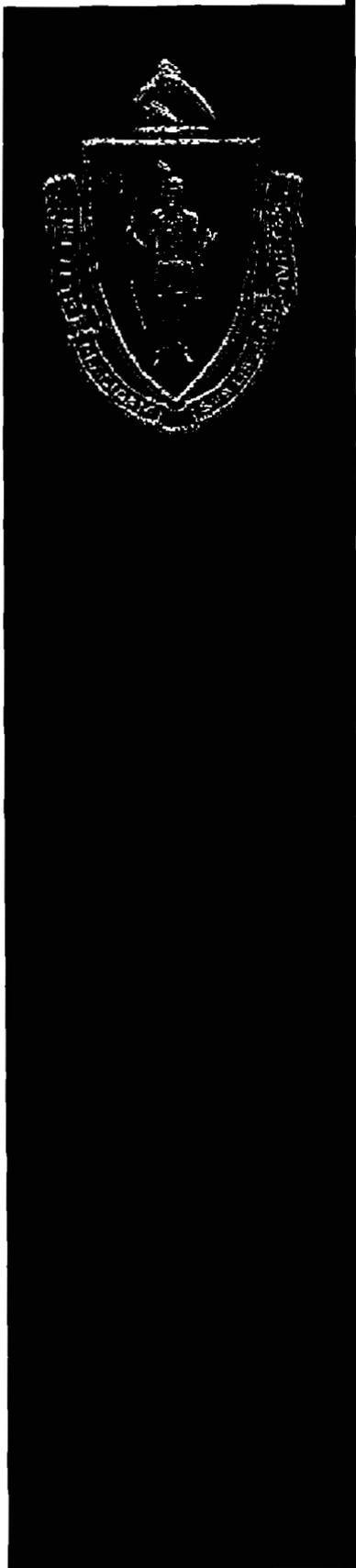


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# **Office of the Inspector General**

Commonwealth of Massachusetts

**Gregory W. Sullivan**  
Inspector General

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## **Disposition of Hale Hospital and Glynn Memorial Nursing Home Under M.G.L. c. 30B, §16**

GOVERNMENT DOCUMENT  
COLLECTION

MAR 02 2004

University of Massachusetts  
Depository Copy

August 2003

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## ***Disposition of Hale Hospital and Glynn Memorial Nursing Home Under M.G.L. c. 30B, §16***

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### **Introduction**

The recent sales of Hale Hospital and the former Glynn Memorial Nursing Home by the City of Haverhill illustrate the benefits of open competition and the use of sound appraisal methods in municipal property dispositions. In February 2003, the City sold the five-acre parcel to the Drs. Kapasi, who responded to the City's request for proposals (RFP) with a plan to use the property to establish an integrated care facility. The winning price proposal of \$779,000 submitted by the Kapasis represented a substantial revenue source to the City that, like so many communities in the Commonwealth, faces significant budgetary shortfalls this year. The events leading to this sale and the involvement of the Office are summarized below.

### **Disposition History**

The City first sought input from the Office regarding the process required for the sale of Hale Hospital, the Commonwealth's last municipally owned hospital, situated on approximately 11 acres of City land, in December of 2000. Real property dispositions by local governments are subject to M.G.L. c. 30B, §16, which sets forth requirements for competition and disclosure. In January of 2001, the City issued an RFP for the sale of the Hale Hospital site, as required by M.G.L. c. 30B, §16.

The City selected the proposal submitted by Essent Healthcare, Inc., the sole responsive and responsible proposer. During subsequent negotiations aimed at completing the complex sale transaction, Essent indicated to the City that it would not complete the purchase of the Hale Hospital site unless the City agreed to convey an additional site, located across the street from the Hale Hospital property, that included the five-acre Glynn parcel and a public works garage parcel consisting of approximately two-thirds of an acre. The RFP to which Essent had responded had not included either the Glynn parcel or the garage parcel.

In April of 2001, the City sought the Office's advice regarding Essent's request to add the two parcels to the disposition agreement. The Office advised the City that adding the two parcels to the agreement would violate M.G.L. c. 30B and principles of fair competition because the parcels in question had not been included in the original RFP issued by the City and because Essent was, in effect, impermissibly placing a new condition on its proposal. The Office recommended that the City either issue a separate RFP for the site containing the Glynn and garage parcels or cancel the ongoing RFP process and issue a new RFP for the sale of the Hale Hospital, Glynn, and garage parcels.

