

EOHLC Monthly Webinar Series

JANUARY 2024: CAPITAL PROCUREMENT AND FORCE ACCOUNT
OVERVIEW



Construction Procurement 101

MGL Ch. 149 vs MGL Ch. 30, Sec 39M

- Ch. 149 applies to building-related construction
 - Sometimes referred to as vertical construction
- Ch. 30/39M applies to non-building-related construction
 - Sometimes referred to as horizontal construction

Construction Procurement 101


Prevailing Wages

Applies from dollar one on any public construction project




Construction Procurement 101

149 Bidding Thresholds

- Under \$10K (estimated construction cost)
 - \$10K- \$50K
 - Over \$50K - \$150K
 - Over \$150K - \$10M
 - Over \$10M
- 

Construction Procurement 101


30/39M Bidding Thresholds

- Under \$10K
 - \$10K- \$50K
 - Over \$50K
- 

Construction Procurement 101


Bidding Requirements

Bidding requirements for construction projects with estimated costs of under \$50K are the same whether the project is a Ch. 149 project or a Ch. 30/39M project.




Construction Procurement 101

How Is The Estimated Construction Cost Determined?

- The Authority must make a good faith determination of the estimated cost
 - Can use previous experience
 - Can rely on someone who routinely encounters these situations
 - Can seek estimates
 - Can rely on a Designer
- 


Construction Procurement 101

Under \$10K

- Only requirement is to use “sound business practices”
 - Generally defined as periodic solicitation of price list or quotes to ensure the receipt of favorable prices
 - Using a statewide contract is acceptable
- 

Construction Procurement 101


\$10K - \$50K

- Written scope of work
 - Solicit written responses from at least three (3) persons who customarily perform such work
 - Advertise: 1) Your website; 2) COMMBUYS; 3) Central Register; 4) Conspicuous place near your office
 - You can skip the advertising if you solicit written responses AND obtain at least two (2) responses from a statewide contract or a blanket contract
 - IF the contract value is more than \$25K, you must obtain a 50% payment bond from the winning bidder
- 

Construction Procurement 101

Service Contract vs Construction Contract

This is where things get a little tricky


- A service contract is limited to routine maintenance: filters, fluids, diagnostics, adjustments
 - Replacing anything other than minor parts turns a service project into a construction project
 - The problem is not so much the bidding aspect of a construction project, it is that any construction project requires prevailing wages to be paid, whereas a service project does not
- 

Completing Projects with Force Account

What is Force Account?

- Force Account is the completion of a capital project using an LHA's own in-house-work force, rather than putting the project out to bid for construction by a General Contractor.

Getting Started

- Before beginning any force account work you must obtain approval from EOHLIC.
 - If the cost of work exceeds \$25,000, you will need to submit a detailed description of work to your HLC Project Manager using the Force Account Proposal Form. You will also need to check with your local building department to be sure your project does not require permits or a design professional.
 - If the cost is between \$10,000 and \$25,000, contact your HLC Construction Advisor with a scope of work.
- 

Force Account - Procurement

Staffing: LHA Work-Force vs. Procured Labor

- LHA staff time must be billed at the employee's regular hourly rate.
- Reasons for the usage of overtime must be properly documented in your procurement record.
- Under special circumstances HLC will approve procured labor.
- Construction procurements involving labor are governed by MGL Ch. 149

Force Account - Procurement

Construction Materials

- LHA's may use materials in stock but cannot procure materials for force account work as non-construction supplies.
- Purchased materials for force account work are considered "construction materials" and are subject to MGL Ch 30 Sec 39M or MGL Ch 30 B Sec 5

Force Account - Reimbursement

Schedule of Values and Invoicing

- Included in the Force Account Proposal Form you will need to submit a schedule of values with labor and materials broken out.
- Invoices should include a summary sheet showing a draw down against the schedule of values and a detailed backup of all expenses.
- LHA and EOHLC will reconcile estimated vs actual materials and labor costs before issuing reimbursements.
- Requests for Formula Funding reimbursement should include a Certificate of Compliance with procurement laws and an invoice for materials and labor hours that indicate the name of staff, number of hours worked, dates, hourly rate (excluding retirement benefits), and whether the hours are regular or overtime.

Force Account Resources

[Force Account Guidelines and Forms | Mass.gov](#)

<https://www.mass.gov/doc/force-account-procedures/download>

<https://www.mass.gov/doc/force-account-proposal/download>

Commonwealth Procurement Thresholds as of Nov 2022

<https://www.mass.gov/doc/charts-on-procurement-procedures-effective-november-25-2022/download>