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Office of the  
Inspector General  
Commonwealth of Massachusetts

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Inspector General

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Procurement Deficiencies  
at the Mahar Regional  
School

March 2007

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## **Overview**

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In 2005, the Ralph Mahar Regional School District hired a new school Superintendent. This was the district's first new superintendent in approximately 40 years and it was this individual's first experience as a school superintendent. He assumed the position as Superintendent in October 2005. The Superintendent had no training in or understanding of Massachusetts procurement practice. The school system did not have and still does not have a business manager or procurement officer. In sum, this office learned that no one at the school had an understanding of Massachusetts procurement law.

One of the first purchase recommendations made by the new Superintendent was for approximately \$70,000 of no-bid technology, equipment and services from a technology vendor with whom he had done prior business while employed in other jobs. The vendor had no experience performing the type of work sought by the Superintendent. The job took several weeks longer than anticipated and, according to the now former Technology Director, was not completed in the quality manner expected.

The Mahar Regional School entered into a no-bid contract with this unqualified vendor. The vendor completed the project. The law in the Commonwealth states that, due to the contracting irregularities, this vendor cannot be paid.

This is an account of the pitfalls that plagued a school system when its stewards and administrators did not avail themselves of basic knowledge relevant to ensuring defensible expenditures undertaken in accordance with legal requirements and in the public interest.

### **Introduction**

The Ralph C. Mahar Regional School (Mahar Regional School), located in Orange, Massachusetts, consists of one school for grades 7-12 and serves the towns of Orange, Petersham, New Salem, and Wendell. On October 1, 2005, the school superintendent retired after a forty year career at the Mahar Regional School. The retiring Superintendent was replaced by an individual who was a first-time superintendent. Much of the new Superintendent's previous educational experience was in the area of

technology, including serving as technology director for the Danvers Public Schools and the Melrose Public Schools. Prior to beginning his tenure at the Mahar Regional School he spent a month shadowing the retiring superintendent.

The former Superintendent's retirement coincided with the near completion of a Mahar Regional School construction/renovation project. This construction project was budgeted at \$33,411,000. The project received approval and funding from the Massachusetts Department of Education, School Building Assistance Program.<sup>1</sup> This project was nearly completed and winding down when the new Superintendent came on board in the fall of 2005.

Prior to assuming the Superintendent's role, the incoming Superintendent began attending meetings of the Mahar Regional School's Technology Committee. The Technology Committee was comprised of teachers and administrators. It had made recommendations to the School Building Committee for expending the technology budget to outfit the new school with computers and other technology items. The technology budget for the new school was approximately \$1,055,000.

In October 2005, the technology budget for the new school had approximately \$86,700 remaining. At that time, the Technology Director was an individual who had served for 21 years in the school system. He was planning to retire effective July 30, 2006. His retirement was timed to coincide with the completion of the technology portion of the new school building project. At this time the Mahar Regional School operated its technology using a Netware platform. Netware ran in a Novell environment. The Technology Committee had planned to use the remaining money in the technology budget to: 1) purchase another server, purchase email software and desktop management software; and 2) install a new Novell email system.

The new Superintendent knew the Technology Director was retiring. Once he took over as superintendent, he sought technology-related job responsibilities at the School for himself. Shortly after taking the helm, the new Superintendent succeeded in negotiating

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<sup>1</sup> On July 26, 2004, Governor Romney signed into law Chapter 208 of the Acts of 2004, which established a new Massachusetts School Building Authority (MSBA). The MSBA has assumed responsibility for the School Building Assistance program.

a change in his job description and salary with the school department. His job responsibilities now included certain tasks formerly held by the retiring Technology Director, including acting as webmaster and developing a technology plan for the purpose of filing for the federal government's E-rate program.<sup>2</sup> His title changed to Superintendent/Director of Technology. To reflect the increased responsibilities, his salary was raised by a total of \$8,000 to \$107,000.

### **Background**

#### **The Mahar Regional School Authorized a No-Bid Project Totaling \$65,500, which was Later Increased to \$71,300**

Around the same time that the incoming Superintendent began attending the meetings of the Technology Committee, he was contacted by a sales representative from Corporate Computer Services, Inc. (CCSI) located in Burlington, Massachusetts. CCSI was authorized under a statewide contract to provide limited technology related services to public schools. The sales representative and the new Superintendent had done business together in the past during the new Superintendent's tenure as technology director in two other Commonwealth municipalities. According to the CCSI sales representative, he had noted that the Superintendent was now in this new position and placed a "cold call" to him.

