

# Massachusetts Office of the Inspector General

## Procurement Bulletin

### Letter from the Inspector General

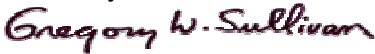
Dear Public Officials:

I would first like to congratulate the most recent designees of the Massachusetts Certified Public Purchasing Official Program. This office strongly believes that education is effective in preventing fraud, waste, and abuse in public government and has been very encouraged by the number of local officials who have attended our MCPPO trainings. A listing of the most recent designees can be found on page 5 of this issue of the Procurement Bulletin. Also, please see page 6 for the July – December, 2008 MCPPO schedule.

I would also like to thank those public officials who visited the Inspector General’s booth and training seminar at the STAR 2008 Exposition hosted by the Operational Services Division as well as the office’s booth at the Division of Fire Services Fire Chief’s Orientation Conference.

*Coming soon!* The office will be publishing two helpful advisories: *Procuring Outside Consultants with Funds from Permit Applicants*, and *Guide to Insurance Requirements for Public Construction Projects*. The advisories will be available on our website this summer.

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 any questions regarding Chapter 30B, please call 617-722-8838.

Sincerely,  
  
Gregory W. Sullivan  
Inspector General

#### Inside this issue:

<b>Learning the Hard Way</b>	<b>Page 1</b>
<b>Price Adjustments and Chapter 30B</b>	<b>Page 2</b>
<b>Procuring Contracts for Solar Panels</b>	<b>Page 3</b>
<b>Chapter 30B Questions and Answers</b>	<b>Page 3</b>
<b>MCPPO Designations</b>	<b>Page 5</b>
<b>New Website for Advertising Central Register Notices</b>	<b>Page 5</b>
<b>Updated Procurement Bulletin Index</b>	<b>Page 5</b>
<b>MCPPO Registration Form</b>	<b>Page 6</b>

### LEARNING THE HARD WAY

Last month, this Office learned of a procurement by a local fire chief that went awry. After prepaying the \$348,000 cost of the fire truck, the vendor, as well as the out of state bonding company that provided the vendor’s performance bond, went out of business before the fire truck was delivered. The town did not receive the truck. This office believes that this situation underscores the importance of the need for training for public officials and the necessity that all local officials have an understanding of local procurement procedures and basic contracting and accounting principles. Our MCPPO program recipients learn that M.G.L. c.41, §56 requires the town determine that goods and services have been received prior to the accountant making payment and are also advised that when requiring bonds, the jurisdiction ensures that the bonding company is licensed to do business in Massachusetts.

## OIG Articles

### Chapter 30B and the Use of Price Adjustment Clauses

Due to rising fuel and materials costs, many jurisdictions have been finding that vendors are attempting to increase prices on existing contracts (which is generally not permitted under M.G.L. c.30B), or are unwilling to submit bids on multi-year contracts. Using price adjustment clauses in solicitations may be one way to address vendor concerns and benefit your jurisdiction. This article seeks to provide some general rules pertaining to the use of price adjustment clauses in both multi-year and short-term contracts while complying with the provisions of Chapter 30B.

Sections five and six of Chapter 30B each contain a provision that states that after the bid opening vendors may not modify their bids in any way that is prejudicial to fair competition or the awarding authority. These provisions encourage vendors to carefully consider the risks of multi-year contracts, including the possibility that their costs to perform the contract may increase during the contract period. One way to promote more accurate pricing is to use a shorter term contract. However, for those jurisdictions that prefer to use multi-year contracts, including contracts with options to renew, consider including a price adjustment clause. Price adjustment clauses are used to adjust the contract price when the vendor's costs either increase or decrease. Vendors may be more willing to bid on multi-year contracts that contain a price adjustment clause because the clause enables the vendors to better absorb fluctuating market costs.

Chapter 30B contains a built-in mechanism for price adjustments. Section 12 of Chapter 30B requires that vendors bidding on multi-year contracts submit unit prices that remain the same throughout the contract, "except to the extent that the solicitation and resulting contract provide for price adjustments." It is this office's opinion that any price adjustment clause must provide a formula for the adjustment that would apply to any winning vendor. For example, your invitation for bids and resulting contract for food services may provide that the price per year will be adjusted based on the consumer price index. Because the price adjustment clause will apply to any vendor that wins the contract, other vendors cannot claim that the adjustment is prejudicial to competition.

