

# Massachusetts Office of the Inspector General Procurement Bulletin

Volume 15, Issue 2

June 2009

Dear Public Officials:

I would like to congratulate those public officials that have recently been certified as Massachusetts Certified Public Purchasing Officials (MCPPO). A list of the most recent designees can be found on page 5 of this issue. Also, July marks the start of the new MCPPO semester. Please see page 6 for the July through December 2009 MCPPO schedule.

With the recent passing of the American Recovery and Reinvestment Act (ARRA), certain governmental bodies are anticipating the receipt of stimulus funds. As always, it is your obligation to ensure compliance with all applicable rules including, but not limited to, all federal, state and local rules for the spending of these funds, wage laws (be it federal or state) and accounting procedures that track use of such funds. This can be made more difficult as the specific rules for ARRA funding may vary depending on which federal agency is dispersing the funds. Additional information on the ARRA, including links to federal agency websites which may include additional ARRA guidance, can be found at [www.recovery.gov](http://www.recovery.gov) or [www.mass.gov/recovery](http://www.mass.gov/recovery).

Along with information on M.G.L. c.30B, this issue contains questions and answers on the use of stimulus funds, an article on the prevention of fraud, and information on changes to the Designer Selection Board guidelines and the Standard Contractor Evaluation Form used in the DCAM certification process.

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## Message From the GAO

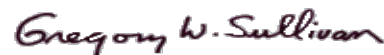
The U.S. Government Accountability Office (GAO), an independent agency of the U.S. Congress, has specific responsibilities under the American Recovery and Reinvestment Act (ARRA) to help promote accountability and transparency. The Congress has tasked GAO with preparing bimonthly reports addressing how selected states and localities are using ARRA funds and if these funds are being used in a manner consistent with the stated purposes of the Act. In response, GAO has identified 16 states, including Massachusetts, to follow over the next few years. GAO's work will provide an ongoing longitudinal analysis of the use of funds under ARRA. A team of GAO analysts has been working in Massachusetts since March, meeting with state government officials, oversight agencies including the Inspector General's Office and the State Auditor's Office, and some local entities, such as school districts and public housing authorities.

## Inside this Issue

ARRA Questions and Answers	Page 2
Chapter 30B Questions and Answers	Page 3
DCAM Certification Process	Page 4
Beware of Fraud in ARRA Spending and Beyond	Page 4
Reporting Fraud, Waste and Abuse	Page 4
Recent MCCPO Certifications	Page 5
MSBA Requirements	Page 5
MCPPO Registration Form	Page 6

Lastly, if you believe that fraud, waste or abuse has occurred in the use of the ARRA or other public funds, please contact our hotline at 1-800-322-1323. As always, calls to the hotline are confidential.

Sincerely,



Gregory W. Sullivan  
Inspector General

The results of the work in Massachusetts are compiled with other state teams' work into a bimonthly report to Congress that includes an appendix on each state. The first report, published on April 23, 2009, and subsequent reports are available at <http://www.gao.gov/recovery/>.

GAO also is interested in hearing any concerns you may have about misspending of the ARRA funds. Along with state contacts where these concerns could be reported, GAO encourages you to report allegations of fraud, waste, abuse, or mismanagement of federal funds to GAO's fraud hotline by sending an e-mail to [fraudnet@gao.gov](mailto:fraudnet@gao.gov) or reading more about this option at <http://www.gao.gov/fraudnet/fraudnet.htm>.

## American Recovery and Reinvestment Act: Questions and Answers

**(Q1) I am a high school technology director and my jurisdiction expects to receive American Recovery and Reinvestment Act (ARRA) funds and dedicate the ARRA funds to the procurement of education technology . We plan to use the ARRA funds to purchase computers and provide professional development to ensure that technology is used effectively in the classroom.**

**(q) Is the use of ARRA funds subject to the competitive bidding requirements of Chapter 30B? If so, how do you sort out conflicting provisions between Chapter 30B and federal agency requirements ?**

(a) Yes. Chapter 30B applies to every contract for the procurement of supplies and services by a governmental body; the source of the funds is irrelevant. However, where you are using ARRA funds and a provision of Chapter 30B would prevent compliance with mandatory provisions of federal law and/or regulations, Chapter 30B, section 1(d) allows you to waive that specific Chapter 30B provision. If you are unsure whether a specific provision of Chapter 30B would prevent compliance with federal law or regulations, please consult with your legal counsel.

