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November 24, 2010

Chief A. Wayne Sampson (Ret.)
Executive Director
Massachusetts Chiefs of Police Association
26 Providence Rd
Grafton, MA 01519

Re: Federal Stimulus Assistance

Dear Chief Sampson:

The Massachusetts Office of the Inspector General (OIG) is writing to request the assistance of the Massachusetts Chiefs of Police Association (MCOPA) to disseminate the information contained in this letter to its membership including affiliated regional associations and law enforcement councils in Massachusetts. The information in this letter pertains to municipal procurement law issues involving local police departments that this office recently identified.

As you may know, the OIG recently reviewed a sample of Edward Byrne Memorial Justice Assistance Grants (Byrne Grants) awarded to local police departments by the U.S. Department of Justice (DOJ) under the American Recovery and Reinvestment Act (ARRA).

The OIG is reviewing ARRA-related grants to identify potential vulnerabilities to fraud, waste, and abuse and other risks that could negatively impact the accountability, transparency, and anti-fraud mandates contained in the statutory language and interpretive guidance of ARRA. The OIG did not conduct an investigation of the Byrne Grant program or perform a comprehensive programmatic review.

As part of the OIG's review of Byrne Grants to municipalities, the OIG selected a sample of 22 police departments. These police departments used Byrne funds to purchase goods and/or services. Determining whether these purchases complied with M.G.L. c.30B (Chapter 30B), the state's Uniform Procurement Act, comprised a key component of the OIG review.

Through this review, the OIG identified violations of Chapter 30B including the absence of delegated purchasing authority to police departments by a municipality's Chief Procurement Officer (CPO), the improper use of collective purchasing agreements, and a lack of documentation to justify sole source procurements. The OIG

is providing this information in summary form so that police and other municipal departments can benefit from these “lessons learned” and conduct future Chapter 30B procurements properly. The OIG is requesting that MCOPA share this information with its membership.

Issues

Delegated Authority: The OIG found that many police departments did not know of or did not fully understand the requirements of Chapter 30B, including the technical requirement regarding the delegation of authority by a CPO. Under Chapter 30B, if a municipality has designated a CPO, he or she is in charge of procuring all supplies and services on behalf of the city or town. Under M.G.L. c. 30B, §19, a CPO may delegate his or her powers and duties to one or more employees of the governmental body. Section 19 states: “a delegation may be in specific or general terms, may be limited to a particular procurement or class of procurements, and may be conditioned upon compliance with specified procedures.” Section 19 also states, “A delegation shall be in writing, be signed by the [CPO], and... [it and] any revocation or amendment thereof shall not take effect until a copy of the same has been filed with the office of the inspector general.”

A number of police departments included in our review sample did not have proper delegations of authority on file with the OIG. In other cases, delegated authority had been granted but only for procurements under a specific dollar amount. Purchases made with grant funds, however, exceeded the amounts for which departments had been delegated authority. The OIG notified these departments that amended delegations of authority would need to be filed prior to similar procurements occurring. In another case, a department believed that it did not need delegated authority to solicit quotes for a purchase under \$25,000. It is important to note that the delegation requirement in Chapter 30B applies to employees acting in any capacity related to the procurement process, including soliciting quotes, as well as when using collective purchasing agreements which is further discussed below.

Delegations of authority by the CPO help to ensure effective and lawful procurements, that procurement authority is adequately controlled, and that only those in the opinion of the CPO to have sufficient knowledge of procurement rules receive delegation.

Collective Purchasing Agreements: The OIG also identified violations in the use of collective purchasing agreements. A purchase from a collective purchasing agreement is deemed to comply with Chapter 30B, §1(c) when, pursuant to M.G.L. c.7, §22B, one political subdivision acting on behalf of other political subdivisions complies with the requirements of Chapter 30B. However, many collective purchasing agreements or the organizations that conduct these group purchases require membership in the organization, the payment of fees, or have other requirements. The OIG identified some cases where a police department obtained collective purchasing agreement pricing and conducted a purchase without being an approved participant under the

agreement. It is the opinion of the OIG that to comply with Chapter 30B, a purchaser must be an original participant in a collective purchasing agreement in order to make purchases from that agreement. Otherwise, a jurisdiction could use “a good price” to justify by-passing legal requirements for conducting a fair, open, and competitive procurement. Improper use of collective purchase agreements also undermines those communities that legitimately participate in these agreements by paying fees, dues, or by meeting other requirements. The OIG recommends that purchasers ensure they are participants in the original collective purchasing agreement before buying from any agreement entered into pursuant to M.G.L. c.7, §22B.

