



The Commonwealth of Massachusetts
Office of the Inspector General

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INSPECTOR GENERAL

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October 23, 2008

Ms. Nancy Wilson, Purchasing Agent
City of Fitchburg
718 Main St
Fitchburg, MA 01420

Dear Ms. Wilson,

This Office is aware that the City of Fitchburg (City) has tried without success on two occasions, to procure energy management services for the school department. It is this Office's understanding that Energy Education Incorporated (EEI) has submitted non-responsive proposals on each occasion, necessitating rejection of the only proposer. In addition, EEI has indicated that it will neither provide a performance bond nor sign the City's contract. While you have indicated that the School Department is strongly in favor of the type of services provided by the non-responsive proposer, EEI, it is clear that the proposer is not cooperating with the City's procurement process.

At the City's time and expense, it is attempting for a third time to procure energy management services. However, without vendor assurances that it will properly respond to the City's new procurement attempt, this Office has no confidence that a contract will result, and as such this office suggests the following:

- that the City review and revise the scope of services to open up the procurement to a wider range of competition, such as the scope used to successfully contract with the City's energy services provider, or,
- that the City seek assistance from the Department of Energy Resources to conduct a procurement process under M.G.L. c.25A, §11I.

The Department of Energy Resources has advised that the services provided by EEI comport with the definition of "energy conservation measures" which may be procured using M.G.L. c.25A, §11I. That statute contains certain safeguards to protect the City including but not limited to requiring the selected vendor to produce a performance bond of 100% but provides for a slightly different solicitation and contract process. Ms. Eileen McHugh at the Department of Energy Resources at 617.727.4732 will be able to provide more information pertaining to the operation of that statute.

No matter which method is used, safeguards, such as requiring a performance bond are reasonable measures to protect the City's interest. In addition, it is always this office's recommendation that vendors sign the City's contract. As you are aware, M.G.L. c.30B requires

that all contract terms and conditions be included in the invitation for bids or request for proposals, and contract terms cannot be added or negotiated after the contract has been solicited. If a vendor refuses to sign the City's contract as included with the RFP, the City has no choice but to reject the vendor as non-responsive.

I hope that you find this information helpful. If my Office can be of further assistance, please contact Kelly Whelan, Assistant General Counsel at 617.722.8855.

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: Lisa A. Wong, Mayor
Andre Ravenelle, Superintendent