



Office of the Inspector General
Commonwealth of Massachusetts

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Contracting Violations at the
Brockton Public School District's
Facilities Department

April 2013

Massachusetts Office of the Inspector General

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Printed on recycled paper.

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Executive Summary

The Office of the Inspector General (OIG) received a complaint from a concerned citizen regarding the Brockton Public Schools' (BPS) electrical maintenance contract, originally awarded in 2007 and in effect through June 30, 2010. The complainant alleged that the invoices the electrical contractor submitted to the BPS did not include documentation showing the hours of work performed, materials purchased, and certified payrolls as the contract required. He also stated the bills were submitted in even amounts and a number of them were unreasonably high for the work performed.

The OIG subsequently initiated an investigation of the BPS's procurement of certain construction and maintenance contracts. The OIG investigation found that BPS officials did not comply with state procurement laws for design and construction work on the electrical maintenance contract as well as two other major projects. In the case of the electrical maintenance contract, the official overseeing the work, BPS's director of facilities, allowed the vendor to deviate from the contract's terms by exceeding spending caps and submitting lump-sum invoices rather than itemized bills. The BPS director of facilities, who is a licensed electrician, developed an outside business relationship with the owner of the company.

The OIG investigation also found that the same BPS official awarded two no-bid roof repair contracts, each worth nearly \$500,000, to a firm that had recently hired him to perform private work. The BPS official did not comply with rules for awarding contracts in emergency situations, and he authorized the contractor to exceed the scope of work allowed when emergency awards are made. BPS's insurer, which was paying the roof repair claims, believed the costs were excessive due to repeated change orders approved by the BPS director of facilities.

In a separate matter, the BPS director of facilities hired another contractor several times to build and install cabinets and countertops for the BPS. In at least two of these instances, the work was awarded in violation of bidding rules. Furthermore, the costs of the projects were split into multiple invoices in order to keep each payment to the contractor under the \$5,000 threshold. In addition, the BPS facilities director hired the contractor to build a vanity for his private home but directed the contractor to re-write the invoice to state falsely that the vanity had been built for the BPS official's private business office.

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Applicable Massachusetts Laws and Regulations

In 2006, the BPS Administrative Services Department switched from using Chapter 30B for construction-related contracts to Chapter 149. Following the switch to Chapter 149, BPS conducted its bidding procedures for electrical maintenance, carpentry and masonry work in conformance with rules for procurements of between \$25,000 and \$100,000. For projects estimated to cost between \$25,000 and \$100,000, Chapter 149 requires public agencies to conduct a sealed bidding process. For projects estimated to cost more than \$100,000, Chapter 149 sets additional requirements on public agencies and prospective bidders. For example, contractors must be certified by the state's Division of Capital Asset Management and Maintenance (DCAMM) in order to be eligible bidders.

In addition, the law requires governmental agencies to provide public notice of the bidding process. The public notification must include a scope-of-work statement that defines the work to be performed and provides potential responders with sufficient information regarding the objectives and requirements of the awarding authority, as well as the time period within which the work must be completed. The notification also must be posted, at least two weeks before responses are due, on the awarding authority's website, in a conspicuous place in or near the awarding authority's primary office, and on either the Central Register or the Commonwealth Procurement and Solicitation System (known as Comm-PASS).

Chapter 149 also obliges the governmental entity to include in the bid specifications certain requirements relating to wages and employment conditions. For example, the law requires paying prevailing wages as set by the Department of Labor Standards, offering hiring preferences to veterans and residents of Massachusetts, and providing workers' compensation coverage. See M.G.L. c. 149, §§ 26-27. The contract also must include the requirements for performance and/or payment bonds.

Chapter 149 also prohibits bid splitting for the purpose of evading state bidding requirements. See M.G.L. c. 149, § 44J(3). Section 44J of Chapter 149 states in pertinent part: "Whoever violates any provision of this section shall be punished by a fine of not more than ten thousand dollars or by imprisonment in the state prison for not more than three years or in a jail or house of correction for not more than two and one-half years or by both said fine and imprisonment" Section 44J also requires any person who causes or conspires to violate the bid-splitting provisions to pay the awarding authority \$5,000.

Chapter 149 provides an exception to the requirement to seek competitive bids in a situation of "extreme emergency" when there is an imminent threat to public health and safety. In such cases, the awarding authority must get prior approval from the commissioner of the DCAMM. Furthermore, an official acting under the "extreme emergency" exemption can award a contract only for the portion of the work necessary to preserve public health or address an imminent danger.

