

Massachusetts Office of the Inspector General

Procurement Bulletin

Letter from the Inspector General

Dear Public Officials,

This office recently issued a report that chronicles the pitfalls that plagued a school system in its endeavors to obtain computer services and equipment. We found that the school system's stewards and administrators did not avail themselves of basic knowledge relevant to ensuring defensible expenditures undertaken in accordance with legal requirements and in the public interest. The harm was already done by the time this office was contacted.

The report is about the regional school known as Ralph C. Mahar Regional School District (Mahar Regional School District) in Orange, Massachusetts, which hired a new school Superintendent in 2005. This was the district's first new Superintendent in approximately 40 years and it was this individual's first experience as a school Superintendent. He assumed the position as Superintendent in October 2005. The Superintendent had no training in or understanding of Massachusetts procurement practice. The Mahar Regional School District did not have a business manager or procurement officer. In sum, no one at the school had an understanding of Massachusetts procurement law.

One of the first purchase recommendations made by the new Superintendent was for approximately \$70,000 of no-bid technology, equipment and services from a technology vendor with which he had done prior business while employed elsewhere. The vendor had no experience performing the type of work sought by the Superintendent. Instead of two weeks, the job took approximately eight weeks to complete and was not completed in the quality manner expected.

The vendor completed the project. The law in the Commonwealth states that, due to the contracting irregularities, this vendor cannot be paid. The complete report, *Procurement Deficiencies at the Mahar Regional School*, may be viewed at <http://www.mass.gov/ig/publ/maharrpt.pdf>.

Inside this issue:

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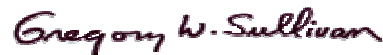
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As always, I encourage you to visit our website periodically to obtain the most up-to-date information on the public bidding laws, the MCPPO program, and to access our reports, advisories and other publications. If you have questions regarding M.G.L. c.30B, please call 617.722.8838. Lastly, I would like to congratulate the most recent recipients of the MCPPO certification.

Sincerely,



Gregory W. Sullivan
Inspector General

The July –December, 2007 MCPPO Schedule is now Available

The new schedule for the Massachusetts Certified Public Purchasing Official (MCPPO) program is now available, and the new registration form can be found on page 5 of this issue of the *Procurement Bulletin*.

If you need more information regarding the MCPPO program, the seminars that are offered, or how to become designated as a Massachusetts Certified Public Purchasing Official, please visit our website at www.mass.gov/ig/mcpopo/igmpo.htm.

OIG Articles

Updated Addresses for Energy Contracts

Please update your address books! M.G.L. c. 30B, §1(b)(33) exempts contracts for energy and energy related services and requires that jurisdictions send a copy of contracts for electricity and for natural gas supply contracts to three state agencies, along with a report of the process which led to each award.

One of the three agencies – the Department of Telecommunications (DTE) – no longer exists, due to a recent restructuring of state agencies. The newly created Department of Public Utilities (DPU) is one of two new regulatory agencies that will assume DTE's functions. Among other matters, DPU will handle electricity and natural gas issues, and so is an agency with which a report must be filed.

Please note that the term “energy” is not defined in any applicable statute, but is interpreted by this office to mean contracts for electricity and for the supply of natural gas. Fuel sources other than natural gas, such as gasoline, fuel oil and propane, are all supply contracts and must be competitively procured.

The updated address list for energy contracts, which reflects the change noted above, is as follows:

Mary Cottrell, Secretary
Department of Public Utilities
One South Station, 2nd Floor
Boston, MA 02110

Robert Sydney, General Counsel
Division of Energy Resources
Office of the General Counsel
100 Cambridge Street, Suite 1020
Boston, MA 02114

Barbara J. Hansberry, General Counsel
Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108

Chapter 30B Questions and Answers

Q.1. I am the superintendent of a high school and I have been approached by a company that is offering to create an alumni directory at no cost to the school. After the directory is completed, the company will sell the directory for \$100 per copy. Is this contract subject to Chapter 30B?

A.1. Yes. Who pays is irrelevant to whether a contract is subject to Chapter 30B. The law applies because there is a contract between the local government and the vendor. The value of the contract, and the process to be used, will depend on how much money the vendor will potentially earn from the sale of the directory.

If the agreement will require that the school provide student information to a private party, some of which may be confidential, it is recommended that you contact your legal counsel to ascertain whether the school is authorized to release this information for private business purposes.

