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Office of the  
Inspector General  
Commonwealth of Massachusetts

**Gregory W. Sullivan**  
Inspector General

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UMASS Dartmouth Dormitory  
Renovation Project

October 2009

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### **Massachusetts Office of the Inspector General**

**Address:**

Room 1311  
John McCormack State Office Building  
One Ashburton Place  
Boston, MA 02108

**Phone:**

(617) 727-9140  
(617) 523-1205 (MCPPO Program)  
(800) 322-1323 (confidential 24-  
hour hotline)

**Internet and Fax:**

[www.mass.gov/ig](http://www.mass.gov/ig)  
(617) 723-2334 (fax)

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## ***Introduction***

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In February 2008, this Office received a complaint involving the fire alarm procurement process connected to the renovation of the Cedar Dell dormitory buildings located on the campus of the University of Massachusetts Dartmouth (UMass Dartmouth). Specifically, it was alleged that a Vice President of Signet Electronic Systems, Inc., Norwell, MA (hereinafter Signet), a distributor of General Electric Security (GES)/Edwards Systems Technology (EST)<sup>1</sup> (hereinafter GES/EST) fire alarm equipment, attempted to influence other distributors of GES/EST fire alarm equipment not to bid on Phase Two of the UMass Dartmouth dormitory renovation project or bid at list prices. The complainant alleged that this effort by Signet's Vice President of Sales amounted to an attempt to rig the bidding process and eliminate competition with respect to the purchase of fire alarm equipment for the renovated dormitory buildings.

Upon receipt of the complaint, the Inspector General authorized this Office to conduct an investigation to determine if the allegations in the complaint were valid. The investigation confirmed the validity of the allegations.

UMass constructed Phase I and Phase II of the Cedar Dell dormitory projects pursuant to a Special Act of the Legislature that permitted them, with permission from the Governor, to utilize an alternative mode of procuring design and construction. However, UMass's authority to utilize an alternative procurement methodology did not extend to also waive public safeguards in the law on the use of proprietary (brand name) specifications or to otherwise curb competition. Nor did UMass, in its practice under the Special Act, utilize methods to ensure safeguards against price gouging.

The investigation disclosed that Signet was involved in submitting separate bids to provide GES/EST fire alarm equipment for both Phase One (April 2007) and Phase Two (November 2007) of the UMass Dartmouth Cedar Dell dormitory renovation project. Signet is considered by GES/EST to be one of their "Strategic Partners," i.e. approved

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<sup>1</sup> It should be noted that General Electric Security Inc. purchased Edwards Systems Technology in 2005.

distributors.<sup>2</sup> The investigation also disclosed that prior to the writing of the fire alarm specifications on both Phase One and Phase Two of the UMass Dartmouth Cedar Dell (Cedar Dell) projects, Signet's Vice President made contact with the project's engineering firm and successfully influenced two firm employees to include GES/EST fire alarm equipment in Phase One and Two of the project specifications.<sup>3</sup> In addition, he influenced the engineering firm to include language in the specification for both phases of the project that the GES/EST fire alarm products were to be distributed by Signet.

Arguably, naming a clearly favored brand of fire alarm equipment (Phase One Specification) and mandating a brand of fire alarm equipment (Phase Two Specification) as the only acceptable equipment effectively rendered moot any real competition by other manufacturers of similar equipment. Likewise, requiring that electrical contractors purchase the brand name fire alarm equipment from a specific distributor completely obliterated price competition among distributors of the GES/EST products. The Signet Vice President made contact with the engineers on separate occasions before the Phase One and Two fire alarm specifications were written and bidding was initiated. Inclusion of a named brand (GES/EST fire alarm equipment) in the specification as well as the highly unusual inclusion of the distributor's name (Signet), illustrates the significant influence the Signet Vice President had over the engineering firm employees.

Signet's Vice President was motivated to get the engineers to directly name the GES/EST product in the specification because of a financial incentive offered by GES/EST. GES/EST has a policy, known as the "Specification Discount Policy," which rewards one of its Strategic Partners when the Strategic Partner is successful in convincing a project engineer to include the GES/EST product name in project specifications. Once this is done, the Strategic Partner notifies GES/EST of the

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<sup>2</sup> Strategic Partners are distributors of General Electric Security/Edwards Systems Technology fire alarm equipment. These distributors have been specifically approved by General Electric Security/Edward Systems Technology as authorized distributors of General Electric Security/Edwards Systems Technology fire alarm equipment.

<sup>3</sup> The Phase One fire alarm specification did allow for the use of Notifier fire alarm equipment if equal. However, the specification when read in its entirety clearly favored GES/EST equipment.

accomplishment and GES/EST rewards the Strategic Partner with a 10 percent price discount from the cost of the GES/EST fire alarm equipment for the project. This is known by GES/EST Strategic Partners as “registering” the specification. This practice places other GES/EST Strategic Partners who might be interested in bidding a public project like the one at UMass Dartmouth at a distinct competitive disadvantage because they do not receive the price discount. Moreover, this investigation revealed that Signet’s Vice President and the GES/EST District Manager actively encouraged other Strategic Partners not to submit bids at all. This conduct was brought to the attention of the General Contractor. The fire alarm bid process was scrapped and a rebidding process was initiated. Had the bid process not been halted, taxpayers would have had no protection from the adverse effects of a manipulated procurement process orchestrated by that Strategic Partner.

In general, the GES/EST Specification Discount Policy is contrary to the spirit and letter of Massachusetts law. M.G.L. c.30, §39M(b) states that “specifications . . . shall be written to provide for full competition for each item of material furnished under the contract. . . .” It goes on to state that “[f]or each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said name or described materials.”

In this office’s opinion, M.G.L. c.30, §39M(b) effectively prohibits manufacturers from implementing policies that reward sales persons for influencing public owners to write specifications listing only one brand name product when other competing products also meet the owner’s requirements.

The law states that public owners must write specifications to provide for full competition unless sound reasons exist, as determined by a reasonable investigation, for limiting such competition. Public officials ordinarily must provide that specifications include not fewer than three brand names or a description of material that can be met by a minimum of three manufacturers or products, or for the equal of any one of the three brand names or described materials. Exceptions to this requirement should be made only after the public official has conducted an independent, reasonable investigation

justifying a sound reason in the public interest to provide for less than full competition with the results of such investigation memorialized in writing.

In the present instance, GES/EST's incentive policy relates to the marketing of products within a highly competitive market sector in which other major manufacturers offer equivalent products. GES/EST's policy has the intended effect of incentivizing the issuance of RFP's that do not include at least three brand names or equivalents but instead list only one brand name, their own. If other competing products exist in the market place that meet the required product needs of the owner, the law dictates that at least two other brand names should be included. GES/EST's policy does not comply with the law in this regard and should be discontinued.

Practically speaking, the inclusion of a brand name fire alarm system in a product specification acts as a bidding disincentive to other manufacturers of fire alarm systems. The 10 percent discount creates a bidding disincentive for other GES/EST distributors, as well. Importantly, such policy in no way guarantees that the project owner benefits from the distributor's 10 percent reduction in the purchase price for the fire alarm system. Moreover, in this case, the specification required that the fire alarm system be purchased from a specific distributor, and therefore other GES/EST distributors were not even invited to bid.

With respect to Phase Two of the Cedar Dell bidding process, the investigation disclosed that this procurement was the object of bid rigging. After Signet's Vice President successfully influenced the project engineering firm's employee to write the fire alarm specification to purchase from GES/EST and Signet, he sent an email message to the GES/EST District Manager. The email specifically stated that other GES/EST Strategic Partners should refrain from bidding the job or in the alternative, bid the fire alarm equipment at list prices. This email was also sent to two of Signet's primary competitors. Both of these companies are also GES/EST Strategic Partners. The GES/EST District Manager responded by email informing Signet's Vice President that GES registered the specification which entitled Signet to a 10 percent discount on the fire alarm equipment for the Cedar Dell project. Signet's Vice President informed this Office that he sent the email because once he "registered" the Phase Two



specification with GES/EST, he did not believe that his competitors should bid because he did the work of convincing the project electrical engineer to write the brand name, GES/EST fire alarm equipment, into the specifications.

