



The Commonwealth of Massachusetts
Office of the Inspector General

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Mayor Scott W. Lang
City of New Bedford
133 William Street
New Bedford, MA 02740-6132

Dear Mr. Mayor:

As you know, this office has been reviewing the proposed sale of the city's Fairhaven Mills parcels to Home Depot USA Inc., at your request, to determine whether the transaction complied with the guidelines of M.G.L. c. 30B, the Uniform Procurement Act ("Procurement Act"), and whether it comported with the fair, competitive, and open process outlined therein.

On March 9, 2006, I issued a letter stating that our preliminary inquiry had revealed apparent violations of the Procurement Act, and as a result, I recommended that the city take no further action on the sale process until our inquiry was complete. This letter constitutes the final report of that inquiry.

Over the past several weeks, my office has performed an exhaustive review of thousands of documents, and has also conducted interviews with numerous current and former officials, as well as other individuals involved. Based on that inquiry, I have concluded that there were multiple violations of the bidding law.

Here is a summary of our findings:

- 1) The Request for Proposals ("RFP") to redevelop the Fairhaven Mills site, issued March 9, 2005, was a land disposition regulable by the Procurement Act. This is so because neither the state, the federal government, nor the New Bedford Redevelopment Authority had approved a plan for the alternative disposition of this property. Section 1(b)(25) of the Procurement Act states that, lacking such an approved plan, all sales of property valued at more than \$25,000 by a government entity are regulated by the Procurement Act.
- 2) The redevelopment authority and the city, which are contractually partnered, issued the RFP with direct prior knowledge that Home Depot was the only entity that would or could meet the requirements set forth in the RFP. As such, the RFP was a sham with a preordained result.
- 3) The city and redevelopment authority were negotiating the sale of the property with Home

Depot and its local representatives, Whelan Associates, LLC, before the RFP was issued. Furthermore, the city gave Home Depot access to the site, in order to conduct soil testing and other due diligence, before the RFP was even advertised. This access gave Home Depot a crucial advantage over any other potential bidders. The point person in these negotiations was George J. Leontire, the former city solicitor and Whelan Associates partner who was, throughout this process, a top campaign advisor for then-Mayor Frederick M. Kalisz Jr., in addition to being a lifelong friend. Leontire's firm will receive a \$500,000 fee from Home Depot if the development deal is completed.

4) The city and redevelopment authority issued the RFP as soon as they were informed by Leontire that Home Depot and Whelan Associates had secured enough options on the surrounding private parcels to eliminate any competition. Five months earlier, the city failed to issue an RFP on those properties when a rival development firm, also seeking to put a Home Depot store on the Fairhaven Mills site, made a formal offer on the properties. (Another offer on one of the parcels was also rebuffed by the city, approximately four months earlier.)

5) The city and redevelopment authority violated Section 16 of the Procurement Act by improperly designating the RFP an "emergency." The practical effect of this designation was that it lifted the Procurement Act's requirement that the property be advertised for at least 30 days prior to the opening of bids. In this case, accurate advertisements of the land disposition ran two weeks prior to the deadline for proposals. The official reason for this emergency designation was that damage to the city's property after a mill fire that had occurred almost one year before the RFP, on July 8, 2004, posed an imminent safety threat. Our investigation determined that the real reason for this emergency designation, which ensured that the process would be wrapped up by March 31, 2005, was that an option held by Whelan Associates to purchase the largest private parcel in the development area was set to expire April 1, 2005. Had the city not labeled the RFP an "emergency," the procurement period would have lasted until April 12, 2005. This "emergency" designation improperly shortened the period during which any prospective bidder would have had to assemble rival proposals.

6) The city and the redevelopment authority failed to publish the reasons for which they were accepting a proposal with a dollar value vastly below the true worth of the property, a violation of section 16(g) of the Procurement Act. In this case, the difference between the value, roughly \$800,000, and the proposed purchase price, \$10,000, was substantial. That Home Depot proposed numerous "offsets", such as demolition work, in order to make up the difference between the purchase price and the assessed value is irrelevant. The property was being sold without caveats, and in its "as-is" condition, and thus it would have been incumbent upon any bidder to conduct clean-up work and to demolish the structures there. I should note that Home Depot made private purchase deals worth millions of dollars with the other Fairhaven Mills property owners – even though those sites would also require clean-up and demolition work.

7) The city and the redevelopment authority failed to abide by section 16(f), which requires that the awarding authority submit the name of the buyer selected as the party to a real property transaction, as well as the amount of the transaction, to the Secretary of State for publication in the Central Register.

