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United States Government Accountability Office
Washington, DC 20548

July 10, 2006

The Honorable Richard C. Shelby
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate

Subject: *Active Commuter Rail Agency Service Contracts*

Dear Mr. Chairman:

Commuter rail is an important part of the transportation system in many cities and regions in our country, providing more than 420 million passenger trips in 2005. Although several of the largest commuter rail agencies hire their own employees, many agencies contract with other companies, including Amtrak, freight railroads, and private rail operators, to provide services that are critical to running the agencies' trains. These contracted services include providing crews to operate trains (train operations); maintenance of equipment (MOE), including maintenance of train cars and locomotives; dispatching train traffic; and maintenance of way (MOW), which involves maintaining the track, signals, and other track infrastructure. Commuter rail agencies can obtain these services by opening contracts to competition or through noncompetitive negotiations with a service provider.

You asked us to provide information on the service arrangements between commuter rail agencies and other companies. Accordingly, we addressed the following questions: (1) How many currently active commuter rail service contracts were obtained through competitive and noncompetitive processes? (2) What differences, if any, are there between competitively and noncompetitively negotiated contracts? Through interviews and site visits with commuter rail agencies, we identified all 50 active commuter rail contracts that provided at least one of the four following services: train operations, MOE, dispatching, and MOW. Of these 50 contracts, we found that 22 only provided access to infrastructure and services directly related to maintaining and operating the infrastructure (e.g., dispatching and MOW). These contracts did not include other services, such as train operations, that are not bound to the infrastructure and for which a commuter rail agency could choose a provider other than the infrastructure owner. We excluded these 22 contracts from our analysis because commuter rail agencies must negotiate with the infrastructure owner for access, and infrastructure owners generally conduct their own dispatching and maintain their own rights-of-way. The other 28 contracts included at least one service that was not bound to infrastructure used by the commuter rail agency and, therefore, could be provided by an entity other than the infrastructure owner. These

contracts were included in our analysis and are discussed in greater detail in our findings.

About Half of Commuter Rail Service Contracts Were Obtained through Competitive Processes

Fifteen of the 28 active commuter rail service contracts were obtained through competitive processes. As of July 1, 2006, Herzog, a private rail operator headquartered in Missouri, held 7 of the competitively procured contracts. Amtrak held 2 of the competitively procured contracts—including a turnkey service for Caltrain, a commuter rail service linking San Francisco and San Jose, under which Amtrak provides services critical to running Caltrain’s commuter service, as well as operations at several of Caltrain’s passenger stations. The remaining 6 contracts were spread among six other private transportation companies.

The other 13 contracts were negotiated noncompetitively. Amtrak held 5 of these 13 contracts, and three freight railroads—Burlington Northern Santa Fe (BNSF), CSX, and Union Pacific—held 6. The remaining 2 noncompetitive contracts were negotiated between commuter rail agencies that share continuous rights-of-way.¹

Table 1 provides information on all 28 active commuter rail service contracts.

Table 1: Active Commuter Rail Service Contracts

Commuter rail agency	Services	Contracted service provider	Contract period	Was this contract negotiated competitively?	Does the contracted provider own the infrastructure?
Competitively negotiated contracts					
Altamont Commuter Express (ACE)	Train operations and MOE	Herzog ^a	June 1998-June 2009, with the option to extend the contract for a period deemed appropriate by ACE’s board	Yes	No
Maryland Transit Administration (MARC)	Contract for MOE services at MARC’s maintenance facility in Frederick, Maryland	Amtrak	Dec. 2001-Dec. 2006	Yes	No

¹In the first case, Metro-North Railroad, a commuter rail service in the New York City area, has a contract with New Jersey Transit (NJT), another commuter rail agency in the same region. Two of Metro-North’s lines are extensions of New Jersey Transit lines that operate out of Hoboken Terminal in New Jersey, and both agencies have found it to be efficient to have a single operator (NJT) for this system. In the second case, Coaster has a contract for dispatching services provided by Southern California Regional Rail Authority (SCRRA), the operator of Metrolink Commuter Rail Service. Coaster officials noted that this contract is between two California public agencies, and, while Coaster’s service does not use parts of the rights-of-way owned by SCRRA, Metrolink commuter rail service does access Coaster rights-of-way.

