

On January 26, Ms. Lindsay Pope, the town's Acting Procurement Officer(APO) sent a memo to the BOS related to the School Department Procurement. In addition to some grammatical and syntactic irregularities, there were some factual and legal errors. The version below is annotated with corrections from the School Department. It should be noted that according to Ms. Pope's resume, she does not have the level of licensure for procurement held by the Director of Support Services for the schools. Hers is an "associate" MCPPO. Mr. Harding holds a full certification and 20 years of experience.

MEMORANDUM

TO: Board of Selectman

CC: Francis T. Crimmins, Jr.

Date: January 26, 2012

Subject: Procurement Laws and Policies

On December 7, 2011 a procurement policy memo was distributed to all department heads, board members, etc. This memo included references to Town Charter information and Massachusetts General Laws. We have reiterated and clarified these policies and laws throughout the past few months and I am proud to say most past issues regarding confusion and mistake due to the unknown portions have been remedied. However we still have a lot of work to do moving forward as it has been brought to my attention that as recently as Tuesday of this week, bids have been awarded by individuals employed by the town that are not authorized by State law to do so. (Please see one attached bid that was sent to me by a concerned bidder since this bid is currently being protested due to a low bidder with a possible criminal history).

Although the School Department has a Chief Procurement Officer and has historically awarded their own bids, the last bid awarded subject to M.G.L. c.30B was on November 22, 2011. It is unclear to which state law the APO is referring. There has not been a bid protest. Mr. Harding has inquired of the Assistant Attorney General as to the eligibility of a bidder, after getting a tip that a bidder may not be eligible to bid due to his legal issues, but this is not a bid protest. All appropriate bidding procedures were followed. As a contract had not been awarded at this time, a protest would be premature.

The Inspector General's Office as well as the Attorney General's Office governs all supplies and services (including construction and public works) for the state. They go mainly by Massachusetts General Laws 30B, 30 39M, and 149. These three laws are the bread and butter of how to buy anything in the state as a public entity. Municipalities are required to follow these laws.

The Office of the Inspector General governs M.G.L. c.30B (Procurement)

The Office of the Attorney General governs M.G.L. c.149 (Construction)

Awards for bids, proposal openings, and request for quotes must only be given by the Chief Procurement Officer (CPO) designated through the Inspector General's Office by the Town in order for that procurement to be valid. If a procurement is not valid that procurement *cannot* be paid for or acquired in any way using public funds. This is just one rule under the privy of the above listed laws there are several others on the process depending on the amount of the purchase and type. On Tuesday a bid opening for a

\$400,000-\$600,000 roof took place by the school department. It was placed out to bid without notice to the town or the Acting CPO of the Town. It was opened without an applicable CPO present. A low bidder was also chosen without an applicable CPO present or signing off on it. The Acting CPO for the Town of Stoughton is 1; the Town Manager and Town Accountant also have full CPO designations through the Inspector General's Office. The Superintendent of Schools has a limited designation of powers only that allows purchasing up to \$24,999 but all applicable laws must be followed and all sign offs, awarding, and contracts must be maintained and signed by the CPO. (This information is attached; please note no one else at the School Department has a CPO power designation.)

Construction contracts are not governed by M.G.L. c.30B. Hence, the CPO has no jurisdiction, and the entire premise of the above paragraph is incorrect. The School Committee, however, by law has the obligation to repair, maintain and construct school buildings under M.G.L. c.71 s68. A low bidder was identified in the above Roof Bid, and as the School Committee appropriately awards all building contracts, the School Committee has since done so. The misunderstanding by the APO of the scope of the APO's rights and limits under 30B is notable.

There have been multiple bids placed out, opened, and awarded since the December memo. This is a problem because it is not legal to do so. Discussions with the School Department Superintendent have been ignored. I was told that they would "not comply" with these laws and that they have a "statute" that says they can do otherwise and their attorney would furnish me with that shortly. This discussion took place on December 20, 2011. I still have received no information, no statute, no legal response, and when asking what statute they referred to for my own reference they would not tell me. I have been told I have no authority to make procurement decisions for their department and I cannot "just decide I am the procurement office".

Again, the last bid awarded subject to M.G.L. c.30B was on November 22, 2011.

The examples of purchases just in the past two months that have been placed out to bid range from janitorial, to roofing contracts, to supplies and services that are not included in the excluded curriculum and books categories. In the past there have been procurements paid for without knowing because the school refuses to furnish the town with contracts and bidding materials. The contracts are required by law to be held in the Town Accountants office. This alone was a huge preexisting issue that makes the Town non-compliant with state laws. Furthermore things like shoveling of roofs fall under 30B law and were not complied with, boiler work, and office supplies. Some bidding like Bus contracts which normally results in multiple bids only had one bidding party and others left commenting that they weren't given a chance to bid because they were told they couldn't but weren't willing to do a bid protest. Another quote was given to a vendor that wasn't the low bidder for a sports busing contract for after school programs.