With the City facing financial pressures to complete the sale of the Hale Hospital site and Essent still insisting on the inclusion in the disposition agreement of the Glynn and garage parcels, special legislation was filed that would waive the requirements of M.G.L. c. 30B, §16, thereby allowing the Glynn and garage parcels to be included in the Hale Hospital disposition agreement with Essent. Parties involved in the negotiations suggested to the Office that the Glynn and garage parcels were of rather inconsequential value in the context of the multimillion-dollar Hale Hospital transaction that involved land, assets, capital improvements, and liabilities. Although the parties referenced an aggregate value of approximately \$160,000 for both parcels, the City lacked specific, updated appraisal information on the value of the parcels. In a June 4, 2001 letter to the Chair of the Joint Committee on Health Care, the then-Inspector General opposed the special legislation and again recommended that the City comply with M.G.L. c. 30B, §16. (A copy of the letter is provided in the appendix to this report.)

As of August of 2001, the sale to Essent had not been completed, and the City faced a substantial risk of having to close Hale Hospital. New special legislation was filed that would, among its other provisions, waive M.G.L. c. 30B in order to allow the unadvertised, noncompetitive sale of the Glynn and garage sites to Essent. Following meetings with many involved parties, the Acting Inspector General wrote to the Mayor of Haverhill on August 29, 2001, recommending that any such special legislation require – as a post-transaction condition of the sale – that the City obtain three independent appraisals of the real estate value of the two parcels and require Essent to pay the City,

in addition to the agreed-upon sale price, any positive difference between the average value of the appraisals and \$160,000, the estimate relied upon by both parties during the previous negotiations. (A copy of the letter is provided in the appendix to this report.) The special legislation was not enacted. On August 31, 2001, Essent purchased the Hale Hospital site from the City; the disposition did not include the Glynn and garage parcels.

Consistent with the previous recommendations of the Office, the City then issued a new RFP for the site containing the Glynn and garage parcels. The RFP established a minimum proposal price of \$160,000, based on the informal estimate derived from the City's prior negotiations with Essent. The City received two responsive proposals, each of which offered the City \$250,000. One of the two proposers was Essent, whose proposal received a higher rating by the City's RFP evaluation committee, largely because the package of medical services Essent planned to offer at the site was considered more likely to facilitate the long-term development of the neighboring Hale Hospital.

The City was preparing to make a final selection when a November 29, 2001 press account in the *Lawrence Eagle Tribune* reported allegations of collusion between the two proposers, allegedly resulting in the identical \$250,000 offers. The Mayor of Haverhill immediately sought the assistance of the Office in investigating the allegations of collusion and providing recommendations for administering the RFP process.

In a letter dated November 30, 2001 (a copy of which is included in the appendix to this report), the Acting Inspector General advised the Mayor to suspend the RFP process pending an investigation into the circumstances giving rise to the claim of bidder collusion. Additionally, the Office recommended that if a new RFP process proved warranted, the City obtain at least two independent appraisals of the properties in question and provide the Office an opportunity to review the methodology used in conducting the appraisal process. Various public officials in Haverhill had also expressed concerns that the Glynn and Garage properties may have been undervalued

by the City and were worth substantially more than the \$250,000 offered in the proposals previously received.

The City submitted the appraisal guidelines that it planned to use in valuing the Glynn and garage parcels to the Office for comment in January 2002. In a February 12, 2002 letter to the Mayor of Haverhill, the Office provided comments and suggestions, including a recommendation that the City require the appraisal to be conducted in strict compliance with the Uniform Standards for Professional Appraisal Practice.<sup>1</sup> (A copy of the letter is provided in the appendix to this report.)

The Acting Inspector General reported to the newly elected Mayor of Haverhill on the Office's investigation of the collusion charges in a letter dated March 22, 2002. (A copy of the letter is provided in the appendix to this report.) The Office found that representatives of the proposers may have made statements to a reporter that could have reasonably led to inferences of collusion. However, based on interviews and document reviews, the Office concluded that there was no substantiated evidence that the proposers had colluded on the prices to be proposed for purchasing the Glynn and garage parcels. Nevertheless, in light of the lingering concern regarding the appearance of potential impropriety created by the report of collusion, and the fact that the City was in the process of obtaining revised appraisals for the Glynn parcel that could be used in a new RFP process, the Acting Inspector General advised the City that there were valid reasons for canceling the previous RFP process and conducting a new solicitation process.