The investigation disclosed that Signet's Vice President sent additional follow up emails to the GES/EST District Manager seeking his assistance to ensure that his GES/EST competitor Strategic Partners would refrain from bidding on Phase Two of the Cedar Dell project. Most damning was an email which stated, "I'm nervous about (a Strategic Partner). They may quote (an electrical contractor). Could you remind them that this is the second phase of this project and they cannot quote it." The GES/EST District Manager responded by email and stated, "I'll call [the president of the Strategic Partner] today – right now in fact." The investigation revealed a taped phone message left by the GES/EST District Manager on the phone of the President of the Signet competitor. The message states in relevant part, "So, there's a bid out on the street right now for an addition, another dorm that's going to tie in to this network and I'd appreciate it if you would treat that accordingly. If contractors call you for a price, refer them to Signet and if you have to quote something to maintain that relationship, treat it accordingly." This evidence clearly demonstrates that the GES/EST District Manager aided and abetted Signet's Vice President in his effort to limit fair and open competition with respect to the Phase Two fire alarm bid solicitation process.

Signet's Vice President, assisted by the GES/EST District Manager, was successful in his effort to influence his competitor Strategic Partners to refrain from bidding on Phase Two of the Cedar Dell project. In fact, one electrical contractor attempted to obtain GES/EST fire alarm prices from both of Signet's two principal competitors for his bid on the Phase Two electrical work. Both companies declined to offer him a price quote. He was told by one that the GES/EST District Manager told them not to bid because it was Signet's job. Additionally, the electrical contractor stated that he was informed by another principal competitor that Signet registered the job.

The investigation uncovered evidence that indicates that GES/EST Strategic Partners may be involved as a regular practice in an informal agreement not to submit bids or to bid at list prices when one of them has successfully convinced the owner or its agent to

write into the specification the GES/EST brand name equipment that they distribute. The regularity of this practice among Strategic Partners is clearly detrimental to public owners. Though not intended by GES/EST, in the case of the UMass Cedar Dell project, a consequence of its Specification Discount Policy for product placement in specifications was an informal agreement among Strategic Partners not to bid against the distributor that had registered the specification with GES/EST, resulting in a severe restriction of meaningful price competition. Taxpayers bear the brunt of such anticompetitive schemes.

It should be noted that upon learning of the conduct of Signet's Vice President and the GES/EST District Manager in connection with Phase Two of the Cedar Dell project, GES/EST officials promptly reported the matter to the Department of Justice (DOJ) Antitrust Division in New York.<sup>4</sup> GES/EST officials also immediately took steps to remind involved parties of their obligation to adhere to GES/EST policies which require compliance with antitrust laws. In addition, GES/EST also suspended and subsequently terminated the GES/EST District Manager and informed Signet that Signet's Vice President was no longer authorized to work on GES/EST related matters. It is also noteworthy that GES/EST is reviewing and clarifying aspects of its Specification Discount policy. However, GES/EST officials disagree with our view that the policy encourages anticompetitive behavior on the part of its Strategic Partners.

GES/EST should be commended for promptly reporting the conduct of the GES/EST District Manager and Signet's Vice President to DOJ officials in New York and cooperating with this Office in our investigation of the matter. By way of contrast, no UMass official or any of its project representatives reported such conduct to any law enforcement agency when the conduct came to their attention. This failure to report is clearly unacceptable.

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<sup>4</sup> This information has been provided to this Office by an attorney representing GES/EST and corroborated by DOJ officials.

## ***General Project Background***

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Pursuant to its receipt of a waiver from the Governor pursuant to a Special Act of the Legislature, the UMASS Building Authority, on behalf of the University of Massachusetts, solicited joint proposals from architectural firms and construction management firms to provide design and construction management services in connection with renovations of the Cedar Dell residential housing complex located at the University of Massachusetts Dartmouth. The Cedar Dell complex is comprised of fourteen two-story townhouse type buildings arranged in two clusters. Each cluster consists of seven buildings. The scope of the work for the project was comprehensive. The case at hand is focused on bidding practices for the electrical work on this project and very specifically the procurement of the fire alarm system. Documents indicated that besides the fire alarm system, the electrical portion of the project work might consist of replacement of carbon monoxide detectors, replacement of exit signs, emergency battery light units, certain wall outlets and lighting fixtures. In addition, the scope of work included the required electrical connections to the new boilers, circulator pumps, water heaters, and control devices.

The UMass Construction Project Manager for Facilities Planning, Design & Construction (UMass Manager), advised this office that the Cedar Dell project was to be completed in two separate phases. He advised that Phase One of the Cedar Dell project involved the renovation of seven dormitories at Cedar Dell South and Phase Two involved the renovation of the remaining seven dormitories at Cedar Dell West on the campus. The UMass Manager advised that the University of Massachusetts Building Authority (UMBA), located in Boston, is considered to be the owner of the renovated dormitories.

This office also spoke with the UMBA Director of Capital Projects. He advised that the UMBA hired a company to serve as the Cedar Dell project's Construction Manager. The Construction Manager served as the owner's representative for the Cedar Dell Project. He advised that the UMBA also solicited bids and hired a General Contractor and a Design Firm as a team to coordinate the project construction and create the design plans for the Cedar Dell Project. The design firm subcontracted the design of the electrical work to an electrical engineering firm. The electrical engineering firm was

responsible for creating the electrical specifications for the project which included the specification for the GES/EST fire alarm equipment.

The UMass Manager advised that members of his unit at UMass Dartmouth agreed that fire alarm equipment manufactured by GES/EST was one of two brands of fire alarm equipment that would be acceptable for use on the Cedar Dell project. The other acceptable brand was manufactured by a company called Notifier. The UMass Manager advised that GES/EST fire alarm equipment had been used in other UMass Dartmouth campus dormitory renovation projects and UMass officials were happy with the way it worked.

The UMass Manager advised that Signet's Vice President was involved in the distribution of GES/EST fire alarm equipment during the renovation of other campus dormitories before the Cedar Dell projects began. He advised that the Signet Vice President was involved in bringing GES/EST fire alarm equipment to the campus for utilization in Phase One of the Cedar Dell project. The UMass Manager advised on August 5, 2009 that no one from his Department ever reported allegations of Signet's attempt to control competition regarding Phase Two of the project to any law enforcement authority. The UMBA Director of Capital Projects also informed this Office on August 6, 2009 that no one from the UMBA reported Signet's inappropriate conduct to any law enforcement agency.

## ***Interview of Electrical Contractor***

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This Office interviewed a representative of an electrical contractor who advised that his company was invited to bid on Phase One of the Cedar Dell dormitory project at UMass Dartmouth by the General Contractor on the project. He advised that Phase One of the project was scheduled to begin in May 2007 and it involved renovation of seven dormitory buildings on campus. Phase Two of the project was scheduled to begin in November 2007 and involved renovation of seven more dormitory buildings. His bid for Phase One included replacement of the fire alarm systems in the seven dormitory buildings. The representative advised that he did not win the electrical bid for Phase One.

The representative provided to this Office, a copy of the fire alarm specification for Phase One of the Cedar Dell project. This specification was dated 4/27/07 and it stated that “network fire alarm control panels shall be EST 3 addressable voice evacuation and detection system as distributed by Signet Electronic Systems, Inc. Norwell MA 781-871-5888 X1229.” The specification allowed bidders to also consider using Notifier fire alarm equipment as an alternate.<sup>5</sup> The representative of the electrical contractor advised that he found it objectionable that the Phase One fire alarm specification specifically included Signet as the distributor of GES/EST fire alarm equipment. He stated that he believed that this language was inappropriate, anticompetitive, and that it should not be included in a specification on a public project.

