



January 22, 2025

Jeffrey S. Shapiro, Esq., CIG
Office of the Inspector General Commonwealth of Massachusetts
John W. McCormack State Office Building
One Ashburton Place, Room 1311
Boston, MA 02108

Re: Town of Orange. Disposal of Surplus Inventory

Mr. Shapiro:

I was recently made aware of the attached correspondence dated October 18, 2024, from your office. The letter was addressed to the Town of Orange, and LiRo-Hill, with copy to, the MSBA. I had a very pleasant conversation with your office on 1/16/25 and I mentioned that I would be responding. I benefitted from the conversation and hope it was mutually beneficial.

The Town of Orange, the MSBA, LiRo-Hill, the general contractor, the design teams and consultants, and many other individuals, agencies and entities worked for many years to successfully achieve the new Fisher Hill educational facility. It was through the diligent efforts of each team member that this very complex project was delivered to the Town on time and under budget. We understand and appreciate the obligation of your office to review compliance with applicable public procurement statutes, and the issues raised in the letter are valid. It is clear that the project team failed to act in strict compliance with aspects of Chapter 30B with disposal of the existing school furnishings.

I would like to note that LiRo-Hill has been involved with school projects for over 20 years and disposal of existing school is a typical aspect of the projects. We have found that furniture and equipment of the age and condition of that at the existing Dexter and Fisher Hill Schools has no commercial value, and that the vote by the School Committee stating that the material is surplus and is to be disposed of, complies with the requirements under 30B. Once the School Committee determined that the material is surplus, LiRo-Hill as OPM facilitated the disposal in the most cost-effective manner. Using good business practices in accordance with 30B, the Town contracted with a private contractor to dispose of the material with an added incentive to recycle rather than dispose in a landfill. The donation of kitchen equipment was outside the purview of LiRo-Hill. However, we would find it a supposition that items would have commercial value under a public bid process just because the item was accepted as a donation. We do concur that the Town should have gone through a more public process in the donation of the kitchen equipment.

I wish to respond to the items in the letter that referred to our responsibilities on the project.

Comments:

- Page 2 of the letter states, "...the owner's project manager (OPM) entered into an agreement with a recycling company...". This is incorrect. Orange entered into the contract. Further 963 CMR 2.07(2)(I) states, "...the Owner's Project Manager shall be able to rely upon the vendors, designers and contractors for the proper performance of their obligations..."



- Page 5 of the letter states, “Per MSBA regulations, the OPM is responsible for all aspects related to the building construction project...”. I cannot find this, all-encompassing, regulation.
- The standard MSBA contract between the OPM and the city/town does not include the responsibility for the OPM to oversee and monitor the disposal of any surplus inventory. Note that Article 8.6.11 does specially require the OPM to, “oversee and monitor the procurement of furniture....”
- Your letter is correct that LiRo-Hill, as the OPM on a project that was disposing of surplus inventory, should have been more diligent in advising and helping our client comply with regulations.

As LiRo-Hill moves forward on our current public projects and begins new ones, we will redouble our efforts to properly assist our clients in all matters requiring compliance with laws. I have already scheduled an in-house “lunch and learn” addressing this topic.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Peter Martini', is written over a light blue horizontal line.

Peter Martini
Sr. Vice President

Cc: Mary Pichetti, MSBA

October 18, 2024

Via Electronic Mail

Dr. Elizabeth Teahan-Zielinski
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Matthew Fortier
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Martin Goulet
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**Re: Dexter Park and Fisher Hill Elementary Schools – Demolition and Renovation
Projects – Disposal of Surplus Inventory**

Dear Dr. Teahan-Zielinski, Chair Ellis, Mr. Fortier, and Mr. Goulet:

The Office of the Inspector General (OIG) received a complaint in June 2023 regarding the Orange Elementary Schools' (school department) disposal of surplus inventory related to the demolition of the former Dexter Park Elementary School (Dexter Park) and the accompanying renovation and expansion of the Fisher Hill Elementary School (Fisher Hill). In its ensuing investigation, the OIG found that the school department and the town of Orange (town) did not follow several requirements of the Commonwealth's Uniform Procurement Act, Chapter 30B of the Massachusetts General Laws (Chapter 30B), in disposing of surplus equipment and supplies. The OIG offers several recommendations herein for the school department and town to implement before disposing of any additional surplus items in the future.

