



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

July 7, 2011

Edward M. Pikula, Esq.
City Solicitor
City of Springfield
36 Court Street
Springfield, MA 01103

Dear Mr. Pikula:

As you know, the Massachusetts Office of the Inspector General (OIG) reviewed a sample of American Recovery and Reinvestment Act (ARRA) grants issued by the U.S. Department of Energy (DOE). The OIG has included the City of Springfield's (City) \$1,498,200 Energy Efficiency and Conservation Block Grant (EECBG)¹ from DOE in its review sample. The OIG is reviewing ARRA-related grants to identify potential vulnerabilities to fraud, waste, and abuse and other risks that could negatively impact the accountability, transparency, and anti-fraud mandates contained in the statutory language and interpretive guidance of ARRA.

According to grant documents, DOE awarded the City funding in November 2009 to replace five standard boilers with high-efficiency boilers (amended in 2011 to six boilers), install three energy management systems (EMS) to control the heating and cooling systems in City buildings, and install solar panels at one of the City buildings, as well as hire an Energy Conservation Manager to oversee the grant-funded project and its results. The OIG has limited its review to the five original boiler replacements initially budgeted by the City for \$1,140,847 or 76% of the total grant. As of March 2011, the City has reported expending \$685,721 from a revised boiler budget of \$827,631 (73% of the total grant).

The OIG review focused on the City's use of a "Design Build" (according to the City) process for four out of the five boilers included in the original grant scope. For the

¹ EECBG is a program intended to help deploy energy efficient and conservation technologies across the country.

fifth boiler, the City used an M.G.L c.149 procurement process² that, based on an OIG review of City-provided documents, appears to have complied with that statute. For the OIG's main focus, the four "Design Build" boiler projects, the City used pre-existing competitively procured contracts (using M.G.L. c.7 or c.149) including a \$750,000 on-call HVAC services "price contract" (procured in March 2010 using M.G.L. c.149), a \$182,000 contract with an on-call electrical contractor, a \$650,000 contract with an on-call hazardous waste removal firm, and a \$150,000 contract with an on-call environmental site assessment firm. The City assigned a portion of each of the four boiler replacement to these contractors using the pre-existing contract pricing and scope requirements.

ARRA-Funded Boiler Projects

Indian Orchard Fire Station
16 Acres Fire Station
Fire Alarm Building
Old First Church (City-owned)
South End Community Center (M.G.L. c.149 process)
Mason Sq. Library (added per grant amendment) ³

The City's use of pre-existing maintenance and "on-call" service contracts for large capital improvements such as boiler replacements raised concerns for the OIG. As ARRA requires additional transparency and accountability and stresses that the use of these funds should be protected against fraud, waste, and abuse, the use of the City's pre-existing "price" contracts for the procurement of boilers may have been inappropriate.

The OIG believes that project specific capital improvements for public buildings, such as boiler replacements, should receive the benefits of fair, open, and competitive procurement processes to help ensure that a jurisdiction pays reasonable prices design

² According to the City, ""Due to the complexity of the South End Community Center boiler replacement [the fifth boiler] and that we anticipated the total cost over \$100,000, the City had this project designed by an engineering firm and put out to bid. The other projects were smaller and more cost effective to complete as "Design Build" with our vendor who is on the city "Price Agreement"/Contract.""

³ The OIG did not include this sixth boiler project in its review as the grant amendment took effect after the substantial completion of OIG review.

and construction services. The nearly one million dollars worth of boiler work funded under this grant should have merited its own procurement process rather than a "Design Build" process based on pre-existing prices and contract terms and conditions. The City opted for a new procurement process for only one of the five boilers originally included under the grant.

The City stated that it used a separate procurement process for one boiler, the South End Community Center, in part because the estimated cost exceeded \$100,000 [\$230,000], a M.G.L. c.149 threshold for the use of a sealed bid procurement process. Based on this criterion, the OIG suggests that the City should have used a M.G.L. c.149 process for the other boilers as well. The City estimated that it would cost approximately \$363,000 for the other four boilers. Using pre-existing contracts with varied pricing for some projects and separate procurement processes for others using the same grant funding makes it difficult to compare and contrast costs between the different projects and virtually guarantees that different prices will be paid for similar services. Although these "price contracts" may have prices that appear fair and reasonable, the City did not obtain them for the type of boiler replacement work performed with ARRA funds. The OIG consulted with the Attorney General's Fair Labor Division, which interprets and enforces M.G.L. c.149, on the use of service contracts for the procurement and installation of boilers and they concur in principle with the OIG's position.

The OIG also believes that the City may have had ample time to include the scope of the four boiler projects we reviewed in the on-call HVAC services contract. According to City documents, the City spent nearly \$280,000 for HVAC services for the four boilers. The City awarded this contract in March 2010 while the DOE awarded this ARRA grant to the City in November 2009. As a result, the City knew of the potential need for HVAC services for the boilers well before it advertised for the on-call contract. The City could have included these boilers as a potential work item that bidders could have competitively priced.

An open competition might have generated lower prices or a better value for the City. For example, there might have been greater competition for the installation of four boilers rather than for one. Moreover, the bidders on the pre-existing City contracts might not have known that nearly a million dollars worth of boiler-related work would be performed over a short period of time when they submitted price proposals for "on-call" maintenance work that could have occurred on piecemeal basis over longer periods. Work schedules directly impact costs

The OIG also identified other cost risks. For example, three of the four of the City's pre-existing "price" contracts allowed contractors to charge "cost plus 15% plus 10%" for any materials used in addition to any mark-ups already included in the contract

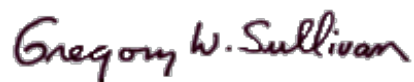
price. The City only “reserved the right” to verify the contractors cost basis. This type of cost-plus payment process is highly vulnerable to fraud, waste, and abuse, because absent robust oversight by the awarding authority, the awarding agency is almost entirely dependent upon contractor integrity and contractor willingness to identify the “best value” for the City when making purchases. Cost-plus contracts require additional oversight to ensure that the costs charged by a contractor are fair, reasonable and reflective of actual costs. Generally, under M.G.L. c.149, cost-plus contracts are not permitted for large projects.

The OIG also identified that these “price” contracts included provisions for overtime payments and contractors based their pricing on time and materials (T&M) costs. Under M.G.L. c.149, a contractor submits a “lump sum” bid that would include all costs the contractor reasonably believed it would incur to complete the project. The contractor assumes a degree of risk in a low-bid process. Under a cost-plus, “price” contract, or T&M payment process, the awarding authority assumes a greater amount of risk. These types of payments are more vulnerable to fraud, waste and abuse.

The OIG recommends that the City review contractor invoices submitted under the “price contracts” for accuracy and cost reasonableness. The OIG also recommends that future capital projects be conducted using competitive procurements as required by statute.

I appreciate your cooperation with this review. Please do not hesitate to contact the OIG with any questions or concerns you may have regarding this review.

Sincerely,



Gregory W. Sullivan
Inspector General

cc: Brian O'Donnell, Esq. - Office of the Attorney General