

COMMONWEALTH OF MASSACHUSETTS

Charles D. Baker, Governor
Matthew Beaton, Secretary
Judith Judson, Commission



Green Communities
Webinar

November 9, 2015

Procurement of Energy
Management Services

Eileen McHugh, Senior Program
Coordinator, Department of Energy
Resources

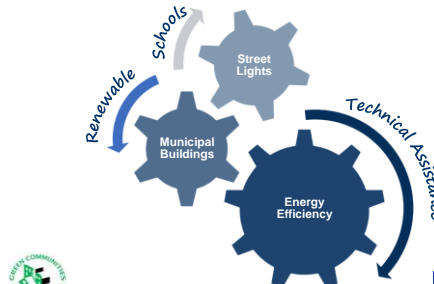
Drew Cahill, Assistant Attorney General,
AGO Fair Labor Division

Natasha Bizanos, Associate General
Counsel, Office of the Inspector General

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Green Communities Division

The energy hub for **all** Massachusetts cities and towns,
not just designated "Green Communities."



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Outreach - Regional Coordinators

- Regional Coordinators act as direct liaisons with cities and towns on energy efficiency and renewable energy activities
- Located at each of the DEP Regional Offices:



WERO - SPRINGFIELD: Jim Barry
Jim.Barry@state.ma.us



NERO - WILMINGTON: Joanne Bissetta
Joanne.Bissetta@state.ma.us



CERO - WORCESTER: Kelly Brown
Kelly.Brown@state.ma.us



SERO - LAKEVILLE: Seth Pickering
Seth.Pickering@state.ma.us



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Green Communities Division -
Programs & Resources for Municipalities

- Green Communities Designation and Grant Program
- MassEnergyInsight energy tracking and analysis tool
- Municipal Energy Efficiency Assistance
- Energy Management Services Technical Assistance
- Mass Municipal Energy Group (MMEG)
- Website filled with tools & resources:
www.mass.gov/energy/greencommunities

Email updates via e-blasts - Sign up by sending an email to:
join-ene-greencommunities@listserv.state.ma.us



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Designation & Grant Program

Qualification Criteria: Designation

1. Adopt as-of-right siting for RE/AE generation, R&D, or manufacturing
2. Adopt expedited permitting process
3. Create an Energy Reduction Plan to reduce energy use by 20% in 5 years
4. Purchase only fuel-efficient vehicles
5. Minimize life cycle cost in new construction → adopt the Stretch Code

Grant Funding

1. Energy Efficiency Projects
2. Renewable Energy Projects on municipal land

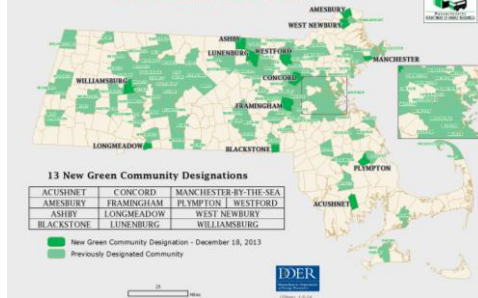


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GREEN COMMUNITY DESIGNATIONS REACH
ONE HUNDRED TWENTY-THREE



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Poll Question #1

Who is listening to today's webinar?

- A. Municipal procurement officers
- B. Municipal energy managers
- C. Energy services contractors
- D. Other



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Presenters:

Eileen McHugh, Senior Program Coordinator, Department of Energy Resources

Ms. McHugh provides support and procurement assistance for performance contracting (ESPC) in the public sector. Eileen is responsible for supporting local units of government and school districts in the development, implementation, and on-going measurement & verification of projects.

Drew Cahill, Assistant Attorney General, AGO Fair Labor Division

Mr. Cahill enforces the Commonwealth's wage and hour laws, including non-payment of wage, overtime, minimum wage, prevailing wage, independent contractor misclassification, child labor, hindering, and retaliation laws. Prior to starting in the division, Drew served as Director of the task force on the Underground Economy and Employee Misclassification, a cross-agency vehicle for enforcement of employer-related laws, such as wage and hour, tax, unemployment, and workers' compensation insurance requirements.

