



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

July 1, 2010

Robert Grossman
Chairman
Board of Selectmen
Town of Auburn
104 Central Street
Auburn, MA 01501

Dear Chairman Grossman:

As you know, the Town of Auburn requested that the Office of the Inspector General (OIG) review issues that had been brought to the Town's attention concerning the Auburn Highway Department (AHD). The Town initially hired legal counsel to conduct a preliminary review of these issues that included allegations of possible illegal activity. The Town forwarded the results of this preliminary review to the OIG as background for the Town's request. Specifically, concerns about the AHD included cash control lapses, procurement law violations, and inappropriate payroll/timekeeping practices. Staff from the OIG investigated a number of these issues by reviewing applicable documents and interviewing Town employees and others.

Based on this investigation, the OIG has prepared the following findings and recommendations to address identified violations of law, inattention to the tenets of sound accounting, internal controls, and general business practices. The OIG has also forwarded information to the Office of the Attorney General and to the State Ethics Commission for further review.

The OIG found that the AHD lacks formal written policies and procedures for managing many practices fundamental to AHD operations including work order issuance, overtime use, cash management, inventory control, and procurement. Moreover, the AHD violated state procurement law, failed to follow sound business practices, and appears to have violated state municipal finance and conflict of interest laws. The following are the specific findings and recommendations stemming from the OIG investigation:

- 1) **Issue:** Complainants claimed that the Highway Surveyor created a conflict of interest situation for an AHD contract. Instead of relying on in-house expertise or hiring a consultant for specification development services, the Highway Surveyor used the assistance of an employee of a construction contractor, who was also a member of the Town Planning Board, to develop the specifications and cost

estimates for a Town roadway paving contract. The contractor for whom the individual worked subsequently bid on the job. In fact, the employee's firm was the sole bidder for the paving work.

Finding: The OIG verified that the Highway Surveyor did receive assistance from the individual who worked for a private contractor as well as serving on a Town Board. The Highway Surveyor told the OIG that she needed assistance to develop the bid specifications because paving contracts had not been issued previously by the AHD during her tenure and she had "no clue" how to prepare this type of contract. Her decision to use an employee of a likely bidder on the contract raised a potential conflict of interest law violation and created, at a minimum, an appearance of impropriety. Regarding the appropriateness of the change order, the OIG has forwarded this matter to the Office of the Attorney General for further review. Regarding the ethical matter, the OIG has forwarded the issue to the State Ethics Commission for further review.

Recommendation: The AHD should request ethics training for staff from the State Ethics Commission. Also, the OIG can provide AHD staff with anti-fraud training. The AHD might consider coordinating these trainings with other Town departments and/or municipalities.

- 2) **Issue:** Complainants suggested that the Highway Surveyor failed to follow appropriate procurement rules three years ago when the AHD auctioned 23 surplus equipment items and/or vehicles.

Finding: The AHD violated M.G.L. c.30B. Chapter 30B requires that when the resale or salvage value of surplus supplies is less than \$5,000, the AHD must follow written procedures approved by the Town¹ and that surplus supplies with an estimated net value of \$5,000 or more must be disposed of through an invitation for bids or at a public auction.² No attempt at the valuation of the surplus supplies was made prior to disposition. The Highway Surveyor informed the OIG that she was under the impression that, as an elected official, she was exempt from many Town governance standards.

One example of impropriety follows: as pertains to the sale of a 1986 surplus vehicle, the AHD never disclosed to potential buyers that in 2001, the vehicle had received a replacement engine, which increased its value. Nor did the AHD place a value on the vehicle prior to the auction in order to, for example, require a minimum auction bid amount. The Highway Surveyor won the bid for approximately \$1,000 on behalf of her spouse. She placed the bid on a vehicle in the name of her spouse's business. She then, based on the bid she submitted, awarded the vehicle to her spouse's business.

¹ M.G.L. c.30B, §15(f).

² M.G.L. c.30B, §15(b).

Not disclosing the replacement engine and then bidding on the vehicle creates an appearance if not a violation of the conflict of interest law. Not valuing the vehicle violated M.G.L. c.30B. The conflict of interest law generally prohibits a municipal employee, relative, or other related party from benefiting financially from the employee's position. Previously, the OIG received guidance from the Ethics Commission as to the applicability of the conflict of interest law, M.G.L. c.268A, to the purchase of surplus supplies by municipal employees. The Ethics Commission advised the OIG that municipal employees are generally prohibited from having direct or indirect financial interests in municipal contracts by M.G.L. c.268A, §20 unless an exemption applies.³ The purchase of a surplus item at auction is covered by this interpretation. As a result, the OIG has forwarded the matter to the State Ethics Commission for further review. In addition, poor AHD recordkeeping has limited the number of records normally available for a review concerning an auction.