8) Home Depot's proposal was not responsive to the specific terms of the RFP. The Request for Proposals clearly stated that bids from entities that could not demonstrate control of "75 percent of the 12 private parcels" in the development zone would not be accepted. While Home Depot at the time of the RFP did control roughly 81 percent of the private acreage on the site, the RFP did not use land mass as the requirement, but percentage of the number of parcels. Home Depot controlled only five private parcels, or 42 percent of the 12.

9) Presently, Home Depot no longer holds the option to purchase any of the five private lots it controlled at the time the retailer submitted its proposal in 2005, leaving it zero percent of the private parcels in the development zone. Therefore, Home Depot is not in compliance with the terms of the RFP, a situation that arises solely from its own actions or inactions.

BACKGROUND

The Fairhaven Mills site, located on the banks of the Acushnet River, forms a roughly 15-acre square of private and public properties dotted with modern businesses and historic mills in varying states of decrepitude and occupancy. City officials tell this office that much of the area is classified as a "Brownfield" by the US Environmental Protection Agency because it contains a hodgepodge of industrial hazards.

The Kalisz administration, which occupied City Hall from January 1998 to January 2006, had stated on several occasions that the highest and best use for the Fairhaven Mills site was as a cohesive development in which all the private and public parcels were united into a larger entity.

The General Laws, recognizing the difficulties inherent in developing such challenging properties, outline a means for municipalities to achieve such goals – without being bound by the requirements of the Procurement Act's bidding process. Section 1(b)(25) of the Procurement Act exempts municipalities that dispose of real estate in accordance with an approved plan from the process outlined in Section 16.

The Kalisz administration did not take this route, however. Our review of documents, and interviews with current and former officials, determined that, as of June 2005 – more than two months after the RFP process ended – consultants working with the city and redevelopment authority had issued two separate reports that called for the future creation of an urban renewal plan which would include the Fairhaven Mills site. That plan has yet to be approved or finalized.

Lacking such a plan, the RFP for the redevelopment of the Fairhaven Mills site clearly fell under the regulations set forth in the Procurement Act. The authority acknowledged as much when running an advertisement in the Central Register. "This project," the advertisement states, "is being published... in accordance with M.G.L. c. 30B, §16(e)(1)."

Instead of following an approved plan and then actively seeking developers to make proposals for the properties, the Kalisz administration over the years waited for developers to approach City Hall with their own vision for the Fairhaven Mills site. In 2001, the authority even designated one firm as the developer, totally ignoring the requirements of the Procurement Act, but the project never came to fruition.

Beginning in 2002, when prospective developers approached the city – something that occurred with some regularity – they were told by then-Solicitor Matthew J. Thomas that the only proposals the mayor would entertain were those that envisioned a larger development for the Fairhaven Mills site. At least two developers interested in purchasing the city properties were told by Thomas, who also served as the Kalisz administration’s real estate development strategist, that they had to first obtain purchase options on a majority or three-quarters of the 12 private parcels on the Fairhaven Mills site before their offers would be considered.

While such a development strategy may have merit from an economic development standpoint, the city was still obligated by law to conduct a fair and open request-for-proposals process when officials were finally ready to put the properties up for sale. In this case, however, that did not happen.

A BATTLE BETWEEN DEVELOPERS

Interest in the site appears to have grown substantially after a suspicious fire tore through a mill building on one of the city-owned parcels on July 8, 2004. According to documents reviewed by this office, the arrival of a new Lowe’s home improvement store near the North Dartmouth Home Depot prodded the Atlanta-based company to begin searching for a new location to the east. Leontire, in an interview with my staff, said he began thinking about the potential for a Home Depot at Fairhaven Mills on July 10, as the site was still smoldering. Leontire said that he mulled ideas for a couple of weeks, and then ultimately pitched the idea to Home Depot’s regional real estate director, Brian J. Leahy

Home Depot began putting together a plan for the Fairhaven Mills site in August, after the community of first choice, the town of Fairhaven, did not have any suitable properties. A prototype plan created by Home Depot was transmitted to Greenberg Farrow Architecture, the retailer’s architectural firm, shortly after Aug. 20, 2004, records show.

Meanwhile, major retail developer Eastern Development Inc. had since June 2004 been working to consummate the private real estate deals necessary to develop the Fairhaven Mills site, where it hoped to lease the land to Home Depot. Eastern Development’s Brian Kelly, in an interview, said he had several telephone discussions with Home Depot’s Director of Real Estate, John Tascione, throughout the summer of 2004. But despite that, Home Depot had not committed to working with the firm because Home Depot preferred to buy property outright rather than lease.