Given ARRA's special contracting provisions, it is unlikely that any provision of ARRA would prevent compliance with Chapter 30B. Specifically, ARRA's contracting provisions which appear at Title XV of ARRA, §1554 require that contracts funded under ARRA, to the maximum extent possible, be awarded as fixed-price contracts through the use of competitive procedures. If a contract is not awarded on a fixed price basis or is not competitively awarded, then the jurisdiction is required to post a summary the contract on [www.recovery.gov](http://www.recovery.gov).

**(q) As the aim is to spend ARRA dollars as quickly as possible to maximize the impact on the economy, may I routinely make emergency procurements under Chapter 30B when my jurisdiction is spending ARRA funds?**

(a) No. While it is true that spending funds quickly to stimulate the economy is a key aim of ARRA, you may only use the emergency provisions of Chapter 30B when the time required to comply fully with a Chapter 30B requirement would endanger the health or safety of people or their property due to an unforeseen emergency.

**(q) May I purchase additional quantities of supplies and services using ARRA funds under the scope of an existing contract?**

(a) Possibly. If you have an existing contract in place for the supplies and/or services that you wish to purchase

with ARRA funds, the so-called "25 percent rule" may apply. Under Chapter 30B, a governmental body may increase the quantity of supplies and services specified under a contract, provided that the following four conditions are met: the unit prices remain the same or less; the procurement officer documents in writing that an increase is necessary to fulfill the actual needs of the jurisdiction and it is more economical and practical than awarding another contract; the parties agree to the increase in writing; and the increase in the total contract price does not exceed 25 percent. In addition, you should verify with your legal counsel that the use of this provision satisfies the requirements for the expenditure of ARRA funds.

**(q) May I expand the scope of an existing contract for educational technology by adding additional supplies or services not competitively bid so that I may expend the ARRA funds quickly without a further solicitation process?**

(a) Generally, no. In addition to the statutory Chapter 30B limitations in the 25% rule, there are other legal rules that restrict amendments to the terms and conditions of M.G.L. c. 30B contracts for supplies or services. These restrictions are based on Massachusetts court decisions interpreting public bidding laws or on municipal finance safeguards, and one of them has to do with amending the original scope of the contract.

The contract amendment must be incidental to the original scope of the contract. Massachusetts courts have reasoned that one of the purposes of the public bidding laws – to promote fair competition on a level playing field – would be undermined if the parties to the contract could negotiate major changes in the scope of the work after the contract was signed. The scope and magnitude of changes that can be negotiated is limited by this principle. In addition, adding scope without following the required competitive process may invalidate your contract if the dollar value of the additional scope triggers a Chapter 30B procurement process. ARRA does not have specific language that allows existing contracts to be extended, opened, or modified.

**(Q2) My jurisdiction plans to purchase milk with ARRA funds under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et. seq.) through a program that is governed by the United States Department of Agriculture (USDA). Will my jurisdiction be responsible for meeting federal procurement rules if we receive ARRA funds? If so, what are they?**

(A2) Yes. Each federal agency has its own procurement regulations. You must identify those that apply to the USDA and comply with those regulations. Procurement information is available on each federal agency website, links to which can be found at [www.recovery.gov](http://www.recovery.gov).

