

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).

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.

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 I; 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.)

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 officer”.

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.

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.

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 Kopelman & 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 know breaking the law intentionally.

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.

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 of 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.

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.

Lindsay Bray Pope
Acting Chief Procurement Officer.

Attachments: (1) Roof Bid; Inspector (2) General Designations for Francis T. Crimmins, Jr; Lindsay Bray Pope; William Rowe; and Marguerite Rizzi; and (3) Procurement Policy Memo of December 7, 2011.