The City initiated a new RFP process in September of 2002. This time, however, the City decided to omit the garage parcel from the RFP. Additionally, based on the results of appraisals received pursuant to the Office's recommendations, the City decided to require a new minimum proposal price of \$750,000. Notably, during this period, the

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<sup>1</sup> The Uniform Standards of Professional Appraisal Practice (USPAP) are generally accepted standards for professional appraisal services in the United States, promulgated by the independent Appraisal Standards Board. Pursuant to legislation enacted in 1989, all appraisals for federally related transactions are required to conform to the USPAP, which have been widely adopted at the state and local level as well.

revitalization of the former Hale Hospital, now known as Merrimack Valley Hospital, appeared to be enhancing the value of the neighboring real estate, including the Glynn parcel, as the new RFP process was taking place. That RFP process generated two proposals, one of which the City was obligated to be reject because it lacked the mandatory deposit required by the RFP. The other proposal of \$779,000, submitted by the Drs. Kapasi, was responsive. The Kapasis proposed to convert the Glynn property into medical offices on the ground floor and an alternative health care center offering services such as acupuncture and reflexology on the second floor.

The Haverhill City Council voted to award the Glynn parcel to the Kapasis and transferred ownership of the site on February 4, 2003. The City retained the garage facility, which is currently being used as a storage site by municipal departments.

### **Conclusion**

The City's disposition of the Hale Hospital and Glynn sites provides a useful illustration of the benefits of formal competition and independent appraisals in real property dispositions. This case also underscores the risk of underestimating the value of municipally owned property that is offered for sale. A professional appraisal, executed pursuant to generally accepted industry standards, can give the awarding authority realistic and valuable information on the worth of its property on the open market.

It is also important, as evidenced by the disposition of the Glynn property, to ensure that the RFP process and proposal evaluation procedures are open to new and varied competitors. At the time that the City solicited proposals on the Glynn parcel, soon after the sale of Hale Hospital, there was much speculation that Essent would be the only party interested in purchasing the Glynn parcel. However, the City's RFP was amenable to a variety of potential users of the property and, thus, generated interest from two new proposers. As a result, the City received over three-quarters of a million dollars for the sale of a site that had at one point been destined to be a virtual "throw-in" on another property sale. The Office commends the City for its persistence and its responsiveness to the Office's suggestions and recommendations.

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## ***Appendix***

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1. Letter from Inspector General Robert A. Cerasoli to the Honorable Richard Moore, Chair, Joint Committee on Health Care, June 4, 2001.
2. Letter from Acting Inspector General Gregory W. Sullivan to the Honorable James A. Rurak, City of Haverhill, August 29, 2001.
3. Letter from Acting Inspector General Gregory W. Sullivan to the Honorable James A. Rurak, City of Haverhill, November 30, 2001.
4. Letter from Acting Inspector General Gregory W. Sullivan to Robert J. Griffin, Esq., Krokidas & Bluestein, February 12, 2002 (without attachment).
5. Letter from Acting Inspector General Gregory W. Sullivan to the Honorable William Guerin, City of Haverhill, March 22, 2002.

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Office of the Inspector General

ROBERT A. CERASOLI  
INSPECTOR GENERAL

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June 4, 2001

The Honorable Richard Moore, Chair  
Joint Committee on Health Care  
State House, Room 312D  
Boston, MA 02133

**House No. 4132 of 2001**  
**An Act Relative to Hale Hospital in the City of Haverhill**

Dear Chairman Moore:

I am writing in opposition to House No. 4132, legislation currently before your Committee. House No. 4132 proposes to amend Chapter 211 of the Acts of 2000, which allowed Hale Hospital, the last municipally-owned hospital in the Commonwealth to compete in the current health care market. During the last Legislative session, this Office worked diligently with officials from the City of Haverhill ("City"), offering amendments that enabled the transaction to be undertaken in the best interest of the taxpayers.