While Kelly worked the phones, Eastern Development broker Richard E. Barnes held several meetings with then-City Solicitor Thomas, who, it so happens, had been the attorney on several development projects put together by Barnes in Fairhaven and elsewhere on the South Coast. Barnes, in interviews with this office, said he met with Thomas on several occasions over the summer of 2004 to understand how the city hoped to see the site developed, how best to navigate the city’s bureaucracy, and, most importantly, what price the city would want for its properties. According to Barnes, the two men usually met at Thomas’s private law office, where they also conducted business on other real estate deals outside of New Bedford; Barnes provided this office with some documents Barnes said he got from Thomas at that time, including a color-

coded map of the Fairhaven Mills site dated August 2004.

Kelly, in an interview, said he was contacted by Leontire and Whelan Associates founder William N. Whelan regarding the Fairhaven Mills site in the summer of 2004. Kelly said the call was initiated by Whelan, who was proposing that Eastern Development and Whelan Associates join forces to redevelop Fairhaven Mills. Kelly said that Leontire was adamant that his connections in City Hall could ensure that the project would move forward. Kelly said he did not like Leontire's demeanor or approach, and decided against any such alliance. (Leontire disputes Kelly's recollection of the timing of that conversation, saying this discussion did not take place until December 2004 or January 2005.)

By September 2004, Whelan Associates and Eastern Development were directly competing for development rights of the privately owned Fairhaven Mills parcels, records and interviews revealed. Home Depot's real estate manager in Massachusetts, Leahy, said it was his recollection that he received a "blind call" from Leontire on or about Sept. 8, 2004. Shortly thereafter, Leahy e-mailed Leontire an initial site plan for the New Bedford site. After that, documents show, Leontire's firm began working with Prime Engineering Inc. to work with Home Depot on developing project layouts and a base plan. This work took place from Sept. 19, 2004, to Oct. 16, 2004, a Prime Engineering invoice says.

Leahy said in the interview that he did not want to work with Kelly because Home Depot wanted to own the New Bedford site, and not lease it. Because Tascione was recently promoted to senior real estate official and no longer had direct oversight of the Massachusetts development projects, choosing a local development facilitator, Leahy said, was now his decision to make.

But while Leontire was still performing due diligence on the private Fairhaven Mills sites, Eastern Development Inc. was presenting formal offers to purchase not only the private properties there, but also the publicly owned parcels. The company, telling owners that it intended to bring a Home Depot to Fairhaven Mills, signed and began submitting purchase offers to the various private property owners in the area on Sept. 29, 2004. The owner of the largest and most strategically crucial parcel at Fairhaven Mills, John J. Meldon, signed the offer from Eastern Development on Oct. 8, 2004, giving the company a tremendous advantage over Whelan Associates or other potential competitors.

Barnes had another advantage as well. Thomas, it so happens, was also Barnes' attorney on several development projects around the South Coast area. Over the summer of 2004, Thomas had given Barnes explicit directions on how to become the developer of the Fairhaven Mills site. Barnes said that, over several meetings, Thomas provided him with the color-coded map of the Fairhaven Mills site, and basic advice on what the city was looking for in an offer, including a target price of \$500,000 for the properties. That was roughly the dollar value of back property tax money owed to the city when the parcels went into tax title in 1996, Thomas explained to Barnes.

Barnes also said he was told by Thomas that the city would issue a formal Request for Proposals for the property, but that the RFP could be written in such a way that only Eastern Development would qualify.

(For his part, Leontire said he always assumed that the city would simply designate a developer for the Fairhaven Mills site, and never contemplated a formal bidding process regulated by the Procurement Act. Thomas said he never had any detailed conversations about the Fairhaven Mills sites with Barnes.)

With Eastern Development moving fast, Barnes said it soon became apparent that Thomas was getting in hot water for helping him. Leontire, according to Barnes, complained both to the mayor and to Thomas himself about the solicitor's conflict of interest, apparently in order to keep the rival developer out of City Hall. Both Leontire and Thomas dispute that assertion.

In an interview with my staff, Thomas said he did not meet in person with Barnes, but rather had a brief telephone discussion with him on Oct. 13, 2004, in which he told him, simply, "Go for it, and good luck." That assertion strains credulity, however, because Barnes was able to produce several documents provided him by Thomas, including the color-coded map, as well as specific notes of their meetings.

