



The Commonwealth of Massachusetts
Office of the Inspector General

GREGORY W. SULLIVAN
INSPECTOR GENERAL

JOHN W. McCORMACK
STATE OFFICE BUILDING
ONE ASHBURTON PLACE
ROOM 1311
BOSTON, MA 02108
TEL: (617) 727-9140
FAX: (617) 723-2334

March 30, 2012

Dr. Carol R. Johnson
Superintendent
Boston Public Schools
26 Court Street
Boston, MA 02108-2581

Re: Textbook Procurement

Dear Dr. Johnson:

The Office of the Inspector General (OIG) received a complaint that Boston Public Schools (BPS) paid significantly more for textbooks because it had failed to comply with Massachusetts General Laws Chapter 30B—the Uniform Procurement Act (M.G.L. c.30B)—in its purchase of textbooks and other educational materials. This year, BPS will spend \$10,939,670 for textbooks.¹

The OIG review confirmed that BPS failed to follow M.G.L. c.30B for textbook procurements and that compliance with M.G.L. c.30B, together with improved policies and procedures properly followed, could significantly reduce BPS's textbook expenses.

As part of the review, the OIG reviewed a sample of BPS textbook purchases made between April 1 and September 30, 2011. The OIG focused on so-called non-textbook-adoption² book purchases, as these books are available from a wide number of suppliers and resellers. These books consist of novels, plays, and other books that are often commonly available from many retail sources. The OIG compared BPS's purchase prices (inclusive of shipping and handling charges) to prices available to the general public through three national book resellers.³ The OIG found that BPS often

¹ Not including purchases that may be made with grant funds, donations, or through the Boston Educational Development Foundation.

² Textbook-adoption textbooks are usually single-subject core curriculum textbooks that are often available from one publisher.

³ The OIG used the same ISBN number listed on the vendor invoice to ensure the price was based on same version and binding.

paid more for books than a member of the general public would, including from the same vendors used by BPS.

This small sample review by the OIG found that BPS paid approximately 8% more for the books than would the general public. Based on this sampling, the OIG believes that BPS could possibly save hundreds of thousands of dollars each year through more effective procurement practices.

The OIG also found that BPS overpaid for shipping and handling charges, that its business office exercises only limited oversight of textbook purchases, and that its current decentralized book-buying process does not foster sound business practices.

Background

BPS textbook purchases are made by individual teachers, schools, programs, or libraries who prepare a purchase order and forwarding the purchase order to the BPS business office. The purchase order includes the items to be purchased and from which vendor the purchase should be made. The business office verifies that the school, program, or library has sufficient funds in its budget to cover the purchase and places the order with the vendor specified by the issuer of the purchase order.

According to BPS's Chief Financial Officer (CFO), BPS does not use the competitive procurement processes outlined in M.G.L. c.30B for textbook purchases because BPS believes that textbook purchases are exempt from M.G.L. c.30B. This is not a correct statement of the law.⁴ The statute does allow a governmental body to procure supplies without advertising or competition if it undertakes a reasonable investigation, determines there is only one practicable source, and documents the investigation and its findings in its procurement file.⁵ These so-called sole-source procurements are allowed only for procurements of less than \$25,000, although a governmental body may make sole-source procurements—subject to the conditions stated—in an amount greater than \$25,000 for:

library books, school textbooks, educational programs, educational courses, educational curricula in any media including educational software, newspapers, serials, periodicals, audiovisual materials or software maintenance.⁶

In some cases, single-subject textbooks might be eligible for purchase under these provisions (sole-source procurements). However, other books may be obtained from multiple sources. For example, BPS purchased copies of the play, *A Raisin in the Sun*, which is available from multiple vendors, without using a M.G.L. c.30B process. Since the book is available from many different sources, BPS could not legally make

⁴ The list of exemptions in M.G.L. c.30B, §1(b), does not include any mention of textbooks or educational materials.

⁵ M.G.L. c.30B, §7

⁶ M.G.L. c.30B, §7(a)

sole source procurements. BPS is required by law to use the appropriate M.G.L c.30B competitive procurement process.

Findings

The OIG has the following findings based on its review of BPS records:

1) BPS is overpaying for textbooks.

The OIG tested a sample of 233 non-textbook adoption purchases to determine if BPS paid reasonable prices. The OIG sample focused on books that are widely available from book vendors. The OIG compared the prices paid by BPS to prices charged by other vendors and prices available to any member of the public from three large national book sellers.⁷ The OIG sample found that BPS appeared to overpay for books by more than 8%.

