

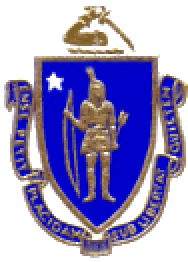


Office of the
Inspector General
Commonwealth of Massachusetts

Gregory W. Sullivan
Inspector General

Review of a
Real Property Disposition
by the City of Revere

October 2002



The Commonwealth of Massachusetts
Office of the Inspector General

GREGORY W. SULLIVAN
INSPECTOR GENERAL

JOHN W. MCCORMACK
STATE OFFICE BUILDING
ONE ASHBURTON PLACE
ROOM 1311
BOSTON, MA 02108
TEL: (617) 727-9140
FAX: (617) 723-2334

October 15, 2002

Mayor Thomas G. Ambrosino
City of Revere
28 Broadway
Revere, MA 02151

Re: Disposition of "Surf Site"

Dear Mayor Ambrosino:

I am responding to your letter requesting that this Office review the City of Revere's 1997 disposition and 2001 reacquisition of a parcel known locally as the "Surf Site" (Site). It is this Office's understanding that the City is seeking guidance to assist in avoiding missteps in future dispositions of real property. The City is to be commended for its willingness to learn from the "Surf Site" disposition, which ultimately failed to achieve the City's objectives. With the assistance of the City Solicitor's Office, this Office obtained and reviewed the request for proposals (RFP) and the provided documents relating to the original disposition of the Site. The attached report summarizes the issues and recommendations identified by this Office based on a limited review of these documents.

I hope that these comments and recommendations are helpful to the City. Our Office currently offers a course, "Local Government Real Property Transaction under M.G.L. c. 30B" in our Massachusetts Certified Public Purchasing Official (MCPPO) Program. Enclosed is information on that class and other MCPPO courses. If this Office can be of any further assistance, please do not hesitate to contact us.

Sincerely,

Gregory W. Sullivan

Gregory W. Sullivan
Inspector General

cc: Robert A. Marra Jr., City Solicitor
Encl. (1) MCPPO Course Catalog 2002
(2) MCPPO Registration Form

Background

At the City's request this Office reviewed the 1997 disposition of a parcel of Revere land located across from the ocean known locally as the "Surf Site" (Site). The following review provides guidance to the City on proper disposition procedures.

Introduction

According to the documents reviewed by this Office, sometime prior to March 21, 1997, Condit's Hall Associates LP (CHA), a development firm, contacted the City about acquiring the Site to be used as parking and commercial space ancillary to developing a hotel on a nearby parcel. On March 21, 1997, the Mayor wrote the following to the City Council:

This Office has been presented with a development plan for the construction of a hotel on the southern end of Revere Beach along Revere Beach Boulevard. The development plan proposed includes the city owned parcel known as the 'Surf site' located on Ocean Avenue. I am requesting that a meeting with the Economic Development Subcommittee, City Planner and City Solicitor be convened to allow for careful analysis of the proposal.

Given the proposed development plan's implication to the "Surf site", it will be necessary to formulate a Request For Proposal for public advertisement for the disposition or lease of the city owned parcel involved. Therefore, it is necessary for the City Planner, City Solicitor and City Clerk work together with the Economic Development Subcommittee to structure a Request For Proposal that best represents the City's objective for broadening the City's tax base and encouraging sound planning.

According to an entry in the City Council's April 1997 Journal, the Purchasing Agent and the City Planner were instructed to dispose of the Site pursuant to M.G.L. c. 30B. Section 16 of M.G.L. c. 30B governs the disposition of real property by municipalities. As required by M.G.L. c. 30B, the City obtained an appraisal, which valued the Site at \$530,000, prepared, and advertised a request for proposals (RFP). The RFP defined the project as "the City of Revere's desire to promulgate a hotel development which will foster the attraction of Tourism and Economic Development of the Revere Beach area and which is consistent with the emulating of the historic theme of Revere Beach." It

also stated that proposals would be evaluated on the basis of seven equally weighted criteria. As of June 9, 1997, the proposal submission deadline, the one proposal the City had received was from CHA which offered the City \$200,000 for the Site.

On the same day that proposals were due, the City Council voted to sign a purchase and sale agreement for \$200,000 with CHA and to publish in the Central Register the justification for disposing of the Site at less than fair market value as required by M.G.L.

c. 30B. The City's published justification stated:

The Revere City Council has determined that it is in the City's best interest to sell this property for less than the appraised value for a number of reasons.

