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Commissioners

2010 Pest Control Contract

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Introduction

In March, 2010 the Office of the Inspector General received a complaint concerning the quote process for the pest control contract that was to be awarded by the Plymouth County Commissioners in 2010. The pest control contract involved pest control services for seven Plymouth County buildings, including the Plymouth County District Attorney's Office, the Brockton Superior Court, three District Courts, the Plymouth County Registry of Deeds, and the Plymouth County Commissioners' Office (PCCO). The complaint alleged that Timothy McMullen, a County Commissioner, tipped off Burgess & Capeway Pest Management Company (BCPM), one of the vendors that provided a written quote for the 2010 pest control contract, that their quote was too high. The complaint further alleged that BCPM subsequently submitted a second quote which matched exactly the low quote submitted by another vendor. The complaint alleged that providing a vendor with inside information during a bidding process was clearly inappropriate and amounted to bid rigging.

Upon receipt of the complaint, the Inspector General authorized this Office to conduct an investigation to determine if the allegations in the complaint were valid. The investigation confirmed the validity of the allegations.

Executive Summary of Investigation

During January 2010, the (now former) Plymouth County Administrator instructed his Administrative Clerk (Clerk) to solicit quotes for the pest control contract for seven County buildings for 2010. This contract had been previously issued to BCPM for several years without a competitive bidding process.¹ County officials decided to review existing County contracts and seek vendor competition to insure that the County was receiving the best prices for required services.

Accordingly, on January 24, 2010, the Clerk solicited written price quotes from several potential vendors for the pest control contract for seven County buildings for 2010. On February 1, 2010 she received a written quote from Environmental Health Services (EHS) for the pest control contract. On February 3, 2010, she received a written quote from Griggs & Browne for the contract. The Clerk also received a hand printed quote from BCPM on January 26, 2010. BCPM followed up its hand printed quote with an identical type written quote three days later, on January 29, 2010. The BCPM quote was identical to its 2009 quote for the pest control contract for the same County buildings. BCPM had been awarded the pest control contract for 2009.

The Clerk reviewed the written quotes submitted by the three vendors for 2010 and determined that Griggs & Browne had submitted the low quote. Griggs &

¹ During interview, BCPM's owner Edward "Ted" Burgess advised that his company had been awarded the pest control contract by Plymouth County for the seven buildings for twenty five years.

Browne quoted \$45.00 dollars for each of the seven buildings per month. BCPM's quote for four of the seven buildings was double that of Griggs & Browne, i.e. \$90.00 dollars per building per month. BCPM quoted \$45.00 dollars per month for the other three buildings. EHS's quoted prices were substantially higher than both the other vendors.

The Clerk informed this Office that she received a telephone call from BCPM's owner Ted Burgess (Burgess) shortly after she received BCPM's first hand printed quote in late January 2010. During that conversation, she informed Burgess that her superiors had decided to solicit quotes for the pest control contract because it had not been sent out for quotes for a long time. Burgess told her that he understood.

This Office interviewed the County Executive Assistant (Executive Assistant) who also played an important role in the quote process for the 2010 pest control contract. She advised that on February 24, 2010, she had a telephone conversation with Plymouth County Commissioner Timothy McMullen. During the conversation, Commissioner McMullen inquired as to the reason why the pest control contract had been placed on the agenda for that evening's Commissioners' meeting. She informed him about the quote process that had been ordered by the County Administrator for this contract. She further told him that one vendor had submitted a quote lower than the one provided by BCPM. She also furnished Commissioner McMullen with the names and quoted prices submitted by the three competing vendors.

On February 24, 2010, after her conversation with Commissioner McMullen, the Executive Assistant received a call from Burgess. Burgess told her that he had a conversation with Commissioner McMullen and was informed that the Commissioners would be addressing the pest control contract that evening. Burgess told her that BCPM had not understood that the County had been soliciting quotes from other vendors. Burgess asked for permission to submit an amended quote. Subsequently, BCPM submitted a second quote for the pest control contract which was received by the Executive Assistant at 5:43 pm, February 24, 2010 (fifteen minutes before the 6pm Commissioners' meeting). This new BCPM quote was substantially lower than its original quote and was identical with the previously low quote submitted by Griggs & Browne.

During the Commissioners' meeting which followed, the pest control contract was discussed by the Commissioners. The Executive Assistant provided each Commissioner with a copy of the quotes received from each vendor. During the discussion, Commissioner McMullen leaned over to the Executive Assistant and asked her if she had received an additional quote. She answered in the affirmative but told him she had to research the matter further. She did not believe that the other Commissioners overheard the conversation. She advised that the Commissioners decided to wait until a future meeting to award the pest control contract.

Commissioner Riordan was interviewed and advised that prior to the February 24, 2010 Commissioners' meeting, he received a telephone call from Burgess. Burgess told him that he was concerned that he would lose the pest control contract. Burgess told Riordan that he had the contract for 25 years and now was going to lose it. Riordan refused to discuss the matter with Burgess and referred him to the Commissioners' office staff. Riordan stated that there was no question in his mind that at the time Burgess called him, Burgess knew that he was not the low bidder. Moreover, Riordan stated that he was certain that Burgess knew the bid prices submitted by his competitor vendors. Riordan stated that it was quite clear to him that Burgess received this information from Commissioner McMullen.

Riordan advised that the next Commissioners' meeting occurred on March 16, 2010. During the meeting, Commissioner McMullen made a motion to accept Burgess' quote as the low quote and award the contract to Burgess. Riordan advised that he and Commissioner O'Brien declined to second Commissioner McMullen's motion. Riordan asked Commissioner McMullen if he provided the other vendor quotes to Burgess and he denied doing so. Riordan asked Commissioner McMullen if he took political contributions from vendors doing business with the County. McMullen responded in the affirmative but denied taking any from Burgess.² Riordan displayed to Commissioner McMullen a copy of a check written from Burgess to Commissioner McMullen in the amount of \$100.00 dollars, dated May, 2008. This was a political contribution. Riordan advised that Commissioner McMullen claimed that he did not recall receiving the contribution.

This Office obtained the cell phone records of Commissioner McMullen and Ted Burgess for the relevant time period by subpoena. The records reveal telephonic contact between Commissioner McMullen's phone and the Plymouth County Commissioners' Office (PCCO) on February 23 and February 24, 2010. Moreover, the records reflect telephone contact between Commissioner McMullen's cell phone and Burgess' cell phone four times on February 24, 2010. The records also disclose a call from the Burgess phone to the PCCO on February 24, 2010.

