

Letter from the Inspector General

Dear Public Officials,

Congratulations to the most recent designees in the Massachusetts Certified Public Purchasing Official (MCPPO) Program.

This past February, the MCPPO program added a new segment to the three-day seminar Supplies and Services Contracting, entitled Statewide Contracting & Collective Purchasing: Best Practices. This class was added in response to a request from a local official who had unwittingly made a purchase from a vendor who claimed to be on the statewide contract but was not on the statewide contract for the items being procured. Based on actual cases reviewed by this Office, this segment seeks to provide public officials with best practices recommendations for using statewide contracts as well as using the collective purchasing option under M.G.L. c. 30B.

I would like to remind you that House Bill 3172, which is currently before the Joint Committee on State Administration and Regulatory Oversight, contains amendments to the public design and construction laws that are beneficial to municipalities. One such amendment would require the use of sound business practices for building construction contracts estimated to cost less than \$5,000, and require three written price quotes for building construction contracts estimated to cost between \$5,000 and less than \$10,000. Currently, three written price quotes are required for all building construction contracts estimated to cost less than \$10,000. This Office is working with the legislature, other agencies, and private entities to move the bill forward.

This Office recently received a complaint from the Massachusetts Gun Owners' Action League regarding fees for licenses to carry firearms and restricted firearms identification cards charged by the City of Cambridge Police Department (CCPD). The complaint alleged that the fees charged by the CCPD were in excess of those permitted by law. This Of-

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ice reviewed the applicable laws and recommended that the CCPD cease charging fees in excess of the statutory limits, and the CCPD agreed to follow this recommendation. The letter can be viewed at <http://www.mass.gov/ig/publ/cambridgegun.pdf>. This Office advises cities and towns to check all fee schedules for licenses to carry firearms and restricted firearms identification cards to ensure that they are within the limits of the law.

As always, I encourage you to visit our website periodically to obtain the most up to date information on the public bidding laws, the MCPPO program, and to access our reports, advisories and other publications. If you have questions regarding M.G.L. c.30B, please call 617.722.8838 to speak with the attorney of the day.

Sincerely,

*Gregory W. Sullivan*

Gregory W. Sullivan  
Inspector General

## OIG Articles

### TAX EXEMPT LEASE PURCHASE TRANSACTIONS FOR LOCAL GOVERNMENTAL BODIES

A tax exempt lease purchase (“TELP”) is a financing tool, like a loan, which is used to pay for an asset—usually a capital asset such as equipment—over time rather than in a lump sum. TELPs offer a way for a local governmental body to acquire equipment without having to pay the entire cost out of one year’s operating budget. A TELP should be considered only if the local governmental body wants to own the equipment.

In the typical transaction, the local governmental body conducts a procurement for the equipment. After choosing the equipment vendor, the local governmental body assigns its purchase order to the TELP finance company which actually buys the equipment from the vendor and then leases the equipment to the local governmental body under a TELP contract. TELP providers pay no income tax on interest paid to them by the local governmental body under the lease purchase and therefore offer favorable financing terms. At the end of the term, title to the equipment transfers to the local governmental body.

As indicated, the equipment procurement and the financing transaction are separate processes. With respect to the equipment procurement, the municipality must follow the quote, IFB or RFP procedures set forth in M.G.L. c.30B, based on the equipment purchase price. Maintenance and technical support are usually handled as part of the terms of the equipment procurement but shouldn’t be financed as part of the TELP. The TELP provider is not responsible for these services as it is providing financing only. Generally, all obligations, costs, and responsibilities associated with equipment ownership (such as obtaining property damage or liability insurance) are the responsibility of the local governmental body and do not involve the TELP provider.

The TELP itself is a form of financing agreement, and financing agreements are not subject to M.G.L. c.30B. The municipality must nevertheless select a TELP provider. Inasmuch as financing services are competitive and pricing will vary, this office recommends that municipalities follow “sound business

practices” pursuant to M.G.L. c. 30B, §4(c) by seeking quotes from TELP providers. Be aware that a mid-contract TELP cancellation may result in penalties to the governmental body and the loss of equity built up in the commodity.

This office also recommends that a local governmental body coordinate the timing of the evaluation of the equipment vendor and the process to select a TELP finance company. The reason for coordinating, i.e., overlapping both procurement processes, is that a TELP is a three-party transaction among the local governmental body, the TELP provider, and the equipment vendor. As noted, the TELP finance company pays the equipment purchase price to the equipment vendor and takes title to equipment identified and accepted by the local governmental body, which then starts making lease payments to the finance company under the TELP. Identification of the transaction participants simultaneously will assure that the transaction is completed in a timely manner.

