



# PROCUREMENT BULLETIN

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## **IG GREETINGS**

*Omnibus ad quos presentes  
literae pervenerint, salutem.*

**I am releasing the first issue of my procurement bulletin for procurement officials across the state. This bulletin will be published by my Office on a periodic basis.**

**This bulletin will focus on issues pertaining to the Uniform Procurement Act, M.G.L. c.30B, which has been in effect for over four years now. My Office is the state agency charged with the oversight and enforcement of the Uniform Procurement Act. Since the passage of this law, my Office has been committed to making the Uniform Procurement Act work for you.**

**I hope that this newsletter is helpful to you. If you have any suggestions or comments about this bulletin, please feel free to write to me.**

Sincerely,

**Robert A. Cerasoli,  
Inspector General**

## *Bidding Small Construction Projects*

Many calls have come in concerning the use of Chapter 30B sealed bid procedures for construction projects. Chapter 30B always applies to the procurement of supplies, services and real property, unless your purchase falls under an exemption, but section five of Chapter 30B may only be used for construction projects that cost less than \$25,000.

Generally, building projects costing \$25,000 or more are procured under Chapter 149, and design services for building projects are procured using Chapter 7, the designer selection law.

Public works projects, also known as horizontal construction projects, are bid using Chapter 30, §39M. Building projects that cost less than \$25,000 may also be bid under Chapter 30, §39M.

The Fair Labor and Business Practices Division of the Attorney General's Office is charged with enforcing Chapter 149, Chapter 30, §39M, and the Designer Selection Law. If you have any question about any of these laws, you should call them at (617) 727-3464.

The only time you may use Chapter 30B to bid construction

projects is when the price of the project will be less than \$25,000.

The threshold for an advertised bid is \$10,000, but this Office recommends that you advertise for smaller construction contracts (or seek quotations) because you can save money and ensure a fair process by seeking competition. Keep in mind that contracts that cost \$5,000 or more must be in writing.

For projects that cost \$2,000 or more, the law requires you to obtain a 50% payment bond. For any construction contract, you must comply with prevailing wage rates.

When you use Chapter 30B to bid small construction projects, you are required to advertise in a newspaper, but are not required to place an advertisement in the Central Register. Chapter 30, §39M requires you to place an advertisement in both the newspaper and the Central Register.

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# QUESTIONS ABOUT

## CHAPTER 30B

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***When may I negotiate with a vendor in order to save money?***

If you invited bids, you may negotiate the price of a contract downward, without any change in the quantity or scope of services, with the low bidder only. This would not be prejudicial to fair competition because the low bidder will be awarded the contract anyway.

Once you have awarded a contract, Chapter 30B allows you to increase the amount of supplies or services to be provided under a contract by ten percent of the total contract price. However, the unit price of the supply or service must remain the same.

If you obtained oral or written quotations for a contract that is less than \$10,000, you may negotiate the price downward with all of the vendors that gave you a quote, as long as you treat all of the vendors equally.

If you used a request for proposals process, you may negotiate the plan of services with the chosen proposer, if you

asked for one in your specifications.

***A theatrical company offered my jurisdiction a fee in exchange for permission to use our high school auditorium for a dress rehearsal of their latest production. Is this transaction subject to section 16 of Chapter 30B?***

The answer is no. This type of agreement is called a "license." A license is a temporary permit to use real property and is not subject to Chapter 30B because it is not an interest in real property.

On the other hand, a lease is an interest in real property and will be subject to Chapter 30B if the value of the lease is \$500 or more. You need to look at the facts and circumstances surrounding the transaction in order to distinguish between a license and a lease.

A lease is an agreement in which the owner of real property grants to another the right to possession of the property,

retaining a reversion. The usual test of whether a document is a lease is whether the instrument gives the so-called lessee exclusive possession of the premises.

On the other hand, a license excuses acts done by one party on land in possession of another that would be trespass without the license. A license is revocable at the will of the possessor of the land, subject only to the licensee's right to be on the land for a reasonable time after revocation for the purpose of removing his goods thereon.

A license is generally non-assignable. A license often grants permission to enter land only for certain well-defined purposes, such as to cut timber or gather crops. Licenses may be of very limited duration. The portion of the property to be used by the licensee is often ill-defined or changeable. Indeed, a license may be both time-limited, and allow access to an indeterminate area. In sum, the character of a license is "evanescent, fleeting, revocable..." (3 Powell, Real Property 428 (Rohan ed., 1986).

## *Chapter 30B Legislation Update*

The Inspector General has recently re-filed legislation to further streamline Chapter 30B. These amendments were drafted by the Inspector General based on the experience of public purchasing officials. If passed, this bill would:

- Increase the dollar limit for sole source procurements from \$10,000 to \$25,000.
- Permit sole source procurements of educational programs, educational software, educational curricula and audiovisual material.
- Raise the dollar threshold for section 16 real property transactions from \$500 to \$25,000.
- Increase the percentage by which the quantity of supplies or services in a contract may be increased from 10% to 15%.