This Office interviewed Edward S. "Ted" Burgess during the investigation. Burgess advised that when his company was initially contacted by a County employee and asked to provide a price quote for the pest control contract, his employee was not told that the County was conducting a competitive bidding process for the contract. Burgess advised that he contacted the County employee himself and specifically asked her if the County was going out to bid on

² The minutes of the Plymouth County Commissioners' meeting for March 16, 2010 disclose the following: "Commissioner Riordan asked Commissioner McMullen if he had taken any political contributions from Burgess Pest Control in the past. Commissioner McMullen could not recall."

the pest control contract and she told him no. Burgess stated that she did tell him that she was speaking to other pest control vendors about pricing.³

Burgess advised that he was confused and thought that the County might be involved in a bidding process. He advised that he separately contacted both Commissioners' McMullen and Riordan to try and clear up his confusion. He stated that he asked them whether the County was going out to bid on the pest control contract. He stated that neither man could provide him with the answer.⁴

At this point, Burgess decided to submit a second written price quote proposal to the County. This submission was intended to be a written price quote for the pest control contract. He advised that he knew that his office had sent an earlier written price quote proposal to the PCCO regarding the pest control contract. He explained that BCPM did not consider this first written price quote to be a bid. He stated that BCPM sent it to the County to confirm that the BCPM price was the same as the prior year.

Burgess denied that any County employee, including Commissioner McMullen, provided him with any of his competitor price quotes for the pest control contract. He further denied that Commissioner McMullen gave him any inside information regarding the 2010 pest control contract.

Plymouth County Commissioner McMullen was interviewed and advised that about a week before the Commissioners were scheduled to meet to vote on awarding the pest control contract, he received a telephone call from Ted Burgess. Burgess asked him why the pest control contract was being put out for quotes for 2010.⁵ Commissioner McMullen explained to Burgess that it was a cost saving measure and told Burgess that the County had solicited quotes from other vendors for this contract.

Commissioner McMullen advised that he also spoke with Burgess the day before or the day of the Commissioners' meeting on February 24, 2010. Prior to this conversation, Commissioner McMullen spoke with the County Executive

³ During interview with this Office, the County Administrative Clerk advised that she spoke telephonically with Burgess and told him that the County Administrator and the Commissioners wanted to solicit quotes because the pest control contract had not been sent out for quotes for a long period of time. Burgess told her he understood. The Clerk's statement appears to contradict Burgess' claim that she told him the pest control contract was not going out for bid.

⁴ During interview, Commissioner McMullen advised that he spoke with Burgess prior to the Commissioners' meeting on February 24, 2010. During the conversation Burgess asked Commissioner McMullen why the pest control contract was being put out for quotes. McMullen informed Burgess that all County contracts were being reviewed in an effort to save money and that the PCCO had solicited price quotes from other vendors for the pest control contract. McMullen's statement appears to contradict Burgess' claim that Commissioner McMullen told him that he did not know that the pest control contract was going out to bid.

⁵ This question from Burgess to McMullen clearly indicates that Burgess was aware of the fact that the pest control contract was involved in a competitive quote process well before he sought permission from the County Executive Assistant to submit a second written quote for the contract on 2/24/10.

Assistant and learned from her that the Burgess quote for the pest control contract was high. During his conversation with Burgess, Commissioner McMullen told him that his price quote for the pest control contract was high. He also told Burgess that he should fax over a new quote to the County Commissioners' Office.⁶ Commissioner McMullen advised that it is his belief that Burgess faxed a second quote over to the Commissioners' Office on February 24, 2010, the day of the Commissioners' meeting. Commissioner McMullen denied that he and Burgess ever discussed pricing except that he told Burgess his quote was high. He denied that he ever provided Burgess the Griggs & Browne price quote.⁷

Commissioner McMullen stated that during the Commissioners' meeting on the evening of February 24, 2010, he asked the County Executive Assistant if she received a second price quote from Burgess and she told him she received one just prior to the meeting. Commissioner McMullen advised that the Commissioners did not vote on awarding the pest control contract that night because Commissioner Riordan had a problem with Commissioner McMullen accepting a \$100.00 dollar campaign contribution from Burgess in 2008. During the meeting, Riordan asked Commissioner McMullen about the Burgess contribution and he responded that he did not recall that it was made. Riordan subsequently produced documentation which confirmed that the contribution was made.

Commissioner McMullen advised that during the February 24, 2010 meeting, he spoke favorably about Burgess and observed that Burgess had held the contract for twenty years, had served the County well, and had never been a problem. The Commissioners discussed the pest control contract again during their meeting on March 16, 2010. Commissioner McMullen advised that he voted to award the contract to Burgess because he had served the County for the past twenty years.⁸ According to the minutes of the PCCO meeting on May 25, 2010, the Commissioners voted to award the pest control contract to Griggs & Browne during that meeting. Commissioners' Riordan and O'Brien voted for Griggs & Browne and Commissioner McMullen voted against Griggs & Browne.

⁶ During interview with this Office, Burgess denied receiving any inside information from Commissioner McMullen prior to submitting BCPM's second quote. This statement is directly contradicted by Commissioner McMullen's admission that he told Burgess that his first price quote was high.

⁷ McMullen's denial notwithstanding, it is interesting to note that BCPM's second quote for the pest control contract was identical with the earlier quote submitted by Griggs & Browne.

⁸ The minutes of the March 16, 2010 PCCO meeting disclose that Commissioner McMullen moved to accept the BCPM quote submitted on 2/24/10 as the low quote. Commissioner Riordan moved to accept the Griggs & Browne quote as the low quote. No contract award was made during this meeting.

Findings of Fact

1. The PCCO awarded the pest control contract for seven County buildings to Burgess & Capeway Pest Management Company (BCPM) for several years, including 2009, without a bidding (quote) process in violation of M.G.L. c. 30B, §4.
2. The estimated value of the pest control contract for 2009 was \$5,940.00. M.G.L. c. 30B, The Uniform Procurement Act, requires local governmental entities, including Counties, to seek price quotations from at least three responsible vendors for any service expected to cost between \$5,000.00 and \$24,999. This was not done by the PCCO in 2009.
3. The PCCO properly initiated a quote process for the pest control contract in 2010 by seeking price quotes from more than three responsible vendors on January 24, 2010.
4. Three vendors, Griggs & Browne, Environmental Health Services and Burgess & Capeway Pest Management submitted written quotes for the pest control contract in response to the invitation initiated by the PCCO.
5. The written quotes submitted by the three vendors were received by the PCCO between the dates of January 26 and February 3, 2010. Griggs & Browne submitted the low quote of \$45.00 per building per month.
6. The initial written quote submitted by BCPM on January 26, 2010 was \$90.00 per month for four buildings and \$45.00 per month for three buildings.
7. On February 24, 2010 Commissioner Timothy McMullen spoke telephonically with the County Executive Assistant who informed him that one of the vendors had submitted a quote for the pest control contract that was lower than the quote provided by BCPM. She also provided him with the names and price quotes submitted by the three competing vendors.⁹ She discussed with Commissioner McMullen the fact that the pest control contract was on the agenda for the Commissioner's meeting that evening, i.e. February 24, 2010.
8. Cell phone records obtained by this Office disclose telephonic contact between Commissioner McMullen's cell phone and the cell phone belonging to BCPM's owner Edward "Ted" Burgess, four times on February 24, 2010.

⁹ During interview with this office, Commissioner McMullen stated that he could not recall whether the County Executive Assistant provided him with the names and price quotes of the three vendors.

