

Massachusetts Office of the Inspector General

Procurement Bulletin

IG Sullivan Files New Procurement Reform Legislation

The Office of the Inspector General has filed a revision to House No. 51, a bill relative to raising public bidding thresholds. House No. 51 is a comprehensive proposal to streamline and reform the public design and construction procurement laws and M.G.L. c. 30B, which applies to the procurement of supplies, services, and real property by local jurisdictions.

The Inspector General's revised proposal would substantially increase the dollar threshold for soliciting sealed bids on public construction contracts from \$10,000 to \$50,000, thereby allowing state and local awarding authorities to use informal quotation procedures for smaller construction contracts.

The dollar threshold for the more restrictive M.G.L. c. 149 bidding requirements applicable to public building projects would increase from \$25,000 to \$200,000.

The Inspector General's proposal would also double the dollar threshold for formal competition on contracts for supplies and services at the local level, thereby allowing local jurisdictions to use informal quotation procedures for supply and service contracts up to \$50,000, and streamline other bidding requirements that affect state and local entities.

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IG Report on Building Committee Oversight

Although there is no state law requiring the creation of a building committee for the purpose of overseeing a local construction project, many local jurisdictions rely on volunteer building committees to administer and oversee their construction projects. In February 2003 the Office issued a report, entitled *Completion of the Greenfield Middle School Renovation Project: Building Committee Oversight*, concerning the oversight of a troubled school renovation project by the Greenfield Middle School Building Committee. The Town of Greenfield had delegated full responsibility and spending authority for the project to the building committee.

The Office's review focused on the completion phase of the project, after the building committee had fired the original contractor and obtained a series of emergency waivers from the Division of Capital Asset Management setting forth procedures for completing the work. Although the building committee was assisted by legal counsel and other outside consultants, the Office's review found that numerous contracts executed by the building committee did not comply with legal requirements. The Office's review also found that the building committee failed to employ sound business practices in obtaining the services of its owner's representative, which was paid more than \$100,000 without a written contract, and failed to document the official actions of its subcommittees, as required by the open meeting law.

The findings of the Office's report underscore the importance of ensuring that building committees, like other public entities, receive training and information they need to provide effective oversight

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IG Report on Building Committee Oversight, continued

while ensuring public accountability and transparency in the expenditure of public funds. The report contains detailed recommendations aimed at assisting the Town of Greenfield and other jurisdictions in their efforts to promote cost-effective contracting and reduce their vulnerability to risk on local construction projects. The recommendations include:

- documenting the building committee's role, authority, and reporting relationships;

- appointing a project manager to serve as the locus

- of project responsibility and accountability for each construction project;

- developing project-specific oversight plans; and

- instituting effective fiscal and administrative controls over consultant contracts.

The full report may be downloaded from the Office's website at www.mass.gov/ig.

M.G.L. c. 30B Questions and Answers

The information provided is educational in nature and should not be considered legal advice. Persons with questions about a specific situation should contact the Inspector General's Office for advice.

My municipality received a state grant to purchase some fire fighting equipment. Is the purchase that I make with the grant exempt from M.G.L. c. 30B?

No. There is no exemption in M.G.L. c. 30B for purchases made with state grant money.

The only provision in M.G.L. c. 30B that applies to grant money received by an awarding

authority is M.G.L. c. 30B, §1(d), which states that "where a procurement involves the expenditure of federal assistance or contract funds, the provisions of this chapter shall not apply to the extent that such provisions prevent compliance with mandatory provisions of federal law and regulations."

The police department in my town received an offer for a "free" vehicle in exchange for placing advertising on the vehicle. If the police department accepts this offer, it will be required to sign a three-year contract for the lease of the vehicle in exchange for advertising on the vehicle. Is this contract subject to M. G.L. c. 30B?

