



The Commonwealth of Massachusetts  
Office of the Inspector General

GREGORY W. SULLIVAN  
INSPECTOR GENERAL

JOHN W. MCCORMACK  
STATE OFFICE BUILDING  
ONE ASHBURTON PLACE  
ROOM 1311  
BOSTON, MA 02108  
TEL: (617) 727-9140  
FAX: (617) 723-2334

January 4, 2010

George Ramirez, Esq.  
General Counsel  
Office of Business Development  
One Ashburton Place, Room 2101  
Boston, MA 02108

Dear Mr. Ramirez:

Notice is hereby provided to you in accordance with the Rules of Procedure of the Office of the Inspector General (945 CMR 1.09(3)(c)) of the content of certain investigative information developed by the Office of the Inspector General (OIG) concerning a construction change order paid for through a Massachusetts Opportunity Relocation and Expansion Jobs Capital Program Grant (MORE Grant) issued by your office to the City of Gloucester (City) in 2009, the subject of which may be appropriate for further review and administrative action by your office.

The OIG has reviewed a change order on the \$1.3 million "Gloucester Roadway" construction project (contract No. 99060). The roadway connects Route 128 through public property to a new private mixed use development. The City partially funded this contract by using a \$2.5 million MORE Grant awarded by the Executive Office of Economic Development (EOED). The OIG reviewed the change order to review whether MORE grant funds had been used properly.

Based on this review, the OIG believes that the City may have misrepresented the reason for this change order and for altering the contract scope. As a result, grant funds may have been used improperly. The OIG is requesting that EOED review the issue to determine if grant funds should be returned to the Commonwealth.

The City awarded the roadway construction contract on January 13, 2009. The City approved change order number one nearly a month later on February 12, 2009. The City classified the change order as "no cost" because the added costs would be funded by contract scope reductions, essentially a redistribution of contract funds. The change order called for the following "reduction of finish items":

<b>Item</b>	<b>Amount</b>
<b>Electric and Light Poles</b>	\$ 81,000
<b>Pavement</b>	195,000
<b>Loam and Seed</b>	28,000
<b>Guard Rail and Fence</b>	30,000
<b>Line Striping/Signs</b>	29,000
<b>Concrete and Curbs</b>	155,000
<b>Total "reduction of finish items"</b>	\$518,000

The change order document used the following justification for the change order:

Due to date restrictions of the conservation commission not know[n] at the time of the bid the contractor is requesting to reduce the finish items and include additional work to bring the entire Gloucester Crossing Road to gravel base grade.

In other words, to avoid permit restrictions the contractor needed to speed up the work schedule to meet contractual work completion deadlines in May 2009. This work speed up would be paid for by cutting scope items from the contract. These reduced items would have provided amenities such as lighting, sidewalks and fencing on the public property through which the road was being built – property which borders a school building. The change order resulted in a shift of nearly 40 percent of project funds to pay for what amounts to overtime.

The City's Conservation Commission, by virtue of its permitting authority, imposed date restrictions on the project through the Order of Conditions issued by the City to the Gloucester Crossing developer on May 24, 2007, almost two years before the change order. The special condition placed a restriction on construction work within 100 feet of vernal pools between March and June. The construction contract required the contract to complete the project by the end of May 2009.

This OIG believes the following raises questions about the both the justification and ultimately the need for the change order and "reduction" in scope:

- The City issued the Order of Conditions in May 2007, long before the award of the construction contract. The Order was recorded at the Southern Essex Registry of Deeds on March 17, 2008. Also, the design firm and a major construction subcontractor for the roadway project worked for the developer on the private portion of the Gloucester Crossing as well. They would have been aware of the conservation restrictions before the roadway project.

- The construction contract incorporates “special conditions” by reference. Contractors are usually held responsible for knowing the permitting restrictions and other conditions relating to performance.
- Minutes of a pre-construction conference in January 2009 between the City and the contractor indicate that the project managers informed the contractor directly that “any work within the contract limit must comply with the Order of Conditions . . . the time of year restriction that excludes work within 100 feet of vernal pools during the vernal pool breeding and development seasons is March through June.” This same contractor later claimed in the change order justification that the date restrictions had not been known.
- Project officials stated to the OIG that “weather delays” and other scheduling issues and not the special conditions prompted the need for the change order to fund work acceleration to get the schedule back on track.
- In response to a request from the developer, on March 4, 2009, the City’s Conservation Commission voted unanimously to override the special condition to allow construction work to proceed within 100 feet of vernal pools during March through June. This would have negated the stated reason for the change order approved less than one month earlier. The contractor would have been responsible for any contractual work deadlines and any work acceleration or speed-up to meet these deadlines should have been the contractor’s financial responsibility.

