



The Commonwealth of Massachusetts
Office of the Inspector General

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January 22, 2009

Jeffrey M. Welch, Chairman & Chief Procurement Officer
Timothy McMullen
John Riordan Jr.
Plymouth County Commissioners
11 South Russell Street
Plymouth, MA 02360

Revised

This letter supersedes the November 12, 2008 letter in all respects. This document is being disseminated consistent with the mission of the Office of the Inspector General to educate local officials on best practices in public contracting, and to prevent and detect fraud, waste and abuse. This document is directed at identifying deficiencies in public contracting practices and procedures, and to presenting alternative best practices. Nothing contained herein is intended as a finding of unlawful or otherwise wrongful conduct by any party.

Gentlemen:

This office understands that your agenda for this evening's meeting includes awarding Plymouth County Commissioner's Bid Contract #09-10-11 (Ford Motor Company public service vehicles) to MHQ Municipal Vehicles (MHQ) of Marlborough, Massachusetts. For your consideration, I am writing to provide you with the results of this office's review of whether the Plymouth County Commissioner's Bid Contract #06-07-08¹ with MHQ complied with M.G.L. c. 30B, §1(c) and M.G.L. c. 7, §§22A and 22B.

¹ The initial term of Plymouth County Commissioner's Bid Contract #06-07-08 with MHQ was October 1, 2005 through September 1, 2006. Plymouth County extended the contract with MHQ for two additional twelve (12) month terms, and the contract expired on September 30, 2008.

This contract was procured by the Plymouth County Sheriff's Department with delegated authority from the Chief Procurement Officer of Plymouth County (Plymouth County contract). The office also reviewed MHQ's sales activity reports submitted to the Plymouth County Sheriff's Department for Ford public service vehicles. Based on the above, the office found that Plymouth County's deficient contract administration invites vendor contract abuse and opens the door to illegal purchasing. This letter includes recommendations relative to an award of a contract.

BACKGROUND

The Commonwealth's cities, towns, districts, counties and authorities (Massachusetts jurisdictions) may use either of two alternative procurement methods under M.G.L. c. 30B without soliciting quotes, bids, or proposals. Under one method, Massachusetts jurisdictions may purchase supplies or services from vendors on contracts with the Commonwealth. The legal authority is M.G.L. c. 30B, §1(c) and M.G.L. c. 7, §22A, which allows Massachusetts jurisdictions to use the Operational Services Division (OSD) statewide contracts and certain department issued contracts. *OSD Policy Guidance 09-13 – Use of Commonwealth Contracts by the Commonwealth Cities, Towns, Districts, Counties, and Authorities*. (October 10, 2008). OSD or a Commonwealth Department with delegated authority from OSD conducts the competitive procurement and awards statewide contracts to vendors from which Massachusetts jurisdictions may be eligible to make purchases. If Massachusetts jurisdictions are deemed by the state to be an eligible entity, Massachusetts jurisdictions may purchase contract items in full compliance with the terms and conditions contained in the Statewide and Commonwealth Department contracts. Under another method, one Massachusetts jurisdiction makes purchases from a collective contract which was procured on its behalf pursuant to M.G.L. c. 30B by another "lead" public entity. M.G.L. c. 30B, §1(c) and M.G.L. c. 7, §22B.

The MHQ Municipal Vehicles Contract

Plymouth County operates collective contracts for, among other commodities, public service vehicles. Interested Massachusetts jurisdictions that join this Plymouth County collective contract must agree to pay an administrative fee. A Massachusetts jurisdiction must join the collective purchase and pay the fee prior to the vehicle specifications being put out to bid. The vehicle contracts have a term of one year and Plymouth County may, at its sole discretion, extend a contract for two additional twelve (12) month terms. The fee to participate in the upcoming contract will be \$300.

Plymouth County, through the Sheriff's department, conducts a M.G.L. c. 30B process for a vendor on behalf of its members. Member jurisdictions are then able to buy from the vehicle contract, which also includes certain vehicle options, without conducting their own independent bid process.