After learning from the Superintendent that the school was operating in a Novell environment, the CCSI sales representative recommended to the Superintendent that the school migrate away from Netware and the Novell environment to a Microsoft Windows environment. CCSI followed-up on October 12, 2005 by sending the Superintendent an email that included CCSI's rationale as to why the Mahar Regional School should migrate from Novell to Windows. The email also included Microsoft sales literature espousing the benefits of migrating from a Netware to a Microsoft Windows Server. The CCSI sales representative also provided an informal cost estimate, stating

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<sup>2</sup> E-rate is a federal program that provides discounts to assist most United States schools and libraries to obtain affordable telecommunications services, Internet access, and internal connections (such as wiring).

that he would expect such a migration to cost “in the range of \$35,000 – 45,000 for the entire project.”

However, on October 20, 2005, presumably after a more careful analysis of costs and services, CCSI provided a written sales quote to the Superintendent for the migration project which totaled \$65,500. The CCSI sales quote indicated that CCSI would provide a server, Windows 2003 licenses for the entire school, CCSI professional services for 60 – 80 hours, Quest Migrator licenses, professional services for 5 days, Windows 2003 training for 40 hours and 3-years maintenance of the Windows network with a provision for 2 hours emergency response time. The provision of all of the above services and equipment was far beyond what CCSI was authorized under the statewide contract to provide to schools. As such, the only way Mahar Regional School could have proceeded to obtain a valid contract that included all the equipment and services listed in the price quote was by conducting an advertised, competitive solicitation process pursuant to M.G.L. c. 30B.

After receiving CCSI's quote, however, the Superintendent recommended to the Technology Committee that it consider using the remaining new school technology budget money to fund the Novell to Windows migration project as proposed by CCSI. He suggested to the Technology Committee members that because there were more people in the marketplace that administer Microsoft Windows server networks (than a Netware/Novell network) the cost in salary to pay an administrator would be more reasonable. The Technology Committee later voted to go forward with the migration project using CCSI.

Besides not realizing a competitive solicitation process to hire a vendor to provide such technology equipment and services was required, the Superintendent also never requested information about CCSI's past experience with this type of migration project. In fact, this office learned that CCSI had never before performed a Novell to Windows migration project. The Mahar Regional School did not advertise or seek any additional quotes or bids for this project. Instead, it illegally authorized a vendor to conduct a project costing tens of thousands of dollars for which the vendor had no prior experience.

After the project was completed and upon questioning by this office, the Superintendent told this office that he knew from past experience that CCSI was on the statewide contract. He stated that he remembered that CCSI had been on a contract called Educational Technology Integration Services (ETIS) which had been administered by the Department of Education. However, that contract had long been expired.

No steward of public money at the Mahar Regional School knew the Commonwealth's procurement rules and procedures. Due to this dearth of procurement expertise, the project went forward in violation of municipal procurement laws.

In fact, CCSI was a statewide contract vendor for a very limited set of services. The statewide contract under which CCSI was authorized to perform was called ITC16, Category 1 – Project Management / Integration Services. It is a contract administered by the Department of Administration and Finance's Operational Services Division. ITC16, Category 1 authorized CCSI to provide the following services:

- Assist the school to determine project requirements;
- Manage and take responsibility of the outcome of information technology projects;
- Acquire the necessary hardware, software and services from statewide contracts;
- Secure multiple quotes if more than one statewide contractor can supply any or all items needed; and
- Provide for a single source invoice for all work performed or equipment or services obtained.

CCSI failed to do the above. The terms of ITC16, Category 1 authorize CCSI to provide technology consultant services to public schools to assist them to determine computer-related project requirements. The terms of the statewide contract also authorize CCSI to provide coordination services for a school technology project. Coordination services would allow CCSI to manage any purchases and resultant network integration but not actually provide the equipment and services itself unless CCSI held a statewide contract to provide such commodities and services. CCSI did not hold any other statewide contract so it was therefore not authorized to provide commodities and services pursuant to ITC 16, Category 1.

