

Procurement Bulletin

IG Files New Procurement Reform Legislation

The Office of the Inspector General has filed procurement related legislation for consideration during the 2009-2010 session of the General Court. Provisions of interest to governmental bodies include proposals to streamline and fine-tune Chapter 30B, an amendment to the false claims statute, and a proposed change to Chapter 149 for smaller procurements valued at not more than \$10,000.

The following are summaries of the above-mentioned sections of House Bills No. 9, 12, and 15:

HB 9, Section 1 would exempt from M.G.L. c.30B energy management services that are subject to M.G.L. c.25A, §11C. Currently, only contracts for energy management services subject to M.G.L. c.25A, §11I are specifically exempted. It is important to note that while these contracts would not be subject to M.G.L. c.30B, M.G.L. c.25A does require a competitive process.

HB 9, Section 2 eliminates confusion by clarifying M.G.L. c.30B, §1(b)(4), which exempts contracts between a governmental body and the Commonwealth from M.G.L. c.30B. However, M.G.L. c.30B, §16(i) requires that dispositions of real property to the Commonwealth be subject to M.G.L. c.30B, §16(a),(b) and (g). This section requires the governmental body to declare the property available for disposition, specify any reuse restrictions that will apply; determine the value of the property; and, if the governmental body disposes of the property for less than the determined value, the governmental body must post a notice in the Central Register explaining the reasons for its decision and the difference between such price and the sale price.

HB 9, Section 3 would permit governmental bodies to make purchases from certain federal General Services Administration (GSA) contracts. In 2002, and again in 2008, the GSA made available certain federal supply schedules to local governments (information technology (IT) and public safety equipment). Although the federal government now permits state and local governments to make purchases off of GSA contracts, there is no exemption in M.G.L. c.30B for making these purchases without conducting an M.G.L. c.30B process. Currently, under M.G.L. c.30B, you may make a purchase from a GSA contract through sound business practices (under

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\$5,000). If you wish to purchase a supply from a GSA vendor and the cost is \$5,000 or more but less than \$25,000, then you may use the GSA vendor's price as a price quotation and solicit at least two more price quotations. Generally, you may not make a purchase from a GSA contract with a procurement value of \$25,000 or more. This proposed amendment permits cities and towns to purchase from GSA vendors on schedules open to governmental bodies without further soliciting quotes, bids, or proposals.

HB 9, Section 4 would add a definition for "sound business practices" the use of which is required for purchases of less than \$5,000.

For consistency, HB 9, Section 5 would substitute the term sound business practices for "generally accepted business practices" for procurements of Massachusetts agriculture with a value of less than \$25,000.

HB 9, Section 6 would allow governmental bodies to advertise procurements for goods and services on a public website as an alternative to a newspaper of general circulation. This amendment would allow governmental bodies to use either their own website or a website of the commonwealth such as Comm-PASS.

HB 12 would make failure to provide notification to an awarding authority within 30 days of discovery of violations of criminal law or overpayment in connection with the award or performance of a contract relative to a

Chapter 30B Questions and Answers

Q.1. My school district is a member of an educational collaborative that has begun offering school bus transportation to its members. Would I be required to conduct a bid process if I entered into a contract with the educational collaborative?

A.1. No. Educational collaboratives formed pursuant to M.G.L. c.40, §4E are considered by this Office to be instrumentalities of each of their member school districts, and therefore no competitive process is required. Agreements between boards, commissions, authorities, departments or public instrumentalities of one city or town are exempt from M.G.L. c.30B under section 1(b)(7). If the educational collaborative will be contracting with a private company to provide the services (as opposed to performing them in-house) the collaborative must competitively procure the contract using M.G.L. c.30B. Only then will members be able to contract with the collaborative for the services without doing a bid process.