Chapter 268A, the state ethics law, prohibits certain conduct and imposes certain disclosure requirements on public employees. For example, Section 23(b)(1) of Chapter 268A states that a

public employee may not accept employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with his public responsibilities. Section 23 (b)(3) states that no public employee can act in a manner which could cause a reasonable person, having knowledge of the relevant circumstances, to conclude that the public employee is improperly favoring another party. The public employee can avoid this “appearance” problem by making a written disclosure to his appointing authority.

Findings

OIG staff interviewed the BPS director of facilities, George M. Bezreh, as well as three other senior BPS officials with supervisory responsibility for either Mr. Bezreh or the contracts examined in this investigation: Aldo Petronio, BPS's Executive Director of Financial Services; Michael Thomas, BPS's Director of Operations; and Michael Bandis, BPS's Budget Manager. OIG staff also reviewed city records for the electrical maintenance work, roofing repairs, and cabinetry projects at issue.

OIG staff also interviewed the owners of Northern Lights Electric Company, Zander Corporation, and Custom Cabinets by Al Fortes, the companies BPS hired to perform electrical maintenance, roofing repairs, and cabinet fabrication respectively. The OIG also reviewed these companies' business records, other documents related to the BPS contracts, and records concerning the private business arrangements between Mr. Bezreh and the companies.

Based on the interviews listed above and a thorough review of the relevant documents, the OIG has assembled chronological accounts of three BPS contracts: the electrical maintenance contract, the roof repair projects, and the cabinet and countertop contracts.

A. Electrical Maintenance Contract

On June 1, 2007, the BPS received five bids for a new electrical maintenance contract. The bids were reviewed by Mr. Bezreh and, in a June 13, 2007 letter signed by him, the BPS awarded an electrical maintenance service contract to Northern Lights Electric Company, Inc. Northern Lights was owned by two men, Armando Petruzziello and Joseph Mahoney. Bezreh had known Petruzziello since the 1980s and worked with him at Emerson College from 2001 to 2002. Mr. Bezreh's sister married Mr. Petruzziello's uncle in 1993, but they have since divorced. Mr. Bezreh and Mr. Petruzziello have socialized on occasion.

The term of the BPS contract with Northern Lights was for one year, July 1, 2007 to June 30, 2008, with two successive one-year renewal options at the discretion of the school committee. Of the five bidders, Northern Lights was the lowest at a price of \$49 per man hour for the contract's first year, \$51.50 for the first optional renewal year and \$53.50 for the second optional renewal year. Expenses under the contract were capped at \$100,000 for each year. The contract required the vendor to submit invoices detailing the time worked along with original documentation of all materials purchased. The vendor was allowed to add 10 percent to the cost of materials as compensation for overhead.

In the first year of the contract, Northern Lights submitted invoices totaling \$89,134 to Brockton Public Schools' Facilities Department and its Information Technology Department.

On April 8, 2008, the Brockton School Committee voted to exercise its option to extend the contract with Northern Lights for the coming fiscal year, July 1, 2008 to June 30, 2009. For that fiscal year, Northern Lights submitted invoices to the Facilities Department and the Information Technology Department totaling \$56,346.

On February 10, 2009, the Brockton School Committee voted to exercise its option to extend the electrical maintenance contract with Northern Lights for another year, from July 1, 2009 to June 30, 2010.

In the early spring of 2009, a homeowner in Sharon for whom Mr. Bezreh had previously worked asked Mr. Bezreh to remodel his home. Mr. Bezreh approached Mr. Mahoney with the idea that they form a business together, with the Sharon remodeling project as its initial job.

On April 14, 2009, Impressive Remodeling Specialists, LLC was established and registered at the Secretary of State's Corporations Division, listing Mr. Bezreh and Sonya Mahoney as signatories. Sonya Mahoney is the wife of Joseph Mahoney, co-owner of Northern Lights. According to Mr. Mahoney, Mr. Bezreh wanted Mr. Mahoney's name kept off of the paperwork establishing Impressive Remodeling because Mr. Bezreh did not want BPS officials knowing that he was a partner in a private business with one of the contractors he was responsible for overseeing on behalf of the schools. He understood that this would be considered a conflict of interest. For the same reason, Mr. Bezreh also listed an alternative address for Sonya Mahoney on the business registration documents, rather than her true address where she lived with Mr. Mahoney.

In May 2009, the Sharon homeowner signed a contract with Impressive Remodeling to renovate his home. The initial contract was for \$40,499. During the course of the project, change orders brought the cost to \$57,200. The work was finished in October, 2009.

