



The Commonwealth of Massachusetts
Office of the Inspector General

GREGORY W. SULLIVAN
INSPECTOR GENERAL

October 20, 2011

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Michael Vaughn
Chief Procurement Officer
City of Lowell
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Dear Mr. Vaughn:

This Office has reviewed the City of Lowell's (City's) 2009 two-phase procurement of a wireless radio fire alarm system and dispatch center and implementation of the contract. In the opinion of this Office, the procurement process was flawed: (1) Phase 1 should have been bid under the public construction bidding laws, (2) terms and conditions of the Phase 1 contract were not favorable to the City or its businesses and citizens; and (3) Phase 2 work should have been procured pursuant to M.G.L. c.30B rather than awarded on a no-bid basis.

Background

On March 16, 2009, the City of Lowell issued a Request for Proposals entitled "RFP No.: 09-21, **Radio Fire Alarm System**," (the RFP) seeking proposals to furnish and install a comprehensive, complete-in-place and operational municipal radio fire alarm system (RFAS).¹ The City purportedly used a M.G.L. c.30B, §6 request for proposals (RFP) process although the installation of such a system should have been completed using the public construction laws. Nonetheless, the City did not comply with M.G.L. c.30B either.

Lowell's confused procurement did not comply with M.G.L. c.30B for the following reasons, including but not limited to: (1) the RFP did not require the submission of separate price and technical proposals and did not include comparative evaluation criteria: the proposers were required to submit one proposal for the lump sum price of performing the contract; and (2) the award standard. In addition, the City apparently mishandled the process of evaluating the minor informality standard; and did not comply with M.G.L. c.30B rules relative to contract changes.

¹ Lowell's purchase description is extremely vague and this description of the RFAS includes details gleaned from this Office's telephone conversations with Lowell's Chief Procurement Office, Fire Chief, City Solicitor and a complainant.

Specifications and Scope of Work

The City's plan was to replace and update the RFAS throughout the City over a period of time. To avoid incompatibility issues, the technical specifications provided that Lowell sought bids from vendors to furnish and install a comprehensive municipal RFAS that would allow the fire department to monitor 484 fire alarm boxes, of which 68 were city-owned and the rest of which would be installed on certain public and private properties.

The installation work was to occur in two phases, but only Phase 1 was covered in the RFP. The Phase 2 work entailed supplying the remaining non-municipal fire alarm boxes within a two year period.

The City's warranty specifications provided that the first year maintenance on all equipment and installations would be done by the vendor at no cost to the City. The City would perform maintenance after the initial warranty period was over, with the provision that the vendor could provide maintenance and emergency services as required by Lowell pursuant to a contract.

In addition, the technical specifications required that the new system interface with the City's Larimore Computer Aided Dispatch (CAD) system -- but did not otherwise specify what the RFAS system required.

The RFP required that vendors propose a product and submit brochures and specifications about the equipment. The RFP required a working RFAS. Each of six vendors proposed a different system. The bids that Lowell received are as follows:

Number	Firm	Proposal
1	East Coast	\$77,849
2	RB Allen	\$112,400
3	Smart Link	\$124,000
4	Easton	\$180,000
5	LW Bills	\$202,500
6	Mammoth	\$394,500

East Coast was the low proposer, proposing a name-brand Keltron system. Lowell awarded the Phase 1 contract to East Coast. East Coast's 90-day contract with Lowell required East Coast to install a new Keltron system in Lowell's 9-1-1 Communications Center and in all

the municipal buildings in Lowell, effectively converting the city to Keltron radio fire alarm boxes. East Coast installed the RFAS for municipal users.

Issues

If Lowell had decided on the basis of price alone, the procurement might not have been considered prejudicial to competition. However, the specifications did not afford a way to meaningfully compare different systems that were proposed by vendors. The disparity in proposal price of more than \$300,000 suggests the City's solicitation documents did not contain specificity as to what it wanted to purchase. The vagueness of the specification contributed to the myriad deficiencies this Office has found with City's procurement. For example, the City did not call for itemization of the installation and maintenance services and equipment to be provided. East Coast's price of \$77,849 was for everything.