A common way to adjust prices is to use established indexes for the specific supplies or raw materials that you are procuring or that your vendor may need to provide a service. Indexes for fuel, steel and milk are good examples. In many fuel contracts, price adjustments can be tied to the Boston tank price from the *Journal of Commerce Oil Price Daily*, and prices may adjust monthly based on the average increase or decrease in the price of fuel. The solicitation and resulting contract will state what necessary change in price must occur before the price is adjusted (such as when the average price per gallon increases or decreases by more than \$.05 in the previous month.) For sample fuel escalation clauses, including clauses that are not tied to an existing fuel index, please see our *School Bus Bid Pricing Forms* which can be downloaded at [www.mass.gov/ig/mcppo/schbidfs.pdf](http://www.mass.gov/ig/mcppo/schbidfs.pdf). Ultimately, use of a specific supply index will serve the jurisdiction by facilitating payment based on the true cost of the goods. A vendor may be less likely to breach a contract if the contract contains a mechanism that adjusts for fluctuating market prices. The jurisdiction is also served when market prices decrease.

Another option available to municipalities to provide some contracting flexibility is to include a provision in the solicitation to increase prices in the subsequent years of the contract by a specific percentage. This method may work well for products or services for which no index exists, and will provide vendors some comfort in anticipating whether bidding on the contract makes financial sense. However, this increase may not reflect the actual change in the costs of goods or services. This method also carries a risk to the jurisdiction in a situation where prices fall during the contract term. As you can see, this type of price adjustment benefits the municipality only when the prices increase because the vendor's price must still be increased in the subsequent years of the contract based on the percentage increase provided in the solicitation and resulting contract even if the costs actually decrease.

While Chapter 30B expressly permits the use of a price adjustment clause in contracts exceeding one

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## OIG Articles, cont.

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year in length, this office is of the opinion that price adjustment clauses may be used in shorter termed contracts so long as the adjustment is included in the solicitation and resulting contract and the adjustment is used to adjust unit pricing submitted by the vendor. For example, if you entered into a one year contract for milk and dairy products, your monthly prices may be adjusted based on a milk index so long as the invitation for bid and resulting contract stated that the unit prices were to be adjusted based on a specific index.

### General Rules of Price Adjustments

1. Price adjustments must be included in the solicitation and resulting contract.
2. Unless such is provided for in the solicitation and resulting contract, vendors may not increase prices for delivery over those that were bid or add fuel surcharge fees.
3. In order for a vendor to adjust a price, you must require that vendors provide a unit price for the supply or the service that will be adjusted based on the method included in the solicitation and resulting contract.

If you have questions on using price adjustments, please contact the Chapter 30B line at 617-722-8838.

### PROCURING CONTRACTS FOR SOLAR PANELS THAT INCLUDE THIRD PARTY FINANCING

This Office is aware of cities and towns being approached by vendors seeking to install solar panels on the roofs of public buildings. The solar panels will be paid for by a third party financier who will take advantage of the available tax credits, and will offer electricity to the governmental body at a discounted rate.

The Division of Energy Resources recommends that these contracts be treated as performance contracts subject to M.G.L. c.25A, §§11I or 11C. If you have questions regarding the procurement procedures under M.G.L. c.25A, please contact Eileen McHugh, Division of Energy Resources at 617-727-4732.

## Chapter 30B Questions and Answers

**Q.1. I am the superintendent of a local water district and am currently considering whether to exercise an option to renew a contract for chemicals; however, the vendor has stated that it cannot hold its prices due to rising costs. May we negotiate a higher price for chemicals when exercising the option to renew, provided that the prices are still reasonable?**

A.1. No. Unless you had originally included a price adjustment clause in the invitation for bid and resulting contract, Chapter 30B does not provide an opportunity for vendors to increase the prices bid under a contract. If the vendor refuses to renew due to increased costs, you may want to discuss with your legal counsel whether the vendor has breached its contract. If, instead of exercising the option, you decide to conduct a new procurement, you should consider using a price adjustment clause to avoid such a situation in the future. For information on price adjustments, please see the article "Chapter 30B and the use of Price Adjustment Clauses" on page 2 of this *Procurement Bulletin*.