In late August or early September 2009, Impressive Remodeling replaced two sections of rubber membrane roof at the Hellenic Nursing and Rehabilitation Center in Canton. Impressive Remodeling sent Hellenic Nursing and Rehabilitation Center an invoice, dated September 3, 2009, for \$6,400. Mr. Mahoney and Mr. Bezreh each made about \$15,000 in total from this project and the Sharon home renovation.

On November 12, 2009, Mr. Bezreh authorized and filed documents removing Ms. Mahoney's name as a signatory for Impressive Remodeling and replacing her with Stephanie Cabral, Ms. Mahoney's sister.

On January 19, 2010, the Needham Building Department issued a building permit to Mr. Bezreh to renovate the house at 44 Norfolk Street in Needham. The property had just been purchased by Mr. Petruzzello and another man. Mr.

Petruzziello paid Mr. Bezreh \$1,000 for securing the building permit in Needham in January 2010 and an additional \$600 in May 2010 for filing an amended permit and coming to the property during visits by building inspectors.

During Fiscal Year 2010, Northern Lights billed the BPS a total of \$204,057, which substantially exceeded the \$100,000 annual cap on spending under the terms of the contract award. Approximately \$126,000 of that figure was billed to the Facilities Department alone.

In an October 2010 meeting between OIG investigators and three BPS senior officials, Mr. Bezreh initially denied having any personal dealings with the owners of Northern Lights, Mr. Mahoney and Mr. Petruzziello. By the summer of 2011 with the OIG investigation continuing, Mr. Bezreh acknowledged having had business dealings with the two men at the same time Northern Lights was under contract to BPS.

B. Roof Repair Projects

Zander Corporation has worked for Brockton Public Schools in various capacities since at least 2004. In June 2007, Zander Corporation was awarded new contracts for fiscal year 2008 (July 1, 2007 to June 30, 2008) for masonry work and for carpentry work. The contracts included an annual cap on spending of \$100,000 and provided for two one-year renewals at the option of the BPS.

During the summer of 2007 shortly after the BPS contracts were signed, Edward Zaniboni, the owner of Zander Corporation, hired Mr. Bezreh to install the electrical work in a new home Mr. Zaniboni was building in a Middleboro subdivision. Mr. Bezreh filed an electrical permit application dated August 7, 2007 for the house at 94 Elk Run Drive in Middleboro. The next day, Zander Corporation issued a check to Mr. Bezreh's company, GMB Electrical Services, Inc., for \$6,000. Over the next four months, Zander Corporation issued several additional checks totaling \$10,325 to GMB Electrical Services, Inc. for work at this property. The final check, for \$825, was issued on December 4, 2007, for a total of \$16,325 paid to Mr. Bezreh's firm for work at 94 Elk Run Drive.

Shortly after beginning work at 94 Elk Run Drive, GMB Electrical Services installed the electrical system at a new home under construction across the street, at 79 Elk Run Drive. The house is owned by Nicholas Pirraglia, the brother-in-law of Mr. Zaniboni and a project supervisor for Zander Corporation. Mr. Pirraglia paid Mr. Bezreh's firm four checks totaling \$16,225 for work on the home. The last check was dated December 7, 2007.

On December 17, 2007, staff at the Gilmore Academy Middle School reported hearing cracking noises from the roof supports. The building was immediately evacuated and Mr. Bezreh was notified. He contacted a structural engineer, who visited the school that day and recommended immediate installation of temporary shoring of the roof supports to prevent a collapse. Mr. Bezreh then contacted

Zander Corporation and told them to begin installing temporary shoring, which was done by a subcontractor.

On December 20, 2007, Mr. Bezreh filed an emergency waiver request with DCAMM seeking an emergency exemption from Chapter 149 for the work necessary to bring the building back to a safe condition. He estimated that the cost of shoring up the roof supports would be between \$75,000 and \$100,000. DCAMM granted the waiver the same day.

On December 28, 2007, the structural engineering firm completed a plan for roof beam repairs, calling for reinforcing the existing wood laminate beams with structural steel beams.

In late December 2007 or January 2008, the structural engineering firm also examined the Kennedy Elementary School, which was originally built at about the same time as the Gilmore Academy Middle School and apparently used the same architect, contractor, and materials. The engineer recommended shoring up the Kennedy Elementary School roof and reinforcing the roof beams with structural steel.

On January 15, 2008, Zander Corporation submitted an estimate of \$259,331 for repairing and reinforcing the Gilmore Academy roof beams.

