



The Commonwealth of Massachusetts

Office of the Inspector General

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June 28, 2011

Rositha Durham
Chief Procurement Officer
City of Newton
1000 Commonwealth Ave.
Newton Center, MA 02459

Dear Ms. Durham:

As you know, the Massachusetts Office of the Inspector General (OIG) reviewed a sample of American Recovery and Reinvestment Act (ARRA) grants issued by the U.S. Department of Energy (USDOE). The OIG has included the City of Newton (City) in its review sample of Energy Efficiency and Conservation Block Grant (EECBG) recipients. EECBG is a program intended to help deploy energy efficient and conservation technologies across the country. The City received a direct grant from the USDOE for \$799,600.

The OIG is reviewing ARRA-related grants to identify potential vulnerabilities to fraud, waste, and abuse and other risks that could negatively impact the accountability, transparency, and anti-fraud mandates contained in the statutory language and interpretive guidance of ARRA. Our review of the provided documents should not be construed as an audit, investigation, or a comprehensive programmatic review. The OIG intends these reviews to assist recipients of ARRA funding identify and address risks.

The City's grant included funding to implement performance contracting energy efficiency improvements, including boiler replacements, for six City facilities. At the time of our review, the City had completed one of the boiler replacement projects planned under the grant. The OIG has limited its review to this completed boiler replacement, which was procured prior to your employment with the City. In response to a document request, the City provided the OIG with EECBG grant expenditure information indicating that the City spent \$144,000 in grant funds for the replacement of a boiler at the Emerson School/Upper Falls Community Center.

The City originally planned to use a M.G.L. c.149 procurement to replace this boiler. However, in December 2009, the boiler failed "catastrophically" forcing the City to expedite the boiler project. To do so the City abandoned the planned formal bidding process and instead had its existing heating, ventilation, and air conditioning (HVAC) on-call repair and maintenance service vendor replace the boiler.

State law required the City to obtain an “emergency” contract waiver from the state for authorization to proceed without using M.G.L. c. 149. The law requires the municipality to seek a written waiver from the Division of Capital Asset Management (DCAM) before proceeding with work needed to preserve the health or safety of people or property. The City failed to obtain a waiver.

City staff indicated that the City believed it could proceed without a waiver because it used an existing service contract. Moreover, the City stated that the work consisted of a “repair” to restore a failed heating system. The City believed that the replacement of a failed boiler constituted a repair because the “repair” restored heat to the building.

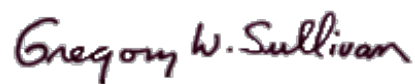
Use of an “on-call” service contract for a boiler replacement costing \$144,000 is illegal and a violation of M.G.L. c. 149 §44A. Large capital improvements over \$10,000 but less than \$25,000 require three quotes. Projects estimated to cost more than \$25,000 require sealed bids in accordance with the procedures set forth in M.G.L. c.30 §39M. The \$144,000 boiler replacement was sizeable and beyond the scope of an on-call labor contract.

An on-call contract is not for significant capital improvements, and should be for a limited number of hours of work at an hourly rate. For example, the City could bid an hourly rate for 150 hours of electrical work over the course of a year. A \$144,000 project is well beyond what should be undertaken pursuant to such a contract. As a best practice, it should be stated on the face of such contracts that the contract shall not be used for expenditures of \$10,000 or more.

The OIG consulted on the use of service contracts for the procurement and installation of boilers with the Attorney General’s Fair Labor Division, which interprets and enforces Chapter 149, and they concur in principle with the OIG’s position.

I appreciate your cooperation with this review. Please do not hesitate to contact the OIG with any questions or concerns you may have.

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