

# Massachusetts Office of the Inspector General

## Procurement Bulletin

### Letter from the Inspector General

Dear Public Officials,

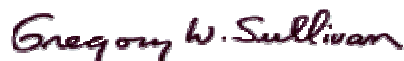
In 1996, this Office began educating public officials in our Massachusetts Certified Public Purchasing Official or MCPPO program. The program began with just one seminar, *General Certification*. Over the years, the program has evolved exponentially, offering classes more often and on a variety of topics, including the seminars *Charter School Procurement* and *Construction Management at Risk*. Although the MCPPO program began as a certification program for public purchasing officials, others, including attorneys, school superintendents, school business managers and vendors have found the class to be invaluable.

This year, in order to meet the new Massachusetts School Building Authority (MSBA) regulations, this Office created a four-day seminar available **only** to private sector designers and owner's project managers. The seminar, entitled, *Certification Course for School Project Designers and Owner's Project Managers*, addresses many of the issues that might arise in connection with a school construction project funded with assistance from the MSBA, and satisfies the MSBA requirement that the project director for the owner's project manager and the individual assigned to the project by the design firm be certified in this Office's MCPPO Program. The next seminar will be offered on May 29 – June 1, 2007. For more information on the new MSBA requirements please see page 5 of this issue.

For information on any of the seven seminars offered in the MCPPO program, please visit our website at <http://www.mass.gov/ig/mcpo/igmpo.htm>.

As always, I encourage you to visit our website periodically to obtain the most up-to-date information on the public bidding laws, class schedules for 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, between the hours of 9:00 am and 4:30 pm, and the attorney of the day will assist you.

Sincerely,



Gregory W. Sullivan  
Inspector General

### In this Issue:

|  |               |
|--|---------------|
| <b>Who Should Attend the MCPPO Program</b>           | <b>Page 1</b> |
| <b>OIG Articles:</b>                                 |               |
| <b>The Importance of an Owner's Project Manager</b>  | <b>Page 2</b> |
| <b>The Plus or Minus Bid</b>                         | <b>Page 3</b> |
| <b>Chapter 30B Questions and Answers</b>             | <b>Page 3</b> |
| <b>School Bus Bid Season</b>                         | <b>Page 4</b> |
| <b>New MSBA Regulations Require MCPPO Training</b>   | <b>Page 5</b> |
| <b>MCPPO Seminar Schedule</b>                        | <b>Page 6</b> |
| <b>Procurement Bulletin Subscription Information</b> | <b>Page 7</b> |

### Who Should Attend the MCPPO Program?

The MCPPO program is open to everyone. There are no prerequisites for admission to the program, but successful completion of *Public Contracting Overview* is a prerequisite for most advanced courses.

Anyone responsible for or interested in procurement by local governmental bodies can benefit from this program. The MCPPO program provides a solid foundation in public contracting for supplies and services and for design and construction of public works and public buildings.

The foundation is invaluable for:

- Public managers and administrators
- Procurement officers and department heads who participate in procurements
- Public works and facilities managers
- Elected officials who authorize or approve contracts
- Lawyers, designers and consultants involved in public contracting
- Auditors and accountants who work with public entities
- Consultants who assist or advise local governmental bodies on purchasing

For more information on the MCPPO program, please visit our website at <http://www.mass.gov/ig/mcpo/igmpo.htm>.

## OIG Articles

### The Importance of an Owner's Project Manager

Recently this Office received an anonymous complaint relating to the Norfolk Annual Town Meeting's approval of a \$75,000 appropriation to repair a 1999 addition to the H. Olive Day School. The complainant stated that the town had not sought compensation from the architect or builder, even though the Norfolk Advisory Board said that the appropriation was needed as "a direct result of poor design and poor construction of the addition."

This Office reviewed the specifications and found that, although the architect had detailed the plans in an appropriate manner, the addition was not built in accordance to the plans. After the addition was built, the pipes froze. There is no record on file of how the frozen pipes were repaired and made serviceable. In addition to the pipes freezing, in 2002 it was found that ice dams had formed on the roof exterior and that there was "damage to wood framing, wet interior walls which lead to mold conditions, and if not addressed... could lead to bug damage," according to a consultant's report. That report contained proposals for correction of the roof problems which would cost between \$43,540 and \$62,000. It is our understanding that this report was the basis for the recommendation from the Norfolk Advisory Board to appropriate \$75,000 for roof repairs.