9. On February 24, 2010 Edward "Ted" Burgess telephonically contacted the County Executive Assistant and informed her that he had a conversation with Commissioner McMullen and was informed by him that the Commissioners would be addressing the pest control contract that evening. Burgess asked for permission to submit an amended quote. Burgess' cell phone records confirm a call from his cell phone to the PCCO on February 24, 2010.
10. On February 24, 2010 at 5:43pm, BCPM faxed a second written quote to the PCCO for the pest control contract. This second quote was substantially lower than its initial price quote and identical in its prices to the previously low quote submitted by Griggs & Browne, i.e. \$45.00 per building per month.
11. Edward "Ted" Burgess was interviewed by this office and denied that Commissioner McMullen gave him any of his competitor vendors' price quotes for the pest control contract. He further denied that Commissioner McMullen gave him any inside information for the pest control contract.
12. Commissioner Timothy Commissioner McMullen was interviewed by this Office and admitted that he spoke with Burgess on February 24, 2010 or the day before. He admitted that prior to this conversation, he was informed by the County Executive Assistant that the first Burgess quote for the pest control contract was high. Commissioner McMullen admitted that he informed Burgess that his first quote was high and told him he should submit a new quote to the PCCO by fax.
13. The PCCO pest control contract was ultimately awarded to the first low bidder Griggs & Browne by a 2-1 Commissioners' vote on May 25, 2010. Commissioner McMullen voted against the award to Griggs & Browne.

Details of Investigation

Interview of the Former County Administrator

On April 21, 2010, the former County Administrator and Chief Procurement Officer for Plymouth County was interviewed by this Office. During his tenure in Plymouth County, he discovered that there were several contracts that had been extended for a long period of time without ever going out for bid. One of these contracts was the pest control contract which had been held by Burgess & Capeway Pest Management Company (BCPM), West Bridgewater, MA for several years. John Riordan, one of the Plymouth County Commissioners, had also spoken with the County Administrator and indicated that the pest control contract that was held by BCPM had not gone out to bid for years. Commissioner Riordan thought the County should solicit quotes for a new

contract. The County Administrator ordered an Administrative Clerk to review the pest control contract and to solicit at least three quotes for a new contract.

The County Administrator stated that the Administrative Clerk solicited at least three quotes for a new pest control contract which would cover seven County facilities. These quotes were received prior to February 19, 2010, which was the County Administrator's last day with Plymouth County. The County Administrator advised that quotes were received from BCPM, Griggs & Browne and Environmental Health Services Inc. (EHS).

Interview of the County Administrative Clerk

The Plymouth County Administrative Clerk (Clerk) was interviewed and advised that near the end of January 2010, she was instructed by the (former) County Administrator to solicit price quotes for the pest control contract for seven County buildings. She subsequently made telephone calls to several potential vendors on January 24, 2010 in an effort to obtain price quotes for the contract. Included among those she called were Griggs & Browne, Environmental Health Services Inc. (EHS) and Burgess & Capeway Pest Management Company. She subsequently received a price quote from Griggs & Browne by facsimile on February 3, 2010. Griggs & Browne quoted a price of \$45.00 per building per month for the seven County buildings.

She also received a price quote from EHS on February 1, 2010 by facsimile. She advised that the monthly prices quoted by EHS for the seven buildings included, \$138.00 for the Hingham District Court, \$168.00 for the Brockton Superior Court and the Plymouth County Commissioner's Office; and \$148.00 per building for the other four buildings. She advised that EHS provided the highest quotes for each of the buildings involved in the quote process.

The Clerk advised that she contacted BCPM on January 24, 2010 and spoke with a woman whose name she could not recall. The woman referred her to a male employee whom she also spoke to on the phone. She explained to the male employee that the County was seeking a quote for pest control for seven County buildings. At the time she called BCPM, she was aware of the fact that BCPM currently had a contract with the County to service these buildings.

The Clerk advised that on January 26, 2010 BCPM faxed over to her a hand printed quote for the seven County buildings. BCPM quoted \$90.00 per month for each of the four County Court Houses and \$45.00 dollars per month for the other three buildings. The quote contained the signature of a BCPM employee and was dated January 26, 2010. She advised that the prices quoted by BCPM in this fax were identical to the prices they quoted for the County pest control contract that they had been awarded for the previous year.

She advised that not long after she received the price quote fax from BCPM, she received a telephone call from the Burgess Owner, Ted Burgess. She believes that this call was made on either January 27 or 28, 2010. During the call, Ted Burgess informed her that his company had been providing pest control service to the County for many years and hoped there was no problem with their performance. She told him that there had been no complaints and explained that the County Administrator and the Commissioners wanted her to solicit quotes because the pest control contract had not been sent out for quotes for a long period of time. Mr. Burgess told the Clerk that he was going to fax over a quote. When she received the BCPM quote on January 29, 2010, she noticed that it was typed but the quoted prices for the seven buildings were the same as the earlier BCPM fax sent to her on January 26, 2010.

The Clerk advised that the pest control contract issue was on the Plymouth County Commissioners' agenda for the evening of February 24, 2010. During the work day on February 24, 2010, the County Executive Assistant (Executive Assistant) received a telephone call from Ted Burgess. The Clerk advised that the Executive Assistant was informed by Ted Burgess that he wished to submit another quote for the pest control contract. The Clerk advised that the Executive Assistant told Ted Burgess to send in his new quote. The Executive Assistant told that Clerk that she was not sure what she should do with the new quote. The Executive Assistant displayed the new BCPM quote to the Clerk when it arrived and the Clerk noted that the price quote for each building was \$45.00 per month per building. The new BCPM quote was identical to the quote previously submitted by Griggs & Browne.

The Clerk advised that ultimately the pest control contract was awarded to Griggs & Browne by the Commissioners. The contract went into effect on June 1, 2010.

Interview of County Executive Assistant

The Executive Assistant for the Plymouth County Commissioners was interviewed on March 23, 2010 and advised that during the past year the (now former) Plymouth County Administrator instructed her and the Administrative Clerk, to review all contracts that had been awarded over the years in an attempt to save money and to also ascertain if new contracts should be awarded. One of the first contracts to be reviewed was the pest control contract. She advised that for about the past 20 years, including 2009, this contract has been awarded to BCPM, West Bridgewater, MA.

The Executive Assistant stated that it was decided that the pest control contract would go out for quotes and the contract would be awarded to the lowest bidder for one year. The Executive Assistant assigned this project to the Administrative Clerk (Clerk). The Clerk advertised this contract in the Brockton Enterprise for one day. On January 24, 2010, the Clerk solicited several pest control companies to ascertain if they were interested in submitting a quote for the work.

The companies the Clerk contacted via phone included Griggs and Browne, Abington, MA; Environmental Health Services (EHS), Norwood, MA; and BCPM. On the same day the Clerk faxed the specification sheets to these companies.