Prior to entering into a TELP, the local governmental body must approve the TELP transaction. Under rulings issued by the Division of Local Services of the Massachusetts Department of Revenue, a TELP is to be treated as indebtedness subject to M.G.L. c. 44. Accordingly, the TELP must be approved by an appropriate vote. For example, for towns or districts this would be a vote of a majority or two thirds, respectively, of the voters present and voting at a meeting duly called, and for cities, a vote taken by yeas and nays of a majority or of two thirds, as the case may require, of all the members of each branch of the city government where there are two branches, or of all the members where there is a single branch of the city government, or of a majority or two thirds of the commissioners where the city government consists of a commission; and in every case subject to the approval of the mayor, where such approval is required by the charter of the city. The local governmental body should make sure it allows time to obtain the necessary approvals.

## OIG Articles, cont.

### GREEN PURCHASING AND CHAPTER 30B

Spurred by new technology and increased demand, the marketplace has been flooded with environmentally responsible or green products such as products made from recycled materials, hybrid vehicles, and compact fluorescent lighting. According to an Operational Services Division (OSD) publication entitled *Recycled and Environmentally Preferable Products and Service Guide*, close to 300 Massachusetts municipalities have written policies requiring the purchase of goods made from recycled products. If your governmental body has implemented a mandate to buy recycled, or “go green,” you may wonder where you can find helpful information on drafting competitive, performance-based specifications that allow you to purchase green products at competitive prices.

When drafting specifications, you will want to ensure that you are not restricting competition by including requirements that will reduce the pool of qualified bidders. Organizations, like the non-profit group Green Seal ([www.greenseal.org](http://www.greenseal.org)), have information online for many green products, which may assist you when drafting specifications. For example, Green Seal has certain performance standards for compact fluorescent light bulbs, such as the average number of hours a bulb will produce light. The website provides many different brands of light bulbs and their performance output. Doing research up front means that you will be better informed about what products will meet your needs and more able to draft specifications that will ensure that the products you purchase meet your quality and performance requirements.

If you do not have the time to conduct the research on your own, a procurement from the statewide contract through OSD may be right for you. As you may be aware, OSD awards a variety of contracts from which your jurisdiction may make purchases, without a competitive process, if you are listed as an eligible entity. OSD has established an Environmentally Preferable Products Procurement Program, through which OSD has procured several contracts for environmentally preferable products, and which provides guidance on how to draft specifications for your own procurement of green products. For information on this program, see [www.mass.gov/epp](http://www.mass.gov/epp).

Well drafted performance specifications for commonly available green products will allow you to obtain the green products you need at competitive prices. Just as the old adage goes, “every little bit helps,” in a municipality, every little bid could help the environment.

## Chapter 30B Questions and Answers

**Q.1. I am a town accountant. May I also serve as my jurisdiction’s Chief Procurement Officer (CPO)?**

A.1. While Chapter 30B would not prohibit a town accountant serving as a CPO, M.G.L. c.41, §55 states that town accountants cannot hold any office that involves the receipt or disbursement of money, except for the office of town clerk. In order to ensure compliance with the law and to uphold a sound internal control system, this office does not recommend an organizational structure in which the CPO for the town also serves the role of town accountant.

**Q.2. My jurisdiction is drafting an invitation for bids seeking a vendor that will analyze telephone bills and make recommendations for cost savings measures. The contract would be for two years and the vendor would be compensated by a percentage of the savings it identifies. Do you see any Chapter 30B issues?**

A.2. Yes. Such a contract would violate Chapter 30B because one of the requirements for contracts that exceed one year in length, including any renewal or extension options, is that your solicitation must include that the bidder or offeror shall give a unit price for each supply or service, and that the unit price shall remain the same throughout the contract, except to the extent that the solicitation and resulting contract provides for price adjustments. You are proposing that the compensation be based on a percentage of savings, which does not meet the requirements for unit prices. A one-year contract based on this method of compensation would comply with Chapter 30B. For a discussion of all of the requirements for Chapter 30B contracts that exceed one year, including any renewal or extension options, see Spotlight on M.G.L. c. 30B, §12, from this Office’s Procurement Bulletin, v9, n3, p1 (September 2003), which may be viewed at <http://www.mass.gov/ig/publ/nlsep03.pdf>.

**Q.3. I am the purchasing agent for a city and my jurisdiction is procuring online tax and fee collection services for the first time. A bank has offered to administer the online collections and will charge a fee to residents who choose to pay online. According to the bank, my jurisdiction is responsible for complying with Chapter 30B in the event that the fees the bank earns on the contract will equal or**

-continued on following page -

## Chapter 30B Questions and Answers, cont.

- continued from previous page -  
**or exceed \$5,000. Should I obtain quotes before entering into a contract?**

A.3. Yes. Best practices dictate that you should solicit three quotes prior to contracting with the bank. This will ensure that if the contract meets the \$5,000 dollar threshold, you will not be forced to cancel the contract. The first year will give you an estimate of the amount the bank receives for credit card collections. You can use that estimate to determine which bidding procedure will apply in future years.

**Q.4. I am a school superintendent and have been delegated procurement authority by the town's chief procurement officer. May I, as a person with delegated authority, further delegate my responsibilities to the school's business manager?**

A.4. No. Chapter 30B permits only the chief procurement officer to delegate his or her authority to other individuals. The statute does not provide a process whereby someone with delegated authority further delegates to another individual.