In December of 2000, this Office assisted the City of Haverhill by reviewing the draft request for proposal ("RFP"), which at the time did not include within its scope the Glynn Nursing Home (the "Glynn"). In February of 2001, the City received one proposal in response to the RFP, from Essent Healthcare. In April, city officials contacted this Office for an opinion on the inclusion of the Glynn in the sale of the Hale Hospital based on the original RFP<sup>1</sup>. This Office discussed with the City that it would be necessary to issue a separate RFP for the Glynn or to issue another RFP, inclusive of both Hale Hospital and the Glynn.

City officials knew in April that including the Glynn in the sale of Hale Hospital would be beyond the scope of the RFP. For the City to claim at this late date that they

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<sup>1</sup> Haverhill's RFP included one reference to the Glynn, which read: "Respondents should also be aware that the City is considering issuing a request for proposals under Chapter 30B relating to the sale of the Glynn Nursing Home." However, only Hale Hospital real and personal property were included with the scope of the RFP as issued.

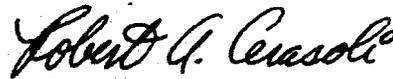
need to circumvent M.G.L. c. 30B, the Uniform Procurement Law in order to meet a June 30 time constraint is disingenuous at best.

M.G.L. c. 30B §16 governs the disposition and acquisition of real property by local governments. Section 16 (a) requires governmental bodies to formally declare its intention to dispose of real property and specify any reuse restrictions. Section 16 (b) requires governmental bodies to determine the value of the property to be disposed of through procedures customarily accepted by the appraising profession as valid. Then, if the property is disposed of at less than market value, Section 16 (g) requires governmental bodies to publish a notice of its decision in the Central Register, explaining the reasons for its decision and disclosing the difference between such value and the price to be received. Conducting real property transactions in this matter with full disclosure of the process taken and monies received is simply good government.

It also bears mentioning that House No. 4132 does not just exempt the Hale Hospital transaction from M.G.L. c. 30B, but also M.G.L. c. 93 and c. 93A, the regulation of trade and consumer protection statutes. There is no public policy justification for these exemptions.

Chapter 211 of the Acts of 2000 represented an effort to balance the goal of assuring Hale Hospital's survival with the values of maintaining it as a public and publicly accountable institution. It is not the role of this Office to take a position on the fate of Hale Hospital. However, we have worked with the City to assure a responsible process. As drafted, this Office opposes House No. 4132 and recommends that Hale Hospital abide by M.G.L. c. 30B. If you have any questions, please do not hesitate to contact me or Fran Brown of my staff.

Sincerely,



Robert A. Cerasoli  
Inspector General



**The Commonwealth of Massachusetts**  
**Office of the Inspector General**

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August 29, 2001

The Honorable James A. Rurak  
Municipal Building  
4 Summer Street  
Haverhill, Massachusetts 01830

Dear Mayor Rurak:

The purpose of this correspondence is to comment on House 4327, a bill relative to the City of Haverhill's (City) transfer of the real property and other assets of the Hale Hospital (Hale), the Glynn Memorial Nursing Home (Glynn) and a parcel commonly referred to as the public works garage (Garage) to Essent Healthcare, Inc. (Essent), a Delaware for-profit corporation.

It is this Office's understanding that the City is under great pressure to stem the ever-rising tide of financial losses associated with the operation of the Hale. The City has made a policy decision that it wants to maintain a full service health care facility within its boundaries to serve its citizens and those of surrounding communities. In addition, it has been reported to this Office that Dr. Howard Koh, the Commonwealth's Commissioner of Public Health, has concluded that the closing of the Hale could represent a public health crisis for the Merrimack Valley. The City views the arrangement with Essent as an opportunity to halt the accumulation of losses while holding out the hope of a viable hospital within the community. It is with this public interest at the forefront that the Legislature has requested that this Office review the disposition.

This Office acknowledges that the City made a good faith effort to utilize the M.G.L. c. 30B procurement process in its December 2000 solicitation of proposals. The City sought input from this Office in conducting their process, which included extensive advertising and the receipt of proposals from a wide range of health care interests. The effort resulted in the City's identification of Essent as the only party with a financially viable plan that the City's representatives consider consistent with their policy objectives. During the City's process, this Office expressed concern with the City's failure to include all property proposed for disposition in its RFP process commenced in

December of 2000. This issue first presented itself when the City contacted this Office to inquire about the inclusion of the Glynn parcel. City officials explained that Essent was insisting that it be included in any transaction.