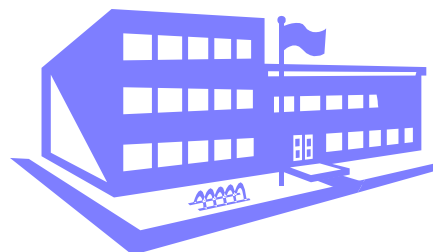
It is this Office's opinion that the source of the roof problems is an unexplained deviation in 1999 from the architect's plans. Neither the records of the town or the architect, nor interviews conducted by this Office fully explain the decision or rationale for the deviation. This Office believes, however, that the deviation and the current resulting problems were consequences of the installation of the incorrect type of sprinkler pipe mid-way through the project. This Of-

fice believes further that the present situation may have been avoided had the town appointed a qualified project manager to serve as the focal point of responsibility and accountability for the town, who could have assessed the broad consequences and full ramifications of piecemeal decisions.

To prevent this situation from occurring again, this Office issued a letter to the Town of Norfolk and provided the following recommendations for future construction and renovation projects, which may benefit all jurisdictions:

1. Assign or contract for a qualified owner's project manager to oversee the project from the feasibility study to project completion.
2. Maintain complete, accurate project records, particularly with respect to any deviation from approved plans.
3. All changes in the project, together with an analysis of the impact, should be documented in writing and countersigned by the designer, the general contractor, and any affected subcontractors.
4. Contracts with vendors should be reviewed to assure accountability, and should be executed under seal. Contracts executed under seal have a 20 year statute of limitations.

The complete letter may be viewed at <http://www.mass.gov/ig/publ/norfolkkr.pdf>.



## OIG Articles, Cont.

### The Plus or Minus Bid Bidders Should Submit Fixed Bid Prices

The following question has regularly been posed to this Office: Must a bid that fails to provide a fixed bid price, but instead provides an amount to be added or subtracted from the best bid received from another vendor be rejected? This Office is of the opinion that a bid that fails to state a fixed bid price should be rejected in that such a bid violates the principles of fair and open competition for public contracts.

The Supreme Judicial Court has articulated two fundamental and complementary objectives of the competitive bidding statutes: to obtain the best price that competition among responsible bidders can secure, and to establish fair and open procedures for public competition that places all bidders on an equal footing in the competition to gain the contract. Interstate Engineering Corp. v. Fitchburg, 367 Mass. 751, 757-758 (1975). The equal footing principle requires that bidders “have the opportunity to bid in the same way, on the same information, and to bear the same risk of rejection.” Dept. of Labor & Industries v. Boston Water and Sewer Commission, 18 Mass. App. Ct. 621, 626 (1984) citing E. A. Berman Co. v. Marlborough, 11 Mass. App. Ct. 1009, 1010 (1981).

Given these objectives, this Office has consistently determined that bidders should submit fixed bid prices that can be meaningfully compared. If a single bidder submits an amount to be subtracted from the lowest bidder’s price (or in the alternative, an amount to be added to the highest bidder’s price for a revenue generating contract), that bidder does not bear the same risk of rejection; in fact, that bidder is virtually assured of winning the bid. If there were a situation where there is only one bidder, and that bidder submits an amount to be subtracted from the lowest bid, or if all bidders bid in such a manner, the jurisdiction will be left with no ascertainable bid prices at all.

Finally, awarding authorities are accorded considerable discretion in determining the responsibility of bidders. An awarding authority may well determine that a bidder that submits an amount to be added to or subtracted from an unknown sum has not provided sufficient assurance that it has seriously considered the financial implications of its offer.

It is this Office’s opinion that a bidding system without firm fixed prices is unworkable, leaves awarding authorities vulnerable to bid protests, and does not preserve the dual objectives of the public bidding laws. For these reasons, it is this Office’s opinion that a bidder submits a bid which is an amount to be added or subtracted from the best bid price received

### Chapter 30B Questions and Answers

**Q.1. My jurisdiction is preparing an invitation for bids for fire vehicle repair. May I require potential bidders to attend a pre-bid conference to inspect the vehicle?**

A.1. Yes. Chapter 30B does not prohibit jurisdictions from conducting mandatory pre-bid conferences, provided that you give adequate notice. Certain procurements may warrant required attendance such as fire vehicle repairs or complex operation and maintenance contracts. However, do so with the full understanding that you may be limiting competition on the bid. Consider making attendance at the pre-bid conference optional which may achieve your purpose as well as promote competition. This office recommends that if you make attendance at the pre-bid conference optional, you ensure that the information shared at the pre-bid conference is provided to all vendors who picked up the specifications regardless of whether they attended the conference.

**Q.2. I am the chief procurement officer (CPO) of a regional school district and I have recently advertised a request for proposals for food services**

- continued on following page -

## Chapter 30B Questions and Answers, continued.

- continued from previous page -

**management. Is the register of proposals, which includes the name of each proposer, a public record available for inspection?**

A.2. Yes. Under section 6(d) of Chapter 30B, the register of proposals must be open for public inspection. The contents of proposals, however, must be kept confidential until the completion of the evaluations, or until the time for acceptance specified in the RFP, whichever occurs earlier.