The representative advised that the electrical company was invited to bid on Phase Two of the Cedar Dell project by the General Contractor in November 2007. He provided to this Office a copy of the fire alarm specification for Phase Two of the project. Unlike the Phase One specification, this specification did not contain language citing Notifier as an equal acceptable brand of fire alarm equipment. The specification stated “network fire alarm control panels shall be EST 3 addressable voice evacuation and detection system

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<sup>5</sup> The text of the specification includes this language, “Equal systems include the Notifier AM3030. No other manufacturers or systems shall be acceptable. It is the intent of campus to establish continuity on all fire alarm systems. The EST3 system is the preferred system and should be considered as the base bid.”

as distributed by Signet Electronic Systems, Inc. Norwell, Massachusetts, 781-871-5888 X1229 and shall match Phase 1. No other manufacturer or systems shall be acceptable.” This fire alarm specification was dated 9/21/2007. Once again, the representative found the specification language which stated that the GES/EST fire alarm equipment should be purchased from Signet objectionable. There are numerous distributors of this type of fire alarm control panel.

In the opinion of this Office, naming the distributor was at the very least unabashed favoritism. Such restrictive language has no place in a public, taxpayer funded project. It has, without question, a chilling effect upon open and fair competition and causes other distributors to question the validity of the process. Competition, the foundation upon which public trust in the expenditure of taxpayer money rests, is thwarted by UMass’s practice of specifying a product distributor. Inserting into the specification that the product must be purchased from a specific distributor should be prohibited by all public owners.

The provisions of M.G.L. c.30, §39M(b) require that public officials write specifications for contracts providing for full competition unless sound reasons exist, as determined by a reasonable investigation, for limiting such competition. Sales representatives and occasionally architects, too, are often compensated by product manufacturers for product placement in specifications. Public officials have an obligation to insure that specifications include no fewer than three brand names or a description of material that can be met by a minimum of three manufacturers or products, or for the equal of any one of the three brand names or described materials. Exception to this requirement should be made only after the public official has conducted an independent, reasonable investigation justifying a sound reason in the public interest to provide for less than full competition, with the results of such investigation memorialized in writing.

UMass, operating pursuant to Section 18 of Chapter 773 of the Acts of 1960 as amended by Section 15 of Chapter 319 of the Acts of 1998, was authorized to utilize an alternative mode of procuring design and construction in connection with the renovation and repair of the Cedar Dell Housing Complex at UMass Dartmouth. Because more than half of the funds for the project were derived from “nongovernmental” sources, that

is, student fees, the Special Act permitted UMass, subject to authorization by Governor Patrick, to procure design and construction services for renovation of these dormitories using an alternative procurement methodology.

Pursuant to the provisions of Chapter 773 as amended, UMass submitted a request to the Governor, describing in detail an alternative procurement methodology it wished to employ, which request the Governor subsequently approved. Authority to utilize an alternative procurement methodology did not extend also to waive statutory requirements for compliance with the full-competition standards pertaining to bid specifications under M.G.L. c.30, §39M(b). In this case, UMass failed to comply with the full competition requirements of the law.

Email correspondence indicates that the brand name fire alarm system (distributed by Signet) was inserted into the specifications after a concerted sales effort by Signet's Vice President. GES/EST representatives told this office that their Strategic Partners spend significant time and resources to pitch the GES/EST product to purchasers. We do not know what tactics the Signet Vice President employed to persuade UMass officials and engineering representatives to switch from the previous fire alarm system to the GES/EST brand, but we do know that UMass, its owner's representative, its designer and its General Contractor failed to rigorously review the electrical engineering firm's work product to identify the insertion of a required product distributor into the specifications. Only a glaring error in judgment by Signet's Vice President brought this bid rigging scheme to a halt in this case.

The representative of the electrical contractor informed this Office about the contents of an email message sent by Signet's Vice President, to the GES/EST District Manager. The email was dated 11/26/07 and read as follows: "I am respectfully registering this project at the UMass Dartmouth Cedar Dell complex. This is an addition to our system that was done in a previous phase. As you can see from the attached, I have managed to get EST as the only acceptable mfg. on campus. This took a tremendous sales effort. I would ask that the other SP's [Strategic Partners] respect this effort and not quote or quote at list prices. You may receive calls from various EC's [Electrical

Contractors] looking for a price, please respect our account.”<sup>6</sup> The email was entitled “EST proprietary” and copies of it were sent to two persons who are employed by Signet’s principal competitor companies. The representative advised that this email shows that Signet, was clearly attempting to keep its competing distributors of GES/EST fire alarm products from bidding on Phase Two of the Cedar Dell project.

The representative advised that while he was preparing his bid for the electrical work on Phase Two of the Cedar Dell project, he telephonically contacted one of Signet’s principal competitors to seek a price quote for GES/EST fire alarm equipment. According to the representative of the electrical contractor, the Signet competitor told him that he was told by the GES/EST District Manager not to quote, that it was Signet’s job. Another distributor of GES/EST fire alarm equipment and likewise a primary competitor of Signet also told him that GES/EST told him that he should not quote it. The distributor explained to the representative of the electrical contractor that the project was Signet’s deal because Signet was able to get itself approved by UMass as a proprietary vendor.

A review of other documents by this Office has disclosed that GES/EST has a policy that permits its Strategic Partners to obtain a 10 percent discount on the sale price of GES/EST fire alarm equipment if a Strategic Partner is able to convince a project specification drafter to insert the GES/EST fire alarm product into a project specification. Once this is done, the successful Strategic Partner is able to register the accomplishment with GES/EST. This entitles the successful Strategic Partner to a 10 percent discount. In Phase Two of the Cedar Dell project, Signet was successful in convincing the electrical engineer to insert GES/EST exclusively into the fire alarm specification, thereby earning the GES/EST reward of a 10 percent discount on the equipment cost. Then, Signet actively discouraged other GES/EST vendors from bidding. As such, Signet’s Vice President would not have to use his 10 percent advantage to win the bid, nor would he need to concern himself with what his

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<sup>6</sup> The Strategic Partners are distributors of GES/EST fire alarm equipment that have been specifically approved by GES/EST as authorized distributors of GES/EST fire alarm equipment.



competitors would bid, thereby significantly increasing his profit margin at the taxpayer's expense.

The representative of the electrical contractor advised that he received a quote from Signet for Phase Two of the Cedar Dell job. This quote included the cost of the GES/EST fire alarm equipment. Signet's primary competitors refused to give quotes to the representative of the electrical contractor. The electrical contractor declined to use the Signet quote and instead bid the job without a specific quote from any GES/EST distributor. The representative advised that his company was later informed verbally by the General Contractor that his company was the low bidder on Phase Two and would get the job.

However, after the General Contractor learned of Signet's email to the GES/EST District Manager, which was suggestive of an attempt to limit competition, the General Contractor withdrew the fire alarm portion of the Phase Two electrical specification and rebid. The electrical contractor participated and submitted a bid in the rebidding process but did not get the job. The fire alarm portion of the job eventually was done by another GES/EST distributor from western Massachusetts who was not involved initially in bidding on Phase Two work.

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## ***Review of Relevant Records***

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Pursuant to subpoena, this Office obtained records from Signet, including relevant email correspondence involving the Signet Vice President, and the GES/EST District Manager. The first relevant document is an email message from Signet's Vice President to the GES/EST District Manager which has already been described above. This is the email in which the Signet Vice President attempted to register the fire alarm portion of Phase Two of the Cedar Dell project with GES/EST.

In this email, dated 11/26/07, as previously mentioned, the Signet Vice President states, "I have managed to get EST as the only acceptable mfg. on campus. This took a tremendous sales effort. I would ask that the other SP's respect this effort and not quote or quote at list prices. You may receive calls from various EC's looking for a price, please respect our account." The GES/EST District Manager responded to the Signet Vice President by email and told him that he was pleased to register the specification and that he was entitled to a ten percent specification discount on the project. He also stated, "this credit will make you more competitive when you bid the project, as this discount is only given to the Strategic Partner that writes the spec and registers it."

On 11/29/07 the Signet Vice President sent a second email message to the GES/EST District Manager, in which he said, "Did you get a chance to talk to the Strategic Partner's regarding UMass? The District Manager responded to this email with his own email in which he said, "Your email went to all the Strategic Partners except [a named Strategic Partner]. I spoke to [a representative of that Strategic Partner] he's on board."

