



The Commonwealth of Massachusetts
Office of the Inspector General

GREGORY W. SULLIVAN
INSPECTOR GENERAL

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April 25, 2006

Joseph E. Connarton
Executive Director
Public Employee Retirement Administration Commission
5 Middlesex Ave., 3rd floor
Somerville, MA 02145

Dear Mr. Connarton,

You asked the Office of the Inspector General to examine the Middlesex Retirement System's renovations of their new headquarters at 25 Linnell Circle in Billerica. Your request followed suspicions raised by Middlesex's auditors as well as the Public Employee Retirement Administration Commission's own audit team.

I am writing to report the results of my office's review of the renovation project as you requested. I plan to get back to you about the other matters raised in the audit at a later date.

Our investigation has uncovered numerous falsified documents apparently created to convey the appearance that a valid competitive selection process had been conducted when, in fact, no competition existed. The Middlesex Retirement Board, in its response to auditors Powers & Sullivan, represented that "all subcontracts were awarded after receipt of three (3) bids." That did not happen.

In fact, our investigation uncovered that the winning general contractor knew the prices of both bidders he had to beat, knowledge that completely eliminated any semblance of competition.

The board's actions in this matter represent a profound breach of public trust and a misuse of beneficiaries' money.

Our investigation also uncovered numerous instances of Middlesex Retirement Board

members' lack of the "care, skill, prudence and diligence" required of them under M.G.L. c. 32, §23 in their role as fiduciaries of the \$600 million pension fund.

While the Middlesex Retirement System has argued that it is exempt from the state's Uniform Procurement Act under M.G.L. c.30B § 1(b)(19) when it procures services, this is a construction project and, therefore, on any level, M.G.L c.30B is irrelevant. No exemption from any law gives license to create false documents designed to give the impression of a competitive process.

Here are the facts as we have been able to establish them.

Improper General Contractor Selection

In September 2002, the Middlesex Retirement System paid \$6 million for an office building at 25 Linnell Circle to serve as its headquarters as well as an investment. The board had hired a real estate firm, Bovis Lend Lease, to find, renovate and manage their new headquarters and was preparing to renovate the portion of the building the pension fund would inhabit.

However, days after the building's purchase, the Middlesex Retirement System board voted 3-2 to fire Bovis. Two days later – at an unusual Saturday meeting – they hired a new general contractor.

In recent interviews, board members attributed the change to suspicions that Bovis' prices were too high. Contemporaneous staff notes and correspondence between Bovis and James E. Fahey Jr., then the board's chairman, tell a different story. Those documents indicate that board members were angry at Bovis' lack of accommodation towards certain subcontractors favored by board member Lawrence P. Driscoll.

On Oct. 3, 2002, a three-member subcommittee – made up of Mr. Driscoll, John H. Burke Sr. and James M. Gookin, the three individuals who voted to fire Bovis – was given responsibility for overseeing the renovation. Thomas F. Gibson, then the board's general counsel, recommended that the subcommittee get three quotes before hiring a general contractor. Two days later, this subcommittee voted to hire as general contractor John C. MacDonald, a longtime friend of Mr. Driscoll and Mr. Burke.

Meeting minutes give the appearance of a competitive process by listing the three bids the subcommittee reviewed. In their response to Powers & Sullivan and interviews with my staff, board members defended Mr. MacDonald's hiring as a legitimate, competitive procurement, saying Mr. MacDonald's "bid" was the lowest of three received by the subcommittee. The other two ostensible bids were from Bovis and a Peabody contractor named Howard A. Squires.

While the minutes state that the subcommittee considered three prices before hiring Mr. MacDonald, the investigation by my staff has established there was no bona fide competition.

Two of the “bids” do not meet any conventional definition of a bid. Mr. Squires had a business association with Mr. MacDonald shortly before the Middlesex renovation was undertaken. Mr. Squires and Mr. MacDonald both told my staff that Mr. Squires verbally provided a price of \$595,000 to Middlesex – but that the quote was relayed through Mr. MacDonald. In an interview, Mr. Squires said when he gave his price to Mr. MacDonald, he did not know that Mr. MacDonald was himself trying to get the job.

In addition, in an apparent attempt to follow Mr. Gibson’s recommendation, the subcommittee revived Bovis’ last offer of \$660,000 and called it a third bid. However, the board had already sent a letter formally notifying Bovis of its termination. By the time the subcommittee met to review the bids on Oct. 5, 2002, Bovis’ bid was no longer active.

In an interview, Mr. MacDonald said he knew both Bovis’ price and Mr. Squires’ price when he gave verbal quotes to the subcommittee. In other words, Mr. MacDonald knew the numbers he had to beat. Such insider knowledge breaks the cardinal rule of competitive procurement.

Mr. MacDonald said he created both his and Mr. Squires’ proposals on paper only after he was hired by the Middlesex Retirement System. Both bids are dated Oct. 7, 2002, two days after the subcommittee voted to hire Mr. MacDonald.

Mr. MacDonald also said that two years later, he created a second version of Squires’ bid – one that looked nicer – after Powers & Sullivan raised questions about the authenticity of the bids.

Middlesex Retirement System officials insist the hiring of Mr. MacDonald was legitimate but have scant evidence to bolster their position. Chairman Fahey and board member Brian Curtin, the two members not on the subcommittee, said they were uninvolved in the renovation project.

Subcommittee member Mr. Gookin said he could not recall whether he saw bids for contractors or subcontractors. Subcommittee Chairman Burke acknowledged that, as a result of a serious leg injury, he was heavily medicated at the time and his participation in the process – and all other official retirement board business – was impaired. He said he did not see many of the bids when they came in, in part because he participated in meetings by phone.

Mr. Driscoll, the fifth board member, said the subcommittee had “something in writing” on the day of the vote but he was unsure whether the papers he saw were the documents currently in Middlesex’s files. Like the other board members, Mr. Driscoll said he did not know how the board received the bids, who had physical custody of the proposals, or any other details of the bids. He could not explain why Mr. MacDonald’s and Mr. Squires’ bids are dated Oct. 7, 2002.

Circumstantial evidence supports Mr. MacDonald's account that he verbally communicated both his and Mr. Squires' numbers to Mr. Driscoll and created the paperwork only after he had been hired. For example, Mr. MacDonald said that after he was hired, he was told that the board needed proposals on paper. He used a common computer-generated bid form to create the nearly identical proposals for himself and Mr. Squires. Also, Mr. MacDonald's written proposal calls for the Middlesex Retirement System to pay the subcontractors directly – a requirement that meeting minutes show was first raised on Oct. 5, 2002 following the vote to hire Mr. MacDonald.

There are some discrepancies and ambiguities in various parties' accounts of the details of Mr. MacDonald's hiring. Mr. MacDonald, in his account to my staff, said Mr. Driscoll had told him he was too small to be considered for the job. As a result, Mr. MacDonald said he told Mr. Squires, who had a more established business, to submit a bid. Mr. MacDonald said he told Mr. Squires that if he bid \$600,000, Mr. MacDonald would run the job, and both men would make money. Mr. Squires said Mr. MacDonald gave him the impression that he hoped for some subcontracting work if Mr. Squires won the job. Also, Mr. MacDonald stated that a Middlesex board member, most likely Mr. Driscoll, told him what Bovis' price was. Mr. Driscoll denies telling Mr. MacDonald Bovis' price or that he was too small to win the job.

These inconsistencies do not materially alter the larger picture. Patently fraudulent documents were created to enable a longtime friend of two Middlesex Retirement System board members to oversee a \$590,000 renovation project, a job on which he earned more than \$100,000 in a matter of about 10 weeks. Immediately following completion of the project, Mr. MacDonald was hired on staff by the board to manage the 25 Linnell Circle property.

Suspect Subcontractor Bids: Suspended Ceiling

Regarding the subcontracting work, the investigation by my staff has found that despite the paperwork in the Middlesex Retirement System's files, there was little competitive bidding involved in the renovation project. Many of the putative bids are fabrications. Others are suspect for other reasons, including possible collusion. In some categories of work, the board voted to award contracts without even the appearance of a competitive process.

The bids for installing a suspended ceiling made of acoustical tile provide one example of the bogus bids and how they might have cost beneficiaries of the pension fund.

On Oct. 23, 2002, the subcommittee voted to award a \$43,750 contract to C & G Suspended Ceilings. The two other bids in Middlesex's files were higher. Both, however, were fabricated. In interviews, the two losing bidders for the acoustical ceiling tile contract said they had not submitted bids to the Middlesex Retirement System, any of its board members or staffers, or Mr. MacDonald, the general contractor for the building project.

In response to a documents request, the Middlesex Retirement System provided a handwritten bid allegedly from B & B Acoustical Contractor Inc. The handwriting matches other documents from Middlesex's files that are signed "Jack Mac," Mr. MacDonald's nickname. In an interview, Mr. MacDonald acknowledged that the handwriting on the document appeared to be his. However, he said he did not remember creating the B&B bid and had no idea where it came from.

Certainly, it did not come from B&B. The company went out of business in December 1999 – nearly three years before the Middlesex Retirement System allegedly received the bid in October 2002 – a fact confirmed by both the owner of the defunct firm and its former landlord.

