

PROCUREMENT BULLETIN

Happy New Year!

For the past several years, Gateway Regional School District (Gateway) in Huntington has generously provided the MCPPO Program with videoconference space in western Massachusetts. I am pleased, after nearly a year of seeking the ideal site on Cape Cod, to announce our newest videoconference location at Centerville, Osterville and Marston Mills (COMM) Fire District located in Centerville. COMM Fire District recently hosted videoconferences for the MCPPO Program's Public Contracting Overview and Supplies and Services classes with enthusiastic reviews from attendees in the Cape area. (See page 7 for photos). COMM Fire District joins Gateway in providing conference space to accommodate jurisdictions outside of the Boston area that seek to further their MCPPO training. I would like to thank the staff at COMM Fire District and Gateway for helping to make our classes a success. I look forward to continuing to collaborate with both Gateway and COMM Fire District in order to bring MCPPO training to procurement professionals throughout the Commonwealth.

My office is also working closely with UMASS Dartmouth and UMASS Lowell to establish additional videoconference locations for our MCPPO Program. These locations will serve the training needs of jurisdictions in southeastern Massachusetts and north of Boston. When the Office confirms these new locations, we will make an official announcement. In the meantime, please see pages 8–9 of this *Bulletin* for the spring schedule of MCPPO classes.

Also, in this issue of the *Procurement Bulletin* you will find information concerning lease-purchase options, crowdfunding websites, and municipal energy contracts, as well as frequently asked questions about donating surplus property valued under \$10,000, best practices for resolving tied bids and the unique acquisition of real property.

Thank you for your time and consideration in reviewing this Office's publications. I wish you all a safe holiday season and a happy New Year.

Sincerely,

Glenn A. Cunha Inspector General

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<u>IMPORTANT NOTICE</u>



Please be advised that we have changed our MCPPO Program registration policy. All registration forms must be mailed in and accompanied by payment. Registration forms received via fax or email will no longer be accepted. We are working on the ability to have registrations and payment options available online and hope to have that capacity in the future. We thank you for your cooperation and continued support.



Energy and Energy-Related Contracts

Pursuant to Chapter 30B, Section 1(b)(33), municipalities forward copies of contracts for energy or energy-related services, along with a description of the process used to execute the contracts, to the Inspector General's Office (IGO) within fifteen days of execution.¹ The IGO has determined that a summary of these contracts might be beneficial to other municipalities as they negotiate and enter into agreements for the provision of energy or energy-related services. To that end, the following information summarizes the forty energy and energy-related contracts that the IGO received from April 1, 2014 through October 31, 2014.

Electricity

The IGO received twenty-six contracts for the purchase of electricity. These municipalities contracted to pay between \$0.0285 and \$0.12191 per kilowatt hour (kWh), with contract terms ranging from eight months to five years. The municipalities contracted with the following electricity companies:

- Constellation NewEnergy
- Direct Energy Business
- Great Eastern Energy
- Hampshire Power
- Liberty Power Holdings

Twenty of these municipalities used a third party to assist them with their negotiations, pricing and contracting. Some of the contracts disclosed that the municipalities are paying \$0.001 per kWh for the third party's services, which the Office considers to be energy-related services. Some contracts did not include the amount that the municipalities pay to the third parties. The municipalities reported that they worked with the following third parties:

- Axsess Energy Group, LLC
- Colonial Power Group
- Massachusetts Municipal Association

Natural Gas

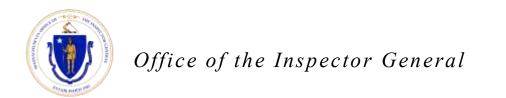
The IGO received contracts for the purchase of natural gas from two municipalities. These municipalities contracted to pay \$0.745 and \$0.756 per therm, with contract terms of two years. Both of the municipalities contracted with Santa Buckley Energy, Inc. and both consulted with Bay State Consultants to assist with the negotiations and contracting. Neither contract included the amount that the municipality paid to the consultant.