Q.2. I am the business manager for a regional school district which receives federal McKinney-Vento funds, which are used to pay for the transportation of homeless students. I cannot estimate in advance how many students will need such transportation throughout the year, so I currently conduct a separate quote process for the transportation services for each student. Is such a process considered to be bid-splitting?

A.2. No. Bid splitting is the intentional division of a procurement with the intent of evading a requirement of Chapter 30B. Because you cannot know how many students will need such transportation throughout the year, nor do you know for how long such transportation will be required, this office predicts that a court would not consider the practice of conducting a separate quote process for each student as bid-splitting, as you have a legitimate basis to solicit separate quotes. If, however, more than one child from the same family requires such transportation, it is recommended that you conduct one process for those children, as the duration of the services needed would most likely be the same for the children.

Q.3. I am the CPO of a town and have a general question regarding the procurement of consulting services. The town has limited funds available for such procurements, and I am often concerned that the bid submissions will exceed the appropriated amount. May I include the appropriated amount in the specifications?

Chapter 30B Questions and Answers

- continued from previous page -

A.3. Yes. Chapter 30B does not prohibit you from including the amount appropriated for a procurement as a maximum bid price in your bid specifications. This may make sense if you are concerned that prices will exceed the appropriation, and time would not permit you to conduct another bid process if such occurs. Be forewarned however, that vendors may bid prices no lower than, or only slightly lower than your maximum bid price.

Q.4. I am the purchasing agent for a town. I am putting together a bid for a one-year cleaning services contract, with two one-year options to renew. Must the bidders bid the same price for the option years as they bid for the first year of the contract?

A.4. No. When drafting your specifications for a multi-year contract, including a contract with option years, you have the discretion to determine how prices are to be submitted. You may require that bidders provide a price for the first year of the contract that does not increase in the option years, or you may allow bidders to provide different prices for each year of the contract. However, after the bids are opened, vendors cannot increase the prices they bid. This means that, prior to entering into an option year, the vendor will not be able to increase the prices that it bid for that option year.

Further, when determining the winning bidder for a contract with option years, you will consider only the initial term of the contract. In this example, that would only be the first year of the contract, as you cannot know when awarding the contract whether you will exercise the option years.

Q.5. I am the CPO of a fire district. I am currently trying to determine whether it is more advantageous to exercise an option to renew a contract for ambulance billing services than it is to conduct a new procurement. May I conduct a separate bid process to make this determination?

A.5. Yes. Chapter 30B states that before exercising an option to renew or extend that was stated in the solicitation and resulting contract, you are required to make a reasonable determination that it is more advantageous to renew your existing contract than to conduct a new procurement process. Some jurisdic-

tions solicit quotes, while others conduct a separate bid process to make this determination.

When conducting a reasonable investigation through an advertised bid or proposal process, this office recommends that you solicit prices for the same term as the option, extension or renewal, to allow for a meaningful comparison. If you decide to conduct a bid process, the current vendor should be made aware that, while it may bid on this separate bid process, its current rate for the option years will remain legally enforceable if the current vendor bids a higher amount than that originally bid.

Q.6. An educational collaborative has asked if the town would be willing to lease its surplus property to the collaborative. Is a lease of real property to an educational collaborative subject to M.G.L. c.30B?

A.6. Yes. However, if the collaborative was formed pursuant to M.G.L. c.40, §4E, you will not be required to solicit proposals for the disposition. Such an educational collaborative is considered to be a governmental body. When disposing of property to a governmental body, including the federal government, the commonwealth, or any of its political subdivisions, you must follow the requirements of M.G.L. c.30B, §16(i).

When disposing of property through sale or lease, M.G.L. c.30B, §16(i) requires that you follow M.G.L. c.30B, §16(a),(b) and (g). M.G.L. c.30B, §16(a) requires that you declare the property available for disposition and set any reuse restrictions for the property. M.G.L. c.30B, §16(b) requires that you determine the value of the property through procedures customarily accepted by the appraising profession as valid. And if you dispose of the property for less than the determined value, M.G.L. c.30B, §16(g) requires that you post a notice in the *Central Register* explaining the reason for the decision and the difference between the value as determined in paragraph (b) and the price to be received.

If the educational collaborative was not formed pursuant to M.G.L. c.40, §4E, you will be required to solicit proposals for the disposition if the value of the property that you are disposing exceeds \$25,000.