The second losing bid in Middlesex's files is allegedly from Allan Construction, Inc. However, the company's owner said the signature on the bid is neither his nor anyone else's from his company. He said the form in Middlesex's files was not one he used for estimates. He backed that up by providing the Inspector General with a copy of the substantially different form he does use.

Allan Construction never submitted the \$44,900 bid reviewed by the Middlesex Retirement System's building subcommittee at its Oct. 23, 2002 meeting. However, records obtained from Bovis, Middlesex's original general contractor, included a bid from Allan Construction. The Burlington firm, a union shop, gave a proposal to Bovis to install the ceiling for \$37,787 – about \$6,000 less than what Middlesex paid for the same work using the same materials.

Suspect Subcontractor Bids: Drywall

The drywall bids are suspect for different reasons. The Middlesex Retirement Board subcommittee awarded a \$93,956 contract to G. L. & S. Construction Inc. of Tyngsborough, a firm headed by Gerard Levesque, on Oct. 23, 2002. Middlesex's files contain two different versions of G. L. & S. Construction's computer-generated bid form. Both are dated Sept. 30, 2002, when Bovis was still managing the project .

However, Bovis, according to records and interviews, never solicited a bid from G. L. & S. Construction. (Bovis' records show it solicited five drywall bids, two of which were lower than G. L. & S. Construction's price by more than \$14,000. A third was \$8,000 less.)

There were two losing drywall bids in Middlesex's files, both of which are addressed to Mr. Driscoll. One was from a Billerica firm called Int-Ex Wall Corp. The company's owner said the signature appeared to be his but he had no recollection of making the proposal. As a result, he was uncertain whether he had bid on the job.

The other losing bid was \$108,650, submitted by Walls Unlimited Inc. of Tewksbury, which is owned by Clarence Levesque, the brother of Gerard Levesque, G. L. & S. Construction's owner. Clarence Levesque insisted his company's bid was a legitimate

estimate put together by an employee.

This employee, who no longer works for Walls Unlimited, confirmed that he reviewed the job and wrote up the bid in Middlesex's files. However, he noted that he had submitted an earlier estimate of \$93,000 – a figure below G. L. & S. Construction's "low" bid. He said Mr. Driscoll contacted him after receiving the first, lower estimate and told him Middlesex had added work and that he should re-examine the plans. His \$108,650 estimate notes "NEW WORK: As per plans. (9/5/02)." Neither of the other two bids notes additional work. The project manual for the renovation is dated Sept. 5, 2002, meaning any "new work" would have been added after that date.

A current Walls Unlimited employee also mentioned the \$93,000 when my staff first contacted the company. She later claimed that she had been confused and the \$93,000 bid was for another job. In response to a documents request, Walls Unlimited provided dozens of estimates written up by the former employee. However, Walls Unlimited was unable to provide documentation showing an estimate for any other \$93,000 job. They also failed to produce the \$93,000 estimate for the Middlesex Retirement System project.

In an interview, Mr. Driscoll said he had no memory of being involved in the drywall bidding.

As they had regarding the suspended ceiling bids, the other board members said they had no knowledge of how the drywall bids ended up in Middlesex's files. Mr. MacDonald acknowledged he had a business relationship with Gerard Levesque prior to the Middlesex Retirement System renovation project. He said he solicited a price from G. L. & S. Construction but never contacted any other prospective bidders. Mr. MacDonald said he had never seen the losing drywall bids.

In fact, virtually all the losing bids appear to have been fabricated. Mr. MacDonald, the general contractor, said he used subcontractors he knew for the project and never sought competitive bids for the work. He repeatedly told my staff that once the project started he was too busy to solicit bids. (The Middlesex Retirement System did hire a handful of subcontractors whose bids Bovis solicited before the company was fired. No one has raised questions about the authenticity of these bids.)

Mr. MacDonald explained that he had gotten prices from friends and acquaintances while he was putting together his estimate and felt obligated to use the subcontractors who had helped him get the job. Soliciting other bids would have been useless since he planned to use his friends for the job. Mr. MacDonald said he has no idea how the faked bids arrived in Middlesex Retirement System files.

While Mr. MacDonald's credibility may be questioned, none of the current and former board members were able to offer any evidence that undermines Mr. MacDonald's contention. All board members, as well as Wayne MacDonald, the staffer who supervised the renovation project, denied having any knowledge about how the bids

were solicited, who received the documents, or how they ended up in the pension fund's files. Other than Mr. Driscoll, no one even expressed any certainty that he had seen them prior to the completion of the renovation. (Wayne MacDonald and John MacDonald are not related.)

In other cases, the board voted to spend retirees' savings without even the appearance of a competitive process. For example, more than \$23,000 in millwork was awarded to Walter Sloper. Middlesex's records show no other bids in this category of work and contain no explanation for the lack of competing proposals. John MacDonald acknowledged that Mr. Sloper is one of his best friends.

Mr. Driscoll's In-Law "Wins" Insurance Contract

The creation of misleading documents extends beyond the renovation work. For example, when Middlesex purchased the building in September 2002, Mr. Fahey oversaw the procurement of commercial property insurance on the building. According to meeting minutes, Middlesex Retirement System board members voted on Sept. 12, 2002 to issue a request for proposals for insurance. A document headed "Vendor List" names four insurance firms as solicited for quotes on the insurance. The list has a notation next to three of the companies' names, stating "Did Not Respond."

The three firms did not respond for a simple reason – they were never contacted by anyone from the Middlesex Retirement System, according to interviews with each of the three companies.

The firm which was contacted and was awarded the insurance business employs one of Driscoll's in-laws. That man is listed as the contact for the \$12,467 bid.

In interviews, Mr. Fahey at first insisted, "We did solicit quotes." However, he then said Wayne MacDonald was assigned to round up bids for insurance. Wayne MacDonald told my staff that Mr. Driscoll had given him the name of the winning insurance company and that he never contacted the other companies on the vendor list. Mr. Fahey and Wayne MacDonald both denied any involvement in creating the vendor list. Neither man offered any explanation for how the document came to be created nor who created it.

The effect of the misleading document is clear: the creation of a false record of a bona fide competitive procurement process where none had taken place.

Middlesex Board Members' Reaction to Allegations

By itself, my staff's discovery of fraudulent bid documents would be worrisome. However, there is another equally alarming failure.

Eighteen months ago, Powers & Sullivan raised questions about the authenticity of the contractor and subcontractor bids, suspicions that were presented at a board meeting. Among other things, Powers & Sullivan noted that the handwriting on several

subcontractor bids was similar to the general contractor's handwriting, an indication, they said, that the general contractor might have faked the documents to create the appearance of a competition where no competition existed.

Over the following year, the Middlesex Retirement System board reported Powers & Sullivan's findings to PERAC as required, but the Middlesex Retirement System never took any steps to investigate the substance of the auditor's charges. Instead, its efforts were limited to submitting rebuttals to the auditor's findings, such as that the auditor was "unqualified to render such expert opinions (on handwriting), and such opinions should not be included in the audit findings."

During that time, an affidavit arrived over the fax machine from Howard Squires, one of the bidders Powers & Sullivan had raised questions about. According to Mr. Gibson, the affidavit was unsolicited and addressed to him as chairman. The affidavit stated that Mr. Squires had provided a legitimate proposal, contrary to Powers & Sullivan's suspicions. Without attempting to verify the provenance of the affidavit, Middlesex Retirement System board members in their response to Powers & Sullivan pronounced themselves satisfied that the suspect bid was authentic.

Lax Oversight

In recent weeks, my staff has interviewed the five current members of the Middlesex Retirement Board as well as former chairman Fahey. Each man was interviewed in the presence of at least one lawyer representing the Middlesex Retirement Board. In these interviews, each Middlesex Retirement Board member showed a lax attitude towards his fiduciary duties.

Mr. Gookin, a former captain on the Lowell Police Department and the member appointed by the other four, said he has no memory of ever personally reviewing any bids for the building renovation - either for general contractor or for subcontractors. He said he has no knowledge of how bids were solicited or who received them. Mr. Gookin said he believes any subcommittee meeting held on a Saturday, including the first one on Oct. 5, 2002, during which John MacDonald was hired, would have been conducted over the phone, an apparent violation of the state's open meeting law.

Mr. Curtin, the Burlington treasurer and the appointee of the Middlesex Retirement System Advisory Committee, said he was not at all involved in the bids for the renovation project after Bovis was fired. He said he first became aware of questions being raised about the authenticity of some bids when Powers & Sullivan met with him and Mr. Gibson in the fall of 2004. Mr. Curtin said Powers & Sullivan included him because he served on Middlesex's audit committee. Mr. Curtin said he has not taken any steps of his own to determine the validity of the bids or examine the conduct of Jack MacDonald, who is now a full-time employee of the Middlesex Retirement System, making more than \$60,000 a year.

Mr. Burke, a former Billerica firefighter and an elected member of the board since 1999,

told my staff that he had little involvement in the building renovations because of a serious leg injury he suffered in May 2002. Mr. Burke – who was officially the chairman of the building subcommittee – explained that his damaged leg left him “laid up” for 15 months while he was taking prescription painkillers to lessen the pain of his injury.