On 11/29/07, the Signet Vice President sent a third email message to the District Manager. This email states, "I'm nervous about [another Strategic Partner]. They may quote [an electrical contractor]. Could you remind them that this is the second phase of this project and they cannot quote it?" The District Manager responded to the Signet Vice President by email on 11/29/07 as follows: "I'll call [the President of a competitor Strategic Partner] today – right now in fact."

On 7/15/08 this Office received a transcript of a recorded phone message from the President of a Massachusetts based GES/EST Strategic Partner. The message stated:

Hey [person's first name], It's [the GES/EST District Manager] calling. A few days or a week ago, [the Signet Vice President] sent you an email, I think, regarding UMASS Dartmouth. I'm just calling to follow up and make sure you understand the situation here. [The Signet Vice President] for a couple of years has worked to get this campus from [a GES/EST competitor] to EST and I think he's got about 7 systems he's installed there in the last year and a half. They're just beginning now to network them and continuing to exclude [the GES/EST competitor] from this campus, which is a big turnaround. This used to be all [the GES/EST competitor]. So, there's a bid out on the street right now for an addition, another dorm that's going to tie in to this network and I'd appreciate it if you would treat that accordingly. If contractors call you for a price, refer them to Signet and if you have to quote something to maintain that relationship, treat it accordingly. If you have any questions on this, please give me a call. . . .

On 12/7/07 the GES/EST District Manager sent an email message to Signet's Vice President. He copied two of Signet's primary competitor's on the message. The email stated, "I'm pleased to register the Specification you sent me for the UMASS Dartmouth Cedar Hill (sic) Dormitory project. As you know, this entitles Signet to a 10 percent Specification credit on the project. Hopefully, this credit will make you more competitive when you bid the project, as this discount is only given to the Strategic Partner that writes the spec and registers it. Thank you for your efforts on our behalf to get GE Security/EST listed as the primary alarm vendor. . . ." He went on to remind the Signet Vice President that GES/EST Strategic Partners are required to follow company policy with respect to adherence to antitrust laws.<sup>7</sup>

On 12/7/07, Signet's Vice President responded to the GES/EST District Manager's email by a fourth email to the District Manager and stated, "As you know, the Email below (believed to be the email from the Signet Vice President to the District Manager in which the Vice President attempted to limit competition from other EST distributors) that inspired your response was sent to an Electrical Contractor on the referenced project by one of three recipients of this correspondence. This has caused some controversy. The fact that this was sent to an EC by one of three recipients demonstrates a true ethics issue. I can only hope that my colleagues in the territory do not attempt to undo

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<sup>7</sup> This reference by the GES/EST District Manager to company policy regarding adherence to antitrust laws is believed to be in response to the Signet Vice President's attempt to limit competition in his initial email to GES/EST.

this effort to appease an Electrical contractor. Our enemy is [a GES/EST competitor] and other manufacturers not each other.” Signet’s Vice President is complaining to the GES/EST District Manager about one of Signet’s competitor distributors of GES/EST fire alarm products who apparently notified an electrical contractor of the Signet Vice President’s anticompetitive email. This email contains language, when considered in the light of other evidence developed in this investigation, which appears suggestive of an informal agreement among GES/EST distributors that they should not compete with each other. Further, it suggests that one GES/EST official was aware of the situation.

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## ***Interview of Officials of the General Contractor***

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The President of the General Contractor on the Cedar Dell project was interviewed on 8/6/08 and advised that he and his Executive Manager spent much time working on the project. He advised that the University of Massachusetts Building Authority (UMBA) hired a company to be its Owner Representative on the project. The UMBA and its Owner Representative brought in the General Contractor and the designer on the project after a Request for Proposal process. The project's engineering firm was brought in by the project's Designer.

He advised that Signet was the distributor of GES/EST fire alarm equipment on Phase One. He stated that an engineer from the project's engineering firm wrote the fire alarm specifications for Phase One and Phase Two of the project.

The General Contractor's Executive Manager was present during the interview and advised that he learned of a potential bidding problem regarding Signet, and GES/EST fire alarm equipment for Phase Two of the project from an electrical contractor. The electrical contractor sent him a copy of an email that Signet's Vice President had sent to the GES/EST District Manager. He recalled that this email requested that other distributors of GES/EST fire alarm equipment not bid on Phase Two of the Cedar Dell project or bid at list price. He brought the problem to his President's attention and the General Contractor's President called an official of the Owner's Representative to apprise him of the situation. The President told this official that he thought this email involved collusion and the official agreed.

The General Contractor's President and the official of the Owner's Representative decided that because of suspected collusion, the electrical work on Phase Two had to be rebid. They met with representatives from the project's Designer and UMass Dartmouth at the job site and they all agreed that the fire alarm specification for Phase Two of the project should be expanded to allow other GES/EST distributors to bid on the project. They wanted to use GES/EST fire alarm equipment on the job but wanted to make clear that other distributors of GES/EST equipment were free to bid. The General Contractor's President advised that this decision resulted in the Designer

creating Addendum #2 which opened up the Phase Two bidding on fire alarm equipment to all GES/EST distributors. Addendum #2 contains the following language, "There is no exclusive relationship between Signet and UMass Dartmouth or the UMass Building Authority. All authorized Edwards (EST) distributors are strongly encouraged to bid this project." The President advised that after more than one rebidding process, the fire alarm portion of Phase Two was ultimately awarded to a company from western Massachusetts.

The President of the General Contractor advised that he called the GES/EST District Manager regarding the Signet Vice President's problem email. He stated that the District Manager expressed shock that the Signet Vice President put the contents of his email in writing. The President informed the GES/EST District Manager that he thought the GES/EST policy of giving its fire alarm product distributors a price discount for getting GES/EST products written into job specifications was inappropriate and involved price fixing. According to the General Contractor's President, the District Manager had trouble grasping the price fixing suggestion.

The General Contractor's President provided this Office with a copy of an email he received from Signet's Vice President on 12/7/07. This email reads in pertinent part, "I sent out the copy of the spec and the email to register the job (with GES/EST) and to let the other SP's (i.e. Signet's direct competitors) know that they should not and cannot take this discount on the project. Generally we observe each other's hard work and do not try to undermine this type of effort. . . . we cannot force them not to bid . . . we merely ask for respect and consideration."

On 8/12/08, the General Contractor's President sent a letter to this Office regarding the fire alarm issue pertaining to Phase Two of the Cedar Dell project. The letter made reference to a meeting that was held in the office of the project's Owner's Representative on 1/23/08. In attendance were officials from the General Contractor, the Owner's Representative and Signet's Vice President. The letter states that, "Mr. (Signet's Vice President) explained to us how he understands the Strategic Partnership to work which is, that if a Strategic Partner gets an architect/ engineer or owner to specify an Edwards (EST) System . . . that the partners register the project and receive



an additional discount for that project. Mr. (Signet's Vice President) explained to us that the other Strategic Partners have an understanding to either not bid or bid at list prices on any project that has been registered. We tried to explain to him that this eliminates competitive bidding but he did not understand that. Signet's Vice President went on to explain that at [Name Removed] College, the purchasing agent was trying to obtain a second quotation for some fire alarm work. Signet's Vice President at first refused to bid because the project had been registered by another strategic partner. After persistence by the [Name Removed] College purchasing agent, Signet's Vice President submitted a high bid."

This meeting, as reported by the President of the General Contractor, establishes the existence of an informal agreement between GES/EST Strategic Partners not to compete with each other when one of the Strategic Partner's has registered a specification on a particular job. The statement of Signet's Vice President confirming the existence of this informal agreement is given great weight by this Office because it involves a serious admission against interest.

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## ***Interview of the Project's Engineering Firm Employees***

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On July 8, 2008 this Office interviewed a former employee of the Cedar Dell project's engineering firm. He advised that he is a licensed electrical engineer and was employed by the project's engineering firm for 28 years. He advised that he was laid off from the firm in May 2007 and is currently working on his own. He advised that his former firm was brought on board to work on the UMass Dartmouth Cedar Dell dormitory renovation project by the project's architect.