Background

In July 2021, the town entered into a \$41.4 million contract with a general contractor to combine its two elementary schools, Fisher Hill and Dexter Park. The project, supported by funding from the Massachusetts School Building Authority (MSBA), entailed renovating and constructing a new building at Fisher Hill and demolishing Dexter Park.

Prior to the demolition of Dexter Park and the partial demolition of Fisher Hill, administration and staff toured the schools and selected the furniture, supplies, and equipment they wanted to keep for the new school. The school department did not take an inventory of the surplus

items, nor of the items retained for the new Fisher Hill. The school department did not determine the value of items left behind at either school.

At a meeting on November 15, 2021, the Orange Elementary School Committee (committee) learned of “a significant amount of old, broken, and unusable equipment/supplies at Fisher Hill.” The committee voted unanimously to declare those items “obsolete” and directed that they be “removed and appropriately disposed of.”¹ The November 15, 2021 meeting minutes do not specify the items that were the subject of the vote.

One year later, at its November 14, 2022 meeting, the committee took two votes related to Fisher Hill. The first vote declared the Fisher Hill kitchen equipment to be surplus and turned that equipment over to the town for its use. The second vote:

[D]eclare[d] the current Fisher Hill School’s furniture and other items that are not to be moved into the new Fisher Hill wing as surplus; allowing furniture and selected surplus items to be sent to Honduras for a schools [sic] use there, while other surplus items that are no longer usable or outdated to be disposed of.²

Other than the reference to the kitchen items, the November 14, 2022 minutes do not list the specific items considered to be surplus.

Later in November 2022, the owner’s project manager (OPM)³ entered into an agreement with a recycling company to remove and repurpose the furniture left behind in the school.⁴ The town paid the company \$16,140 to remove and transport:

- 200 chairs
- 137 wood cubbies
- 105 tables
- 43 student desks
- 28 metal shelves
- 16 teacher desks
- 12 miscellaneous items⁵

¹ November 15, 2021 meeting minutes of the Orange Elementary School Committee.

² November 14, 2022 meeting minutes of the Orange Elementary School Committee.

³ A public body is required to contract with an OPM for any building construction project estimated to cost more than \$1.5 million. M.G.L. c. 149, § 44A½(a). Additionally, public recipients of MSBA funding are required to contract with an OPM. 963 CMR 2.07(2)(a). In those instances, an OPM serves as the public body’s agent in all aspects of the school building construction project, including assisting with “the procurement of other vendors and contracts and agreements associated” with the project. *Id.* at 2.07(2)(f).

⁴ The recycling company is not a 501(c)(3) organization, although it partners with 501(c)(3) organizations to ship furniture to destinations in the United States and abroad.

⁵ The OIG is not aware of the ultimate disposition of this inventory, *i.e.*, whether the items were sent to Honduras or whether proceeds from a sale of the items were donated to Honduras in accordance with the committee’s vote.

Following the committee's vote to transfer the Fisher Hill kitchen equipment to the town, the town donated various pieces of the equipment to outside parties. In January 2023, the town donated an oven hood from the Fisher Hill kitchen to a for-profit restaurant in Orange. The restaurant did not pay the town or the school department for the oven hood. According to witnesses, the oven hood was successfully installed in the restaurant. A few months later, the town donated various pieces of the kitchen equipment, including an oven, to a registered 501(c)(3) charity in Orange. Neither the town nor the school department voted to donate the kitchen equipment to the charity.

In March 2023, the committee, upon a roll call vote, declared Dexter Park and Fisher Hill furniture and other items not moved to the new Fisher Hill to be surplus. The committee voted to turn the items over to the contractor for disposal. The town took possession of some kitchen equipment from Dexter Park, and the contractor disposed of the remaining items. The school department did not sell any of the items.⁶ Again, the minutes do not list the specific items that were the subject of the vote.