He freely acknowledged that the medications significantly impaired his participation in board matters. Meeting minutes show that of the 35 board meetings held from May 2002 to January 2004, Mr. Burke attended seven by phone and 14 in person. Of those he did attend, he said he remembers very little, largely because of the painkillers. According to Mr. Burke, his prescribed medications even occasionally caused him to fall asleep during meetings.

Like Mr. Gookin, Mr. Burke also said he attended building subcommittee meetings by telephone although the subcommittee meeting minutes do not reflect this. And although Mr. Burke, like Mr. Gookin, said he didn't recall seeing any of the renovation bids, the minutes of the Oct. 5, 2002 building subcommittee meeting describe Mr. Burke as reviewing the general contractor bids for his fellow subcommittee members.

Mr. Driscoll told my staff that he does remember seeing both winning and losing bids during the renovation project, making him the only board member to make that claim. He said Wayne MacDonald and Jack MacDonald were responsible for getting bids. (Wayne MacDonald told my staff he never saw any bids until after the renovation was completed. As I indicated earlier, John MacDonald said he never saw any losing bids.)

Mr. Driscoll also said the subcommittee members made it clear they wanted three bids for every category of subcontracting work. However, he said he knew nothing about how bids were solicited, who received them, or what process was used to handle them prior to a contract award. When asked by my staff about how closely he reviewed competing subcontractor bids, Mr. Driscoll pointed to the dollar estimate on a proposal and said that the price was the only part of the bid he looked at.

Like his colleagues, Mr. Driscoll said the board delegated the handling of issues raised in the fall of 2004 by Powers & Sullivan to Mr. Gibson, the board chairman and former legal counsel. Mr. Gibson promptly informed top PERAC managers. Auditing staff from PERAC were sent to Middlesex Retirement System office where they examined the documents cited by Powers & Sullivan and verified there was a basis for suspicion. Mr. Gibson said these suspicions were relayed to the Attorney General's office.

Over the next year, no one on the Middlesex Retirement System board, including Mr. Gibson, made any independent effort to investigate the validity of the bids. By his own description and that of other board members, Mr. Gibson thoroughly examined the documents in question but did nothing beyond that.

In December, Middlesex Retirement System officials formally answered the issues raised by Powers & Sullivan, with their collective response reported in the auditing firm's management letter. The board's answers contained in that document are a product of

accepting at face value any favorable statement or document, such as the unsolicited affidavit faxed to Mr. Gibson, while rejecting or minimizing the import of any records or declarations that question any board member's actions.

Mr. Fahey, who was chairman of the board from 1987 until 2004, seemed to sum up the attitude of the board members when he expressed concern about the personal relationship between Jack MacDonald, Mr. Driscoll and Mr. Burke but acknowledged doing nothing about the apparent favoritism.

"I am not my brother's keeper," Mr. Fahey told my staff.

In fact, a fiduciary with responsibility for safeguarding more than \$600 million of other people's retirement money should act as his brother's keeper.

As I have detailed in this letter, numerous false documents were created in connection with the Middlesex Retirement System's renovation of its headquarters. Each of the Middlesex Retirement System board members, as well as the relevant staff members, has disavowed responsibility for fabricating the documents. Each has also denied knowing anything about how these documents ended up in Middlesex's files – a responsibility that rests squarely on the board members.

I submit this report to you today in response to your request to my office to conduct this investigation. The findings represent a very serious breach of fiduciary duty by the Middlesex Retirement Board.

Together with the findings of your investigation into the \$37 million loss that resulted from Middlesex's investment with Cambridge Financial Management, our findings raise grave concerns about the "care, skill, prudence and diligence" of the board.

In particular, I note the following finding from your report:

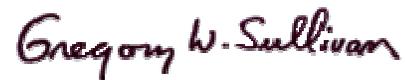
"It is clear that the (Middlesex Retirement Board), in monitoring the (Cambridge Financial Management) account, failed to abide by PERAC Regulations, did not employ best practices and as a result the possibility of discerning the true picture of what was transpiring in the CFM account was diminished. The MRB did not require direct reports from CFM, did not meet with CFM after (July 2001), did not make an annual determination of CFM compliance with its mandate and did not review transaction and brokerage costs. In addition, the MRB did not insist on an assessment of CFM by (its consultant Wainwright Investment Counsel) as required by the contract between WIC and the MRB and did not require various reports by WIC to the MRB regarding the CFM account."

- October 2005 Interim Investigative Report on the Middlesex Retirement System and Cambridge Financial Management.

I understand that the PERAC commissioners have begun discussing whether to move the Middlesex Retirement System's \$600 million portfolio into the Pension Reserves Investment Trust. I believe the grave matters detailed in this letter, together with your earlier report, support that move.

Please call me if I can be of any assistance as you consider steps to safeguard the assets of the Middlesex Retirement System.

Sincerely,

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

Gregory W. Sullivan
Inspector General

Encl.
cc: PERAC commissioners

I have enclosed the following documents for your review:

1. Documents related to general contractor selection

John C. MacDonald's proposal

Howard A. Squires' proposal generated by Mr. MacDonald in 2002

Mr. Squires' proposal generated by Mr. MacDonald in 2004

Mr. Squires' affidavit

2. Documents related to suspended ceilings selection

Bid from C and G Suspended Ceilings

Bid attributed to Allan Construction

Bid attributed to B&B Acoustical Contractor

Note signed "Jack Mac"

3. Notes and correspondence documenting that Middlesex had preferred vendors

Wayne MacDonald's handwritten notes describing Mr. Driscoll's unhappiness that Bovis isn't considering "his vendors."

Mr. Fahey's handwritten notes describing conversation with Bovis employee Eric Nelson regarding "our list" of subcontractors.

Letter from Mr. Nelson to Mr. Fahey

List of vendors the Middlesex Retirement Board sent to Bovis

4. Powers & Sullivan audit

**F
R
O
M**

John C. MacDonald
General Contractor
16 Emerson Rd.
Westford, MA

Construction Supervisor Lic.#012005
Home Improvement Lic.#121945
Phone: 978-589-9869
Cell phone: 508-527-5627

PROPOSAL

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PROPOSAL SUBMITTED TO:		DATE
NAME Middlesex Retirement System		10/7/02
STREET 40 Thorndike St.		JOB NAME # 002
CITY Cambridge		STREET 25 Linnell Circle
STATE MA 02141	CITY Billerica	STATE MA
	PHONE 617-494-4175	

We hereby submit specifications and estimate for:

General Contract Project for Middlesex Retirement System as presented on plan submitted for Remodeling of office space on second floor in said building at 25 Linnell Circle, Billerica, MA

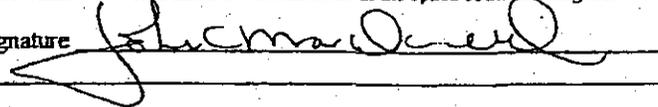
1. Sub contractors bids to be reviewed & accepted by Middlesex Retirement System Building Committee.
2. Apply for, & obtain Building Permits.
3. Setup, Coordinate & Supervise all Subcontracting work.
4. Arrange pre-construction conference with owner, contractor, & subcontractors.
5. Submit anticipated project schedule & reports weekly
6. Verify drawings, notify Architect & Middlesex R.S. of any changes warranted for improvement.
7. Comply with applicable State & Federal codes, regulations, ordinances, & requirements.
8. Inspect all work and guarantee payments to all subcontractors. Monies will be paid directly from M.R.S. to subcontractors on agreed upon bi-weekly payment schedule as phases of work are completed.
9. Insurance & Bond (if required) by Contractor in conjunction with M.R.S to be included in this agreement.
10. All subcontractors will be required to submit affidavit of Workman's Compensation Insurance as well as Liability Insurance.

557,000

We hereby propose to furnish labor and materials—complete in accordance with the above specifications, for the sum of Five Hundred & Fifty-five Thousand & 00/100 Dollars (\$555,000.00) with payments to be made as follows: *Five Hundred Fifty Seven Thousand 00/100*
\$50,000.00 upon signing of agreement, payments to subcontractors as specified in agreement, any other related on-the-job expenses as agreed upon. Remaining payment due at projects completion & within time specified for occupancy.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accident or delays beyond our control. This proposal subject to acceptance within 10 days and it is void thereafter at the option of the undersigned.

Authorized Signature

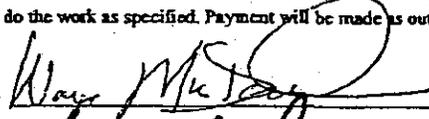


ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

ACCEPTED:

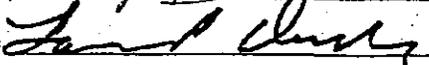
Signature



DATE

10-8-02

Signature



**F
R
O
M**

Howard A. Squires
Residential & Commercial Consulting
Services
Custom Building, Inc.
8 Valley Circle
Peabody, MA 01960

Phone: 978-977-0401
Fax: 978-977-3331
Cell: 978-815-4959

PROPOSAL

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of 2 Pages

PROPOSAL SUBMITTED TO:		DATE
NAME Middlesex Retirement System		10/7/02
STREET 40 Thorndike St.		JOB NAME
CITY Cambridge		STREET 25 Linnell Circle
STATE MA 02141	CITY Billerica	STATE MA
	PHONE 617-494-4175	

We hereby submit specifications and estimate for:

Contracting Project for Middlesex Retirement System, based upon plans submitted to me for 25 Linnell Circle, Billerica, MA.
2nd Floor remodeling of office space. Plan Heading: Construction Documents, Sept, 2002 by ADD, Inc.