CCSI told this office that it did not contract with the Mahar Regional School under the auspices of the statewide contract. The CCSI project undertaken by the Mahar Regional School involved not only management consulting services, but also included the provision of hardware, software, installation, training and maintenance services.

### **The Novell to Windows Migration Project Begins**

In the fall of 2005, CCSI principals visited the Mahar Regional School, met with certain Technology Committee members and conducted a site survey of the existing Novell system. The now retired Technology Director recalls that he was disappointed in CCSI's site survey, saying that it was cursory. He and the Assistant Technology Director brought their concerns to the Superintendent. The Superintendent reportedly stated that, upon assurances by CCSI, the migration job was a simple operation that would take two weeks total to complete.

At a Technology Committee meeting on November 2, 2005, the members voted unanimously in favor of the Superintendent's project proposal. On January 12, 2006, the School Building Committee approved the use of the remaining funds in the technology budget for the server migration project.<sup>3</sup>

According to CCSI, it received a purchase order signed by the Superintendent and dated January 23, 2006. The receipt of the purchase order signaled to CCSI that it was authorized to go forward and carry out the project as described in CCSI's original October price quote.

At the Superintendent's invitation, two CCSI principals attended a meeting of the full Technology Committee. CCSI followed-up with a letter to the Superintendent on February 2, 2006 thanking him for providing the opportunity to make a presentation to the Technology Committee. The letter also outlined in greater detail the scope of services and hardware that CCSI would provide for the project. The February 2, 2006 letter was the first time the school was seeing a written scope of the supplies and services CCSI would render for the \$65,500 price quoted back in October, 2005.

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<sup>3</sup> The server migration project was one of a small number of projects that had its genesis outside of the School Building Committee.

Approximately \$5,800 was later added to this total for a server that CCSI determined was necessary. This brought the total amount requested by CCSI to \$71,300. Such a backwards approach to spending taxpayer money is antithetical to sound procurement in the public interest.

The project was scheduled to begin during school vacation week in February, 2006. The School Building Committee had voted to approve the Technology Committee's plan to use the remaining money from the budgeted line item. Due to the fact that the School Building Committee was closing out the building project, the Technology Committee had to spend the money by the end of February 2006.

### **February 2006 – CCSI's Work Begins**

CCSI hired three temporary workers to perform the integration and installation services at the Mahar Regional School for the migration project. Not only did CCSI have no previous experience conducting this type of project but, it also had no previous experience with the temporary workers it hired for this project. Moreover, the temporary workers had not attended the only site survey to determine how to integrate the new system and the members of the Technology Committee had not interviewed the individual workers, who were scheduled to be on-site, to assess their qualifications.

This project started in late February 2006. Between February 24th and February 27th, 2006, the School received at least \$6,000 in hardware and other equipment that CCSI purchased on behalf of the Mahar Regional School. The project ultimately took approximately eight weeks to complete.

The now retired Technology Director told this Office that problems arose for CCSI at every turn. He said that CCSI had not anticipated the project's complexity. He stated that in his opinion, CCSI was solving problems inappropriately with quick fixes. In this case, the two CCSI principals who conducted the site survey were not even on site to lead the project. According to the now retired Technology Director, CCSI ultimately completed all tasks requested.

In a properly conducted M.G.L. c.30B procurement for computer hardware, software, integration, training and maintenance services, a school district would design the specifications after careful thought and perhaps professional consultation and then

advertise and receive bids for the project. An evaluation team would review bids received and ensure that the project was within the bidder's realm of expertise, that the vendor's references thoroughly checked out and that the vendor representatives who were spearheading the project were fully qualified and expert at the task. In this case, the important due diligence steps were not taken by school officials.

**CCSI Invoiced for the Entire Cost of the Job Weeks Before Services Would Be Completed**

Even though CCSI had just started work at the Mahar Regional School during the week of February 20, 2006, on February 23, 2006, CCSI submitted two invoices for the total cost of payment – Invoice #3391 for \$65,500 and invoice #3392 for \$5,800, totaling \$71,300.

