

## Letter from the Inspector General

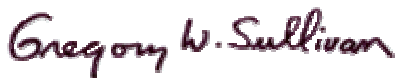
Dear Public Official:

This is our eleventh year of publishing the *Procurement Bulletin*. Over the years, we have used the *Procurement Bulletin* as a means to provide procurement officials with information on topics including developments in the law, noteworthy legal cases, questions and answers about M.G.L. c.30B and the state's design and construction laws, and the Massachusetts Certified Public Purchasing Official (MCPPO) program. For instance, this issue includes advice on what to do in the case of tied bids and information on how my office will provide basic procurement training in your area for public officials. We have often been asked whether there is a *Procurement Bulletin* index available to use as a research tool. For your information, we have now developed an index covering the first *Procurement Bulletin* issued in 2000 through this issue. Further information on obtaining the index is provided on pg. 5 of this *Procurement Bulletin*.

In addition, I am pleased to announce that the latest version of *Designing and Constructing Public Facilities*, the office's manual which provides information and guidance to public officials undertaking construction projects, is now available for downloading from our website or purchase from the State Book Store. The link to the manual is <http://www.mass.gov/ig/publ/dcmanual.pdf>. This 2005 revision incorporates the changes to the design and construction laws and state regulations that resulted from the passage of Chapter 193 of the Acts of 2004, entitled "An Act Further Regulating Public Construction in the Commonwealth." Overall, I hope the step-by-step manner in which the manual presents the requirements of the law and suggestions for best practices will lead to cost savings and better management and oversight of public projects.

As always, please feel free to contact my office for information on any of our reports, advisories or other publications. Also, I encourage you to visit our website periodically to obtain the most up-to-date information on the MCPPO program and any other OIG information and publications. Finally, congratulations to the most recent recipients of MCPPO certification.

Sincerely,



Gregory W. Sullivan  
Inspector General

### Inside this issue:

#### OIG Article

- **Tied Quotes and Bids: OIG Recommended Practices** Page 2

#### Questions and Answers

- **M.G.L. c.30B** Page 3
- **M.G.L. c.149** Page 4

#### OIG Advisories

- **Advisory to Local Officials: Model Designer Selection Procedures for Municipalities and Other Local Public Agencies (June 2005)** Page 5
- **Procurement Bulletin Index** Page 5
- **Advisory to Local Officials: eProcurement: Chapter 30B and Online Auctions (June 2005)** Page 5

#### MCPPO

- **External Procurement Trainings** Page 6
- **New Designations** Page 7
- **Registration Form** Page 8

## **TIED QUOTES AND BIDS: RECOMMENDED PRACTICES**

Over the years, the Office of the Inspector General (office) has received numerous calls from local officials concerning tied quotes and bids for procurements for supplies and services, and for the disposition of surplus supplies. The following are our recommended practices on handling tied quotes and bids, keeping in mind the purposes of M.G.L. c.30B: fair and open competition, and best price.

### **Approved Tie Breaker Procedure by Your Local Government**

The best approach to breaking tied offers is to have a tie breaker procedure that has been approved by a majority vote of your governing body. Your procedure for breaking ties must be fair and objective and, therefore, not based on subjective criteria, such as a vendor having received previous contracts from your local government. This office recommends that your tie breaker procedure be included in your specifications for all solicitations and utilized by all departments, boards, commissions, agencies, etc., of your local government. If your local government does not have a pre-approved tie breaker procedure, this office recommends that you adopt one of the following simple, fair and objective measures to break a tie.

**Second Heat.** You may allow for a “second heat” when there is a tie in price between two or more responsive and responsible vendors/purchasers. When a contract requires your local government to pay a *vendor*, the best price is the lowest price. Conversely, when a contract requires a *purchaser* to pay your local government, the best price is the highest price. A second heat provides tied vendors/purchasers the opportunity to submit a last and final quote or bid without changing the terms of their original offers. The second price submission must be on a specified date, and at a specific time and place. You then award the contract to the responsive and responsible vendor/purchaser offering the best price.