Breakdown of Contract will be submitted upon acceptance of Proposal.

We hereby propose to furnish labor and materials—complete in accordance with the above specifications, for the sum of 595,000.00 Dollars (\$Five Hundred & Ninety-five Thousand & 00/100) with payments to be made as follows:
To be agreed upon if accepted.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accident or delays beyond our control. This proposal subject to acceptance within 30 days and it is void thereafter at the option of the undersigned.

Authorized Signature Howard A. Squires

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

ACCEPTED: _____ Signature _____

DATE _____ Signature _____

PROPOSAL

HOWARD A. SQUIRES
CUSTOM BUILDING & REMODELING
Residential & Commercial Consulting Services
8 Valley Circle
PEABODY, MASSACHUSETTS 01960
Telephone (508) 977-0401
Fax (508) 977-3331

TO:

Middlesex Retirement System
40 Thorndike Street
Cambridge, MA 02141

PHONE 617-494-4175	DATE 10/7/02
JOB NAME / LOCATION 25 Linnell Circle Billerica, MA	
JOB NUMBER	JOB PHONE

We hereby submit specifications and estimates for:

Contracting project for Middlesex Retirement System, based upon plans submitted to me for 25 Linnell Circle, Billerica, MA. 2nd floor remodeling of office space.

Plan Heading: Construction documents, Sept 2002 by ADD, Inc.

Breakdown of contract will be submitted upon acceptance of proposal.

We Propose hereby to furnish material and labor — complete in accordance with the above specifications, for the sum of:

dollars (\$ 595,000.00)

Payment to be made as follows:

All material is guaranteed to be as specified. All work to be completed in a professional manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Worker's Compensation insurance.

Authorized
Signature

Howard A. Squires, President

Note: This proposal may be
withdrawn by us if not accepted within _____ days.

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Signature _____

Date of Acceptance: _____

I attest to the fact that My Office submitted a bid of \$595,000.00 for the contractor contract at 25 Linsell Circle, Billerica, MA.

The bid was submitted on October 4, 2002.

H. Squinno, President

A person unknown to me contacted me and identified himself as an Auditor. He was very evasive and rude. His questions made me very suspect as to his intentions.

I was not awarded the contract, and therefore I am not obligated to assist you any further.

*H Squinno (CUST #612)
FAX 978-977-3331
C- 978-815-4459
CONTACT HOWARD SQUINNO*

*Chairman Thomas Gibson
Middlesex Retirement System
FAX 978-439-3050*

1052

C AND G SUSPENDED CEILINGS
 148B TANNER ST
 LOWELL, MA 01852
 978-453-1535
 FAX # 978-458-1232

Estimate

DATE	ESTIMATE #
10/21/2002	2615

NAME / ADDRESS
JACK MAC MIDDLESEX RETIREMENT 25 LINELL CIRCLE BILLERICA, MA.

TERMS	PROJECT	JOB NAME
Due on receipt		MIDDLESEX RETIREME...

DESCRIPTION	TOTAL
WE PROPOSE TO FURNISH AND INSTALL:	43,750.00
2 BY 2 WHITE ARMSTRONG 9/16" GRID, WITH MATCHING 2 BY 2 WHITE ARMSTRONG CIRRUS #589 CIRRUS REVEALED EDGE TILES.	
ALSO IN A FEW SMALL AREAS , ACCORDING TO THE PRINT. WE WILL FURNISH AND INSTALL: 2 BY 2 WHITE FIRERATED ARMSTRONG9/16" GRID WITH MATCHING 2 BY 2 WHITE FIRERATED ARMSTRONG CIRRUS #577 REVEALED EDGE TILES.	
ALL CEILINGS ARE TO BE HUNG TRUE AND LEVEL WITH THE AID OF LAZERS. ALL EDGES OF REVEALED EDGE TILES ARE TO BE RABITTED AROUND MOLDINGS. PRICE IS BASED ON WORKING DURING REGULAR WORKING HOURS. PRICE IS BASED ON USING 15/16" MOLDINGS , TO ALLOW FOR STRONGER HOLDING AGAINST THE WALLS. PRICE IS BASED ON A FLAT CEILING WITH NO SOFFITS OR SPLAYS TO BE DONE WITH SUSPENDED CEILING MATERIALS. PRICE IS BASED ON A CLEAN WORKING AREA ALL DEMO AND DUMPSTER TO BE SUPPLIED BY OTHERS ALL ELECTRICAL DEVICES ARE TO BE CUT AND INSTALLED BY OTHERS. ALL DIFFUSERS ARE TO BE CUT AND INSTALLED BY OTHERS. PLEASE ALLOW 2-3 WEEKS LEAD TIME TO ALLOW FOR ORDERING OF THE MATERIALS IN BULK. C AND G WILL MEET ALL AGREED UPON COMPLETION DATES C AND G WILL PROVIDE A QUICK, CLEAN AND PROFESSIONAL WORKING CONDITION	
I AGREE WITH ALL OF THE ESTIMATE	
PLEASE SIGN AND FAX/MAIL BACK TO SCHEDULE	
THANKYOU VERY MUCH	
PAYMENT DUE 30 DAYS 1.5% MONTHLY WILL BE CHARGED, ALL LEGAL FEES PAID BY CUSTOMER	TOTAL

**F
R
O
M**

ALLAN Construction Inc.
Suspension Ceilings
264 Cambridge St.
Burlington, MA

PROPOSAL

Page No. 1
of 1 Pages

PROPOSAL SUBMITTED TO:		DATE
NAME	Middlesex Retirement System	10/7/02
STREET	40 Thorndike St.	JOB NAME
CITY	Cambridge	776
STATE	MA 02141	STREET
		25 Linnell Circle
		CITY
		Riveria
		STATE
		MA
		PHONE
		617-494-4175

We hereby submit specifications and estimate for:
 2X2 white 9/16" Grid & 2X2 #589 revealed-edged Tiles in all areas shown on Plan.
 2X2 fire-rated Armstrong 9/16" Grid and Armstrong #577 fire-rated Ceiling Tiles to be used in areas as shown on Plan.
 No demo
 Dumpster to be provided on job site.

We hereby propose to furnish labor and materials—complete in accordance with the above specifications, for the sum of Forty-four Thousand and Nine-hundred Dollars (\$44,900.00) with payments to be made as follows:
 Payments to be arranged if accepted.
 Price determined from information on Plan shown, any changes or additional work is extra.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accident or delays beyond our control. This proposal subject to acceptance within 10 days and is void thereafter at the option of the undersigned.

Authorized Signature *William Hayes*

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

ACCEPTED:

Signature _____

DATE _____

Signature _____

567123

B+B Acoustical Contractor Inc
 35 Industrial PK Way/
 Woburne MA.

Proposal Submitted To: Middlesex Retirement System	Job Name binnell	Job # 47
Address 25 binnell Circle Billerica MA	Job Location Billerica #	Date 10/18/02
Phone # 978 670 1807	Fax # same	Architect Add Jac
Date of Plans Sept 02		

We hereby submit specifications and estimates for:

2 x 2 white 9/16" Grid with white
 # 589 Revealed edge tiles

577 2x2 Fire rated tile and
 Grid where shown on plan

No Demo or clean up Dumpster
 supplied by General Cont.

Price based on plan shown and
 explanation provided

Total # 47,350

We propose hereby to furnish material and labor — complete in accordance with the above specifications for the sum of:

\$ Forty Seven Thousand Three fifty Dollars

with payments to be made as follows:

Any alteration or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.

Respectfully
 submitted

Robert Burton

Note — this proposal may be withdrawn by us if not accepted within 10 days.

Acceptance of Proposal

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature _____

Date of Acceptance _____

Signature _____

Re Execuspace (Tim Enkey)

Mr Horatio Melo

In response to The work performed
by Execuspace Const. At 25 Linnell
circle on behalf of Maric Inc.

We did not state that work done
by your company was substandard

The work done was in no manner

the problem, our issue is

with Maric Inc. in the fact

That the remaining portions

of both front and rear divided

Areas were not repaired or

repainted and we believe

Maric Inc. should have been

responsible for this area Also

And we have received a quote

to repair and Paint for \$ 7500.00

We do not think this to be

unreasonable and believe

Moric Inc should pay for

REPAIRS

Yours

Jack Mac

Sept 19, 02
Harry:

1. Called 9:40 AM - His vendors are not getting so operated from Boves.
2. What is bidding deadline 23 or 27 Sept
3. Tom A. Review Boves contract how was bid to return them. What are we pay Boves.