First, this property was publicly advertised and publicly offered for sale with very little interest shown by developers. The only bid that the City received was from the Purchaser. Due to the lack of development interest in this property, the City Council feels that the sale of this property, below the appraised value, is warranted.

Secondly, the City Council is aware that the Developer will be required to make a significant financial investment to improve the public utility infrastructure of this area to accommodate future development of this property. Sewer mitigation improvements alone from the property under the adjacent M.B.T.A. Blue Line Track to Porter Street will cost in excess of three hundred thousand dollars (\$300,000) to upgrade a portion of the sewer line to secure State Department of Environmental Protection (DEP) approval to develop the property for the Purchasers intended use.

Lastly, the City Council views this proposed development as the catalyst for future development along Revere Beach and surrounding areas. The City Council feels that the development resulting from the sale of this property will increase the property value of this area, stimulate future development and ultimately broaden the tax base of the City.

On September 2, 1997, the City transferred the deed to CHA. The deed, together with a Land Disposition Agreement (LDA) setting forth the development obligations of the City and CHA, was recorded at the Registry of Deeds. The RFP and the LDA gave CHA two years to commence development of the project and stated that if construction did not commence by September 2, 1999, CHA would be deemed to be in default of the

development agreement,¹ and the City could require CHA to reconvey the Site to the City.² The LDA did not state a completion deadline for the project.

On January 23, 1998, the City executed another agreement with CHA, a Land Development Agreement (Development Agreement) that required CHA to perform significant sewer system improvements to accommodate hotel construction at the Revere Boulevard location. The Development Agreement provided that CHA was to complete the improvements within one year (by January 23, 1999). This agreement with CHA was subsequently amended. The amendment, dated December 3, 1998, required CHA to enlarge a sewer line connected to the Revere Beach Boulevard location. It also required that CHA perform a television inspection and clean certain sewer lines on Ocean Avenue, and enlarge certain sewer lines at the Site. The amendment eliminated the original one-year completion deadline for the sewer improvements, instead allowing CHA to complete the work in a timely and workmanlike manner.³

On December 15, 1998, without having commenced construction,⁴ CHA sold all of its rights to develop the undeveloped Site to Red Roof Inn (RRI) for \$2.842 million.⁵ The Site was transferred with a parking easement previously granted by CHA to third parties in March of 1998. The City received no part of CHA's profits on the sale.

In late December of 1999, RRI, which had been acquired by new owners since buying the development rights from CHA, transferred all rights in the Site to a third developer, Boston Logan Associates (BLA), for \$1.00. The Site was transferred with additional

¹ "Development agreement," was apparently intended to refer to the Land Disposition Agreement.

² According to the RFP, the City would then have the right to retain the entire purchase price and reclaim clear title to the Site.

³ A second amendment dated May 3, 1999, instructed a new owner, RRI, to provide an \$80,000 payment to the City in lieu of a portion of the above sewer improvement work if the City received a State grant for certain sewer replacement work.

⁴ Some site work such as clearing and grading may have been performed.

⁵ The consideration also included an agreement from CHA not to operate or lease a lodging facility with one-quarter mile of the Site for 40 years.

parking easements granted by RRI to third parties in December 1998. In conjunction with this transfer, the City executed an amended LDA with RRI and BLA. While the amended LDA extended by one year the period by which BLA had to achieve 15 percent completion of the first hotel located on Revere Beach Boulevard, it also expanded the project scope by adding a second hotel to be constructed at the Site. It eliminated the two-year deadline and again did not include a schedule for the completion of the entire project.

In September 2000, the Mayor wrote to BLA’s attorney stating that it was evident BLA would not be able to reach a level of construction reasonably close to 15 percent completion by December 22, 2000, the required date under the amended LDA. On November 6, 2000, the City informed BLA of its intention to reclaim the property. BLA transferred the Site back to the City on January 31, 2001 for \$1.00.

Chronology of Events

May 1997	City advertised RFP for disposition of Site.
June 9, 1997	City received one proposal from CHA.
September 2, 1997	City transferred Site to CHA for \$200,000 and executed Land Disposition Agreement with CHA for development.
January 23, 1998	City and CHA executed Land Development Agreement with CHA for public utilities improvement.
March 18, 1998	CHA and Surf Club Associates granted parking easement to Trustees of the Festa Boulevard 3,4, and 5, Nominee Trust.
December 3, 1998	City and CHA amended Land Development Agreement.
December 15, 1998	CHA transferred Site to Red Roof Inns for \$2.842 million. Red Roof Inn granted and recorded parking easements to Surf Club Associates.
May 3, 1999	City and RRI amended Land Development Agreement.
December 28, 1999	Red Roof Inns transferred Site to Boston Logan Associates LLC for \$1.00. City, RRI, and BLA amended Land Disposition Agreement.
January 31, 2001	Boston Logan Associates LLC transferred site back to City for \$1.00.