On January 26, 2010, the Clerk received via fax a hand printed quote from BCPM, which listed the quotes for the seven facilities as follows:

- Plymouth County Commissioners Office @ \$45.00 each month.
- Plymouth Registry of Deeds @ \$45.00 each month.
- Wareham District Court @ \$90.00 each month.
- Brockton District Court @ \$90.00 each month.
- Hingham District Court @ \$90.00 each month.
- Brockton Superior Court @ \$90.00 each month.
- Brockton District Attorney's Office @ \$45.00 each month.

The fax stated that the above pricing is for 2010 and is consistent with 2009 pricing and has not increased.

On January 29, 2010, the Clerk received a type written quote via fax from BCPM that was signed by Ted Burgess, President. In his cover letter, dated January 28, 2010, Burgess stated that he has provided pest control service to Plymouth County for the past 25 years. BCPM's type written quote repeated the identical pricing for seven facilities that BCPM had submitted on January 26, 2010 as described above.

On February 1, 2010, EHS submitted their quote to the Clerk via fax. The quote was dated January 29, 2010 and was submitted with a breakdown of the seven buildings as follows:

- Hingham District Court, \$138 each month.
- Wareham District Court, \$148 each month.
- Plymouth County Commissioner's Office, \$168 each month.
- Registry of Deeds, Old Brockton District Court, \$148 each month.
- Brockton District Attorney's Office, \$148 each month.
- Registry of Deeds, Plymouth, \$148 each month.
- Brockton Superior Court, \$168 each month.

On February 3, 2010, a third quote was received by the Clerk via the United States Mail from Griggs & Browne. The price quoted by Griggs & Browne for the seven County buildings was \$45.00 per month per building.

The Executive Assistant stated that after the Clerk received the quotes from the three companies, she compiled a chart which listed the seven County buildings and the respective prices from each company for each building. This chart was to be provided to the Commissioners for their review. The chart was prepared by the Clerk about a week prior to the Commissioners' meeting scheduled for

February 24, 2010. The pest control contract was placed on the agenda for the February 24, 2010 meeting. The Commissioners have the responsibility to award the contract.

On February 24, 2010, the Executive Assistant received a telephone call from Commissioner McMullen. Commissioner McMullen asked the Executive Assistant why the pest control contract was placed on the agenda for that night's meeting. She told Commissioner McMullen that the County Administrator, had instructed the PCCO to solicit three quotes for this contract. She also believes that she told Commissioner McMullen that one of the quotes that had been received was lower than the one provided by Burgess. She recalled furnishing Commissioner McMullen the names of the companies that submitted quotes and the prices received from each of the three companies. She also told Commissioner McMullen that she had prepared a vote for the Commissioners to sign and award the pest control contract to the lowest bidder.

On February 24, 2010, at approximately 3 to 4 pm, the Executive Assistant received a telephone call at the PCCO from Ted Burgess, who told her that he was calling from Naples, Florida. Burgess told her that he had a conversation with Commissioner McMullen and understood that the Commissioners would be addressing the pest control contract that evening. Burgess never told the Executive Assistant when the conversation with McMullen took place. Burgess claimed that his son misunderstood the County Clerk when she asked for a quote for the pest control contract and that his son did not understand that she was soliciting quotes from other companies. Burgess told the Executive Assistant that he would like to submit an amended quote. She told Burgess to submit the new quote via fax and she would try and submit it to the Commissioners for their meeting scheduled for 6pm that evening.

At approximately 5:43pm, February 24, 2010, the Executive Assistant received the new quote via fax from BCPM. It should be noted that the fax cover sheet was addressed to Commissioner McMullen, Plymouth County Commissioners and was sent by Ted Burgess. The typed date on the fax cover sheet was January 29, 2010, but the information at the top of the fax cover sheet shows it was sent on February 24, 2010.

When the Executive Assistant received the new BCPM quote, she noticed that BCPM's new prices were identical to the quote prices previously received from Griggs & Browne on February 3, 2010. The Executive Assistant stated that in her mind what Burgess had done was not right. After receiving the amended quote, she left it on her desk and did not provide it to the Commissioners. The Executive Assistant stated that she called the County Administrator and told him what had transpired with Burgess and the pest control contract. He told her that he did not think this was proper.

The Executive Assistant stated that she attended the Commissioners' meeting that evening. When the pest control contract came up on the agenda, the Executive Assistant explained the process that had been followed to the Commissioners and furnished each of them a copy of the quotes that had been received. At this point, Commissioner McMullen leaned over toward the Executive Assistant and asked her if she had received an additional quote. Commissioner McMullen never mentioned the name of the company. She answered in the affirmative but told him that she had to look into the matter further. She did not believe that the other Commissioners overheard this exchange. She stated the Commissioners reviewed the quotes and set a vote for a future meeting.

On February 25, 2010, Burgess called her and left a message on her office answering machine in an attempt to ascertain what transpired during the Commissioners' meeting the previous evening. The Executive Assistant stated that she never returned the call to Burgess.

About March 1, 2010, Commissioner McMullen called the Executive Assistant and requested that the pest control contract be placed on the agenda for the March 16, 2010, meeting. During the March 16, 2010, Commissioners' meeting, the Executive Assistant provided each of the Commissioners with the most recent quote received from Burgess along with all the original quotes received from the three bidders. Earlier that day Commissioner O'Brien and Commissioner Riordan both called the Executive Assistant to ask her about the background of the pest control contract. She explained the entire situation to both Commissioners including an explanation regarding BCPM's second price quote.

During the Commissioners meeting on the 16th, Commissioner Riordan expressed his view that something was wrong with the pest control quote process. Commissioner McMullen felt that the pest control contract should be awarded to Burgess based upon past history of good service and no complaints. Commissioner McMullen made a motion to accept the new quote from Burgess and award the pest control contract to Burgess. Neither of the other Commissioners seconded Commissioner McMullen's motion. During this meeting Riordan expressed his concern about Commissioner McMullen recommending Burgess.

During the meeting, Riordan said it was obvious someone had spoken to Burgess and provided Burgess with the quotes from the other vendors. Riordan asked Commissioner O'Brien if he had provided the quotes to Burgess and O'Brien responded that he had not. Riordan asked Commissioner McMullen the same question and Commissioner McMullen said that he had not provided the quotes to Burgess and denied speaking to him.

Riordan said he has never taken a political contribution from Burgess. Riordan asked the other two Commissioners if they had ever taken any political contributions from Burgess. They both responded no. The Executive Assistant said that Riordan then presented to Commissioner McMullen a copy of a check in the amount of \$100 or \$200 from Burgess to Commissioner McMullen's campaign in 2008. After viewing this document, Commissioner McMullen said he did not recall receiving this donation. Riordan responded by stating that this is why there should be a code of ethics. Riordan made a motion to award the pest control contract to Griggs & Browne but his motion was not seconded. Chairman O'Brien said that this matter should be taken under advisement.