Yes. M.G.L. c. 30B applies to "every contract for the procurement of supplies, services or real property... by a governmental body..." (M.G.L. c. 30B, §1(a).) Since a vehicle may be categorized as a supply, it is the opinion of this Office that such a contract would be subject to M.G.L. c. 30B.

In order to determine which M.G.L. c. 30B procedures to follow, this Office recommends that you look at the value of the supply that you are receiving. For example, in the example above, you should determine the market value of the three-year lease of the vehicle to determine whether you need to issue an invitation for bids or whether you may

solicit three oral or written price quotations.

Is a contract with an engineer exempt from M. G.L. c. 30B?

It depends. M.G.L. c. 30B exempts design and engineering services, as long as those services are *performed in connection with construction* and includes the following types of work:

- preparation of master plan studies, surveys, soils tests, cost estimates, or programs;

- preparation of drawings, plans, or specifications;

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Insurance Consultants Holding Themselves Out as Advisers Must be Licensed Advisers and Should be Free From Financial Ties With Insurance Brokers

While contracts for the procurement of insurance are exempt from M.G.L. c. 30B, many municipalities use a competitive solicitation process for procuring insurance and will attest to the fact that competition results in real cost savings. Price competition gives underwriters incentives to lower prices and motivates brokers to make sure that they have complete information about your loss history and other factors that can really help lower your community's cost for insurance. In addition to generating competition, investing the time and effort to prepare a solicitation will help your community get better control over the risk factors that result in higher-than-necessary insurance costs.

Without a doubt, the purchase of insurance is complex. Your community may decide to contract with a consultant for advice on risks and levels of insurance and for assistance in soliciting and evaluating competitive bids. The consultant contract must be procured in compliance with M.G.L. c. 30B.

The Massachusetts Division of Insurance (DOI) advised this Office that if an insurance consultant is advising a municipality on its insurance needs, the consultant must hold an adviser license issued by DOI. Pursuant to M.G.L. c. 175, §177A, DOI requires that an insurance consultant take and pass an exam to be licensed as an "adviser" in order to provide advice, information, or recommendations relating to examining, accepting, and/or procuring any insurance policy. If the consultant is holding itself out as an adviser, this requirement exists even if the consultant holds a broker's license from DOI. Moreover, DOI advised this Office that it is not enough that one person in a consulting firm has an insurance adviser license. The consultant that is providing advice to your community must hold a current adviser license. This Office strongly recommends that any procurement conducted for an insurance consultant require that bidders demonstrate that they hold a current adviser license from DOI.

In addition, this Office strongly recommends against relying on a consultant to prepare your insurance solicitation and then permitting the consultant's firm or a firm in a related corporate structure to submit a bid for the resulting insurance contract. This could constitute a conflict of interest and is fundamentally unfair to other competitors. An insurance consultant should have no business relationship or financial tie with an insurance broker or agent that could affect his or her objectivity and impartiality. This Office recommends that municipalities avoid any potential conflict of interest by requiring disclosures from insurance consultants and brokers/agents.

This Office also recommends against a common practice in the reinsurance business whereby your insurance consultant enters into an agreement involving financial remuneration between it and your municipality's insurance broker for claims tracking services. This Office recommends that municipalities prohibit such agreements between the municipality's insurance consultant and the municipality's insurance broker or agent.

Confidential Hotline

The Office of the Inspector General encourages public employees to report any suspected incidences of fraud, waste, and abuse by calling the Inspector General's toll-free confidential hotline:

1-800-322-1323

IG Sullivan Files New Procurement Reform Legislation, cont.

The following is a section-by-section summary of House No. 51:

Section 1 would remove contracts solely for the purchase of construction materials (those which entail no labor) from M.G.L. c. 30, §39M. Such procurements would instead be subject to M.G.L. c. 30B, OSD regulations, or other materials procurement procedures applicable to the governmental body. This amendment addresses an area of ambiguity that has created confusion in the past concerning the applicability of the term “supplies,” as defined by M.G.L. c. 30B, to construction materials.