In addition, the OIG found that one national vendor that BPS routinely does significant business offered better prices to the general public on its website than it charged to BPS for 54% of purchases sampled. For example, BPS purchased 100 copies of the novel *To Kill a Mockingbird* from this vendor for \$18.75 each. The vendor's website charged \$15.12 for a single copy of the same book.⁸ Despite purchasing \$264,163 in books from this vendor between April and September 2011, BPS did not receive better prices than an internet shopper would have received. The OIG also did not consider that private customers could obtain even lower prices from this vendor through member discounts or a 20% "educator discount" that BPS did not appear to receive.

Recommendation: BPS should amend its current textbook procurement procedures to comply with M.G.L. c. 30B.

Although, according to the CFO, BPS does not have the ability to distinguish between textbook adoption and non-textbook adoption book purchases without a review of every purchases order, the OIG believes that BPS could potentially save hundreds of thousands of dollars each year in cost savings by competitively procuring non-textbook adoption books and other educational materials as required under M.G.L. c. 30B.

2) BPS does not comply with its own procurement guidelines.

BPS Purchasing Guidelines FIN-7 (9/1/09) requires that staff conduct a formal advertised competitive bid process for purchases totaling \$10,000 or greater. As the Guidelines contain no exemptions, it appears they apply to textbook purchases. (Note that for procurements subject to M.G.L. c.30B, the Guidelines will only apply to the extent that they impose a more rigorous procedure, which they do in this case since the

⁷ The OIG used the same ISBN number listed on the vendor invoice to ensure the price was based on same item.

⁸ ISBN #: 9780061743528. The cost difference for this one transaction amounted to \$363.

\$10,000 Guideline threshold for a formal advertised bid is lower than the \$25,000 M.G.L. c.30B threshold.)

The OIG verified that BPS book-buying entities do not follow BPS procurement policies. The OIG reviewed all BPS textbook purchase orders between April and September 2011 and found that nearly half (47%) of these purchase orders exceeded \$10,000—the BPS policy threshold for a competitive bid. The OIG did not identify any documentation that a competitive bid process occurred for these purchases.

The OIG also found a lack of BPS central oversight for book purchases made across the district. Oversight consists only of ensuring that purchase orders match vendor invoices, that a school or book buyer has a sufficient budget to charge a purchase against, and that a BPS contract is in place with any vendor receiving a payment exceeding \$10,000. (Vendors that sell more than \$10,000 a year in goods/services are also required to sign the City of Boston's boilerplate contract. These contracts are not vendor-specific and do not contain any pricing or other details relative to the books being purchased.)

Recommendation: BPS should ensure that staff understand and comply with the Guidelines. BPS should also improve its district-wide oversight to more effectively and efficiently monitor compliance with state procurement requirements. At a minimum, BPS should ensure that procurement practices comply with the law and that BPS book-buying entities use a fair and open procurement process to obtain the best price possible for textbooks.

3) BPS textbook contracts do not specify or limit vendor shipping and handling charges.

An OIG review of vendor shipping and handling charges found that charges to BPS ranged from 1% to 30% of the total purchase price, with an average rate of 7%. The OIG also found that several sampled purchase orders included surcharges for second-day delivery and one for overnight delivery.

Shipping and handling charges are not written into BPS textbook contracts. As a result, shipping prices vary widely. The OIG compared the shipping charges from a sample of 10 purchase orders to standard rates charged by the United Parcel Service (UPS).⁹ The OIG found that the UPS rate would have been half the average rate that vendors charged BPS, or 3.6% compared with 7.2%.¹⁰ It is possible that had BPS specified in its vendor contract the use of standard shipping rates, BPS could have saved tens of thousands of dollars in yearly shipping costs.

Recommendation: Vendor contracts should stipulate maximum allowable shipping and handling charges. For example, BPS could reference the U.S. Postal

⁹ According to UPS marketing materials, they are the world's largest package delivery service.

¹⁰ Based on UPS standard ground delivery rates posted on UPS.com using book weight and shipping distance from the vendor to BPS.

Services, UPS, or another carrier's "book rate" as an acceptable charge. BPS should also require vendors to specify in their contracts, quotes, or bids what the shipping and handling charges will be. BPS should consider these charges in addition to the price of a textbook when determining best value for a purchase. For example, a less expensive textbook with high shipping and handling costs might not be the best value when compared to a more expensive textbook with lower shipping and handling costs.

4) BPS should determine whether textbook purchases made with charitable donations are required to be conducted in accordance with M.G.L. c.30B.