Issues

1. The evaluation criteria set forth in the RFP were deficient.

The RFP issued by the City in May 1997 stated that the development proposals would be evaluated on the basis of the following seven, equally weighted criteria:

1. Purchase price of the subject parcel, together with the estimated economic stimulus to Revere Beach area.
2. Submission of a hotel and commercial development plan which best promotes the beachfront area and addresses urban design issues relating to massing, density, landscaping and open space in a manner which is sensitive to minimizing impact to the beachfront.
3. Submission of a hotel and commercial development plan which provides for a minimum 125 room full service hotel and restaurant facility with a minimum of 10,000 sq. ft. associated retail space within ¼ mile of the subject parcel.
4. The design criteria shall be based upon the appropriateness of the design, configuration, and orientation of the proposed development to the Revere Beach area and its conduciveness to attracting tourism and related commercial activity to the beach area.
5. The experience and track record of the proposed developer in new construction and proven ability to develop and attract retail and commercial tenants to retail space as well as the ability to secure financial resources adequate to implement the proposal.
6. The ability of the developer to secure all necessary permits in a timely fashion and commence construction within 24 months of taking title to the property.
7. The value of \$530,000 has been established for this parcel based on an appraisal conducted by John D. Heaphy Appraisal Associates.

As described below, many of these evaluation criteria were inadequate to ensure a fair selection process.

The second, fourth, fifth and sixth criteria were excessively vague. These criteria failed to detail what the City required in the proposal. Specifically, the second and fourth criteria failed to indicate what plan and design features were required. The fifth and sixth criteria failed to detail what documentation needed to be submitted as evidence of satisfying these criteria.

In addition to being vague, the criteria, sometimes stated as goals, did not instruct what objective standards the City would use to evaluate whether proposals met the stated criteria or goals or whether proposers were qualified. In the end, the City lacked not only the assurance that the developer could develop a hotel and commercial area which would promote tourism and activity in the Revere Beach area and minimize the impact to the Beach but also objective standards to use in an evaluation process that would result in the selection of a developer with the financial stability and resources necessary to undertake and complete the proposed development.

The seventh criterion was a declarative statement that failed to provide prospective proposers with any indication of how the City intended to use the appraised value. The statement could have been interpreted to mean that the City would not accept a proposal priced below \$530,000.

2. The City failed to generate competition for the Site.

M.G.L. c. 30B, §16(g) states that if a governmental body decides to dispose of property at less than fair market value, it must explain the reasons for its decision in its published justification in the Central Register. As previously discussed, one reason stated by the City for disposing of the Site at less than fair market value was that developers showed little interest. However, while the City advertised in accordance with M.G.L. c. 30B, §16(d),⁶ there is no evidence in the documents reviewed by this Office that suggest the City attempted any proactive outreach, such as advertising in industry publications, professional trade association bulletins and/or in statewide or national newspapers. More aggressive solicitation by the City for prospective developers may have improved this situation.

⁶ M.G.L. c. 30B, §16(d) requires an advertisement for proposals in a newspaper with a circulation sufficient to inform the people in the affected locality. The advertisement must be published at least once a week for two consecutive weeks preceding the day selected for opening the proposals. The last publication must occur at least eight days before the proposal opening. In addition, an advertisement must be published in the Central Register at least 30 days before the proposal opening when the acquisition or disposition is for more than 2,500 square feet.

3. The City's vague RFP submission requirements were inadequate to enable a meaningful review of developer qualifications and plans.

To facilitate a jurisdiction's evaluation of proposals, an RFP typically sets forth proposal submission requirements detailing what information proposers must submit. The City's RFP did not require proposers to submit certain documentation that would permit the City to conduct a reliable evaluation of proposers' qualifications.

Submission requirements relating to qualifications should minimally require detailed information about previous and ongoing projects as well as the names of contact people on such projects who can provide references. However, the City's RFP failed to define and require detailed information regarding dates, location, contact people and specific project financing information. Instead, it contained only the following vague submission requirements regarding qualifications:

C. Qualifications Statement

Specific information on the previous experience and other qualification credentials for each of the principal members of the development firm shall be presented. Also included shall be specific references and information describing similar projects either completed or in progress which have been undertaken by the developer.