**Q.2. Does Chapter 30B apply to purchases of food when the public school food services are provided by a private food services management company?**

A.2. It depends. There are three possible methods of contracting to buy food:

1. Conduct a procurement for a food services management contract, which includes in the scope of services both the cost of the food and the food preparation.
2. Conduct a procurement for a food services management contract, which includes only food preparation services. The procurement officer, or someone with delegated authority, will procure the food using Chapter 30B, and provide the food to the food services management company for preparation.
3. Conduct a procurement for a food services management contract, which requires the food services management company to procure the food on behalf of the governmental body in addition to food preparation services. The cost of the contract includes the services, but does not include the cost of

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## Chapter 30B Questions and Answers, cont.

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food. When the vendor purchases the food, it is reimbursed by the governmental body. This is the most complicated method for the procurement officer, in that he or she **must** ensure that food purchases made by the food services management company are procured under Chapter 30B.

Where a contract between a governmental body and a private food service management company includes food purchases by the vendor, Chapter 30B would not apply to the company's food purchases since the bids or proposals submitted by the food services management company would have included the cost of providing all food. When procuring such services, the governmental body must specify that the company will supply the food and must provide prospective bidders with information to determine the quantity and quality of the food needed.

**Q.3. I am the Department of Public Works Director for my town, which is a participant in a collective bid for sand. My town provided an estimated quantity to the lead jurisdiction of approximately 2,500 tons of sand. May I obtain price quotations apart from the lead jurisdiction's collective bid and get the sand from the vendor offering the lowest quote?**

A.3. It depends. You may choose to do your own competitive process rather than take advantage of a collective bid provided that the jurisdiction has not agreed to be bound by the collective's procurement. However, keep in mind that conducting a separate procurement after agreeing to participate in a collective purchase may undermine the opportunity for volume discounts by discouraging vendor participation with collaborative bids in the future.

**Q.4. I am the Chief Procurement Officer for a city. I looked into buying a new vehicle from a vendor on a statewide contract with the Massachusetts Operational Services Division (OSD). After some investigation, I discovered that I could obtain the same exact vehicle for a lower price from a vendor that is not a statewide contract vendor. If my costs will be lower to buy this vehicle may I enter into a contract with the dealer without soliciting bids?**

A.4. No. Under Chapter 30B, section 1(c), local governmental bodies may make purchases from state

approved vendors on terms and conditions contained in OSD contracts without conducting a separate Chapter 30B procurement process. However, if you decide to purchase the vehicle from a vendor that is not on a statewide contract, you must follow the requirements of Chapter 30B before making the purchase, even if a vendor promises to meet or beat OSD's prices.

**Q.5. As the Director of the Department of Public Works, I am responsible for procuring line painting and thermoplastic (reflective) center line application services for several roads that are estimated to cost \$40,000. Are these services subject to Chapter 30B?**

A.5. No. These services are public works construction services and are subject to M.G.L. c.30, §39M. Because the estimated cost of construction is \$10,000 or more, you will be required to conduct an advertised invitation for bid (IFB). Prevailing wage rates will apply to the contract and must be obtained from the Division of Occupational Safety and included in your IFB.

M.G.L. c.30, §39M does permit the use of section five of Chapter 30B, the IFB process, when the cost of the contract is between \$10,000 and \$25,000. If you choose to use a Chapter 30B IFB you will still be required to include the prevailing wage rates in the IFB, advertise the procurement in the *Central Register*, and obtain a 50% payment bond from the winning bidder. The bidders must also certify that all employees have completed a ten-hour course in construction safety. See "Chapter 30B Questions and Answers," *Procurement Bulletin*, v13, n3, p3, September 2007, which can be downloaded at <http://www.mass.gov/ig/publ/nlsep07.pdf>

For a quick reference guide on the requirements of the public bidding laws, including M.G.L. c.30, §39M, please see the Office of the Inspector General's *Charts on Local Public Procurement Procedures*, which can be downloaded from [www.mass.gov/ig/mcppo/charts06.pdf](http://www.mass.gov/ig/mcppo/charts06.pdf). Any questions on the public construction laws should be directed to the Attorney General's Office, Fair Labor Division at 617-727-2200 or your legal counsel.





