

Massachusetts Office of the Inspector General

Procurement Bulletin

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 August 1, 2002 and February 1, 2003.

MCPPO

Lawrence A. Connors, Quincy Housing Authority

Denise M. Dembkoski, Town of Swampscott

Denis C. Fraine, Town of Bellingham

Patricia E. George, Town of Swampscott

Russell A. Kaubris, Franklin County Technical School

Patricia A. Kennedy, Town of Palmer

Domenic R. Lanzillotti, City of Worcester

Deborah A. McElhinney, Town of Walpole

MCSP0

Filomena S. Cunha, Dept. of Transitional Assistance

MCSP0 for Design and Construction

Cory B. Yacovone, Dept. of Environmental Protection

MCPPO Course Materials Available on CD-ROM for Course Participants

The Office of the Inspector General is now offering the text of MCPPO core courses in Microsoft Word format on CD-ROM. The CD-ROMs may be purchased by anyone who has previously enrolled in the course. The following CD-ROMs are available at the price of \$20 each:

- Selected Materials from *Design and Construction Contracting* (includes the manual *Designing and Constructing Public Facilities* in Microsoft Word format)
- Selected Materials from *Public Contracting Overview* (includes the manual *Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property* in Microsoft Word format)
- Selected Materials from *Supplies and Services Contracting* (also includes the manual *Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property* in Microsoft Word format)

To purchase a CD-ROM, send a letter indicating which CD-ROMs you want to buy, along with a check for \$20 made payable to the Office of the Inspector General for each CD-ROM ordered, to:

Joyce McEntee Emmett
Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108

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OIG Recent Reports

The Office of the Inspector General recently released the following reports, all of which are available for download from www.mass.gov/ig.

Fees for Bid and Proposal Packages, October 2002:

The Office of the Inspector General recently reviewed a matter concerning a \$7,500 fee charged by the City of Lawrence to prospective proposers for copies of a request for proposals (RFP). As a result of the Office's efforts, the Supervisor of Public Records in the Office of the Secretary of the Commonwealth issued an advisory opinion clarifying the applicability of the public records law to fees for bid and proposal packages issued by public jurisdictions. According to the advisory opinion, the fee charged by the City could not exceed the actual cost of reproducing the RFP.

Long-Term Leasing of DEM Skating Rinks, November 2002:

In January 2002, at the request of Senator Brian Joyce and the Department of Environmental Management (DEM), the Office of the Inspector General initiated a limited review of a

competitive process to award 25-year leases for 18 state-owned ice skating rinks under DEM's control. The Division of Capital Asset Management (DCAM), in conjunction with DEM, had issued a request for proposals (RFP) in December 2001 for long-term operation and management services and capital improvements to the rinks under 25-year leases. The RFP was issued pursuant to special legislation authorizing DCAM, on behalf of and in consultation with DEM, to lease and enter into other agreements for one or more rinks, for terms not to exceed 25 years, to provide for the continued use, operation, maintenance, repair and improvement of the 18 rinks named in the legislation.

The Office's review identified serious flaws and omissions in the RFP and the draft lease incorporated into the RFP. For example, the Office's review found that the RFP submission requirements appeared inadequate to provide DCAM and DEM with sufficient information to enable an accurate evaluation of each proposer's capacity to supervise the construction work to be undertaken un-

der the lease and to finance its proposal. The Office's review also found that the draft lease contained inadequate protections to ensure that rink operators would complete their proposed capital repair and replacement programs and return the rinks in an improved condition at the end of the lease term. Accordingly, the Office provided DEM and DCAM with recommendations for corrective actions and amendments to reduce the risks and protect the public interest in the competitive selection and leasing process. DEM and DCAM subsequently rejected the proposals received in response to the RFP, amended the RFP and lease in response to the Office's comments, and readvertised for proposals.

As a result of the Office's review and cooperative working relationship with DCAM and DEM, the final RFP and long-term leases for 17 of the 18 skating rinks incorporated important public protections that were lacking in earlier versions of these documents. (A one-year license agreement for the eighteenth rink was awarded to the Massachusetts College of

Liberal Arts.) These protections will benefit taxpayers and rink customers by helping to ensure that the private rink operators leasing the rinks for the next 25 years will complete needed improvements to the rinks, operate the rinks in a manner that supports the Commonwealth's objectives, and return the rinks in an improved condition when the leases expire.

The Office's report summarizing the review, *Long-Term Leasing of DEM Skating Rinks*, was issued in November 2002. The Office's report may be viewed at or downloaded from the Office's website at www.ma.gov/ig.

Evaluating and Avoiding the Irresponsible General Contractor

The following article is reprinted with the permission of the author, Kurt B. Fliegau, Esq.:

The public bidding laws require public construction contracts to be awarded to the lowest responsible and eligible bidder. While all general contractors bidding on significant public building projects must be certified by the Division of Capital Asset Management and Maintenance (DCAM), not all certified general contractors may be “responsible” in the eyes of the municipality.