Speak with John Hawler - ref. Harry D
questions. He stated the only contracts/
sub will be sent info today. (Dorella
Pleming) I contacted John Moore and he
will contact John Hawler again with
names I have T. B. Golden's fact
again for his list one I will
forward to Eric Wilson (per his request)
who will return a favor to Boves.

S66978

9/20/02 Eric Nelson called
+ JCB — he says
all subs on our list
were sent Pre-Qualification
+ invitation bid
to all on the list
— probably by Fax

Ask + he will check +
C/B

- ① did stuff go by FAX
 - ② WHAT is calendar — when
are bids due? done?
selection later etc?
 - ③ Check on proposal +
Dezella
 - ④ review design costs
— why over \$600
+ is the kitchen involved?
- WHAT ABOUT Lease +
Tenant allowance
Build out?

Lend Lease
REAL ESTATE INVESTMENTS

September 23, 2002

Mr. James E. Fahey Jr., Esq.
Chairman
Middlesex Retirement System
40 Thorndike Street
Cambridge, MA 02141

Eric J. Nelson
Associate
Lend Lease Real Estate
Investments, Inc.
101 Arch Street
Boston, MA 02110

Telephone
617-772-7804
Facsimile
617-772-7811

Dear Mr. Fahey:

I write this letter with regards to the selection of subcontractors for the renovation of 25 Linnell Circle, in particular the list of subcontractors provided to Lend Lease by the Middlesex Retirement System on Thursday, September 19, 2002.

All subcontractors who provided sufficient contact information, i.e., a street address, were sent initial bid packages via overnight delivery on Friday, September 20, 2002. The remaining subcontractors were sent the initial bid package by regular mail.

Please note there are two exceptions: Joseph DeMillo Plumbing was sent the initial bid package via facsimile on Saturday, September 21, 2002 and additional contact information is required for J&S Carpet.

All subcontractors are being sent today, Monday, September 23, 2002 copies of the plans in order to assist them with submitting their bids. No contracts shall be awarded without prior approval by the Board of the Middlesex Retirement System.

As always, I look forward to continuing to work closely with the Board and welcome any questions you may have.

Very truly yours,

LEND LEASE REAL ESTATE INVESTMENTS, INC.

Eric J. Nelson
Associate

cc: Mr. Dana Harrell - Lend Lease Real Estate Investments, Inc.
Mr. William Gagnon - Bovis Lend Lease
Mr. John Lawlor - Bovis Lend Lease

PLUMBING

Powderly & Sons
P.O. Box 235
Billerica, MA 01865
Contact: Ken Powderly, Jr.

Phone (978)663-0164
Fax (978)663-0164

CEILINGS

Suspended Ceilings, Inc.
P.O. Box 413
Lowell, MA 01853-0413
Contact: Jeff Fentross

Phone (978)453-1535
Fax: (978)458-1232

DEMOLITION

G L and S Construction Inc.
36 Westech Drive
Tyngsboro, MA 01879
Contact: Gerard Levesque

Phone (978)649-8340
Fax (978)649-8341

DRYWALL

G L and S Construction Inc.
36 Westech Drive
Tyngsboro, MA 01879
Contact: Gerard Levesque

Phone (978)649-8340
Fax (978)649-8341

PAINTING

G L and S Construction Inc.
36 Westech Drive
Tyngsboro, MA 01879
Contact: Gerard Levesque

Phone (978)649-8340
Fax (978)649-8341

HVAC

B.J. Doyle Heating & Air Conditioning
25 Sullivan Road - Unit 5B
No. Billerica, MA 01862
Contact: Erik Timmons

Phone (978)857-8631
Fax (978)691-9373

ELECTRICAL ✓

St. George Electrical Services
574 Boston Road - Unit 3
Billerica, MA 01821
Contact: Al St. George

Phone (978)671-0980
Fax (978)671-0978

SPRINKLER

Solomon Mechanical
20 McGinnes Way
Billerica, MA 01821
Contact: Robert Solomon

Phone (978)663-3653
Fax (978)459-0982

CARPENTRY

Sloper & Sons
16 Ironwood Road
Billerica, MA 01821
Contact: Walter Sloper

Phone (978)663-3015
Fax (978)851-7264

Powers & Sullivan

Certified Public Accountants



100 Quannapowitt Parkway
Suite 101

Wakefield, MA 01880

T. 781-914-1700

F. 781-914-1701

www.powersandsullivan.com

To the Honorable Middlesex Retirement Board
Middlesex Retirement System
Billerica, Massachusetts

In planning and performing our audit of the financial statements of the Middlesex Retirement System (MRS) as of and for the years ended December 31, 2003, 2002, and 2001 we considered the system's internal control in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on internal control.

However, we became aware of findings and other matters that are opportunities for strengthening internal controls and operating efficiency. The memorandum that accompanies this letter summarizes our findings and recommendations concerning these matters.

This letter does not affect our report dated December 28, 2004, on the financial statements of the Middlesex Retirement System.

The accompanying comments and recommendations are intended solely for the information and use of management of the Middlesex Retirement System (MRS) and the Public Employees Retirement Administration Commission (PERAC), and are not intended to be and should not be used by anyone other than these specified parties.

We will review the status of these comments during our next engagement. We have already discussed these comments and recommendations with various personnel, and we will be pleased to discuss them further at your convenience, to perform any additional studies of these matters, or to assist you in implementing the recommendations.

December 28, 2004

MRSIC

MIDDLESEX RETIREMENT SYSTEM
FINDINGS AND RECOMMENDATIONS
YEARS ENDED DECEMBER 31, 2001-2003

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Status of Prior Audit Findings

PERAC completed an examination of the Middlesex Retirement System for the period January 1, 1998 through December 31, 2000 and issued their opinion, findings and recommendations in a report dated February 17, 2004. The examination included 19 findings which are summarized below along with the current status of each finding.

1. Finding 1 related to PERAC's recommendation that future audit services are competitively bid and that the independent audit firm refrains from completing consulting services.

Current Status – Resolved - The System followed PERAC's recommendation and competitively bid audit services during calendar 2004. If the System requires consulting services the independent audit firm will be precluded from bidding on these services.

2. Findings 2, 3, 4 related to the reimbursement of the Board's Attorney for conference expenses, insurance benefits and NAPPA dues. PERAC recommended the System discontinue this practice.

Current Status – Resolved - The System continued to reimburse the Board's Attorney for these types of expenses during the audit period due to the fact the PERAC's report was issued after the period under audit. During calendar 2004 the Board's Attorney was appointed executive director and therefore these expenses are no longer reimbursed to the law firm.

3. Finding 5 related to the need for proper approval and documentation of all travel and conference expenses.

Current Status – Partially Resolved - The System recently adopted a more stringent policy on payment of travel and expense reimbursement and will now disallow all expenses not properly supported. However for the period under audit various findings have been listed in the current audit findings section of this report.

4. Finding 6 related to the need to document formal policies regarding the use of computers and cell phones. PERAC also recommended the need to initiate a physical inventory policy and periodically account for these assets.

Current Status – Unresolved - The System is currently formulating policies regarding cell phones, computers and capital assets inventory.

5. Findings 7 and 8 related to the lack of sufficient documentation for work performed by some consultants and the recommendation that the System competitively bid lobbying and administrative services.

Current Status – Resolved - The System feels that competitive bids for lobbying is exempt from MGL 30b and will comply with the bidding requirements for administrative services.

6. Findings 9 and 11 related to the use of nonconforming ledger accounts to record the activity of the System.

Current Status – Unresolved - The System maintained the same accounts throughout the period under audit and was required to establish more nonconforming accounts during the current audit period. The new accounts mainly relate to the purchase of a building, the establishment of a limited liability company (LLC), and the recording of the activity of the conference account. The System indicated that it would seek to resolve the use of all of these accounts with PERAC in the near future.

7. Finding 10 related to the System's legal authority to charge interest if member units did not pay their assessments by the due date.

Current Status – Resolved - The System's policy is to inform all member units of the related statute and monitors the status of the outstanding balances. If significant amounts remain unpaid the System will bring legal action to recover all amounts due including interest.

8. Finding 12 related to not reporting the activity of the Annual Retirement Conference on the Annual Report or the general ledger.

Current Status – Resolved – The System has included financial statements for the last three years as part of this report and has included the amounts on the general ledger.

9. Finding 13 related to the lack of various member units not breaking down their payroll reports sufficiently and the lack of some Treasurers not certifying that the payroll data is accurate and correct.

Current Status – Unresolved - The System has informed all member units of their responsibility to provide accurate and correct payroll information that is certified by the Treasurer. As was the case in the past not all member units comply with the requirements. The System will continue to educate and monitor compliance.

10. Finding 14 related to missing signatures on the Application for Withdrawal of Accumulated Total Deductions.

Current Status – Resolved – Testing for this audit period did not find any instances of missing signatures.

11. Finding 15 related to some files being missing.

Current Status – Resolved – The prior audit was conducted during the time period of the office relocation from Cambridge to Billerica that resulted in some misplaced files. All files requested from the System were immediately made available to us.