He advised that he was assigned to write the fire alarm specification for Phase One of the Cedar Dell project. He was informed by someone at UMass that they wanted GES/EST fire alarm equipment to be used on the project. He was told that UMass Dartmouth already had GES/EST fire alarm equipment on campus in other dorms and wanted the same equipment to be used in the Cedar Dell dorms as well.

He advised that he knew that Signet's Vice President was familiar with GES/EST fire alarm products and he called him. He advised that he had worked with the Signet Vice President on several other projects over the years and knew that Signet handled GES/EST fire alarm products. He advised that he wrote the fire alarm specification for Phase One of the Cedar Dell project. He advised that the language for the entire fire alarm specification for Phase One was given to him by Signet's Vice President. This language included the following: "Network fire alarm control panels shall be EST 3 addressable voice evacuation and detection system as distributed by Signet Electronic Systems, inc. Norwell, MA. . . ." He advised that Signet's Vice President provided him with the specification language by email. Signet's Vice President did not tell him that Signet would get a price discount from GES/EST if the EST3 addressable voice evacuation and detection system language was included in the fire alarm specification.

He advised that the project's architect was not happy with his work on Phase One and his superiors removed him from the project. He stated that he was currently working on three other public projects that also involve Signet and its Vice President. He advised that with respect to two of the other public projects, the Signet Vice President provided him with the fire alarm specification language.

This Office is in possession of an email sent from the Signet Vice President to the electrical engineer, dated 4/10/07. This email is entitled "Umass Dartmouth fire doc." and contains an attachment which has the same title. The email states, "[Engineer's name] here is the spec. Please review and advise. The riser is on the way." This Office believes that the attachment referenced in this email is the specification for fire alarm equipment for Phase One provided to the engineer by Signet's Vice President.

A second electrical engineer from the project's engineering firm was interviewed by this Office on July 2, 2008. He advised that he has been employed by the firm for 12 years. He advised that he was instructed by his superiors to take over work on the UMass Dartmouth Cedar Dell dormitory renovation project after another electrical engineer was removed from working on the project. He advised that he was responsible for drafting the specification language for the fire alarm specification used in Phase Two of the Cedar Dell project. He drafted the restrictive language that appears in the Phase Two fire alarm specification. This language reads in pertinent part, "Network fire alarm control panels shall be EST 3 addressable voice evacuation and detection system as distributed by Signet Electronic Systems, Inc. Norwell, MA. . . . No other manufacturers or systems shall be acceptable."

This engineer advised that to the best of his knowledge, neither the Signet Vice President nor Signet had any input regarding the fire alarm language set forth above.<sup>8</sup>

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<sup>8</sup> As set forth in the Signet Vice President interview section of this report, the Signet Vice President contradicts the electrical engineer on this point and states that he spoke directly with the engineer and suggested to him that he incorporate language into the Phase Two fire alarm specification that specifically identified GES/EST fire alarm products to be used and that they be distributed by Signet. This Office credits the Signet Vice President's commentary on this point.

## ***Interview of the Signet Electronic Systems Vice President***

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On January 20, 2009 this Office interviewed the Signet Vice President of Sales, Signet Electronic Systems, Norwell, MA. The Signet Vice President advised that he worked on Phase One of the UMass Cedar Dell dormitory renovation project. The Signet Vice President advised that upon learning of the plan for the Cedar Dell renovation project, he contacted one of the electrical engineers from the engineering firm that was hired to work on the Cedar Dell project. He stated that he has known the electrical engineer for twenty years.

The Signet Vice President stated that he believed that the electrical engineer placed the name of GES/EST fire alarm products and Signet's name in the fire alarm specification for Phase One of the Cedar Dell project. He advised that to the best of his knowledge, he did not provide the engineer with the written fire alarm specification that was used for Phase One of the project.<sup>9</sup> Nevertheless, he admitted that in all cases where he is trying to obtain business for Signet, he will suggest to electrical engineers working on various projects that he is interested in them specifying GES/EST products and Signet in their specifications for fire alarm equipment. He also admitted that he regularly provides to electrical engineers working on various projects, a written specification containing the names of GES/EST fire alarm products and Signet.<sup>10</sup>

The Signet Vice President advised that a particular electrical contractor won the electrical bid for Phase One of the Cedar Dell project and used GES/EST fire alarm products and Signet to supply them. He advised that an electrical engineer from the same electrical engineering firm that worked on Phase One called him regarding Phase Two of the Cedar Dell project and asked him for advice on how to write the fire alarm specifications for Phase Two. The Signet Vice President advised that he suggested to

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<sup>9</sup> The electrical engineer for Phase One has specifically informed this Office that he received a written Phase One fire alarm specification from the Signet Vice President which he incorporated into the actual fire alarm specification for Phase One. This Office has received a copy of an email from the Signet Vice President to the electrical engineer which appears to support the engineer's recollection on this point.

<sup>10</sup> Based upon this admission, it appears highly probable that there may be many other public projects won by Signet that involve the kind of anticompetitive language found in the fire alarm specifications written for Phase Two of the Cedar Dell project.

the engineer that he incorporate GES/EST fire alarm products and Signet into the Phase Two fire alarm specifications. The Signet Vice President further recommended to the engineer that he state in the specifications that no other manufacturer or fire alarm system was acceptable. The engineer followed the Signet Vice President's advice.

The Signet Vice President advised that GES/EST has a specific policy concerning registration of its name into electrical specifications on specific construction projects. He explained that distributors of fire alarm products can apply with GES/EST to become "Strategic Partners" in the distribution of GES/EST fire alarm products. GES/EST encourages its Strategic Partners to work with project electrical engineers to convince them to write GES/EST products into fire alarm specifications. The Signet Vice President advised that once this is done, the successful Strategic Partner will notify GES/EST of the accomplishment and register the specification with them. Upon registering the specification, the successful Strategic Partner is entitled to a 10 percent price discount from GES/EST on fire alarm products for the particular job.

The Signet Vice President advised that once the engineer had inserted the GES/EST alarm equipment into the Cedar Dell Phase Two fire alarm specification, he sent an email, dated 11/26/07, to the GES/EST District Manager, and copied two competitor Strategic Partners on the email. The Signet Vice President stated that the purpose of the email was to register the specification with GES/EST regarding Phase Two of the Cedar Dell project and obtain the 10 percent price discount. He advised that he copied two of Signet's competitor Strategic Partners on the email to alert them that they should not try to claim the discount because he did the work and was entitled to the discount.

The Signet Vice President advised that he sent a second email to the GES/EST District Manager to express concern because he was nervous about the possibility that one of his competitor Strategic Partners might bid on Phase Two even though Signet had earned the GES/EST discount. He advised that he was not aware of whether the GES/EST District Manager followed up with his two competitors regarding his second email.

The Signet Vice President denied that there ever was an agreement between Signet, and its competitor Strategic Partners not to compete with each other when one of the parties had done prior work on a project and registered it with GES/EST.<sup>11</sup> Nevertheless, the Signet Vice President advised that he believed that his competitor Strategic Partners should not bid on Phase Two because he had done the work to earn the 10 percent discount from GES/EST.

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<sup>11</sup> The Signet Vice President's statement on this point is directly contradicted by his own statement to the General Contractor and the Owner's Representative after they discovered the Signet Vice President's attempt to limit competition. At that time, he informed these men that the other Strategic Partners have an understanding to either not bid or bid at list prices on any project that has been registered.

