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# PROCUREMENT BULLETIN

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## Procuring Electricity in the Competitive Market

The Electricity Restructuring Act of 1997 significantly changed the electric power industry in Massachusetts. Customers – including municipalities and other public agencies – may now choose their electricity supplier (generation service) instead of relying on a regulated, monopoly utility.

The March 1998 issue of the *Procurement Bulletin* predicted that it would likely be difficult to evaluate competing claims from marketers selling generation service. As predicted, some of the agreements now being offered to municipalities contain language that may confuse the customer and obscure the true costs. For example, some contracts that appear to promise cost “savings” are artfully worded to avoid providing any guarantee that the customer will realize those savings.

Although the purchase of electricity was exempted from Chapter 30B, we strongly recommend that municipalities and other public agencies seek competition and compare the terms of several generation service contracts before signing on. Regardless of the size of your jurisdiction, it is advisable to obtain a comparison of the available options from an independent, knowledgeable professional rather than relying on the claims made by marketers. The cost of professional advice will likely be far less than the consequences of being locked in, for years, to a bad deal.

We recommend that you consider all of the following questions when you review any generation service proposal:

- Is the listed price lower than standard offer price (which ranges from 3.12 to 3.64 ¢/KWh),

for each year of the contract?

- Can my jurisdiction terminate this contract if the promised savings never materialize?
- What is the basis for the fees?
- If fees are based on “savings,” who is determining the amount of savings, how is the formula based, and how likely is that figure to be accurate and unbiased?
- Would this contract lock in terms for more than two years, without allowing for future market fluctuations (e.g., can we accept the risk that if prices drop substantially as competition develops, my jurisdiction may be compelled to continue to pay the higher contractual rates)?
- Are there any other obligations attached that my jurisdiction must promise in order to obtain generation service?

If the answers to any of these questions make you suspicious of the contract terms, you would be wise to seek the advice of a knowledgeable professional or avoid the contract altogether.

The Division of Energy Resources is developing a presentation on buying electricity in the competitive market. To schedule a presentation, please call Jerome Shea at (617) 727-4732, extension 180.

If you have any questions regarding electricity procurement, please call the 30B Team at (617) 727-9140 and/or the Division of Energy Resources at (888) 758-4469. You may also access the Department of Telecommunications and Energy website at [www.magnet.state.ma.us/dpu](http://www.magnet.state.ma.us/dpu).

## OIG Files Legislation to Streamline Chapter 30B

This Office filed a new bill this year to streamline and fine tune M.G.L. c. 30B. The bill number is House No. 83. We drafted this legislation in consultation with the Massachusetts Association of Public Purchasing Officials (MAPPO) and the Massachusetts Association of School Business Officials (MASBO). Passage of this bill would bring M.G.L. c. 30B up to date by raising the thresholds for quotes, bids and proposals, and for the disposition of surplus supplies. Specifically, the bill proposes the following changes to M.G.L. c. 30B:

- Increasing the threshold for soliciting price quotations for supplies and services from \$1,000 to \$5,000.
- Increasing the threshold for advertised sealed bids or proposals from \$10,000 to \$25,000.
- Permitting a governmental body and the apparent lowest responsible and responsive bidder or the responsive and responsible proposer offering the most advantageous proposal to extend the time for acceptance of a bid or proposal by up to 45 days by mutual agreement.
- Authorizing sole source procurements of supplies and services for up to \$25,000 when a procurement officer determines that only one practicable source exists.
- Allowing the amount of supplies and services purchased under a contract to be increased by up to 25 percent of the contract price.
- Allowing a governmental body to negotiate a reduction in unit prices for supplies or services after the contract has been awarded or when an option is exercised.
- Increasing the threshold for auctioning or seeking bids to dispose of surplus supplies from \$500 to \$5,000.
- Exempting transactions between Massachusetts governmental bodies and public entities in other states from competition.

If you would like to contact your state legislator to support this bill you may call 617-722-2000.

## Other OIG Legislative Initiatives

House No. 84 was filed by the Inspector General's Office to reform the public construction laws by raising dollar thresholds for bidding requirements, strengthening the contractor prequalification system, introducing value engineering to save money on larger projects, and establishing training standards for public officials responsible for contract oversight.