This office’s best practices recommendation is to require vendors/purchasers to submit their second price in a sealed envelope, and for you to open it in the presence of the tied vendors/purchasers, if possible, and one or more other witnesses. The procurement officer and the witnesses should sign a statement under penalties of perjury listing the names of the tied vendors/purchasers who submitted last and final price offers and declare that such list is complete and accurate. This signed statement should also be kept in the procurement file with the contract.

**Coin Toss or Drawing Straws.** Despite its simplicity, a coin toss, or other fair and objective approach such as drawing straws, may be used to break a tie. When you attempt to use either of these methods to break a tie, you should call the tied vendors/purchasers and inform them of the tie and invite them into your office, if possible, to flip a coin or draw straws in the presence of one or more witnesses. The procurement officer and witnesses should sign a statement under penalties of perjury stating that the named vendors/purchasers submitted offers that were tied in price and that you implemented the following approved tie breaker procedure. This office will advise any aggrieved vendor that such tie breakers are considered to be fair if used as stated herein and the use of such will not be questioned. The results of the tie breaker should be documented in writing and kept in the procurement file.

We hope that these recommended practices provide you and your local government with a clear understanding of how best to handle tied quotes and bids. If you have any questions, please feel free to call the Chapter 30B hotline at 617.722.8838.

## Questions & Answers

### M.G.L. c.30B

**Q: Are fuel vendors allowed to increase the unit cost of supplies and services, and/or delivery charges on existing contracts due to increasing fuel prices?**

A: No. Chapter 30B does not allow vendors or local governments to amend or modify existing contracts by increasing shipping or delivery costs, nor does it allow for increasing unit prices for supplies or services. Although both the cost of gas and fuel oil have increased, vendors cannot legally amend existing contracts to reflect such increases, **unless** the contracts have existing fuel escalation clauses written into them. Such a clause would have had to have been in the original specifications and, thereafter, incorporated into the executed contract.

This office recommends contacting your legal counsel if a vendor is not performing or is threatening not to perform on an executed contract due to increasing gas and/or fuel oil costs. A written statement from your legal counsel informing a vendor of the breach of its contractual agreement and the legal consequences of the breach, may remedy the problem. In addition, your legal counsel may be able to prepare a standard written statement for use in response to a vendor who is threatening to breach a contract with your jurisdiction. All notices sent to a vendor for failing to perform fully the contract requirements should be kept with the procurement file. Furthermore, a vendor who breaches a contract may thereafter be deemed not responsible by your jurisdiction on future procurements, as

such a vendor did not demonstrate the capability to perform fully the contract requirements, and lacked the integrity and reliability to assure a good faith performance. Additionally, you will also have documented records to refer to in the event that another jurisdiction contacts you for a reference check.

**Q: Are purchases from the federal GSA contracts exempt from the procurement provisions of Chapter 30B?**

A: No. Although the federal government now permits state and local governments to purchase from the federal General Services Administration (GSA) contracts, there is no exemption in Chapter 30B for these purchases. If you want to purchase a supply from a GSA vendor at the GSA price and the cost is \$5,000 or more, but less than \$25,000, you may use the GSA vendor's price as a price quotation and solicit at least two more price quotations.

If you want to make a purchase from a GSA vendor and the cost is \$25,000 or more, then you still must comply with the invitation for bids (IFB) or the request for proposals (RFP) process set forth in Chapter 30B. However, you may require as part of your IFB or RFP criteria that bidders offer the supply or service at the GSA price or lower.

**Q: I am the purchasing director for a city and I am awarding a food contract for one year with a one-year option to renew. My specifications state that a contract will be awarded to**

**the lowest, responsive and responsible bidder who bids on 100 percent of the food items and provides the lowest total price. I received four bids and each bidder submitted pricing on 100 percent of the items. How do I select the lowest, responsive and responsible bidder when I am awarding a contract that includes a one-year option to renew?**

