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OIG BULLETIN

Official Newsletter of the Office of the Inspector General

Greetings,

It has been a challenging summer. Public entities around Massachusetts continued to provide important public services, manage changing budgets and plan for the upcoming school year, all while operating during a pandemic. Although there are still many unknowns, remember that the Office of the Inspector General (OIG) is here to support you in your efforts to prevent and detect fraud, waste and abuse in the expenditure of public funds and resources. Please connect with us on our website at mass.gov/ig and our [Twitter](#) and [LinkedIn](#) pages. You can also view videos about fraud prevention, public integrity, the history of the OIG and more on our [YouTube](#) channel.

In this *Bulletin*, you will find content describing some recent OIG investigations and civil recoveries. Our Office could not have done this work without your help. Both private and public employees use our fraud hotlines to report concerns and offer tips related to possible fraud, waste and abuse of public funds. These tips provide leads that help us investigate and recover public money.

Likewise, students who take classes through our Massachusetts Certified Public Purchasing Official (MCPPO) program learn about compliance and the use of internal controls and procedures to prevent and detect fraud, waste and abuse of public funds. In the fall, we will continue to offer [MCPPO classes online](#), as we did throughout the spring and the summer. We have expanded our online offerings for the fall to include a total of twenty-seven classes. These offerings will include both live, webinar-style classes and asynchronous, e-learning versions of our [Supplies and Services Contracting](#) and [Real Property](#) classes for students who prefer self-paced formats.

As always, thank you for your time and consideration in reviewing the *OIG Bulletin*. This edition of the *OIG Bulletin* includes content from several of our divisions, frequently asked questions related to public procurement and information about ongoing training opportunities. This edition also contains the names of all students who earned MCPPO designations from January 1, 2020 through June 30, 2020.

Thank you for your ongoing commitment to good government. Please stay safe and stay connected. Do not hesitate to contact us if you need assistance.

Sincerely,

A handwritten signature in blue ink that reads "Glenn A. Cunha".

Glenn A. Cunha

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PROTECT YOUR COMMUNITY

If you suspect fraud, waste or abuse of public funds or property, you can confidentially report your concerns.



Call the 24-Hour Hotline at
(800) 322-1323



Send us an Email at
IGO-FightFraud@state.ma.us

HAVE A QUESTION ABOUT CHAPTER 30B?



Send us an Email at
30BHotline@state.ma.us

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Recent OIG Investigations

Companies Pay \$850,000 to Settle Investigation of Misleading Sales Practices Targeting Massachusetts Cities and Towns

On June 29, 2020, two New York-based companies and their owners and presidents agreed to pay \$850,000 to settle allegations that their high-pressure, misleading telemarketing operation victimized cities and towns across the Commonwealth. Under the legal agreement reached with Attorney General Maura Healey and Inspector General Glenn Cunha, the companies are also banned from doing business in Massachusetts for one year.

In the agreement, filed in Suffolk Superior Court, the Commonwealth alleged that over the last ten years, Pioneer Products Inc., Noble Industrial Supply Corp. and their owners and presidents, Richard Weber and Benno Schubert, used high-pressure techniques and misleading statements to induce municipalities to spend large amounts on supplies that they did not want or need. Pioneer and Noble sell cleaning supplies, specialty products for fire departments and other chemical products through telephone sales calls.

An investigation by the Office of the Inspector General (OIG) found that the companies started with a cold sales call to a potential municipal customer. During that call, a Pioneer or Noble salesperson would persuade a municipal employee to place an order. At a later date, Pioneer's and Noble's salespeople would call back and say that they were sending the next order, even though the municipality had not placed another order. If a customer disputed the order, the Pioneer or Noble employee engaged in misleading and high-pressure sales tactics to get the municipality to agree to the next shipment. They also told municipalities they would be subject to retroactive price increases if they did not pay for the next order. Pioneer and Noble even threatened to take legal action and refer cities and towns to debt collectors.

These high-pressure sales calls caused municipalities to pay for more merchandise.