Section 2 would increase the minimum threshold for sealed bidding for public works projects under M.G.L. c. 30, §39M from \$10,000 to \$50,000.

Section 3 would increase the minimum threshold for sealed bidding for public building projects under M.G.L. c. 30, §39M from \$10,000 to \$50,000. Section 7 would increase the maximum threshold from \$25,000 to \$200,000.

Section 4 would make contracts solely for the purchase of construction materials subject to M.G.L. c. 30B, OSD regulations, or other materials procurement procedures applicable to the governmental body. (See Section 1, above).

Section 5 would allow governmental bodies to procure public construction projects of less than \$50,000 using their own less formal competitive quotation procedures. Local jurisdictions would be able to use the M.G.L. c. 30B quotation process, and state agencies would be able to use the best value quotation process allowed by OSD regulations. This change would also allow governmental bodies to use state tradesperson contracts for construction contracts of up to \$50,000, five times the current cap of \$10,000.

Section 6 would increase the current thresholds for construction contracts requiring a payment bond of at least 50 percent of the contract value from \$2,000 (for local jurisdictions) and \$5,000 (for state agencies) to \$50,000. This amendment would bring the bonding re-

quirement threshold into line with the threshold for formal sealed bidding.

Section 7 would increase the minimum threshold for bidding public building projects under M.G.L. c. 149 from \$25,000 to \$200,000. As a result, many small construction projects could be carried out by municipalities and state agencies without having to utilize state certified contractors and filed sub-bids.

Section 8 would increase the threshold for the sub-bid process to apply to specific trades from \$10,000 to \$25,000.

Sections 9, 10, and 11 would increase the thresholds for building design contracts subject to the designer selection law from \$10,000 (design fee) and \$100,000 (estimated construction project cost) to \$20,000 (design fee) and \$200,000 (estimated construction project cost).

Sections 12, 13, and 14 would increase the M.G.L. c. 30B threshold for contracts requiring formal sealed bids or proposals from \$25,000 to \$50,000, thereby allowing local jurisdictions to use the M.G.L. c. 30B quotation process for contracts below \$50,000. Local jurisdictions could use “sound business practices” for contracts up to \$10,000, twice the current \$5,000 threshold. Section 13 also makes explicit the Office’s long-standing position that local jurisdictions may procure contracts of less than \$50,000 using formal sealed bids or proposals if they so choose.

Section 15 would add language to M.G.L. c. 30B to parallel the proposed amendments to M.G.L. c. 30, §39M requiring local jurisdictions subject to M.G.L. c. 30B to use M.G.L. c. 30B quotation procedures for public construction contracts estimated to cost between \$10,000 and \$50,000.

Sections 16 and 17 would require solicitation of sealed bids or proposals for M.G.L. c. 30B contracts exceeding \$50,000.

For the full text of House No. 51, please visit the IG’s Web site at www.mass.gov/ig.

M.G.L. c. 30B Questions and Answers, cont.

supervision or administration of a construction contract;

or construction management or scheduling.

Keep in mind that design services costing more than \$10,000 for a public building project, or design services for a public building project with a construction cost over \$100,000 are subject to the designer selection law, M.G.L. c. 7, §38A½ to 380.

Are purchases from federal “GSA” contracts exempt from M.G.L. c. 30B?

No. Although the federal government now permits state and local governments to make purchases off of federal

General Services Administration (GSA) contracts, there is no exemption in M.G.L. c. 30B for these purchases. If you want to purchase a supply from a GSA vendor at the GSA price and the cost is \$5,000 or more, but less than \$25,000, then you may use the GSA vendor’s price as a price quotation and solicit at least two more price quotations.

If you want to make a purchase from a GSA vendor and the cost is \$25,000 or more, then you still must comply with the invitation for bids (IFB) or the request for proposals (RFP) process set forth in M.G.L. c. 30B. However, you may require, as part of your IFB or RFP criteria, that bidders offer the supply or service at the GSA price or lower.