Congratulations

The following is a list of the MCPPO Program's new designees on applications **reviewed** between August 2006 and June 2007.

MCPPO

Paul G. Barden, Town of Framingham
 Joanne M. Blier, Greenfield Public Schools
 Brenda Bussey, Framingham State College
 Sandra J. Cashen, Dennis-Yarmouth RSD
 J. Michael Cassidy, Lowell Public Schools
 Gregory C. Chapdelaine, City of Leominster
 Diane I. Clark, Narragansett RSD
 Donna M. Compton, City of Gloucester
 David P. Connor, Winchendon Housing Authority
 Darlene F. Costa-Brown, Bridgewater State College
 Joanne M. Cuff, Ipswich Public Schools
 Fred J. Davies, Town of Framingham
 Jennifer L. DeCarvalho, Barnstable Sheriff's Office
 Joan E. Dillon, City of Cambridge
 Rositha Durham, City of Somerville
 Grace Earle, Plymouth County Sheriff's Dept.
 Warren Fairbanks, Framingham State College
 Nancy A. Fitzgerald, Fitchburg State College
 John F. Flaherty, Concord/Concord-Carlisle Public Schools
 Joseph C. Foti, Chelsea DPW
 Marilyn Gordon, Easton Public Schools
 Jonathan A. Harris, Town of Concord
 Mary Ann Harris, Town of Millbury
 Lisa A. Higgins, Town of North Attleboro
 Kelvin Jeremiah, Springfield Housing Authority
 David S. Keniston, Marblehead Public Schools
 William F. Ketcham, Town of Adams
 Michael La Francesca, Blue Hills Reg. Voc. Tech. School
 John A. Lafleche, Bay Path Voc. Reg. School
 Cyndee Lafreniere, Winchendon Housing Authority
 Lorraine A. Leonard, Town of Harvard
 Connie Linscott, City of Beverly
 Karen Mancini, City of Somerville
 Bonnie-Anne Mathias, UMASS Medical School
 Andrew W. Maylor, Town of Swampscott
 Shelly Maynard-DeWolf, City of Springfield
 Eleanor A. McCarter, Town of Mansfield
 John J. McGarry, Town of Raynham
 Gerry Missal, Town of Belmont
 Linda Nesta, Framingham State College
 Diane A. O'Neil, Town of Nantucket
 Craig L. Owen, Reading Municipal Light Dept.
 Carol H. Pratt, Town of Medway
 John F. Quinn, Tewksbury Public Schools
 David W. Ramsay, Town of Dover
 Judith Ann Rebello, City of New Bedford
 John Retchless, Middleboro Public Schools
 Nancy R. Rockwell, County of Norfolk
 Jenna Rostek, UMASS Amherst
 Joseph A. Salvo, Methuen Public Schools

MCPPO cont.

Anita M. Scheipers, Town of Lincoln
 Deborah A. Seymour, Worcester Public Schools
 Kristine M. Shipp, South Shore Charter Public School
 Joseph Slominski, Barnstable School Dept.
 Daniel G. Smith, City of Gloucester
 James A. Smith, City of Fall River
 Lori Tanner, Pioneer Valley Planning Commission
 Tammy Bazin Tefft, City of Westfield
 Thomas E. Wilson, Town of Chilmark

MCPPO for Supplies & Services

Anne Marie Cella, Revere Housing Authority
 Maureen DeChristoforo, The Education Cooperative
 Cindy Mahr, Weston Public Schools
 Mary M. Martin, Cambridge Public Schools
 Nanci S. Schwartz, Hampshire Council of Governments

MCPPO for Design & Construction

Eddie Corbin, City of Springfield
 Basilio Diaz, Town of Southborough
 David Gallogly, City of Boston Capital Construction
 James A. Kiely, Somerset Public Schools
 John J. Moynihan, Canton Public Schools
 Steven H. Popper, Town of Needham

Associate MCPPO

James S. Albrecht, Sturgis Charter Schools
 Mary Bator, Lowell Public Schools
 Eileen Comeau, Concord Public Schools
 Brian F. Curley, Lowell Public Schools
 Alesia H. Days, City of Springfield
 Kristin N. Harrington, City of Pittsfield
 Robert Kachinski, Chicopee Housing Authority
 Martha B. Kelly, UMASS Boston
 Nooshi S. Robertson, Town of Watertown
 Linda K. Stevens, MassBay Community College
 Chad G. Thompson, Town of Longmeadow
 Lawrence M. Travers, Town of Barnstable

Associate MCPPO for Supplies & Services

Jennifer Jaillet, City of Gardner
 Darlene R. McGrath, Town of Milton Public Works
 Susan H. Sullivan, Wachusett RSD
 Linda A. Sweet, Shrewsbury School Dept.