Price and Population

The following table reports the price paid for electricity and natural gas based on each municipality's population:

Population Range (based on 2010 census)	Electricity: Price per kWh	Natural Gas: Price per therm
75 to 9,872	\$0.087 to \$0.12191	N/A
10,086 to 19,808	\$0.0978 to \$0.12191	\$0.756
20,228 to 47,255	\$0.0285 to \$0.10296	N/A
51,251 to 95,072	N/A	\$0.745
105,162 to 617,660	\$0.108	N/A

¹Contracts for energy or energy-related services are exempt from Chapter 30B provided that the local government claiming the exemption has complied with Chapter 30B's statutory requirements. Specifically, Section 1(b)(33) of Chapter 30B states that within fifteen (15) days of the contract's execution, the local government must submit "a copy of the contract and a report of the process used to execute the contract" to the "department of public utilities, the department of energy resources, and the office of the inspector general."



Whether to Lease or Purchase an Asset

Like an outright purchase, the lease of goods is subject to Chapter 30B. Whether to lease or to purchase an item is a financial decision that a jurisdiction must make after thoughtful analysis. Below is general advice to consider when deciding whether to lease or purchase:

- Perform a cost-benefit or other financial analysis to determine which option provides the best value. Consider total costs, including:
 - > Purchase price
 - > Financing costs, including interest costs
 - > Fees or other acquisition costs
 - > Maintenance costs
 - Disposal costs



- Consider other factors in your determination, such as:
 - > The useful life of the asset compared to the lease term (the useful life should exceed the term of the lease).
 - > The use planned for the asset (full-time versus periodic use). This could impact the asset's useful life, help determine maintenance costs, and impact the decision to purchase at all. For instance, perhaps a periodic rental would be a better value.
 - > Asset depreciation value.
 - Market and technological changes. Is acquisition the best option at this time?
 - > Budget planning. Will you be able to make lease payments from your operating budget?
 - > Vendor ability to meet the lease terms.

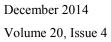
If you make a determination to lease:

- Ensure that the lease terms are fair and equitable.
- > Ensure that the lease has an opt-out provision and that the lease is contingent upon the appropriation of funds.
- Ensure that the lease addresses the disposition of the item at the end of the lease term.

For more information, the Office recommends that you consult the "Contract Terms and Conditions Checklist" in Chapter 2 of the Office's *Chapter 30B Manual* for provisions to consider including in a lease.

Finally, the financing arrangement for the lease could be subject to provisions of municipal finance law. You should check with legal counsel, your accountant, and/or the Division of Local Services at the Department of Revenue to determine the legality of any financing arrangements.

Leasing is often a prudent financial decision. You should obtain leases through a fair, open and competitive process to help ensure that you obtain a good deal at a good price. Make sure that your jurisdiction follows Chapter 30B and municipal finance laws and that the appropriate stakeholders are involved in the decision-making and acquisition process.



Crowdfunding: Is it Right for Your Jurisdiction?

Local jurisdictions increasingly are turning to crowdfunding websites to raise money to fund public projects. Crowdfunding can be a useful fundraising tool, but procuring a crowdfunding service must be done correctly, in accordance with procurement laws.

Crowdfunding sites are websites designed to allow individuals, companies and other organizations to raise money for a cause or project through online donations. In exchange for a hosting fee paid to the host website, the fundraising campaign posts information on the website and uses the site's credit card processor to accept donations online from the public (or "crowd"). Some crowdfunding sites are designed specifically for governmental bodies to fund local projects. According to one report, civic crowdfunding has raised over 10 million dollars for local projects, usually involving parks and recreation, over the last four years.¹

Crowdfunding web services must be procured in accordance with Chapter 30B, the Uniform Procurement Act. Chapter 30B applies to every contract for the procurement of services by a governmental body. "Services" is defined as the furnishing of labor, time or effort by a contractor, not involving the furnishing of a specific end product other than reports.² The source of funds to pay for the service is irrelevant to whether a service contract is subject to Chapter 30B. The law applies when there is an agreement between a governmental body — as defined in Chapter 30B — and a vendor. Therefore, the crowdfunding service is subject to Chapter 30B even if the host site is paid from the donations received online.