Though the Glynn had not been incorporated into the City's RFP, the RFP notified proposers that the Glynn could be available for conveyance at some future time. In addition, an information packet accompanying the RFP stated:

"...The Glynn also contains a relatively new addition and may be available for inclusion in a program of services to be contemplated or proposed by a respondent to the RFP.... In sum, those interested in formulating a proposal to acquire the Hospital should consider the Hospital's modern physical plant, additional developable land, potential opportunities with respect to the Glynn..."

One may reasonably conclude that interested parties were put on notice as to the City's willingness to dispose of the Glynn parcel. In the case of the Garage parcel, however, there was no comparable public notice or any attempt to comply with M.G.L. c. 30B. Adding a parcel of property subsequent to the original solicitation is clearly an abrogation of M.G.L. c. 30B bidding procedures. Since all components of the present disposition were never offered publicly, it remains open to speculation whether the City could have entered into a more favorable deal.

This Office has made it clearly known to the parties that their proposed inclusion of additional parcels of land in the sale transaction beyond those set forth in the RFP would necessitate either a re-bid in accordance with Chapter 30B, or an act of the legislature. Now, this Office has been asked to recommend whether the legislature should allow a waiver from Chapter 30B, given the history and totality of the circumstances. This Office is not opposed to the legislature authorizing such a waiver, in consideration of the aforementioned considerations, so long as certain mitigating amendments are included in the legislation. Therefore, this Office recommends the following:

1. In order to assure that the City receives fair market value for the two additional parcels of land and improvements thereon, this Office recommends that the legislature require, as a post-transaction condition of the sale, that three independent appraisers assess the real estate value of the two parcels and that Essent be required to pay to the City, in addition to the agreed upon sales price, any positive difference between the average value of the three appraisals and \$160,000, the sum that both parties relied upon during negotiations to be the value of the two parcels, as stated by the parties to this Office.
2. Section 2 of House 4327 should be amended relative to Section 6G(b) to specify that the new hospital entity will be unable to seek or receive from the city indemnification for future losses or liabilities. This Office discussed this

issue with the parties and the parties indicated that they intended this section to pertain exclusively to past liabilities.

3. The parties informed this Office that they do not foresee the City making loans to the new entity now or in the future. This Office has raised the concern about language in the legislation that would statutorily authorize such loans. This Office recommends that this language be stricken from the legislation. Accordingly, Section 2 of House 4327 should be amended relative to Section 6G(a) by striking the following language:  
    “The city is authorized to accept and hold notes, bonds and other evidence of indebtedness of a new hospital entity in connection with the assumption of such obligations and the new hospital entity’s liability therefore may be secured by its mortgage or pledge of any or all of its revenues or assets to the city as well as a guarantee.”
4. This Office recommends that the legislature memorialize the stated intent of the new hospital entity relative to the length of time that the new hospital entity will operate an emergency room. Representatives of Essent told this Office that the new hospital entity is required by force of state regulations governing operation of an acute care hospital to operate an emergency room and that Essent, in effect, will operate an emergency for the full ten-year post-transaction period. The language of the legislation requires only five years. Given Essent’s statement to this Office that it will “have to” operate an emergency room for ten years, this Office recommends that the legislature include a ten-year, 24-hour per day requirement as part of the legislation.
5. This Office recommends that Section 3 be deleted so as to require that the proposed transaction and the operation of the new hospital entity be subject to the state public records law.
6. This Office recommends that Section 4 be amended to insure that state conflict-of-interest provisions remain in full force and effect for city employees who are not hospital employees.
7. This Office recommends that the legislation be amended to better define the scope of services that the new hospital entity will be required to provide during the ten-year post-transaction period. Section 2(b) is insufficiently specific in this regard, in this Office’s opinion. In Chapter 94 of the Acts of 1999 relative to Quincy Hospital, the legislature included language to the effect that no deed conveyed by the City shall be valid unless such deed provides that such property shall be used for the provision of *a range or core inpatient, outpatient, clinical and diagnostic services comparable to those provided at the hospital prior to the implementation of this act* for a period of no less than ten years. This Office recommends that similar language be incorporated in this legislation.

If you have any questions regarding this letter, please contact me or Brian O'Donnell of this Office.