Commuter rail agency	Services	Contracted service provider	Contract period	Was this contract negotiated competitively?	Does the contracted provider own the infrastructure?
Massachusetts Bay Transportation Authority (MBTA)	Train operations, MOE, MOW, dispatching, and station operation	Massachusetts Bay Commuter Railroad Company (MBCR)	July 2003-July 2008, with the option to extend through 2013	Yes	No
Nashville Music City Star ^b	Train operations and MOE	Transit Solutions Group	Begins from the start of revenue service for 5 years, with the option to extend for 5 years; notice to proceed was issued in May 2006	Yes	No
New Jersey Transit Corporation (NJT) ^c	MOE	Herzog	July 2005-June 2010, with the option to extend through June 2012	Yes	No
New Mexico Rail Runner Express ^b	Train operations, MOE, and MOW	Herzog	Fall 2005-2010, with the option to extend until 2012	Yes	No
North County Transit District (Coaster)	Train operations, MOE, and MOW	Herzog	July 2006-June 2011	Yes	No
Peninsula Corridor Joint Powers Board (Caltrain)	Train operations, MOE, MOW, dispatching, and station operation	Amtrak	July 2001-June 2009, with the option to extend until June 2011	Yes	No
Southern California Regional Rail Authority (SCRRA), operator of Metrolink Commuter Rail Service	MOE	Bombardier	July 2003-June 2010, with the option to extend until 2013	Yes	No
SCRRA	Train operations	Connex	July 2005-June 2010, with the option to extend until 2015	Yes	No
SCRRA	MOW (track and structures)	Herzog	March 2001-June 2007	Yes	No
SCRRA	MOW (signals and communication)	Mass Electric Construction Co.	July 2001-June 2007	Yes	No
Tri-County Commuter Rail Authority (Tri-Rail)	Train operations and MOE	Herzog	Nov. 2002-June 2007	Yes	No
Trinity Railway Express (TRE)	Train operations, MOE, MOW, and dispatching	Herzog	Oct. 2005-Oct. 2010, with the option to extend through 2015	Yes	No

Commuter rail agency	Services	Contracted service provider	Contract period	Was this contract negotiated competitively?	Does the contracted provider own the infrastructure?
Virginia Railway Express (VRE)	MOE	STV Group Inc.	May 2006-May 2007, with 1-year options to extend up to 2010	Yes	No
Noncompetitively negotiated contracts					
Coaster	Dispatching	SCRRA	In perpetuity until the parties agree to terminate the agreement	No	No
Connecticut Department of Transportation Shore Line East (SLE)	Train operations, MOE, MOW, dispatching, and station operation	Amtrak	March 2006-June 2007	No ^d	Yes, owns rights-of-way
MARC	Train operations, MOE, MOW, dispatching, and station operation	Amtrak	Dec. 2004-Dec. 2006	No	Yes, owns portions of the rights-of-way, Washington Union Terminal, and Ivy City Maintenance Yard
MARC	Train operations, MOE, MOW, and dispatching	CSX	July 2005-July 2010	No ^e	Yes, owns portions of the rights-of-way
MTA Metro-North Railroad	Train operations, MOE, MOW, and dispatching ^f	NJT	In perpetuity until the parties agree to terminate the agreement	No	Yes, owns portions of the rights-of-way in New Jersey
New Mexico Rail Runner Express ^b	Dispatching	BNSF	March 2006-March 2009	No ^g	No
NJT	MOE	Amtrak	July 2005-June 2006	No	Yes, owns Sunnyside Maintenance and Storage Yard, in which NJT has an easement interest
Northeastern Illinois Regional Commuter Railroad Corporation (Metra)	Train operations, MOE, MOW, and dispatching	BNSF	Jan. 2001-Dec. 2007	No	Yes, owns portions of the rights-of-way
Metra	Train operations, MOE, MOW, and dispatching	Union Pacific	Jan. 2004-Dec. 2008	No	Yes, owns portions of the rights-of-way
Sound Transit, Central Puget Sound Regional Transportation Authority (Sounder)	MOE	Amtrak	Sept. 2000-Dec. 2009	No	Yes, Amtrak owns facilities and leases property at Holgate Maintenance and Storage Yard

