



The Commonwealth of Massachusetts
Office of the Inspector General

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May 5, 2011

Kathleen C. Millett
School Nutrition Programs
Massachusetts Department of Elementary and Secondary Education
75 Pleasant Street
Malden, MA 02148-4906

Re: Richard B. Russell Grant

Dear Ms. Millett:

The Office of the Inspector General (OIG) recently reviewed a sample of the American Recovery and Reinvestment Act (ARRA) funded U.S. Department of Agriculture's (USDA) Richard B. Russell National School Lunch Program Equipment Assistance Grants awarded to school districts and schools (see Attachment One) by the Massachusetts Department of Elementary and Secondary Education (DESE).

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. The OIG did not conduct an investigation of the Russell Grant program or perform a comprehensive programmatic review.

USDA intended the Russell Grant to provide equipment assistance to school food authorities (SFA). DESE received a total of \$1,404,025 that it awarded through an application process to 40 recipients from a pool of 109 applicants. DESE gave priority to applications from SFAs where at least 50% of the students are eligible for free or reduced-priced meals. DESE prioritized equipment selection by using four focus areas: 1) expanded program participation, 2) improved food quality with integration of the *Dietary Guidelines for Americans*,¹ 3) enhanced food safety standards, and 4) improved overall energy efficiency.

¹ The *Dietary Guidelines for Americans* provides evidence-based nutrition information and advice for people age 2 and older and serves as the basis for Federal food and nutrition education programs, the development of which is coordinated by The U.S. Department of Health and Human Services (HHS) and the U.S. Department of Agriculture (USDA).

From the 40 grant recipients, the OIG chose a sample of 12 that had not yet been reviewed by DESE or the USDA. The OIG's sample consisted of 11 public school districts (that applied for equipment for 35 district schools) and one private, not-for-profit school. This sample comprised 64% of the recipients that had not yet undergone compliance reviews. In early 2011, the OIG requested information and performed site visits for a sub-set of the sample. The OIG scope included a determination of whether grantee purchases complied with grant requirements, including M.G.L. c.30B (Chapter 30B), the state's Uniform Procurement Act and M.G.L. c.149, the public building construction law and whether the recipients received the intended equipment for the intended amount.

The OIG review found violations including non-compliance with Chapter 30B and Chapter 149, poor record keeping, and unfamiliarity with statewide contracts. The following is a more in-depth summary of our findings as well as recommendations regarding the future distribution, management, and oversight of Russell Grants.

Findings:

Violations of Chapter 30B

The OIG identified two instances where procurement practices did not comply with Chapter 30B. In one case, a school district (District) chose to use a quote process for like items with an aggregate value of \$49,000. To comply with Chapter 30B, purchases exceeding \$24,999 require a formal bid process. The recipient could have purchased these items using a statewide contract, which takes the place of a competitive process, or used a formal Invitation for Bids (IFB) or Request for Proposals (RFP) process under Chapter 30B. In the other case, the District used a quote process for like items but, did not purchase the items in aggregate. The recipient used separate purchase orders for each item that gave the appearance of bid-splitting, a violation of law and prohibited by Chapter 30B. Bid splitting is knowingly causing or conspiring to cause the division of any procurement for the purpose of evading the requirements of the law. As the total cost for the items exceeded \$24,999, the District violated Chapter 30B. The District should have purchased these items using the statewide contract or a formal IFB or RFP process.

Recommendations: The OIG recommends that DESE remind its recipients that they must follow Chapter 30B, include Chapter 30B compliance information in grant information (for example, by linking to the Procurement Assistance page on the OIG website at <http://www.mass.gov/ig/igch30b.htm>) and by including a review of procurement methodology in DESE's grant oversight protocol. Free online Chapter 30B training is also available at http://www.mass.gov/ig/mcppo/bb_online.htm