Interviews of Commissioner Riordan

John Riordan, Plymouth County Commissioner, was interviewed on March 22, 2010 and advised that the PCCO received quotes from three contractors for the 2010 pest control contract for seven County buildings. He advised that one of the bidders was Griggs & Browne and another was BCPM. Upon receiving these quotes, a spread sheet was prepared by a County employee which listed the names of the seven county buildings to be serviced, the names of the contractors, and their price quotes for each building. The spread sheet was to be given to the Commissioners for review and action during their meeting on February 24, 2010.

Prior to this meeting, Commissioner McMullen called either the County Clerk or the County Executive Assistant and was informed that the pest control contract was on the agenda for that evening. Riordan said that Commissioner McMullen was either sent the above spread sheet or was told the price quotes that had been received from each contractor. Riordan stated that Griggs & Browne submitted the lowest quote which was \$45.00 per month per building.

Riordan stated that later on February 24, 2010, Ted Burgess, BCPM's owner, called either the County Clerk or the County Executive Assistant and asked for permission to submit an amended quote. The amended quote was identical to the quote that had been submitted by Griggs & Browne.

During the Plymouth County Commissioners' meeting on February 24, 2010, the Commissioners reviewed the pest control quotes and set a vote for a future meeting. Riordan stated that he was not aware at this meeting that BCPM had submitted an amended quote for the pest control contract. Subsequently Riordan learned that BCPM had submitted an amended quote after Commissioner McMullen spoke with a PCCO employee on February 24, 2010.

Riordan stated that the next scheduled Commissioners' meeting was March 16, 2010. On the agenda for that evening was the pest control contract. During the March 16th meeting, Commissioner McMullen made a motion to accept the quote from BCPM as the low bidder. This motion was not seconded by Riordan

or Commissioner O'Brien. Riordan expressed his concern about Commissioner McMullen recommending Burgess. Riordan explained that it was obvious that someone had spoken with Burgess and furnished Burgess with the quotes from the other vendors. Riordan asked Commissioner O'Brien and Commissioner McMullen if they had provided the other vendor quotes to Burgess and they both responded no.

Riordan asked Commissioner O'Brien if he took political contributions from contractors doing business with the County and O'Brien answered in the negative. Riordan asked Commissioner McMullen the same question and Commissioner McMullen said that he did accept political contributions from contractors who perform work for the County but denied taking a contribution from Burgess. Riordan displayed to Commissioner McMullen a copy of a check in the amount of \$100, dated May 2008, from Burgess to Commissioner McMullen, which was a political contribution. Commissioner McMullen said he did not recall receiving this check.

Commissioner Riordan was interviewed again on August 26, 2010 and advised that prior to the Plymouth County Commissioners' meeting on February 24, 2010, he received a telephone call from Ted Burgess. Riordan could not recall the date or time of the call but stated that it was prior to the February 24th meeting.

During the call, Burgess told Riordan that he was concerned that he would lose the pest control contract. Riordan told Burgess that he would not discuss the contract with Burgess and that if Burgess had any questions regarding the bid process he should contact the PCCO for clarification. Riordan stated that Burgess said something that made Riordan believe that Burgess had already spoken with Commissioner McMullen about this contract. Riordan stated that Burgess was upset with him because he would not discuss the bid with Burgess. Sometime after Riordan's conversation with Burgess, he learned that Burgess had called him from Florida.

Shortly after this conversation, Riordan telephoned the County Executive Assistant at the PCCO. During this telephone conversation she informed Riordan that Commissioner McMullen had called her earlier and requested the pest control bid documents. The Executive Assistant said that she sent these documents to Commissioner McMullen. Riordan also believes that on the same day, the Executive Assistant was contacted by Burgess. Later that same day she received a second quote from Burgess. The second quote was lower than his first quote.

Riordan stated that it was quite clear to him that Commissioner McMullen had sent Burgess the bid documents prior to the Commissioners' meeting on February 24, 2010. Riordan stated he is certain that when Burgess called him to inquire about the pest control contract, he (Burgess) knew the bid prices that had been submitted by the other contractors. During their conversation, Burgess was

ranting and raving about how he had this contract for the past twenty five years and now he was not going to get the new contract. There is no question in Riordan's mind that Burgess knew that he was not the low bidder.

Analysis of Burgess and Commissioner McMullen's Telephone Records

The Office of the Inspector General (OIG) obtained the telephone records for the cell phone number belonging to Plymouth County Commissioner McMullen from Verizon Wireless pursuant to subpoena. OIG also obtained the telephone records for the cell phone number belonging to BCPM owner Edward S. "Ted" Burgess from the Sprint Nextel Corporation pursuant to a subpoena. These records have been examined by the OIG and the analysis has disclosed the following relevant information:

- A call was placed from phone number 508-830-9103 (the phone number of the PCCO) on 2/23/10 at 2:11pm to Commissioner McMullen's cell phone number. The duration of the call was seven minutes.
- A call was placed from the Burgess cell phone number to Commissioner McMullen's cell phone number on 2/24/10 at 10:49am. The call lasted approximately six minutes.
- A call was placed from the Burgess cell phone number to Commissioner McMullen's cell phone number on 2/24/10 at 11:03am. The call lasted approximately one minute.
- A call was placed from phone number 508-830-9103 (phone number for the PCCO) to Commissioner McMullen's cell phone number at 11:31am on 2/24/10. The call duration was four minutes.
- A call was placed from Commissioner McMullen's cell phone number on 2/24/10 to the Burgess cell phone at 11:49am. The duration of the call was four minutes.
- A call was placed from the Burgess cell phone number to 508-830-9100 (the PCCO) on 2/24/10 at 2:02pm. The duration of the call was approximately seven minutes.
- A call was placed from Commissioner McMullen's cell phone number to phone number 508-830-9101 (PCCO) on 2/24/10 at 3:11pm. The duration of the call was 28 minutes.

- A call was placed from the Burgess cell phone to Commissioner McMullen's cell phone number on 2/24/10 at 4:31pm. The call duration was approximately one and a half minutes.

These phone records serve to corroborate the statement provided to this Office by the Plymouth County Executive Assistant who advised that she spoke telephonically with Commissioner McMullen on 2/24/10 and furnished him the price quotes from the three companies that offered quotes for the pest control contract for 2010.

The phone records also corroborate her statement to this Office that she spoke telephonically with Ted Burgess during the afternoon of 2/24/10. During her conversation with Burgess, she was informed by Burgess that he had spoken with Commissioner McMullen and learned that the Commissioners would be addressing the pest control contract that evening. Burgess also told her that he wanted to submit an amended quote for the pest control work.

The Executive Assistant additionally informed this Office that BCPM sent an amended quote to the PCCO (addressed to Commissioner McMullen) at 5:43 pm on 2/24/10. The Executive Assistant advised that the Burgess amended quote was lower than Burgess' first quote and identical with the previously submitted low quote furnished by Griggs & Browne.

It is significant to observe that the Burgess and Commissioner McMullen cell phone records reveal substantial telephone interplay between Burgess and Commissioner McMullen on 2/24/10. Specifically, the telephone records disclose four telephone contacts between the phones operated by Burgess and Commissioner McMullen on 2/24/10. The last of these calls occurred at 4:31 pm on 2/24/10. The last call closely followed a 28 minute call from Commissioner McMullen's cell phone to the PCCO. The Burgess amended quote as mentioned above was received by the PCCO at 5:43 pm 2/24/10, fifteen minutes before the Commissioners' meeting that was scheduled for 6:00 pm that evening.