Commuter rail agency	Services	Contracted service provider	Contract period	Was this contract negotiated competitively?	Does the contracted provider own the infrastructure?
Sounder	Train operations, MOW, and dispatching	BNSF	South Route 2000-2040; North Route 2000-2012, with the option to extend until 2017	No	Yes, owns rights-of-way
Tri-Rail	MOW and dispatching	CSX	To continue until either party provides 9 months notice to end or change the contract	No ^h	No
VRE	Train operations, MOE, MOW, dispatching, and station operation	Amtrak	July 2005-June 2010	No ⁱ	Yes, owns about 1.5 miles of rights-of-way from L'Enfant Station into Washington Union Terminal and Ivy City Maintenance Yard, which are also owned by Amtrak

Source: GAO analysis of commuter rail contract information.

Notes: Each row of this table represents a single contract. Because commuter rail agencies may have multiple contracts to obtain the services critical to their operations, a commuter rail agency may be listed more than once. For example, Metrolink, a commuter rail service in Los Angeles, has four contracts—one for train operations, one for maintenance of equipment, and two for maintenance of way—each of which is summarized on a separate row; Metrolink, therefore, is listed four times in the table.

^aHerzog has several subsidiaries, but we did not distinguish between them for the purposes of the report.

^bThe Nashville Music City Star and the New Mexico Rail Runner Express are both proposed commuter rail agencies that plan to initiate revenue service later in 2006.

^cThis contract covers about 2 percent of NJT's total maintenance of equipment service needs.

^dSLE has had a noncompetitive agreement with Amtrak, in part because of labor issues, according to agency officials. However, SLE is investigating the possibility of contracting with a different train operator and having a separate noncompetitive agreement with Amtrak for rights-of-way access.

^eMARC's contract with CSX requires MARC to issue a request for proposals for new train operation crews and maintenance of equipment workers because CSX does not wish to provide these services to MARC in the future. MARC officials are working to develop the request for proposals and plan to issue it late in 2006.

^fThis contract covers about 7.5 percent of Metro-North's total service and applies only to Metro-North services west of the Hudson River.

^gIn March 2006, New Mexico purchased rights-of-way from BNSF and established a Joint Use Agreement. In accordance with the terms of the agreement, BNSF will provide dispatching services over this rights-of-way for 3 years (until March 2009). After this initial period, New Mexico may assume dispatching responsibilities or select another provider.

^hThis contract is between the state of Florida and CSX. According to Tri-Rail officials, dispatching and MOW services were negotiated as a part of the sale of CSX's rights-of-way to the state when the service was initiated.

The state of Florida now owns the rights-of-way and may choose to competitively procure this service contract provided the state gives CSX 9 months' notice of its intention to do so.

In its July 2005 renegotiations with Amtrak, VRE had Amtrak separate its costs for access and midday storage at Washington Union Terminal (WUT) from other expenses. This information would allow VRE to competitively procure train operations in 2010, when its current service contract with Amtrak expires. VRE's long-term plans also include the construction of maintenance facilities so that equipment maintenance would not need to be performed at WUT. The WUT contract would remain noncompetitive, but VRE would be able to competitively procure maintenance of equipment services.

Infrastructure Ownership Appears to Be an Important Determinant in Whether Contracts Are Competitively Negotiated

According to our analysis, the most notable difference between contracts that were competitively and noncompetitively negotiated was whether the service provider owned the infrastructure that the commuter rail agency was using. Specifically, for all 15 contracts that were negotiated competitively, the service provider did not own the infrastructure used by the commuter rail agency. Rather, in most cases the commuter rail agency or its sister transit agency owned the majority of the infrastructure. In contrast, for 10 of the 13 contracts that were negotiated noncompetitively, the service provider owned the infrastructure used by the commuter rail agency. In two other cases, the service provider was the former owner of the rights-of-way, and the service agreement was established concurrently with the sale of the track. Thus, the service provider currently or previously owned the infrastructure used by the commuter rail agencies for 12 of the 13 noncompetitively negotiated contracts.

