



Office of the Inspector General

Commonwealth of Massachusetts

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Inspector General

Bid Fabrication and Cover-up in the Town of Bernardston's Sand Procurement

February 2004

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Executive Summary

This investigation by the Office of the Inspector General uncovered a flagrant and intentional disregard of the public bidding laws by Town of Bernardston officials with respect to the procurement of sand in 2000. Moreover, it revealed an even more egregious attempt by one Town official to cover-up his failure to adhere to public procurement laws. Furthermore, this Office learned that false documents were created by another Town official purportedly at the direction of a former Selectman. This was done as a potential cover-up in the event that the documents were needed in the future to support the prior improper actions of certain Town officials.

The investigation was predicated upon a complaint to this Office from an attorney representing Robert Mitchell (Mitchell), a supplier of sand located in Shelburne, Massachusetts. The complainant alleged that the Town of Bernardston (Town) participated in a collaborative bidding process for the purchase of sand in the fall of 2000 which was handled by the Franklin Council of Regional Governments (FCRG). He further advised that Mitchell was the low bidder in the collaborative bid process. He advised that another bidder, Cersosimo Industries, Inc. (Cersosimo) submitted a bid during the FCRG process but the Cersosimo bid was higher than Mitchell's. He advised that notwithstanding the fact that Mitchell was the low bidder on the collaborative sand contract, the Town decided to purchase sand from Cersosimo for an amount that was higher than Mitchell's FCRG bid. The attorney questioned the legality of this arrangement.

The investigation conducted by this Office confirmed that the Town was included in a collaborative bidding process for the purchase of sand that was conducted by the FCRG. The investigation further confirmed that Mitchell was the low bidder in that process with a bid of \$3.80 per ton and Cersosimo was the second low bidder with a bid of \$3.95 per ton. Instead of awarding the sand contract to Mitchell, the Town purportedly engaged in a separate quote process for the sand procurement and

obtained three quotes.¹ The three quotes were listed on a "Chapter 30B Telephone Bid Sheet" (Telephone Bid Sheet) created by the Town's Highway Superintendent and signed by the Board of Selectmen's Administrative Assistant (Administrative Assistant). The alleged quote process included a quote from Mitchell at \$3.80 per ton, one from Cersosimo at \$3.85 per ton and one from Warner Brothers at \$4.25 per ton. The Town chose to award the sand contract to Cersosimo even though Cersosimo's quote was higher than Mitchell's. The investigation determined that the Town purchased over \$5700 hundred dollars of sand from Cersosimo before the contract award was challenged.

During this Office's initial investigation in 2001, the Highway Superintendent advised that he chose Cersosimo because the low bidder (Mitchell) was not responsible and he (the Highway Superintendent) had obtained bad references from two towns regarding Mitchell. He also said he liked Cersosimo and had done business with them for several years. Information was received by this Office during the investigation, which indicated that Mitchell had not done any business with the two towns named by the Highway Superintendent. When confronted on this issue by an employee of this Office, the Highway Superintendent claimed that he had miscommunicated with this Office. Moreover, as mentioned above, the Warner Brothers Company purportedly offered the Highway Superintendent a quote for sand as shown on the Highway Superintendent's Telephone Bid Sheet. This Office received information that raised serious doubt about whether Warner Brothers had in fact ever tendered this quote during the so-called quote process. As a result of the initial investigation, this Office declared in a letter to the Chairman of the Town's Board of Selectmen, dated 5/22/01, that the Town's winter sand

¹ Members of a collaborative may still choose to conduct their own procurement process if, (a) the collaborative agreement permits them to do so and (b) the collaborative IFB puts vendors on notice of members' rights to do their own process.

procurement for 2000-2001 was illegal and that no further payments could be made to Cersosimo.²