## Chapter 30B Questions and Answers

**Q.1. I am the Department of Public Works Director for a town. I plan to procure the services of a firm to mow the lawn at a town park. I may also have enough money in my budget for a fall cleanup and a spring cleanup. One vendor could easily perform all of the services. What is the best way to structure the invitation for bids (IFB) so that I may obtain as many services as are within budget?**

A.1. Alternate bidding is often used to maximize buying power while staying within budget. In the opinion of this Office, an awarding authority may use ordered alternates if the awarding authority deems it appropriate. Alternates are options that the awarding authority may include in a bid package, for which the bidders must submit separate prices from a base bid. The awarding authority reserves the right to select or reject the optional work, based on the prices received.

The rules for ordered alternates are included in Chapter 149, and it is this Office's recommendation that you follow them for Chapter 30B bids as well. First, you may use alternates only if they are ranked numerically in order of priority. Second, when evaluating the bids, you may consider a specific alternate only after all of the higher-ranking alternates have been accepted.

**Q.2. I am the Chief Procurement Officer of a city and recently awarded a one-year contract for several categories of ready-mix concrete. However, the city is not getting the best value because the vendor with the lowest total price gave high unit prices for items like sidewalk concrete that the city buys frequently and low unit prices for items such as flowable fill, which the city only buys on occasion. How may I avoid this the next time I go out to bid?**

A.2. In the future, you may wish to structure a rule for award on an item-by-item or category basis. This method of bidding permits multiple contracts to be awarded from a single invitation for bids (IFB). When you award multiple contracts, you must make sure that your stated method for determining the lowest bid will identify only one low bid per contract. Your IFB could list types of ready-mix concrete such as pavement concrete, sidewalk concrete, structural concrete, and flowable fill, with a rule for award such as the following: Contracts will be awarded on an item-by-item basis to the responsive and responsible bidder(s) offering the lowest price for each type of ready mix concrete. For more on rules for award, see the Inspector General's *Practical Guide to Drafting Effective Invitations for Bids and Requests for Proposals for Supplies and Services*, <http://www.mass.gov/ig/publ/pracguid.htm>.

**Q.3. I am a public works official and need to buy a pick-up truck. I have located a used truck that is currently for sale and meets the DPW's needs. Am I required to follow Chapter 30B when procuring used equipment?**

A.3. Yes. Chapter 30B applies when procuring any supplies, new or used. When drafting your specifications you should assess your needs for a used truck and draft a purchase description that meets your needs, including maximum age and mileage and any other performance requirements that must be met. You will follow the appropriate process based on the cost of the vehicle.

**Don't forget, a Chapter 30B attorney is available Monday through Friday from 9:00 am to 4:30 pm to answer any Chapter 30B questions you might have.**

**617-722-8838**

## Update to the Designer Selection Board Guidelines

The Designer Selection Board has issued a Notice of Correction to Wording of the Designer Selection Board Guidelines for City and Town Building Projects. The guidelines now require that the designer selection procedures be followed when the design fee is estimated to cost \$10,000 or more **and** the estimated construction cost of the contract is \$100,000 or more. This means that the designer selection procedures must be followed when both requirements are met. The guidelines previously provided that the designer selection procedures be followed when the design fee is estimated to cost \$10,000 or more **or** the estimated cost of the contract is \$100,000 or more.

If you have any questions on the Designer Selection Guidelines, please contact the Designer Selection Board at 617-727-6008.

The *Notice of Correction* may be viewed at [http://www.mass.gov/Eoaf/docs/dcam/dlforms/dsb/dsb\\_ct\\_guide\\_feesched\\_2009.pdf](http://www.mass.gov/Eoaf/docs/dcam/dlforms/dsb/dsb_ct_guide_feesched_2009.pdf).

## Beware of Fraud in ARRA Spending and Beyond

People believe that fraud can never occur in their organizations because of the controls that are in place, the routine auditing that occurs, and the honesty of their coworkers. These people are wrong. A red flag indicator of fraud is management's belief that fraud cannot occur. Studies show that a majority of organizations will experience some type of fraud and that most fraud is committed by a respected "insider" in a position of trust.