**Q.5. I am the chief procurement officer of a city. When procuring office supplies I underestimated the quantities needed, and had to amend the contract by 15 percent so that I could increase the quantity of supplies. Since the amendment, our city has hired additional employees, which resulted in a need for even greater quantities of office supplies. May I use section 13 of Chapter 30B (the 25 percent rule) to amend the contract by an additional 25 percent?**

A.5. No. Section 13 of Chapter 30B permits you to amend an existing contract by up to 25 percent of the total contract cost so that you may increase the quantities of supplies or services procured under that contract. To take advantage of the 25 percent rule:

- the unit prices remain the same (or less),
- you must determine in writing that the increase is necessary and that it is more practical and economical to amend the contract than it is to conduct a new procurement,
- the parties must agree to the increase in writing, and
- the increase in quantity can not exceed 25 percent of the total contract cost.

Your total contract value, including all amendments, cannot exceed more than 125 percent of the original total contract cost. That is, if your original total contract cost is \$100,000, the total contract cost could only be amended by \$25,000, resulting in a total contract cost of \$125,000. Because you have already amended your contract by 15 percent, you may amend the contract by an additional ten

percent of the original total contract cost. You will have to conduct the proper procurement process for any additional items needed.

It is important to note that contracts for gasoline, fuel oil, special fuel, road salt and other snow or ice control supplies are not subject to the 25 percent limit on contract increases, but you must meet the other conditions discussed above before amending your contract to purchase these additional supplies.

**Q.6. I am the technology director for a regional school district. I have recently procured the services of a consultant for \$4,500 to write a request for proposals for telecommunications services. The town would now like to enter into a new contract to have the consultant assist in the evaluation of the proposals received. I have estimated the work to cost an additional \$4,500. Should the town conduct a quote process for the additional work because the total amount paid to the vendor will be \$9,000?**

A.6. Yes. The town should conduct a quote process as the total amount to be paid to the vendor exceeds \$5,000, and Section 4 of Chapter 30B would require a quote process if the scope of the two contracts had originally been combined. Awarding two contracts to the same vendor for work to be performed on the same project may be viewed as bid splitting. While you had no intent to divide the procurement for the purpose of evading a requirement of Chapter 30B, a quote process will ensure that you avoid the appearance of bid splitting.

### School Bus Bid Season

As many of you know, 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* which 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>.



## Congratulations!



The following is a list of the MCPPO Program's new designees on applications **reviewed (not received)** between November 30, 2007 and January 1, 2008:

### MCPPO

Tammy Bazin Tefft, City of Westfield  
 Anne M. Capra, Pioneer Valley Planning Comm.  
 Colleen F. Hunter-Mullett, City of Pittsfield  
 Steven M. Moore, Randolph Public Schools

### MCPPO for Supplies & Services

James I. McNichols, Chelsea Housing Authority  
 Andrew Scribner-MacLean, Reading Police Dept.

### MCPPO for Design & Construction

Richard Bedard, Jr., Winchendon Public Schools

### Associate MCPPO

Veronica A. Brusio, Springfield Parking Authority  
 Buckner M. Creel, Lincoln Public Schools

### Associate MCPPO for Design & Construction

Beth L. Regulbuto, Hampden Wilbraham RSD

### **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 been 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. The next four-day *Certification Course for School Project Designers and Owner's Project Managers* is scheduled for June 18, 19, 20 & 26, 2008.

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 January—June 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](http://www.mass.gov/ig).

**PUBLIC CONTRACTING OVERVIEW**

*No Prerequisite*

- January 23, 24, 25—2008
- March 4, 5, 6—2008

3-day seminar

**BOSTON**  
**BOSTON**

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

- May 6, 7, 8—2008 **BOSTON**
- June 3, 4, 5—2008 **BOSTON**

**SUPPLIES & SERVICES CONTRACTING**

*Prerequisite: Public Contracting Overview or Charter School Procurement*

- February 5, 6, 7—2008
- April 1, 2, 3—2008

3-day seminar

**BOSTON**  
**BOSTON**

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

- May 20, 21, 22—2008 **BOSTON**

**DESIGN & CONSTRUCTION CONTRACTING**

*Prerequisite: Public Contracting Overview or Charter School Procurement*

- February 26, 27, 28—2008
- April 29, 30, May 1—2008

3-day seminar

**BOSTON**  
**BOSTON**

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

- June 10, 11, 12—2008 **BOSTON**

**ADVANCED TOPICS UPDATE**

- April 17 & 18—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**

**NEW**

- June 18, 19, 20 & 26—2008

4-Day Training

**BOSTON**

**Tuition:** \$1200

**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*

- May 17—2008

1-day seminar

**BOSTON**

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

**CHARTER SCHOOL PROCUREMENT**

*No Prerequisite*

- Fall 2008 - *To be announced*

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 Meghan O'Malley by phone at 617-727-9140.

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