12. Finding 16 related to the System not requesting annual affidavits from the current retirees as required by regulation.

Current Status – Resolved - The System did not send the affidavits during the three years subject to this audit. The System completed the process in 2004 after the issuance of the PERAC report in February 2004.

13. Findings 17, 18 and 19 related to the maintenance of the Executive and Regular Board minutes. PERAC recommended a separate minute book be maintained for executive sessions, that board minutes be more descriptive and that the minutes record that the Board reviewed the prior month's trial balance and cash reconciliations.

Current Status – Resolved - The System has implemented PERAC's recommendations.

Current Findings, Recommendations and Questioned Costs

14. Travel Expenses

Finding

We examined all board members travel expense reimbursement requests for all three years. We noted that four board members expense reports had substantially all documentation that supported reimbursements and travel expenses. However we found Board Member Lawrence Driscoll's travel expense reimbursements consistently requested to have questionable items reimbursed throughout the three years subjected to audit. Below are listed our findings related to Mr. Driscoll's reimbursement requests.

Car Rental Reimbursements

The travel policy for the System reimburses either the cost of a car rental or actual mileage if your own car is used by board members away on travel. Over the three year period Mr. Driscoll requested and received reimbursement 7 times for the exact amount of his monthly payment on a leased vehicle maintained in Florida which is his legal residence. The following documentation was included in his reimbursement requests:

- o 7 copies of his personal checks made out to World Omni for exactly \$432.97
- o The description of the expenses stated that the payments were for a car rental and had no other supporting documentation
- o A copied page attached as documentation for the car rental expense reimbursement request contained copies of the front of two checks for \$432.97 and included the following note made to the staff person responsible for processing the reimbursement. "Marie - Car rental paid by check due to: 1. They didn't take Amer Exp 2. My VISA was maxed out - Larry"

World Omni Financial Corp. is an automotive finance company located in Florida.

Mr. Driscoll informed us that the payments to World Omni were in fact for a personal leased vehicle.

Based on the audit evidence listed above we believe the travel expense report was completed in a misleading manner. We are questioning the validity of the costs totaling \$3,030.79.

Meal Reimbursements

The travel policy for the System reimburses the cost of meals and nonalcoholic beverages for board members away on travel. Documentation is required to support the reimbursement request.

Over the three year period we examined all of Mr. Driscoll's 182 meal reimbursement requests totaling \$5,176.26. The reimbursements ranged from \$12 to \$112 and averaged \$28.40 per meal. In most cases the only documentation provided was a generic prenumbered copy of a restaurant receipt stub that was torn off the bottom of the bill. Listed below are the irregularities that were noted.

- o Of the 182 reimbursement requests examined, 135 used duplicate copies of the same restaurant receipt stub for reimbursements on different days, months, and years; along with different cities. For example, prenumbered receipt #154203 was used five different times as follows:

<u>Receipt #</u>	<u>Date</u>	<u>Amount</u>	<u>Location</u>
154203	10/07/2001	\$27	San Francisco, California
154203	10/11/2001	\$27	San Francisco, California
154203	04/27/2002	\$22	Hollywood, Florida
154203	08/26/2002	\$17	Sarasota Springs, New York
154203	12/07/2002	\$21	Scottsdale, Arizona

- o Of the 182 requests examined 5 did not have any supporting documentation.

The use of the same receipt, the use of copies instead of originals, the lack of a restaurant name on the receipt, the lack of any receipt that itemized the meal purchased, the lack of a date on the receipt, and the use of receipts that are numerically sequenced represents a consistent pattern of submitting misleading travel expense reimbursement requests.

Although it is reasonable to assume Mr. Driscoll ate while away on business trips we cannot be certain of the accuracy of any of the amounts. Therefore based on the evidence detailed above we are questioning 100% of the submitted requests totaling \$5,176.26.

We noted this practice continued into 2004 however we did not quantify these amounts.

We are aware that the Board has contacted PERAC regarding these matters. In addition, Powers & Sullivan has met with representatives of PERAC to discuss these matters and have provided them with copies of the documentation referenced in this report.

We recommend that the Board evaluate this finding and determine if any further action is required.

Management Response

Car Rental Reimbursements

The Board has analyzed the expense data submitted, has reviewed its Conference and Travel Reimbursement Policy in effect during the period under review, has reviewed PERAC's Travel Regulations, 840 CMR 2:00, which became effective on June 6, 2003, and has provided the Board Member, Mr. Driscoll, an opportunity to explain his submissions.

The Board Member has acknowledged that although it was never his intent to do so, the car rental reimbursements in question could be characterized as being submitted in a misleading manner and the Board Member has offered to reimburse the System. Mr. Driscoll also offered substantial data to the Board in support of his position that, notwithstanding the method of reimbursement, the actual expenses submitted and reimbursed were generally less than present and past car rental expenses submitted by Board Members who were attending educational conferences, and were less than the expenses which would have been incurred through a car rental agency, thereby resulting in a savings to the System. The Board Member maintains that his submissions were in compliance with the letter and the spirit of reimbursement practices for retirement board members in Massachusetts during the period under review, which was prior to the effective date of PERAC's Travel Regulations. Mr. Driscoll has acknowledged the requirements of PERAC's Travel Regulations, which became effective after the date of the expense reimbursements in question, and he has further acknowledged that expense reimbursements submitted after June 6, 2003 must comply with the Regulations.

The Board Member has agreed that restitution should be made. In determining the appropriate remedy to be applied under the circumstances, and in order to fairly resolve this matter, the Board has determined that the

appropriate amount of restitution to the System is the difference between the amount which would have been reimbursed to the Board Member applying the Board's policy of reimbursement based upon mileage, and the amount which was actually reimbursed to the member, or \$1,240.54. The Board Member has reimbursed the System the full amount.

Meal Reimbursements

The Board has analyzed the expense data submitted, has reviewed its Conference and Travel Reimbursement Policy and practices in effect during the period under review, has acknowledged PERAC's Travel Regulations, 840 CMR 2.00, which became effective on June 6, 2003, has reviewed prior audits conducted by PERA, PERAC and Powers & Sullivan, and has provided the Board Member, Mr. Driscoll, the opportunity to explain his submissions.

The Board Member has maintained that on all occasions, he has adhered to the Board's meal expense reimbursement practices and policies, and the subsequently promulgated PERAC Travel Regulations, and has kept his meal costs well below the Board approved maximum per diem meal reimbursement of \$95.00. The Board Member rarely dines in large groups, but prefers to dine with other conference attendees and friends in smaller, less formal settings, under circumstances where the total cost of a meal is divided among the diners, making split bills cumbersome or unavailable, and making cash payments by each diner the preferred method of meal payment. Further, the Board Member affirms that he has consistently utilized the method of submitting generic numbered receipts to more accurately track these expenses, when used in conjunction with his daily expense report (the so-called "grids," which are yellow lined pages of detailed explanation.) The Board Member maintains that his expense reports succinctly identified each expense by meal type, conference location, date, and amount of payment. The Board Member submits that he had utilized this exact method for meal reimbursements over many years, and he had supplied receipts even during periods when the Board's prior policies had not required him to do so, in compliance with the Board's requirements for appropriate documentation.

The Board Member maintains that no past finding or criticism of this reporting method has been made by the Board, nor by PERAC, nor by the Board's current auditor, despite many reviews and audits over the past twenty three (23) years he has served as a Board Member. Lastly, the Board Member notes that he was notified of PERAC's Travel Regulations by PERAC Memorandum of July 9, 2003, near the end of the audit period under review, and consequently, the subsequently enacted Travel Regulations cannot be applied retroactively to meal reimbursement expense requests submitted prior to the effective date of the Regulations.

Notwithstanding the Board Member's persuasive defense of his bookkeeping methods, his beneficial intentions, and the fact that actual reimbursed meal expenses fell far below the maximum amount set by the Board, the Board has determined that the Board Member's methodology and the use of generic pre-numbered receipts, many of which are duplicated, is a less than desirable method of documentation for meal expense reimbursement.

However, in determining a remedy to be applied, the Board must also take into consideration the fact that the Board Member's method of documenting meal expenses for reimbursement has reviewed on multiple occasions, by PERA and PERAC, and by the Board's own outside auditors. These reviews failed to raise questions or to cite issues regarding the appropriateness of this method. Further considered is the Board's own policies, dating back to 1993, requiring that expenses be documented "with receipts, indicating location, date, amount and nature of the expense." The Board's subsequent policy applied in 2001 merely required "appropriate documentation acceptable to the Board."

The Board Member's representations that, (1) his method of submitting expense reimbursements complied with the Board's policies, (2) this reimbursement practice was reviewed previously and not found to be problematic, and, (3) notwithstanding the generic and sometimes duplicate nature of the receipts, the amounts to be

reimbursed were accurately noted and were far less than authorized by the Board, find considerable support in the record.