The RFP submission requirement relating to proposers' financial qualifications was similarly vague:

D. Financial Qualifications

In order to establish the developer's proven financial responsibility and overall financial ability to undertake the proposed project, a general bank reference must be provided. The bank reference must include a statement concerning the developer's ability to finance the project.

The information solicited by the RFP was insufficient for the City to: 1) check proposers' references on specific development projects - an indicator of how proposers would perform in the future and 2) accurately determine the proposers' financial capacity to complete the proposed development project. Because of the vague submission requirements, the City did not have the information to do a meaningful review of CHA's proposal based on the evaluation criteria set forth.

4. CHA's proposal did not satisfy the City's submission requirements and therefore the City should have either rejected CHA's proposal as not responsive or subsequently obtained the information for evaluation.

CHA failed to comply with the City's submission requirements described above. Based on the records reviewed by this Office, CHA did not completely respond to subsections C and D of Section IV. Specifically, CHA failed to include previous experience and qualification credentials for each principal member of the development firm as well as a bank reference including a statement concerning the developer's ability to finance the project. Instead, in response to the qualification and financial submission requirements, CHA submitted the following information:

- A corporate brochure for The Claremont Companies including a list of completed projects describing the kind of property, the location, number of units and square footage for each project.
- A chart describing Claremont's "track record." The chart states the amount of total square footage that Claremont had rehabilitated, constructed, purchased, and managed. However, the chart did not identify specific projects that CHA had completed.
- A statement that Claremont should be able to obtain permitting within 24 months because "Claremont has tremendous experience with new development projects" and "the project itself does not seek to stretch the development envelope."
- Statements to the effect that Claremont had estimated it could obtain permits and approval for the Hotel on Revere Beach Boulevard within six to eight months with construction commencing thereafter, expected such construction to take approximately five months, and expected to start hotel construction within one year from the awarding of the RFP and completion within six months after that.
- A statement that Claremont, at the time of its proposal submission, controlled a real estate portfolio with a market capitalization in excess of \$500,000,000, had a broad reach in debt markets and had had preliminary discussions with lenders regarding the Revere development project, and was highly confident that a debt and equity capital structure could be put in place without delay.
- A statement that The Claremont Company had "both extensive relationships with lenders and financial institutions which manage our cash and other financial instruments" along with a reference list providing the names and telephone numbers for eight financial institutions.

Given that CHA failed to meet the City's RFP bid submission requirements the City could have rejected CHA as not responsive. Alternatively, the City could have treated the failure to include such information as a minor informality and could have required CHA to provide this information for evaluation. Based on the records reviewed by this Office such information was never obtained.

5. City records provided for review to this Office contained no documentation indicating that the City conducted an evaluation of the sole proposal received.

The RFP stated that the city would evaluate proposals. However, this Office found no records indicating that CHA's proposal was evaluated either on the basis of the seven criteria set forth in the RFP or any other basis. The City Council voted to award the contract to CHA on the same day that proposals were due.

6. The RFP and related agreements did not address either subsequent transfers of or encumbrances on the Site or development rights and thus, failed to ensure the City's interests would be protected.

The RFP stated that if the chosen developer failed to commence the project within 24 months then the City would have the right to retain the entire purchase price and reclaim clear title to the Site. While both the original and amended LDA and Development Agreements established the obligations of successors and assigns, neither established the City's right to prevent or review and approve/deny transfers of or encumbrances on the Site or the development rights by the developer.⁷

Consequently, as previously discussed, ownership of the Site changed from CHA to RRI to BLA. During the periods of ownership by both CHA and RRI the respective developers of the Site entered into two agreements, dated March 18, 1998⁸ and December 15, 1998, which in part, granted parking easements to third parties for parking rights at the Site. Both Agreements stated that the easements ran with the land. The City reacquired the Site on January 31, 2001. It appears that at least one

⁷ The RFP stated that if the project was not completed within two years, the City had the right to reclaim clear title of the Site.

⁸ This easement was subsequently amended on 1/12/99 to correct a clerical error.

easement may have diminished the value of the Site. Thus, the City's reversionary and financial interests in the Site were not protected.

Conclusion and Recommendations

The City's land disposition process did not generate competition. While the original Development Agreement did establish actual completion deadlines, the original and amended LDA and amended Development Agreement failed to establish completion deadlines for the project. Furthermore, none of these original or amended agreements addressed the subsequent transfer of or encumbrances on the Site.