In May 2003, documents were received by this Office which suggested that there might have been an attempted cover-up in this matter. One of these documents, dated 9/13/00, was entitled "Bid Notice/Town of Bernardston/Highway Sand Bid" (Bid Notice). It requested sealed bids for approximately 2,500 tons of winter sand, which would be opened at the Board of Selectmen's Office in Bernardston on 10/11/00. A second document, dated 10/12/00, was an unsigned letter to the Bernardston Board of Selectmen from the Highway Superintendent stating that he would like to choose the Cersosimo Industries, Inc. bid over that of Mitchell because of the quality of the sand, even though the Cersosimo Industries bid was five cents more a ton. Accompanying these documents was a printout of a computer directory which showed that the two documents described above had been last saved on the computer on 3/26/01. The date, 3/26/01, is significant because it follows closely the date, 3/23/01, when this Office addressed a letter to the Town Treasurer directing her to withhold payments for the procurement of sand because it appeared that the Town was procuring sand from someone other than the lowest responsive and responsible bidder. This letter also mentioned that this Office had received a complaint about the sand contract and would be conducting an investigation into the matter. A copy of this letter was sent to a member of the Board of Selectmen. It appeared as though the documents were backdated and could have been created in response to this Office's letter dated 3/23/01.

² M.G.L. c. 30B §4(b) requires that a contract for the purchase of supplies valued at \$5000 or more but less than \$25,000 be awarded to "the responsible person offering the needed quality of supply ... at the lowest quotation." This Office's letter, dated 5/22/01, to the Chairman of the Board of Selectmen declared the award of the sand contract to Cersosimo invalid because "[t]he Department's decision to pass over Robert Mitchell was not based on a determination that this contractor was not ... responsible." A jurisdiction cannot lawfully pass over a contractor providing the lowest quote unless that contractor's quote is shown to be not responsive to the invitation of the municipality or there are sufficient facts to indicate that the low quoter is not a **responsible** contractor, i.e., the contractor will not be able to satisfactorily perform its contractual obligations. During the initial inquiry by this Office, the Highway Superintendent failed to provide any credible information that Mitchell was not a responsible bidder.

Following the receipt of the documents indicating a possible cover-up, this Office conducted further investigation and interviewed the Administrative Assistant on 11/21/03. During the interview, she admitted to creating the false Bid Notice, dated 9/13/00 and the false unsigned letter, dated 10/12/00 on her computer. These documents are described above. She admitted to creating these documents on 3/26/01 and claimed that she did so at the direction of a member of the Town's Board of Selectmen.³ She advised that the documents were created because there was a bid protest and it had to be shown that "we" had gone out and gotten quotes and acted in good faith regarding the quality of sand. She advised that the Selectman wanted to create the documents because of the bid protest, which was made shortly before the documents were created. She advised that the Selectman had spoken to the Office of the Inspector General and told her that "we" needed to put some stuff in the files and told her to produce these documents on 3/26/01. Based upon these admissions, this Office concluded that these documents were false and fictitious, created to cover-up what actually happened in this matter, if it became necessary to do so. These documents were never furnished to this Office during our initial inquiry in 2001 and this Office did not become aware of their existence until May of 2003.⁴

On 11/21/03 this Office interviewed the Town's Highway Superintendent. He admitted that he did not want to go through a bidding process to buy sand in the fall of 2000. He explained that when the FCRG (which was managing the collaborative bid for sand) sent out the sheet for him to specify the amount of sand that he would need, he did not fill it out and return it to the FCRG. Instead, he went ahead and arranged to buy sand through an employee from Cersosimo Industries without a bidding process. He advised that without his knowledge, the FCRG's Chief Procurement Officer included

³ This Selectman no longer serves on the Board of Selectmen. The same Selectman was sent a copy of this Office's letter to the Town Treasurer dated 3/23/01, which is further described above.

⁴ It appears that these documents remained on the Administrative Assistant's computer and were never used in any official matter.

Bernardston on the FCRG bid sheet for the collaborative purchase of sand.⁵ He advised that he had already agreed to purchase sand from Cersosimo and was shocked when he later saw the FCRG bid sheet. The Highway Superintendent advised that he put together the Telephone Bid Sheet⁶ after he received the FCRG bid sheet. The Highway Superintendent sent the Telephone Bid Sheet to this Office in 2001, in response to an official inquiry into the Town's year 2000 sand procurement. It is clear that the purported telephone bid process was a sham process, orchestrated by the Highway Superintendent to cover-up the fact that he had engaged in a sole source procurement in violation of M.G.L. c. 30B.