The Assistant Treasurer of the School Building Committee added the invoices to the warrant, and the School Building Committee approved them for payment. On Tuesday, February 28th, the Assistant Treasurer presented certain checks to the Superintendent for his signature, including a check made out to CCSI totaling \$71,300. According to the Assistant Treasurer, she told the Superintendent that she felt it would be best to hold the check for CCSI rather than forward the payment to CCSI at that time because services on the migration project had only been started a week earlier and were not completed. The Assistant Treasurer reasoned that payment should not be made until services are fully rendered.

She asked the Superintendent if they could break out the invoice into individual line-items and pay only for those items and services that CCSI had provided. According to the Assistant Treasurer the Superintendent refused and instead insisted that CCSI be paid in full. The Superintendent expressed his confidence in CCSI, and suggested that he hand deliver the check in full to CCSI. The Superintendent told her that he would take responsibility for the check.

The Assistant Treasurer contacted the School Building Committee Treasurer and expressed her concern. The Treasurer requested that the Assistant Treasurer fax the invoices to her.

When the Treasurer was presented with the two invoices for \$65,500 and \$5,800, the Treasurer could not recall having seen a contract for services with CCSI.<sup>4</sup> She questioned the expenditure noticing in addition that invoice #3391 called for up-front payment for a three-year maintenance agreement. The Treasurer informed the Superintendent that it was impermissible to pay in full for maintenance services that would not be provided for years hence.

The Treasurer was acting consistent with municipal finance law by recognizing this issue. Approval to pay vendors is generally given only after an examination to determine that the charges are correct and that the goods and materials were delivered and that the services were actually rendered. It was not merely the payment of the maintenance agreement that would have violated principles of municipal finance law, but since the project was not yet completed, payment in full to the vendor would also have been a deviation from sound financial practices.

At this time, CCSI removed the item of maintenance from the invoice, adjusted the cost down by \$14,000 and issued a new invoice reflecting the reduction. As such, Invoice #3406 dated March 1, 2006, showed a total cost of \$51,500. The work was not yet halfway complete.

Meanwhile, the Treasurer began to contact people in search of a contract between the Mahar Regional School and CCSI. She told this office that the Massachusetts School Building Authority (MSBA) required that a contract be in place before the School could receive state reimbursement for the items related to the new school. The MSBA accounting would ensure that payments made to a vendor do not exceed the amount obligated. However, at no time during the Mahar Regional School's engagement with CCSI did a valid contract exist.

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<sup>4</sup> The School Building Committee Treasurer also was retiring upon completion of the school building project including the audit process. The Treasurer of the School Building Committee is the accounting officer for the building project. As a practical matter, the Treasurer's retirement was planned for December 31, 2006.

### **March – April 2006 – Treasurer Tries To Get Help From The Commonwealth To Figure Out How to Proceed**

On March 1, 2006, the Chief Accounting Officer for the Mahar Regional School District emailed the Treasurer and asked: “By the way, did we go out to bid for the \$70,000, like Chapter 30B says we had to?” In another email to the Treasurer on the same day, the Chief Accounting Officer wrote: “I just found out that this company is on the state's IT [information technology] list. There is some confusion as to whether this needed to be sent out to bid if they are on said list. This needs to be clarified.”

Meanwhile, on March 6, 2006, the School Building Committee Treasurer contacted the Massachusetts Operational Services Division (OSD) and spoke with the procurement team leader (PTL) for a contract entitled: ITC 16, Category 1 – Project Management / Integration Services. The Treasurer explained that she had received invoices for payment in the amount of \$71,300 and there was no accompanying contract. She asked the PTL whether CCSI was on the statewide contract and requested the PTL's guidance on how to proceed.

According to the Treasurer, the PTL told her that CCSI is only on the statewide contract for IT consulting services and that CCSI was not authorized to provide equipment or certain other services. The Treasurer recalls the PTL telling her that to use CCSI for equipment, and services such as, training, software and maintenance, the Mahar Regional School would be required to secure three bids prior to the award. (Of course, at this juncture, the migration project was well underway at the Mahar Regional School so even if such a requirement in the law existed, it could not have been followed.) The Treasurer told this office that the PTL recommended to her that the School secure two backup bids for its records so that the funding reimbursement from the Massachusetts School Building Authority was not jeopardized. According to the Treasurer, the PTL advised her that while the two backup bids were not technically required, she should still get them to demonstrate that the price the school would be paying was competitive.