Regardless, Thomas says he took two actions on Oct. 13, 2004: He wrote a letter recusing himself from any further dealings related to the development of the Fairhaven Mills site; and he spoke via telephone with Leontire to inform him that Barnes was seeking to secure options on all of the private parcels surrounding the public properties at Fairhaven Mills. He also said that he told Leontire that Eastern Development intended to put a Home Depot on the site.

Barnes continued to press forward despite losing the help of Thomas, meeting with redevelopment authority manager Robert J. Luongo on Nov. 5, 2004, to pitch his company's vision for the Fairhaven Mills site. At that time, he delivered a formal offer to purchase the city's Fairhaven Mills properties for \$500,000.

Documents obtained by my staff show that Leontire, who had yet to make a formal offer to any of the private property owners at Fairhaven Mills, moved quickly following the Thomas phone call, in hopes of counteracting the progress being made by Eastern Development. Within 48 hours of the Thomas call, Home Depot's attorneys had transmitted draft Purchase and Sale Agreement forms to Leontire for him to use in offering to buy the private parcels. Shortly thereafter, on Oct. 20, 2004, he transmitted offers to each of the major private owners in the area.

It was approximately at this time, mid-October, that Barnes was trying to meet with then-Mayor Kalisz to discuss his company's vision for developing the Fairhaven Mills site. Barnes dropped off a package outlining his company's experience in developing large retail centers, including Home Depots, on Oct. 20, 2004, but despite Eastern Development's track record, the mayor cancelled several planned meetings with Barnes. Leontire did not have such access problems. According to paperwork filed by the mayor's campaign committee, Kalisz had flown to Florida and spent several days at Leontire's residence in the Palm Beach Polo and Country Club – at Leontire's expense – as the two men campaigned for presidential candidate John F. Kerry in early November. Airfare and rental car costs came to \$606.87. The mayor reimbursed Leontire for those expenses shortly afterward, both men said in interviews.

Kalisz, speaking with this office, said he had no recollection of any conversations with Leontire about the Fairhaven Mills development. The two men, friends since early childhood, focused their efforts on the Kerry campaign, he said.

By the time the mayor did meet with Barnes, on Dec. 1, 2004, Leontire had secured a letter from Home Depot's Leahy stating that the company would only work with Whelan Associates to develop the Fairhaven Mills parcels.

The day before Barnes met with Mayor Kalisz, Nov. 30, 2004, Leontire had called Barnes and threatened to bring him before the state board of realtors for "fraudulently" presenting himself to property owners as working on behalf of Home Depot. He also said, according to Barnes's notes of the conversation, that he "will never get that site approved by the city." Leontire acknowledged making the telephone call, but denied ever saying anything about site approval to Barnes.

The day after his meeting with Mayor Kalisz, Barnes sent a letter to Meldon, the owner of the largest and most strategically crucial parcel, rescinding the firm's offer to purchase his property. Eastern Development was, for all intents and purposes, out of the competition at this point.

CONTACT BETWEEN CITY AND HOME DEPOT BEFORE THE RFP WAS ISSUED

Documents and interviews revealed that Leontire and attorneys working for Home Depot had direct contact with city and redevelopment authority officials in the months, weeks, and days prior to the formal release of the RFP on March 9, 2005. This contact appears to have centered exclusively on Home Depot's efforts to purchase the city-owned Fairhaven Mills parcels.

On Jan. 19, 2005, just two days after Whelan Associates had inked sale option agreements with most of the private property owners in the Fairhaven Mills site, Leontire made a call to the city solicitor's office, according to e-mail records.

At the next meeting of the New Bedford Redevelopment Authority's board of directors, Jan. 31, 2005, then-City Solicitor Thomas requested on behalf of the mayor that the authority issue an RFP on the Fairhaven Mills parcels.

Thomas, in his interview with this office, acknowledged that he received a call from Leontire stating that Whelan Associates had obtained options to purchase the majority of the private parcels on the Fairhaven Mills site. He stated that Leontire had said, "We believe we have control. We would like to buy the city's parcels."

Leontire said he recalls telling both Thomas and the mayor that he had "majority control" of the private parcels at Fairhaven Mills. Kalisz, however, could not recall such a conversation.

Thomas, in the interview, also stated that then-Mayor Kalisz had issued him the order to go forward with an RFP upon learning that Eastern Development was dropping out of the competition, and that Whelan Associates was the only developer working on bringing Home Depot to New Bedford. However, Thomas did not go before the redevelopment authority at its

next meeting, Dec. 20, 2004, to request an RFP. Rather, he waited until the Jan. 31, 2005, meeting – the first meeting after Whelan Associates had inked option-to-purchase deals with five of the private property owners at Fairhaven Mills.