840 CMR 2.00. Retirement Board Travel Regulations. By PERAC Memorandum #22/2003, dated July 9, 2003, the Board was advised of the promulgation of 840 CMR 2.00, Retirement Board Travel Regulations. The Regulations became effective June 6, 2003, and superseded the Board's expense reimbursement practices and policies. PERAC Regulations are reviewed and approved by the Legislature prior to promulgation. Accordingly, the Retirement Board Travel Regulations have the force and effect of law, and the Board has no discretion in their application.

The Regulations provided a fundamental change to the Board's prior reimbursement policies and practices. 840 CMR 2.04¹ requires that, "Original itemized receipts must be submitted for all expenses" [Emphasis Added.] Further, "Any travel related expenditures which have not been properly documented or approved or are not in conformity with . . . 840 CMR 2.00 must be rejected or adjusted." The Board Member has acknowledged the requirements of PERAC's Travel Regulations, and has further agreed that expense reimbursements submitted after June 6, 2003 must comply with the Retirement Board Travel Regulations.

¹840 CMR 2.04. Required Documentation for Reimbursement, in its entirety states:

1. The Board shall develop a form to be used in connection with any requests for reimbursement, requiring that the traveler certify that the expenses were incurred and were necessary and incidental to the approved travel.
2. All requests for reimbursement shall be completed and properly approved after incurring any travel, transportation or meal or other travel related expenses and before reimbursement takes place. The Retirement Boards shall require that requests for reimbursement be submitted within a reasonable time after the expenses are incurred, but in no event longer than 60 days after the expenses were incurred. If expenses for a single event were incurred over a number of days, requests for reimbursement shall be submitted no later than 60 days from the last day that expenses were incurred.
3. Original itemized receipts must be submitted for all expenses including transportation, lodging, and other expenses incidental to travel.
4. Travel-related expenses that are under \$10 (such as gratuities) should be fully described and reimbursed based on the traveler's certification that the expenses were necessary and incidental to the approved travel.
5. Any travel related expenditures which have not been properly documented or approved or are not in conformity with these 840 CMR 2.00 must be rejected or adjusted.
6. Reimbursement shall only be made to the person who actually made payment for the expense.
7. The reimbursement request form must be signed by the person seeking reimbursement and signed under the pains and penalties of perjury.

Here, the record indicates that the Board Member's method of record keeping and meal expense reimbursements had been consistent, had been accepted by the Board under the Board's practices and policies in effect through June 6, 2003, and had not been determined by PERA, PERAC or the Board's auditors to be deficient or inappropriate. However, requests for reimbursements for expenses incurred after June 6, 2003 must comply with PERAC's Travel Regulations and be supported by original, itemized receipts. Meal expenses previously reimbursed to the Board member from June 6, 2003 through December 31, 2003 which were supported by generic, sequentially numbered receipts and/or copies of same are not in compliance with the Regulations, and must be adjusted under 840 CMR 2.04(5). In determining the appropriate remedy, the Board determined the meal expenses reimbursement must be adjusted in the amount of \$1,119.47. The Board Member has reimbursed the System the full amount.

15. Middlesex Retirement LLC

Finding

The Middlesex Retirement System occupied an office in Cambridge that used to belong to the now abolished Middlesex County. MGL Chapter 34B Abolition of County Government was enacted in December of 1999 that allowed the System to maintain its Cambridge office space until the term of the former County Treasurer expired on December 31, 2002. The law also allowed the System to purchase an office building.

The System hired a commercial real estate firm to assist in the process of finding office space that the System would both occupy and lease out. The original intent was for the real estate firm to also assist in the design of the new space, build it out to suit the System and ultimately manage the property. The System's real estate law firm recommended that a Limited Liability Company (LLC) be created to protect the System from potential law suits.

Although the System had planned to move several months prior to December 31, 2002, the actual closing on the new building did not occur until late September 2002. The timing of the property closing only gave the System approximately three months to renovate the new office space and move. The System accelerated the process to select a general contractor.

General Contractor Selection

Bovis Lend Lease is the construction division of the commercial real estate firm hired by the System. They had access to the architectural plans and had previously quoted \$963,000 and \$720,000 to complete the office build-out. On October 3, 2002 they came in with their final quote of \$660,000. Listed below is the sequence of events that led to the hiring of the general contractor.

- At a board meeting on October 3, 2002 Mr. Fahey and Mr. Curtin voted in favor of hiring Bovis Lend Lease as general contractor while Mr. Driscoll, Mr. Burke and Mr. Gookin opposed.
- Mr. Driscoll suggested that the System could complete the project for less money by hiring a local general contractor and sub-contractors.
- Mr. Fahey emphasized the importance of hiring a nationally recognized firm versus an individual and the liability associated with the same.
- A motion was carried to establish a three member Building Subcommittee, responsible for the renovation, made up of Mr. Driscoll, Mr. Burke and Mr. Gookin.
- Legal counsel suggested that the building subcommittee obtain at least three quotes for general contractors.
- Two days later, on Saturday October 5, 2002, the building subcommittee met and reviewed three bids for the general contractor. One was Bovis Lend Lease for \$660,000; Howard Squires for \$595,000; and John MacDonald for \$557,000.

- By unanimous vote of the building sub-committee the contract was awarded to John MacDonald pending receipt of a performance bond, insurance certificates and a signed contract.
- Mr. MacDonald was in attendance at the October 5, 2002 meeting.

The following comments and findings are the result of our review of the general contractor selection process.

- We requested from the board and the staff the bidding documents and found out there were none.
- We requested from the board and staff the contract file on John MacDonald and determined there was no signed contract, no performance bond and no certificate of insurance.
- We requested from the board and staff the proposals from the three bidders and received a complete file on Bovis Lend Lease, a two page proposal from John MacDonald of Westford MA, and a one page proposal from Howard Squires of Peabody MA.
- We asked the board if the architectural plans were sent to Squires or MacDonald and did not get a response.
- We noted that the MacDonald and Squires proposals did not have much detail for a \$600,000 proposal and that there would be a significant risk in producing a proposal in one day, October 4, 2002, without ever reviewing the architectural drawings.
- We noted that the MacDonald and Squires proposals were almost identical. They used the same software (E-Z Contractors Forms Form No. Prop23) and both were dated on October 7, 2002.
- The date on both proposals was dated two days after the building subcommittee voted to award John MacDonald the contract.
- We noted that John MacDonald's invoices, numbered 1, 2, 3 etc were completed using the same software used to prepare both proposals.
- We noted that it was unusual for a general contractor to have sequential invoices starting at Invoice #1 with Invoice #2 a couple of months later. It led us to believe that there is a high probability that Mr. MacDonald did not have an ongoing business at the time he was hired as the general contractor. It is possible that the E-Z Contractors Forms software was purchased after the October 5, 2002 subcommittee meeting which then produced the October 7, 2002 bids for Mr. MacDonald and Mr. Squires on the following Monday.
- Based on this evidence James Powers contacted Howard Squires, Custom Building Inc. on October 6, 2004 at about 1pm (we were conducting the audit approximately two years after these events occurred). Mr. Powers introduced himself as a partner from Powers & Sullivan and that he was the engagement partner for the audit of MRS. The man stated he was the chief estimator but did not want to give his name. Mr. Powers faxed him a copy of the proposal that according to MRS records was from Howard Squires. After reviewing the fax he unequivocally stated that they do not use that software and all his proposals are stamped.
- The next day Mr. Powers had a late morning meeting with members of the MRS board to review the initial audit findings.
- Mr. Powers asked if anyone had prior contact with Mr. Squires and all board members in attendance said no. It was then asked if anyone had prior contact with Mr. MacDonald. Both Mr. Driscoll and Mr. Burke said yes. Mr. Driscoll stated he contacted both Mr. MacDonald and Mr. Squires on October 4, 2002 based on business cards that were received from contractors on September 30, 2002 where plans were given out. The meeting lasted until about 2:30pm.
- When Mr. Powers returned to his office he called Mr. Squires again at about 4:00pm and this time the man that answered identified himself as Mr. Squires and said that he was nervous about giving his name the previous day.
- Without Mr. Powers ever mentioning Mr. MacDonald's name on either day, Mr. Squires stated he remembered talking with John MacDonald about two years ago about the MRS project while they were both working on a project in Lexington.
- He stated that he did not bid on the project, that the estimate we had faxed him the previous day was not his and that the signature on the proposal was not his.

- MRS paid many of the subcontractors directly and Mr. MacDonald did not assume the normal financial risk/reward a general contractor takes. MRS paid Mr. MacDonald over \$100,000 for his role as general contractor for the period between October 5, 2002 and late December 2002. After the project was completed the building subcommittee voted to hire him as a full-time employee to manage the building.
- In February 2003 Mr. Driscoll called Powers & Sullivan and spoke with our audit supervisor assigned to this engagement, and said that we should not have told the MRS accounting staff to send a 1099-MISC to Mr. MacDonald and asked if this could be corrected. We informed him that issuing the 1099-MISC was appropriate for the System to do.

Because of the findings detailed above we examined other contracts awarded by the building subcommittee and found strong evidence that indicates additional proposals were "created" in order to have the three quotes that legal counsel instructed the building sub-committee to get.

We noted that the handwriting on several of the proposals appear to be similar to the handwriting on Mr. MacDonald's proposals and invoices.