Another difference between the competitively and noncompetitively negotiated contracts was the types of services included in the contract. Although competitive and noncompetitive contracts were almost equally likely to cover train operations, maintenance of equipment, and maintenance of way, the noncompetitive contracts were much more likely to include dispatching—an important infrastructure-related service that allows the provider to control train traffic on the rights-of-way. (See table 2.)

Table 2: Services Included in Contracts Reviewed

Service	Competitive contracts	Noncompetitive contracts
Train operations	9 of 15	8 of 13
Maintenance of equipment	12 of 15	9 of 13
Maintenance of way	7 of 15	9 of 13
Dispatching	3 of 15	11 of 13

Source: GAO analysis of commuter rail agency contract information.

Note: Most contracts included terms for more than one service. For example, a single contract may include train operations, maintenance of equipment, and maintenance of way services. As a result, the number of services exceeds the number of contracts in each column.

Although infrastructure ownership appears to have played a critical role in determining whether the current contracts were negotiated competitively, commuter rail agencies indicated that, in the future, they may have greater latitude in choosing a provider other than the infrastructure owner. For example, several commuter rail agencies have taken steps to competitively procure services that are currently being provided by the infrastructure owner, and two agencies noted that the Massachusetts

Bay Transportation Authority's (MBTA) experience with changing service providers served as an example for other agencies. Specifically, in 2003, MBTA replaced Amtrak with a new service provider, even though Amtrak had provided these services since 1987 and the two agencies are dependent on each other's infrastructure. In addition, commuter rail agency officials noted that the number of private rail companies has grown in the last 5 to 10 years, potentially making competitive negotiations financially more worthwhile. For example, officials from the Virginia Railway Express (VRE) took steps to restructure their current service contract with Amtrak and are developing long-term plans to build their own equipment maintenance yard so that the agency is positioned to competitively negotiate train operations and maintenance of equipment services when their contract with Amtrak expires in 2010.

Agency Comments

We provided the Department of Transportation and Amtrak officials with a draft of this report for review and comment. Both agencies provided technical clarifications that we incorporated, as appropriate.

Scope and Methodology

To address our objectives, we contacted officials from all existing commuter rail agencies, as reported by the American Public Transportation Association, as well as two proposed commuter rail agencies that plan to initiate service in 2006. We conducted a semistructured interview with each agency to identify its service needs, the companies it has contracted with, and the scope of the services covered by its contracts. We also determined through these interviews whether the contracts included rights for the commuter rail agency to access infrastructure owned by the service provider (e.g., rights-of-way, passenger stations, and train maintenance yards). Through site visits with seven existing and one proposed commuter rail agency and through follow-up correspondence with all existing commuter agencies and the two proposed commuter agencies, we identified the length of the service contracts and determined whether each contract had been competitively or noncompetitively negotiated. We also examined some current commuter rail service contracts and documents related to milestones in agencies' competitive procurement processes.² To ensure the accuracy of information summarized in the report, we verified the information we collected with the commuter rail agencies.³

²Our audit work also contributed to a comprehensive report on commuter rail agencies' reliance on Amtrak for services and access to infrastructure. See GAO, *Commuter Rail: Commuter Rail Issues Should Be Considered in Debate over Amtrak*, [GAO-06-470](#) (Washington, D.C.: Apr. 21, 2006).

³Two commuter rail agencies did not respond to our request to verify information.

Our review identified 50 active commuter rail contracts that provided at least one of four services critical to running an agency’s service—that is, these services are all related to the movement of trains (i.e., train operations, MOE, dispatching, or MOW).⁴ Many of these contracts covered more than one critical service. Of the 50 contracts, we found that 22 provided access only to infrastructure and services directly related to maintaining and operating the infrastructure (e.g., dispatching and MOW). These contracts did not include other services, such as train operations, that are not bound to the infrastructure and for which a commuter rail agency could choose a provider other than the infrastructure owner. We excluded these 22 contracts from our analysis because commuter rail agencies must negotiate with the infrastructure owner for access, and infrastructure owners generally conduct their own dispatching and maintain their own rights-of-way. A limitation of our analysis is that we did not collect information on the willingness of infrastructure owners to provide infrastructure access without also providing other services to commuter rail agencies. Table 3 describes all 50 contracts and indicates whether they are included in our analysis.