Sincerely,

A handwritten signature in black ink that reads "Gregory W. Sullivan". The signature is written in a cursive style with a prominent initial "G".

Gregory W. Sullivan  
Acting Inspector General



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November 30, 2001

The Honorable James A. Rurak  
Municipal Building  
4 Summer Street  
Haverhill, MA 01830

Dear Mayor Rurak:

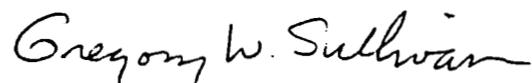
This letter is to acknowledge receipt of your communication of November 29th requesting that this Office provide advice and counsel in regard to the proposals received in connection with the City's planned disposition of the Glynn Memorial Nursing Home and the adjacent municipal garage. Based on the information available to this Office, I am recommending that the City:

1. Suspend the current Request for Proposal ("RFP") process and prepare to solicit new proposals for the properties. This Office will, in an expeditious manner, conduct an investigation of the circumstances surrounding the submission of proposals by the respondents to the current RFP process. We will inform you of the results of that investigation in order that you may a) utilize that information to determine whether there are grounds to cancel the current RFP process and/or b) utilize that information in completing a new RFP process of the parcels in question.

2. Prior to issuing any new RFP, this Office strongly recommends that the City seek at least two (2) independent appraisals of the properties in question. This Office wishes to review and comment on the methodology utilized in conducting the appraisal process. Before such appraisals are conducted, I request that this Office be provided with the written directives to the appraisers outlining the information, methodology, and underlying assumptions that the City directs appraisers to use in conducting their appraisals.

This Office has successfully worked with the City in the past to make sure that the dispositions of the property at the Hale Hospital and surrounding parcels in compliance with M.G.L. c. 30B. I thank you for quickly bringing this latest issue in the disposition process to the attention of this Office. If you have any questions regarding this letter, please contact me or Brian O'Donnell of this Office.

Sincerely,

A handwritten signature in cursive script that reads "Gregory W. Sullivan".

Gregory W. Sullivan  
Acting Inspector General



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February 12, 2002

Robert J. Griffin, Esq.  
Krokidas & Bluestein  
141 Tremont Street  
Boston, Massachusetts 02111

Dear Mr. Griffin:

In your letter dated January 29, 2002, you requested that this Office review the City of Haverhill's (City) proposed appraisal methodology for Lots 2 and 3 located across from the former Hale Hospital. You provided five factors that you characterized as relevant to an appraisal of the above lots. This Office's review of the information that you provided was completed with assistance from our appraisal consultant. The following comments pertain to your request:

With regard to the five factors listed in your correspondence, it is the opinion of this Office that only factor no. 1- *zoning* and factor no 5 – *environmental concerns* are factors relevant to the appraisal. Factors 2, 3, and 4 are relevant to the City's disposition of the property but are not relevant to a solicitation for appraiser services.

With regard to factor no. 5 - *environmental concerns*: It is important that the City provide any and all test results pertaining to the presence of asbestos, (and any other information relevant to environmental concerns) to the appraiser(s) selected to perform the appraisal(s). If this information is not available, a clean 21e condition will be assumed.

Since the value of the subject property has been influenced by the recent sale of the former Hale Hospital, the City should request the valuation of the property be provided as of a certain post-Hale sale date.

The City's criteria for selecting an appraiser must state that the City will entertain responses only from appraisers who can demonstrate their competency and experience appraising property for use as a medical facility. The definition of *competency* in the Uniform Standards for Professional Appraisal Practice (USPAP) should be followed. For example, as a minimum requirement, the City could require Massachusetts general

certified appraisers to demonstrate that they have performed three appraisals of property for use as a medical facility in the last five years. (If a firm, rather than an individual, is submitting a proposal, the City should require that the individual performing the appraisal on behalf of the firm have the above minimum qualifications.)

In addition, this Office advises the City to request that individuals proposing to perform appraisal services provide at least three references relevant to their recent past performance (past five years) appraising property for use as a medical facility.

This Office recommends that the City require the appraisal to be completed in strict compliance with USPAP Standard 1 (with no deviations). I have enclosed Standard 1 for your information.