In this case, Plymouth County assumed the role of lead public entity and issued specifications for a collective purchase of Ford public services vehicles on behalf of its members. Plymouth County determined that MHQ Municipal Vehicles, the sole bidder was a qualified bidder. Once the contract is awarded to MHQ, member jurisdictions may buy off Plymouth County contract 09-10-11. Each member of the collective purchase must thereafter accept sole responsibility for contracting with the vendor, including any payment due the vendor for purchases made from the collective bid. See page 14 of *Municipal, County, District and Local Authority Procurement of Supplies, Services, and Real Property* (5th Edition, September 2006), <http://www.mass.gov/ig/publ/30bmanl.pdf>.

Authorized Items Available for Purchase

Contract 06-07-08 between MHQ and Plymouth County expired on September 30, 2008 and provided that within forty-five (45) days of executing any contract, the vendor shall produce and distribute the MHQ Municipal Headquarters Catalog (catalog) to all members of the collective bid, subject to the approval by the Sheriff's Department prior to printing and distribution. That contract further provided that all items listed in the catalog must be taken directly from the contract documents and the invitation to bid. This catalog is in essence the accumulation of items available for sale pursuant to the procurement.

The catalog identifies all the vehicle and vehicle options that were part of Plymouth County's bid specifications. Plymouth County is responsible to ensure that the catalog reflects only the options that were listed in its bid specification, and furthermore, it must ensure that the prices for the vehicles and the options reflect the prices MHQ bid.

"Off-Contract" Items

When purchasing options for municipal vehicles, often members wish to purchase additional items which have not been included in the bid. This letter refers to these items as "off-contract" items. The dollar value of the "off-contract" item determines what, if any, M.G.L. c. 30B procedures are applicable. Massachusetts jurisdictions may not split contract values to avoid or bypass these thresholds.²

For off-contract items that cost less than \$5,000, a Massachusetts jurisdiction would analyze the transaction using sound business practices.³ While the law does not require any formal competition for these small purchases, this office recommends periodically checking price lists or quotes to ensure that prices are favorable.

² M.G.L. c. 30B, §11.

³ M.G.L. c. 30B, §4(c).

For “off-contract” items that cost between \$5,000 and \$25,000, price quotes must be sought from at least three vendors. A Plymouth County member may only purchase the item from MHQ if MHQ is the lowest quote.⁴

Items costing \$25,000 or more must be the subject of a formal advertised competition using sealed bids or proposals.⁵

FINDINGS

This office randomly chose three Commonwealth cities that are members of Plymouth County’s collective purchase for Ford public service vehicles and reviewed certain MHQ price quotes and sales invoices for vehicles and options for a four-month period. We also reviewed sales activity reports, which are required under the contract to be submitted to Plymouth County.

The office found that Plymouth County’s administration of the contract was deficient, specifically with regard to oversight of the sale of “off-contract” items. The deficient administration of the contract opened the door to illegal purchasing. We also found that Plymouth County did not enforce the sales activity report requirement of the contract. In addition, MHQ’s price quotes did not include reference numbers which would have afforded an analysis of M.G.L. c. 30B compliance. In the absence of identifying information, this office could only question whether certain items were on the contract. Based on our review, we found that MHQ has been selling numerous “off-contract” options to members of the Plymouth County collective purchase, notwithstanding M.G.L. c. 30B and M.G.L. c. 7.

Review of MHQ’s Price Quotes

Documents received by this office reflect that members seeking a vehicle with added options start by seeking a price quote from MHQ. MHQ then sends back an itemized price quote for the vehicle and added options. With certain limited exceptions, for example on the request of one of the member jurisdictions, MHQ’s price quotes did not break out “off-contract items.” Nor were the “off-contract” items reflected on MHQ’s invoices. Items to be purchased were described in words on MHQ’s price quote sheet with no other identifying information. Only rarely did the description of items match the wording in the catalog for public service vehicles.

