



Office of the
Inspector General
Commonwealth of Massachusetts

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Contracting Violations
at the East Bridgewater
Fire Department

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Massachusetts Office of the Inspector General

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East Bridgewater Fire Department Roof Replacement

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Executive Summary

The Office of the Massachusetts Attorney General referred a complaint from a concerned citizen to the Office of the Inspector General (OIG) in April 2011. The complainant alleged legal and ethical problems in connection with the East Bridgewater Fire Department's roof replacement project undertaken in late 2006 and completed in early 2007. The East Bridgewater Fire Department's main building had been damaged in a storm on December 1, 2006. In summary, the complainant alleged that the fire department's bidding process for the repair of the roof on its building did not follow procurement laws and that individuals manipulated the process in order to circumvent Massachusetts construction bidding laws. Moreover, the complainant alleged that the contractor who won the bid, through his subcontractor, had engaged in inappropriate contact with another bidder during the quote solicitation period, which suggested collusion among the bidders.

The OIG investigated the complainant's allegations and found that the East Bridgewater fire chief, who was in charge of the roof repair project, did not comply with state procurement law for construction work. Instead of soliciting competitive bids for the roofing project, the fire chief hired a favored vendor to do the work. The investigation also found that the vendor's subcontractor asked another roofing company to submit a proposal in order to create the impression that the town had conducted a competitive procurement. The investigation further found that after the work was completed, documents were created in order to disguise violations of state bidding laws.

Applicable Massachusetts Law and Regulations

When undertaking the repair or replacement of the East Bridgewater Fire Department roof, the town was obliged to follow Chapter 149 of the Massachusetts General Laws, the procurement law for public construction projects in Massachusetts. Chapter 149 sets out a regimen of specific rules for public agencies and contractors to follow in connection with public construction projects.

Some of the Chapter 149 procurement procedures are determined by the estimated cost of the work. Section 44A of Chapter 149 requires governmental entities – including towns and town departments – to seek written responses from contractors when the estimated cost of a contract for building repairs is between \$10,000 and \$25,000. For projects estimated to cost between \$25,000 and \$100,000, Chapter 149 requires public agencies to conduct a sealed bidding process. 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; it must provide potential responders with sufficient information regarding the awarding authority’s objectives and requirements, as well as the time period within which the work must be completed. When the town replaced the roof in 2006, moreover, the notification had to be posted 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 must also include the requirements for performance and/or payment bonds. Moreover, the contractor must provide specific certifications regarding labor harmony and training approved by the U.S. Occupational Safety and Health Administration. See M.G.L. c. 30, § 39S(a).

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 normal bidding procedures in a situation of “extreme emergency” for work necessary to preserve public health and safety. In such cases, the awarding authority must get prior approval from the commissioner of the Division of Capital Asset Management.

Finally, another potentially relevant statute in this matter is M.G.L. c. 266, § 67A. This statute prohibits the submission of a false material writing in a public procurement. The penalty for violating this statute is imprisonment for up to five years or a fine of up to \$10,000, or both.

Findings

OIG staff interviewed East Bridgewater Town Administrator George Samia and Fire Chief Ryon Pratt¹ and reviewed town records documenting the roofing project, including roofing proposals from Brian Healey Contractor, Inc.; Cara-Donna Copper & Slate Co. Inc.; and G. Arthur Moberg & Son, Inc.

The OIG also interviewed and reviewed the files of Brian Healey, the owner of Brian Healey Contractor Inc. (BHCI), the firm that Chief Pratt hired to replace the fire department building's roof; Bruce Whittemore, the owner of Sunrise Roofing, Inc., which was the subcontractor on the roofing project; Randall Lucier, the insurance claims adjuster who assessed the roof damage; William Cara-Donna, the owner of Cara-Donna Copper & Slate Co. Inc.; and Stephen A. Moberg, the president of G. Arthur Moberg & Son, Inc.

Based on a thorough review of the relevant documents and the interviews described above, the OIG has assembled a chronological account of the East Bridgewater Fire Department roofing project, as follows:

On December 1, 2006, a wind storm damaged sections of the fire department building's roof, blowing off shingles along the roof's right side and front. Three days later, at Chief Pratt's request, Mr. Healey submitted a proposal to repair the damaged sections of the roof. He proposed to do the work for \$24,350.

The town did not conduct a sealed bidding process. Nor did it post bid specifications on Comm-PASS, on the Central Register, in a conspicuous place near the fire department, or on the town's website. There is no evidence that the town posted or publicized the roofing project at all.

On December 6, 2006, the town contacted its insurance agency about the storm damage. The next day, Mr. Lucier inspected the fire department building, spoke with Chief Pratt, and began preparing an estimate to repair the damage. Mr. Lucier estimated the cost of repairing the storm damage as \$18,863. The town's policy included a \$5,000 deductible, meaning the town would be paid \$13,863 to settle the claim.

Internal insurance company records show that Mr. Lucier told the insurance company that Chief Pratt had already chosen a contractor, Mr. Healey, to begin repairs immediately. This information came from either Chief Pratt or Mr. Healey, both of whom Mr. Lucier interacted with in connection with the damage claim.

