



The Commonwealth of Massachusetts
Office of the Inspector General

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April 12, 2006

Mr. John F. Cox
City Manager
City of Lowell
375 Merrimack Street
Lowell, Massachusetts 01852

Dear Mr. Cox:

Information was received by the Office of the Inspector General in January 2005 that companies seeking vehicle towing contracts with the City of Lowell, covering the period January 1, 2005 to December 31, 2005 with a one year option to renew, were required to specify in writing what amount, if any, that they would be willing to provide back to the city per tow. The amounts per tow for those obtaining a tow contract create the appearance of collusion. These amounts with one exception were \$1.01, \$1.03, \$1.07, \$1.07, \$1.10 and \$1.50. The one exception was a company who would provide back an amount of \$22.00. An investigation by this Office was initiated to determine if some of the companies seeking tow contracts agreed in advance to the amount each would provide back to the city per tow.

The City of Lowell placed an advertisement in the newspaper on December 8, 2004, and sought a Request for Information (RFI) from interested contractors for vehicle towing, storage, and disposal services for vehicles found to be in violation of the City of Lowell code. Contractors were informed that RFI packets could be obtained from the City of Lowell Police Department. The tow fee is \$90.00 plus a \$20.00 a day storage fee and a \$10.00 administrative fee per tow that is paid to the city.

The City of Lowell Solicitor informed an Investigator from this Office that in an effort to raise revenue, section (18) was placed in the RFI asking "in consideration of this contract what dollar amount, if any, you and/or your firm would provide to the City of Lowell per tow." She advised that the city would give the most lucrative towing zone to the company who gave the most to the city. The city is divided up into six geographic towing zones and one alternate.

The City Solicitor contacted the Commonwealth of Massachusetts Department of Telecommunication and Energy (DTE) regarding the issue of having tow companies provide back to the city an amount for each tow. DTE explained to her how the new rate was determined and that it had been sought for two years. She was informed that DTE has set the maximum amount that can be charged for a tow at \$90.00 but the tow company does not have to charge that

amount and may charge less. The City Solicitor was told that there did not seem to be anything prohibiting the city from seeking an amount per tow from prospective contractors.

The Lowell Police Department administers the towing contracts. A Lieutenant assigned to the Traffic Division handles this matter for the department. The Lieutenant informed an Investigator from this Office that he made a list of who submitted towing contract applications and reviewed each application. He looked to make sure that each company had the proper insurance and tow licenses. He carefully examined the background and qualifications of each company to insure that each could properly perform. He advised that eleven (11) companies submitted applications. His review narrowed them to seven (7) companies. He advised that all seven companies worked for the city previously. Next he examined the amount each company offered to provide back to the city per tow.

The Lieutenant advised that by memorandum dated December 22, 2004, he made certain recommendations to the Chief of Police regarding which companies should receive tow contracts for 2005 and 2006.

These recommendations are listed as follows:

Zone: 1: Paul Demers D/B/A Paul Demers Towing and Service, 1015 Lakeview Avenue, Dracut, Massachusetts (agreed to provide back to the city \$1.10 per tow).

Zone 2: Gulbicki's, Incorporated, 50 First Street, Lowell, Massachusetts (agreed to provide back to the city \$1.07 per tow).

Zone 3: Stuart's Automotive, Incorporated, 117 Congress Street, Lowell, Massachusetts (agreed to provide back to the city \$1.50 per tow).

Zone 4: Geoffroy's Gulf Station, Incorporated, 290 Westford Street, Lowell, Massachusetts (agreed to provide back to the city \$1.01 per tow).

Zone 5: Kazanjian's Garage, Incorporated, 688 Broadway Street, Lowell, Massachusetts (Alan Kazanjian-owner; agreed to provide back to the city \$1.07 per tow).

Zone 6: Robert D. Beaulieu D/B/A Jon Kazanjian's Automotive Repair Shop, Incorporated, 256 Smith Street, Lowell, Massachusetts (agreed to provide back to the city \$22.00 per tow).

Alternate: Lowell Automatic Transmission, Incorporated, 202 Chelmsford Street, Lowell, Massachusetts (agreed to provide back to the city \$1.03 per tow).

The above recommendations were approved by the Chief of Police and forwarded to the City Manager. The City Manager adopted the Chief's recommendations and signed the contracts on December 30, 2004.¹

¹ On May 9, 2005 the Statewide Towing Association, Incorporated filed a civil suit (Docket number: 05-01569) in Middlesex Superior Court against the City of Lowell and each of the above recipients of tow contracts. This civil suit alleged that the new City of Lowell towing contracts are illegal and void as against public policy. On March 10, 2006, Middlesex Superior Court dismissed the suit against the City of Lowell and the recipients of tow contracts.