In a letter to the Superintendent dated March 7, 2006 the Treasurer wrote that if the CCSI bid does not turn out to be the low bid upon receipt of the three bids we will have to include an explanation in the file as to why we did not take the low bid.

## **School Administrators and the School Building Committee Treasurer Did Not Adequately Assess the Procurement Predicament**

Soon, the Treasurer was instructing the Superintendent to produce additional bids to compare against the cost of CCSI's supplies and services. In the email dated March 7, 2006, the Treasurer wrote the following to the Superintendent:

As stated in my letter there is a method to remedy the improper procurement of this vendor and I feel that in the long run this incident will not jeopardize our reimbursement status with the State.

Instead of understanding that the project with CCSI was illegal, the Treasurer continued to pursue a way to save the procurement. The Treasurer told the Superintendent that she needed a contract and two backup bids.

The Superintendent set out to fulfill the Treasurer's request by obtaining bids from VisionSoft and AIM INC. He told this office that he had obtained the VisionSoft bid on his own for "a comparative analysis only" and that he contacted CCSI to supply a name of another vendor to contact for another comparative bid. The CCSI sales representative said that he gave the Superintendent AIM INC's telephone number and expected that the Superintendent would call.

The quote information gathered is outlined on the chart below. It is apparent that VisionSoft had the lowest total bid. The Superintendent now had evidence that in a comparative analysis, CCSI was not the low bidder. However, the purpose of obtaining the bids was not to insure that taxpayer's were getting the best value for their money, at this stage of the project, the only purpose the quotes served was to satisfy OSD's suggestion that the Mahar Regional School have quotes on file to demonstrate to the Massachusetts School Building Authority that it had complied with procurement law requirements in order to ensure funding reimbursement. The file contained no explanation of why the Mahar Regional School did not choose the low bidder.

## Bids for Migration Project Obtained for Comparative Purposes

	VisionSoft	CCSI	AIM INC
Server Migration	\$59,900	\$65,500	\$67,400
Servers	\$6,700	\$5,800	\$7,100
Total	<b>\$66,600</b>	\$71,300	\$74,500

OIG chart

### March, April and May 2006 – Contracts With CCSI are Created, Discarded and Recreated

CCSI had been performing integration services on-site for nearly two weeks, but on March 3, 2006, an executed contract with CCSI was delivered by the Superintendent to the Treasurer. However, because the contract language did not reflect the full scope of equipment and services or include a dollar amount, the Treasurer rejected it. This document was later replaced with the second attempt at a contract.

On April 10, 2006, CCSI entered into a second contract with Mahar. The contract was only for on-site maintenance of the network for three years. The Treasurer, however, said that she needed a contract with all of the items on the invoices accounted for (see chart below), and felt that neither the first nor the second contract were satisfactory.

### Documentation of Goods and Services Invoiced by CCSI

	Date	Invoice	Category	Description	Total (\$)
1.	3/1/06	3406	Server	CCSI Server – Back up Domain Controller, Web Server and File Server	4,500
2.	3/1/06	3406	Licenses	Windows Server 2003 Licenses with CALS for entire school	8,500
3.	3/1/06	3406	Services	CCSI professional services for 60-80 hours	9,500
4.	3/1/06	3406	Migration	Upgrade, Migrate and Install Windows 2003 from Novell	1,800

5.	3/1/06	3406	Training	Windows 2003 training for 40 hours	4,000
6.	3/1/06	3406	Maintenance	3 years maintenance of Windows 2003 network with 2 hours emergency response for 3 years	7,000
7.	3/1/06	3406	Maintenance	Year 2	7,000
8.	3/1/06	3406	Maintenance	Year 3	7,000
9.	3/25/06	3392	Winserver	Windows 2003 Server Dual Processor	3,400
10.	3/25/06	3392	Winserver	Windows Server Xeon	2,400
<b>Total.....</b>					<b>\$71,300</b>

OIG chart - based on a chart prepared by the School Building Committee Treasurer dated April 17, 2006.

On April 19, 2006, CCSI and the Mahar Regional School entered into a third contract. This contract was on the letterhead of the Mahar Regional School. However, on April 20, 2006, the Superintendent provided the Treasurer with a copy of OSD's Update Statement 05-03 to ITC 16, Category 1, which said that the purpose of the contract was to offer "one stop shopping' for public schools and public libraries by allowing category 1 contractors to supply complete IT solutions using hardware, software and services purchased from IT statewide contracts."