The OIG and the Attorney General's Office (AGO) will return nearly \$400,000 to 43 cities and towns misled by Pioneer and Noble. The municipalities will also be able to keep all merchandise that Pioneer and Noble shipped. A total of \$385,000 will be allocated to the state's general fund. The agreement also bans the companies from doing business in Massachusetts for one year and requires Pioneer and Noble to implement new policies and retrain their employees. The companies cooperated in the investigation and admit no wrongdoing.

The OIG's Civil Recovery Unit (CRU) undertook the investigation and recovery. The CRU, in collaboration with the AGO's False Claims Division, pursues civil actions to recover funds lost due to fraud, false claims and other wrongful conduct. It works closely with the OIG's other investigative units as well as other state agencies and local governments. The OIG operates a hotline for reporting fraud involving public funds or property at (800) 322-1323 or IGO-FightFraud@state.ma.us.

The False Claims Division was created by AG Healey in 2015 to safeguard public funds by enforcing high standards of integrity against companies and individuals that make false statements to obtain government contracts or funds. Anyone with information about suspected fraud or abuse relating to state or municipal contracts or funds is urged to contact the False Claims Division's tip line at (617) 963-2600.

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Recent OIG Investigations (continued from previous page)

Former Accountant for Three Massachusetts Towns Indicted for Stealing \$729,000

On July 6, 2020, a Massachusetts grand jury indicted Justin Cole, former accountant for the towns of Uxbridge, Monterey and Millville, for allegedly embezzling more than \$729,000 between December 2012 and June 2018. The grand jury indicted Mr. Cole on five counts of larceny over \$250, two counts of larceny over \$1,200, four counts of presentation of false claims, four counts of unwarranted privilege by a municipal employee and one count of financial interest by a municipal employee. The charges resulted from a joint investigation by the Massachusetts Office of the Inspector General and the Massachusetts Attorney General's Office.

Mr. Cole worked as Town Accountant for the town of Uxbridge, and he provided contracted accounting services to the towns of Millville and Monterey through his company, Baystate Municipal Accounting Group. According to the allegations in the indictment, Mr. Cole diverted the towns' funds to other companies that he operated by submitting fake invoices for services that were never provided. Mr. Cole also used town funds to pay office rent and purchase software for his private businesses. The indictment alleges Mr. Cole stole \$657,335 from Uxbridge, \$24,597 from Monterey, and \$47,600 from Millville.

Mr. Cole is presumed innocent until proven guilty.

Check Your Insurance Coverage

The indictment of a former town accountant who allegedly embezzled \$729,000 from three towns should cause the governing bodies of local jurisdictions to review their policies and oversight regarding their financial functions. As a first step, governing boards should review the surety bonds

According to the 2018 ACFE Report to the Nations...

**The three leading
detection methods
of work-related fraud
are tips, internal audits
and management reviews.**



or professional liability insurance held for positions with financial responsibilities. Consult with your insurance carrier or broker about the following:

- Is our coverage still active? Is the coverage enough to protect the jurisdiction?
- Does this policy cover both regular employees and contract employees? Does it cover vendors?
- What is the coverage per incident or occurrence? Do the claims aggregate? If so, what is the aggregate limit?
- What type of conduct does the policy cover?
- When can we file a claim?
- Have we met all the conditions of coverage, including an annual financial audit?

It is difficult when a jurisdiction is the victim of a crime perpetrated by an employee. The situation becomes even worse when the jurisdiction is unable to recoup its losses because of lapsed or insufficient insurance coverage.



Collecting and Creating Data

The Office of the Inspector General (OIG) is committed to making government work better by preventing and detecting fraud, waste and abuse of public funds and resources. This goal may be accomplished, in part, by using high quality data for informed decision making and risk assessment. In the [February 2020 issue of the *OIG Bulletin*](#), we published the first in a series of articles to help demystify data analytics. This second article of the series discusses how to collect data and provides examples of how procurement officials can use the data.