Violation of Chapter 149

The OIG identified one instance where a District's procurement violated Chapter 149. Some recipients purchased equipment that required installation work to be performed by electricians, plumbers, and others. Depending on the cost and scope, this installation work was subject to Chapter 149, which is applicable to contracts for building construction, maintenance, or repair. At the time of this procurement (September 2009), Chapter 149 required the solicitation of three written quotes for services estimated to cost between \$5,000 and \$10,000. The District failed to use a competitive process for electrical work. The District had purchased eight pieces of the same equipment and hired one vendor to install five of them for a cost of \$4,485, and another vendor to install the other three for \$2,245. The District paid \$6,730 in total installation costs. Chapter 149 required the District to aggregate the cost of the electrical work for all eight items and to obtain three quotes for the service. The Office of the Attorney General concurred with our opinion on this matter.

Recommendations: The OIG recommends that DESE inform applicants of the requirements of Chapter 149 and its applicability if the recipient plans to perform installation work. As of July 27, 2010, Chapter 149 requires the use of sound business practices for projects estimated to cost less than \$10,000 and the solicitation of written quotes is required for purchases between \$10,000 and \$24,999. For reference, there is a manual on the construction bid laws entitled *Designing and Constructing Public Facilities* (the construction manual) that is downloadable from the OIG website at <http://www.mass.gov/ig/igpubl.htm>.

Redistribution of Funds

The OIG identified a number of instances where recipients redistributed grant funds. Redistribution occurred because grant applications included estimated equipment costs that differed from the actual costs later paid for the equipment; some equipment cost more while others less than estimated. In a small number of cases, recipients redistributed funds to pay for installation costs not included in the application. DESE had informed the OIG that recipients may only spend the amount per item as awarded pursuant to the application unless DESE approves the change. Not all recipients sought DESE approval.

Recommendations: The OIG recognizes that redistribution may be necessary when dealing with estimated costs. If USDA grant guidelines allow, DESE should consider creating parameters for redistribution that would not require approval, for example, 5% of total grant funds. Grantees can note this redistribution in routine grant reporting to DESE. Anything above the established limit would require DESE approval. Alternatively, DESE could require that applicants submit actual quotes/prices rather than estimates. This could eliminate the need for redistribution.

DESE should also require that applicants submit costs for installation work as these costs could require, as stated in an earlier finding, the use of additional procurement methods and a change in total costs. Recipients should clearly specify in the grant application exactly how grant funds will be spent.

Whenever grantees do not spend all allocated grant funds, it should be made clear to them that DESE must be notified. DESE can then determine whether these funds should be returned or whether the grantee would be allowed to amend its original application to purchase additional items with this surplus. However, DESE must have guidelines for these additional purchases as well to control for possible system abuses. An example would be an applicant inflating cost estimates to ensure that it receives a larger share of grant funds that it could use later with or without DESE approval.

Using Statewide Contracts

The OIG review found that similar items are purchased by applicants across the Commonwealth. While some districts use a statewide contract, others do not. This results in a range of prices paid by applicants for the same equipment purchased under the same grant.

Rather than multiple recipients individually procuring the same items, DESE should consider working with the Operational Services Division (OSD) to procure these items under a statewide contract or work with OSD to obtain better pricing on pre-existing statewide contracts. For example, through the application process, DESE may know that X number of school districts will be purchasing Y number of a specific item, say a \$5,000 freezer during a grant cycle. DESE could work with OSD to either develop a statewide contract for the specific items or obtain quotes from vendors (rather than having X number of districts calling the same vendor for quotes) on pre-existing statewide contracts. OSD could also consider the applicability of obtaining Volume Purchase Discounts (VPDs) from existing statewide contract vendors.

This could help streamline the procurement process and make more effective use of overall resources and group purchase opportunities. This could also help stretch limited grant funds and add a level of control in the grant oversight process. For example, if DESE knows that a statewide contract price for a freezer is X dollars, DESE can then determine whether an estimated cost in a grant application is reasonable. Alternatively, DESE can use the statewide contract price as the benchmark for a grant award. This could help DESE to better budget and account for grant funds. For even greater control over funds, DESE could also consider paying vendors directly after recipients confirm delivery. Having one vendor, one price, and one payor could simplify the process including DESE's grant compliance activity.