Until recently, a municipality had been limited as to the types of collective purchasing agreements it could use. Recent, legislation has broadened the types of agreements and contracts that may be used to include those issued by federal, state and other local jurisdictions both within and outside Massachusetts. A September 2010 *Procurement Bulletin* (<http://www.mass.gov/ig/publ/nlsep10.pdf>) issued by the OIG explained, “[Collective] purchasing is an arrangement in which two or more governments purchase under the same procurement contract. A recent amendment to M.G.L. c.30B added section 22, which permits local governmental bodies to purchase supplies from [collective] contracts that have already been procured by the federal government, another state, a political subdivision (city, town, county, etc.), of the commonwealth or any other state, so long as the contract is open to Massachusetts governmental bodies and was procured in a manner that constitutes fair and open competition. Purchasers under a [collective] contract for supplies will typically be required to sign a participation agreement before making purchases.”

At the time of its review, the OIG discovered that a police department had purchased gas masks from a federal General Services Administration (GSA) contract. Although the legislation discussed above had been pending, that law was not in effect when the police department made its purchase. With the recent passage of the Municipal Relief Act, however, certain GSA supply schedules have been made available for use by governmental bodies subject to Chapter 30B. The OIG Procurement Bulletin explained, “Section 1(f) of M.G.L. c.30B provides that all purchases made from vendors pursuant to GSA supply schedules that are open to state and local governments are deemed to comply with M.G.L. c.30B without a further competitive process. It is important to note, however, that the new section applies only to a limited number of GSA’s contracts. The Cooperative Purchasing Program permits the purchase of equipment and related services from contracts awarded under GSA Schedule 84, which includes total solutions for law enforcement, security, facility management systems, fire, rescue, special purpose clothing, marine craft, and emergency/disaster response.”

Sole Source Justification: The OIG identified issues with the documentation of the sole source procurements of *Tasers* in two municipalities. M.G.L. c. 30B, §7 states that, “the [CPO] may award a contract in an amount of less than \$25,000...without competition when, after reasonable investigation, [he or she] determines in writing that only one practicable source for the required supply or service exists.” *Taser*

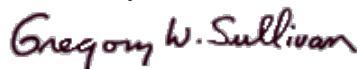
International is the sole manufacturer of the *Taser*, and its corporate policy allows only one regional dealer at a time to sell *Tasers* in Massachusetts. One police department made two separate purchases of *Tasers*, the first from Taser International, and the second from Interstate Arms Corporation, which Taser International has since designated as the regional dealer. While the department made an undocumented determination that the only source for *Tasers* would be Taser International, and later Interstate Arms, Chapter 30B requires that these "sole source" determinations be made in writing and documented in the department's procurement file. Department files failed to contain this documentation.

Conclusion

The OIG review found that all 22 sampled police departments spent Byrne Grant funds as intended; the departments obtained the items DOJ intended to fund. The OIG's primary concern is that police departments follow Chapter 30B more carefully in the future to avoid potential procurement problems that could place grant funds in jeopardy; the DOJ has required in the past that misspent funds be returned. All Massachusetts municipalities are required to follow the procurement practices outlined in Chapter 30B. The OIG recommends that police departments familiarize themselves with the Chapter 30B requirements. Step-by-step procurement information is available in the OIG manual for procurement, *Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property* [the Chapter 30B manual], available at <http://www.mass.gov/ig/igpubl.htm>. In addition, an introductory Online Bidding Basics training course is available on the OIG's website at: http://www.mass.gov/ig/mcppo/bb_online.htm.

The OIG appreciates the cooperation of the many departments involved in this review. Please do not hesitate to contact us with any questions or concerns you may have regarding this review. Thank you for your assistance in disseminating this information and helping to ensure that procurements are performed pursuant to Chapter 30B. We welcome any suggestions you have for outreach and education on this important issue. Thank you for your cooperation.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive, slightly slanted style.

Gregory W. Sullivan
Inspector General