

July 29, 2025

Via Electronic Mail

Robert Prophet
Superintendent
Bourne Water District
211 Barlow's Landing Road
Pocasset, MA 02559
rprophet@bournewaterdistrict.com

Re: Lease of 645 County Road – Solar Development

Dear Mr. Prophet:

Thank you for meeting with the Office of the Inspector General (OIG) on July 9, 2025, regarding the request for proposals (RFP) issued by the Bourne Water District (the district) for a lease of land at 645 County Road, Bourne, and the subsequent lease agreement entered between the district and its lessee (lessee). As discussed, the OIG has reviewed the documentation produced by your office in response to the OIG's request. We appreciate the time and effort you and your staff have dedicated to this matter and trust that this letter will be of assistance going forward.

Cities, towns, and public governmental bodies are required to follow the provisions of Chapter 30B of the Massachusetts General Laws in procuring supplies and services, as well as in acquiring or disposing of real property.¹ Section 16 of Chapter 30B (Section 16) governs the disposition of real property and imposes a number of requirements designed to ensure open, fair, and competitive processes. These requirements include identifying the property available for disposition and any restrictions on use of the property. In instances where a local governmental body intends to lease its real property, it must follow the applicable procedures in Section 16.

The records produced by the district indicate that a third party associated with the lessee approached the district in 2019 with a proposal to lease district land to develop a solar array. Counsel for the district recommended that the district issue an RFP for a lease of the property.

The district issued an RFP in May 2020 that referred to 12 acres of property "Off County Road" that contained a "capped landfill." The RFP attached an assessor map of 645 County Road as a description of the location. The RFP also included a draft lease agreement and required respondents to identify objections or changes to the draft lease agreement in their proposal. The district advertised the RFP in the Cape Cod Times, which identified the project as containing 7.6

¹ Bourne Water District is one of three independent water districts in Bourne. Pursuant to its enabling statute, the district is operated by an elected board of water commissioners. *See* St. 1938, c. 441. The district is not controlled by the town of Bourne.

acres of land at 645 County Road. The district also posted a notice in the Central Register which did not identify the location as required by Section 16. Three companies responded to the RFP, including the lessee. All three proposals identified the project as located at 645 County Road. While the lessee's proposal did not identify any changes to the draft lease agreement, the other two proposals did.

The district entered a lease agreement with the lessee for 7.8 acres of property at 645 County Road. Despite the lessee not identifying changes to the draft lease agreement in the RFP, the executed lease agreement contained materially different terms, including a rent payment schedule that would commence following the utility granting permission to operate.

In reviewing the documents produced by the district, the OIG has identified the following issues concerning the RFP and lease:

- The RFP and statutory notices contained inconsistent descriptions of the geographical area. The assessor's map attached to the RFP indicates that 645 County Road is a 7.8-acre property. In contrast, the RFP represented the property as a 12-acre capped landfill, and the Cape Cod Times advertisement listed it as 7.6 acres. Further, the Central Register notice did not contain any property description as required. Pursuant to Section 16(d), any advertisement must accurately identify the specific parcel offered for disposition, including its geographic location.
- The district awarded the RFP and executed a lease agreement with the lessee that was materially different from the draft agreement, even though the lessee failed to identify such changes as required in the RFP. Most notably, the lease contains a new term that delays payment until after receiving approval to operate from the utility, rather than immediately following execution. Because of this new lease term, the district has not yet received lease payments despite the Board of Water Commissioners approving the lease in June 2021.²

Despite the inconsistencies regarding the size and location of the property, the district received multiple proposals correctly identifying the location of 645 County Road. However, there may have been other vendors willing to bid on the project who were unable or unwilling to resolve these inconsistencies. To ensure an open, fair, and competitive procurement, this information should be consistent, accurate, and available in the RFP itself as well as in all mandatory advertisements. While a contract entered in violation of Chapter 30B is invalid and payment by the governmental body is prohibited, the governmental body may waive "minor informalities" in the bid where doing so would not prejudice other vendors.³

² It is the OIG's understanding that no ground has been broken on this site and that the district is seeking information from the lessee, with the assistance of counsel, regarding the steps the lessee has taken, if any, toward obtaining the permits, agreements, and approvals necessary to move forward with the project.

³ M.G.L. c. 30B, §§ 2, 17(b).

Furthermore, the RFP stated that “[a]ny changes, objections, exceptions, or comments to [the draft lease agreement] must be specifically noted in the proposal submission or will not be considered during negotiations.” The executed lease, however, ultimately included altered terms favorable to the lessee that the lessee did not identify in their proposal as required. To ensure the procurement process is fair to all bidders, restrictions identified in the RFP such as this should be enforced uniformly.

Based upon the present circumstances, the OIG recommends that the district take the following actions with regard to this procurement and to ensure that future procurements are open, fair, competitive, and in compliance with Chapter 30B:

1. Consult with counsel regarding the implications of the district’s failure to include a property description in the Central Register notice as required by M.G.L. c. 30B, § 16(d) and the deviation from the RFP instruction that the district would only negotiate concerning terms identified as part of a bidder’s proposal.
2. Implement internal procedures concerning disposition and acquisition of real property that comply with Chapter 30B, ensuring that the district:
 - a. Identifies and follows applicable requirements under Section 16, including accurately identifying the property in required advertisements and uniformly enforcing restrictions identified in the RFP; and
 - b. Consults with counsel during the procurement process to evaluate whether it is in compliance with the applicable laws governing a particular procurement. The district is encouraged to contact the OIG’s Public Procurement Technical Support Team with procurement questions.
3. Enroll all district employees involved in procurements and contracts in OIG Academy courses and ensure that at least one employee obtains the OIG’s Massachusetts Certified Public Purchasing Official (MCPPO) Designation within six months of this letter. Ensure that the district maintains at least one MCPPO at all times.

Thank you again for your cooperation with our review of this matter. We acknowledge and appreciate that when a third party reached out about developing district land, the district took steps to conduct a competitive procurement. We hope the guidance outlined in this letter will assist you in future procurements, including the lease of public property controlled or owned by the district for the purpose of solar development or otherwise. It is important that cities, towns, and public governmental bodies act as good stewards of their public property assets while simultaneously helping to achieve the Commonwealth’s clean energy goals. We look forward to hearing from you with any developments regarding this matter.

If you have further questions regarding this matter, please feel free to contact Jack Foster, Associate General Counsel, at jack.foster@mass.gov or by phone at (617) 722-8881.

Robert Prophet, District Superintendent
July 29, 2025
Page 4 of 4

Should you have any additional questions about the district's disposition of real property, please review the Chapter 30B Manual and other resources on the OIG's website, or contact the OIG's Public Procurement Technical Support Team at www.mass.gov/oig-public-procurement.

Sincerely,



Jeffrey S. Shapiro, Esq., CIG
Inspector General

cc (by email):

Melissa Ferretti, Chair, Town of Bourne Select Board
Marlene McCollem, Town Administrator, Town of Bourne
Brian Handy, Chair, Bourne Water District
Randall Collette, Esq., Bean & O'Connor LLP
George Xenakis, Director of Audit, Oversight and Investigations, OIG
Eugenia M. Carris, Esq., General Counsel, OIG
Nataliya Urciuoli, Senior Executive Assistant, OIG