In the days following Thomas's request for an RFP, redevelopment authority manager Luongo created a draft RFP. The first draft appears to have been completed Feb. 10, 2005. It contained several key elements that would change in the coming two weeks.

First, it identified two parcels, lot 167 and lot 262, as the ones being put up for sale. Second, it stated that proposals would only be accepted if the bidder had control of a "substantial" number of the 12 private parcels on the site. Third, it listed an RFP issue date of Feb. 23, 2005, and a due date of March 28, 2005, which would give prospective bidders little more than a month to put together their bid packages. What's more, the winner would be announced April 12, 2005.

In the final draft of the RFP, the number of parcels up for sale doubled, with the inclusion of lots 213 and 279. The term "substantial" was changed to "75 percent" of the 12 private parcels. The issue date was pushed forward to March 9, 2005, the due date moved up to March 22, 2005, and the winner would be announced March 31, 2005.

Luongo said that, as far as he knew, Thomas initiated the changes, and Thomas, in his interview, took responsibility for them. But there is evidence to suggest that Home Depot and Whelan Associates were involved in the RFP editing process, too. For instance, Leahy said in his interview with this office that Leontire had informed him, prior to the issuance of the RFP, that the city would make 75-percent control of the private parcels a mandatory RFP requirement. Leontire said he could not recall ever telling Leahy such information prior to the RFP being issued.

THE PARCELS

Home Depot, perhaps better than any other entity, knew exactly which lots were involved in its plan to develop Fairhaven Mills. This is because, on Feb. 15, 2005, Home Depot secured the services of Fidelity National Title Insurance Co. to run title searches on all of the parcels on the site. Other site work had also been performed in the fall of 2004, the documents show. The results of the title search were generated on Feb. 25, and apparently led to direct changes of the RFP itself. On March 2, the redevelopment authority's Robin Costa e-mailed what were supposed to be final versions of the RFP to Whelan Associates and Home Depot. Only two parcels were being offered, lots 167 and 262. The following day, however, a new final RFP was generated and e-mailed to the two companies, with the addition of lots 279 and 213. The changes were the direct result of conversations with Leontire, all of those involved told this office.

In interviews with this office, Luongo stated that he received at least one irate call from Leontire chastising the authority for failing to make all of the city-owned property at the Fairhaven Mills site available in the RFP. On March 3, Costa e-mailed Leontire what she called a "revised RFP," asking him to review it before she sent it out to Jeffrey Dehner, one of Home Depot's Atlanta-based lawyers. At that point, a legally required advertisement for the RFP had not run in the Secretary of State's Central Register, and the ad that had run the day earlier in the New Bedford Standard-Times stated that the document would be available to bidders on March 9, 2005.

Leontire acknowledged calling the redevelopment authority and insisting that they include the two new parcels in the RFP, saying they were crucial to the project. He also said he was outraged that Costa had insinuated in her e-mail to him that he could exert editorial control over the contents of the RFP, and says he e-mailed her saying so. However, neither Costa nor Leontire could produce that e-mail, and Costa had no recollection of receiving it.

It appears that Thomas received angry calls from Leontire at this time as well. A March 2, 2005, notation made by the assessor's office on the property card for lot 279 says that, by order of the Thomas' office, lot 279 was to be erased and merged into lot 262. Such an erasure would guarantee that the property would be part of the RFP.

In light of Leontire's familiarity with the Fairhaven Mills site – given his four years as solicitor – Leontire's proactive steps to rectify the omission of the two parcels and the city's quick steps to respond to his concerns, are not, on their own, violations of the Procurement Act. However, they do clearly demonstrate the degree of control that Leontire and Home Depot were exerting over the RFP process.

The addition of lot 279 to the RFP was particularly important to Home Depot's plans, interviews and documents revealed. Home Depot never planned to use lot 167 for its store. Rather, the plan was to clean up and pave the parcel, then sell it for \$3 million for the creation of a 60,000-square foot shopping center by another retailer. According to Leahy and Leontire, the entire project budget would have been blown if the 60,000-square foot shopping center were eliminated. The sale of Lot 167 was to occur one year after the opening of the Home Depot store, documents showed.