Town Bylaw – Surplus

The school department does not have its own written procedures for the disposal of surplus supplies; however, town bylaws state that all “personal property belonging to the Town and voted by the Town Meeting to be sold or traded will be sold only after first offering the property to other departments and will be sold only at a well-advertised public auction to the highest bidder.”⁷

Applicable Law – Chapter 30B

Section 15 of Chapter 30B of the Massachusetts General Laws establishes the procedures for the disposal of surplus supplies that are “no longer useful to the governmental body but [have] resale or salvage value,” including motor vehicles, machinery, computer equipment, furniture, and other materials and supplies.⁸

A jurisdiction seeking to dispose of surplus supplies must first determine the value of the supplies, which controls the manner of disposal. For surplus supplies with an estimated value of less than \$10,000, the jurisdiction must dispose of the supplies using written procedures established by that jurisdiction.⁹ For surplus supplies with an estimated value of \$10,000 or more, the jurisdiction must dispose of the supplies through competitive sealed bids or public auction.¹⁰

⁶ March 13, 2023 meeting minutes of the Orange Elementary School Committee.

⁷ General Bylaws of the Town of Orange, § 76-1, available at <https://ecode360.com/10442951#>.

⁸ M.G.L. c. 30B, § 15(a).

⁹ *Id.* at § 15(f).

¹⁰ *Id.* at § 15(b).

Jurisdictions may donate supplies to a registered 501(c)(3) charitable organization upon a majority vote from the governmental body.¹¹

Chapter 30B does not apply to “an agreement between agencies, boards, commissions, authorities, departments or public instrumentalities of one city or town.”¹²

Findings

1. The school department did not dispose of surplus supplies from Fisher Hill and Dexter Park in accordance with any written procedure.

The school department did not dispose of surplus supplies from Fisher Hill and Dexter Park in accordance with Section 15 of Chapter 30B. The school department did not determine the value of the items left behind; therefore, they could not determine the appropriate disposal procedure. Moreover, the committee did not formally declare that the items had no resale or salvage value, simply describing the items as “obsolete.”

If the school department were to have determined that the surplus items had value, then it should have disposed of them in accordance with its own written procedures (which the school department did not have) or the town’s bylaw concerning disposal of surplus town property.¹³ It did not do so.

2. The town violated Section 15 of Chapter 30B by transferring ownership of an oven hood to a for-profit business.

As noted above, Chapter 30B does not apply to an agreement between departments or instrumentalities of the same town. Therefore, the transfer of the kitchen equipment from the school department to the town was lawful. However, jurisdictions are prohibited from donating items that have a resale or salvage value to for-profit entities.¹⁴

In this instance, neither the school department nor the town took any steps to determine the value of the oven hood. The oven hood was ultimately installed in the restaurant, indicating that it did, in fact, have a value. By transferring ownership of the oven hood to a for-profit restaurant, the town violated Section 15 of Chapter 30B, as well as its own bylaw governing the disposal of surplus supplies.

¹¹ *Id.* at § 15(g).

¹² *Id.* at § 1(b)(7).

¹³ General Bylaws of the Town of Orange, § 76-1, available at <https://ecode360.com/10442951#>.

¹⁴ M.G.L. c. 30B, § 15.

3. The school department and the town violated Section 15 of Chapter 30B by transferring surplus items to a recycling company and to a local nonprofit.

Section 15 of Chapter 30B allows for a jurisdiction to dispose of surplus supplies to a charity as long as two conditions are met: (1) the charity must be a registered 501(c)(3) organization, and (2) the governing body must vote to approve the donation.¹⁵ According to the committee's November 14, 2022 meeting minutes, the committee simply voted for furniture and other items from Fisher Hill to "be sent to Honduras for a schools [sic] use." The vote did not authorize the items to go to a specific registered 501(c)(3) organization. The OPM arranged to remove the items by contracting with a for-profit recycling company that works with various charities in the United States and around the world. The town paid the recycling company \$16,140 to remove the items, but the ultimate recipients are unknown. If the school department wished to donate the surplus items to charity, it should have donated the items directly to a registered 501(c)(3) organization. The town and the school department should consider that many charitable organizations pick up donated items at no cost to the donor.