The prevention and detection of fraud is always an important issue for government entities, and is made more important now when certain agencies and governmental bodies will be charged with spending monies from the American Recovery and Reinvestment Act as quickly and as efficiently as possible. With this in mind, this Office has joined together with other state and federal agencies to provide a coordinated and efficient approach to oversight of federal recovery spending in Massachusetts and to prevent fraud. These agencies, acting under the name, Stimulus Oversight and Prevention of Fraud Task Force (STOP Fraud Task Force) will have regular meetings and communications to facilitate information sharing, prevent duplicative efforts in reviewing spending and investigating alleged fraud on ARRA projects, and ensure efficiency in ARRA oversight activities.

Steps that you can take now to prevent fraud in your governmental body include ensuring that a code of conduct, ethics and anti-fraud policies are in place and adequate internal controls are established. Internal controls should reflect the following general principles: segregation of duties, layers of authorization and approval, review and reconciliation of documents and payments, written controls/policies/procedures, physical controls, supervision, and training. These controls will help to reduce opportunities for fraud even though alone they cannot prevent fraud entirely. Ask yourself how you monitor and enforce controls, and raise your awareness about types of fraud schemes that could be used against your governmental body, such as phantom vendors, product substitution, mischarging, and false statements. Do not hesitate to seek advice and support from the Office of the Inspector General, the Office of the State Auditor, the Office of the Attorney General, or other oversight or law enforcement agencies. You should also consider expanding the scope of the routine audits performed by your internal and external auditors. At the very least, be vigilant by examining, questioning, and verifying.

## DCAM Certification Process – Changes to the Standard Contractor Evaluation Form

Over the last year, the Office of the Inspector General in conjunction with the Division of Capital Asset Management (DCAM) undertook a review of the contractor evaluation process under M.G.L. c.149, §44D and identified certain areas in which the process could be improved to make it more effective and to minimize abuse. These changes will help to ensure that awarding authorities are contracting with only qualified contractors for building construction projects.

Based on the IG recommendations, DCAM has or will take the following steps:

- The Standard Contractor Evaluation Form has been revised to require the evaluator to certify that both the Project Rating and the contents of the evaluation have not been the result of a "negotiation, close-out, or settlement of the project" and that "no compensation and or consideration was given to the Awarding Authority in connection with its preparation or its opinions on the form." Please be advised that the State Ethics Commission may deem any such negotiation as unlawful under M.G.L. c.268A.
- DCAM will begin drafting proposed regulation language to require contractors and subcontractors to notify DCAM within twenty days of any convictions which relate to the criminal activity listed in the debarment statute, specifically those crimes enumerated in M.G.L. c.29, §29F(c)(1). This language shall only apply to the officers, principals, and supervisory personnel of the firm.
- DCAM will place an advisory on its website stating that Awarding Authorities must rely on evaluations provided by DCAM as the official evaluations on file for that particular contractor.

### Reporting Fraud, Waste and Abuse

Individuals are welcome to contact the Office with information regarding fraud, waste, and abuse. It is the Office's practice to maintain the names of complainants in confidence. You may provide information anonymously.

**The Office's 24-hour hotline number is 1-800-322-1323.**





## Congratulations!

The following is a list of the MCPPO Program's new designees on applications **reviewed (not received)** between March 15, 2009 and June 1, 2009:

### MCPPO

Charles D. Boddy, Jr., City of Lawrence  
Donna Champagne O'Keefe, Town of Swampscott  
Michael A. Connelly, Wellesley School Dept.  
Timothy D. Goddard, Town of Framingham  
Jayne Gourdeau, Town of Framingham  
Michael R. Hale, Town of Shrewsbury  
Craig S. Hughes, Town of Dover  
Colleen A. King, Pembroke Public Schools  
Jane C. Kinsella, Town of Reading  
Cheryl L. Levesque, Northborough-Southborough Schools  
Linda Marzelli, Town of Bourne  
Gene Mastro, Blue Hills Regional VT School  
Michael W. McCue, Town of Avon  
Debra G. Mizia, Salem State College  
John J. Moynihan, Town of Wayland  
Daniel M. Richie, UMASS Medical School  
Cleudson L. Silva, Boston Public Health Comm.  
Teresa M. Tracy, Grafton Public Schools  
Mark Webber, Town of West Stockbridge  
James W. Wright, Town of Athol