On 11/21/03 this Office interviewed the Selectman that allegedly instructed the Administrative Assistant to create false documents. This individual no longer serves on the Board of Selectmen. He categorically denied that he directed the Administrative Assistant to prepare the false documents dated 9/13/00 and 10/12/00. He said that he would never do anything like that and would never cover up. He said that he was not aware that the FCRG gave the sand contract to Mitchell. He said that the Highway Superintendent told him that Mitchell was a questionable source and that he liked Cersosimo Industries' product and service. He stated that the Highway Superintendent came into the Selectmen's meeting and advised them that the Cersosimo bid was five cents higher than the lowest bid and that there was a problem with Mitchell [the low bidder].

The findings of this investigation and the recommendations of this Office are set forth in the body of this report.

⁵ This action by the Chief Procurement Officer effectively included the Town of Bernardston in the collaborative bidding process for sand, even though the Highway Superintendent had not returned the collaborative bid form to the FCRG.

⁶ As explained earlier, this Office has obtained information, which raised serious doubt about whether at least one quote on this Bid sheet was ever in fact obtained. Even if the quotes were in fact obtained as reflected on the Bid Sheet, this Office is of the opinion that this document was created to cover up the fact that the Highway Superintendent had entered into a prior agreement with Cersosimo to supply sand to the Town in violation of the public bidding laws.

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Background and Initial Investigation

In March 2001 this Office received a complaint from an attorney representing Robert Mitchell (Mitchell) a supplier of sand located in Shelburne, Massachusetts. The complainant alleged that the Town participated in a collaborative bidding process for the purchase of sand in the Fall of 2000, which was handled by the Franklin Council of Regional Governments (FCRG). He further advised that Mitchell was the low bidder in the collaborative bid process. He advised that another bidder, Cersosimo, submitted a bid during the FCRG process but the Cersosimo bid was higher than Mitchell's. He advised that notwithstanding the fact that Mitchell was the low bidder on the collaborative sand contract, the Town decided to purchase sand from Cersosimo for an amount that was higher than Mitchell's FCRG bid. The attorney questioned the legality of this arrangement.

Following this complaint, this Office spoke to several public officials, including the FCRG Chief Procurement Officer (CPO), a Town Selectman, and the Town Highway Superintendent. This Office learned that in the Fall of 2000, the Town was included in a collaborative bidding process for the purchase of sand, which was handled by the FCRG. The FCRG, on behalf of several municipalities, solicited competitive bids for the purchase of sand. The lowest responsive and responsible bidder in the FCRG process for Bernardston was Mitchell with a bid of \$3.80 per ton. The second low bidder was Cersosimo at \$3.95 per ton. Another company, Warner Brothers submitted a bid of \$5.70 per ton in the FCRG process. The FCRG notified the Town that that Mitchell was the lowest responsive and responsible bidder and requested that the Town notify them if the Town had any problem with awarding the contract to Mitchell. The Town did not respond and the FCRG contract was awarded to Mitchell.

In May 2001, this Office spoke with the Town's Highway Superintendent. The Highway Superintendent did not participate in the sand contract awarded by the FCRG to Mitchell and advised that instead he initiated a separate quote process for the procurement of sand. The Highway Superintendent provided to this Office a Telephone Bid Sheet which recorded the following sand quotes that were purportedly obtained by the