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## ***Interview of Officials at General Electric Security***

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In June 2009 officials representing General Electric Security (GES Officials) met with investigators from this Office and provided an explanation concerning remedial steps taken by GES/EST upon learning about the conduct of their employee, the GES/EST District Manager, and the Signet Vice President. They subsequently provided this Office with written material which further explicated the remedial steps taken by them in response to the inappropriate conduct of these individuals. First, GES/EST officials apprised us of the provisions of its comprehensive policy prohibiting anticompetitive behavior by its employees and its Strategic Partners. Second, they informed us that the GES/EST District Manager received training from GES/EST pertaining to avoidance of anticompetitive behavior and the Signet Vice President attended GES/EST conferences at which antitrust training was featured. Third, they informed us that upon learning of possible inappropriate anticompetitive behavior involving the GES/EST District Manager and the Signet Vice President, GES/EST instructed the District Manager to notify affected Strategic Partners by email to remind them of their obligation to comply with company policy which prohibited anticompetitive behavior. This was done by the GES/EST District Manager and was followed up soon after by a GES/EST official who sent a more detailed email to the affected parties concerning company policy relating to anticompetitive conduct.

GES/EST officials initiated an internal investigation to establish the facts concerning what actually happened in Phase Two of the Cedar Dell matter. GES/EST officials also promptly brought the situation to the attention of the United States Department of Justice Anti Trust Division (DOJ) in New York and pledged their complete future cooperation with DOJ regarding any further investigation. GES officials are to be commended for the positive steps they took to promptly notify DOJ of the facts in this matter and for their subsequent cooperation with investigators from this Office.

GES/EST officials advised that GES/EST suspended their District Manager with pay on 12/19/07. On 2/11/08, GES/EST informed Signet that they did not want the Signet Vice President working on any matters relating to GES/EST. GES/EST officials advised that its prohibition against the Signet Vice President working on GES/EST matters is still in

effect. GES/EST officials advised that they received a written apology from an Executive Vice President of Signet who characterized the questionable conduct of the Signet Vice President as a “poor decision of a rogue employee.” It should be noted that in spite of this characterization, the Signet Vice President was still employed by Signet as a Vice President of Sales when interviewed by this Office in 2009.

GES/EST officials took subsequent disciplinary action against their District Manager. He received a written reprimand for his conduct, a reduction in compensation and mandatory additional training. He was allowed to return to work upon the condition that he provide complete and accurate information regarding the ongoing investigation. GES/EST later learned from DOJ that the District Manager may not have provided complete and accurate information to DOJ and they suspended him again without pay. GES/EST officials informed this Office that after completing an internal review of the District Manager’s conduct, they terminated him in July, 2009.

GES/EST officials have explained the nature and rationale behind their “Specification Discount Policy” to investigators from this Office. General Electric Security (GES) inherited the policy from Edwards Systems Technology (EST) when they purchased EST in 2005. They displayed a copy of the policy to the investigators. The written policy specifically encouraged GES/EST Strategic Partners to influence the electrical engineers on various construction projects to base their project specifications on GES/EST fire alarm products. GES/EST officials advised that the company relies on its Strategic Partners to educate engineers on the merits of its products. They explained that this education process takes time and resources expended by its Strategic Partners. GES/EST rewards those Strategic Partners who expend both time and resources to perform the necessary engineer education process through its Specification Discount Policy.

This policy grants a 10 percent price discount to a Strategic Partner who is successful in convincing an owner to specifically name GES/EST fire alarm products in a project specification. If the Strategic Partner who accomplishes this work does not ultimately win the bid and instead, the bid is won by another Strategic Partner, the Strategic Partner who accomplished the work will receive a credit on another project. GES/EST

officials, while acknowledging that the Specification Discount Policy appears to provide a cost advantage to the Strategic Partner and/or owner who through their own expenditure of time and money convinces an engineer to include GES/EST brand products in a specification, insisted that the policy actually facilitates price discounting among its Strategic Partners. They suggest that competition between Strategic Partners in Massachusetts is vigorous. GES/EST officials advised that although they strongly believe this policy conforms to existing antitrust law, they are in the process of evaluating the policy language and considering some changes, including certain changes recommended by this Office. They also told this Office that this is not the only public project in Massachusetts with which they are aware that a Strategic Partner had registered the specification and the specification indicated that the GES/EST product must be distributed by Signet Electronic Systems, Inc.

GES/EST officials informed investigators that one of the steps taken by them after learning of alleged inappropriate conduct on the part of their District Manager was to show up unannounced at his home for the purpose of conducting a search of his home office for relevant records. They arrived at his home with a forensic computer expert who made an image of the District Manager's office computer. They later crafted a key word search and located a letter on the computer which is significant and relevant to the current investigation. They voluntarily provided the letter to this Office.

The letter, dated 2/26/99, was addressed to an official of a Massachusetts company that was a Strategic Partner of Edwards Systems Technology (EST) before it was acquired by GES in 2005. The letter had the GES/EST District Manager's name at the bottom and showed him as representing EST.<sup>12</sup> This letter was written by the GES/EST District Manager substantially before EST was acquired by GES in 2005. The letter referenced a meeting between the GES/EST District Manager, who at the time worked for EST as its New England District Manager and the official of the Massachusetts based EST Strategic Partner which occurred on 2/17/99. At the time, this EST Strategic Partner

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<sup>12</sup> The EST District Manager is the same person who later worked for GES/EST after EST was acquired by GES in 2005. He is the same person that aided and abetted the Signet Vice President in the Cedar Dell matter in 2007.

was a distributor of EST fire alarm products. This company was never affiliated with GES and was terminated by EST in 2000.

The letter mentioned an informal agreement between EST distributors where they respect each other's specification writing efforts and refrain from bidding on those jobs. The exact language of the letter is significant: "We've also discussed in the past the "informal" agreement among all of the current EST Distributors in Eastern MA where they respect each other's spec writing efforts by not bidding on someone else's spec. I know you find this hard to believe, but it works in most cases . . . and you will find they will respect the specs you write also. Until such time as your efforts in writing specs is proportionately equal to the other ESD's (EST Distributors), I'd appreciate it if you would give this "informal" agreement a chance to work."

This letter combined with other evidence uncovered during this investigation is highly indicative of the fact that an informal agreement is in place among GES/EST distributors not to compete with each other when one of them registers a specification. When this 1999 letter is considered in light of the conduct of Signet's Vice President and the GES/EST District Manager in 2007, and the Signet Vice President's candid admission in 2008 to the General Contractor and the Owner's Representative of the existence of an informal agreement among Strategic Partners to control bidding, a disturbing pattern of anticompetitive misconduct emerges. This conclusion is both reasonable and inescapable.

## ***Conclusions and Recommendations***

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This investigation was initiated upon a complaint that a Vice President of Signet Electronic Systems, Norwell, Massachusetts had attempted to limit open and fair competition with respect to the fire alarm equipment portion of Phase Two of the UMass Dartmouth Cedar Dell dormitory renovation project. Specifically, it was alleged that Signet's Vice President attempted to influence other distributors of GES/EST fire alarm equipment to refrain from bidding or to bid at list prices regarding Phase Two of the project.

The investigation conducted by the Inspector General has substantially corroborated the initial allegation and uncovered clear anticompetitive behavior engaged in by Signet's Vice President, aided and abetted by the GES/EST District Manager. Moreover, the investigation disclosed a GES/EST policy that is contrary to the spirit and letter of Massachusetts law and which encourages GES/EST Strategic Partners to influence project electrical engineers to favor GES/EST fire alarm products by writing project specifications to include GES/EST proprietary equipment. This policy contributed to anticompetitive behavior described herein and is detrimental to the public interest. The evidence gathered by the investigation has established several unassailable facts.

First, with respect to the initial complaint, this Office obtained a copy of an email, dated 11/26/07, that was sent by Signet's Vice President to the GES/EST District Manager and two of Signet's primary competitor Strategic Partners. In the email, the Signet Vice President clearly and unequivocally asks his primary competitors not to bid on Phase Two of the Cedar Dell project or to submit list price bids. This request involves two well known types of bid rigging. The first involves Bid Suppression whereby competitors agree to refrain from bidding in order to allow one competitor to win a bid. The second involves Complimentary Bidding in which competitors agree to submit inflated bids to insure that the one submitting the designated low bid will win. Here, Signet's Vice President was pressuring his direct competitors not to bid (Bid Suppression) or to bid at list prices (Complimentary Bidding) in order to ensure that Signet would win the bid for fire alarm equipment. The Signet Vice President had the benefit of receiving the GES/EST fire alarm equipment at 10 percent below custom in accordance with the

GES/EST discount policy. At the same time, without legitimate and competitive bidding by his competitors, he would not need to reflect any cost savings from his price discount with UMass.