Home Depot and Leontire were also in contact with the solicitor's office regarding the potential problems an easement on the Fairhaven Mills site could pose for a future retail development. Assistant City Solicitor Jane M. Friedman was engaging in regular telephone and e-mail contact with Leontire regarding a problematic easement running across the city-owned parcels. The easement, granted to the US Environmental Protection Agency for work related to the cleanup of the Acushnet River, was located on terrain that would have made Home Depot's plans for a 102,000-square-foot store centered on the city parcels impossible.

Pressure from Leontire to resolve the issue led Thomas and Friedman to hastily schedule a meeting with the EPA on Feb. 17, records show. An internal EPA e-mail dated Feb. 15, 2005, shows that the federal officials were told that the city would bring "a proposed site plan for the development." Leontire, in the interview with my staff, confirmed that he had sent the latest Home Depot site plan to Friedman for the meeting. Given that no RFP had been issued yet, it seems inappropriate at a minimum that city officials were bringing a site plan for the Home Depot store to the meeting, when there was, at least in principle, a chance that a totally different development plan would emerge as the winning proposal.

Home Depot and Whelan Associates engaged in a series of e-mails, some with Solicitor Thomas, over Feb. 16 and 17 to deal with the EPA easement. In the correspondence, Dehner, a Home Depot attorney, expressed concern that the easement was not properly dealt with in draft

contracts the parties had drawn up to date.

One of those contracts was a draft access agreement between Home Depot and the New Bedford Redevelopment Authority. E-mailed to Thomas by Leontire on Feb. 15, the draft agreement – authored by Dehner – was to allow Home Depot immediate access to the city-owned parcels in order to perform environmental tests on the property. This was a radical departure from standard operating procedure for the redevelopment authority, which typically executed access agreements only after accepting bids and designating a developer, a review of the authority’s other RFPs revealed. What is troubling in this instance is that the city no longer retains a copy of the agreement emailed to Thomas on Feb. 15 and executed on Feb. 17. Rather, the redevelopment authority and Home Depot executed a second access agreement on May 18, 2005, after Home Depot was designated developer, that gives the appearance of being the first such agreement between the city and Home Depot.

Troubling as that situation is, what is more troubling still is the fact that the draft access agreement states that Leontire and city officials were already negotiating the purchase of the city properties in February 2005, a month before the RFP was issued. Referring to the subsidiary created by Whelan Associates, the draft agreement states that “Land Development, LLC (“LD”) is in the process of negotiating a purchase agreement with [the New Bedford Redevelopment Authority] for ownership of the Property.” Leontire, in an interview with my staff, denied that there were any negotiations between him and the city.

On Feb. 16, Dehner e-mailed Thomas directly, urging the city to press forward expeditiously with the signing of the agreement. Dehner made it clear at that time that Home Depot needed to wrap up the process quite quickly. “Home Depot is under a fairly tight timeframe to conduct its due diligence on the New Bedford properties.” Thomas replied that it would be signed the next day.

THE DEVELOPER’S EMERGENCY

The main reason Home Depot was in a hurry, it turns out, is that the company only had a few weeks to seal the deal with the city before some of its purchase options at the Fairhaven Mills site expired. The key option agreement with Meldon was set to expire on April 1, 2005. And because of an error inserted into the option agreement, it was large-property owner Meldon, and not the buyer, Home Depot, who could walk away after the Inspection Period expired on April 1, 2005, with \$200,000 in non-refundable deposit money.

For this reason, Leontire sent a “project summary” to Home Depot’s lawyers on Feb. 14, 2005, that listed a series of actions that he had to take place by April 1, 2005. One action was to “obtain all relevant environmental reports from city and owners ASAP.” Another, and perhaps most telling, was to “Contact Redevelopment Authority to issue RFP for city land and complete process before April 1, 2005.”

After receiving Leontire’s e-mail, Dehner explained to his colleagues in an e-mail dated Feb. 14, 2005, that, “As for the April 1 deadline, it is being driven by one of the contracts which requires a nonrefundable \$200k deposit by April 1.”

On Feb. 17, the very day that the city met with EPA officials to discuss extinguishing the easement across the development zone, Home Depot and the redevelopment authority executed an access agreement that allowed the retailer to conduct extensive borings, surveys, and environmental tests on the Fairhaven Mills.

As it turned out, the city of New Bedford was the only seller on the Fairhaven Mills site that allowed Home Depot to conduct due diligence *before* making an offer to purchase property there. The other sellers, presumably, understood that their negotiating position could be seriously compromised if they allowed the buyer to inspect the site before making an offer and leaving a deposit.