### MCPPO for Supplies & Services

Gary L. Costin, Plymouth Public Schools  
Maria C. Lopez-Santiago, City of Springfield  
Kathleen A. McWilliams, Pentucket RSD  
Susan L. Wright, Northampton Public Schools

### MCPPO for Design & Construction

Anthony Guigli, Town of Brookline  
John P. Hathaway, Town of Norfolk  
Cortney A. Keegan, Southbridge Public Schools  
Paul R. Petit, Southwick-Tolland RSD  
John M. Roy, Berlin-Boylston RSD

### Associate MCPPO

Beth Cimini, City of Pittsfield  
Anthony LeMay, Grafton Public Schools  
Jean A. Sherburne, Haverhill Public Schools  
Sharon M. Smith, Town of Chelmsford  
Donna M. Walsh, MA State Lottery

## Massachusetts School Building Authority Regulations Require MCPPO Training

If you are building or renovating a school, don't forget that, as a part of its new regulations, the Massachusetts School Building Authority (MSBA) requires that the eligible applicant who will be in charge of procurement for a project be designated as an MCPPO for Design and Construction Contracting. 963 C.M.R. 2.03(2)(o). In order to be designated as an MCPPO for Design and Construction Contracting, the applicant must have taken the *Public Contracting Overview*, and *Design and Construction Contracting* seminars, as well as meet certain education and experience requirements. If you are unable to meet the experience requirements, you can apply for an Associate level which MSBA will honor. For information on how to be designated, please see <http://www.mass.gov/ig/mcppo/mcpdesig.htm>. **If you were once designated, but three years have passed and you have not recertified, please see the recertification requirements at <http://www.mass.gov/ig/mcppo/contedu.htm>.**

In addition, the MSBA regulations require that the project director for the owner's project manager (963 C.M.R. 2.11 (12)) and the individual directly assigned to the project by the design firm (963 C.M.R. 2.12(6)) be certified in the Office of the Inspector General's MCPPO Program. Three four-day *Certification Course for School Project Designers and Owner's Project Managers* are scheduled for July 15, 16, 22, and 23; October 14, 15, 21 and 22; and December 9, 10, 16, and 17. Please submit a registration form as soon as possible as the classes fill up quickly.

For more information on the four-day certification course please visit <http://www.mass.gov/ig/mcppo/igmcpo.htm#msbacert>. A registration form is included on page 6 of this issue of the Procurement Bulletin.



**MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM  
REGISTRATION FORM July–December 2009**

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 or LATE CANCELLATIONS 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](http://www.mass.gov/ig).

**PUBLIC CONTRACTING OVERVIEW**

*No Prerequisite*

- September 15,16, 17–2009
- December 1, 2, 3–2009

3-day seminar

**BOSTON  
BOSTON**

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

**SUPPLIES & SERVICES CONTRACTING**

*Prerequisite: Public Contracting Overview or Charter School Procurement*

- August 11, 12, 13–2009
- October 20, 21, 22–2009

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 29, 30 & October 1–2009
- November 17, 18, 19–2009

3-day seminar

**BOSTON  
BOSTON**

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

**ADVANCED TOPICS UPDATE**

- November 3 & 4–2009

2-day seminar

**BOSTON**

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

**CERTIFICATION for School Project Designers & Owner's Project Managers**

- July 15, 16, 22, 23–2009
- October 7, 8, 14, 15–2009

4-Day Training

**BOSTON  
BOSTON**  December 9, 10, 16, 17–2009 **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 24–2009

1-day seminar

**BOSTON**

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

**CHARTER SCHOOL PROCUREMENT**

*No Prerequisite*

- October 27 & 28–2009

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 gov./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](http://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).

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

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