The town also donated kitchen supplies to a duly registered 501(c)(3) organization. However, the Select Board, as the governing body, did not formally vote to authorize the donation as required by M.G.L. c. 30B, § 15(g).

4. The OPM should have known the requirements for disposing of surplus equipment and supplies.

Public entities that receive funding from the MSBA for a building construction project are required to contract with an OPM.¹⁶ Per MSBA regulations, the OPM is responsible for all aspects related to the building construction project, including assisting with the "procurement of other vendors and contracts and agreements associated with the project."¹⁷ Therefore, the OPM should have been familiar with the requirements of Chapter 30B.

As described above, in November 2022 the OPM contracted with a recycling company to remove and repurpose the furniture left behind at Fisher Hill. Although the recycling company works with various charities, the OPM should have known that Chapter 30B allows charitable donations only to registered 501(c)(3) organizations. Further, the OPM should have advised the town and the school department to follow procurement protocols for the costs involved in the furniture's removal.

Recommendations

Based on its investigative findings, the OIG recommends that the school department, the town, other jurisdictions, and OPMs, as applicable:

¹⁵ *Id.* at § 15(g).

¹⁶ 963 CMR 2.07(2)(a).

¹⁷ *Id.* at 2.07(2)(f).

1. Maintain written inventory procedures and inventory lists for all town- or school-owned property, equipment, and supplies from the time of acquisition until the end of their useful life;
2. Determine the value of unwanted surplus items prior to taking steps for disposal;
3. Adopt written procedures for the disposal of surplus items valued at less than \$10,000;
4. Ensure that surplus items are properly disposed of through written procedures or through competitive sealed bids or public auctions, depending on their value;
5. Ensure that votes by governing bodies to transfer or dispose of surplus items are accurately recorded in meeting minutes and include a detailed inventory list;
6. Maintain a written inventory of items being transferred to other political subdivisions and items being disposed of, including their values;
7. Ensure that OPMs for local projects are able to demonstrate their knowledge of statutes, regulations, bylaws, policies, and procedures governing the disposal of surplus property, equipment, and supplies;
8. Enroll employees in OIG Academy courses and designate at least one employee to obtain the OIG's Massachusetts Certified Public Purchasing Official (MCPPO) Designation; and
9. Make the MCPPO Designation a preferred qualification for municipal procurement officers.

Conclusion

Thank you for your cooperation during this investigation. The OIG hopes the guidance outlined in this letter will assist you in the future disposition of items that are no longer of value to the town or its school department.

It is important that the town of Orange, its school department, and all public entities have clear, written policies and procedures to follow upon the end of the useful life of public property, equipment and supplies, similar to policies and procedures used to procure such goods. Being a steward of public resources is a critical means of building and maintaining public trust.

Within 30 days of receiving this letter, please notify this office in writing of your plans to implement the recommendations herein. Please provide any updated documentation that reflects changes made pursuant to these recommendations. Questions may be directed to George Xenakis, director of the OIG's Audit, Oversight and Investigations Division, at 617-722-8853 or George.Xenakis@mass.gov.

Should you have any additional questions about the disposition of surplus property, equipment, or supplies, or on any other aspect of Chapter 30B within the OIG's jurisdiction, please contact the OIG's Public Procurement (Chapter 30B) Hotline at 617-722-8838 or at 30B hotline@mass.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J S Shapiro', is positioned above the printed name.

Jeffrey S. Shapiro, Esq., CIG
Inspector General

cc (by email):

Josefa Scherer, Vice Chair, Orange Elementary School Committee
Jessica Reske, Secretary, Orange Elementary School Committee
Yarelyn Ramos-Martinez, Orange Elementary School Committee
Frank Hains, Orange Elementary School Committee
Thomas Smith, Chair, Orange Select Board
Patricia Lussier, Vice Chair, Orange Select Board
Andrew Smith, Clerk, Orange Select Board
Jane Peirce, Orange Select Board
Julie Davis, Orange Select Board
Mary Pichetti, Executive Director, Massachusetts School Building Authority
Eugenia M. Carris, General Counsel, OIG
George A. Xenakis, Director, Audit, Oversight and Investigations Division, OIG
Nataliya Urciuoli, Senior Executive Assistant, OIG