Congratulations to New MCPPOs!

The Office of the Inspector General extends congratulations to the most recent recipients of MCPPO designations based on applications reviewed between February 2, 2003 and May 1, 2003.

MCPPO

Bernard E. Baker, City of Haverhill
Audrey F. Bouvier, Town of Harwich
Patrice J. Buchanan
Nancy Cote Caldeira, Wareham Fire District
Anne L. Curry, SEEM Collaborative
Michael A. Diorio, Town of Canton
Maureen R. Doherty, Town of Sharon
Chris J. Dunphy, Pioneer Valley Planning Commission
Brenda L. Evans, Barnstable DPW
Nancy A. Goodwin, City of Worcester
John E. Kane, Ludlow Public Schools
Janis M. Mahoney, UMASS Boston
Michael A. Martin, Wareham Fire District
James A. Nihan, Town of Bridgewater
Diane M. Norris, Town of Danvers
Timothy C. Smith, Town of Wellfleet
Deborah Smola, Palmer School Department
Thomas E. Webb, Berkshire Housing and Development

Associate MCPPO

Joan E. Dillon, City of Cambridge
Mary M. Walsh, SEEM Collaborative
Hillari I. Wennerstrom, Town of Tyngsboro

MCPPO for Design and Construction

Karen W. Jason, Bridgewater State College

Associate MCPPO for Design and Construction

Lawrence F. Bevere, Jr., City of Lowell

MCPPO for Supplies and Services

Carol A. Borer, Dukes County
Pamela Fabiano, CHARMS Collaborative
Leslie Lesperance, Middlesex RSVD
Susan O. McCusker, Town of Middleborough
Craig Sanderson, Town of Sandwich

Associate MCPPO for Supplies and Services

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John Tunney, Fairhaven Public Schools
Gregory Zammuto, Beverly Public Schools



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Massachusetts Office of the Inspector General
One Ashbuton Place, Room 1311
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Who Should Attend

Local government officials and others interested in local government contracts for supplies, services, real property, and construction.

Earn Professional Certification

For an in-depth description of courses offered, please visit our website at www.mass.gov/ig and download a course catalog, or you may call 617-727-9140 to request a catalog, or fax a request to 617-723-2334.

Seminars Offered for 2003

For full course descriptions, please download a catalog from <http://www.mass.gov/ig/mcppo/catal02.pdf>

Public Contracting Overview

3-day seminar

**Tuition: \$300 for government/non-profit employees
\$500 for all others**

An overview of legal requirements and best practices for public contracting by local governmental bodies, with hands on workshops that apply contracting knowledge and skills to practical problems faced by the procurement official. A prerequisite for *Supplies and Services Contracting* and *Design and Construction Contracting*, this three-day seminar is invaluable both for experienced public officials and those who have recently entered the field or are working in a support capacity. This seminar concludes with a written examination. You may earn 20 CPE and 20 PDP credits.

Design and Construction Contracting

3-day seminar

**Tuition: \$400 for government/non-profit employees
\$600 for all others**

Prerequisite: *Public Contracting Overview* or *State Contracting Overview*

This in-depth, three-day seminar is tailored to professionals facing the complex issues of today's design, public building construction, and public works construction projects. Participants will learn practical applications and effective strategies to guide them through procurement and administration of design and construction contracts. This seminar concludes with a written examination. You may earn 20 CPE and 20 PDP credits.

September 23-25, 2003

8:30-4:30

Worcester

Date and time to be determined.

State Contracting Outline

1-day seminar

**Tuition: \$100 for government/non-profit employees
\$170 for all others**

An overview of legal requirements and best practices for public contracting by state agencies, this course covers legal requirements for public contracts, consumer protection laws, the designer selection and public construction bid laws, state ethics law, and the prevailing wage law. This course fulfills the prerequisite requirement for DCAM delegated authority for construction projects. You may earn 7 CPE and 7 PDP credits.