**Q.3. I am the purchasing agent for a town and have conducted an invitation for bid process for school bus transportation services. I have required that each bidder submit financial information in order to determine if the bidder is responsible. Is the financial information that the bidders submit subject to the public records law?**

A.3. Yes. The public records law, M.G.L. c.4, §7, explicitly states that financial information submitted as a condition of receiving a governmental contract is not exempt from the public records law. The information will become a public record upon the date and time of the bid opening. Often it is easier for both bidders and awarding authorities to require items such as references or evidence of the ability to obtain a performance bond be submitted, instead of complicated or sensitive financial documents.

**Q.4. I am the CPO of a city and recently solicited bids for an office supply contract. One hour before the bid opening, I received a call from a delivery service stating that it had a bid that was to be delivered for the bid opening, but that the delivery service would be unable to deliver the bid on time. Must the bidder be rejected as non-responsive?**

A.4. Yes. As a general rule, any bid that is delivered after the due date and time is non-responsive to the specifications. It does not matter if the bid was late due to bidder error or an error on the part of a third party charged with delivery of the bid (e.g. mail, courier service).



### School Bus Bid Season

As many of you know, we are we are now in the unofficial school bus transportation bid season. Just a reminder that, in June, 2005, this Office published an issue of the Procurement Bulletin containing questions and answers relating to the solicitation of bids for school bus transportation, *Ten Tips to Avoid School Bus Bid Protests*, as well as a list of other resources that we hope will assist local officials when soliciting bids for school bus transportation.



These resources can be found in Volume 11, issue 2, of the *Procurement Bulletin* can be accessed at <http://www.mass.gov/ig/publ/nljun05.pdf>.

This Office has also developed sample price forms and fuel escalation clauses related to school bus transportation. These sample forms can be accessed at <http://www.mass.gov/ig/mcppo/schbidfs.pdf>.

As always, feel free to call the Chapter 30B line at 617.722.8838, between the hours of 9:00 am and 4:30pm, for Chapter 30B procurement assistance.

## New Massachusetts School Building Authority Regulations Require MCPPO Training



On September 22, 2006 the Massachusetts School Building Authority (MSBA) finalized its new School Building Grant Program Regulations. The new regulations create the framework to assure that school building grants will be equitable for all districts and will be consistently applied to ensure both short-term and long-term financial viability.

As a part of its new regulations, the MSBA requires that the eligible applicant who will be in charge of procurement for a project be designated as an Massachusetts Certified Public Purchasing Official (MCPPO) for Design and Construction Contracting. 963 C.M.R. 2.03(2)(o). (A current MCPPO designation automatically qualifies.) In order to be designated as an MCPPO for Design and Construction Contracting, the applicant must have taken the *Public Contracting Overview*, and *Designing and Construction Contracting* seminars, as well as meet certain experience requirements. If you are unable to meet the experience requirements, you may apply for an Associate level designation, which MSBA will honor. For information on how to be designated, please see <http://www.mass.gov/ig/mcpo/mcpdesig.htm>. If you were once designated, but three years have passed and you have not been recertified, please see the recertification requirements at <http://www.mass.gov/ig/mcpo/contedu.htm>.

In addition, the 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.

In conjunction with the MSBA, the office has developed a curriculum to fulfill these requirements and to specifically address many of the issues that might arise in connection with a school construction project funded with MSBA assistance. The next available four-day *Certification Course for School Project Designers and Owner's Project Managers* will be offered on May 29 – June 1, 2007. The certification course is available only to private sector designers and owner's project managers. For more information on the four-day certification course please visit <http://www.mass.gov/ig/mcpo/igmcppo.htm#msbacert>. A registration form is included on page six of this issue of the *Procurement Bulletin*.

### Comments from participants of Certification for School Project Designers and Owner's Project Managers:

"The program was very well thought out: full of meaningful information."

"This seminar was very valuable to me. To have [the owners project manager], architect and purchasing official exposed to the same information... will serve to prevent misunderstanding of responsibility."

"Wonderful! Great flow – the class segments were organized well over the 4 days and the instructors are fabulous."

"Excellent on all points!"

"More than expected. I learned a bit and was pleasantly surprised with how much was refreshed. Good work by everyone."

"Overall excellent. It filled in areas I didn't know and dispelled hearsay."

"The strength of the four day program clearly was in the depth of knowledge of every presenter from day one through day four."



**MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM  
REGISTRATION FORM January—June 2007**

**Office of the Inspector General**

*Gregory W. Sullivan, Inspector General*

**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 contact Joyce McEntee Emmett, Director of the MCPPO Program at (617) 727-9140 x28835 or go to our website at [www.mass.gov/ig](http://www.mass.gov/ig).

|  |                                     |   |
|--|-------------------------------------|---|
| <b>PUBLIC CONTRACTING OVERVIEW</b><br><i>No Prerequisite</i>   | 3-day seminar                       | <b>Tuition:</b> \$450 for government/non-profit employees<br>\$700 for all others |
| <input type="checkbox"/> January 17, 18, 19—2007   | <b>BOSTON</b>                       | <input type="checkbox"/> May 22, 23, 24—2007 <b>BOSTON</b>                        |
| <input type="checkbox"/> March 6, 7, 8—2007  | <b>BOSTON</b>                       | <input type="checkbox"/> June 12, 13, 14—2007 <b>BOSTON</b>                       |
| <b>SUPPLIES &amp; SERVICES CONTRACTING</b><br><i>Prerequisite: Public Contracting Overview or Charter School Procurement</i>   | 3-day seminar                       | <b>Tuition:</b> \$450 for government/non-profit employees<br>\$700 for all others |
| <input type="checkbox"/> January 23, 24, 25—2007   | <b>BOSTON</b>                       | <input type="checkbox"/> May 8, 9, 10—2007 <b>BOSTON</b>                          |
| <input type="checkbox"/> March 27, 28, 29—2007   | <b>BOSTON</b>                       |   |
| <b>DESIGN &amp; CONSTRUCTION CONTRACTING</b><br><i>Prerequisite: Public Contracting Overview or Charter School Procurement</i>   | 3-day seminar                       | <b>Tuition:</b> \$650 for government/non-profit employees<br>\$900 for all others |
| <input type="checkbox"/> February 13, 14, 15—2007  | <b>BOSTON</b>                       | <input type="checkbox"/> June 5, 6, 7—2007 <b>BOSTON</b>                          |
| <input type="checkbox"/> April 11, 12, 13—2007   | <b>BOSTON</b>                       | <input type="checkbox"/> June 20, 21, 22—2007 <b>BOSTON</b>                       |
| <b>ADVANCED TOPICS UPDATE</b>  | 2-day seminar                       | <b>Tuition:</b> \$350 for government/non-profit employees<br>\$600 for all others |
| <input type="checkbox"/> May 3 & 4—2007  | <b>BOSTON</b>                       |   |
| <b>CERTIFICATION for School Project Designers &amp; Owner's Project Managers</b><br><i>NEW</i>   | 4-Day Training                      | <b>Tuition:</b> \$1200  |
| <input type="checkbox"/> January 30, 31, Feb. 1, 2—2007  | <b>BOSTON</b>                       | <input type="checkbox"/> March 20, 21, 22, 23—2007 <b>BOSTON</b>                  |
|  |                                     | <input type="checkbox"/> May 29, 30, 31 & June 1—2007 <b>BOSTON</b>               |
| <b>CONSTRUCTION MANAGEMENT AT RISK Under M.G.L. c. 149A: Legal Requirements &amp; Practical Issues</b><br><i>*Introductory material geared to procurement officials who are not construction experts</i> | 1-day seminar                       | <b>Tuition:</b> \$275 for government/non-profit employees<br>\$600 for all others |
| <input type="checkbox"/> April 24—2007   | <b>BOSTON</b>                       |   |
| <b>CHARTER SCHOOL PROCUREMENT</b><br><i>No Prerequisite</i>  | 2-day seminar                       | <b>Tuition:</b> \$400 for government/non-profit employees<br>\$600 for all others |
| <input type="checkbox"/> May 31 & June 1—2007 <b>CANCELED</b>  | <b>BOSTON</b>                       | <input type="checkbox"/> To be announced for FY08 <b>BOSTON</b>                   |
| <b>Drafting A Model IFB</b><br><i>Disk program requiring Microsoft Word 7.0 or higher</i>  | <input type="checkbox"/> Self-paced | <b>Tuition:</b> \$75 ea. for gov./non-profit employees<br>\$200 for all others    |
| <b>*Registration for this course must be accompanied by a check</b>  |                                     |   |

**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).

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

NAME: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX \_\_\_\_\_ E-MAIL \_\_\_\_\_

ORGANIZATION/JURISDICTION: \_\_\_\_\_ TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

Do you need special accommodations? \_\_\_\_\_

## ***Procurement Bulletin*** **Subscription Information**

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 Eva Benoit at benoittev@maoig.net. To receive a paper copy via mail, please fax your mailing address to Eva Benoit at 617-723-2334.

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

---

### **Massachusetts Office of the Inspector General**

**One Ashburton Place, Room 1311**

**Boston, MA 02108**

**(617)727-9140**