The title of this bill is "An Act Amending Certain Public Bidding Laws." If you would like to support this bill, you should contact your state legislator. We will let you know if there is any change in the status of this bill.

## **State Blanket Contracts: Where to find information**

The Collective Purchasing Bureau, which is part of the State Department of Procurement and General Services (DPGS), awards competitive contracts that are available for you to purchase from. The Bureau publishes a bi-monthly newsletter that is sent out to all cities and towns in the Commonwealth. This newsletter contains a list of all of the items that are available for you to purchase.

A purchase from a vendor under one of these contracts by your jurisdiction will comply with the requirements of Chapter 30B. You may want to check prices of other vendors before making a purchase from a Collective Purchasing Bureau contract. If you have questions about these contracts, you may call (617) 727-7500 x. 245.

Another division of DPGS, the Bureau of Information Technology Assistance (BITA), procures contracts for computers and accessories that you may purchase from. BITA contracts contain a provision that the vendor's price must be the lowest offered on comparable terms in Massachusetts. If you can find a lower price for the same product from another vendor in Massachusetts, the vendor under contract with BITA may be required to match that price. For more information about these contracts, you may call 727-7500 x. 287 or 205.

When you make a purchase from any collective purchasing contract, you should specify delivery terms and warranties. You should also provide cancellation terms for non-performance. If you find that a vendor does not comply with your performance terms or is not willing to match another vendor's price for computer equipment, you should complain to the appropriate bureau. You are also free to cancel your order and go out to bid on your own terms.

### **Let Us Know!**

- Do you have some money saving tips that you would like to share with other jurisdictions?
- Have you saved time by centralizing purchasing in your jurisdiction?
- Did you realize a savings by bidding something that is exempt from Chapter 30B?

If so, then we would like to hear about it. Please send comments or stories to:

Office of the Inspector General  
One Ashburton Place, Rm. 1311  
Boston, MA 02108  
Attn: Bulletin

## New Program to Assist With Energy Conservation

We have good news about a new program that can help you balance your budget by lowering energy and water costs. Like most jurisdictions across the state, you have probably had to battle with a tight budget for several years now. One item that you may want to look at as a source for potential savings is your energy use. Energy conservation is one method of saving money that will also benefit the environment.

If your jurisdiction is planning to procure services to help you implement energy conservation measures, you should contact the Division of Energy Resources (DOER) to find out about the new statutory provisions which establish procedures for contracting with vendors for these services. DOER will be promulgating regulations under

Chapter 25A of the Massachusetts General Laws, as recently amended.

In addition, DOER has instituted an Energy Engineering Program (EEP) to help local governments evaluate energy and water usage with an eye toward conservation.

Under the EEP, engineers are available to assist local governments identify and procure energy and water conservation improvements in line with the new legislation governing the procurement of energy conservation services. Additionally, the EEP has important information about federal conservation incentives and rebates available to local governments that you may not know about.

Improvements may include energy management systems and controls, lighting tech-

nologies, heating and air conditioning system upgrades and conversions, swimming pool covers, high efficiency motors and pumps, heat recovery systems, cogeneration systems and building envelope upgrades.

Many of these improvements may be financed through third parties whose payments come directly from the actual cost savings realized by your jurisdiction due to the reduction in energy and water consumption. These flexible projects could result in valuable energy savings and capital improvements.

For more information about EEP, contact the Public Buildings Program at (617) 727-4732.

### ***Chapter 30B Amendment***

Chapter 180 of the Acts of 1994, which was signed by the Governor on November 16, 1994 exempts from Chapter 30B contracts for the purchase of photography services entered into by a public school. This amendment will be effective 90 days from the date of the Governor's signature. The Inspector General opposed this amendment because it denies parents and students the benefit of comparison shopping for competitive prices and services. Of course, you may still bid this service even though it is now exempt.

## *NEW MANUAL*

The Office of the Inspector General is publishing a new edition of the procurement manual, which will be ready in early 1995. The new edition will update and revise the 1990 edition. It is a step by step guide to purchasing which offers tips for saving time and money. The Inspector General is pleased to offer one copy of this resource **at no charge** to each public official requesting it.

A copy will be mailed to each public official currently on our mailing list. If you would like to make sure that you are on our mailing list or if you have a new address, please complete the information below and mail to:

Office of the Inspector General  
One Ashburton Place, rm. 1311  
Boston, MA 02108  
Attn: Manual

In conjunction with our new manual, we may offer Chapter 30B training classes. We would first like to know whether enough jurisdictions are interested in attending training classes. If you or any of your jurisdiction's employees are interested in attending a Chapter 30B training class please check the appropriated box below.

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NAME \_\_\_\_\_

POSITION \_\_\_\_\_

ADDRESS \_\_\_\_\_  Check if new address

CITY/TOWN \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

Please check if you or anyone in your jurisdiction would be interested in attending a Chapter 30B training session