Interview of Edward S. "Ted" Burgess Jr.

Edward S. "Ted" Burgess Jr., was interviewed on 8/18/2010 and advised that he is the President of the Burgess & Capeway Pest Management Company (BCPM) which is located in West Bridgewater, MA. He advised that the precise name of his company is Sanitary Chemical Service, D/B/A Burgess & Capeway Pest Management. He advised that he started the company close to 30 years ago. Burgess advised that BCPM has been doing business with Plymouth County for about 25 years. He stated that BCPM has provided pest control service to the District Attorney's office and several County Court houses during that time period. He understood that he was the only contractor hired to service these buildings during the 25 year period.

Burgess advised that sometime early in 2010, in either January or February, his office received a telephone call from a woman (name not recalled) employee of Plymouth County. The County employee called his Administrative Assistant/Office Manager, at his business office in West Bridgewater. He stated that the County employee asked his Office Manager if the BCPM prices would be the same for 2010 for the pest control contract as they were for prior years or would there be any changes. Burgess advised that his Office Manager told the County employee that the BCPM prices would not change for 2010. Burgess stated that the County employee never told his Office Manager that her inquiry involved a bidding process for the pest control contract for 2010. According to Burgess, his Office Manager was under the impression that the County was simply putting its budget together for 2010.

Burgess advised that about a week later, he spoke telephonically with his Office Manager from Naples, Florida. He advised that he resided in Naples, Florida from January 1, 2010 until April 1, 2010 when he returned to Massachusetts. She informed him about the telephone call from the County employee in which the County employee inquired as to whether BCPM would have any price changes for 2010 regarding the pest control contract.

Burgess advised that both he and his Office Manager were confused as to the purpose of the County employee's telephone call. Burgess advised that he decided to call the County employee himself. He advised that the only phone that he had in Florida was his personal cell phone. He stated that he spoke telephonically with the County employee and she informed him that the County was doing some price checking regarding the pest control contract.

Burgess stated that he told the County employee that he would be willing to provide the pest service to the County at no cost if the County was in financial difficulty. Burgess advised that he asked the County employee if the County was going out to bid on the pest control contract and she told him no.¹⁰ Burgess stated that she told him that this was her way of determining what his price might be. Burgess stated that the County employee did tell him that she was speaking to other pest control vendors about pricing.

Burgess stated that he was still confused after speaking to the County employee and thought that what the County was doing looked like a bid process. He decided to place telephone calls to County Commissioners' McMullen and Riordan in an effort to clear up his confusion. He could not recall when he made these calls for sure but stated that they were made a few days or a week after he spoke to the County employee about the matter as described above.

Burgess advised that he asked both Riordan and McMullen if the County was going out to bid on the pest control contract. He stated that neither man could provide him with an answer. He advised that after speaking to Commissioner

¹⁰ Supra, Note 3.

McMullen and Riordan, he decided that the County was actually involved in a bid process for the pest control contract. He called his office and instructed his Office Manager and his son to prepare a written price quote proposal that would be submitted to the County for the pest control contract. He understood this to be the second price quote proposal sent by his company to the County regarding the 2010 pest control contract.

Burgess explained that when his Office Manager received the first call from the County employee to inquire about pest control pricing, BCPM sent in a written price quote to the County with the same price numbers in it that BCPM had submitted to the County in prior years. He stated that he thought that his Office Manager may have informed him about sending in the first BCPM price quote when she first told him about the initial call from the County employee. Burgess understood that the first price quote proposal was sent in by BCPM to confirm that its price was the same as the prior year and was not a bid.

Burgess was shown a copy of the cover sheet to a facsimile sent from BCPM to the County dated January 26, 2010. He reviewed the sheet and explained that the telephone number at the top of the sheet was the fax number for his office, which is located in West Bridgewater. Burgess reviewed the hand written prices on the January 26th quote and stated that he believed but was not sure that the hand printing on the quote was that of one of his employees. Burgess also reviewed the typed written letter sent from BCPM to the County Commissioners dated January 28, 2010 and stated that the "Ted Burgess" signature at the end of the letter was his son's. He advised that his son is the General Manager of the business. He could not recall if he had reviewed this letter before it was sent. He stated that his son signed the letter on his behalf. (See Appendix A for a copy of the first BCPM price quote sent to the Plymouth County Commissioners by fax dated 1/26/10 and for a copy of the "Ted Burgess" letter dated 1/28/10).

Burgess advised that the second BCPM proposal that was sent to the County for the pest control contract was sent with his knowledge and direction. He thinks that his son sent in the second fax proposal to the County. (See Appendix B for a copy of the second BCPM price quote sent to the Plymouth County Commissioners by fax dated 1/29/2010 but actually sent on 2/24/2010).

Burgess advised that no County employee contacted him or any other BCPM employee with the bid prices of other vendors for the 2010 pest control contract. He stated that he thinks he spoke to Commissioner McMullen twice about the pest control matter and Commissioner Riordan once and possibly twice about the matter. He advised that neither Commissioner McMullen nor Riordan gave him any of his competitor prices. He repeated that when he spoke to Commissioner McMullen and Riordan neither had any knowledge that the contract was going out to bid.

Burgess advised that Commissioner McMullen did not give him any prices submitted by other vendors. Burgess advised that he spoke to Commissioner McMullen on his cell phone from Florida. He stated that Commissioner McMullen did not give him any inside information regarding the 2010 County pest control contract. He advised that he had no recollection of speaking with Commissioner McMullen on February 23 or 24, 2010.

Interview of Plymouth County Commissioner Timothy McMullen

Commissioner McMullen was interviewed and advised that he is currently a Plymouth County Commissioner and has held this position for the past eight years. His current term is up in November 2010. He serves with two other Commissioners, John Riordan and Anthony O'Brien.

Commissioner McMullen stated that recently the County Commissioners decided to review all County contracts in an attempt to save money. One of the contracts they reviewed was the pest control contract. The Commissioners decided to solicit quotes for a new contract in an attempt to save money. It is possible the County Administrator may have suggested that all contracts be reviewed.

Commissioner McMullen stated that approximately one week before the Commissioners were scheduled to vote on the pest control contract, he received a telephone call from Ted Burgess. Burgess told Commissioner McMullen that he had received a telephone call from a County staff member who asked Burgess if he wanted to submit a quote for the upcoming contract. Commissioner McMullen stated that Burgess had held the pest control contract for the County for about fifteen years. Burgess asked Commissioner McMullen why the pest control contract was being put out for quotes. Commissioner McMullen told Burgess that all County contracts were being reviewed in an attempt to save the County money. Commissioner McMullen told Burgess that the staff at the PCCO had solicited additional quotes from other contractors for the pest control contract.¹¹

Commissioner McMullen suggested to Burgess that he call the PCCO and ask the staff what they specifically wanted. Burgess had a few questions about the contract and Commissioner McMullen suggested that he speak with the County Clerk or the County Executive Assistant about this contract because they were handling this process.