Chapter 30B also prohibits any payment by a local jurisdiction under an invalid contract even if the supplies have been delivered or the work has been performed, and even if all parties acted in good faith. Consequently, if a jurisdiction contracts with a crowdfunding site without following Chapter 30B, the law prohibits the jurisdiction from paying the site for its services.

Therefore, you must consider more than your project and fundraising goals when choosing a crowdfunding site. You also must determine which 30B threshold applies to your contract so that your jurisdiction can conduct a proper procurement of the host website.

Generally, crowdfunding sites charge a percentage of the money raised as the cost for hosting a project fund raiser. Some charge both a percentage of money raised and a transaction fee for each donation made to the project. For example, your fundraising goal for playground equipment might be \$75,000. If the crowdfunding site charges a 10% fee plus a thirty-five-cent fee per transaction, your jurisdiction might find itself over the \$10,000 threshold, requiring you to solicit three quotes.

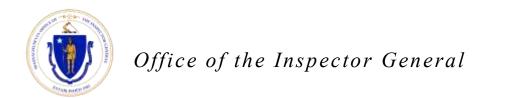
Once you have determined the applicable threshold requirements, your jurisdiction should then solicit the necessary quotes, conduct an invitation for bids, or execute a request for proposals in order to procure a crowdfunding service provider.

As another consideration, some sites require you to purchase your goods or services from site-approved vendors. Your jurisdiction should refrain from entering into crowdfunding agreements with sites that require the use of specific vendors because this practice is antithetical to open and fair competition as required by Chapter 30B.

Finally, before conducting *any* fundraising, you should always check with your chief procurement officer and your jurisdiction's legal counsel. Also, please remember that the use of the crowdfunding money must follow the requirements of Chapter 30B and all other applicable procurement laws.

¹ Davies, Rodrigo, Civic Crowdfunding: Participatory Communities, Entrepreneurs and the Political Economy of Place (May 9, 2014). Available at SSRN: http://ssrn.com/abstract=2434615 or http://dx.doi.org/10.2139/ssrn.2434615.

² M.G.L. c. 30B, § 2.



FREQUENTLY ASKED QUESTIONS RELATING TO PROCUREMENT

Q1: My regional school district's athletic teams have old uniforms and other team clothing that they no longer need. I estimate the value at less than \$1,000. We have a school district policy that says we need to follow sound business practices in order to dispose of surplus school property. Can the school district donate this clothing to a local youth group that would reuse the uniforms?

A1: Yes, as long as the school district complies with Section 15(g) of Chapter 30B. "Sound business practices" is defined in Section 2 of Chapter 30B as "ensuring the receipt of favorable prices by periodically soliciting price

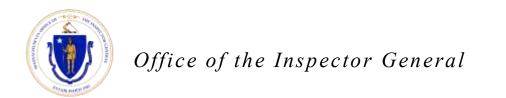


lists or quotes." Normally, you would need to obtain a favorable price from the market in order to dispose of school property. However, if the local youth group is a charitable organization, Section 15(g) of Chapter 30B would allow you to donate the uniforms. Section 15(g) states: "Notwithstanding any other requirement of this section, a governmental body may by majority vote, unless otherwise prohibited by law, dispose of a tangible supply no longer useful to the governmental body but having resale or salvage value, at less than the fair market value to a charitable organization which has received a tax exemption from the United States by reason of its charitable nature."

Please remember that you have the responsibility to determine the charitable status of the organization. In addition, the appropriate governmental body – in your situation, the regional school committee – must approve the donation. You should discuss any questions about the organization's charitable status with your legal counsel, the Internal Revenue Service or the Public Charities Division of the Massachusetts Office of the Attorney General.

Q2: My town has been approached by the owner of a piece of property that is designated for agricultural or horticultural use under M.G.L. c. 61A. The owner is planning to sell the property, and the town has determined that it needs this specific property. Pursuant to M.G.L. c. 61A, § 14, the town has an option to purchase the land through a "right of first refusal." To purchase this property, does the town need to follow the process set out in Chapter 30B for acquiring real property?