Natasha Bizanos, Associate General Counsel, Office of the Inspector General

Ms. Bizanos serves as Senior Counsel/30B Coordinator focusing on Chapter 30B matters. She coordinates the 30B team, instructs for the MCPPO Program, and handles calls from cities, towns, and their counsel on the 30B hotline. Previously, she worked as the Contractor Certification Manager at the Division of Capital Asset Management Maintenance, and as a Policy Analyst at the Massachusetts State Auditor's office.



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Energy Management Services (EMS)

Energy Saving Performance Contracting (ESPC)

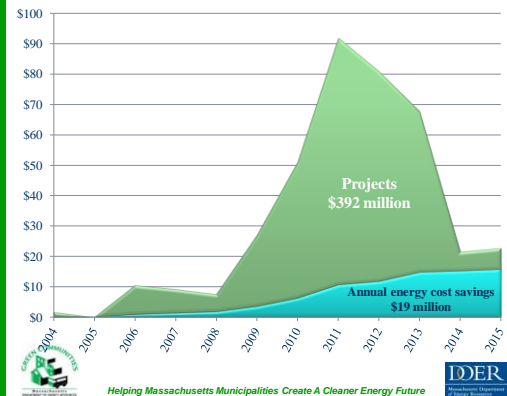
- Energy & Water Conservation Measures
- Operations & Maintenance
- Onsite Energy Generation



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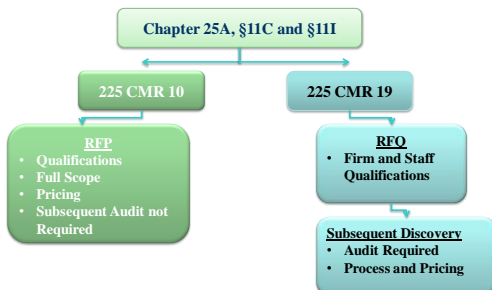


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Procurement Process



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Procurement Guidance

- EMS web page
- Guidelines, instructions, FAQs, and forms
- Model documents, developed and issued by DOER
- Links to other resources such as DCAM contractor certification and the Central Register



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General Requirements

Procurement Procedure	Request for Proposal (RFP) 225 CMR 10.00	Request for Qualifications (RFQ) 225 CMR 19.00
Notice of EMS Procurement	RFP Compliance Certificate	RFQ Compliance Certificate
Bid and Addenda	File bids with DOER at least 15 Business Days prior to filing the bid with the Secretary of the Commonwealth for publication in the Central Register.	File bids with DOER at least 15 Business Days prior to filing the bid with the Secretary of the Commonwealth for publication in the Central Register.
DOER Acknowledgment	DOER will confirm receipt; verify that all documents have been submitted.	DOER will confirm receipt; verify that all documents have been submitted.



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General Requirements

Procurement Procedure	Request for Proposal (RFP) 225 CMR 10.00	Request for Qualifications (RFQ) 225 CMR 19.00
DOER Acknowledgment [cont]	Within 15 business days, DOER shall determine whether a bid is complete or notify the local governmental body that further review is needed. A local governmental body shall not issue or publish an RFP until it receives an acknowledgment of receipt from DOER.	Within 15 business days, DOER shall determine whether a bid is complete or notify the local governmental body that further review is needed. A local governmental body shall not issue or publish an RFQ until it receives an acknowledgment of receipt from DOER.



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General Requirements

Procurement Procedure	Request for Proposal (RFP) 225 CMR 10.00	Request for Qualifications (RFQ) 225 CMR 19.00
Advertising Requirements	Once the acknowledgment is received, advertise in the Central Register under general contracts. Publication of an RFP prior to receipt of an acknowledgment is a violation of the procurement process under 225 CMR 10.00.	Once the acknowledgment is received, advertise in the Central Register under general contracts. Publication of an RFQ prior to receipt of an acknowledgment is a violation of the procurement process under 225 CMR 19.00.
DCAMM Certification	Required under prime contractor for energy management.	Required under prime contractor for energy management.