Specifically, this legislation would raise bidding thresholds for public works construction projects and building projects to \$50,000 and \$100,000 respectively. The current law prohibiting a single designer from performing both the study and the final design on a state project would be repealed, and a value engineering process would be implemented for projects estimated to cost more than one million dollars. This legislation would also shore up the state's contractor prequalification system by giving awarding authorities access to information about contractor performance and by extending qualified immunity to individuals responsible for preparing contractor evaluation forms. Training and certification would be required for owner's representatives who oversee state-funded construction projects estimated to cost more than one million dollars.

Additionally, this Office filed House No. 88 to repeal the following exemptions set forth in M.G.L. c. 30B:

- the exemption for the procurement of insurance and surety bonds,
- the exemption for retirement board services,
- the exemption for towing contracts, and
- the exemption for trash collection and disposal.

If this legislation passes, these contracts will be subject to the procurement requirements of M.G.L. c. 30B.

# Avoiding School Bus Bid Protests

With the new year upon us, many of you will be going out to bid for school bus transportation services. As these contracts are often large dollar, multi-year contracts, bid protests are common. Every spring, our Office receives several complaints and lawsuits are sometimes filed in superior court.

Protests are frustrating and time-consuming for everyone involved. For this reason, the Chapter 30B team encourages public officials to utilize our **free specification review service** before going out to bid for these services. We will be glad to review your draft specifications to ensure Chapter 30B compliance and to flag any other issues that might cause future problems. An ounce of prevention is worth a pound of cure!

You may send your draft school bus service IFB for review to:

Office of the Inspector General  
State House Station, P.O. Box 270  
Boston, MA 02133  
Attn: Chapter 30B Team

Or fax to:  
(617) 723-2334

Please allow at least one week for a review.



## School Bus IFB DOs and DON'Ts

**DO** hold a pre-bid conference to handle bidders' questions.

**DO** issue addenda to the IFB when necessary.

**DO** make sure you have advertised in the *Goods and Services Bulletin* if the contract cost will be \$100,000 or more.

**DO** include a price form that includes estimated quantities for bidders to fill in unit and total prices. (This Office has a model bid pricing form you may use.)

**DO** include a clear scope of services that provides bidders with enough information to price the contract, such as estimated mileage and wait time for field trips and athletic trips.

**DO** include a method for calculating the present value of payments if you are permitting bidders to submit different prices for each contract year.

**DO** include a clear rule for awarding the contract specifying whether you are awarding one contract to the lowest overall bid, or multiple contracts, one contract to the lowest bidder for each route or type of bus service.

**DO** require the successful bidder to provide a performance bond.

**DON'T** forget to obtain prevailing wage sheets from the Division of Occupational Safety before you advertise, if applicable.

**DON'T** forget to include extension and renewal options in your advertisement, if you plan to use them in your contract.

Commonwealth of Massachusetts  
Office of the Inspector General  
One Ashburton Place, Room 1311  
Boston, MA 02108

## Chapter 30B Court Decisions Wanted

We need your assistance...

If your jurisdiction has been involved in litigation relating to M.G.L. c. 30B, this Office would appreciate being sent any written trial court decisions. We may be able to use these decisions to help other jurisdictions avoid the same situations. You may send written court decisions by mail to:

Office of the Inspector General  
State House Station, P.O. Box 270  
Boston, MA 02133  
Attn: Chapter 30B Team

Or fax to:  
(617) 723-2334

Thank you!

## Central Register Ads by E-Mail

The Secretary of State's Office recently issued five new forms for *Central Register* advertisements. These forms replace the old forms, which will no longer be accepted.

The most cost-effective way to submit your *Central Register* advertisement is by electronic mail. This saves the state money because forms submitted by electronic mail are placed directly into the *Central Register* database. Forms that are sent by mail or fax must be manually entered by a contractor who charges the state per key-stroke. Sending your Central Register advertisements by e-mail also saves your jurisdiction postage and telephone charges. The *Central Register* e-mail address is **regs@sec.state.ma.us**.

If you have questions about the new *Central Register* format, you may contact the State Publications and Regulations Division at (617) 727-2831.