Q.2. I am the CPO of a city and have solicited proposals for the lease of city-owned surplus real property. In drafting the proposal, I asked vendors to submit separate price and non-price proposals. Since the proposals were submitted the city has received public records requests for the information. Do the proposals remain confidential until I have finished the evaluation of the non-price proposals?

A.2. No. Unlike a Section 6 request for proposal process, price and non-price proposals do not need to be submitted separately, and proposals submitted for the acquisition or disposition of real property are afforded no confidentiality and become public records upon opening, unless otherwise exempted by the public records law. Please remember that real property proposals must be opened publicly at the date and time specified in the solicitation documents.

Q.3. I am a municipal employee charged with the operation of a public golf course which includes a pro-shop. It is important that the pro-shop be stocked with items that the golfers will purchase, and therefore I need to procure several different brand name items. Would you agree that I may use a proprietary specification to procure the brand name items?

A.3. Yes. Chapter 30B applies to the acquisition of supplies and services by a governmental body, including items that will be offered for sale in the pro-shop. Because of the nature of this retail operation you would be justified in using a specification that cites a brand name, or otherwise has the effect of exclusively requiring a proprietary supply. Proprietary specifications are only permitted when you document in writing, for the procurement file, why no other manner of description will suffice. You will then conduct a competitive procurement based on the value of your procurement.

Q.4. I am the CPO of a city that has a piece of property that it would like to sell to the highest bidder. May I dispose of the property through a public auction?

A.4. Yes. This office is of the opinion that you may dispose of real property through an auction so long as you meet all of the requirements of M.G.L. c.30B, §16. You must advertise the public auction in a local newspaper once a week for two consecutive weeks, the last advertisement appearing at least 8 days before the public auction. If the property you are disposing of is greater than 2,500 square feet, you must publish an advertisement in the *Central Register* at least 30 days before the public auction. The advertisements should include the information that you would include in an advertisement for your competitive proposal process. Your advertisement must also state that the property is being disposed of through a public auction, provide the time and date of the public auction and any other information that is relevant such as reuse restrictions or minimum price. After the auction, you must publish the name of the purchaser and the auction price in the *Central Register* as soon as practicable.

As always, you should consult with your legal counsel as your local rules, bylaws or ordinances may not allow for disposal through a public auction or may place other restrictions on your real property transactions.

Lastly, the services of an auctioneer are subject to M.G.L. c.30B. You will determine which procurement procedures apply based on the fee that the auctioneer will be paid.

OIG Important Information and Recent Publications

Inspector General Helps Commonwealth Recover nearly \$215,000 from a Social Service Provider

A review by the Inspector General led the Commonwealth of Massachusetts' Operational Services Division (OSD) and Department of Mental Retardation (DMR) to recover a combined \$213,548 from the Judge Rotenberg Education Center Inc. (JRC), a not-for-profit that provides treatment services for children and adults who are mentally challenged and have severe behavioral disorders.

The Inspector General informed DMR and OSD by letter of March 1, 2007 that an investigation conducted by the Division of Professional Licensure found that JRC had used unlicensed psychologists to provide services under its contracts with the Commonwealth and local school districts. The Inspector General found that JRC had billed the Commonwealth for licensed clinicians. As a result, the Inspector General suggested that DMR initiate cost recovery action against JRC for potential overcharges as well as possible failure to meet contractual requirements. OSD and DMR have protected the taxpayers' interests by ensuring that this contractor met its contractual obligations and charged for services appropriately.

By separate action in 2006, JRC paid \$43,000 to the Division of Professional Licensure under a consent agreement.

Guidance for Procuring Energy Management and Conservation Services

Are you confused about how to procure contracts to help save energy or about what energy savings options are available to you in the marketplace? You are not alone. The complexities of energy management and services contracts and methods for measuring and verifying savings require specific expertise. A prudent approach for municipalities considering entering into any energy performance contract is to procure the services of an independent consultant who is well versed in the International Performance Measurement and Verification Protocol (IPMVP), the industry standard for savings verification, at the outset. While an independent consultant is an additional cost in these tight fiscal times, it is money well spent. The consultant will be able to determine the specific needs of the jurisdiction, and determine whether those needs can be met by contracting with a local utility or if it will be necessary to procure the services of an energy management company or an energy services company (ESCO). The consultant will then be

able to assist in drafting non-proprietary specifications for the procurement of the vendor and should be able to assist you in verifying whether the savings guaranteed under the contract will be realized.