Highway Superintendent: Robert Mitchell - \$3.80 per ton; Cersosimo Industries, Inc. - \$3.85 per ton; and Warner Brothers - \$4.25 per ton. The Highway Superintendent advised that in preparing the Telephone Bid Sheet, he used Mitchell's bid furnished during the FCRG bid process and called two other parties for quotes. When asked why he had rejected the low bidder, he replied that the low bidder was not responsible and that he (the Highway Superintendent) had gotten bad references on Mitchell from the towns of Brattleboro, VT and Erving, MA. He also said that he liked Cersosimo with whom he had done business for several years. This Office subsequently received information from Mitchell's attorney, indicating that Mitchell had not done business with either Brattleboro, VT or Erving, MA prior to October 2000. Moreover, the attorney provided information that raised serious doubt about whether Warner Brothers had ever tendered a quote at all during the so-called quote process as reflected on the Telephone Bid Sheet. The attorney advised that he interviewed an employee of Warner Brothers (the third company listed on the Telephone Bid Sheet as having offered a quote to the Town for sand). This employee informed the attorney that he could not recall speaking to the Town's Highway Superintendent in October 2000 regarding a bid for winter sand. According to the attorney, this employee checked his records and found no record that he provided a quote to the Highway Superintendent for sand. The Warner Brothers employee also informed Mitchell's attorney that he would not have offered a quote to Bernardston that would have been lower than his bid for Bernardston on the FCRG collaborative bid.⁷

The Highway Superintendent was subsequently informed that this Office had received information indicating that Mitchell had not done business with Brattleboro, Vermont or

⁷ Warner Brothers bid \$5.70 per ton for Bernardston during the FCRG collaborative bid process and purportedly \$4.25 per ton on the Bernardston Telephone Bid Sheet. This Office interviewed the Warner Brothers' employee in 2003 and he could not recall the Highway Superintendent contacting him for a separate quote for sand in October of 2000. He could not be positive in this regard because it was so long ago. He also stated that he would never have given the Highway Superintendent a lower quote for sand for Bernardston than he gave to the FCRG during the collaborative bidding process. He checked his records and could locate no record of a separate quote provided by him to the Town for the sale of sand in October of 2000.

Erving, Massachusetts prior to the quote process initiated by the Superintendent in October of 2000. He responded by stating that there had been a miscommunication between himself and this Office on that point. He said that he awarded the contract to Cersosimo because he had done business with them in the past and that he liked them. Following our initial inquiry, this Office sent a letter to the Chairman of the Bernardston Board of Selectmen.⁸ This letter, dated May 22, 2001, declared the award of the Fall 2000 sand contract to Cersosimo to be invalid and a violation of M.G.L. c. 30B.⁹ The letter also stated that no further payments could be made to Cersosimo by the Town.

In May 2003, documents were received by this Office which suggested that there may have been an attempted cover-up in this matter. One of these documents, dated 9/13/00, was entitled "Bid Notice/Town of Bernardston/Highway Sand Bid" (Bid Notice). It requested sealed bids for approximately 2,500 tons of winter sand, which would be opened at the Board of Selectmen's Office in Bernardston on 10/11/00. A second document, dated 10/12/00, was an unsigned letter to the Bernardston Board of Selectmen from the Highway Superintendent stating that he would like to choose the Cersosimo Industries, Inc. bid over that of Mitchell because of the quality of the sand, even though the Cersosimo Industries bid was five cents more a ton. Accompanying these documents was a printout of a computer directory which showed that the two documents described above had been last saved on the computer on 3/26/01. The date, 3/26/01, is significant because it follows closely the date, 3/23/01, when this Office addressed a letter to the Town Treasurer directing her to withhold payments for the procurement of sand because it appeared that the Town was procuring sand from someone other than the lowest responsive and responsible bidder. This letter also mentioned that this Office had received a complaint about the sand contract and would be conducting an investigation into the matter. A copy of this letter was also sent to a member of the Board of Selectmen.¹⁰ It appeared as though the documents could have

⁸ The Chairman of the Board of Selectmen at the time of the letter is not the current Chairman and no longer serves as a Town Selectman.

⁹ Supra, note 2.

¹⁰ Supra, note 3.

been created in response to this Office's letter dated 3/23/01 rather than on the dates reflected on the documents.