With that information in-hand the Treasurer again contacted the OSD Procurement Team Leader and was directed to a later OSD Update Statement, 06-08, which informs readers that pursuant to the ITC 16, Category 1 - Project Management / Integration Services contract, the vendor can secure all goods and services from other State approved vendors and supply them directly to the School district. The Treasurer thought that this information saved the School's engagement with CCSI. On May 1, 2006, the Building Committee Chair wrote the following to CCSI: "We understand that Statewide Contract #ITC-16, Category 1, OSD update 06-08 allows for CCSI to secure all goods and services from other State approved vendors and supply them directly to the School District." The correspondence went on to request that CCSI complete a Commonwealth of Massachusetts purchase order for the goods and services provided between February and April 2006.

When the completed purchase order came back to the Mahar Regional School, the Treasurer was perplexed because CCSI had neither filled out the form properly nor included a number for a statewide contract.

Meanwhile, the Treasurer had called the Inspector General's office declaring that she finally had a copy of the contract that governed the procurement conducted by the Mahar Regional School and that she thought that everything was okay. This office informed her that CCSI had not purchased equipment and services from other statewide vendors as that contract requires, nor was CCSI authorized by OSD to provide equipment and services itself. This office told her that the Mahar Regional School should contact its legal counsel for a determination whether it had entered into an illegal contract with CCSI upon which no payment could be made. The Office directed the School to make no payment on the contract until the conclusion of this office's review.

### **June 2006 – Building Committee Chair Resigns**

In June 2006, the Chair of the School Building Committee resigned alleging that the Superintendent misled the building committee when he purchased computers and related equipment from CCSI. The Chair stated that the company was not on the state's list of approved vendors and 84 percent reimbursement from the state for the construction project might be in jeopardy.

### **Procurement Law Overview**

Chapter 30B of the Massachusetts General Laws, the Uniform Procurement Act, establishes uniform procedures for use by local governments when contracting for supplies, equipment, services and real property. Approximately 1,500 local jurisdictions in Massachusetts (cities, towns, counties, districts, regional school districts, and local authorities) follow the procedures to award contracts worth billions of dollars each year. An exemption in M.G.L. c.30B allows local jurisdictions to forgo following M.G.L. c.30B procedures when they purchase from a vendor pursuant to a contract with the Commonwealth.

Contracts, such as the one with CCSI, estimated to cost over \$25,000 must be entered into using an advertised, competitive process. The policy objective behind the

requirement is in the public-interest. The Legislature determined that, when contemplating the expenditure of large sums of taxpayer money, the governmental body must ensure that it is obtaining the best value through an open, fair process. The law requires that governmental bodies establish evaluation criteria to help ensure that they are obtaining the quality of supplies or services needed from a qualified vendor capable of performing the contract. And the law requires that a governmental body award the contract to a responsive and responsible vendor that meets stipulated quality requirements at the best price. For most procurements, the best price is the lowest price from a responsible, and responsive, offeror.

As mentioned above, M.G.L. c.30B also contains a list of specific exemptions, including one specific to agreements between a governmental body and the Commonwealth. The governmental body is permitted to contract with eligible vendors that have valid contracts with the Commonwealth for certain supplies or services.

CCSI has a valid contract with the Commonwealth - but not for the breadth of items and services provided to the Mahar Regional School. The contract, ITC16, Category 1, authorizes CCSI to provide Project Management / Integration Services. As such, CCSI could have legally provided the Mahar Regional School with information technology project management, and could have coordinated the purchase of hardware, software and any installation and integration services from other statewide vendors. But CCSI did not “coordinate” purchases of equipment. CCSI provided the equipment, hired temporary workers and installed the equipment. Though inexperienced at the task, CCSI then conducted the integration of the equipment with the School’s other systems. The project went weeks beyond schedule. This is where CCSI failed the Mahar Regional School.