It appeared to this office that several option items on invoices were not authorized contract options. The office estimated that of the total amount spent by the three municipalities on vehicle options, 4% of options were “off-contract.” The value of the “off-contract” items was approximately \$17,781.

⁴ M.G.L. c. 30B, §4(b).

⁵ M.G.L. c. 30B, §5 and §6.

Reported Value of "Off-Contract" Options For Three Municipalities September – December 2007	
Reported Total Sales	\$1,701,943
Reported Base Vehicle Sales	<u>-\$1,259,232</u>
Total Options (approximately 35% of base vehicle sales)	\$ 442,711
Reported Value of "off-contract" Options (approximately 4% of Total Options)	\$17,781

MHQ, which is a vendor on other collective contracts, told our office that "off-contract" items provided to members of the Ford public services vehicle collective bid were pulled from other contracts on which MHQ was a vendor. MHQ stated that the purchase by the Massachusetts jurisdiction of the option was therefore legally sound.⁶

The Office of the Inspector General does not agree that if in fact "off-contract" items did come from another collective contract on which MHQ is an authorized vendor that members of the Ford public service vehicle contract are automatically authorized to make the purchase of the "off-contract" item. Whether the purchase is legally sound and compliant with M.G.L. c. 30B must be a separate case-by-case analysis. Before members of the Plymouth County bid purchase "off contract" items, they must make two separate determinations. First, that MHQ is an authorized vendor on the contract that incorporates the "off contract" items; and second, that the public jurisdiction is eligible to purchase from the contract in question. That is, whether the jurisdiction is a member of the collective purchase group or an eligible entity on a statewide or Commonwealth department contract from which the "off-contract" item is being pulled. Only if these determinations are properly made is purchasing the item legally authorized. Otherwise, the jurisdiction is ineligible to make the purchase of the "off-contract" item from MHQ.

In a series of document requests from this office regarding the three municipalities, MHQ was given the opportunity to demonstrate where "off-contract" items provided to members of the Ford public services vehicle collective bid were pulled from other contracts on which MHQ was a vendor. There was not a single instance where MHQ replied that an "off-contract" item was purchased from another contract on which MHQ was a vendor.

⁶ This office has verified that MHQ was a vendor for vehicles and/or vehicle options on the following contracts in Massachusetts during our review: The Statewide Contract of the Massachusetts Operational Services Division, the Greater Boston Police Council Bid of the Metropolitan Area Planning Council, the Massachusetts State Police, and the Massachusetts Department of Conservation and Recreation.

Sales Activity Reports

The contract with Plymouth County requires that MHQ submit Sales Activity Reports to Plymouth County on a monthly basis. These reports provide Plymouth County with revenue numbers, information to evaluate whether bid items were purchased in a large enough volume to be included in the specifications of the next competitively procured collective procurement, as well as other relevant information.

The provision in the Plymouth County contract with MHQ provides as follows:

Sales Reports: The successful Bidder(s) will provide, on a monthly basis, to the Plymouth County Sheriff's Department, sales reports of vehicles sold, quantities and purchasing authority. Reports are due by the fifteenth (15th) of the month following the month being reported. The information will allow the Plymouth County Sheriff's Department to evaluate the success or failure of the Collective Bid process for the future.

This office learned that Plymouth County does not require vendors to submit these reports. Upon the request of this office, Plymouth County obtained Sales Activity Reports from MHQ. MHQ's Sales Activity Reports were general, vague, contained no contract reference numbers or a breakout of "off-contract" items. Moreover, the Sales Activity Reports did not include dollar amounts. In effect, these reports, as constituted, offer no value for contract or sales activity oversight, contract monitoring, or contract verification. Additionally, they were not helpful to provide Plymouth County with information to evaluate whether bid items should be added or removed in any future collective procurement.

Based on MHQ's identified sales reports and prices from the catalog, this office conservatively estimated \$27,547,808 in total base vehicle sales in 2007, not including options. Based on the random sample of vehicle sales to the three municipalities, this office estimated that total options conservatively add 35 percent to base sales, or \$9,641,733 for 2007 and that "off-contract" items comprise four percent of the total options, or \$385,669.