In the Fall of 2003 this Office conducted further investigation into the Town's Fall of 2000 sand procurement. Further investigation was deemed warranted because the documents mentioned above, dated 9/13/00 (the Bid Notice) and 10/12/00 (the unsigned letter from the Highway Superintendent) appeared to have been created on 3/26/01. Moreover, the dates on these two documents failed to correspond with the dates set forth on the Telephone Bid Sheet, which involved the quote process for the purchase of sand. The Telephone Bid Sheet disclosed that two quotes were obtained by the Highway Superintendent for sand on 10/19/00 and one on 10/17/00. If the 10/17-19/00 quote process was legitimate, the document dated 9/13/00 which referred to a sealed bid process on 10/11/00 and the document dated 10/12/00 regarding the Highway Superintendent's intention to choose Cersosimo appeared to be falsified and required explanation. Accordingly, this Office conducted interviews with the Town's Administrative Assistant, the Highway Superintendent, and a former member of the Town's Board of Selectmen.¹¹

¹¹ Id.

Interviews of Town Employees

The Administrative Assistant was interviewed on 11/21/03 and initially stated that the Town opted out of the FCRG process because the year before, Mitchell's (the FCRG low bidder) sand had a lot of rocks in it. She advised that the Town awarded the sand contract to the next lowest bidder in the FCRG process. She noted that Mitchell had bid \$3.80 per ton in the FCRG procurement process and Cersosimo bid \$3.95 per ton. She advised that in a meeting of the Board of Selectmen, they decided to purchase the sand from Cersosimo. She advised that the sand procurement contract was not put out for bids after the Town opted out of the FCRG bidding process. She recalled that the Selectmen nonetheless used the bids submitted to the FCRG in deciding to award the sand contract to Cersosimo. She advised that the Selectmen did this at the request of Merle Kingsley who came to a meeting of the Board of Selectmen.

The Administrative Assistant was shown a copy of the Telephone Bid Sheet which disclosed that three parties including Cersosimo, Mitchell and a third vendor, Warner Brothers, had submitted quotes to supply sand to the Town on 10/19/00 and 10/17/00. She identified her signature on the document and identified handwriting pertaining to the quotes as belonging to the Highway Superintendent.¹² After observing the Telephone Bid Sheet, she changed her story and admitted for the first time that she gave this document to the Board of Selectmen. During the interview, she opined that the Selectmen wanted Kingsley to obtain three quotes, but she wanted to look at the minutes of the Selectmen's meetings to be sure.¹³

¹² It should be noted that both the Administrative Assistant and the Highway Superintendent provided the identical home address and home telephone number to this Office at the time of their separate interviews.

¹³ The Administrative Assistant provided the minutes for the Board of Selectmen's meetings for the entire month of October 2000. There was no mention of the purchase of sand in those minutes. It should be noted that there were 5 separate meetings during the month of October 2000. The absence of any discussion in the Selectmen's meeting minutes for October 2000 raises the question as to whether the Telephone Bid Sheet was created in October 2000 as reflected on the sheet or sometime in 2001, after Mitchell complained about the sand procurement.

During the interview, she provided to investigators an official file, which upon examination, revealed a document entitled "Agreement." This document reflected that it was created by Cersosimo Industries, Inc. The document was dated 10/11/00 and in it, Cersosimo agreed to furnish sand to Bernardston at the rate of \$3.85 per ton.¹⁴ The Administrative Assistant was at a loss to explain the contradictions between her initial statements to investigators concerning the sand procurement process and the Telephone Bid Sheet disclosing the quote process on 10/17/00 and 10/19/00. She was also unable to explain the "Agreement" document showing that Cersosimo had an agreement with the Town to furnish sand on 10/11/00, about a week before the so-called quote process was initiated.