Associate MCPPO for Design & Construction

Richard A. Brouillard, DHCD
 Coleman G. Flaherty, City of Boston



**MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM
REGISTRATION FORM July–December 2007**

Office of the Inspector General

Gregory W. Sullivan, Inspector General
MCPPO@maoig.net Fax: (617) 723-2334

REGISTRATION 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, 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:

Commonwealth of Massachusetts
Office of the Inspector General
One Ashburton Place, Rm. 1311
Boston, MA 02108
ATTN: MCPPO Program

MAKE CHECK PAYABLE TO: OIG

SUBSTITUTIONS / CANCELLATIONS:

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. **NO-SHOWS WILL BE INVOICED A \$100.00 SERVICE CHARGE.**

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

PUBLIC CONTRACTING OVERVIEW <i>No Prerequisite</i>	3-day seminar	Tuition: \$450 for government/non-profit employees \$700 for all others
<input type="checkbox"/> September 11,12,13–2007	BOSTON	
<input type="checkbox"/> November 27, 28, 29–2007	BOSTON	
SUPPLIES & SERVICES CONTRACTING <i>Prerequisite: Public Contracting Overview or Charter School Procurement</i>	3-day seminar	Tuition: \$450 for government/non-profit employees \$700 for all others
<input type="checkbox"/> August 7, 8, 9 –2007	BOSTON	
<input type="checkbox"/> October 23, 24, 25–2007	BOSTON	
DESIGN & CONSTRUCTION CONTRACTING <i>Prerequisite: Public Contracting Overview or Charter School Procurement</i>	3-day seminar	Tuition: \$650 for government/non-profit employees \$900 for all others
<input type="checkbox"/> September 25, 26, 27–2007	BOSTON	
<input type="checkbox"/> November 6, 7, 8–2007	BOSTON	
ADVANCED TOPICS UPDATE	2-day seminar	Tuition: \$350 for government/non-profit employees \$600 for all others
<input type="checkbox"/> November 15 & 16–2007	ASSABET VALLEY REG. TECH. HIGH SCHOOL– Marlborough, MA	
CERTIFICATION for School Project Designers & Owner's Project Managers NEW	4-Day Training	Tuition: \$1200
<input type="checkbox"/> July 11, 12 & 18, 19–2007	BOSTON	<input type="checkbox"/> Tentative Date December 5, 6 & 12, 13 –2007
<input type="checkbox"/> October 2, 3, 4, 5–2007	BOSTON	BOSTON
CONSTRUCTION MANAGEMENT AT RISK Under M.G.L. c. 149A: Legal Requirements & Practical Issues <i>*Introductory material geared to procurement officials who are not construction experts</i>	1-day seminar	Tuition: \$275 for government/non-profit employees \$600 for all others
<input type="checkbox"/> September 20–2007	BOSTON	<input type="checkbox"/> November 20–2007 BOSTON
CHARTER SCHOOL PROCUREMENT <i>No Prerequisite</i>	2-day seminar	Tuition: \$400 for government/non-profit employees \$600 for all others
<input type="checkbox"/> October 17 & 18–2007	BOSTON	
Drafting A Model IFB <i>Disk program requiring Microsoft Word 7.0 or higher</i> *Registration for this course must be accompanied by a check	<input type="checkbox"/> Self-paced	Tuition: \$75 ea. for govt./non-profit employees \$200 for all others

POLICY OF NON-DISCRIMINATION:

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The Commonwealth of 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 addressed to the National Registry of CPE Sponsors, 150 Fourth Avenue North, Suite 700, Nashville, TN 37219-2417, www.nasba.org.



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

Payment Method : CHECK/M.O. _____ PURCHASE ORDER # _____ I E/IV _____

NAME: _____ TITLE _____

PHONE: _____ FAX _____ E-MAIL _____

ORGANIZATION/JURISDICTION: _____

ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____

Do you need special accommodations? _____

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