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General Requirements

Procurement Procedure	Request for Proposal (RFP) 225 CMR 10.00	Request for Qualifications (RFQ) 225 CMR 19.00
Filed sub-bids	No	No
Bid Deposit	No	No
Payment Bond	Required during construction period. Contractor must provide proof of bonding capacity before signing contract.	Required during construction period. Contractor must provide proof of bonding capacity before signing contract.
Performance Bond	Yes, 100%	Yes, 100 %



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General Requirements

Procurement Procedure	Request for Proposal (RFP) 225 CMR 10.00	Request for Qualifications (RFQ) 225 CMR 19.00
Prevailing Wage	Yes. Please confirm prevailing wage with the Department of Labor Standards at 617-626-6975.	Yes. Please confirm prevailing wage with the Department of Labor Standards at 617-626-6975.
Contractor Evaluation	Yes.	Yes.
Investment Grade Energy Audit Agreement (IGA)	No.	Required before one may negotiate a contract.



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General Requirements

EMS Contract Submission Guideline	The guidelines for filing a contract are the same under 225 CMR 10.00 and 225 CMR 19.00.	
Contract Award	Required to provide public notice of the meeting at which it proposes to award the EMS contract at least ten days before the meeting; promptly publish notice of the award in the Central Register; provide such notice to DOER.	
Prior to executing a contract	Required to file a final version of the contract, a <i>EMS Contract Certification</i> form and DOER's EMS Annual Report with projected energy and water cost savings estimates at least 15 business days prior to signing a contract.	
DOER acknowledgment of receipt	DOER will notify the local governmental body confirming receipt of all documents that are under review. Within 15 business days, DOER will determine if it is complete and meets all requirements or if further action is needed. If incomplete, DOER will identify the deficiencies. A local governmental body shall only award a contract for EMS if all the requirements of the regulations have been met.	



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General Requirements

EMS Contract Submission Guideline	The guidelines for filing a contract are the same under 225 CMR 10.00 and 225 CMR 19.00.
Term	Contract term shall not exceed 20 years.
Measurement and Verification (M&V)	M&V must comply with the most recent version of the Federal Energy Management Program M&V Guidelines including all outside sections. EMS Annual Report must be submitted annually.
Performance Guarantee	The contractor will provide a written guarantee, warranting that the owner will achieve a specific level of performance in each year. Excess savings inure to the benefit of the owner.



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Fair Labor Division



Disclaimer: While the Attorney General's Office enforces the laws that we are going to talk about today, any opinions expressed are those of the speaker and may not reflect the opinion of the Attorney General.

The Massachusetts Prevailing Wage Law

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Poll Question #2

Have you been a part of a prevailing wage project in the past?

- A. Yes
- B. No
- C. Not sure

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What is Prevailing Wage?

- Prevailing wage is the minimum hourly wage to be paid to all employees performing actual work on public construction projects
- The Department of Labor Standards (DLS) sets the prevailing wage
- The Office of the Attorney General enforces the prevailing wage law

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Wage Determinations

- DLS determines whether or not a project is subject to the prevailing wage law
- DLS determines the appropriate hourly wage for each classification of worker on the project
- DLS handles questions regarding applicability or worker classification

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Prevailing Wage Requirements

- Rates only apply for all time worked on project
 - **Exception:** drivers hauling gravel & fill
- Rates change for each project
- Apprenticeship

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Prevailing Wage Records

- Contractors must post prevailing wage rates in a conspicuous location on the job site for all to view
- Awarding authorities must obtain annual updated wage rates from DLS
- All contractors with employees on site must submit certified payroll records to the awarding authority on a weekly basis

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Types of Violations

Wage Violations

- Failure to Pay the Rate
- Misclassification of the Work

Records Violations

- Failure to Submit
- Failure to Submit/Maintain True and Accurate

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Investigations

Origins

- Employee Complaints
- Referrals
- Site Visits

Process

- Records demands, audits, interviews

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Enforcement Options

- Civil citation
- Settlements
- Criminal prosecution
- Debarment

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Considerations

- Knowledge of violation?
- Deception or fraud?
- Previous violations or convictions?
- Violation of other laws? E.g. unemployment, workers' compensation