These issues raise concerns about the stated change order justification. It also raises questions about why the City did not reinstate the scope reductions and reallocate funding back to these “finish items” after the Conservation Commission cancelled the schedule restrictions in March 2009.

The City also reallocated other MORE grant funds to the roadway work and applied for and received additional MORE grant funds for the roadway work. The documentation provided by the City does not explain why the contract required what amounted to a 25 percent increase in funding and a nearly 60 percent fund redistribution for this 5 month roadway project.

Based on the above, the OIG suggests that EOED review and consider the following:

- 1) Whether a misrepresentation of the need for the change impacts the grant funding.
- 2) If the deletion of the “finish items” changed the intent of the grant.

George Ramirez, Esq.

January 4, 2010

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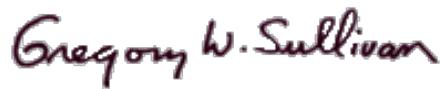
- 3) Whether the City adequately justified the grant increase. Documents submitted with the MORE grant application indicate that approximately \$1.5 million of the grant was intended for the access roadway and new “public streets.” According to documents the following funding changes occurred for this portion of the project:

Deleted scope items per change order to allow work to be completed within restricted timeframe	\$ 518,000
Additional MORE funds for lighting	83,000
Additional MORE funds for the roadway	390,000
MORE grant budget change to allow for increase in roadway expenditure	750,000
Total	\$1,741,000

- 4) If any of the deleted “finish items” impacted any commitments made to the City by the developer through the MORE grant application or in the Environmental Impact Report.

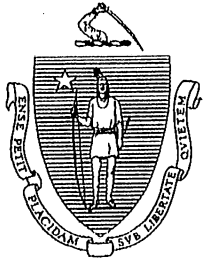
Please notify the OIG of your determination and whether your agency will pursue administrative action. If possible we would appreciate a response by January 29, 2009. If you have any questions or concerns, please contact Deputy Inspector General Neil Cohen. Thank you for your cooperation.

Sincerely,



Gregory W. Sullivan  
Inspector General

cc: Mayor Carolyn Kirk, City of Gloucester  
Bruce Tobey, City Council President



*The Commonwealth of Massachusetts*  
**EXECUTIVE OFFICE OF  
HOUSING & ECONOMIC DEVELOPMENT**  
ONE ASHBURTON PLACE, ROOM 2101  
BOSTON, MA 02108

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

GREGORY BIALECKI  
SECRETARY

TELEPHONE:  
(617) 788-3610

FACSIMILE:  
(617) 788-3605

March 1, 2010

Gregory W. Sullivan  
Inspector General  
Office of The Inspector General  
One Ashburton Place, Rm 1311  
Boston, MA 02108

RE: City of Gloucester MORE Grant Inquiry

Dear Mr. Sullivan,

I write regarding your notice of January 4, 2010 regarding the City of Gloucester MORE grant. In your letter you asked our department to review and consider the following:

1. Whether a misrepresentation of the need for the change impacts the grant funding,
2. If the deletion of the "finish items" changed the intent of the grant,
3. Whether the City adequately justified the grant increase,
4. If any of the deleted "finish items" impacted any commitments made to the City by the developer through the MORE grant application or in the Environmental Impact report.

In our efforts to comply with your request, we reviewed the following documents:

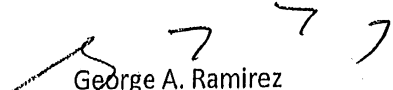
1. The grant application and subsequent supporting documents,
2. A January 19, 2010 report prepared by Sam Park & Co.

After this review I asked Nayenday Thurman our program administrator to submit a brief regarding her audit of the grant (please see attached) and I also asked the City of Gloucester to submit a letter acknowledging your inquiry (please see attached) and have found that there was no misrepresentation, the intent of the grant did not change, and the request for the grant increase was justified.



I trust this answers all of your concerns regarding this grant award. If you have any further questions please do not hesitate to contact me. Thanks again for your assistance in this matter. I look forward to continuing to work with you in the future on behalf of the citizens of the Commonwealth.

Sincerely,



George A. Ramirez  
General Counsel, EOHEd