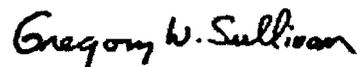
The City should determine the appropriate valuation approach. Since you indicated that the City envisions use of these properties as complementing the adjacent hospital and indicated that price is secondary to the City's vision of creating a medical campus, this Office recommends that the City consider seeking an appraisal of the properties for a specific use, such as a medical office building. If so determined, the City must request that the appraiser apply a value-in-use definition rather than market value. Regardless of which purpose the City chooses, a definition of the value should be included in the solicitation.

In addition to any other venues for advertising, this Office recommends that the City include an advertisement for appraiser services in the *Banker and Tradesman*.

Lastly, this Office recommends that the City obtain a list of Massachusetts generally certified appraisers from the Massachusetts chapter of The Appraisal Institute. The City should then forward the solicitation for appraiser services to the appropriate names on that listing.

Please feel free to contact me with any questions you may have in this regard.

Sincerely,



Gregory W. Sullivan  
Acting Inspector General

cc: Mayor John J. Guerin  
City of Haverhill



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March 22, 2002

The Honorable William Guerin  
Municipal Building  
4 Summer Street  
Haverhill, MA 01830

Dear Mayor Guerin:

This letter is a follow up to the November 29, 2001 request of Mayor James Rurak that this Office provide advice and counsel in regard to the proposals received in connection with the City's planned disposition of the Glynn Memorial Nursing Home and the adjacent municipal garage (hereinafter "Glynn"). At that time this Office had recommended that the City suspend the then current Request for Proposal ("RFP") process and prepare to solicit new proposals for the properties.

As you will recall it was reported by the Lawrence Eagle Tribune that representatives of Essent Health Care ("Essent") and the Whittier Health Network ("Whittier") had acknowledged colluding on a price to be offered for the Glynn property. It should be noted that the newspaper cited no specific source for the information associated with Whittier and cited no specific source for the information associated with Essent other than a junior member of the public relations firm serving as Essent's representative in connection with its activities in Haverhill. The reporter in question did in fact tell me on two separate occasions that a representative of Whittier had disclosed to her that Essent and Whittier had agreed on the amount of the bid. Whittier subsequently denied that allegation. When the reporter was asked by this Office to be interviewed more fully regarding the conversations with Whittier personnel and any contact with Essent, she declined and simply stated that she and her newspaper stand by the story as published. The Eagle Tribune also refused to comply with a documents request from this Office, citing First Amendment protections.

After performing the relevant interviews, reviewing documents, and examining the circumstances surrounding the proposal process, it is the conclusion of this Office that there is no substantiated evidence that

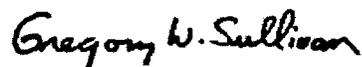
Essent and Whittier colluded on the prices to be proposed for purchasing the Glynn property and or that the prices they actually proposed were the result of collusion. It is also the conclusion of this Office that representatives of both parties may have made statements to a reporter which could reasonably lead to inferences that there was some discussion of price proposals prior to the opening of the proposals. It is also to be noted that the parties in question were involved in business negotiations not directly related to the Glynn property during the period leading up to the bid opening for the Glynn parcel. However, in the end the parties presented different and competing programs for the Glynn property and the selection of a common price is as likely to be by coincidence as through collusion.

It is my understanding that the City has initiated the process of getting revised appraisals for the Glynn (pursuant to recommendations made by this Office) that could be used in a new RFP process. The need to use the information from that new appraisal in formulating RFP requirements would itself justify the canceling of the original RFP process and the issuing of new solicitations.

Furthermore, the appearance of potential impropriety created by the November 29, 2001 story in the Eagle Tribune would also serve as valid grounds for restarting the process. It will ultimately be up to the City as to whether, based on the information contained herein, it wishes to proceed with a new process and whether the conduct of the parties as reported herein (or based on any additional information available to the City during the proposal evaluation process) will effect any determinations as to whether specific proposers are deemed responsible parties and therefore are eligible to be awarded the parcels offered through the solicitation process. It is our general recommendation that all proposers be allowed to submit proposals and for the awarding authority to make responsibility determinations as part of the customary exercise of due diligence.

I am prepared to meet with representatives of the City, Essent, or Whittier to discuss further the details of our findings in this matter. Please do not hesitate to contact me or Brian O'Donnell of this Office should you have any questions regarding the issues addressed in this letter.

Sincerely,



Gregory W. Sullivan  
Acting Inspector General