To assist the City in avoiding similar problems in the future, the Office offers the following general recommendations for future real property dispositions under M.G.L. c. 30B, §16.

- **RFP evaluation criteria should be specific and provide objective standards to allow for meaningful comparisons.** To its credit, the City, in a recent 2002 RFP to dispose of the Site, inserted objective standards to rate proposals received. By including comparative criteria relating to highest and best use, purchase price, economic impact, relevant experience, financial strength, quality of concept and development timeline, the City outlined, with specificity, what the City required of a proposer in order to achieve ratings of "highly advantageous," "advantageous," or "not advantageous."⁹
- **RFP submission requirements should solicit all information and documentation necessary for the evaluation of the proposals based on the RFP evaluation criteria.**
- **The City should include a non-collusion form in all RFPs and contracts for the acquisition and disposition of real property interests.** While M.G.L. c. 30B, §16 does not explicitly require a non-collusion form for the disposition of real property, it is this Office's recommendation that a non-collusion form be

⁹ For example, the City's criterion relating to purchase price stated that a proposer would receive a rating of highly advantageous if it offered a price greater than the appraised value. To receive a rating of advantageous the proposer would be required to offer the appraised value. Finally, the criteria stated that if the proposer submitted a price proposal below the appraised value, the proposer would receive a rating of not advantageous.

required for transactions done pursuant to M.G.L. c. 30B, §16.¹⁰

- **For each RFP and any related agreements, the City should consider whether to protect its interests by including restrictions on the subsequent use of the property.** M.G.L. c. 30B, §16(a) allows jurisdictions to restrict the subsequent use of property. If the City chooses to include subsequent use restrictions, the City should take several additional steps to ensure the effectiveness of the restrictions. First, such restrictions should be incorporated into the deed and/or any agreements relating to the real property. Second, such deed and any agreements relating to the real property should be recorded at the Registry of Deeds to ensure that notice of the restriction(s) is provided to all potential interest holders.

Possible restrictions relating to the sale, transfer of interests in, or development rights to a parcel could include:

1. Any necessary prohibitions, restrictions, or limitations on or prior approvals for subsequent sales, encumbrances such as but not limited to easements or partial-interest transfers;
2. requirements for profit-sharing;
3. retention of a right of first refusal;
4. requirement that certain actions be contingent upon prior written approval by the City; and/or
5. the City, being owner on record at the Registry of Deeds, holding the deed in escrow, as leverage, until the developer has completed the project in accordance with the RFP and any related agreements.¹¹

These kinds of actions will protect the City's interest in real property.

- **The City's advertising period should be sufficient to generate competition.** Based on its RFP requirements, the City should assess the advertising period necessary for developers to prepare substantive proposals. While M.G.L. c. 30B, §16(d) sets forth the minimally required advertising period, the City is encouraged to extend such period when doing so is likely to generate additional competition.
- **The City should plan strategies for outreach to developers.** Contacting

¹⁰ M.G.L. c. 30B, § 10 requires non-collusion forms be included in contracts for supplies or services.

¹¹ If the City elects this option, for liability purposes it should obtain indemnification from the owner or developer.

potential proposers and advertising in statewide or national newspapers and professional trade journals are all means that can and should be used in addition to advertising in a local newspaper and the *Central Register*. In addition to generating competition, a broadened advertising strategy will dispel any appearances of favoritism.

- **The City should document its evaluation process.** Receipt of only one proposal does not automatically suggest that the proposer is qualified. Even when only one proposal is received, the City has an obligation to conduct a systematic review on the basis of each evaluation criterion contained in the RFP and to document that review. These records should be maintained in the project file and serve as documentation assuring public accountability.

In addition, this Office has two general recommendations for all governmental bodies valuing property as required M.G.L. c. 30B, §16(b).

- **Governmental bodies should incorporate the Uniform Standards for Professional Appraisal Practice in its procurements for appraisal services.** The City's written scope of services for procuring appraisal services should require appraisers to follow Standard 1 of the Uniform Standards for Professional Appraisal Practice (USPAP). USPAP Standard 1 contains specific requirements for conducting appraisals.
- **Governmental bodies should include experience requirements for appraisers in its procurement for appraisal services.** As a minimum requirement, the City should require licensed appraisers to demonstrate that they have performed at least three appraisals of properties with characteristics similar to the subject parcel within the past five years. The City should require that individuals proposing to perform appraisal services provide all references relevant to their performance appraising similar property within the last five years. The City should then choose to contact a set number of those references and use the information obtained to evaluate the response.