The Administrative Assistant was shown the documents furnished to this Office which suggested the possibility of a procurement cover-up. As explained above, these documents included a "Bid Notice" from the Town, dated 9/13/00 in which sealed bids for the procurement of sand were allegedly solicited. The document shows that the return date for the sealed bids was to be 10/11/00. The documents also included an unsigned letter from the Highway Superintendent to the Town Selectmen, dated 10/12/00, which indicated that he would like to choose Cersosimo for the sand procurement because his sand is better quality than Mitchell's. In addition, there was a document that contained a printout of a computer directory which disclosed that the above mentioned "Bid Notice" and the unsigned letter had been last saved on 3/26/01. As reflected above, this Office sent a letter dated 3/23/01 to Town officials indicating that an investigation was being conducted by this Office into the Town's 2000 purchase of sand. After looking at these documents, the Administrative Assistant admitted that she created these documents and that they were on her office computer. She advised that the letter dated 10/12/00 purportedly from the Highway Superintendent to the Board of Selectmen was actually created by her on 3/26/01 at the direction of one of the

¹⁴ This document was captioned "Cersosimo Industries, Inc." (CII) and it disclosed that CII agreed to deliver approximately 2500 tons of sand to the Town of Bernardston at a rate of \$3.85 per ton for an estimated price of \$9,625.00 dollars.

Selectmen¹⁵ because there was a bid protest and it had to be shown that “we” had gone out and gotten quotes and had acted in good faith regarding the quality of sand. Moreover, she explained that the document dated 9/13/00, the request for sealed bids, was also generated by her on 3/26/01 at the direction of the same Selectman. He wanted her to create the documents because Mitchell protested the bid award. This protest was filed shortly before the documents were created. She stated that this Selectman had spoken with an employee of this Office and he said that “we” needed to put some stuff in the files and he told her on 3/26/01 to produce these documents.¹⁶ These documents were never furnished to this Office during our initial inquiry in 2001 and our Office did not become aware of their existence until May, 2003. The admissions of the Administrative Assistant lead to the inescapable conclusion that she, purportedly at the direction of a Selectman, created false official documents for a potential cover-up in the event that these documents were later needed to justify the procurement of sand from Cersosimo.

The Highway Superintendent was interviewed on 11/21/03 and initially claimed that he went through the "county" bid process (i.e., the FCRG's collaborative bid process) for the purchase of sand in the year 2000. He claimed that he recommended to the Board of Selectmen that they choose Cersosimo to supply the sand in 2000 even though Cersosimo was higher by four or five cents than the lowest bidder. He initially denied ever soliciting bids himself from Cersosimo for the sand procurement in 2000.

However, when the Highway Superintendent was shown a copy of the Telephone Bid Sheet, which reflected that a quote for the purchase of sand was obtained from Cersosimo on 10/19/00, he admitted that the handwriting on the Bid Sheet was his. He also admitted that he was the one who solicited the quotes reflected on the Telephone

¹⁵ This was the same Selectman that was sent a copy of a letter, dated 3/23/01, addressed to the Town Treasurer from this Office which reflected that an investigation was being conducted by this Office into the 2000-sand procurement.

¹⁶ It should be noted that during this interview, investigators asked the Administrative Assistant to produce the procurement file for the purchase of sand from Cersosimo for the year 2000. She was unable to locate it and permitted investigators to look in her file cabinets for it as well. This search was not productive.

Bid Sheet. He claimed that he brought the Telephone Bid Sheet to the Board of Selectmen and they awarded the sand contract to Cersosimo.¹⁷

In the face of his contradictory statements to investigators and the documentary evidence presented, the Highway Superintendent was asked to explain what really happened with the 2000 sand procurement. For the first time, he revealed that he did not want to go through a bidding process to buy sand in the fall of 2000. He explained that when the FCRG sent out the sheet for him to specify the amount of sand that he would need, he did not fill it out and return it to the FCRG. Instead, he went ahead and arranged to buy sand through an employee from Cersosimo Industries without a bidding process. He advised that without his knowledge, the FCRG's Chief Procurement Officer put Bernardston on the collaborative bid sheet anyway.¹⁸ He advised that he had already agreed to purchase sand from Cersosimo and was shocked when he later saw the FCRG bid sheet. He put together the Telephone Bid Sheet after he received the county (FCRG) bid sheet.¹⁹ The Highway Superintendent also submitted the Telephone Bid Sheet to this Office during an official inquiry conducted in 2001 into the Town's year 2000 sand procurement.

The former Selectman was interviewed and categorically denied that he directed the Administrative Assistant to prepare the false documents dated 9/13/00 and 10/12/00.