According to BPS, book purchases using charitable donations are administered by the Boston Educational Development Foundation (BEDF), a Massachusetts M.G.L. c.180 charitable corporation. BEDF makes book purchases for BPS and pays for these purchases directly to vendors. BPS maintains that its only involvement with these purchases is informing BEDF what books may be needed by BPS. BPS has stated to the OIG that, as a not-for-profit entity, BEDF is exempt from M.G.L. c.30B. That an entity is "non-public" does not necessarily exempt it from M.G.L. c.30B since that statute applies to governmental bodies and their instrumentalities (M.G.L. c.30B, §2). Under a 2002 Supreme Judicial Court case¹¹, an entity may be an instrumentality:

...of a governmental body if a balancing of the following five factors favors the conclusion that the entity is part of a governmental body. First, the creation of the entity was through legislation, the governing body's vote, ordinance, bylaw or mayoral decree. Second, the entity performs an essential or inherent government function, such as police, fire or recreational services. Third, the entity uses public funds for the governmental body's public purposes; the analysis is not limited to receiving public funds. Fourth, is the extent to which private interests are involved, the amount of private funds in comparison to public funds that are received and whether the governmental body sets or controls the employees' wages? Fifth, is the extent to which a governmental body controls and supervises an entity?

Since BPS established the BEDF to makes purchases for BPS's benefit, it may be that BEDF is an instrumentality of BPS and therefore a "governmental body" for purposes of M.G.L. c.30B. Even if BEDF is a BPS instrumentality, M.G.L. c. 30B, §1(b) (20) exemption for gift and trust accounts. BPS should consult with its legal counsel to determine whether BEDF is an instrumentality of BPS and whether BEDF funds are gift or trust accounts under M.G.L. c. 30B, §1(b) (20).

Recommendation: BPS should determine whether BEDF procurements are being conducted in accordance with M.G.L. c.30B, §1(b) (20).

¹¹ *Globe Newspaper Company v. Massachusetts Bay Transit Authority Retirement Board*, 416 Mass. 1007 (1993).

5) Consolidating purchases could lead to better pricing from vendors.

Currently, some BPS textbook purchases are decentralized; each school and, in many cases each department within a school, places its own textbook orders. These textbook orders are rarely coordinated or consolidated among departments or schools.

The OIG found cases where different BPS purchasers bought the same textbooks during the same time period. The OIG also found multiple purchase orders from the same BPS purchaser to the same vendor during the same time period. In both cases, the purchase orders could have been combined into one order, perhaps allowing for volume discount and other pricing benefits.

The OIG found that 98% of BPS purchase orders were below M.G.L. c. 30B's, \$25,000 threshold for a formal competitive sealed bid process. The OIG also points out that larger volume of purchase orders could be burdensome to staff and create processing and oversight inefficiencies. The following chart illustrates the number and value of purchase orders for the sample period of April–September 2011.

Purchase Orders (PO) Dollar Range				
Total POs	Range	PO Total	Percent Dollars	Percent Invoices
17	Over \$25,000	\$ 1,449,131.90	39%	2%
47	\$10,000-\$25,000	743,428.76	20%	6%
91	\$5,000-\$9,999	649,051.21	18%	12%
288	\$1,000-\$4,999	706,245.08	19%	38%
322	Less than \$1,000	137,105.68	4%	42%
765	Totals	\$ 3,684,962.63	100%	100%

Recommendation: BPS should consider preparing a district-wide “market basket” of textbooks that could be bid annually by BPS or in coordination with the state’s municipal purchasing program of the Operational Services Division (OSD) for statewide use. More than 300 school districts across the state may be purchasing similar textbooks each year. For example, both the Massachusetts Department of Elementary and Secondary Education, the private College Board, which produces the Advanced Placement curriculum, and the SAT for the national market, and other organizations, generate recommended reading lists. Using these reading lists and historical purchasing trends at the school district level, could help generate a market basket of textbooks for a competitive bid process. This would satisfy the requirements of M.G.L. c.30B and possibly increase the buying power for school districts.

Dr. Carol R. Johnson
March 30, 2012

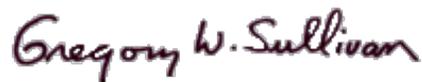
Conclusion

BPS is required to follow M.G.L. c.30B for the procurement of textbooks, and should follow its own policies as well as sound business practices to obtain the best value possible from its purchasing power. BPS should consider centralizing purchasing as well as working with state and other local agencies to take advantage of this purchasing power. BPS should also try to mitigate the risks of fraud, waste, and abuse identified by the OIG. To achieve these goals, the OIG recommends the following:

- BPS should follow M.G.L. c.30B
- BPS should ensure that its purchasing officials are familiar with and follow BPS purchasing guidelines.
- BPS should stipulate allowable shipping and handling charges in contracts.
- BPS should consult its legal counsel and the Department of Revenue to determine whether the Boston Educational Development Foundation is an “instrumentality” of BPS.
- BPS should consolidating purchases to obtain more favorable pricing from vendors.

The OIG appreciates the cooperation of BPS staff during this review. Please do not hesitate to contact us if we can be of further assistance. Thank you.

Sincerely,



Gregory W. Sullivan
Inspector General

cc: Honorable Thomas M. Menino, Mayor, City of Boston
John P. McDonough, Chief Financial Officer, Boston Public Schools
Gary Lambert, State Purchasing Agent, Operational Services Division