



Office of the Inspector General The Commonwealth of Massachusetts

ADVISORY

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CONDUCTING SNOW-RELATED PROCUREMENTS

Objective:

To clarify the applicability of M.G.L. c. 30B, the Uniform Procurement Act (“Chapter 30B”), for the procurement of snow-related supplies and services, including snow plowing, snow hauling, and ice- and snow-control supplies such as road salt and sand.¹

Key Takeaways:

- ✓ Snow **plowing** is exempt from Chapter 30B, but other snow-related services – such as snow **hauling** – are not.
- ✓ Chapter 30B exempts ice- and snow-control supplies from the so-called 25 percent rule. Section 13 of Chapter 30B allows a jurisdiction to increase the quantity of supplies or services specified in a contract if the cost of the increase does not exceed 25 percent of the original contract price. However, this is a limited exemption and the pricing and documentation requirements of Section 13 of Chapter 30B apply.
- ✓ As a best practice, your jurisdiction should use a Chapter 30B process to the extent possible for exempt services like snow plowing to ensure a fair, open and competitive process for these services.
- ✓ To avoid potential conflicts of interests, check with the State Ethics Commission if planning to use employees, their family members or an employee-affiliated business for your snow-related contracting needs.

¹ Chapter 30B establishes uniform procedures for local governments to use when buying or disposing of supplies, services or real property.

Issues:

- (1) Whether a contract for snow **hauling** is exempt from Chapter 30B under the snow **plowing** exemption;
- (2) How to procure ice- and snow-control supplies when the exact amount of supplies may vary from year to year based on weather conditions; and
- (3) Which best practices should jurisdictions use when planning for and purchasing ice- and snow-related supplies and services.

Discussion:

1. Procuring Snow Plowing and Snow Hauling Services

Under Section 1(b)(17) of Chapter 30B, “a contract for snow plowing by a governmental body” is exempt from the procurement procedures set out in Chapter 30B. Snow plowing is generally defined as the use of devices to clear away snow from a roadway, sidewalk or driveway.² Chapter 30B specifically exempts **only** snow plowing services. *See* M.G.L. c. 30B, § 1(b)(17).

Snow hauling services are not exempt from Chapter 30B and must, therefore, be competitively procured. Snow hauling is the process of removing snow from an area and transporting the snow to a new location.³ Often, snow hauling is required to clear accumulated snow from public property, including streets and roadways, after the completion of snow plowing operations particularly after large storms when snow accumulation may affect public safety and create disposal concerns.

In rare instances, a storm may be so large that your jurisdiction may need to supplement a snow hauling contract with extra help. Under these circumstances, a jurisdiction may be able to procure hauling services under the sound business practices or quote process, the sole-source process or the emergency procurement provision of Section 8 of Chapter 30B. However, emergency procurements are limited to only those supplies or services needed to meet the emergency. Keep in mind that during an emergency your jurisdiction is still required to conform to the requirements of Chapter 30B to the extent practicable under the circumstances. Further, your jurisdiction must document the emergency procurement as soon after the emergency as possible. *See* M.G.L. c. 30B, § 8. *See also* the Office’s [Chapter 30B Manual: Procuring Supplies, Services and Real Property](#).

Also, note that a lack of planning does not constitute an emergency. You are obligated to act in the best interest of your jurisdiction and adequately plan for snow events. This ensures that snow accumulation does not become an emergency during and after every

² *See* Merriam Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/snowplow>.

³ *See* Merriam Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/snow>; and Merriam Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/removal> (last viewed September 19, 2018).

storm. The emergency provisions of Chapter 30B are meant to deal with events urgently when “the time required to comply with a requirement of this chapter would endanger the health or safety of the people or their property. . . .” *See* M.G.L. c. 30B, § 8. The Office interprets this to mean that emergency provisions are intended to apply to unexpected or unanticipated events. As a result, Massachusetts communities cannot claim that winter snow accumulation is an unanticipated event.

2. Procuring Ice- and Snow-Control Supplies

In addition to plowing and hauling services, your jurisdiction may need to purchase ice- and snow-control supplies. Under Chapter 30B, the dollar value of the supplies you identify for purchase will determine whether you need to use a quote or bid process. The procurement of supplies under \$10,000 requires the use of sound business practices. “Sound business practices” entail ensuring the receipt of favorable prices by periodically soliciting price lists or quotes. *See* M.G.L. c. 30B, § 2. For the procurement of supplies in the amount of \$10,000 and greater, but not more than \$50,000, you are required to use a written purchase description to solicit written quotations from no fewer than three persons customarily providing the supply. *See* M.G.L. c. 30B, § 4. The procurement of supplies in excess of \$50,000 requires a formal, sealed bid process. *See* M.G.L. c. 30B, §§ 5, 6.

A common challenge for jurisdictions is estimating supply quantities – such as road salt – that will be needed during the winter season. The Office recommends estimating quantities by reviewing actual usage in prior years, checking weather and climate predictions for the upcoming season, and consulting with other jurisdictions or agencies, including the Massachusetts Department of Transportation. You may also include contract terms expressly notifying vendors that you may require additional supplies depending on weather conditions. Ensure your quantity estimates are fair and reasonable to allow you to obtain appropriate vendor pricing. Providing accurate information allows vendors to accurately price and plan for the quantities you may need.

Another common challenge is competitively and quickly procuring supplies when your jurisdiction’s inventory runs low. Based on the amount or value of the supplies needed, your jurisdiction may use a quote or bid process to obtain the supplies. Another option is to purchase additional supplies using your existing contract. Generally, when increasing the amount of a service or quantity of a supply in a contract, Section 13 of Chapter 30B imposes a restriction that the total contract price may not increase more than 25%. *See* M.G.L. c. 30B, § 13(4). However, contracts for the purchase of road salt and other ice- and snow-control supplies are not subject to this 25% limitation.