¹⁷ This Office was not able to verify the Highway Superintendent's claim that he brought the Telephone Bid Sheet to the Board of Selectmen. It should be noted however that there is absence of any mention of the Telephone Bid Sheet or anything about the procurement of sand in the meeting minutes of any of the five Selectmen's meetings for October 2000. It would seem highly likely that the meeting minutes would have reflected discussion about the sand procurement in as much as the Board would have been rejecting the low bidder on the Telephone Bid Sheet in order to award the contract to Cersosimo.

¹⁸ Supra, note 5.

¹⁹ As explained earlier in this report, this Office has obtained information, which raised serious doubt about whether at least one quote on the Telephone Bid Sheet was ever in fact obtained. Even if the quotes were in fact obtained as reflected on the Telephone Bid Sheet, it is the opinion of this Office that the Telephone Bid Sheet was created to cover up the fact that the Highway Superintendent had entered into a prior agreement with Cersosimo to supply sand to the Town in violation of the public bidding laws.

He said that he would never do anything like that and would never cover up. He said that he was not aware that the FCRG gave the sand contract to Mitchell. He said that the Highway Superintendent told him that Mitchell was a questionable source and that he liked Cersosimo Industries' product and service. He stated that the Highway Superintendent came into the Selectmen's meeting and advised them that the Cersosimo bid was five cents higher than the lowest bid and that there was a problem with Mitchell [the low bidder]. He advised that Mitchell's lawyer made a complaint to the Town regarding the sand procurement and the Town made a payment to Mitchell's lawyer. He said he did not know why the Town paid the money.²⁰

²⁰ This Office is in possession of a letter dated 8/3/01 from the Town Counsel to the particular Selectman discussed above which requested that the Town forward a check for \$750.00 to the Town Counsel so that the money could be forwarded to Mitchell's Attorney. The letter states, "In lieu of proceeding with a bid protest hearing in this matter, ... Mr. Mitchell, through his attorney, agreed to settle this matter for payment by the Town of his attorney's fees."

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Findings

1. In the fall of 2000, the Town's Highway Superintendent deliberately violated the bidding process as mandated by M.G.L. c.30B by purchasing sand from Cersosimo Industries, Inc. through a sole source procurement.
2. The Highway Superintendent engaged in a sham quote process and created a Telephone Bid Sheet after he had reached an agreement with Cersosimo for the purchase of sand in order to cover-up his illegal conduct and to demonstrate that he had followed the proper procedures.
3. The Highway Superintendent in 2001 faxed the Telephone Bid Sheet to this Office in response to an official inquiry and falsely led an employee of this Office to believe that he engaged in a legitimate quote process for the purchase of sand in 2000.
4. Serious doubt exists regarding whether one of the quotes listed by the Highway Superintendent on the Telephone Bid sheet was ever in fact made.
5. The Highway Superintendent deliberately attempted to mislead an employee of this Office during the initial investigation of the sand procurement in 2001 by falsely claiming that he had checked two references for the low bidder and found the low bidder's work to be unsatisfactory.
6. The Highway Superintendent initially lied to investigators from this Office when interviewed on 11/21/03.
7. The Town's Administrative Assistant created two false documents, purportedly at the direction of a former member of the Board of Selectmen, because this Office was conducting an official inquiry into the sand purchase.
8. Although the documents generated by the Administrative Assistant were never used to support the purchase of sand from Cersosimo, they were created to cover-up the truth of the sand purchase, if it became necessary to do so.

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Recommendations

- The Town should immediately take all necessary steps to terminate the Administrative Assistant and the Highway Superintendent from employment by the Town of Bernardston.
- The Town, through the Board of Selectmen, should exercise more oversight and supervision of the Town's procurement process.
- The Town should ensure that all employees involved in obtaining goods and services for the Town are properly trained in both the procurement laws and the ethics laws of the Commonwealth.

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Acknowledgement

This Office is most appreciative of the excellent cooperation and assistance provided in this matter by the current Chairman of the Town's Board of Selectmen.