On February 26, 2008, Zander Corporation installed temporary shoring of the roof supports at the Kennedy Elementary School. At the same time, the company began its work to permanently repair of Gilmore Academy's roof beams.

On October 22, 2008, Zander Corporation submitted its final change order for the Gilmore Academy roof beam repair. The total amount paid to Zander Corporation for the project was \$479,305.

On November 4, 2008, Zander Corporation submitted its final payment application to the city for work on the Kennedy Elementary School. The total amount paid to Zander Corporation for the Kennedy Elementary School roof beam repair project was \$493,325.

Through interviews and a review of business records, the OIG also established other facts relevant to the analysis of the Brockton Public Schools' roof beam repair projects.

First, the BPS did not have a contract with Zander Corporation for either roof repair project, nor was either project administered according to the terms of the carpentry or masonry contracts. In addition, the BPS did not seek competitive bids for any portion of these projects, including the work that was not exempt from Chapter 149 procurement rules, namely the permanent repairs made to each school's roof beams.

Funds for the repairs came from Liberty Mutual, BPS's insurer. Liberty Mutual paid the city and the city in turn paid Zander Corporation. Zander Corporation billed the BPS directly, with most of the invoices sent to Mr. Bezreh's attention for his approval.

C. Cabinet and Countertop Contracts

Al Fortes, the owner of Custom Cabinets by Al Fortes, began making and installing cabinets and countertops for the Brockton Public Schools in late 2006.

Mr. Fortes submitted to Mr. Bezreh an estimate dated April 13, 2009 for the construction and delivery of work islands, vanities, work stations, 23 computer countertops and associated finishing treatments to be installed at the Ashfield Middle School.

In May 2009, Mr. Fortes constructed and delivered the work islands, vanities, work stations and finishing treatments to the Ashfield Middle School. He also sent BPS an invoice for this work.

On June 11, 2009, Mr. Fortes sent eight invoices to the BPS for construction and delivery of computer countertops at the Ashfield Middle School. The eight invoices contained the following information:

<u>DATE</u>	<u>INVOICE NUMBER</u>	<u>PURCHASE ORDER</u>	<u>AMOUNT</u>
6/11/2009	1982	29258269	\$ 4,440.00
6/11/2009	1983	29258269	\$ 4,440.00
6/11/2009	1984	29258269	\$ 4,440.00
6/11/2009	1985	29258269	\$ 4,440.00
6/11/2009	1986	29258269	\$ 4,440.00
6/11/2009	1987	29258269	\$ 4,440.00
6/11/2009	1988	29258269	\$ 3,300.00
6/11/2009	1989	29258269	\$ 200.00
Total:			\$ 30,140.00

On October 8, 2010, Mr. Fortes submitted four invoices to BPS for work at Brockton High School. Like the invoices for work at Ashfield Middle School, the invoice numbers were consecutive and the purchase order numbers were identical. Each invoice was for \$1,691.75, for a total of \$6,767.

On November 26, 2009, Mr. Fortes submitted two invoices to BPS for Formica countertops and cabinets. The consecutively numbered invoices, referencing the same purchase order number, were for \$3,744 and \$3,634, for a total of \$7,378.

In an interview, Mr. Fortes told OIG investigators that Mr. Bezreh instructed him to submit multiple invoices for his work, and to keep the invoices under \$5,000.

Mr. Fortes also told OIG investigators that he performed two small projects for Mr. Bezreh personally in 2009. In June 2009, Mr. Fortes built Mr. Bezreh a wooden television stand and in September 2009 he built Mr. Bezreh a bathroom vanity in his home. Mr. Fortes' invoices for these projects totaled \$1,380.

Analysis and Conclusions

The contracting process followed by the Brockton Public Schools for all three of the categories of work examined here – electrical maintenance services, roof beam repairs and countertops – contravened public procurement law. The integrity of the process was also marred by the discovery of the private business conducted by Mr. Bezreh with each of the contractors. In addition, Mr. Bezreh instructed one of the contractors to create invoices designed to hide violations of procurement law.

Violations of Chapter 149. Evidence uncovered during the OIG’s investigation of these contracting matters indicates that BPS officials violated the standards of Chapter 149 in multiple ways.