On February 24, 2010, Commissioner McMullen stated that he telephonically spoke with the County Executive Assistant and learned that the pest control contract would be on the Commissioners' agenda for their meeting that evening. She told him that a number of contractors had been called and asked to submit

¹¹ Supra, Note 4 and Note 5.

quotes for the pest control contract. Commissioner McMullen cannot recall if she told him the names of the contractors who submitted quotes or if she told him the quote prices that had been received from these contractors prior to the meeting. He believed that there were three contractors who submitted quotes. He stated that Burgess submitted a quote along with another company by the name of Briggs (sic).

Commissioner McMullen stated that he believed that he spoke with Burgess the day before or the day of the scheduled February 24, 2010 Commissioners' meeting. Commissioner McMullen believed that Burgess called him but Commissioner McMullen could not recall the time of the phone call. It is possible the call was received in the afternoon. Commissioner McMullen could not recall if he spoke with Burgess once or twice about the matter. Commissioner McMullen is certain that he had no more than two conversations with Burgess regarding the pest control contract on that day.

Commissioner McMullen stated that the pest control contract was discussed during the Commissioners' meeting on the evening of February 24, 2010. It was during this meeting that Commissioner Riordan stated that someone had furnished Ted Burgess the quote prices that had been received from the other contractors. Riordan stated that this allowed Burgess to submit a second quote with the same quote prices as the low bidder. Commissioner McMullen stated that during the meeting Riordan asked him if he had received any political donations from Burgess. Commissioner McMullen told Riordan that he could not recall. At that point Riordan produced a document showing that a number of years ago Burgess gave \$100.00 to Commissioner McMullen's political campaign.

Commissioner McMullen stated that following the Commissioners' meeting he created a number of notes of his recollection of events. According to Commissioner McMullen, his notes disclose that Burgess was a vendor for the County for twenty years. Commissioner McMullen stated that his notes reveal that he was called by Burgess sometime after all three original quotes had been received by the County and prior to the February 24th Commissioners' meeting. Commissioner McMullen advised that the notes also reveal that Burgess called Commissioner McMullen and told Commissioner McMullen that he heard his bid was high and inquired as to what could be done.

Upon further reviewing his notes, Commissioner McMullen advised that he received one telephone call from Burgess at the end of January 2010 and a second telephone call from Burgess about the middle of February 2010. Commissioner McMullen stated that the Commissioners' meeting was on the evening of February 24, 2010, at 6:00 pm. Commissioner McMullen advised that he does not know if he spoke with Burgess the day before the February 24th meeting or the day of this meeting. Commissioner McMullen is sure he had one conversation with Burgess at least one week prior to the February 24th meeting.

Commissioner McMullen is certain that he called the County Executive Assistant about the pest control contract because he received a call from Burgess who expressed concern that he was going to lose the pest control contract. After reviewing his notes, Commissioner McMullen stated that he confirmed from the County Executive Assistant that Burgess' quote for the pest control contract was high. Commissioner McMullen stated that he does not believe she furnished him with Burgess' original quote price but just told him the Burgess quote was high.

Commissioner McMullen advised that he telephoned Burgess to inform him that his quote was high. He told Burgess to fax over a new quote to the PCCO. Commissioner McMullen stated that Burgess wanted the pest control contract because he had been servicing the County for the past twenty years.

Commissioner McMullen denied telling Burgess the quote figures that had been submitted by the other contractors who bid on the pest control contract. The only thing Commissioner McMullen told Burgess was that his quote was high. Commissioner McMullen is certain that when he told Burgess that his quote was high, Burgess asked him what can be done about it. He told Burgess to call the PCCO and to resubmit his quote and fax the new quote over to the office.

Commissioner McMullen advised that Burgess faxed his second quote to the Commissioners' office the day of the Commissioners' meeting on February 24, 2010. Commissioner McMullen stated that the BCPM fax cover sheet was addressed to him. Commissioner McMullen stated that he did not see this quote prior to the meeting. During the Commissioners' meeting, he asked the County Executive Assistant if she had received the second quote from Burgess. She told Commissioner McMullen that she had received the second quote just prior to the meeting.

During the February 24, 2010 Commissioners' meeting, it was revealed that three quotes had been received regarding the pest control contract. The County Executive Assistant furnished to the Commissioners the names of the contractors and their prices. She also told the Commissioners that Burgess had submitted a second quote which was different from BCPM's original quote price. The Commissioners discussed how the second quote was a rebid by Burgess. Commissioner McMullen told his fellow Commissioners that Burgess had held the pest control contract for the past twenty years, had served the County well, and they never had a problem with Burgess.

Commissioner McMullen stated the Commissioners did not vote on awarding the pest control contract that evening because Commissioner Riordan had a problem with Commissioner McMullen accepting a \$100.00 dollar campaign donation from Burgess two years prior. Commissioner McMullen stated that Riordan had documentation showing that this \$100.00 dollar contribution was given to Commissioner McMullen in 2008. During this meeting, Commissioner McMullen

stated that he was asked by Riordan if he had ever accepted any campaign donations from Burgess. Commissioner McMullen advised he told Riordan that he could not recall. Riordan subsequently produced documentation showing the \$100.00 dollar donation. Following the meeting, Commissioner McMullen contacted the State Ethics Commission and was told to file a disclosure of an Appearance of Conflict of Interest. He filed it on March 18, 2010.

Commissioner McMullen stated that the Commissioners decided to review the quotes and to vote on the matter during their scheduled meeting for March, 2010. During the Commissioners' meeting in March 2010, Commissioner McMullen stated that he voted to award the pest control contract to Burgess because he firmly believed that Burgess should receive it because Burgess had served the County for the past twenty years.

Commissioner McMullen denied that he and Burgess ever discussed pricing except to tell Burgess that his quote was high. Commissioner McMullen denied that he furnished Burgess or anyone associated with BCPM the quote price that Griggs & Browne had submitted. Commissioner McMullen stated that he found it of interest that the second quote from BCPM was exactly the same as the quote submitted by Griggs & Browne. Commissioner McMullen stated that he never asked the County Clerk or Executive Assistant if they furnished Burgess the quote prices that had been submitted by the other contractors.

Commissioner McMullen advised that he has known Burgess and his family for years because they both grew up in Brockton and their respective families did business with each other. Commissioner McMullen stated that he does not socialize with Ted Burgess. Commissioner McMullen does not believe that he had ever been to Burgess's Office or his home. Commissioner McMullen believes Burgess' current office is located in Bridgewater but he formerly had an office in Brockton. He has never accepted any money, dinners or gift certificates from Ted Burgess or BCPM.