A2: Yes. However, your town may not need to conduct a competitive process because the purchase can be viewed as a "unique acquisition" under Section 16 of Chapter 30B. If your jurisdiction determines that it needs a particular piece of property because of its unique qualities or location, it may be considered a unique acquisition. However, Chapter 30B still requires you to follow the procedures for a unique acquisition, including: 1) preparing a written determination explaining your jurisdiction's basis for acquiring the property as a unique acquisition; and 2) publishing a notice in the *Central Register* at least 30 days before entering into a binding purchase agreement. In addition, the seller must file a *Disclosure of Beneficial Interest* form with the Division of Capital Asset Management and Maintenance (DCAMM). For more information about the process for unique acquisitions, please consult Chapter 8 of our *Chapter 30B Manual* (available at www.mass.gov/ig).



FREQUENTLY ASKED QUESTIONS RELATING TO PROCUREMENT (Continued)

Q3: I am a Chief Procurement Officer and I recently issued an Invitation for Bids (IFB) for office furniture. The two apparent low bidders submitted bids for the exact same dollar amount, which resulted in a tied low bid. Both bidders were deemed to be responsive and responsible. How do I determine to whom to award the contract?

A3: Chapter 30B does not address how to handle tied low bids. In keeping with the principles of Chapter 30B, we strongly recommend that all local jurisdictions adopt a tie-breaker policy and include the policy in all IFB specifications. In the event that you receive tied low bids and your city or town does not have a pre-approved tie-



breaker procedure, we recommend that you use a coin toss or another simple, fair and objective measure to break the tie. When you break a tie through a coin toss, you should invite the tied bidders to your office and flip the coin in their presence. In any event, the coin toss should be conducted in the presence of a witness and you should keep a written record of the process you used, including the results and the names of those participating. To avoid a potential bid protest, we also recommend that you ask each of the low bidders to sign an agreement stating that they will abide by the results of the tie breaker. As an alternative, you may allow for a "second round" between the tied vendors. This entails contacting the tied vendors,

explaining that the bid prices were tied, and inviting each vendor to submit a sec-

ond sealed bid for the same contract by a specific date and time. You may then award the contract to the responsible vendor offering the lowest-priced bid.

Finally, your jurisdiction has the discretion to reject all bids if it is in the jurisdiction's best interest to do so. (See Section 9 of Chapter 30B).



Chapter 30B Hotline: (617) 722-8838



Office of the Inspector General

Thank You, COMM Fire District!



The COMM Fire District in Centerville hosted the Office's *Public Contracting Overview* and *Supplies & Services Contracting* classes in November and December of 2014. The Office had been looking for a videoconference location on Cape Cod in order to make its training programs more accessible to procurement officials in the southeast region of Massachusetts. The COMM Fire District provided a welcoming and convenient facility. We greatly appreciate the COMM Fire District's hospitality and willingness to host our classes. Please keep an eye out for upcoming MCPPO classes at the COMM Fire District and at other satellite locations throughout the Commonwealth.



Public Contracting Overview videoconference seminar in session at the COMM Fire District



Office of the Inspector General Glenn A. Cunha, Inspector General MA-IGO-Training@state.ma.us Tel: (617) 727-9140

TITLE:

MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM **REGISTRATION FORM** January-June 2015

Please complete below and indicate seminar selection on the right:

NAME:		TITLE:		
PHONE:	EXT.#:	FAX:		
EMAIL:				
ORGANIZATION/JURIS	SDICTION:			
ADDRESS:				
CITY:	STATE:	ZIP CODE:		
Do you require any re	asonable accommodations	?		
ATTENTION: As of Jan payment.	uary 1, 2015, all registration	forms must be mailed in and accompanied by		
HOW TO REGISTER: Please mail a comple	ted registration form along w	rith a check or money order made payable to:		
Office of the Inspector General One Ashburton Place, Rm. 1311 Boston, MA 02108 ATTN: MCPPO Program				
TYPE OF PAYMENT: □ Check/Money Orde	r = State agenci	es: payment via IE/ITA		

NONDISCRIMINATION POLICY: The Massachusetts Office of the Inspector General does not discriminate on the basis of race, color, national origin, ancestry, religion, sex, age, disability, sexual orientation, political affiliation, or Vietnam-era or disabled veteran status in its employment or admission policies, or in the administration or operation of, or access to, its programs and policies. The Office of the Inspector General does not discriminate on the basis of disability; see Section 504 of the Rehabilitation Act of 1973. Inquiries pertaining to the Office's nondiscrimination policy for MCPPO programs may be addressed to Joyce McEntee Emmett, Director of the MCPPO Program, at (617) 727-9140



The Massachusetts Office of the Inspector General is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE sponsors. State Boards of Accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website: www.learningmarket.org.