The municipality ordinarily should utilize its architect to assist in the determination of whether the lowest eligible bidder is also sufficiently responsible to be awarded the contract. All of the contractor’s references (set forth in the update statement submitted with every bid) should be contacted to evaluate the contractor’s past performances, particularly recent ones. The municipality also is permitted to review the content of DCAM’s contractor certification files. The DCAM certification file of the lowest bidder should be thoroughly reviewed before the contract is awarded.

Prior project evaluators should be contacted. If the municipality determines that the lowest eligible bidder is not responsible, its bid may be rejected, and DCAM must be notified. While rejection may result in a bid protest by the contractor, a thorough evaluation process will be the best defense to any protest, and may result in thousands of dollars in project savings.

At the conclusion of a public construction project, the municipality is required to complete a contractor evaluation form, which is sent to DCAM. If the completed evaluation is not submitted to DCAM within seventy days of the completion of the project, the municipality will be ineligible for the receipt of any public funds from the Commonwealth for any public building or public works project.

The evaluation must be signed by a municipal official or the professional responsible for oversight of the construction, certifying that the information contained on the evaluation form is a true and accurate analysis of the contractor’s performance. The completed form is then sent to

DCAM, which will heavily rely on the evaluation to determine whether the contractor should remain certified to bid on public building projects. The evaluation also may be reviewed by other public entities about to begin new public construction projects. The benefit of thorough and accurate evaluations is obvious—marginal or poor contractors will lose their DCAM certification, or their bids will be rejected by public owners.

A copy of the evaluation also must be sent to the contractor, who has thirty days to respond. Public officials rightly have been concerned that strongly critical evaluations may invite lawsuits from disgruntled general contractors. To allay this fear somewhat, in 2000 the Commonwealth granted evaluators a qualified immunity from suit. Any such person sued is entitled to a defense by the municipality, and may not be held liable unless he or she acted in a willful, wanton or reckless manner. Unfortunately, qualified immunity is not an absolute immunity from suit, and an evaluator still may find him or herself mired in litigation with an

aggressive contractor. To minimize this possibility, the evaluator should be as factually specific and accurate as possible.

Kurt B. Fliegau is a lawyer at **Conn, Kavanaugh, Rosental, Peisch & Ford, LLP** whose practice includes representing municipalities in construction law matters.

(**Note:** the opinions in this article do not necessarily reflect the opinions of the Office of the Inspector General (OIG). For further information about contractor certification, see OIG publications *Designing and Constructing Public Facilities*, October 2000; *The Commonwealth’s Contractor Certification System: A Status Report*, November 2000; and *Qualifying Contractors for Public Building Projects: A Case Study and System Review*, August 1998 on the OIG website, www.mass.gov/ig.)

Online Forms for *Goods and Services Bulletin* and Prevailing Wage

Advertisements for the *Goods and Services Bulletin* may be submitted online, or forms may be downloaded in .pdf format from the Secretary of the Commonwealth's Web site www.mass.gov/sec (click on "State Publications and Regulations").

Forms to obtain prevailing wage rates may be downloaded from www.mass.gov/dos/pages/forms.htm#prevailingwage. Awarding authorities may receive wage sheets via e-mail, if requested on the submission form, but all requests must still be sent to the Division of Occupational Safety by mail or in person.

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

New Legislation Proposed by the Inspector General

- The current legislation filed by the Office of the Inspector General has been posted on our Web site at www.state.ma.us/ig/iglegis.htm. In addition, Inspector General Gregory Sullivan, at the request of Governor Mitt Romney, has proposed to file additional legislation to raise the public bidding thresholds. The legislation will propose the following changes to the public bidding laws:
 - The sound business practices threshold under M.G.L. c. 30B would be raised from \$5,000 to \$10,000. The price quotation process would apply to contracts costing \$10,000 or more, but less than \$50,000. Sealed bids or proposals would be required for contracts costing \$50,000 or more. The M.G.L. c. 30B price quotation process would also apply to public works and public building construction contracts estimated to cost more than \$10,000, but less than \$50,000.
 - The threshold for M.G.L. c. 30, §39M public works construction projects would be raised from projects estimated to cost more than \$10,000 to projects estimated to cost more than \$50,000. Public building construction projects estimated to cost more than \$50,000, but not more than \$200,000 would also be procured under M.G.L. c. 30, §39M.
 - The threshold for DCAM certification and filed sub-bids for public building construction would be raised from projects estimated to cost more than \$25,000 to projects estimated to cost more than \$200,000. The threshold for the sub-bid process to apply to specific trades would be raised from \$10,000 to \$25,000.
 - The threshold for the request for qualifications process for designers of public building construction projects under M.G.L. c. 7, §§38A¹/₂-380 (the designer selection law) would be raised from building construction projects estimated to cost more than \$100,000 to building construction projects estimated to cost more than \$200,000.
- The text of this new proposed legislation will be posted on this Office's Web site when the bill number becomes available.



STAR 2003— an event not to be missed!