In addition, although not specifically requested by Lowell, East Coast's proposal included a price of \$2,475.00 each for a Keltron radio box to be installed during Phase 2 or converted during the first two years of Phase 2. Because the City agreed to the name-brand Keltron equipment, the City in essence created a proprietary system. Furthermore, East Coast included a condition that Keltron reserved the right to increase the cost to system users who failed to convert within two years. Based on our review and according to the City, the price that East Coast was charging for the non-municipal installations for each Keltron radio alarm box was much higher than the \$1,100 price that East Coast was paying to obtain the boxes. This was not advantageous for the businesses and citizens of Lowell. In fact, the City advised this Office that one municipal user complained of "price gouging" by East Coast.

A December 18, 2009 letter from the Lowell Fire Chief Edward Pitta to City of Lowell Municipal Fire Alarm System Users stated that the current Gamewell Fire Alarm Box System that connected all fire boxes in the city to a Dispatch Center via telegraph wires was being replaced with a fire alarm system which would connect fire alarm boxes to the dispatch center by the use of radio signals. Effective January 1, 2011, the City of Lowell would not be responsible for maintaining and supervising the Gamewell Fire Alarm System. The letter set out two options for a new Type 1 or Type 2 system. In accordance with 527 CMR 24.07(3)(c), owners of residential properties containing 13 or more separate living units were limited to the first option - a Type I fire warning system (unless waived by the Fire Chief in accordance with another CMR provision). Type I systems are described as follows in 527 CMR 24.07(3)(a):

Fire Warning Systems.

Type I system shall consist of the following: A series of approved smoke detectors and heat detectors with an approved secondary source of power and annunciator at grade level, located pursuant to the approved design specifications. The system shall provide for automatic fire department notification approved by the head of the fire department.

The letter also stated that (1) only radio fire alarm boxes obtained from East Coast were eligible to be connected to the Lowell Communications Center; and (2) Keltron Radio boxes could be installed by East Coast or by any competent, licensed installer. The non-municipal system users would be responsible for purchasing the fire alarm box at a certain price to be established outside any contracting process but mandated by the fire department. The \$2,475 price did not include installation, which could be done by any qualified electrician for an estimated \$500. The City advised this Office that East Coast was the only vendor authorized to code the Keltron Radio boxes for Lowell's fire alarm system.

Lowell had not done a procurement for the vendor, the boxes, or the coding services. So those of the 416 non-municipal municipal users that chose a Type 1 fire warning system had to pay East Coast \$2,475 per box pursuant to East Coast's no-bid agreement with Lowell. Beginning January 1, 2011, the City would institute an annual monitoring fee of \$275 for each radio box. For 416 non-municipal boxes, this would total \$114,400 per year over the life of the system.

Complaint

The Office of the Inspector General received a complaint about Lowell's arrangements with East Coast from a residential user of the fire alarm system with more than 12 units that worked for an awarding authority that is subject to M.G.L. c.30B (Awarding Authority). The Awarding Authority had received quotes for Keltron radio alarm boxes for less than half the amount that East Coast was charging. The residential user explained that generally, if you buy the box, you also buy monitoring. The way it was being done, the City got the monitoring money after the first year. In the opinion of the residential user, East Coast was charging so much for the Keltron boxes because they were not getting the annual monitoring money which would normally be their due.

This Office's review revealed that some of the radio fire alarm boxes of the Awarding Authority were actually included in the original bid. As a result, Lowell provided the Awarding Authority with 11 fire alarm boxes at cost (\$1,100), acknowledging that its list of 68 municipal sites was "poor."

Further, Lowell was requiring that the Awarding Authority buy a separate Keltron box for each building even though one box would be able to handle two buildings. As the Awarding Authority was not aware that certain of its properties had been part of Lowell's original bid, it assumed that all of its purchases from Lowell's contract were in violation of M.G.L. c.30B. Most of them were. In addition, according to the City, the Fire Alarm Trade Association had been complaining to Lowell for two years that the purchase of Keltron radio fire alarm boxes was only available from one vendor.

The City had created a dilemma for the public Awarding Authority by requiring them to purchase the proprietary Keltron boxes from only one vendor, which is a violation of M.G.L.

c.30B. This would also violate the proprietary specification provisions of the building construction statutes. Although the Awarding Authority was able to benefit from the City's Phase 1 contract, other customers were not so fortunate.