A: Chapter 30B, section 12(c)(5) requires the solicitations of local governments to state how a determination will be made on awarding a contract. Our office refers to such an explanation as "a rule for award." When you are awarding a contract that includes an option to renew, you award the contract based on the price submitted for the guaranteed year of the contract **only**, and **not** on the total price submitted for the guaranteed year plus the option year. This is because you may not exercise your sole right to extend or renew the contract at the end of the guaranteed one-year term. Therefore, in the case at hand, you will award a contract to the responsive and responsible bidder who submitted the lowest total price for the first year, as this is the only guaranteed year of the food contract. Lastly, before you exercise an option to renew you must, after reasonable investigation of costs and benefits, determine in writing that the exercise of the option is more advantageous than alternate means of procuring comparable supplies or services. If not, you may then request that the vendor lower its prices for the option period, or you may conduct a new procurement for the option period and award a new contract.

## Questions & Answers

### M.G.L. c.30B

**Q: My town wants to lease its classroom space for two years to a neighboring town. Does my town have to request proposals before leasing its real property?**

A: No. Under Chapter 30B, section 16(i), a governmental body can lease its real property to another governmental body without having to conduct a request for proposals process. However, your town must do the following: (1) declare the property available for disposition and identify any reuse restrictions; (2) determine the fair market value of the property; and (3) if you lease the property for less than its fair market value, you must publish a notice in the Secretary of State's *Central Register* explaining the reasons for your decision and disclosing the difference between the fair market value and the price to be received. See Chapter 8 of the Inspector General's 30B Manual entitled, "Municipal, County, District and Local Authority Procurement of Supplies, Services and Real Property," for guidance on determining the value of real property.

**Q: I am the police chief and oversee a fleet of 28 vehicles. My department sends all of its vehicles to the local auto repair shop for regular maintenance and repairs. My department spent \$43,000 last fiscal year on such services. Are we required to publicly invite bids for vehicle maintenance and repairs?**

A: Yes. Under Chapter 30B you are required to competitively procure services like vehicle maintenance and repairs. If the cost of the services is likely to be \$25,000 or more in a fiscal year for vehicle maintenance and repairs, this office recommends using an invitation for bids process. Because nearly every local government has multiple vehicles serviced in a fiscal year, the \$25,000 threshold is quickly reached. Remember that bid splitting or intentionally dividing a procurement such as vehicle repair and maintenance into individual purchases for the purpose of evading the bidding requirements of Chapter 30B is illegal.

By reviewing previous fiscal expenditures for maintenance and repair services, you will be able to identify the types of services that are routinely procured on an annual basis and, also, estimate the projected amount needed for the term of your contract. From this data, you can create a description of services and an esti-

mated quantity for each item of service. For example, your bid price sheet would require bidders to state an hourly price rate for labor and unit pricing for oil changes, tire rotations, fan belt replacement, brake repair, tune-ups, muffler replacement, alignments, etc. If you anticipate there being a difference in the unit price of a particular service due to the type of vehicle that is being serviced, then your description of services should include an estimated amount for that particular service. In addition, your bid price sheet should reflect the same.

### M.G.L. c.149

**Q: As the chief procurement officer for my town, I often must hire vendors for small, (less than \$10,000) non-emergency plumbing, electrical or other tradesperson repair-type services on public buildings. May I use the commonwealth's Operational Services Division's (OSD) "tradesperson" contract to choose a vendor instead of seeking three quotes?**

A: No. Since July, 2004, the construction bid law, M.G.L. c.149, section 44A(2)(A) requires that non-emergency public building contracts estimated to cost less than \$10,000 be procured by seeking at least three written price quotations from contractors that customarily provide the services you are seeking. You must keep a record of the process and award to the responsible bidder offering the lowest price quotation. The OSD tradesperson contractor selection process does not fulfill the requirements of the July 2004 law. Note, however, that you may use OSD's tradesperson contract as a reference list of eligible contractors from whom to seek quotes. For additional information on small construction contracts, please see the 2005 version of the office's manual *Designing and Constructing Public Facilities* at [www.mass.gov/ig](http://www.mass.gov/ig). See also, "The Tradesperson Contract (FAC29) And Facilities Updates" by Kristal Doherty, *Massachusetts Commonwealth Procurement News* (CPN), Volume 2, Issue 2, p. 4, available at [www.mass.gov/osd](http://www.mass.gov/osd).