¹ Chief Pratt retired earlier this year.

At the same time the claim was being processed, Chief Pratt and the town administrator, George Samia, discussed the roof project. Given that the roof was old and had suffered some deterioration prior to the storm, Chief Pratt proposed replacing the entire roof rather than repairing only the damaged sections. This would involve removing the fascia, gutters and two layers of existing shingles and installing new materials. Mr. Samia agreed and instructed Chief Pratt to procure a contractor to replace the entire roof.

Because replacing the entire roof would cost more than the insurance company settlement, in mid-December Chief Pratt completed paperwork requesting approval from the town's finance committee to transfer \$12,500 from a reserve fund to the department to cover the additional cost of installing a new roof. The finance committee approved the transfer on December 18, 2006.

On December 14, 2006, William Cara-Donna of Cara-Donna Copper & Slate Co. submitted by fax an unsolicited proposal to the fire department to repair the damaged portions of the building's roof at a cost of \$26,750.

On January 4, 2007, Chief Pratt received a proposal from G. Arthur Moberg & Sons for roofing work. The proposal was divided into four components: replacing the roof's front section, replacing the rear section, installing new front gutters and installing new rear gutters. Each component had a separate price. Together, the cost of the four components was \$53,705.

On January 9, 2007, Mr. Healey filed an application for a permit to replace the entire roof and gutters. On January 10 and January 11, 2007, Mr. Healey's employees worked on the building, preparing it so that it was ready for Mr. Whittemore's company, Sunrise Roofing Inc., to install the new roof. Mr. Healey's company also removed the old gutters and fascia and installed new fascia.

Mr. Healey and Mr. Whittemore's companies finished replacing the fire department roof no later than January 15, 2007.

On January 15, 2007, Mr. Whittemore's company sent Mr. Healey an invoice for the completed roof. The invoice requested payment of \$27,050. The invoice was divided into two parts. One part is described as "original contract" for \$18,400. The second part was described as "additional work: back of fire station" for the remainder of the total cost.

The same day that Mr. Whittemore sent this invoice to Mr. Healey, Mr. Healey sent his own invoice to the East Bridgewater Fire Department for \$24,350, which was the price in Mr. Healey's December 4, 2006 bid proposal to repair only the storm-damaged portions of the roof.

On January 17, 2007, Chief Pratt signed a Price Quote Sheet, which purported to award a \$24,350 contract to Mr. Healey's firm. The sheet described BHCI as the "low bidder" on work to "repair[] ...sections of the fire station roof caused, in part, by storm damage, front section." The sheet attributed to G. Arthur Moberg & Sons a price of \$32,370,

reflecting the firm's cost to replace the front section of the roof. Mr. Cara-Donna's price to repair the storm-damaged sections of the roof, as indicated above, was \$26,750.

On February 13, 2007, the East Bridgewater Fire Department received four documents from Mr. Healey. One was a proposal to replace the rear section of the building's roof for \$3,930. The second document was a quote for \$3,200 to remove and replace the gutters and fascia. The other two documents were invoices seeking payment for the same two proposals. The town paid both invoices.

In total, the town paid BHCI \$31,480 to replace the fire department roof.

In interviews, the OIG also established a number of other facts relevant to the analysis of this matter.

Most notably, Mr. Cara-Donna stated he never intended to repair the roof, but that he submitted his proposal at the request of Mr. Whittemore, Mr. Healey's subcontractor. Mr. Cara-Donna said he never visited the damaged building, something he would have done if he were truly bidding on a job. Instead he created the proposal based on information from Mr. Whittemore. Mr. Cara-Donna said his firm would not have replaced the building's roof even if East Bridgewater officials had awarded him the job. His firm specializes in copper and slate roofs. He said he would have subcontracted it to Mr. Whittemore.

Also, Mr. Healey has a prior relationship with G. Arthur Moberg & Sons. In the 1980s, Mr. Healey worked for the firm for about a year. In addition, Mr. Healey has called Mr. Moberg to do roofing work on projects for which Mr. Healey was the general contractor.

In addition to the fire department, the town has hired BHCI to perform work on the East Bridgewater Town Hall and several school buildings. As a result, since 2004, the town has paid BHCI more than \$350,000.

Analysis and Conclusions

The contract for a new roof on the East Bridgewater Fire Department was marred by a disregard for public procurement law, apparent collusion among contractors, the fabrication of documents to disguise the improper award, and a possible criminal violation.

Violations of Chapter 149. Evidence uncovered by the OIG indicates that Chief Pratt awarded the contract to Mr. Healey's company without complying with Chapter 149.