Why would the town pay for procurements "without knowing" and when did the school refuse to furnish the town with contracts and bidding materials? On August 31, 2011, Bill Rowe communicated to the school's financial coordinator that he had "no knowledge of any issues of non-compliance" with regard to capital purchases and that his office was "just being required to provide greater oversight."

With which state laws is the School Department out of compliance?

Special Education transportation is not subject to M.G.L. c.30B. Contracts for this service can be negotiated. A bid protest is not allowable in this case. The vendor referred to here had a contract with Stoughton through CHARMS for 3 years. Based on this experience which was very unsatisfactory, characterized by prices much higher than estimated, the School Department was not willing to enter into a contract with the company.

The transportation for athletic events required three quotes under M.G.L. c.30B. Although the quotes were submitted in differing formats which required some calculation, an understanding of the distance and time involved enabled us to take advantage of the lowest quote. Every effort is made by the School

Department to make responsible decisions regarding the purchase of supplies and services. Yearly audit results have been exemplary.

This is a problem that has now elevated to knowingly breaking the law and must be solved immediately. When a law is broken and those in public office are made aware, we are forced to act immediately in the best interest of those we serve in our community and today I must formally make you aware of these incidents. These incidents have also been promoted and were publicly discussed on television, in the local papers via advertising and articles, and verbally by the individuals involved in those bidding processes.

Are there any factual incidents that should be discussed?

I have talked in depth of these issues with both the Inspector General's office and the Assistant Attorney General Brian O'Donnell. Both have advised me to stop all ability of the school to advertise for any new projects in excess of their designated thresholds through the Inspector General's Office. This has been done with the help of the Central Register and Goods and Services. They have also advised me to move forward with an injunction through our Town Counsel at ICopelman & Paige. This is what I am presenting to you at this time. I was advised to do this because both *Offices* felt as though the School Department has been given proper notice, proper time to comply, and refuses to respond positively to that notice and are now breaking the law intentionally.

The School Department has not been made aware of any issues by the Office of the Inspector General or the Office of the Attorney General, even though there have been a number of conversations with both offices.

The Assistant Attorney General Brian O'Donnell has reached out to the Superintendent of Schools this week to notify her to cease this behavior and the Inspector General's Office is working towards doing the same once they are done investigating the information they have. As of last night, The Assistant AG's calls had gone unanswered and unreturned. This is unfortunate for the town and its population as an injunction costs the town money it could be using elsewhere but it is the only way to force compliance of state law.

This is a crisis manufactured by the APO. The Assistant Attorney General, Brian O'Donnell, has contacted the Superintendent. His recommendation was that the Town and School Department needed to work these issues out before real damages are caused.

At this time I would urge all members to take the advice of both the Assistant Attorney General and Inspector General's Office and move forward with an injunction. There has been two solid months off vendors believing they are bidding jobs they can be paid for, that under state law cannot be paid for through public funding. To continue allowing innocent vendors to bid on Town projects not knowing they will not be paid is unconscionable and a travesty for the businesses, for the taxpayers, and for the Town.

It would be appropriate to have a written opinion from the Assistant Attorney General and Inspector General before any action is taken so that no misunderstandings occur. The School Department's "innocent" and long-standing vendors are being harmed by the Town's inconsistent demands, not by the School Department's established procurement practices. Every year, the School Department along with the Town is audited by an independent firm. Procurement is sampled for compliance. A recent search of our past audits has indicated no issues with compliance. The only thing that has changed is the Town Manager's desire to micro manage the School Department's budget.

In the interim, I will continue to refuse to allow any procurement to be passed through to accounting with my signature if they were illegally procured. I will not sacrifice my freedom due to pressure from an agency that has decided it is above State Law. The State places these rules in for checks and balances. The Town must be aware of what its departments are purchasing and there must be someone authorized to

make those decisions. This too is Massachusetts General Law. That person is me in this particular case. The person who makes sure I am not making a poor decision on spending is the Town Accountant, Town Manager, Board of Selectman, Inspector General, and Attorney General. I take my position very seriously and I am shocked that anyone would be willing to do otherwise.

Nothing illegal is taking place. It is both unfounded and unconstructive to identify the Stoughton Schools as "an agency that has decided it is above State Law." The Schools purchases have always gone through the Town Auditor's office. Again, this is an unfortunate, unnecessary, and expensive crisis manufactured by the Town.

Lindsay Bray Pope

Acting Chief Procurement Officer.