Chapter 30B exempts road salt and other ice- and snow-control supplies from the 25% limitation. *See* M.G.L. c. 30B, § 13(4).⁴ However, despite this exemption, you must still

⁴ M.G.L. c. 30B, § 13 (4) states: “the increase in the total contract price does not exceed 25 per cent but a contract for the purchase of gasoline, special fuel, fuel oil, road salt or other ice and snow control supplies shall not be subject to this limit.”

meet the following three conditions before procuring additional supplies that exceed the original contract amount:

- a. The unit price must be the same as or less than the price in the original contract;
- b. Your jurisdiction's procurement officer must document in writing that an increase is necessary to fulfill the actual needs of the jurisdiction and that it is more economical and practical than awarding another contract; and
- c. Both parties must agree to the price and the additional quantity in writing.

If your jurisdiction meets all three of the required conditions, then it may increase the quantity of road salt and other ice- and snow-control supplies under the existing contract even if the total contract price increases more than 25%. For additional information regarding contract increases, review Chapter 6 of the Office's [Chapter 30B Manual: Procuring Supplies, Services and Real Property](#).

3. Best Practices for Planning and Purchasing Ice- and Snow-Related Supplies and Services

The Office of the Inspector General recommends your jurisdiction consider the following when procuring ice- and snow-control supplies and services:

a. Anticipate Your Needs

To the extent possible, anticipate your needs well in advance of the winter season. For example, although snow amounts vary from year to year, your jurisdiction can procure a snow hauling contract based upon a reasonable expectation of needs. Look, for example, at how much road salt your jurisdiction has used each year over the past five years; this will help you evaluate how much to purchase next year. It is better to plan ahead and have contracts in place than to rely on a last-minute search.

b. Verify All Contract Options

Before purchasing road salt and sand for your jurisdiction, remember to check [COMMBUYS](#), the Operational Services Division's procurement website, for available state contracts. The state contracts may offer the supplies or services you need at a competitive price. As long as you comply with the applicable contract's User Guide, you will also meet the requirements of Chapter 30B. For example, see the User Guide for State Contract VEH95: Sodium Chloride [Road Salt] on [COMMBUYS](#).

c. Check with Your Legal Counsel or Insurance Provider

Before procuring a contract for snow plowing or snow hauling, check with your legal counsel or insurance provider to determine the amount and type(s) of liability insurance coverage contractors or drivers are required to carry. When hiring snow plow drivers, for example, personal automobile insurance may not cover the commercial use of the vehicle. Therefore, your jurisdiction should require drivers to have sufficient commercial insurance coverage in the event they damage property or someone is injured during plowing or hauling services.

d. Check with the State Ethics Commission

Generally, a municipal employee may not have a financial interest, directly or indirectly, in another municipal contract with the same municipality. *See* M.G.L. c. 268A, § 20. For example, some jurisdictions contract with off-duty firefighters or other municipal employees to perform snow plowing and snow hauling services. Depending on the specific circumstances, state law may place some restrictions on – or completely prohibit – such an arrangement.

Similarly, a municipal employee may not participate as a municipal employee in a particular matter in which, to their knowledge, their immediate family or partner, or their business has a financial interest. *Id.* at § 19. For instance, a municipal employee responsible for contracting for snow removal cannot hire a spouse's company to remove snow for the municipality.

For additional information, you should contact the [State Ethics Commission](#) for guidance on the application of the ethics law to specific circumstances.

e. Think about Competition

Although snow plowing services are exempt from Chapter 30B, your jurisdiction should consider using a fair and open competitive process to ensure your jurisdiction gets the best price from a responsible and responsive vendor. Competitive practices not only lead to better prices and more transparency, they also help you gain more information regarding the vendor's past experience and facilitates making the vendor's responsibility determination.

Conclusion

While snow plowing services are exempt from Chapter 30B, snow hauling services must be competitively procured under Chapter 30B. And although snow plowing is exempt, your jurisdiction should still consider conducting an open, fair and competitive procurement. Further, when procuring ice- and snow-control supplies, try to anticipate what your local jurisdiction will need over the entire winter season. If your jurisdiction needs to increase the contracted amount of snow-control supplies, then make sure to comply with Section 13 of Chapter 30B.

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Additional Resources

M.G.L. c. 30B, § 1(b)(17).

M.G.L. c. 268A.

The Chapter 30B Manual: Procuring Supplies, Services and Real Property, Office of the Inspector General. (2016).

Procurement Bulletin, Office of the Inspector General, Vol. 21, Issue # 1, (Apr. 2015), available at <https://www.mass.gov/files/documents/2016/08/rb/nlapr15.pdf>.

Procurement Bulletin, Office of the Inspector General, Vol. 22, Issue # 1, (Jan. 2016), available at <https://www.mass.gov/files/documents/2017/01/ok/nljan16.pdf>.

Procurement Bulletin, Office of the Inspector General, Vol. 23, Issue # 1, (Jan. 2017), available at <https://www.mass.gov/files/documents/2016/08/rb/nlapr15.pdf>.

Guides by Type of Conflict of Interest – Gifts, self-dealing, misuse of position, etc., State Ethics Commission, available at <https://www.mass.gov/service-details/guides-by-type-of-conflict-of-interest-gifts-self-dealing-misuse-of-position-etc>.

Summary of the Conflict-of-Interest Law for Municipal Employees, State Ethics Commission, available at <https://www.mass.gov/service-details/summary-of-the-conflict-of-interest-law-for-municipal-employees>.

For additional information, technical assistance, or to report fraud, waste or abuse, please contact the Office of the Inspector General through the contact telephone numbers, email addresses or mailing addresses outlined below:

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