To use data in decision making, the data must exist in a format that can be analyzed. Some of the data within your organization may already be in an analyzable format. Some information may be in spreadsheets or in existing databases or electronic systems. If the data is not in one of these formats, do not despair! You can transform information from historical and external sources into usable data, and you can create new data.

A helpful starting point is to pull data from current and historical sources and compile it into a more data-friendly format, such as an Excel spreadsheet file. In your role as a procurement official, you may already track bids and price quotations in Excel. If not, many of the bid documents your jurisdiction retains can be used as data sources. For example, information from purchase descriptions, vendor quotations, proposal evaluation forms and invoices contain many data points. These data points include dates, prices, quantities and names that are easy to transfer into an Excel spreadsheet for future analysis.

External sources are another area from which data can be gathered and used in an analysis. For example, you can gather information about product specifications, usage and performance from relevant personnel in your jurisdiction. Then you can compile this information into a data-friendly format, like a spreadsheet.

Historical and external data sources might not provide the complete picture for your analysis. If you determine a need for data that does not al-

ready exist, you can also create data. Surveys are a helpful way to do this. For example, the OIG asks participants in our classes to complete surveys at the end of each class. We then use this data to improve the Massachusetts Certified Public Purchasing Official Program. Conducting a survey can be as simple as sending out an email or using a free online survey tool. The results of the survey can be transferred to a spreadsheet. Some online survey tools even analyze data for you.

Once the data has been transformed into a user-friendly format, it can be used in a variety of ways to assist with future procurements and other business decisions. For example, you can analyze vendor performance using vendor quotations, proposal evaluations and past invoices. The data from these documents can be combined to help make decisions about the award of future contracts. Historical data regarding the use of a supply or service can help procurement teams project future procurement needs and build a more effective and accurate budget. Procurement data can also help detect fraud, such as bid splitting and potential bid rigging.

Remember to consider whether your data gives you enough information to help you make decisions. Are you missing any data that would help you monitor utilization? Are there existing sources for that data? Is it something you can collect in the future? Taking incremental steps and continually finding areas for improvement will create a robust data program and help you make informed, data-driven decisions.

The OIG is developing classes to introduce local officials to specific data analysis techniques. We also plan to give an overview of some of these techniques in the next article on data in an upcoming edition of the *OIG Bulletin*. In the meantime, please feel free to contact us if you have any questions or ideas about data. You can reach us at (617) 722-8838 or 30BHotline@state.ma.us.

Prevent the Waste of Public Funds: Do Not Pay for Supplies You Did Not Order and Do Not Want

Many public organizations receive unwanted sales calls from vendors pitching their products. Sometimes the caller is offering to sell supplies your jurisdiction needs at a competitive price. But beware: sometimes a sales call can lead to trouble. Unscrupulous vendors may use these calls to send jurisdictions supplies that they never agreed to purchase. Unfortunately, many jurisdictions pay for these supplies and even accept additional shipments, not knowing how to make the vendor stop and fearing legal action. *Please remember that you are under no obligation to accept or pay for supplies you never ordered.* These telemarketing scams can target municipal departments, from fire departments and school food services, to public works and town libraries. This article describes common signs of this type of scam and provides tips about how you can prevent it.

Vendors that attempt to manipulate public entities into paying for unordered supplies often employ some common tactics. First, the unexpected or “cold” telephone sales call will start with a vendor offering a “sample” or “trial” amount of a particular product, such as cleaning supplies, which the public organization will agree to accept. The vendor does not send anything in writing confirming the order, and the customer (here, the organization) never signs anything. After the sample arrives, the customer will start to receive calls from the vendor stating that it is ready to ship the next part of the customer’s order, even though the customer never agreed to order anything more than the sample. The vendor may falsely claim that the customer agreed to buy more than just the sample amount of supplies in that initial

sales call, and that the customer must accept and pay for a shipment of additional supplies to “complete” or “fulfill” that initial order. If a customer pushes back, the vendor may insist that it only provided the low price of the sample or initial trial order because the customer agreed to order or accept future shipments. The vendor may also threaten legal action or a referral to a collection agency to force a customer to agree to pay for supplies they never ordered. These companies often escalate this scheme, shipping larger and more expensive orders, until the customer finally refuses to make any more payments.