Recommendation: Although the Highway Surveyor is an elected official, all applicable federal, state, and local laws, regulations, policies and rules that apply to Town employees apply to the Highway Surveyor and the AHD. The OIG informed AHD staff that AHD and other Town departments must follow M.G.L. c.30B guidelines. Town officials should develop written procedures to dispose of surplus property valued at \$5,000 or less as required by statute. The purpose of the law is to ensure that the taxpayers are receiving an appropriate value for this property. The OIG also suggests that the Town contact the State Ethics Commission to obtain training for all staff on the conflict of interest law.

To cure any lingering deficiencies in procurement knowledge, the Highway Surveyor should consider taking procurement training through the Massachusetts Certified Public Purchasing Official (MCPPO) program offered by the OIG. MCPPO training information can be obtained on the OIG website www.mass.gov.ig. This website also contains a manual on construction bidding entitled *Designing and Constructing Facilities* that may be a useful tool for future AHD contracts

- 3) **Issue:** According to complainants, the Highway Surveyor retains revenue for an unofficial petty cash fund instead of turning all revenue over to the Town treasury.

Finding: The OIG confirmed that the Highway Surveyor retains revenue from two sources 1) the so-called "leaf pile" that is a composting area managed by the Highway Surveyor where Town residents and businesses can "dump" leaves and yard debris after purchasing a sticker for their vehicle and 2) the sale of scrap metal collected at the AHD facility.

According to the Highway Surveyor, the AHD collects more than \$10,000 per year from the "leaf pile" (not counting revenue from commercial accounts that are paid through a billing process). In FY2009, the AHD remitted more than \$21,000 in revenue to the Town from the leaf pile. The Highway Surveyor stated that she

³ See M.G.L. c.268A, §20(b).

receives cash and checks from the employees at the leaf pile and holds the money at the AHD offices. The Highway Surveyor stated that she deposits some of the money with the Town about every three months or more frequently if larger sums are collected. The Town maintains a revolving fund for leaf pile revenue through which all leaf pile expenses are to be paid. According to Town officials, the revolving fund is often "short" of funds to pay the part-time seasonal leaf pile employees and deposits are generally made into the revolving fund after the Town informs the Highway Surveyor that the account balance is too low to make payroll.

In the case of the scrap metal, the OIG identified two occasions where AHD sold scrap metal to outside vendors without following appropriate surplus supply guidelines. These sales netted the AHD approximately \$600. These sale proceeds were added to the unofficial petty cash fund maintained by the Highway Surveyor rather than being turned over to the Town treasury. The failure to follow guidelines, to turn funds over to the Town in a timely manner, and to have adequate controls over Town property (scrap metal) created significant vulnerability to employee misuse and misappropriation of cash and property.

During the investigation, OIG staff requested to see the funds held by the Highway Surveyor. Based on this one-time observation, staff found that the Highway Surveyor held cash and checks for at least four months (based on a check date) without being deposited.

The Highway Surveyor and other AHD staff stated that the petty cash is used to pay the wages of the part-time employees who work at the "leaf pile," to pay for printing of the "dump" stickers, and has also been used to buy coffee for employees and volunteers, to subsidize an employee Christmas party, to purchase flowers for staff who had an illness or death in their family, and to buy "T-shirts" to be used as uniforms for the leaf pile employees. The Highway Surveyor stated that she collects receipts for any purchases made from petty cash.

Although the leaf pile employees are required to issue receipts for the purchase of stickers, the Highway Surveyor informed the OIG that there is no reconciliation performed to determine if the value of receipts issued match cash remitted to the AHD and there is no accounting for the petty cash fund itself. Regarding the reconciliation of commercial account revenue, the Town is already reviewing this issue and a concern that the AHD fails to bill certain commercial accounts.