## Recent Publications

### **Advisory to Local Officials: Model Designer Selection Procedures for Municipalities and Other Local Public Agencies (June 2005)**

This advisory sets out Model Designer Selection Procedures for Municipalities and other local public agencies. Design services projected to cost more than \$10,000 for a public building project, or design services for a public building project with estimated construction costs over \$100,000, are subject to the Designer Selection Law, M.G.L. c.7, §§38A½ through 380 (DSL). The law requires that municipalities adopt their own designer selection procedures. This advisory includes a link to a model form of procedures that a municipality can adapt to fulfill the DSL requirement. The procedures can be tailored as appropriate, as long as they continue to meet statutory requirements. This office suggests that procedures be adopted *before* a municipality selects a designer. This will save time and result in a document that best reflects your preferences and needs. Note that the model procedures relate to public building project design services only. Services of architects and engineers that are not related to a public building project (e.g., the selection of an engineering firm to conduct a traffic study not connected with a road construction or repair project) may be subject to Chapter 30B, but are not subject to the DSL. A complete copy of this advisory can be obtained by visiting <http://www.mass.gov/ig/publ/dsbguide.htm>.

### **Advisory to Local Officials: eProcurement: Chapter 30B and Online Auctions (June 2005)**

This publication is intended to assist public officials in the use of online auctions in the disposition of surplus supplies. The office of the Inspector General has determined that municipalities may use online auctions to dispose of surplus supplies when they fully comply with the requirements of Chapter 30B. This advisory provides recommendations for advertising your online auction, and determining whether you will need to solicit quotes or bids for procuring auction services. The advisory is located at <http://www.mass.gov/ig/publ/auctiona.pdf>.

### **Procurement Bulletin Index**

Over the years, the office of the Inspector General has used the *Procurement Bulletin* as a means to provide procurement officials with information on topics including developments in the law, noteworthy legal cases, questions and answers about Chapter 30B, and the Massachusetts Certified Public Purchasing Official program.

Now we have indexed the articles and information from past *Procurement Bulletins* for your use as a research tool. For example, you may use the index to find all real property questions and articles. The index has been compiled to cover *Procurement Bulle-*

*tins* from volume 6 (2000) through volume 11 (2005). As a cautionary note, some of the older materials referenced in the index may not reflect current law. If you have any questions please call the Chapter 30B hotline. The index is intended for informational purposes only, and may be useful in answering your questions concerning Chapter 30B.

As always, we welcome any comments you may have, including how we may improve upon the index in the future.

The index may be found at [www.mass.gov/ig/igpubl.html](http://www.mass.gov/ig/igpubl.html).

## **Let Us Bring Procurement Training to Your Jurisdiction!**

The Office of the Inspector General is now offering procurement training in your area. Many jurisdictions have benefited from having all the necessary employees in the same room and hearing the same information about the procurement bid laws from the Inspector General. This is a convenient and cost-effective way to educate public employees and officials in your community.

The training options listed below include information on the new amendments to the public construction bid laws. You may call, fax or e-mail a registration form to schedule a training. Participants that have already received their Massachusetts Certified Public Purchasing Official (MCPPO) certification may earn credits toward renewing their MCPPO certification.

### **Bidding Basics 101**

This seminar may be either two or three hours in length and includes an overview of the basics needed to begin understanding public purchasing for local governments in Massachusetts. The seminar's emphasis is on M.G.L. c.30B (supplies and services) with a brief overview of other public construction bidding laws including, M.G.L. c.30, section 39M (public works), M.G.L. c.149 (public building construction) and M.G.L. c.7, sections 38A1/2 - O (designer selection). There is no examination requirement. The total cost for this seminar is \$150.00 for the two hour session and \$250.00 for the three hour session.