Conclusions and Recommendations

Chapter 30B of the Massachusetts General Laws (Chapter 30B), the Uniform Procurement Act, establishes uniform procedures for local governments, including Plymouth County, to follow when contracting for the purchase of supplies, equipment, services and real property. The contract procedures found in Chapter 30B are based upon principles of fair and open competition. These principles are designed to save taxpayer money, promote integrity among public officials, create fair and open competition in public contracting and enhance public confidence in government.

Chapter 30B, §4(a) requires a local government entity, e.g., Plymouth County, to seek written or oral quotations from three or more vendors providing a particular service, e.g., pest control, when the cost of the service is estimated to be

\$5,000.00 or greater but less than \$25,000.00 dollars. The estimated cost of the pest control service for the seven Plymouth County buildings in 2009 was \$5,940.00.¹² It is clear that Plymouth County failed to follow Chapter 30B, in 2009 when it issued the pest control contract to BCPM without following the quote process as mandated by the statute. Moreover, this Office has been informed by the County Executive Assistant that the pest control contract has been awarded to BCPM for many years without a competitive bid process. In fact, the County Executive Assistant has informed this office that the County has been doing business with BCPM since at least 1991. Conversely, in 2010, Plymouth County properly followed Chapter 30B and attempted to execute a written quote process for the 2010 pest control contract. The County Administrative Clerk and the County Executive Assistant acted appropriately in conducting the written quote process and obtaining written quotes from three vendors. Everything was done according to Chapter 30B until the County Commissioners were scheduled to consider the pest control contract matter on February 24, 2010.

On February 24, 2010, Commissioner Timothy McMullen was informed by the County Executive Assistant that BCPM's quote for the pest control contract was not the lowest submitted quote. Moreover, the Executive Assistant furnished to Commissioner McMullen the identities and the price quotes from the three vendors that participated in the competitive process for the pest control contract. At 5:43 pm on that same day, BCPM submitted a second price quote to the PCCO for the pest control contract. BCPM's second quote was identical with the previously low quote that had been submitted by Griggs & Browne three weeks earlier.

Commissioner McMullen has admitted to speaking with Ted Burgess shortly before BCPM's submission of its second quote and informing him that BCPM's quote for the pest control contract was high. Commissioner McMullen also informed Burgess that he should contact the PCCO and submit a new quote. Although Commissioner McMullen denied providing Burgess with the actual price quotes from the other vendors, the fact that BCPM's second quote was identical with the previously low quote supplied by Griggs & Browne, is highly suspicious. BCPM's President Ted Burgess denied receiving any inside information from Commissioner McMullen at any time. Given the substantial evidence to the contrary, the Burgess denials of receiving special help from Commissioner McMullen ring hollow, strain credulity and defy reason and common sense. Moreover, the Burgess denial is directly contradicted by the McMullen admission. The timing and content of BCPM's second quote provides substantial additional evidence of direct collusion between Burgess and McMullen.

¹² This Office has been informed by a PCCO Official that BCPM quoted \$90.00 per building for four buildings and \$45.00 per building for three buildings, per month for twelve months in 2009 for a total of \$5940.00.

Collusion among competing vendors has been declared illegal under both Federal and Massachusetts law.¹³ Collusion among competing vendors is also commonly referred to as bid rigging. Bid rigging involves an illegal agreement among competing vendors regarding which one will submit the low bid in a particular matter. The Plymouth County pest control contract matter is even more egregious than bid rigging per se because it involves collusion between a vendor and a public official. In this case, an elected County Commissioner is the person who provided confidential inside information to a vendor bidding on a public contract. This inside information resulted in BCPM's second and substantially lower price quote.

The conduct of the County Commissioner in this matter is inappropriate and without justification for several reasons. First, collusion by a public official with a vendor in a public bidding process violates the fiduciary duty that a public official owes to the citizens that he was elected to represent. Public officials have a duty to always act in the best interest of the citizens that they represent when spending taxpayer generated funds. Taxpayers are entitled to receive services paid for by public funds from the responsible vendor who offers the lowest price. In this matter, the County Commissioner provided inside information to a competing vendor who used it to seek an unfair competitive advantage. To make matters worse, the vendor had previously contributed to the Commissioner's election campaign.¹⁴ It appears that the County Commissioner acted to benefit a vendor that contributed to his campaign fund rather than the citizens he was elected to represent.

Second, as mentioned above, M.G.L. c. 30B, the Uniform Procurement Act, was enacted by the Massachusetts Legislature to ensure open and fair competition in the spending of public money. The Legislature intended to create a level playing field for all responsible vendors to operate on and eliminate favoritism and back room deals in the awarding of public contracts. The admitted conduct of Commissioner McMullen in this matter directly contravenes the Legislature's intent and purpose in enacting Chapter 30B. Only one of the three interested vendors received special treatment from a County Commissioner. Only one vendor was told that his price quote was too high. Only one vendor was told to submit a second quote. The evidence also suggests that this vendor was likely given the exact price quotes of the other competing vendors by Commissioner McMullen. This conduct flies in the face of the concept of open and fair competition and turns on its head the notion of a level playing field in the awarding of public contracts.

Third, Commissioner McMullen's admitted conduct in this matter promotes public cynicism regarding the inner workings of governmental entities in the Commonwealth. Conduct of this nature vitiates public faith that their elected

¹³ See, Title 15 U.S.C. §1 and M.G.L. c. 93, §4.

¹⁴ Records of The Office of Campaign & Political Finance disclose that Edward Burgess contributed \$100.00 dollars to Timothy J. McMullen on 8/5/2008.

officials have the best interests of the taxpayers in mind in the spending of public money. In essence, what happened here, suggests political favoritism, back room deals and a lack of ethical standards. This conduct is inappropriate, unacceptable and cannot be tolerated in the future.

The facts of this matter have been brought to the attention of the Criminal Bureau of the Massachusetts Attorney General's Office. This Office has been informed that the Attorney General's Office believes that the matter should be handled by the Massachusetts State Ethics Commission.

In light of the serious disregard for principles of fairness and integrity uncovered during this investigation, the Inspector General recommends:

- The Plymouth County Commissioners should immediately bring the contents of this report to the attention of the Massachusetts State Ethics Commission.
- The Plymouth County Commissioners should immediately bring the contents of this report to the attention of the Antitrust Division of the Massachusetts Attorney General's Office.
- The Plymouth County Commissioners should immediately bring the contents of this report to the attention of the Plymouth County District Attorney's Office.
- All Plymouth County employees involved with the awarding of public contracts, including the County Commissioners, should receive appropriate training in fundamental purchasing procedures, laws, and regulations such as that which is offered by this Office's Massachusetts Certified Public Purchasing Official (MCPPO) Program. The MCPPO Program includes a no cost on-line training called, Bidding Basics; M.G.L. c. 30B on our website. Additional available guidance includes a manual on c. 30B entitled, "Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property."
- Plymouth County should conduct a review of all current contracts for the purchase of supplies and services to insure that they have been awarded properly under the requirements found in Chapter 30B.
- Plymouth County should notify the Inspector General in writing when the above recommended notifications have been made.
- Plymouth County should create a Code of Conduct/Code of Ethics for County Commissioners and County employees to follow.