Withholding sale proceeds from the Town treasury violates M.G.L c.44, §53 of the Municipal Finance Law and can be deemed a misappropriation of funds. All revenue collected by the AHD belongs to the Town and should be timely deposited in the Town treasury. All funding used by the AHD must first be appropriated to it through the Town's legislative process. The Highway Surveyor has violated these rules by retaining cash collections in an unofficial fund to pay for off budget expenditures. This also violates Town policy as the AHD already has an authorized petty cash account that is subject to record keeping and audit requirements. If the AHD

requires a larger petty cash fund, then AHD should petition the Town for an increase in the allowable balance (currently \$50). Additionally, a lack of adequate cash control, insufficient recordkeeping, and a lack of any semblance of internal controls over the collection, control, and uses of the leaf funds makes this operation highly vulnerable to fraud, waste, and abuse. For example, there is no reasonable assurance that leaf pile money has been collected from all users of the leaf pile, if all money collected from the leaf pile or from the sale of scrap metal is remitted to the Highway Surveyor, or if the Highway Surveyor ultimately remits all proceeds that she has received to the Town.

Recommendation: AHD should immediately implement appropriate cash control policies and remit any remaining unauthorized petty cash funds to the Town treasury as soon as practicable after receipt. All future sale proceeds should be deposited with the Town treasury in a timely way. No Town department should be able to maintain unofficial petty cash accounts. At the time of the OIG investigation, the AHD maintained an unofficial petty cash account larger than all other Town departments combined. All future sale proceeds should be deposited immediately with the Town treasury in accordance Town finance rules that require deposits to be made at least once a week.

Also, all leaf pile transactions must be well documented to ensure transparency for and accountability to the public. The Town should also review the AHD's billing and accounting for leaf pile commercial accounts. Internal control, performance, and accounting procedures must be introduced at the AHD as soon as possible and staff must be trained in these procedures and be held accountable for following these procedures. For example, some best practices recommended by the Government Finance Officers Association (GFOA) includes: daily processing and depositing of receipts, reconciliation to applicable ledgers, a fraud reporting mechanism, segregation of duties, and properly documented and followed internal controls.

- 4) **Issue:** Complainants suggested that the AHD violated M.G.L. c.30B, when it purchased a backhoe/loader.

Finding: The OIG identified violations of M.G.L. c.30B in the loader procurement. On September 18, 2006, AHD opened bids for a loader. AHD received three bids as follows: Casey & Dupuis Equipment at \$73,178; Schmidt Equipment at \$80,282; and Southworth Milton at \$83,539.00 and awarded the bid to Schmidt Equipment for a 2006 John Deere 310SG loader.⁴

M.G.L. c.30B applies to the purchase of the loader by AHD and requires that AHD award the contract to the responsive and responsible bidder offering the lowest price. In order to be considered responsive, a vendor must submit a bid that conforms in all respects to the invitation for bid, that is, the supplies offered must

⁴ With options, the total price paid for the vehicle was \$84,094.

fully comply with the specification requirements. While AHD has the right to reject any and all bids, it must put its reason in writing for the rejection.⁵

While the OIG has no evidence of any written record stating why AHD rejected the lowest bid from Casey & Dupuis Equipment for a JCB (Bamford) loader, in violation of M.G.L. c.30B, §9, it appears from the bids that the vehicle failed to meet 9 of the 53 specific requirements⁶ of the specifications contained in the invitation for bids. Such failure to meet the specifications rendered the bid non-responsive and warranted rejection. However, AHD should have also rejected the bid from Schmidt equipment. The John Deere 310SG loader bid by Schmidt Equipment failed to meet 12 of the 53 requirements of the specifications, including many of the same that Casey & Dupuis Equipment failed to meet. Only Southworth Milton's bid for a Caterpillar 430E BHL met the specifications in their entirety. However, the Highway Surveyor informed the OIG that she preferred John Deere equipment over Caterpillar and so accepted the higher bid.

This purchase violated M.G.L. c.30B. Section 17(b) of M.G.L. c.30B that provides that a contract awarded in violation of the statute is invalid and no payment can be made. An award to a non-responsive bidder is a violation of M.G.L. c.30B, §5(g) which requires that the bid be awarded to the lowest, responsible and responsive bidder. Due to the time lapse between the bid process and the violation being reported to the OIG, AHD has already received and paid for the vehicle.

Recommendation: All future purchases and contracts must comply with applicable state law and regulations.

- 5) **Issue:** Complainants also allege a conflict of interest in the purchase of the backhoe/loader referenced in the preceding finding.