Also, statewide contracts (SWC) may not afford local jurisdictions all needed protections. Having DESE make the purchases could help grantees avoid contract issues. Currently, the OIG recommends that a local jurisdiction using a SWC create its

own form of contract for SWC purchases. The objective is to extend the benefits of the SWC to the local jurisdiction. The best way to guarantee this is to add any relevant SWC terms into the local jurisdiction's own standard contract. This will help to ensure that the local jurisdiction has a contract that addresses its needs while achieving the benefits of the SWC.

Recommendation: The OIG recommends that DESE work with OSD to identify when group purchasing opportunities may exist that provide the best value for applicants and that may act to expedite the use of grant funds/purchase of equipment.

Grant Deadline Missed

The OIG found that some recipients missed the expenditure deadline specified in the grant award. The grant award stated that, "all monies must be expended by September 30, 2009..." and that there would be, "...no extensions allowed." DESE also cited in its award letter to recipients the USDA policy memorandum SP 18-2009 in which the USDA, "recommend[s] that State agencies encourage SFAs to complete their procurement and expenditure activities within three (3) months of grant award."

Recommendation: The OIG recommends that DESE review these instances (forwarded to DESE under separate cover) to ensure that recipients have not violated grant terms or DESE regulations.

Poor Recordkeeping

The OIG found that some recipients failed to maintain complete records for the procurement processes they used under the grant. The lack of recordkeeping is a violation of ARRA's accountability and transparency provisions, ARRA's recordkeeping requirements, the state public records law, and federal regulations. Without complete records, the OIG could not verify that some recipients complied with applicable procurement practices.

Recommendation: The OIG recommends that DESE stress to grant recipients the necessity for maintaining complete records of their activity under the grant pursuant to state and federal public records laws and regulations.

ARRA Specific: Tagging Equipment

According to DESE staff, ARRA requires that equipment purchased with ARRA funds be "tagged" as having been purchased with ARRA funds. However, tagging has not been defined, although DESE made this requirement known to all recipients. During OIG site visits as part of this review, the OIG identified equipment that had not been tagged, as well as a variety of different tagging. For example, one recipient labeled the equipment, while one recipient scratched "ARRA" into the side of the equipment with what might have been a knife or screwdriver.

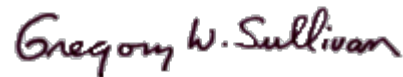
Recommendation: The OIG recommends that DESE implement a uniform tagging requirement that complies with ARRA.

Conclusion

Overall, the OIG review found that the sampled recipients spent the Russell Grant funds as intended and purchased the equipment approved in the grant for the improvement of their schools' lunch programs. The OIG's primary finding is that recipients need to improve their procurement practices and recordkeeping. The OIG also found that there might be opportunities to make grant-based procurement more effective and economical. For example, even a 5% savings generated through more efficient purchasing under the grant could have allowed DESE to provide funding for ovens to an additional 10 school districts. With tight funding and shrinking federal grants, we must all work together to identify new opportunities to better use what resources we have.

I appreciate your cooperation in this review. Please do not hesitate to contact my office with any questions or concerns you may have regarding this review. Thank you.

Sincerely,

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

Gregory W. Sullivan
Inspector General

Attachment

cc: Mitchell D. Chester, Commissioner, DESE
Gary Lambert, Asst. Sec'y for Operational Services/State Purchasing Director, OSD
Mary Anne Gilbert, DESE
David Leblanc, DESE

ATTACHMENT ONE

Sample of Russell Grant Recipients Reviewed by the OIG:

- Boston Public Schools
- The Evergreen Center
- Fall River Public Schools
- Fitchburg Public Schools
- Greater Lowell Regional Vocational Technical High School
- Greenfield Public Schools
- Lawrence Public Schools
- Randolph Public Schools
- Somerville Public Schools
- Ware Public Schools
- Winchendon Public Schools
- Worcester Public Schools