



The Commonwealth of Massachusetts
Office of the Inspector General

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May 11, 2004

Mr. Philmore Anderson
State Purchasing Agent
The Commonwealth of Massachusetts
Operational Services Division
One Ashburton Place
Boston, MA 02108-1552

Dear Mr. Anderson:

I am writing in regard to a matter pertaining to Statewide Contract #OFF13 for Art and Instructional School Supplies, held by School Specialty, Inc. (SSI). As you know, this Office interprets the Massachusetts statute specific to local procurements, M.G.L. c.30B. M.G.L. c.30B provides municipalities with procurement methods for use in soliciting low prices from qualified vendors. It has come to this Office's attention that SSI has been offering certain school districts that conduct separate Chapter 30B procurements goods at prices below what SSI has agreed to charge on its statewide contract with OSD. The statewide contract is open for use by municipalities, and school districts are among the entities that are eligible to buy off of a statewide contract. OSD advertises to municipalities and offers assurances that statewide contract prices are competitive, best value prices. However, it is clear from SSI's practices that municipalities buying from SSI off of the statewide contract are not getting the lowest price.

In a letter from you dated April 2, 2004 to Senator Andrea F. Nuciforo, Jr. you state that you are aware of SSI's pricing discrepancies on the statewide contract. Your April 2, 2004 letter offers a course of corrective action that you indicate was agreed to at a March 26, 2004 meeting between OSD, the State of Connecticut, and SSI. Included in the course of action is a requirement that prior to the end of April, 2004, SSI must self-account for its underpricing and determine a financial credit for reimbursement for each account. This Office states that the process of self-accounting is not adequate. It is this Office's opinion that the remedy outlined in your letter does not protect or compensate municipalities who have relied on the Commonwealth's best value assurances and paid more for goods from SSI off of the statewide contract.

Furthermore, it is this Office's understanding that since your March 26, 2004 meeting with SSI, SSI has continued its practice of undercutting the statewide contract prices for school districts. OSD's remedy does not fully address the problem. This Office states that OSD must consider a more comprehensive approach to ensure SSI's contract compliance and to protect school districts

that use the OSD contract.

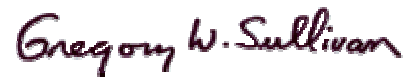
Moreover, it is this Office's understanding that SSI was added to the statewide contract based on advertising procedures and contract terms that the State of Connecticut used in awarding a contract to SSI. Specifically, rather than OSD soliciting vendors for school furniture and supplies, OSD exercised an exception in its regulations, 801 CMR 21.05(4), which permitted OSD to piggy-back off of the State of Connecticut's process to contract with SSI. OSD's use of the collective purchasing exception in its regulations to allow a statewide contract with SSI may have excluded other interested vendors. Your April 2, 2004 letter indicates that staff reductions at OSD contributed to OSD's use of the exception. In this Office's opinion, OSD should not use an out-of-state advertising process, contractual terms to satisfy a solicitation for vendors to perform in Massachusetts.

This Office respectfully recommends that our two Offices meet at your earliest convenience to discuss:

1. How to proceed with SSI, including contemplating SSI's immediate termination from the statewide contract;
2. The considerations of hiring an independent auditor at SSI's expense to perform an accounting of SSI's price undercutting;
3. When use of the policy behind 801 CMR 21.05(04) as well as a closed enrollment policy is in the Commonwealth's best interest.

I will be contacting you shortly for a meeting time.

Sincerely,

A handwritten signature in black ink that reads "Gregory W. Sullivan". The signature is written in a cursive, slightly slanted style.

Gregory W. Sullivan
Inspector General