Estimated Value of MHQ Sales of "Off-Contract" Options for 2007	
Total Base Vehicle Sales	\$27,547,808
Estimated Options (35% of total estimated base vehicle sales)	<u>+\$ 9,641,733</u>
Estimated Total Sales (vehicles and options)	\$37,189,541
Estimated Value of "Off-Contract" Options (4% of Estimated Options)	\$385,669

Over the three-year term of the contract, this estimate of “off-contract” options would be \$1,157,007. This represents a significant revenue increase for the vendor and potentially illegal spending by the Massachusetts jurisdiction.

The office has previously warned Plymouth County about the need for greater contract oversight. By a separate letter dated January 18, 2007, this office informed the purchasing agent of the Plymouth County Sheriff’s Department and the purchasing agent for the city of Boston about a prior review of this same issue as pertained to certain “off-contract” purchases by the city of Boston and MHQ. That review commenced when the office received an anonymous complaint that the city of Boston added “off-contract” options to vehicles it purchased. At that time, the office requested that the Plymouth County Sheriff’s Department investigate whether member purchasers were receiving non-conforming goods under the collective contract from the vendor, MHQ.

In the previous review, based on information from the Sheriff’s Department, the “off-contract” item quotes in question lacked the usual contract reference numbers that would afford an analysis of whether the purchase complied with M.G.L. c. 30B. Moreover, the quotes also lacked reference information to afford a comparison of prices quoted by MHQ with items in the MHQ Municipal Headquarters catalog. In the current review, this office only rarely found contract reference numbers for contract items in MHQ’s price quotes.

RECOMMENDATIONS

For Plymouth County: As you know, collective purchasing does not diminish the need for contract administration and contract monitoring. In this matter, Plymouth County has full responsibility to ensure that the vendor is providing conforming goods at the prices that it agreed to. Ultimately, Plymouth County is accountable to its members and the taxpayers for assurance that it is in full compliance with procurement laws. There are no such assurances able to be made on this Plymouth County Ford public service vehicle contract. The lack of contract administration and monitoring opens the door to fraud, waste, and abuse. Plymouth County must put the tools in place to permit it and its members to conduct proper contract monitoring and oversight.

This office makes the following recommendations to Plymouth County:

1. Plymouth County must strengthen its contract administration and monitoring to include:
 - a. Assurance that MHQ is abiding by the terms of the contract, including whether the vendor is complying by providing the sales activity reports in a timely way and meaningful format;

- b. Spot check reviews of MHQ's provision of "off-contract" items to ensure they are tied to any applicable M.G.L. c. 30B procedure.
2. Plymouth County must enforce the term of its contract that require MHQ to produce timely sales activity reports. Sales Activity Reports serve many purposes including:
 - Gauging the sales volume and dollar impact of the contract;
 - Comparing prices charged to members to assure contract compliance;
 - Informing Plymouth County of the purchasing authority for "off-contract" items;
 - Providing raw data about the contract to make certain determinations, such as what, if any, changes to contract items may be necessary for the future; and
 - Illustrating whether MHQ's prices are fair based on sales volume, i.e., does the volume reflect whether Plymouth County adequately leveraged prices for its members.
3. This office recommends that upon entering into Contract 09-10-11, Plymouth County and MHQ agree to a corrective action plan in writing and implement a required price quote form and vendor sales activity report form. The office has included models of both reports for your consideration in Appendix A and Appendix B.
4. Given that this review calls into question the contract administration on all Plymouth County contracts, this office recommends Plymouth County seek voluntary cooperation from all vendors on Plymouth County vehicle contracts in using forms to record price quotes and report sales activity based on the models in Appendix A and Appendix B.
5. Plymouth County must inform the collaborative members of their obligation to ensure that the receipt of "off-contract" items fully complies with M.G.L. c. 30B. For example, if the "off-contract" item is covered on a contract with the Commonwealth and MHQ is the authorized vendor, then the purchase is deemed to have complied with M.G.L. c. 30B. Currently, MHQ lists "off-contract" items on its quote forms without identifying other contract reference numbers. This office requested on several occasions, including as part of written document requests,

6. that MHQ show us on price quote forms which items were covered on other contracts. MHQ never obliged.