Finding: The OIG discovered that the AHD purchased its backhoe/loader from Schmidt Equipment, the winning bidder, at nearly the same time the Highway Surveyor purchased one for her private business and that the AHD purchased its vehicle at a higher price. A complainant stated that the Highway Surveyor made her purchase at the same time as the AHD in order to get a better price for the one she purchased for personal business use. In other words, she would benefit personally from any multi-vehicle purchase discount. The Highway Surveyor denied this and the OIG found no direct evidence that the two purchases contained a pricing arrangement to benefit the Highway Surveyor. The Highway Surveyor explained that the AHD purchased loader came at a higher price because the AHD required more accessories for the loader. The Highway Surveyor also explained that her spouse negotiated the deal for the loader she purchased so she only had direct involvement with the AHD purchase.

⁵ M.G.L. c.30B, §9.

⁶ The specifications also included 5 additional items listed as optional.

However, making these purchases so close in time, at the very least, creates an appearance of impropriety. This appearance issue is compounded by the fact that the Highway Surveyor paid a lower price for her company's loader than the AHD did and that AHD accepted a proposal from Schmidt Equipment that failed to meet all AHD required specifications while the Highway Surveyor's spouse was also negotiating with Schmidt Equipment for a vehicle. The Highway Surveyor denied any connection between the purchases.

Recommendation: AHD staff should receive proper training in procurement and ethics laws.

- 6) **Issue:** Information provided by complainants suggested that the Highway Surveyor manipulated time records to assist an employee who wanted to report lower earnings because of a pending legal matter.

Finding: Both the employee in question and the Highway Surveyor confirmed that on at least two occasions upon the employee's request, the Highway Surveyor failed to record overtime earnings for the employee. According to the Highway Surveyor, records did not reflect overtime because the employee received compensatory time rather than overtime. However, payroll records do not indicate any earnings or accruals for either overtime or compensatory time during the period under review.

According to the employee, for reasons unknown to him, although he worked overtime, the AHD neglected to pay him for this overtime work and he simply failed to question this error. He did not claim that these hours had been converted into compensatory time. After this statement, the employee terminated his discussion with OIG staff and refused to answer additional questions.

According to other AHD employees, at a later date the Highway Surveyor paid the employee in question for these unpaid overtime hours by manipulating future time records to inflate the employee's paycheck with overtime when overtime had not been worked. These were hours the Highway Surveyor claimed had been converted to compensatory time.

The OIG has determined that AHD recordkeeping, oversight and payroll management must be improved. Employees should not be paid unless the hours they worked are documented and verifiable. Also, side deals between management and employees, misstating work time, arbitrarily adding overtime hours to the payroll, and making false statements are prosecutable offenses and indicate a significant vulnerability to fraud, waste, and abuse.

Recommendation: Internal controls must be tightened and new time reporting procedures should be instituted. Employees should also be reminded that altering time reporting or misstating time worked is fraud which, is subject to criminal prosecution and/or disciplinary action.

7) **Issue:** AHD appears to have violated the state public records law.

Finding: As part of the OIG review of the issue regarding the Highway Surveyor manipulated time records to assist an employee who wanted to report lower earnings because of a pending legal matter, the OIG asked the Town for AHD payroll records. The Town provided payroll records that did not contain information pertaining to the compensatory time earnings raised by the complaint. When questioned, the Highway Surveyor stated that any AHD records detailing the earning of and approval for compensatory time for the period under review had been previously destroyed. The OIG requested these records in 2009, no more than 6 years after these records had been created. Therefore the destruction of these records may have violated the state public records law which generally requires records to be kept for at least 6 years.

Recommendation: The Town should ensure that department managers are aware of state public record retention requirements.

8) **Issue:** Complainants claimed that the Highway Surveyor allowed employees to leave work without reflecting this in time records.

Finding: The OIG identified two specific instances where employees left work while on the payroll. One instance related to the Highway Surveyor allowing employees to leave early the day before a legal holiday and the other involving the Highway Surveyor allowing AHD staff to leave early to attend a court hearing for a fellow employee. The court hearing was not AHD employment related. Employee time records reflect that employees worked these hours rather than reflecting that the Highway Surveyor permitted employees to take this time off.

The Highway Surveyor acknowledged that she has allowed staff to leave early on certain, limited occasions, for example, before a holiday, but only if they used "compensatory time." According to the Highway Surveyor, employees are not simply given time off. The Highway Surveyor also stated that the AHD has discontinued the use of compensatory time. According to AHD staff, allowing employees to attend the court hearing was a way of "showing support" for a co-worker even though the matter was unrelated to work.