### **Contracting with the Operational Services Division for Statewide Contracts**

The Operational Services Division is responsible for procuring and overseeing statewide contracts. The office interviewed certain OSD staff members, including the Procurement Team Leader for the ITC16, Category 1 Project Management / Integration contract regarding the terms and conditions of statewide contracts. OSD staff informed this office that it is OSD’s opinion that applicants in a Request for Responses process

are responsible for reading and understanding the Request for Responses and ultimately the scope of services and contracting procedures of any resulting contract. Once a vendor is accepted as part of a statewide contract, OSD periodically issues Update Statements to inform vendors and users of changes to OSD's contracting practices and to specific contracts.

OSD's instructions for using the ITC 16, Category 1 contract strongly encourages parties to use OSD's form of contract when procuring goods and services from the statewide contract. The form of contract must specifically state that the Statewide Contract number is ITC16, Category 1. No such documentation existed for the CCSI engagement with the Mahar Regional School.

### **Conclusion and Recommendations**

The outright favoritism displayed by the Superintendent towards CCSI exhibited by the facts is alarming. The display of ignorance about the operation of the Commonwealth's bidding laws by stewards of public money and administrators at the Mahar Regional School is unacceptable.

In the case, *Phipps Products Corporation v. MBTA*, 387 Mass. 667, 691-92 (1982) the court outlined general principles of procurement law. Specifically, the court stated that "[t]he general rule in the Commonwealth is that failure to adhere to statutory bidding requirements makes void a contract entered into without such compliance. Statutory bidding procedures are designed to prevent favoritism, to secure honest methods of letting contracts in the public interest, to obtain the most favorable price, and to treat all persons equally. To effectuate these purposes contracts made in violation of the bidding requirements have generally been held to be unenforceable." The Mahar Regional School has not paid CCSI.

The Mahar Regional School had no Chief Procurement Officer or School Business Manager whose job descriptions traditionally include full responsibility for procurements. Additionally, the School Building Committee Treasurer was not functioning with the advice of legal counsel because the school attorney could only be engaged by the school committee or the Superintendent. The total lack of understanding on the part of public officials involved at the Mahar Regional School regarding the framework for

procurement made it particularly difficult for them to effectively use assistance from public agencies.

The new Superintendent and the school committee engaged a new attorney as the School's legal counsel who is also the attorney for the Massachusetts Superintendent's Association. The new attorney informed this office that the Superintendent's Association no longer offers procurement seminars to incoming Superintendents because its training "plate" is too full of other matters.

In November, this office traveled to the Mahar Regional School and spent three hours training several individuals from surrounding regional schools and the Superintendent and the Assistant Treasurer. Mahar Regional School personnel would benefit from comprehensive training in the areas of municipal finance, as well as more comprehensive procurement training regarding M.G.L. c.30B and procuring from the statewide contract.

The Office of the Inspector General describes applicable laws in a manual entitled, *Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property* which can be downloaded from our website at [www.mass.gov/ig](http://www.mass.gov/ig) or purchased from the State Book Store, Room 116, State House, Boston, MA 02133, 617/ 727-2834.

The Office of the Inspector General recommends that:

- The Mahar Regional School, at a minimum, should create a position(s) whereby a certain individual(s) is fully responsible and accountable for ensuring that supplies and services contracts are conducted in full compliance with the Commonwealth's procurement and municipal finance laws. To ensure segregation of duties and sound internal controls, this Office recommends an organizational structure in which an accountant does not have responsibility for procurement functions, since awarding bids and approving bills for payment should not be handled by one school employee.
- The Mahar Regional School and Regional School Committee should invest in extensive procurement, municipal finance and ethics training to assist school employees and administrators to attain knowledge and understanding of the laws and to prevent any future occurrence of a situation as outlined in this report.

- The Operational Services Division should develop a draft form of contract recommended for use by municipalities when contracting with statewide vendors.
- The Operational Services Division should require more frequent sales activity reporting by vendors so that information identifying jurisdictions with which the vendor has contracts is timely available.
- The Operational Services Division should ensure that procurement team leaders whose contracts are open to municipal participation understand the basic requirements of the Uniform Procurement Act, M.G.L. c.30B.
- The Operational Services Division should ensure that all vendors receive information and training in the operation of statewide contracts.
- The Massachusetts Superintendents Association should ensure that it offers superintendents helpful information about the operation of the Commonwealth's procurement laws.
- The Massachusetts Superintendents Association should provide contact information to superintendents for relevant training opportunities provided by the Department of Revenue, the Operational Services Division, the Office of the Inspector General and the State Ethics Commission.