Chapter 149, the procurement law for public construction in Massachusetts, imposes a number of requirements on an awarding authority. There are three thresholds at which different rules apply. Since the passage of the public construction reform law of 2004, awarding authorities are required to seek a minimum of three written quotes for projects estimated to cost less than \$10,000. For projects estimated to cost between \$10,000 and \$25,000, the city or town must provide public notice of the work to be performed, allowing with at least two weeks for bidders to submit written responses. For projects estimated to cost between \$25,000 and \$100,000, the awarding authority must conduct an advertised sealed bid process. For projects estimated to cost more than \$100,000, contractors must be certified by DCAMM.

For the roof beam repairs, the BPS failed to follow the public procurement rules in almost every respect. While Mr. Bezreh did seek an emergency waiver from DCAMM immediately after the damaged roof supports were detected, he exceeded what is allowed under the emergency waiver. Chapter 149 allows a public official to bypass competitive procurement rules only for the portion of work necessary to alleviate an imminent threat to public safety. In the case of the Gilmore Academy Middle School, the temporary shoring needed to prevent a roof collapse was installed within 10 days at a cost of less than \$100,000.

The remainder of the Gilmore Academy project – reinforcing the eight wooden roof trusses with steel beams – did not qualify as an emergency and was not part of Mr. Bezreh’s waiver request. This undertaking should have been conducted using an advertised sealed bidding process open to DCAMM-certified contractors. Instead it was directed to Zander Corporation by BPS officials, notably Mr. Bezreh.

The same analysis and conclusions pertain to the \$493,325 roof repair award for the Kennedy Elementary School, with the exception that BPS did not even apply for an emergency waiver in this case.

In the case of the electrical maintenance contract, Mr. Bezreh and others with responsibility for monitoring contract expenditures at BPS failed to take action when Northern Lights Electrical Company exceeded the \$100,000 cap during Fiscal Year 2010. All of the work performed in excess of the \$100,000 is analogous to a no-bid contract award.

Covering Up Procurement Law Violations. Chapter 149 prohibits bid splitting for the purpose of evading the requirements of state procurement laws. See M.G.L. c. 149, § 44J(3). In this case, Mr. Fortes submitted multiple invoices for his work at the Ashfield Middle School and Brockton High School. Mr. Fortes stated that Mr. Bezreh instructed him to do this for projects in excess of \$5,000. While Mr. Fortes said Mr. Bezreh did not tell him why he wanted to keep the invoices below \$5,000, it is reasonable to infer that Mr. Bezreh wanted to disguise his disregard for public bidding law requirements. (In 2001, Mr. Bezreh attended classes in procurement procedures offered by the OIG. At that time, the threshold for advertising for bids on public construction work was \$5,000.)

Possible Violations of State Ethics Laws. Chapter 268A, the state ethics law, establishes certain disclosure requirements and prohibitions on conduct for public employees. Section 23(b)(1) prohibits public employees from receiving compensation of substantial value from employment that is inherently incompatible with his public duties. Section 23(b)(3) states that a public official must avoid conduct which would cause a reasonable person, knowing all of the relevant information, to conclude that the public official was unduly favoring another person.

Mr. Bezreh's public duties include oversight, supervision, and monitoring of BPS's construction contractors, including Northern Lights Electrical Company and Zander Corporation. Mr. Bezreh's private business relationships with Mr. Mahoney, Mr. Petruzzello, and Mr. Zaniboni, coupled with his failure to follow public procurement laws, could cause a reasonable person to question the integrity with which Mr. Bezreh has carried out his public responsibilities.

Recommendations

- The city should develop a clear and comprehensive code of conduct for all employees that includes disclosure of and restrictions on outside employment.
- The city should implement monitoring systems to provide contemporaneous notice when vendors are approaching contract limits.
- The city should ensure that all BPS officials involved with purchasing goods and services or construction bidding projects should immediately seek training on all Massachusetts laws and regulations pertaining to public procurement.
- City and BPS officials should review Mr. Bezreh's conduct to see if he has complied with all relevant policies and requirements.

BPS Actions

Throughout this investigation, BPS officials cooperated with investigators from the OIG by making themselves available for interviews and by promptly responding to extensive requests for documents.

During the course of the investigation, BPS officials independently identified a number of weaknesses in their procurement system and contract oversight. As a result, BPS officials initiated a number of reforms, including:

- Reorganizing the Facilities Department to have an office manager overseeing purchase orders, budgets and vendor contracts as well as a supervisor reviewing vendors' work to ensure compliance with their contracts.
- Storing all contract documents in electronic form to ensure systemic record-keeping and simply monitoring and retrieval of contract documents by interested parties.
- Instituting team meetings to monitor contracting processes from the solicitation stage through vendor payments.
- Hiring outside counsel to assist BPS in complying with procurement laws.