Recommendation: The OIG received conflicting information regarding whether compensatory time may be earned and used by AHD employees. The Town and AHD should clarify this policy in writing. Overtime or compensatory time earned or used must be reflected in employee timesheets.

9) **Issue:** The OIG found that AHD time keeping is inadequate.

Finding: The OIG found that AHD employee timesheets and time punch cards failed to adequately track employee time. Employee timesheets and punch cards are not signed by employees and these time records may not track actual employee work

time. According to some employees, they have flexible schedules; they have secondary employment outside of the AHD; and/or they own their own businesses. Time records may not reflect when employees are working for the Town. For example, the Highway Surveyor stated to the OIG that as an elected official she does not have a 40 hour per week work hour requirement. As a result, she may leave the AHD to tend to her private business interests during normal AHD business hours. The Highway Surveyor also stated that she maintains a work hour log that reflects when she is on Town time versus private work time.

Recommendation: To ensure AHD accountability and transparency, as a sound internal control measure, and as an anti-fraud, waste and abuse measure, time records must account for time worked by an employee when on Town business. So, if an employee is allowed to do private work during his/her shift, time records should reflect when this time off for private work began and when it ended. The Town should also clarify whether working in this manner is appropriate for AHD employees and this could create potential ethics violations and at the very least, have the appearance of impropriety. Additionally, all employees should sign their time records as an attestation that they worked the hours recorded.

10) **Issue:** According to complainants, AHD staff performed work on private property.

Finding: According to the OIG investigation, AHD staff performed work consisting of removing debris from a marsh/wetland area on a private property including the removal of a beaver dam. Complainants claimed that the Highway Surveyor ordered this work performed because of a personal relationship with the owner of the private property in question - a restaurant and lounge. AHD management denied that this work had been authorized and the Highway Surveyor stated that she was unaware that the work had even been performed until she received a press inquiry about the incident. The Highway Surveyor informed the OIG that she knew the property owner but denied that this would have had any bearing on her decision-making had she authorized the work. However, AHD staff stated that they received direction from AHD management to perform work on this property and were told that this work addressed Town drainage issues.

A lack of work order records for this incident makes it difficult to determine if employees had instructions to perform the work and whether this area is in fact impacted by a Town-owned drain pipe. The location of the work in question is not included on the AHD's partially handwritten list of locations considered "drainage waterways" for which the Town has maintenance responsibility. Employees claim that they have been instructed orally or through written work orders to work at other locations not on the list as well.

Recommendation: According to staff, the delineation of Town drainage areas is not clearly recorded at the AHD. Instead, there appears to be reliance upon memory and an oral "history" that is handed down from employee to employee. For accountability and transparency, the AHD should identify in writing where the AHD

believes it has responsibility for maintaining drainage areas, whether this is public or private property.

Direction to employees for work projects on private property, when necessary for Town business, should be well documented in AHD records in the form of work orders as used for other Highway Department work or other documentation. The Town's legal counsel should also be consulted to identify liability and indemnification issues and to determine proper procedures for authorizing work on private property.

Conclusion

The OIG suggests that the Highway Surveyor work closely with the Town Administrator, Treasurer, Accountant, and legal counsel to review and implement the recommendations contained herein and, if necessary, consult with the Division of Local Services (DLS) of the Massachusetts Department of Revenue. DLS can assist the AHD to improve compliance with municipal finance law and associated accounting, auditing, management and control issues. The AHD must conform to all State and Municipal laws, regulations and rules. Additionally, the same accounting and internal control practices used by other Town departments are applicable to the AHD. The Town's legal counsel should ensure that the Highway Surveyor and all AHD staff know and abide by Town policies including timekeeping, procurement requirements, and other policies referenced in this letter

To prevent future violations of the public bidding laws, the conflict of interest law, and record retention requirements the OIG recommends that AHD staff obtain training and take advantage of all available resources. Please do not hesitate to contact us if you require further assistance in this or any other matter. Thank you.

Sincerely,

Barbara Hansberry
General Counsel

cc: Charles O'Connor, Interim Town Administrator
Darlene Belsito, Highway Surveyor
Deborah Terrien, Town Treasurer
Edward Kazanovicz, Town Accountant