The Lieutenant advised that the location of a tow company is taken into account when deciding what zone the company should be assigned to. He stated that Jon Kazanjian's Automotive Repair Shop, Incorporated was assigned the second most lucrative zone (i.e. Zone 6) because of the amount (i.e. \$22 per tow) he agreed to provide back to the city for each tow. He advised that his business is also located in Zone 6. He advised that this company did not get a contract last time because it did not have the proper insurance. He advised that he gave the most lucrative zone (Zone 5) to Kazanjian's Garage, Incorporated (Alan Kazanjian) because he always gave great service to the city and no complaints were received regarding this company. He advised that there was not much difference between Zones 5 and 6. He stated that Zone 5 has 1,650 tows per year and Zone 6 has 1,500 tows per year. This Office examined the number of tows for each zone and determined that by making these two zone assignments, the city lost revenue of \$7,618.52 for 2005. These assignments appear to contradict the purpose of this portion of the tow contract which was to raise additional revenue for the city. It is to be noted that Alan Kazanjian (Assigned to Zone 5) for the last 15 years has been a member of the City of Lowell Zoning Board of Appeals and is presently the Chairman of this board.

The Lieutenant advised that it appeared to him, based upon the amounts offered by the tow companies, that the tow contractors talked to each other as to what amount they were going to provide back to the city before submitting their bids.

Investigators from this Office interviewed all seven of the tow contract recipients. Only one had a plausible explanation as to how he came up with the amount he was going to provide back to the city. The other tow operators advised that they decided on the amounts offered in various ways including, picking it out of the air; his date of birth (the Date of Birth that he provided does not resemble the amount he agreed to donate back to the city); took it off the top of his head; just picked it; just came up with it and only wanted to pay a dollar then threw in a few cents more. All tow operators, with the exception of one, denied meeting with or speaking to any of the other tow operators regarding how much they were going to provide back to the city per tow. The one exception, in deciding what amount to provide back to the city, contacted another applicant who told him to stay under \$5.00 per tow. The applicant, who told him this, when interviewed by this Office, advised that he never had any discussions with the other applicants as to what amount they should provide back to the city.

When pressed about the possibility of collusion, another of the winning contractors terminated the interview and stated that he wanted to speak with his lawyer. The Investigator asked him for the name of his lawyer and he responded that he did not have one. The bidder who offered \$22.00 per tow provided a plausible explanation for his bid. He decided to offer the value of the money received for one day storage on each tow, i.e. \$20.00 plus \$2.00 more. All of the winning contractors signed a statement under pains and penalty of perjury that they had not colluded with other applicants. Given the potential for perjury and the fact that collusion is a violation of state and federal criminal law, it is not surprising that most of the companies denied collusion.

Upon completion of our investigation, this Office remains highly suspicious of the procurement process in connection with this matter. After reviewing relevant records and conducting appropriate interviews, this Office continues to be skeptical of denials that no collusion occurred among some of the applicants. The proximity of the amounts provided, standing alone raises serious unanswered questions about the overall integrity of this process.

This office finds the explanations offered by several of the tow companies regarding the manner in which they selected the amounts they would provide back to the city to be weak and not worthy of serious consideration. After all, six of the seven tow companies selected, offered between \$1.01 and \$1.50 regarding this provision. Five of the seven offered between \$1.01 and \$1.10 and two offered the identical amount of \$1.07 per tow. One of the companies admitted to discussing price with another of the winning contractors prior to submitting their applications. Another winning contractor terminated an interview with investigators and indicated the desire to speak to a lawyer. It appears that only the applicant offering \$22.00 per tow was not in the loop regarding the amount to provide back per tow.

A public procurement process must be fair and equitable in every respect. The amounts to be provided back to the city submitted in this case and the explanations for them indicate a strong probability that real competition did not happen here. Instead, indications of back room deals and collusion are present.

Accordingly, this Office makes the following recommendations:

1. The City Manager, after consulting with the City Solicitor, should consider terminating the present towing contract and initiating a new process that will be fair and equitable to all tow contractors. The city could set the amount it wants back from each towing company per tow.
2. All potential tow contractors should be clearly informed that collusion between them is illegal under federal and state criminal law. Moreover, they should be required to sign a separate form stating that their contract offers are being submitted under the pains and penalty of perjury and without collusion.
3. If the city continues to utilize this provision as outlined in the existing contract, it should play by its own rules and assign the most lucrative zones to the tow operators who have agreed to provide the most back to the city per tow.

The Inspector General wishes to thank the City of Lowell Police Chief and his staff as well as the City Solicitors Office for their assistance and cooperation in this matter.

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.