### **Bidding Basics and Contract Administration**

This four-hour seminar includes an overview of the basics needed to begin understanding public purchasing for supplies and services and contract administration for local governments in Massachusetts. The seminar also includes a brief overview of the public building construction, public works construction and designer selection bidding laws. There is no examination requirement. The proposed class schedule runs from 10:00 a.m. to 12:00 p.m. and 1:00 p.m. to 3:00 p.m., allowing an hour for lunch. The cost for this seminar is \$500.00.

Please visit our website at [www.mass.gov/ig/](http://www.mass.gov/ig/) for more information or contact Lisa Douglas at 617.722.8856.

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

## **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 March 2005 and September 2005.

### **MCPPO**

**Laurie M. Allen**, CPO, City of Quincy  
**Michael V. Bailey**, Purchasing Agent, Springfield Housing Authority  
**Johanna F. Boucher**, Purchasing Agent, Town of Barnstable  
**Deborah J. Correia**, Purchasing Assistant, Town of Wareham  
**Matthew J. Gillis**, Business Administrator, Berkshire Hills RSD  
**Dana Ham**, Director of Facilities, Lexington Public Schools  
**Paul C. Hilton**, Assistant Director, Charms Collaborative  
**Jean Libitz-Flynn**, Senior Buyer, MassPort Authority  
**Robert A. Palmer**, Finance Director, Town of Natick  
**Thomas Paul**, Business & Tech. Director, Atlantis Charter School  
**Peter H. Roche**, Business Administrator, Mashpee Public Schools  
**William J. Rowe**, Town Accountant, Town of Stoughton  
**John J. Sanguinet**, Assistant Town Administrator, Town of Truro  
**John B. Sousa, Jr.**, DPW Business Administrator, Town of Reading

### **MCPPO for Design and Construction**

**Shardell A. Newton**, Facilities Manager, Town of Falmouth  
**Jody Hart Lehrer**, CDBG Coordinator, Town of Weymouth

### **Associate MCPPO**

**Edward Fahey**, Assistant Superintendent, Malden Housing Authority  
**Robert C. Hostetler**, Maintenance Clerk, Norwood Housing Authority  
**Stephen G. Keane**, Maintenance Supervisor, Lexington Housing Authority  
**Maggie Smith**, Purchasing Agent, Town of Wareham  
**Patricia A. Tassi**, Administrative Coordinator, Town of Winchester

### **Associate MCPPO for Supplies and Services**

**Robert F. Bialka**, Buyer, Boston Water & Sewer Commission  
**Teresa M. Tracy**, Director of Finance, Grafton Public Schools

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MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM
REGISTRATION FORM November 2005-June 2006

Office of the Inspector General
Gregory W. Sullivan, Inspector General
Phone: (617) 727-9140 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).

Or mail 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 \$75.00 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.

PUBLIC CONTRACTING OVERVIEW

No Prerequisite

- December 14, 15, 16-2005
January 25, 26, 27-2006
March 28, 29, 30-2006

3-day seminar

Tuition: \$400 for government/non-profit employees \$600 for all others

BOSTON NO SPACE AVAILABLE
BOSTON
BOSTON

SUPPLIES & SERVICES CONTRACTING

Prerequisite: Public Contracting Overview

- November 15, 16, 17-2005
February 14, 15, 16-2006
April 25, 26, 27-2006

3-day seminar

Tuition: \$400 for government/non-profit employees \$600 for all others

BOSTON
BOSTON
BOSTON

DESIGN & CONSTRUCTION CONTRACTING

Prerequisite: Public Contracting Overview

- December 7, 8, 9-2005
March 8, 9, 10-2006
May 16, 17, 18-2006

3-day seminar

Tuition: \$600 for government/non-profit employees \$800 for all others

BOSTON
BOSTON
BOSTON

ADVANCED TOPICS UPDATE

2-day seminar

Tuition: \$300 for government/non-profit employees \$500 for all others

- February 1 & 2-2006
April 12 & 13-2006

BOSTON
BOSTON

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

- December 13-2005
March 15-2006
May 10-2006

1-day seminar

Tuition: \$225 for government/non-profit employees \$500 for all others

BOSTON
BOSTON
BOSTON

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: \$60 ea. for govt./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.



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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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.

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