THE 75 PERCENT RULE

After then-Solicitor Thomas' Jan. 31 request for an RFP to sell the Fairhaven Mills parcels, redevelopment authority manager Luongo set about drafting an RFP that would satisfy the mayor's vision of developing the entire site. In his first draft, dated Feb. 10, 2005, Luongo said the only proposals that would be entertained would have to come from developers with control of a "substantial number" of the 12 private parcels. The RFP, in that draft, had two sets of conflicting dates related to the process. One set of dates, on the front cover, stated that the RFP was to be issued Feb. 16, and proposals would be due March 21, 2005. That would give developers more than a month to assemble purchase options at the Fairhaven Mills site and submit proposals. The other set of dates gave an issue day of Feb. 23 and a due date of March 28. Regardless, the designation of a winner was to occur April 12, 2005 – well after Home Depot's option on a key parcel was to expire.

But Luongo, in an interview, said that Thomas had two concerns with that draft of the RFP. First, Thomas wanted to change "substantial" to "75 percent." Doing so, Thomas argued in an interview, would make sure that whoever submitted a proposal had a bona fide chance to develop the entire Fairhaven Mills site. However, it also ensured that only one developer could mathematically qualify to submit a bid.

The 75-percent stipulation was not, in and of itself, in violation of the state's procurement law. After all, multiple parties could hold non-exclusive options to purchase the private parcels, which would enable a bona fide competition to take place.

However, in this instance, the city solicitor and others involved knew in advance that Leontire had secured what he believed was 75 percent of the private parcels on the site. As a result, this RFP was a request for a solitary proposal, which makes a mockery of the Procurement Act.

This letter could end with that statement. There is nothing more needed to determine, beyond the shadow of a doubt, that this procurement was deeply flawed, and intentionally slanted toward a former city official who was a boyhood friend of the then-mayor, and who remained a key fundraiser and political backer of the mayor.

Still, it is in the best interests of fairness and openness that this office will proceed to lay out

other serious problems inherent in the procurement.

THE EMERGENCY DESIGNATION

In addition to the “75 percent” rule, Thomas also ordered Luongo to designate the procurement an emergency. The reason, he said, was that the fire-damaged mill on one of the city’s parcels posed an imminent safety threat to the general public. Under the Procurement Act, a governmental body may waive or shorten the advertising period normally required to sell real estate if doing so would endanger the health or safety of the public or their property.

In an interview with this office this spring, as well as in published reports, Thomas said the mill’s roof had collapsed into the building during the fire, and the roof was laced with asbestos. He said the building itself was a threat to collapse, and that homeless people and children were regularly entering the mill and its surroundings.

Records maintained by the city’s police and inspectional services departments reflect no such situation, however. Between the date of the fire, July 8, 2004, and the date the RFP was issued, March 9, 2005, there was a single incident recorded by police at the fire-damaged mill building. The disturbance that police responded to – a report of a group of people stealing bricks from a pile near the building – took place on July 18, 2004. That was one day before city contractors had completed their efforts to demolish, clean-up, and secure the fire-damaged mill building, records show. (There were two incidents involving apparent prostitution activity, on May 17, 2005, and the other on Oct. 19, 2005. Both incidents took place subsequent to the RFP, and neither were inside the building itself.)

There are no police records for the other city-owned properties on the site.

Robert Thatcher, the city’s building inspector, also told this office that there have not been any complaints registered with his office since the fire about any trespassers or break-ins on the site.

What’s more, the city has yet to take any actions since the demolition and site-containment work to abate this so-called emergency situation. In fact, it appears that the important work of securing and stabilizing the fire-damaged mill had already occurred before the RFP. Documents provided by the city revealed that a partial demolition and site-containment operation was conducted in July 2004, immediately after the fire. The operation removed any parts of the building that were a threat to collapse, and secured the site from trespassers. Thatcher received a report on those activities on Jan. 31, 2005 – the very day that Thomas told the redevelopment authority to issue an RFP – detailing how this work was conducted. According to the report, much of the fallen roof sections were removed from the site and taken to a New Hampshire landfill.

But even though Thomas said he believed the situation was indeed an emergency, the city failed to demand that the winning bidder take immediate action to secure the site and demolish the burned-out mill. It’s true that an attachment to the RFP consisted of a draft access-and-land-disposition agreement that called on the winning bidder to demolish buildings and make all structures on the parcels safe within 60 days of the agreement’s execution. But this is by no means evidence that the city saw the Fairhaven Mills site as an exceptional safety threat. On the

contrary, that section of the draft agreement was boilerplate language used by the authority in many of its RFPs. For instance, two non-emergency RFPs issued by the redevelopment authority – one on Nov. 27, 2002, involving a vacant mill building, and another on May 25, 2005, for land in a residential neighborhood – included the exact same language and timeframe as the Fairhaven Mills RFP.