Table 3: Commuter Rail Service Contracts, by Agency

Commuter rail agency	Provider	Contract description	Included or excluded in our analysis
Existing commuter rail agencies			
Altamont Commuter Express (ACE)	Herzog	Contract for train operations and MOE	Included
	Union Pacific	Contract for access to Union Pacific rights-of-way (ROW) and associated dispatching and MOW	Excluded
	Caltrain	Contract for dispatching and train storage at Caltrain’s San Jose Station	Excluded
Connecticut Department of Transportation Shore Line East (SLE)	Amtrak	Contract for train operations, MOE, dispatching, MOW, and station operation; also includes access to Amtrak ROW	Included
Maryland Transit Administration (MARC)	Amtrak	Contract for train operations, MOE, dispatching, MOW, and station operation; also includes access to Amtrak ROW and Washington Union Station	Included
	Amtrak	Contract for MOE services at MARC’s maintenance facility in Frederick, Maryland	Included
	CSX	Contract for train operations, MOE, dispatching, and MOW	Included
Massachusetts Bay Transportation Authority (MBTA)	MBCR	Contract for train operations, MOE, dispatching, MOW, and station operation	Included

⁴Commuter rail agencies such as MTA Long Island Rail Road, MTA Metro-North Railroad, New Jersey Transit, the Northeastern Illinois Regional Commuter Railroad Corporation (Metra), the Northern Indiana Commuter Transportation District, and the Southeastern Pennsylvania Transportation Authority use their own employees for most of their service needs, including train operations, dispatching, MOE, and MOW. Although the Southern California Regional Rail Authority (SCRRA), which operates the Metrolink Commuter Rail Service, contracts out almost all other services, it has its own staff to provide dispatching services. We did not include these in-house arrangements in our analysis.

Commuter rail agency	Provider	Contract description	Included or excluded in our analysis
	Amtrak	Contract for access to Amtrak-owned ROW and associated dispatching and MOW	Excluded
	Amtrak	Contract for MOW at the Route 128 Station, which is owned by Amtrak but sits on land owned by MBTA	Excluded
	CSX	Contract for access to CSX ROW and associated dispatching and MOW	Excluded
	Guilford	Contract for access to Guilford ROW and associated dispatching	Excluded
MTA Long Island Rail Road (LIRR)	Amtrak	Contracts for MOW and special maintenance projects, as well as access to ROW approaching Penn Station and Penn Station itself, all of which are owned by Amtrak ^a	Excluded
MTA Metro-North Railroad	New Jersey Transit	Contract for train operations, MOE, dispatching, and MOW, as well as access to NJT ROW	Included
New Jersey Transit Corporation (NJT)	Herzog	Contract for MOE services on a small portion of the NJT train fleet	Included
	Amtrak	Contract for MOE services at Amtrak's Sunnyside Yard	Included
	Amtrak	Contract for access to Amtrak ROW and Penn Station, as well as dispatching, MOW, and services related to use of Amtrak ROW and Penn Station	Excluded
	Conrail	Contract for access to Conrail ROW and associated dispatching and MOW	Excluded
North County Transit District (Coaster)	Herzog	Contract for train operations, MOE, and MOW	Included
	SCRRA	Contract for dispatching services	Included
Northeastern Illinois Commuter Railroad Corporation (Metra)	Union Pacific	Contract for train operations, MOE, dispatching, and MOW; also includes access to Union Pacific ROW	Included
	BNSF	Contract for train operations, MOE, dispatching, and MOW; also includes access to BNSF ROW	Included
	Amtrak	Contract for MOW and dispatching in the area immediately surrounding Chicago Union Station, which is owned by Amtrak; contract also includes access to Chicago Union Station	Excluded
	Canadian National	Contract for access to Canadian National ROW, and associated dispatching and MOW	Excluded
	Norfolk Southern	Contract for access to Norfolk Southern ROW, and associated dispatching and MOW	Excluded
	CSX	Contract for access to CSX ROW, and associated dispatching and MOW	Excluded
	Illinois Central	Contract for access to Illinois Central ROW, and associated dispatching and MOW	Excluded