The Massachusetts Office of the Inspector General is registered with the Department of Elementary & Secondary Education to award professional development points (PDP).

COURSE INFORMATION:

All seminars will be confirmed based on a minimum of 20 participants.

GOVERNMENT/NON-PROFIT COURSE PRICE:

Government employees shall include all employees of the Commonwealth, the Commonwealth's political subdivisions, other state governments, the federal government, as well as employees of any other municipality, county, or local district. Non-profit employees include any employee of a 501(c)(3) corporation. Proof of government or non-profit status must be provided with this registration form in order to receive the government rate.

SUBSTITUTIONS/CANCELLATIONS:

Each seminar is limited and filled on a space-available basis. No refunds for cancellations. Registrations transferred within your organization are possible with prior notice. The OIG reserves the right to cancel or reschedule any seminar and is not responsible for any costs incurred by registrants. Terms and conditions may change without notice.

CORI NOTICE:

Please be advised that the Office of the Inspector General has reinstated the requirement that all applications for MCPPO Designation include a completed Criminal Offender Record Information (CORI) Request Form. You do not need to include a CORI form with this registration form.

For more information regarding administrative policies, such as complaint and refund resolution, please email Joyce McEntee Emmett, Director of the MCPPO Program, at MA-IGO-Training@state.ma.us or go to our website at www.mass.gov/ig.

PUBLIC CONTRACTING OVERVIEW

□January 27. 28. 29. 2015 **BOS** □January 27, 28, 29, 2015 UMD* □March 10, 11, 12, 2015 BOS □March 10, 11, 12, 2015 **HUNT*** □April 7, 8, 9, 2015 BOS □April 7, 8, 9, 2015 UML* □June 9, 10, 11, 2015 **BOS**

SUPPLIES & SERVICES CONTRACTING

□ February 3, 4, 5, 2015 BOS □March 17, 18, 19, 2015 **BOS** UMD* □March 17, 18, 19, 2015 □June 16, 17, 18, 2015 **BOS** □June 16, 17, 18, 2015 **HUNT***

DESIGN & CONSTRUCTION CONTRACTING

□ February 10, 11, 12, 2015 **BOS** □ February 10, 11, 12, 2015 UMD* **■ March 31, April 1, 2, 2015 BOS** ■March 31, April 1, 2, 2015 HUNT* □April 28, 29, 30, 2015 **BOS**

□April 28, 29, 30, 2015 SPOTLIGHT ON SCHOOLS

BOS □April 14, 2015

COMM*

BOS

CONSTRUCTION MANAGEMENT AT RISK

□April 16, 2015 BOS

ADVANCED TOPICS UPDATE

□May 6, 7, 2015 **BOS**

REAL PROPERTY

□May 12, 2015

STORY OF A BUILDING

□May 19, 2015 **TBD**

CREATING A PROCUREMENT OFFICE

□June 3, 4, 2015 **BOS**

DRAFTING A MODEL IFB

□Self-paced AT YOUR DESK

PRIVATE SECTOR TRAINING

CERTIFICATION for School Project Designers & OPMs

□ February 26, 27 & March 4, 5, 2015 □May 13, 14 &

20, 21, 2015

BOS

BOS

RECERTIFICATION for School Project

Designers & OPMs □March 24, 2015 **BOS** □June 2, 2015 **BOS**

*2015 videoconference locations:

COMM: COMM Fire District Centerville, MA

Gateway Regional School District HUNT: Huntington, MA

UMD: **UMASS Dartmouth** UML: **UMASS Lowell**

Additional Seminar Information



MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM

REGISTRATION FORM

January-June 2015

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For detailed course information, visit our website at www.mass.gov/ig.