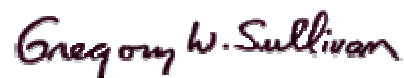
For Plymouth County members of the collective purchase:

1. If MHQ proposes to provide "off-contract" items to members of the Plymouth County collaborative from another collective purchasing contract of which MHQ is an authorized vendor, the member must ensure that it is a member of that collective contract before the purchase. In other words, "off-contract" items supplied by MHQ from another collaborative contract may not be properly purchased by Massachusetts jurisdictions that are not members of the latter collective contract. Remember, membership in a collaborative must be declared at the beginning of a collective purchase before the bidding takes place. There is no piggybacking to a contract by "wanna be" members after bid prices come in.
2. The procurement officer should review MHQ's invoices in detail and ascertain that all contract and "off contract" items are procured properly prior to approving or disapproving payment to MHQ.
3. The procurement officer should certify on MHQ's invoice that vehicles and options have been received and accepted.

This office requests that Plymouth County report back in writing no later than January 15, 2009 on its efforts to implement the recommendations contained herein.

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

Sincerely,



Gregory W. Sullivan
Inspector General

cc: Troy Clarkson, Plymouth County Administrator
Patrick Lee, General Counsel, Plymouth County Sheriff's Department
Grace Earle, Procurement Specialist, Plymouth County Sheriff's Department
George Cravenho, Consultant, Plymouth County Sheriff's Department
Clay Chase, President, MHQ Municipal Vehicles

APPENDIX A
PLYMOUTH COUNTY COMMISSIONERS/PLYMOUTH COUNTY SHERIFF'S OFFICE
PRICE QUOTE FORM FOR PUBLIC SERVICE VEHICLES

VENDOR'S LETTERHEAD HERE

Date/Contact Person/Jurisdiction
 Street Address
 City, State, Zip Code

Contract Name: _____ Contract Number: _____

M.G.L. c. 30B applies to the procurement of all commodities quoted. Plymouth County contract items have been collectively purchased pursuant to M.G.L. c. 30B, §1(c) and M.G.L. c. 7, §22B (collective purchase by two or more of the commonwealth's cities, towns, counties, districts or authorities) and are deemed to comply with M.G.L. c. 30B. The governmental body is responsible to determine the applicability of M.G.L. c. 30B to "off-contract items," including but not limited to "off-contract" items that have already been properly procured under M.G.L. c. 30B, §1(c) and M.G.L. c.7, §22A (purchases from a vendor on a contract with the Commonwealth), other contracts procured under MG.L. c.30B, §1(c) and M.G.L. c. 7, §22B, or any M.G.L. c. 30B contract between the vendor and the jurisdiction. All other off-contract items must be procured under M.G.L. c.30B.

PLYMOUTH COUNTY CONTRACT ITEMS						
PAGE #	SCHEDULE LETTER	CONTRACT ITEM #	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL PRICE
GRAND TOTAL:						

OFF-CONTRACT ITEMS						
CONTRACT	CONTRACT ITEM #	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL PRICE	

Salesperson's Signature: _____
 Salesperson's name (printed) and contact information: _____

Each additional page must be signed, dated, and numbered with all contact information intact.

Sales Report

APPENDIX B

PLYMOUTH COUNTY SALES ACTIVITY REPORT

Contract Items

Contract:
Period:

Customer	Customer Contact Person	Salesperson	Invoice/Order #	Order Date	Item #	Quantity	Unit Price	Total Price
Subtotal Contract Items								

Contract:
Period:

"Off-Contract"
Items

Customer	Customer Contact Person	Salesperson	Invoice/Order #	Order Date	Contract	Contract #	Item #	Quantity	Unit Price	Total Price
Subtotal "Off-Contract" Items										
Grand Total All Items										