For building projects estimated to cost between \$25,000 and \$100,000, Chapter 149 requires the awarding authority to conduct a sealed bidding process. This section is relevant here because Mr. Healey's December 4, 2006 bid to repair only the front section of the roof was just under \$25,000. Therefore, when Chief Pratt and the town administrator agreed – in mid-December – to

replace the entire roof, it was clear that the project was likely to exceed the \$25,000 threshold, triggering the requirement to conduct a sealed bidding process.²

Nevertheless, the town did not conduct a sealed bidding process. There is no evidence that the town ever posted a public notice of the work to be performed or developed any written description of the scope of work. Nor did the town obtain prior approval from the commissioner of the Division of Capital Asset Management to bypass the bidding process on the grounds that the roof replacement was necessary to preserve public health and safety.

While town records include documents – *i.e.*, a Price Quote Sheet and bids from other contractors – purporting to show that a competitive procurement was conducted, the OIG’s investigation determined that the process was not legitimate. As an initial matter, Chief Pratt signed the Price Quote Sheet *after* the roof had already been replaced. Furthermore, the Price Quote Sheet purports to award a contract to repair the front section of the fire department roof. However, Chief Pratt and Mr. Samia had decided weeks earlier to replace the entire roof, which is a different – and larger – scope of work.

Moreover, there is reason to doubt the genuineness of the competing bids. For example, Mr. Cara-Donna’s bid was submitted as a favor to Mr. Healey’s subcontractor (Mr. Whittemore) and was never intended to be a real bid. Mr. Moberg denied colluding with anyone on the bid but could not recall who contacted him about the fire department roof project. Mr. Healey and Mr. Moberg both acknowledge that they have periodically done business with each other. Mr. Healey said he calls Mr. Moberg when he has a job requiring a rubber roof. In addition, they live in the same town and have socialized together.

In addition to the conduct described above, the town of East Bridgewater failed to follow state procurement rules in almost every respect. For instance, the law required the town to publicize the bidding process. The law also required that the public notification include a scope-of-work statement that defined the work to be performed. These requirements were not followed.³ Other town officials failed to prevent Chief Pratt from bypassing Chapter 149 or detecting his conduct after the fact.

Finally, Chapter 149 prohibits bid splitting for the purpose of evading the bidding requirements. See M.G.L. c. 149, § 44J(3). In this case, Mr. Healey submitted three invoices to Chief Pratt in connection with the roofing project, one for \$24,350 and two later ones for \$3,930 and \$3,200. These could reflect an arrangement between Mr. Healey and Chief Pratt to falsely portray the roofing project as three separate jobs in order to cover up Chief Pratt’s failure to abide by the obligations of Chapter 149 for jobs between \$25,000 and \$100,000.

Covering Up Procurement Law Violations. At two points, Chief Pratt acted to conceal the non-competitive nature of the award.

² In fact, Mr. Healey ultimately was paid \$31,480 to replace the entire roof.

³ For this reason, even if the town believed the roof replacement would cost between \$10,000 and \$25,000, it still did not comply with Chapter 149.

First, on January 17, 2007, after the new roof had been installed and after Mr. Healey had submitted his first bill for the project, Chief Pratt signed a Price Quote Sheet purporting to “award” a contract to Mr. Healey to repair the storm-damaged portions of the roof. This cannot be explained as a mistake. Chief Pratt’s office was in the fire department building. He certainly knew a new roof had just been installed on the entire building. Moreover, in December 2005, Chief Pratt had requested – and obtained – permission to replace the entire roof; there was no reason to seek bids to repair portions of the roof.

Then on February 13, 2007, Chief Pratt received four documents from Mr. Healey: two proposals to repair the rear section of the roof and install new gutters along with two invoices demanding payment for the very same work. As he knew, these documents misrepresented the work that had been performed the month before. Nevertheless, Chief Pratt accepted them and authorized payment on them to Mr. Healey.

Violation of Chapter 266. Finally, Chief Pratt and Mr. Healey appear to have violated M.G.L. c. 266, § 67A, the statute prohibiting the submission of a false material writing in a public procurement. First, after the roof had been replaced, Chief Pratt created a Price Quote Sheet which, as discussed above, does not withstand scrutiny. Second, more than three weeks after his subcontractor had finished installing a new roof for the entire building, Mr. Healey sent the fire department two proposals. One was to repair the rear section of the roof and the other was to install new gutters. Mr. Healey certainly knew that work had already been done because at the same time, he submitted invoices for the completed work described in the proposals. These documents misrepresented how the project was conducted while enabling Mr. Healey to receive an additional \$7,130. The fraudulent quotes and invoices received by the fire department from Mr. Healey may constitute material false statements.

Recommendations

- The town administrator is the chief procurement officer in East Bridgewater and is ultimately responsible for all of its municipal purchases of goods and services. He should ensure that when he delegates procurement responsibility to others, those personnel are trained in procurement law and that they comply with state procurement rules.
- The town administrator and all East Bridgewater 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.
- The town should also seek advice from town counsel as to whether the contract with Mr. Healey was invalid and whether the town should seek to recover money from Mr. Healey.
- Town officials should consider sanctions against Mr. Healey, including barring him from public work projects in East Bridgewater, because of his submission of false and misleading documents in connection with the roof replacement contract. Town officials should also consider barring Mr. Whittemore and Mr. Cara-Donna because of their collusion.