



GLENN A. CUNHA  
INSPECTOR GENERAL

## The Commonwealth of Massachusetts

### Office of the Inspector General

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The Honorable Barbara L'Italien, Chair  
Committee on Municipalities and Regional Government  
State House, Room 413C  
Boston, MA 02133

The Honorable James J. O'Day, Chair  
Committee on Municipalities and Regional Government  
State House, Room 540  
Boston, MA 02133

Dear Chairwoman L'Italien and Chairman O'Day:

This Office regularly reviews special legislation seeking to exempt dispositions of public property from the public bidding process set forth in the Uniform Procurement Act, M.G.L. c. 30B. This Office supports the principle that dispositions of publicly-owned property should be handled through advertised competition, which guarantees fairness and accountability and protects the taxpayers' interest.

Section 16 of the Uniform Procurement Act establishes a simple requirement for open and fair competition for the disposition of publicly-owned property. The process also offers built-in flexibility. Local governments have broad discretion to restrict the use of the property, establish eligibility requirements, and write the rules for selecting the winning proposal, so long as those rules are reasonable and fair.

Chapter 30B also permits a municipality to dispose of real property at less than fair market value in certain instances. For example, if a municipality seeks to promote a particular civic or social mission in order to effectuate a public purpose, the municipality may take price out of the competitive process. Chapter 30B also permits a municipality to set a minimum price for real property. However, if the municipality accepts lower than fair market value, it must publish a rationale for this choice in the *Central Register*.

I recognize that under some circumstances, a city or town may view a competitive disposition as impracticable and the city or town may deem it preferable to petition the Legislature for an exemption from the law. In this circumstance, this Office will usually recommend that the bill require the municipality to follow, at a minimum, M.G.L. c. 30B, § 16, paragraphs (a), (b) and (g). Paragraph (a) requires that the municipality declare the property surplus. Paragraph (b) requires that the municipality objectively value the property. Paragraph (g) requires that if the municipality

sells the property for less than fair market value, that the municipality publish a notice in the *Central Register*.

Similarly, if a city or town petitions the Legislature for an exemption to acquire land, the Office recommends that the bill require the municipality to follow, at a minimum, M.G.L. c. 30B, § 16, paragraph (e)(2), which offers transparency to protect the public interest.

This Office also reviews special legislation relative to a municipality's public construction projects. This Office supports the principle that construction on publicly-owned property should be handled through adherence to the construction bidding laws, M.G.L. c. 25A; M.G.L. c. 30, § 39M; M.G.L. c. 149, §§ 44A-44J; and M.G.L. c. 149A. These laws have built-in public safeguards. They help to guarantee contractors' accountability and protect the taxpayers' interest in a fair deal. Moreover, the issue of when projects are subject to the public bidding laws has been the subject of rulings by the Massachusetts courts and local officials may wish to review those cases with their legal representatives.

I hope this information is helpful. As always, my Office stands ready to assist you and your committee. If you have questions, please feel free to contact me.

Sincerely,



Glenn A. Cunha  
Inspector General