



The Commonwealth of Massachusetts
Office of the Inspector General

GREGORY W. SULLIVAN
INSPECTOR GENERAL

March 30, 2011

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Richard Kwiatkowski, Town Administrator
Sheri L. Cleveland, Administrator Coordinator, Board of Selectmen
Town of Orange
6 Prospect Street
Orange, MA 01364

Dear Sir and Madam:

Your municipality, along with eight other municipalities, has put out a request for proposals (RFP) to lease land in your city or town for a 20 - 30 year term to a solar photovoltaic power generating system provider (PV provider). Under the requirements of M.G.L. c.30B, the land must be disposed of with a competitive process that allows for meaningful competition. In our opinion, your RFP is not in compliance with M.G.L. c.30B.

As part of the process of leasing your land, you have entered into a consulting contract with Muni-Sun, LLC (Muni-Sun) to perform the public procurement services (leasing land to a PV provider) under M.G.L. c.30B. The agreement between your community and Muni-Sun specifies that there would be no compensation due to the consultant for the procurement services to conduct the lease of land to a PV system provider.

However, if your municipality were to enter into an agreement under the RFP to lease land, the PV system provider would have to pay a fee to Muni-Sun, based on the amount of energy generated on your land, an estimated \$7,220,000 over the 20-year lease term or \$10,830,000 if the lease was extended to a 30-year period. (See chart below.) By including that condition, you no longer have a fair competition. In our opinion, since you did not conduct a competitive procurement for the consultant services, the consultant contract and the lease would be invalid under M.G.L. c.30B.¹

¹ Our opinion is advisory only, and it is not known as to whether a Superior Court Judge would agree.

The parcels of land to be leased vary by city or town. The majority of the advertised parcels are closed landfills upon which a PV system may be constructed. Permitting, design and construction services would be performed by the PV system provider. Muni-Sun, according to the RFP, would be paid for each kWh generated over the life of the contract.

Municipality	Estimated Generation per year (in kWhs)	Estimated Municipality Power Usage per year	Estimated payments to Muni-Sun by provider that could go to benefit the municipality		
			1 year	20 years	30 years
Ashby Landfill	2.5 million	500,000 kWh/year	\$25,000	\$500,000	\$750,000
Ayer sites 1, 2, & 3	8.0 million	5,200,000 kWh/year	\$80,000	\$1,600,000	\$2,400,000
Clinton Landfill	2.8 million	4,000,000 kWh/year	\$28,000	\$560,000	\$840,000
Gardner Landfill	5.3 million	6,000,000 kWh/year	\$53,000	\$1,060,000	\$1,590,000
Orange Landfill	2.9 million	2,000,000 kWh/year	\$29,000	\$580,000	\$870,000
Palmer Landfill	2.4 million	4,500,000 kWh/year	\$24,000	\$480,000	\$720,000
Shirley Well Site	7.0 million	1,700,000 kWh/year	\$70,000	\$1,400,000	\$2,100,000
Sturbridge Landfill	2.7 million	2,800,000 kWh/year	\$27,000	\$540,000	\$810,000
Westminster Land	2.5 million	2,000,000 kWh/year	\$25,000	\$500,000	\$750,000
	36.1 million kWhs	28,700,000	\$361,000	\$7,220,000	10,830,000

Through a program under the American Recovery and Reinvestment Act of 2009 (ARRA) and an extension under the tax law changes of 2010, municipalities, on behalf of ratepayers, can benefit from making available their land for such PV system installations. The ARRA program, among other elements, provides a cash grant that PV system developers can take advantage of before the end of 2011, thereby making development of such projects more attractive.² The state also provides certain incentives. Your municipality will probably see significant reductions in the amount you pay for the energy you use. However, we believe that you should be obtaining an additional \$7-10 million of benefits instead of providing for a consultant to receive windfall profits.

In our view, by establishing this kind of compensation plan you will be significantly overpaying for the services associated with leasing your land. For example, the City of Pittsfield paid less than \$75,000 for consulting and/or legal services in relation to a similar lease of its land to a PV provider. As a result, Pittsfield will be obtaining the full value for the use of its land through the discounted energy rates for 20 - 30 years. In contrast, your RFP would result in your municipality obtaining less than the full value of your land because you essentially would have to pay in higher energy costs approximately \$7 – 10 million to cover the payments from a PV system provider to

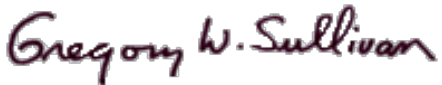
² The program is available until 2016 in a different format, but still includes significant incentives to develop photovoltaic power generating systems.

the consultant. For example, instead of paying \$.05 per kWh, you might have to pay \$.06 kWh, for no other reason than to have the payment passed through to the consultant.

In summary, your municipality is authorized by law to issue an RFP to lease your land without requiring the PV provider to pay an exorbitant amount to a consultant. In order to do so, you must be in compliance with M.G.L. c.30B, which would require a fair competitive process.

Please feel free to contact us with any questions you may have.

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

cc: Muni-Sun, LLC
Department of Energy Resources