For further assistance, the Office of the Inspector General issued the *Advisory for the Procurement of Energy Management/Conservation Services*, available at www.mass.gov/ig/publ/energy_srvcs_adv.pdf, to assist public entities in procuring energy efficiency and conservation consultants. The advisory contains the following energy consultant procurement recommendations for public entities:

- Perform due diligence before conducting the procurement. Public utility companies, state agencies and others may offer free energy consulting services. Public utilities are legally required to provide energy savings assistance to municipalities. Take advantage of free services before entering into costly consulting contracts. Remember, despite their savings guarantees, contracts paid for through energy savings are not "free" or "no cost" services.
- When procuring these services you must use either M.G.L. c.25A or 30B. This office and the Division of Energy Resources recommend c.25A, §11I for energy consulting services. We further recommend that you do not use vendor supplied language for your solicitation document. Using vendor supplied language could have negative legal and policy implications.
- Do not enter into a contract unless you: 1) understand how you will be charged for services; 2) will be able to verify the charges; 3) will be able to verify any vendor savings estimates; and 4) understand all contract related costs.

Save The Date!

Kelly Whelan, Assistant General Counsel at the Office of the Inspector General will be presenting a 2 hour "Bidding Basics" seminar at the 2009 Statewide Training and Resources Conference (STAR) on May 21, 2009.

This will be a great opportunity for local officials to receive an overview of M.G.L. c.30B as it applies to the procurement of supplies and services. The Office will also be available to answer any questions you may have on our Massachusetts Certified Public Purchasing Official program.

You can register for STAR at Operational Services Division's website www.mass.gov/osd.

We look forward to seeing you there!



Congratulations!

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

MCPPO

Chris G. Barry, Brockton Housing Authority
David E. Hinkell, Adams Cheshire RSD
Robert C. Hostetler, Norwood Housing Authority

MCPPO for Design & Construction

Peter M. Gagnon, UMASS Dartmouth
Kenneth Wertz, Sharon Public Schools

Associate MCPPO

Joseph Donahoe, Reading Municipal Light Dept.
Bernard Duggan, Billerica School Dept
Joan Forbes-Ozella, Boston Capital Construction
Patricia A. Mellino, Reading Municipal Light Dept.

Associate MCPPO for Design & Construction

Glen Haywood, Greenfield Community College

The Expenditure of Stimulus Funds

As many governmental bodies are anticipating the receipt and expenditure of stimulus funds through the American Recovery and Reinvestment Act, this Office anticipates questions about the expenditure of stimulus and other grant funds. It is important that prior to spending grant funds you determine what procurement rules are applicable to the expenditure. Certain federal grant funds may require additional or different procedures be followed than those found in M.G.L. c.30B. We encourage you to contact this Office with any specific questions you may have regarding the expenditure of stimulus funds.

As of the time of publication of this bulletin, this Office, along with the Governor, Auditor, Attorney General and the Comptroller, is working to determine the various sources and uses of potential funds from the Federal Stimulus bill. As stated above, it is imperative that governmental bodies follow applicable procurement rules, including in some cases federal rules, which relate to the funding from specific programs. There has been a great emphasis placed on accountability, transparency and oversight of the use of these funds. Please do not hesitate to contact us at 617-722-8838 for assistance.

School Bus Bid Season

Will you be procuring your school bus transportation in the near future? Our June, 2005 *Procurement Bulletin* focused on school bus transportation procurements and may be helpful during your process.