What's more, the city apparently saw no reason to hurry once the Fairhaven Mills RFP process had ended. The access-and-land-disposition agreement executed by Home Depot and the redevelopment authority on May 18, 2005, gave Home Depot 120 days after delivery of the property deed to demolish the fire-damaged mill and secure the city's properties. That extended the date at which the mill would be torn down from July 18, 2005, had the original access agreement been executed, until the very distant future. According the May 18, 2005, agreement, the deed was to be delivered by no later than March 18, 2007, which means the demolition was to have been accomplished by July 18, 2007. That is hardly the kind of immediate threat that the Section 8 of the Procurement Act envisions for establishing an emergency.

In June 2005, Thomas told a lawyer in my office conducting a preliminary investigation of this land sale that the city still viewed the Fairhaven Mills property as an imminent threat. However, he did not state at that time that the May 18, 2005, access-and-land-disposition agreement had already pushed off Home Depot's demolition requirement until the distant future.

Leontire, in his interview with this office, said he had made it abundantly clear to Thomas and Luongo both that Home Depot needed to be designated developer of the Fairhaven Mills site by April 1 in order to stay on the project. He said he had no doubt that Home Depot's timeline was driving the schedule of the RFP process because, without Home Depot, there would not have even been an RFP process.

Therefore, common sense dictates that Thomas was not working to preserve the health and safety of the public. Rather, he was seeking to preserve the competitive edge of a man who had been crucial to the mayor's political successes, and who in fact was deeply involved in the mayor's 2005 re-election campaign, acting as his chief political adviser.

Even if there had been a true emergency at the Fairhaven Mills site, the city and redevelopment authority abused the Procurement Act's emergency guidelines. Section 16 of the Procurement Act clearly sets firm limits on the scope of an RFP in the event of an emergency, constraining the procurement only to those "supplies or services necessary to meet the emergency." In the case of the fire-damaged mill, then, the emergency procurement should have only sought bidders to demolish or secure the site, and not to redevelop the city's properties in a years-long real estate project.

CONCLUSION

Based on the above, I find overwhelming evidence that this procurement was a sham process designed to reward a faithful political ally of the previous administration, and not to serve the best interests of the city of New Bedford.

The Commonwealth of Massachusetts takes its bidding laws extremely seriously. This office was established in 1981 specifically because the public's faith in the bidding process was shaken by a massive construction-and-procurement scandal involving state and county buildings.

In closing, I will also note two serious concerns. Several key documents related to this land sale that should be in the possession of the city or the redevelopment authority have apparently been lost or destroyed. One of those documents was a formal, written offer to purchase the city's Fairhaven Mills parcels for \$500,000 from Eastern Development. Another is an executed access agreement between the redevelopment authority and Home Depot. That such documents went missing raises serious questions. I can only hope that, under the present administration, such lapses in document retention are being rectified.

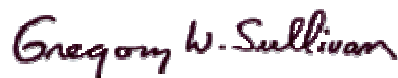
The other concern is the clear effort on the part of Thomas, the former city solicitor, to stop my office from intervening in this land disposition at a much earlier date, an effort that involved mistruths, omissions, and deception. In June 2005, when a complaint came into this office about the Home Depot land deal, a lawyer on my staff contacted Thomas. He stated at that time that the city considered the mill site an imminent threat to public safety, and that there was already a "recorded instrument" executed between the redevelopment authority and Home Depot.

In fact, the city had already pushed off any demolition work at the Fairhaven Mills site for years, deeply undercutting his assertion that the city was concerned about public safety threats. What's more, at the time that Thomas discussed this matter my legal staff, there was no recorded instrument. It was not until March 2006, nine months later, that the land-disposition-and-access agreement was recorded. Thomas said this after my legal staff suggested that the RFP process be undone and conducted anew in a fashion consistent with the Procurement Act.

Thomas' apparent unwillingness to provide my office with the true circumstances surrounding this land deal is symbolic of the deep problems involved in this procurement.

Thank you for your attention to this matter, and thank you for referring it to our office.

Sincerely,



Gregory W. Sullivan
Inspector General

CC: New Bedford Redevelopment Authority, Whelan Associates LLC; Home Depot USA Inc.