October 5, 2009. The DPS proposed an amendment to the MOU in order to have all of its associated costs paid for by the Bradley Enterprise Fund. The DOT would not sign the amendment because it believed that it was already in compliance with Public Act 09-07.

The DPS submitted invoices totaling \$7,539,939 to DOT for reimbursement of its costs for fiscal year ended June 30, 2011. The DOT reimbursed DPS for the budgeted amount of \$4,883,772 from the Bradley Enterprise Fund, leaving the remaining \$2,656,167 to be funded by the General Fund. As a result, the Department of Transportation was in compliance with the budget approved on June 17, 2010, by the Bradley Board of Directors and approved on June 29, 2010, by OPM.

Prior to its approval of the budget, OPM staff inquired as to how Troop W's costs were developed and how these budgeted amounts met the requirements of Public Act 09-07. The DOT responded that a MOU was entered into by both departments and that MOU detailed the staff and budget structure for the airport's security requirements. We were not provided with any emails beyond this. We were unable to interview the staff member from OPM since that employee has retired.

Effect:

The savings to the General Fund of \$2,500,000 that was projected by Public Act 09-07, were not realized.

Cause:

It appears that the parties that approved Bradley Enterprise Fund's budget believed that the costs budgeted for Troop W was for all of its associated costs.

The Bradley Airport administrator (also the airport security coordinator) determines the number of security personnel needed and this number is listed in the ASP that is approved by the TSA. Even though the DPS was informed as to the number of staff and costs that would be reimbursed through the Bradley Enterprise Fund, it decided to staff the Airport with more staff than required by the ASP. It should be noted that the number of security personnel required cannot be disclosed since it is considered sensitive security information.

Recommendation: The legislature should consider the legal budget requirements of the Bradley Enterprise Fund and the number of personnel needed at Bradley International Airport, as required by the Airport Security Program, to determine whether Public Act 09-07 and applicable General Statutes need to be revised. The legislature should consult with the airport security coordinators to determine whether security services in excess of those required in the Airport Security Program are necessary. (See Recommendation 1.)

Department of Transportation Response:

“The Department agrees with the Auditors’ reported recommendation. It is the Department’s position that it is in compliance with the Memorandum of Understanding with the Department of Public Safety for security services at Bradley International Airport, the Bradley Airport Security Program approved by the Transportation Security Administration and Airport Certification Manual and Public Act 09-07.”

Department of Emergency Services and Public Protection Response:

“The Department of Emergency Services and Public Protection (DESPP) disagrees with the recommendation.

While the agency agrees with the audit narrative in general terms, the agency disagrees that it is necessary for the General Assembly to revisit Public Act 09-07, DESPP currently provides the number of law enforcement personnel specified in the Airport Security Plan, for which we are reimbursed by DOT from the Enterprise Fund.

In response to Public Act 09-07, the then Department of Public Safety (DPS) attempted to revise the MOU to cover full costs and DOT would not agree. At the time, DPS was providing more law enforcement personnel than requested. This has now become a moot issue, as DPS, now the Department of Emergency Services and Public Protection is providing only personnel requested and the number is sufficient to satisfy the Airport Security Program. There is now no dispute between DOT and DESPP as to the amount of payment. There may be some slight discrepancy between the full or actual cost and the amount DOT is reimbursing DESPP for due to the fact that an average cost of trooper coverage is charged to DOT while an individual actually assigned may be at the top of his or her pay scale. Any difference in that regard is properly absorbed by DESPP.

As there is no dispute as to reimbursement between the agencies and all security requirements are satisfied it is not necessary to the General Assembly to revisit Public Act 09-07.”

Auditors’ Concluding Comment:

While there currently is no dispute as to the reimbursement between the agencies, Public Act 09-07, leaves open the possibility that costs in excess of those budgeted may be required to be paid even though other laws regarding the budget may limit the amount of reimbursement.

RECOMMENDATION

Audit Recommendation:

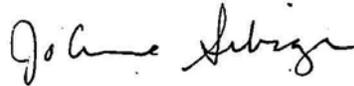
- 1. The legislature should consider the legal budget requirements of the Bradley Enterprise Fund and the number of personnel needed at Bradley International Airport, as required by the Airport Security Program, to determine if Public Act 09-07 and applicable General Statutes need to be revised. The legislature should consult with the airport security coordinators to determine whether security services in excess of those required in the Airport Security Program are necessary.**

Comment:

The MOU between the departments state the number of law enforcement officers and other staff required at the Airport had to be in compliance with the ASP that is approved by the TSA. The budget for the Bradley Enterprise Fund is approved by the Bradley Board of Directors and OPM and includes a line item for security services based on the requirements of the ASP. DPS is notified of the number of its staff required for security services and the dollar amount budgeted for the staff prior to the beginning of each fiscal year. DPS has consistently provided more law enforcement personnel than required by the ASP.

CONCLUSION

In conclusion, we wish to express our appreciation for the courtesies and cooperation shown to our representatives by the personnel of the Department of Transportation and the Department of Public Safety during the course of our examination.



JoAnne Sibiga
Principal Auditor

Approved:



John C. Geragosian
Auditor of Public Accounts



Robert M. Ward
Auditor of Public Accounts