PUBLIC CONTRACTING OVERVIEW		Tuition	: \$495 for government/non-profit	emnlovees
No Prerequisite		TUTUOI	\$650 for all others	employees
□ January 27, 28, 29, 2015	BOSTON	□ April 7, 8, 9, 2015	BOSTON	
□ January 27, 28, 29, 2015	UMASS DARTMOUTH*	□ April 7, 8, 9, 2015	UMASS LOWELL*	
□ March 10, 11, 12, 2015	BOSTON	□ June 9, 10, 11, 2015	BOSTON	
□ March 10, 11, 12, 2015	HUNTINGTON*	, , ,		3-day seminar
SUPPLIES & SERVICES CONTRACTING Prerequisite: Public Contracting Overview	1	Tuitior	: \$495 for government/non-profit \$650 for all others	employees
□ February 3, 4, 5, 2015	BOSTON	□ June 16, 17, 18, 2015	HUNTINGTON*	
□ March 17, 18, 19, 2015	BOSTON	□ June 16, 17, 18, 2015	BOSTON	
□ March 17, 18, 19, 2015	UMASS DARTMOUTH*	, , ,		3-day seminar
DESIGN & CONSTRUCTION CONTRACT	TING	Tuitio	n: \$695 for government/non-profit	t employees
Prerequisite: Public Contracting Overview	DOCTON	A!I 00 00 00 0045	\$850 for all others	
□ February 10, 11, 12, 2015	BOSTON	□ April 28, 29, 30, 2015	BOSTON	
□ February 10, 11, 12, 2015	UMASS DARTMOUTH* BOSTON	□ April 28, 29, 30, 2015	COMM Fire Distric	τ.
□ March 31, April 1, 2, 2015□ March 31, April 1, 2, 2015	HUNTINGTON*			3-day seminar
SPOTLIGHT ON SCHOOLS No Prerequisite		Tuitior	: \$150 each participant	
□ April 14, 2015	BOSTON			1-day seminar
CONSTRUCTION MANAGEMENT AT RIS	SK UNDER	Tuitior	: \$250 for government/non-profit	employees
M.G.L. c. 149A: Legal Requirements & No Prerequisite: Introductory course geared to procur		n exnerts	\$450 for all others	
□ April 16, 2015	BOSTON	поры		1-day seminar
ADVANCED TOPICS UPDATE		Tuitior	: \$345 for government/non-profit	employees
Prerequisite: Supplies & Services Contracting or Des	-		\$500 for all others	.
□ May 6, 7, 2015	BOSTON			2-day seminar
REAL PROPERTY No Prerequisite		Tuition	: \$150 each participant	
□ May 12, 2015	BOSTON			1-day seminar
STORY OF A BUILDING		Tuition	: \$150 each participant	
No Prerequisite □ May 19, 2015	TBD			1-day seminar
CREATING A PROCUREMENT OFFICE		Tuition	: \$295 for government/non-profit	emnlovees
No Prerequisite		Taltion	\$500 for all others	. Jp.01000
□ June 3, 4, 2015	BOSTON			2-day seminar
DRAFTING A MODEL IFB	AT YOUR DESK	Tuitior	: \$75 each participant	
□ requires Microsoft Word 7.0 or higher				Self-paced
	PRIVA	TE SECTOR TRAINING		
CERTIFICATION for School Project Designe	rs & Owner's Project Managers	Tuitior	: \$1250	
No Prerequisite □ February 26, 27& March 4, 5, 2015	ROSTON			A-day cominar
□ May 13, 14 & 20, 21, 2015	BOSTON			4-day seminar
RECERTIFICATION for School Project Design	gners & Owner's Project Managers	Tuitior	: \$495	
□ March 24, 2015	BOSTON			1-day seminar
□ June 2, 2015	BOSTON			

COMM Fire District: 1875 Falmouth Road, Centerville, MA 02632

UMD: UMASS Dartmouth, 285 Old Westport Road, North Dartmouth, MA 02747

HUNTINGTON: Gateway Regional School District, 12 Littleville Road, Huntington, MA 01050 UML: UMASS Lowell, 1 University Avenue, Lowell, MA 01854



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ATTN: Michelle Joyce