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Civil Citations

- Restitution
- Penalties
- Right to Appeal
- Failure to Pay Citation or Appeal

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Criminal Prosecutions

- Show-cause hearing/District Court
- Grand Jury/Superior Court

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Contact AGO

<http://www.mass.gov/ago/doing-business-in-massachusetts/labor-laws-and-public-construction/>

Fair Labor Hotline: (617) 727-3465

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Contact DLS

<http://www.mass.gov/lwd/labor-standards/prevaling-wage-program/>

617-626-6975

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Poll Question # 3

Have you completed a 30B procurement?

- A. Yes
- B. No
- C. Not sure



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Overview of M.G.L. c. 30B with regard to M.G.L. c. 25A

D.O.E.R.
Webinar

Massachusetts Office of
the Inspector General



Glenn A. Cunha
Inspector General

Chapter 30B Applicability

- Chapter 30B applies to:
 - Procurement of supplies and services
 - Disposal of surplus supplies
 - Acquisitions and dispositions of real property and interests in real property...by a governmental body
- The Office of the Inspector General has an extensive Chapter 30B program to assist local governments, including a Chapter 30B Hotline for questions, 617-722-8838, available daily 8:30 a.m. to 4:30 p.m.

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Chapter 30B

GOVERNMENTAL BODIES

- | | |
|--|--|
| Applies to: <ul style="list-style-type: none"> Cities Towns Regional school districts Horace Mann charter schools Counties Agencies, boards, commissions, authorities, departments, or instrumentalities of above | Does not apply to: <ul style="list-style-type: none"> Executive agencies of the Commonwealth State colleges and universities County sheriffs Commonwealth charter schools |
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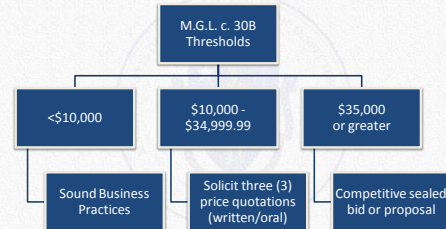
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Chapter 30B and Chapter 25A

- Those responsible for procuring EMS contracts need to know other laws that may be applicable to projects and to assess options
- For example:
 - Chapter 30B might apply to:
 - Procurement of a consultant or an owner's agent to help with the implementation of the project
 - Note: an OSD statewide contract might be an option to procure energy consultant services
 - Municipal finance laws might impact EMS project funding

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Procurement Thresholds



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MCPPO Classes

- The OIG administers the Massachusetts Certified Public Purchasing Official Program to promote:
 - cost-effective, ethical, and modern purchasing practices,
 - dialogue and exchange of ideas and best practices among procurement officials,
 - stewardship of resources in the public's interest, and
 - compliance with Massachusetts contracting laws

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MCPPO Classes

- Public Contracting Overview
- Supplies & Services Contracting
- Design & Construction Contracting
- Advanced Topics Update
- Other



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MCPPO Classes

- Various seminars incorporate presenters from the AGO, DOER, Department of Labor Standards, Ethics Commission, Office on Disability, Operational Services Department, Secretary of State, Supplier Diversity Office and Local Governments

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MCPPO Contacts

- Joyce McEntee Emmett, Director (MCPPO)
 - (617)722-8835
- Chapter 30B Hotline
 - 617-722-8838
 - Daily from 8:30 am to 4:30 pm
- Judi A. Cimildoro, Program Coordinator (MCPPO)
 - (617)-722-8862
- MCPPO Program
 - Fax: (617)523-6266
 - EMAIL: ma-igo-training@massmail.state.ma.us



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Contact Information

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eileen.mchugh@state.ma.us
(617) 626-7305

Web page: www.mass.gov/eea/energy-utilities-clean-tech/green-communities/ems.html

To file documents: EMS.DOER@state.ma.us



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