September 11, 2003

8:30-4:30

Worcester

Supplies and Services Contracting

3-day seminar

**Tuition: \$300 for government/non-profit employees
\$500 for all others**

Prerequisite: *Public Contracting Overview*

Comprehensive and challenging, this seminar focuses on procurements under the Uniform Procurement Act, M.G.L. c. 30B. Presented in an easy-to-follow, hands-on workshop format, participants are guided through practical applications of this law. Participants will learn about writing effective specifications, obtaining best value using an invitation for bids, making the request for proposals process work, common bidding problems and how to resolve them, effective contract administration, and more. This seminar concludes with a written examination. You may earn 20 CPE and 20 PDP credits.

Date and time to be determined.



MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM REGISTRATION

Office of the Inspector General
Phone: (617) 727-9140 Fax: (617) 723-2334

REGISTRATION INFORMATION:

Off-site seminars will be confirmed based on a minimum of 25 registrants. In the event of cancellation of an OFF-SITE location, an alternate date will be offered.

GOVERNMENT/NON-PROFIT COURSE PRICE:

Government employees shall include all employees of the commonwealth, employees of the commonwealth's political subdivisions, employees of other state governments, employees of the federal government and employees of any other municipality, county, or local district. Non-Profit employees include any employee of a 501(c)(3) corporation. Proof of non-profit status must be provided with registration.

RESERVE SEATING:

To reserve seating, fax registration and purchase order to (617-723-2334). MAIL ORIGINAL TO:

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Office of the Inspector General
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Each seminar is limited and filled on a space available basis. No refunds for cancellations. Registration transfer to someone in your organization is possible with prior notice. The OIG reserves the right to cancel/reschedule any seminar and is not responsible for any costs incurred by registrants. Terms and conditions may change without notice. Alternate course dates may be substituted in the event of an emergency, upon notification. Change in seminar date and/or cancellations received (BY FAX) less than 2 business days prior to the seminar date are subject to a \$25 transfer fee - NO-SHOWS WILL BE INVOICED A \$50 SERVICE CHARGE.

FOR MORE INFORMATION:

Please contact Joyce McEntee Emmett, at (617) 727-9140.

STATE CONTRACTING OUTLINE

1-day seminar

Tuition:

\$100 for government/non-profit employees
\$175 for all others

SEPTEMBER 11, 2003

WORCESTER

DESIGN & CONSTRUCTION CONTRACTING

3-day seminar

Tuition:

\$400 for government/non-profit employees
\$600 for all others

Prerequisite: Public or State Contracting Overview

SEPTEMBER 23-25, 2003

WORCESTER

POLICY OF NON-DISCRIMINATION:

The 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, 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 in violation of Section 504 of the Rehabilitation Act of 1973. Inquiries pertaining to the Office's non-discrimination policy for MCPPO programs may be addressed to Joyce McEntee Emmett, Program Director, at 617-727-9140.



The 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 addressed to NASBA, 150 Fourth Avenue North, Suite 700, Nashville, TN 372192417, (615) 880-4200.



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If you previously subscribed to the *Procurement Bulletin* and have not received a copy, please contact Beth Hayward by phone at 617-727-9140.

Statewide Contract for Scrap Tire Disposal Services

The state's Operational Services Division (OSD) has established a statewide contract for the removal of scrap tires and tire shreds. Municipalities and other local jurisdictions may purchase services from statewide contracts procured by OSD without following the requirements of M.G.L. c. 30B.

The price established under the contract is \$200 per net ton if the contractor removes the tires from a facility or \$160 per net ton if the agency delivers the tires to the contractor.

For information about this contract, please contact the contract administrator, Paul Guerino, at 617-720-3146 or visit OSD's website at www.mass.gov/osd.

Massachusetts Office of the Inspector General
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