## Congratulations!

The following is a list of the MCPPO Program's new designees on applications **reviewed (not received)** between January 2, 2008 and June 30, 2008:

### MCPPO

Patricia A. Cavanaugh, Holyoke Public Schools  
 Shabnam Khan, Massport  
 Joseph A. MacRitchie, Quincy Housing Authority  
 Edna A. Robie, South Shore RSD  
 William R. Sedewitz, Town of Framingham  
 April L. Smith, Mass College of Art  
 Myra G. Suchenicz, Town of Orleans

### MCPPO for Design & Construction

Robert Graham, Natick Public Schools

### Associate MCPPO

Andrea L. Pawluch, Town of North Attleboro  
 Brian Rittershaus, Bureau of State Office Buildings

### MCPPO for Supplies & Services

Mark Webber, Town of Cheshire

### **UPDATED PROCUREMENT BULLETIN INDEX**

Have you been trying to find an old Procurement Bulletin article, or a past frequently asked Chapter 30B question?

As you may know, this Office has put together an index for those Procurement Bulletins that have been published since 2000. The index has been updated to include Volume 14, and can be found at [www.mass.gov/ig/publ/pbindex.htm](http://www.mass.gov/ig/publ/pbindex.htm).

### **NEW WEBSITE FOR ADVERTISING CENTRAL REGISTER NOTICES**

The Secretary of State has recently updated its website resulting in a change to the website address for the posting of notices in the *Central Register*.

The new website address for *Central Register* postings is: <http://www.sec.state.ma.us/spr/sprcentral/infosubmit.htm>.

The website address for posting notices in the *Goods and Services Bulletin* has not changed, and notices can be submitted at <http://www.sec.state.ma.us/sprpublicforms/GSSubmissionform.aspx>.



MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM
REGISTRATION FORM July-December 2008

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

No Prerequisite

- September 16, 17, 18-2008
November 4, 5, 6-2008

3-day seminar

BOSTON
BOSTON

Tuition: \$450 for government/non-profit employees
\$700 for all others

December 2, 3, 4-2008 BOSTON

SUPPLIES & SERVICES CONTRACTING

Prerequisite: Public Contracting Overview or Charter School Procurement

- August 12, 13, 14-2008
October 7, 8, 9-2008

3-day seminar

BOSTON
BOSTON

Tuition: \$450 for government/non-profit employees
\$700 for all others

DESIGN & CONSTRUCTION CONTRACTING

Prerequisite: Public Contracting Overview or Charter School Procurement

- September 30 & October 1, 2-2008
November 18, 19, 20-2008

3-day seminar

BOSTON
BOSTON

Tuition: \$650 for government/non-profit employees
\$900 for all others

ADVANCED TOPICS UPDATE

- October 29 & 30-2008

2-day seminar

BOSTON

Tuition: \$350 for government/non-profit employees
\$600 for all others

CERTIFICATION for School Project Designers & Owner's Project Managers

- December 10, 11 & 17, 18-2008

4-Day Training

BOSTON

Tuition: \$1200-Private Sector

CONSTRUCTION MANAGEMENT AT RISK

Under M.G.L. c. 149A: Legal Requirements & Practical Issues

\*Introductory material geared to procurement officials who are not construction experts

- November 13-2008

1-day seminar

BOSTON

Tuition: \$275 for government/non-profit employees
\$600 for all others

CHARTER SCHOOL PROCUREMENT

No Prerequisite

- October 15 & 16-2008

2-day seminar

BOSTON

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

Drafting A Model IFB

Disk program requiring Microsoft Word 7.0 or higher

\*Registration for this course must be accompanied by a check

Self-paced

Tuition: \$75 ea. for govt./non-profit employees
\$200 for all others

POLICY OF NON-DISCRIMINATION:

The Commonwealth of 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, 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 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

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ORGANIZATION/JURISDICTION:

ADDRESS: CITY: STATE: ZIP CODE:

Do you need special accommodations?

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The *Procurement Bulletin* is published on a quarterly basis by the Massachusetts Office of the Inspector General. There is no charge to subscribe. To receive the *Procurement Bulletin* via e-mail, please send an e-mail containing your first and last name, along with your e-mail address, to Meghan O'Malley at [omalleye@maoig.net](mailto:omalleye@maoig.net). To receive a paper copy via mail, please fax your mailing address to Meghan O'Malley at 617-723-2334.

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

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