Volume 11, issue 2, of the *Procurement Bulletin* can be accessed at

<http://www.mass.gov/ig/publ/nljun05.pdf>.

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procurement punishable as a false claim under M.G.L. c.266, §67A.

HB 15 is written to eliminate the so-called "dollar one issue" in public building construction by requiring the use of sound business practices for the procurement of public building construction with a value of less than \$5,000 and require the solicitation of written quotes without public notice for contracts with an estimated cost of \$5,000 but not more than \$10,000. Currently, the law requires the solicitation of three written quotes for contracts with an estimated cost under \$10,000. This amendment is expected to relieve administrative burdens as well as bring more consistency to the public bidding laws.

Comm-PASS Quick Quote

The Operational Services Division will soon be launching new functionality for public purchasers, called Quick Quote. Among other things, this functionality will allow governmental bodies subject to M.G.L. c.30B to solicit and accept price quotations for M.G.L. c.30B purchases of less than \$25,000 online.

This Office has been asked to serve on the user group that will review the functionality prior to its launch. In the coming issues of the *Procurement Bulletin*, we will issue guidance on how governmental bodies can best use this new functionality, which remains free of charge along with all BuySmart functionality offered to Massachusetts public purchasers.

Information on Quick Quote can be found in Volume 10, Issue 5 of OSD's Commonwealth Procurement News, accessible at http://www.mass.gov/Aosd/docs/cpn/cpn_current.pdf.



MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM
REGISTRATION FORM January-June 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 WILL BE INVOICED A \$100.00 SERVICE CHARGE.

For more information regarding administrative policies, such as complaint and refund resolution, please email Joyce McEntee Emmett, Director of the MCPPO Program at MCPPO@maoig.net or go to our website at www.mass.gov/ig.

PUBLIC CONTRACTING OVERVIEW 3-day seminar Tuition: \$450 for government/non-profit employees \$700 for all others
No Prerequisite
January 27,28,29-2009 BOSTON March 24,25,26-2009 BOSTON May 12,13,14-2009 BOSTON
February 23,24,25-2009 BOSTON April 14,15,16-2009 BOSTON

SUPPLIES & SERVICES CONTRACTING 3-day seminar Tuition: \$450 for government/non-profit employees \$700 for all others
Prerequisite: Public Contracting Overview or Charter School Procurement
February 10,11,12-2009 BOSTON
April 28,29,30-2009 BOSTON June 2,3,4-2009 BOSTON

DESIGN & CONSTRUCTION CONTRACTING 3-day seminar Tuition: \$650 for government/non-profit employees \$900 for all others
Prerequisite: Public Contracting Overview or Charter School Procurement
February 3,4,5-2009 BOSTON May 5,6,7-2009 BOSTON
March 31, April 1,2-2009 BOSTON June 9,10,11-2009 BOSTON

ADVANCED TOPICS UPDATE 2-day seminar Tuition: \$350 for government/non-profit employees \$600 for all others
April 8 & 9-2009 BOSTON

CERTIFICATION for School Project Designers & Owner's Project Managers 4-Day Training Tuition: \$1200-Private Sector
March 4,5,11,12-2009 BOSTON
June 15,16,18,24-2009 BOSTON

CONSTRUCTION MANAGEMENT AT RISK Under M.G.L. c. 149A: Legal Requirements & Practical Issues 1-day seminar Tuition: \$275 for government/non-profit employees \$600 for all others
*Introductory material geared to procurement officials who are not construction experts
May 27-2009 BOSTON

CHARTER SCHOOL PROCUREMENT 2-day seminar Tuition: \$400 for government/non-profit employees \$600 for all others
No Prerequisite Fall / Winter 2009 BOSTON

Drafting A Model IFB Self-paced Tuition: \$75 ea. for gov./non-profit employees \$200 for all others
Disk program requiring Microsoft Word 7.0 or higher
*Registration for this course must be accompanied by a check

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