Second, other emails between Signet's Vice President and the GES/EST District Manager on 11/29/07, as described earlier in this report, provide further evidence of the pressure Signet's Vice President brought upon his competitors to keep them from bidding on Phase Two of the Cedar Dell project. In one email, Signet's Vice President asked the GES/EST District Manager whether he had a chance to speak to Signet's competitors regarding UMass. The GES/EST District Manager responded that the Signet Vice President's email went to all GES/EST distributors (Signet competitors) except one. The GES/EST District Manager further stated that he spoke to that distributor and "he's on board."

More telling is Signet's Vice President's response. He states, "I'm nervous about [one of Signet's competitors]. They may quote [a particular electrical contractor]. Could you remind them that this is the second phase of this project and they cannot quote it." Not only did Signet's Vice President directly pressure his competitors not to bid the UMass project but also enlisted the assistance of the GES/EST District Manager to act as his surrogate. The evidence establishes that the GES/EST District Manager in fact acted as Signet's advocate in the matter. He left a damaging voice mail on the phone of the President of a Signet competitor. In that voice mail, the GES/EST District Manager stated, "If contractors call you for a price, refer them to Signet, and if you have to quote something to maintain that relationship, treat it accordingly." There can be no doubt that the GES/EST District Manager pressured a Signet competitor to refrain from bidding on the UMass project or to submit a high bid if necessary to maintain a relationship with an electrical contractor. Not only was Signet's Vice President seeking to rig the fire alarm bid but the GES/EST District Manager, the product manufacturer's employee, was supporting his effort. This conduct is clearly illegal and unacceptable.

Third, an electrical contractor involved in the Phase Two bidding process spoke directly with employees from two Signet competitors in an effort to obtain a bid for GES/EST fire alarm equipment for Phase Two of the Cedar Dell project. The electrical contractor was

informed by an employee of one Signet competitor that he could not give the electrical contractor a price for Phase Two because the GES/EST District Manager told him and another Signet competitor not to quote the electrical contractor a price. He told the electrical contractor that it was Signet's job. The electrical contractor advised that he received a similar response from a second Signet competitor. Apparently, the combined efforts of Signet's Vice President and the GES/EST District Manager to make Signet the front runner were initially successful.

Fourth, this investigation developed evidence that the attempt to restrain open and fair competition by employees of Signet and GES/EST was not limited to Phase Two of the Cedar Dell project. Instead, the evidence supports the inference that an informal agreement existed between GES/EST distributors which called for them to refrain from bidding or to submit high bids when one of them had registered a specification for a job with GES/EST. Moreover, there is evidence which suggests that the GES/EST District Manager was aware of this agreement and acted as a referee between distributors when problems arose among them with respect to it. For example, Signet's Vice President sent an email to the project's General Contractor during the Phase Two fire alarm bidding process. In the email Signet's Vice President tried to explain the reason why he sent the 11/26/07 anticompetitive email to the GES/EST District Manager and the other GES/EST distributors. The email informed the General Contractor that Signet's competitors "should not and cannot take this discount on the project." It also said, "generally we observe each others hard work and do not try to undermine this type of effort. . . . we cannot force them not to bid. . . . we merely ask for respect and consideration."

From the email described above, coupled with knowledge of the other facts developed by the investigation, it is reasonable to conclude that an informal agreement exists among GES/EST distributors whereby they will not bid on projects when one of them has registered the specification. Moreover, as mentioned previously, GES/EST officials have provided us with a copy of a 1999 letter from an EST District Manager to an EST product distributor in Massachusetts. In the letter the EST District Manager attempts to arbitrate a dispute between two EST product distributors. The EST District Manager

complained that the distributor was bidding jobs against a second EST distributor after the latter had registered the specification with EST. The EST District Manager mentioned an informal agreement among EST distributors wherein they respect each other's specification writing efforts and don't bid on those jobs. This letter was created by the same person that later became a GES/EST District Manager and the same person interacting on behalf of GES/EST with Signet on the Cedar Dell project in 2007. The evidence shows that the GES/EST District Manager has been involved in refereeing bid rigging disputes among Strategic Partners for many years as an employee of GES/EST and earlier, of EST.

The evidence of an informal agreement to restrain trade among GES/EST Strategic Partners is bolstered by the project General Contractor's letter to this Office in which he reported a meeting attended by the General Contractor, Signet's Vice President and other UMass Cedar Dell project leaders in January 2008. The General Contractor reported that Signet's Vice President explained to those in attendance that GES/EST Strategic Partners "have an understanding to either not bid or bid at list prices on any project that has been registered." This statement is unambiguous and clearly points to the existence of an anticompetitive agreement between GES/EST distributors.

The Signet Vice President's actual conduct, as outlined in this report, regarding Phase Two of the Cedar Dell project, aided and abetted by the GES/EST District Manager, also supports the existence of an illegal agreement among GES/EST distributors. After all, Signet's Vice President sent the GES/EST District Manager and two competitor GES/EST distributors an email in which he attempted to register the fire alarm specification and remind his competitors that they should not bid on Phase Two or bid at list prices. Signet's Vice President, doubting whether the agreement would hold, sought the GES/EST District Manager's help to ensure an outcome favorable to Signet. The GES/EST District Manager subsequently followed through and encouraged Signet's primary competitors not to bid.

Fifth, this investigation uncovered an alarming practice in which a GES/EST approved distributor, i.e. Signet, approached the Cedar Dell project electrical engineers before the fire alarm portion of the project was bid. Signet's Vice President, by his own admission,



influenced the electrical engineers to specify GES/EST products in the fire alarm specification of Phase One and Phase Two of the Cedar Dell project. With respect to Phase One, Signet's Vice President actually provided written language to the engineer which was used in the fire alarm specification. Regarding the Phase Two fire alarm specification, the Signet Vice President admitted that he verbally provided a second engineer with the specification language. In both cases, the language provided was narrow and anticompetitive. No written rationale for favoring the GES/EST product in Phases One & Two was made available to this Office during the course of this investigation. Moreover, no one had an answer to why the specifications were written to require that the GES/EST product be purchased from Signet Electronic Systems. The specification as written gave the clear impression that UMass Dartmouth and its representatives succumbed to a hearty sales effort by Signet's Vice President and predetermined that GES/EST fire alarm equipment was to be used during both phases of the project. Moreover, in both specifications, Signet Electronic Systems was listed as the only acceptable distributor of the GES/EST products.

Restricting the purchase of brand name products or any product to a specific distributor is anathema to the open and fair bidding landscape in Massachusetts. Such restrictive language has no place in a public taxpayer funded project. It is, without question anticompetitive and has a chilling effect upon open and fair competition. It may cause other manufacturers and distributors to question the validity of the process and to refrain from bidding. Listing a distributor of a product should always be rejected by a public owner.

Finally, this investigation disclosed the existence of a specific GES/EST policy that financially rewards GES/EST approved distributors who successfully influence project owners and/or their representatives to include GES/EST fire alarm products in project specifications. This policy rewards the successful distributor by providing a 10 percent price discount on the purchase of fire alarm products which will be resold to project owners. The GES/EST policy rewards Strategic Partners for assisting a public awarding authority and/or its representatives in violating the spirit and the letter of Massachusetts law by limiting full competition. The practical result of the policy is an

unwanted restriction on full and fair competition. It places all other brand products as well as GES/EST approved distributors at a distinct economic disadvantage and in no way guarantees lower prices to the public owner.

Submission of a bid in a bidding competition requires a concerted amount of time and effort on the bidder's behalf. If the specification names a particular brand of product or material, it potentially increases costs and negatively effects competition by creating an uneven playing field. As such, it may deter bidders from bidding altogether or deter bidders from "sharpening their pencils to give the public owner a competitive bid." Moreover, other GES/EST distributors that do not get the 10 percent discount are also less likely to expend the time necessary to submit a competitive bid on a project when it is known that another Strategic Partner has received the discount before the bidding begins. This would be true even in the absence of an informal agreement among GES approved distributors not to submit competitive bids when one of them registers the specification.