We are aware that the Board has contacted PERAC regarding these matters. In addition, Powers & Sullivan has met with representatives of PERAC to discuss these matters and have provided them with copies of the documentation referenced in this report.

We recommend that the Board evaluate this finding and determine if any further action is required.

Management Response

General Contractor Selection

The Board has reviewed sundry documents, including the minutes of Board meetings, relating to Middlesex Retirement LLC. The Board has noted the provisions of G.L. c. 30B, s.1(b)(19), which exempts contracts for procurement of supplies, real property or services rendered to the Board from the provisions of the Uniform Procurement Act. *The Board has consulted its own collective memory of the hectic construction and moving period in the closing months of calendar 2002, and has made the following determinations.*

As a preliminary matter, the Board accepts the audit findings regarding the history of Middlesex Retirement LLC, as set forth by the auditor. (the first 8 bullet points on pages 7-8.) These findings are generally accurate in depicting dates, events, actions and relevant dollar amounts. However, where the minutes of Board meetings reviewed by the auditor properly reflect all that was done by the Board, the minutes do not reflect all that was discussed by the Board, and therefore, the Board minutes alone do not offer a complete picture of the Board's discussion and selection of a building subcommittee and a General Contractor.

Although not required to do so under the statutory exemption cited above, the Board undertook a competitive process in retaining the services of Lend Lease for the purpose of locating and purchasing a new location for the Middlesex Retirement System. The original contract specified fees for market search, selection and conveyance of a real property. However, the contract also implied a future role for Lend Lease, at suggested fees, in the areas of demolition, construction, and future building management. Lend Lease's future roles were not initially agreed upon by Board, and required further Board review and actions. To demolish, construct, and renovate, Lend Lease initially proposed a figure of \$962,000. After rigorous questioning and scrutiny by the Board, Lend Lease corrected the contract fee figure to \$720,000 in an effort to win Board support. After a culmination of errors of omission and commission, and a subsequent further reduction of its fee to \$660,000, Lend Lease had estranged a majority of the Board. At the Board meeting of October 3, 2002, the Board rejected Lend Lease's bid to serve as General Contractor.

Lend Lease had assured the Board on September 12, 2002 that all potential bidders for contracting and subcontracting roles were properly notified of the bid process. On September 30, 2002, Board staff and Members met with Lend Lease and Add Inc., the architect, and other contractors. It was determined at that time that Lend Lease had failed to make bid specifications available to all potential bidders.

Subsequently, on October 2, 2002, a further meeting was held at the building site, and copies of plans and specifications were made available to other potential vendors, including demolition contractors and general contractor candidates Harold Squires and John MacDonald. It was reported that representatives from Lend Lease were abrupt in dealing with the other contracting professionals. In the view of a majority of the retirement board members, Lend Lease had failed to properly discharge its duties to date, and, as stated above, was discharged by Board vote on October 3, 2002. At that time the Board Chairman acknowledged the will of the majority of the Board and suggested a building subcommittee consisting of the majority members. On October 5, 2002, Mr. MacDonald was appointed the general contractor.

With reference to the auditor's comments and findings appearing as bullet points on page 8 and on page 9, the Board's responses will correspond in kind as follows:

- Board members and pertinent staff do not recall requests by the auditor for bidding documents. In fact, bidding documents are included in the Project Manual produced by the architects, Add, Inc.
- Board Members and pertinent staff do not recall a request for the contract file on John MacDonald.
- The Board does not dispute that requests were received for the files of the three vendors and were delivered to the auditor.
- As stated above, on 10/02/02, Mr. Squires and Mr. MacDonald received plans and specifications from Lend Lease.
- The Board notes that Mr. Squires and Mr. MacDonald did get the plans on 10/02/02 and Add, Inc.'s Project Manual is extremely detailed.
- The Board notes that Mr. Squires and Mr. MacDonald used the same software in preparing similar bids. However, the Board notes also that the software (EZ Contractors Forms) is fairly common in the contracting industry.
- The building subcommittee had copies of the bids for its meeting on 10/05/02. Apparently, both Mr. Squires and Mr. MacDonald mailed originals, dated 10/07/02, to 40 Thorndike Street, Cambridge, Massachusetts.
- Upon inquiry by the Board, Mr. MacDonald responded that he numbers his invoices anew with each contract project and begins each with "Number 1." The Board has no further comment upon the software used.
- The Board does not share the conclusion that Mr. MacDonald did not have "an ongoing business," based upon the use of a popular software, and low sequential numbering for invoices.
- The Board feels that no response is necessary.
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- Board Member Mr. Driscoll believes that the "contact" with Mr. MacDonald and Mr. Squires occurred on October 2, 2002 and not on October 4, 2002.
- The Board feels that no response is necessary. We can neither confirm nor dispute Mr. Powers' discussion with Mr. Squires nor its content.
- The Board feels that no response is necessary. We can neither confirm nor dispute Mr. Powers' discussion with Mr. Squires nor its content.
- The Board is satisfied that the Board received an original bid from Mr. Squires, and, subsequently, the Board received an affidavit attesting to the submission of said bid.
- The Board did pay subcontractors directly, and not "through" the general contractor. The Board requested such a process for payables as more transparent and with greater control and oversight. Mr. MacDonald acceded to the Board's unusual request, and as general contractor, he signed off on each job when it had been completed to his satisfaction. The building subcommittee and the full Board were pleased with this system of checks and balances. Mr. MacDonald was fairly compensated for conducting the general contracting to architectural specifications, to building codes, and to the satisfaction of the Middlesex Retirement Board. Upon the request of the Board, the auditor on September 12, 2002 made a presentation to the Board, at its meeting, regarding the implementation of the LLC as a vehicle for real property ownership. Consistent with his recommendations, the Board chose to establish a division of property management and building supervision and to create employment positions for same. Based upon Mr. MacDonald's credentials as a licensed contractor with expert knowledge of the subject facility, the Board hired him as facility manager.
- Mr. Driscoll contacted Powers & Sullivan, on behalf of Mr. MacDonald, when Mr. MacDonald received a 1099-MISC which was prepared by Board staff and which Mr. Driscoll and Mr. MacDonald felt was incorrect. Messrs. Driscoll and MacDonald believe that the IRS reporting was in error due to the following:
 1. Approximately \$9,000 of the reported sum was not income to Mr. MacDonald, but rather a reimbursement for his "out of pocket" purchases of cleaning supplies, restroom toiletries, rubbish, bags, barrels, and maintenance equipment on the eve of the opening of the building.
 2. Mr. MacDonald was required to install a handicap railing by the Billerica Building Inspector, which construction was not anticipated by the original plan.
 3. Mr. MacDonald installed premier quality appliances in the kitchen at no additional cost beyond the \$2,500 stated in the architect's plan. (Add Inc.)
 4. Mr. MacDonald was required to engage contractors to work nights and weekends to avoid inconveniencing the tenant.
 5. In the Board's review of payments made to the General Contractor, the Board discovered that Mr. MacDonald was not paid a final residual balance due under the contract, which the Board has taken under further advisement.

The Board also considered the findings in the four (4) paragraphs on page 9 following the bullets and responds as follows:

Although expressly exempted from the service procurement requirements of G.L. c. 30B, the Board, nevertheless, attempted to ensure a competitive process. The records indicate that all subcontracts were awarded after receipt of three (3) bids, some of which were alternatively received by phone, fax, and/or mail. The building subcommittee was dealing with the most literal interpretation of "time is of the essence," and made decisions upon the bids and documentation received, without further inquiry. The anticipated original general contractor, Bovis Lend Lease, did not intend to seek bids from any subcontractors but to rather build upon their existing contracting relationships.

The Board does not choose to respond to the auditor's observations regarding "similar handwriting" appearing on documents, other than to note that the Board believes the auditor to be unqualified to render such expert opinions, and such opinions should not be included in the audit findings.

After a great deal of discussion, including discussion with the Board's oversight and regulatory agencies, and after further document study and reflection, the Middlesex Retirement Board stands upon its responses. For the first time in the history of the Commonwealth, a county government was abolished, and the supporting Middlesex Retirement System forced by law to relocate. For nearly two years, the Board explored myriad options for its future location. Facing a statutory eviction on 12/31/02, the Board purchased 25 Linnell Circle, Billerica, on September 26, 2002, and proceeded to engage the contractors and the vendors necessary to relocate and renovate. On December 9 2002, the System officially began operations in Billerica. In so doing, the Board's building renovation was completed on time and under budget by the lowest bidding contractor, and substantially under the original cost quoted by Lend Lease. To date, the Board, staff and visitors to the office continue to express satisfaction with the building renovation.

The Board acknowledges the importance of process and procedure in the operations of public agencies, and that such is as important as the end results. Here, the Board accomplished its statutory goal in a timely fashion, with quality workmanship, and cost accountability. Unquestionably, the Board encountered novel questions without precedents to guide it, rendering the Board susceptible to errors. Nevertheless, this was a one-time event and expense. In reviewing the matter in the entire context, and noting the success of the project under such time constraints, the Board concludes that the audit criticisms made, despite any possible validity, require no further future action on the part of the Board.