Commuter rail agency	Provider	Contract description	Included or excluded in our analysis
Northern Indiana Commuter Transportation District (NICTD)	Metra	Contract for access to Metra ROW, stations, and associated dispatching and MOW	Excluded
Peninsula Corridor Joint Powers Board (Caltrain)	Amtrak	Contract for train operations, MOE, dispatching, MOW, and station operation	Included
	Union Pacific	Contract for access to Union Pacific ROW and the right for Caltrain to maintain and operate this portion of the track	Excluded
Sound Transit, Central Puget Sound Regional Transportation Authority (Sounder)	Amtrak	Contract for MOE and access to Holgate Maintenance Yard	Included
	BNSF	Contract for train operations, dispatching, and MOW, as well as access to BNSF ROW	Included
Southeastern Pennsylvania Transportation Authority (SEPTA)	Amtrak	Contract for access to Amtrak-owned ROW, as well as associated MOW, dispatching, and propulsion power on Amtrak's Northeast Corridor and Harrisburg Line	Excluded
Southern California Regional Rail Authority (SCRRA), operator of Metrolink Commuter Rail Service	Connex	Contract for train operations	Included
	Bombardier	Contract for MOE	Included
	Herzog	Contract for MOW (track and structures)	Included
	Mass Electric Construction Co.	Contract for MOW (signals and communications)	Included
	Union Pacific	Shared-use agreements for access to Union Pacific ROW, and associated MOW and dispatching	Excluded
	BNSF	Shared use agreements for access to BNSF ROW, and associated MOW and dispatching	Excluded
Trinity Railway Express (TRE)	Herzog	Contract for train operations, MOE, dispatching, and MOW	Included
Tri-County Commuter Rail Authority (Tri-Rail)	Herzog	Contract for train operations and MOE	Included
	CSX	Contract for dispatching and MOW	Included
Virginia Railway Express (VRE)	Amtrak	Contract for train operations, MOE, dispatching, MOW, and station operation; also includes access to Amtrak ROW and Washington Union Station	Included
	STV Group Inc.	Contract for MOE	Included
	CSX	Contract for access to CSX ROW, and associated dispatching and MOW	Excluded
	Norfolk Southern	Contract for access to Norfolk Southern ROW, and associated dispatching and MOW	Excluded
Proposed commuter rail agencies			
New Mexico Rail Runner Express	Herzog	Contract for train operations, MOE, and MOW	Included
	BNSF	Joint Use Agreement for dispatching services	Included
Nashville Music City Star	Transit Solutions Group	Contract for train operations and MOE; notice to proceed was issued in May 2006	Included

Commuter rail agency	Provider	Contract description	Included or excluded in our analysis
	Nashville and Eastern Rail Authority (NERA)	Contract for access to NERA ROW, and dispatching and MOW services through NERA's contractor, the Nashville and Eastern Railroad Corporation; notice to proceed was issued in May 2006	Excluded

Source: GAO analysis of commuter rail contract information.

^aDispatching at Penn Station is a joint responsibility between Amtrak and LIRR, with each company providing half of the dispatching employees.

Our review did not examine commuter rail agencies' compliance with the Federal Transit Administration's requirements for the use of competitive procurement for railroad service contracts. We conducted our review from July 2005 to July 2006 in accordance with generally accepted government auditing standards.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to congressional committees with responsibilities for commuter rail issues, the Secretary of Transportation, the Acting President of Amtrak, and the Administrators of the Federal Railroad Administration and the Federal Transit Administration. We will also make copies available to others upon request. In addition, this report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or heckerj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Nikki Clowers (Assistant Director), Gregory Hanna, Nancy Lueke, and Joah Iannotta.

Sincerely yours,



JayEtta Z. Hecker
Director, Physical Infrastructure Issues

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