



The Commonwealth of Massachusetts

Office of the Inspector General

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MAILING ADDRESS:
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The Honorable Shannon O'Brien
State Treasurer and Receiver General
State House Room 227
Boston, MA 02133

Dear Treasurer O'Brien:

I am writing to alert you to an issue relating to an application for financial assistance submitted on behalf of the Lynn Water and Sewer Commission (Commission) to the State Revolving Fund Program. I have enclosed a copy of a report released this week by my Office, entitled *Privatization of Wastewater Facilities in Lynn, Massachusetts*. This report concerns the Commission's design-build contract with U.S. Filter for the East Lynn Combined Sewer Overflow Project. My report findings show that the Commission's October 16, 2000 application to the State Revolving Fund contains a construction price that is almost three times the cost estimated by my Office for similar work performed under competitively bid construction contracts in Lynn. My report findings also show that the total design-build project price of \$47 million is almost double the Office's cost estimate of \$25 million for similar, competitively bid work in Lynn. Based on these findings, I urge you to require the Commission and its design-build contractor, U.S. Filter, to justify the high cost of this project in order to prevent potential waste or misuse of State Revolving Fund money.

The Commission obtained special legislative authorization to use an open-ended, design-build request for proposals process to procure the contract with U.S. Filter. Under this procurement approach, each proposer was invited to develop its own technical approach for abating combined sewer overflows. The Commission received two proposals for two different construction projects, with U.S. Filter proposing a new sanitary-only sewer and Modern Continental Construction Company proposing a new stormwater system. Because each proposal called for a different scope of work, the proposal prices were not comparable. The procurement process itself therefore provided no basis for gauging the reasonableness of U.S. Filter's design-build price.

My Office has met with officials at the Department of Environmental Protection (DEP) to discuss the Office's concerns regarding the high cost of the construction work included in the State Revolving Fund application for the first phase of the

project. These DEP officials advised my Office that DEP does not ordinarily scrutinize construction costs in reviewing funding applications and that DEP's standard practice is to rely on competitive bid prices solicited by local governmental units to ensure that construction costs approved for State Revolving Fund financing are competitive and reasonable. For this project, the Commission's alternative procurement method did not generate competing bids for the work U.S. Filter proposed. My Office therefore believes that U.S. Filter's price must be compared with an independent construction cost estimate to ensure that it represents a competitive and fair price.

I have also enclosed copies of correspondence from the Commission and from Maguire Group, Inc., U.S. Filter's design consultant, to DEP in connection with the State Revolving Fund application. This correspondence includes a letter from the Commission dated October 16, 2000, requesting an increase of \$5,233,510 in its allocation from the State Revolving Fund for calendar year 2000. This letter was accompanied by a Preliminary Design Report, prepared by Maguire Group for the first phase of the East Lynn CSO Project, which contained a design-build price of \$10,122,499. In addition, I have enclosed a letter from the Commission to U.S. Filter dated January 16, 2001, requesting an itemized cost breakdown to support the \$10,122,499 design-build price. Maguire Group's response, dated March 12, 2001, does not contain the itemized cost breakdown requested by the Commission. Finally, I am enclosing a copy of a request from my Office to U.S. Filter dated May 1, 2001, requesting the same itemized cost breakdown; U.S. Filter did not respond to my Office's request.

As I conclude my final term as the state's Inspector General, I would like to sound a warning to public officials relating to other major public projects undertaken using alternative procurement methods. These alternative procurement methods generally do not provide the safeguards that construction bidding laws and standardized construction contracts were designed to ensure. These projects will therefore require more scrutiny to ensure that costs are competitive and the public interest is protected. Failing to invest in this scrutiny amounts to an invitation to fraud, waste, and abuse.

Sincerely,

Robert A. Cerasoli
Inspector General