This GES/EST Specification Discount Policy can fairly be said to be a contributing factor to anticompetitive behavior uncovered by this investigation. It should be noted that GES/EST officials disagree with our conclusion that their Specification Discount Policy" is anticompetitive in nature. They believe that the policy is in full accord with relevant law and simply rewards its Strategic Partners for diligent work, having expended time and resources to educate owners and engineers on the merit and value of the GES/EST product.

This Office finds nothing wrong with vendors approaching owners and their representatives to educate them on the merits of particular products. The line was crossed in this case when the other Strategic Partner's incentive to compete was diminished by the known fact that one Strategic Partner would be receiving a significant economic advantage, the GES/EST specification discount. In addition, Signet's Vice President and the GES/EST District Manager actively dissuaded potential bidders from submitting competitive bids in consideration of the GES/EST Specification Discount Policy, making this policy appear all the more ill-advised. In this case, it is unlikely that

anticompetitive behavior would have happened but for the disincentive in the GES/EST Specification Discount Policy.

Moreover, UMass was not vigilant in stewarding the project in the public interest and creating a bidding environment that was open and fair. While the Special Act of the Legislature under which UMass was operating authorizes it to use methods of construction not generally available to a public entity, it did not authorize UMass to forego public safeguards that are in the law to protect against excessive spending. We know from documents in this case that employees of the project's engineering firm were heavily solicited and influenced by the Signet Vice President to include the GES/EST brand fire alarm system in two specifications. UMass gave no indication to this office that it had conducted a reasonable, independent investigation to determine the product's merit and had no written rationale for naming the GES/EST product in its specification. Moreover, UMass officials shirked their duty with carelessness and inattention to detail by permitting bid documents to be issued that contained a requirement that bidders purchase the GES/EST fire alarm system from a specific distributor. This is a red flag of abuse in a public procurement process that the Legislature and Massachusetts' courts have deemed must be open and fair. It is especially intolerable in light of the money UMass expended to pay a designer and an owner's representative for services that inherently would include attention to specification development and review. However, as deficient as UMass' oversight was in this case, no amount of vigilant oversight could have revealed the insidious nature of the bid rigging scheme uncovered here.

One of the most important goals of any public procurement is open and fair competition. Open and fair competition provides all qualified bidders with an equal opportunity to obtain public contracts. Moreover, genuine competition benefits public entities and taxpayers alike because quality goods and services are offered at the most competitive prices possible. For these reasons, the collusive and anticompetitive practice of bid rigging has been declared illegal in the United States. The federal statute that prohibits

bid rigging is the Sherman Act which was originally enacted in 1890.<sup>13</sup> The Sherman Act prohibits agreements among competitors to restrain trade among the several states. The General Laws of Massachusetts likewise prohibit agreements that are in restraint of trade.<sup>14</sup> There can be little doubt that the Signet Vice President's conduct in Phase Two of the Cedar Dell project, aided and abetted by the GES/EST District Manager, involved an attempt to restrain trade.

In summary, there is ample evidence that Signet's Vice President attempted to interfere with open and fair competition regarding both Phases of the Cedar Dell dormitory renovation projects. With respect to Phase One, he provided the project's electrical engineer with a written fire alarm specification which named his firm, Signet Electronic Systems, Inc., as the only acceptable distributor of the fire alarm control panels. This language was inserted into the actual Phase One fire alarm specification before the bidding process began. Likewise, before the Phase Two fire alarm equipment bidding process began, Signet's Vice President verbally influenced another electrical engineer to incorporate GES/EST fire alarm equipment and Signet Electronic Systems, Inc. into the fire alarm specification. In this instance, the language stated that no other manufacturers would be acceptable. Moreover, he attempted to influence his direct competitors not to bid or to bid at list prices on Phase Two of the Cedar Dell project. He also enlisted the assistance of the GES/EST District Manager who assisted the Signet Vice President's effort to restrain trade and aided and abetted in the activity to ensure Signet's success.

The evidence demonstrates that the combined efforts of the Signet Vice President and the GES/EST District Manager to restrain trade were initially successful because both of Signet's competitors (two other GES/EST Strategic Partners) declined to provide a bid to an electrical contractor and told him that either the GES/EST District Manager or GES/EST told them not to bid.

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<sup>13</sup> 15 U.S.C. §1.

<sup>14</sup> M.G.L. c. 93, §4 and §10.

In order to prevent similar anticompetitive conduct of this nature in the future, the following recommendations are being made to officials at the University of Massachusetts Building Authority (UMBA), UMass, and by extension all public officials involved in public construction projects within the Commonwealth:

1. UMass authorities should be vigilant in their duty to expeditiously report information and evidence of bid rigging and improper practices to a law enforcement agency, such as the Office of the Inspector General and the Office of the Attorney General. UMass' inaction when confronted with a clear indicator of fraud is intolerable. UMass officials should conduct an internal review to determine who knew about the scheme and when they knew it and institute appropriate sanctions for the colossal lapse in judgment demonstrated by their failure to report evidence of bid rigging to the proper authorities.
2. The entire UMass building enterprise should receive antifraud, ethics and procurement training.
3. UMass authorities should insure that all prospective vendors (i.e. distributors of a manufacturer's product) on future projects are competing on a level playing field by ascertaining whether any are receiving an anticompetitive price discount from a manufacturer which encourages anticompetitive behavior, e.g. registering a specification as described herein. After all, there is no guarantee that the vendor receiving the discount will pass the discount on to the public entity. Rigorous competition among vendors is the only true method of achieving competitive prices in the taxpayer's interest. Such anticompetitive price discounts should be prohibited regarding future UMass projects.
4. UMass should ensure, by requiring a non-collusion form signed by the design professionals at the contracting stage, that UMass' consultants on building projects are not improperly influenced in their recommendations by product representatives. The non-collusion form should be added to the current form required by M.G.L.c. 7, §38H(e). For example, the form could state:
  - The Designer (design sub-contractor) certifies under the penalties of perjury that it has not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the contract. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals. Furthermore, the Designer (design sub-contractor) certifies under the penalties of perjury that throughout the duration of the contract, it will not have any financial relationship in connection with the performance of this contract with any materials system manufacturer, distributor or vendor. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten percent of

the outstanding stock entitled to vote at the annual meeting of such corporation.

\_\_\_\_\_  
Signed                      Date

\_\_\_\_\_  
Name of Architect

\_\_\_\_\_  
Name of Design Sub-Consultant

5. Similar to recommendation four above, in future projects UMass should require a non-collusion form signed under the pains and penalties of perjury to be completed by all contractors and subcontractors bidding on a project. For example, this form could state:
- The Undersigned certifies under penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

\_\_\_\_\_  
(Signature of individual submitting bid or proposal)

\_\_\_\_\_  
(Name of business)

6. UMass should ensure that decisions to require brand name products in specifications adhere to the public safeguards found in M.G.L.c. 30, §39M(b), including at a minimum, requiring a written determination that reflects the specific need to use any and all brand name products. To do so, UMass should develop a set of standard operating procedures to accompany this exercise.
7. UMass should rigorously review the work product produced by architects and engineers in advance of finalizing bid solicitation documents. UMass clearly had the capacity to ensure the rogue insertion of the required distributor was caught

early on and removed. Its lack of oversight permitted the errant inclusion of a product distributor and an unsupported brand name product into the dormitory electrical specifications.

8. Although no specific evidence of gift giving was discovered in this case, UMass authorities should ensure that a code of conduct exists which clearly sets forth general restrictions on acceptance on gifts and gratuities from sales representatives by UMass employees and its representatives.

UMass authorities should ensure that all persons/companies hired to represent them in future construction matters are made aware of the contents of this report including, but not limited to, Construction Managers, General Contractors, Architects, Engineers and Construction Consultants.