Mark your calendars now for **STAR 2003**. If you were at STAR 2002 then you will want to be at **STAR 2003**. If you weren't at a STAR event, here's your chance to attend the Commonwealth's largest statewide contractor exposition and visit contractors who are ready to discuss **YOUR** needs!

STAR 2003 is designed to improve and facilitate communication, understanding, team-building and networking. Increase your knowledge, boost your buying power and work within limited budgets.

The Commonwealth of Massachusetts' Operational Services Division (OSD) will be presenting this exceptional exposition on April 8 & 9, 2003 at Worcester's Centrum Centre from 8:30am to 2:30pm. STAR is funded 100% by its exhibitors and is **FREE** to all employees from state agencies, cities, towns, schools, other political subdivisions and human and social service agencies.

For two days, STAR will bring together many of the Commonwealth's Statewide Contractors who provide commodities and services for an opportunity unequalled elsewhere. Attend the **FREE** workshops covering procurement regulations, stress management and other vendor sponsored informational sessions. Some early exhibitors representing office equipment, recreation supplies, clothing, facilities, food, medical equipment, information technology and telecommunications have already selected prime exhibitor space and indicated that **STAR 2003** is *the* place to be.

As you may know, OSD establishes contracts for commodities and services on behalf of all state departments, which cities and towns and human service providers can also use. STAR offers attendees opportunities to learn more about these products and services while meeting the contractors in a hands-on environment.

STAR 2002 was a sell out with 300 exhibitors representing a majority of the Statewide Contracts along with 2500 attendees. We expect another great turnout at STAR 2003. Representation from cities and towns, schools and other political subdivisions increased significantly at STAR 2002. With STAR 2003 being centrally located in Worcester, we again expect excellent support to make this one of the best events in 2003.

STAR is **FREE** and offers breakfast, lunch, Education Workshops and special training, Sergeant Dan Clark (the Singing State Trooper), as well as other musical entertainment. For more information and to register online visit us at www.mass.gov/star. (MCPPO and MCSPPO participants can earn continuing education credit for attending educational workshops.)

What STAR 2002 Attendees Said About The Show...

- "This was my first time attending and I thought it was very useful."
- "STAR is a good thing and should be kept up for the State workers."
- "Can't underestimate the value of [STAR]."
- "We look forward to Worcester."



Massachusetts Certified Public Purchasing Official Program
Massachusetts Office of the Inspector General
One Ashbuton Place, Room 1311
Boston, MA 02108
(617) 727-9140

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.

March 31-April 2, 2003 8:30-4:30 Taunton

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.

May 21-23, 2003 8:30-4:30 Taunton

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.

May 8, 2003 8:30-4:30 Taunton

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.

April 30-May 2, 2003 8:30-4:30 Taunton



MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM REGISTRATION

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

REGISTRATION INFORMATION:

OFF-SITE REGISTRATION AND PAYMENT MUST BE RECEIVED 30 DAYS PRIOR TO SEMINAR DATE IN ORDER FOR THIS OFFICE TO CONFIRM SEMINAR. **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. Confirmation letters, with directions, will be mailed 10 days prior to seminar.

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, Room 1311
Boston, MA 02108
ATTN: MCPPO

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. 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 the Program Director, Joyce McEntee Emmett, at (617) 727-9140.

| | | | |
|---|---------------|----------|--|
| PUBLIC CONTRACTING OVERVIEW | 3-day seminar | Tuition: | \$300 for government/ non-profit employees \$500 for all others |
| <input type="checkbox"/> MARCH 31-APRIL 2, 2003 | TAUNTON | | |
| STATE CONTRACTING OUTLINE | 1-day seminar | Tuition: | \$100 for government/ non-profit employees \$175 for all others |
| <input type="checkbox"/> MAY 8, 2003 | TAUNTON | | |
| SUPPLIES & SERVICES CONTRACTING | 3-day seminar | Tuition: | \$300 for government/ non-profit employees \$500 for all others |
| Prerequisite: Public Contracting Overview or Outline | | | |
| <input type="checkbox"/> APRIL 30-MAY 2, 2003 | TAUNTON | | |
| DESIGN & CONSTRUCTION CONTRACTING | 3-day seminar | Tuition: | \$400 for government/ non-profit employees \$600 for all others |
| Prerequisite: Public or State Contracting Overview | | | |
| <input type="checkbox"/> MAY 21-23, 2003 | TAUNTON | | |

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 37219-2417, (615) 880-4200.



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

THIS FORM MAY BE DUPLICATED

PAYMENT:

CHECK/M.O. PURCHASE ORDER # I E/IV

NAME: _____ PHONE: _____

SIGNATURE OF APPLICANT: _____ E-MAIL: _____

ORGANIZATION/JURISDICTION: _____

TITLE: _____ FAX: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

HOW LONG HAVE YOU BEEN EMPLOYED AS A PURCHASING OFFICIAL? _____

Do you need special accommodations? _____

Procurement Bulletin **Subscription Information**

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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.

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