Conclusion and Recommendations

In the future, the City should consider conducting collaborative purchases with other public entities in the City that are required to follow M.G.L. c.30B for any supplies or services that affect such entities. The City should contact these entities and include their estimated needs when preparing procurements that purport to cover them. Additionally, the ill-planned and ill-executed procurement process that required that system users purchase the Keltron brand name fire alarm boxes from East Coast was not only a M.G.L. c.30B violation, but it completely obliterated price competition among distributors of radio fire alarm boxes that would have happened under M.G.L. c.30B.

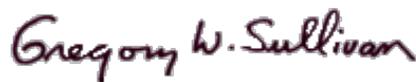
The City violated the law by failing to conduct a M.G.L. c.30B procurement for the radio fire alarm boxes for the non-municipal users. As a result, the possibility of more favorable terms and conditions that may have been attained from a fair and transparent competition, were not available to customers.

In addition, the City should have determined the applicable public bidding law prior to issuing a solicitation for the installation of the RFAS. For your information, this Office has attached a letter dated August 9, 2011 from the Office of the Attorney General to a municipal attorney which provides in pertinent part that a building construction project that was bid pursuant to M.G.L. c.30B should have been procured pursuant to M.G.L. c.149.

Finally, this Office recommends that the City consult the Office of the Attorney General in the future for guidance on the applicability of the public construction bid laws to particular procurements.

Please feel free to contact me or Deputy General Counsel Helen Flaster of my staff with any questions about this matter.

Sincerely,



Gregory W. Sullivan
Inspector General

Enclosure

cc: Christine O'Connor, City Solicitor
Brian O'Donnell, Assistant Attorney General



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August 9, 2011

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RE: Somerset Middle School Fire Alarm Project

Dear Attorney LeBlanc:

I am writing pursuant to our telephone conversation late last week regarding a contract awarded by the Somerset Public Schools, for which your office serves as legal counsel. I wish to confirm the preliminary finding of this Office with regard to the bid protest received concerning the above-referenced project. Based on the information provided to date to this Office, the project involves work that is subject to the public construction bidding laws, M.G.L. c.149, §§44A-M, which governs the award of building construction contracts. In particular, the project in question includes, among other work, the installation of alarm equipment and the attendant electrical wiring of those systems. Such work is considered construction under the public construction bidding law and therefore, should not have been bid out under M.G.L. c.149, §§44A-M, and not procured pursuant to M.G.L. c.30B, which primarily governs the award of contracts for goods and services not related to construction. Accordingly, the determination made by Somerset to utilize the provisions of c.30B, §1(f), which permits awarding authorities to comply with procurement requirements through the use of a contract previously entered into between a vendor and the General Services Administration, was erroneous. Since this "GSA alternative" to a bid process pursuant to the bid laws of the Commonwealth is inapplicable to c.149, it should not be the basis for the award of a contract that includes construction activities, such as the installation of alarm equipment and related wiring.

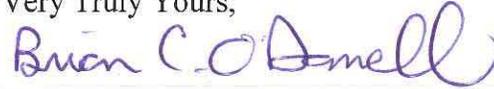
As you know, the courts of the Commonwealth have long held that contracts which have not been the subject of statutorily required procurement procedures are void and no payment is to be made on such contracts. See *Majestic Radiator Enclosure Co., Inc. v. County Commissioners of Middlesex*, 397 Mass. 1002, 1003-04; *Baltazar Contractors, Inc. v. Town of Lunenburg*, 65 Mass. App. Ct. 718, 720-23 (2006); *E.Amanti & Sons, Inc. v. R.C. Griffin, Inc.*, 53 Mass. App. Ct. 245, 255-256 (2001) (discussing history of nonpayment with respect to "no bid" contracts). I trust the Town of Somerset



will now take the appropriate steps to conduct an appropriate bid process for the work in question.

If you have any additional questions regarding this matter, please do not hesitate to contact me.

Very Truly Yours,



Brian C. O'Donnell,
Assistant Attorney General

Cc: Ann Marie Barry, Esq. (Simplex Grinnell, Inc.)
Barbara Hansberry, Esq.(Office of the Inspector General)
Kevin C. Fitzpatrick (Advanced Alarm Systems)