You can prevent this scam by taking some simple precautions. First, when you place an order, always get a written confirmation that shows what you ordered, the price and the terms of any agreement about pricing or future orders. This documentation can help protect your jurisdiction:

if you keep written records of all your orders, you will be prepared to push back if a vendor tries to trick or bully you.

Second, make sure that everyone in your organization who responds to a vendor inquiry or sales call is authorized to do so and is aware of these scams. Vendors may try to manipulate frontline staff into agreeing to accept a shipment by falsely claiming they did business with the organization in the past, or by saying that a supervisor already signed off on the shipment. They may do some research into public records to “talk the talk,” meaning they know the names of other employees or officials in your organization. Encourage employees to check

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Prevent the Waste of Public Funds: (continued from previous page)

with others in the organization if they are not sure about something a vendor says.

Third, if you receive high-pressure or threatening calls from salespeople, tell them to put your organization on their company's "do not call" list. If they keep calling, report them to the Massachusetts Attorney General's Office.

Finally, if you do get a shipment you did not order, you have no obligation to pay for it or even to return it. *No one, whether private person or public agency, has to pay for or return something they did not order but received in the mail.* See [M.G.L. c. 93, § 43](#). Carefully review every invoice you receive. Do not pay for anything unless you are certain that someone in your organization ordered it.

If a vendor tries to charge your jurisdiction for something that you did not order and do not want, contact the Office of the Inspector General's confidential fraud hotline at (800) 322-1323 or IGO-FightFraud@state.ma.us. All telephone calls and emails are treated confidentially, and individuals may choose to remain anonymous.

Cooperative Purchasing Agreements and Collective Procurements

Public employees often call the Office of the Inspector General's Chapter 30B Technical Assistance Hotline to ask about the difference between a cooperative purchasing agreement and a collective procurement. Both options are available for purchases under Chapter 30B, but they differ in several important respects. This article summarizes these types of procurements and offers some suggested best practices for cooperative purchasing agreements.

Pursuant to [Section 22 of Chapter 30B](#), local jurisdictions may purchase supplies from contracts that have already been procured by an in-state or

out-of-state public procurement unit. This is known as a cooperative purchasing agreement. See [M.G.L. c. 30B, § 22](#). The "public procurement unit" administering the cooperative purchasing agreement could be a federal or state agency, or a political subdivision of the commonwealth or any other state. See *id.* The contract terms must state that the cooperative purchasing agreement is open to Massachusetts governmental bodies, and the contract must be the result of an open and fair competition. *Id.*

Chapter 30B limits the use of cooperative purchasing agreements to the procurement of supplies only. *Id.* ("A public procurement unit may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of supplies with public procurement units or external procurement activities in accordance with an agreement entered into between the participants.") (emphasis added). A local jurisdiction may not use a cooperative purchasing agreement to procure services, unless those services are "incidental to the delivery, conveyance and installation of" supplies procured. See *id.* at [§ 2 \(definition of "supplies"\)](#).

A jurisdiction should fully understand the terms and conditions of any cooperative purchasing agreement it uses. We further recommend the following best practices regarding cooperative purchasing:

- Verify eligibility and competition. Before purchasing supplies through a cooperative purchasing agreement, confirm that the public purchasing unit offering the contract used a competitive process and that the contract is open to Massachusetts jurisdictions.
- Understand contract pricing. Vendors generally offer their best prices when they have an actual quantity or a reliable estimate on which to bid. In cooperative purchasing, jurisdictions purchase supplies from a previously awarded contract. This contract may not yield the lowest price available given the bidding parameters.
- Conduct market research. Multiple contracts may offer the supplies your jurisdiction

Cooperative and Collective Agreements (continued from previous page)

tion needs, including out-of-state contracts, Massachusetts statewide contracts and other in-state contracts. Choose the contract that offers what your jurisdiction needs at the best price. If prices on existing contracts are too high, consider conducting a new procurement using a competitive process under Chapter 30B to obtain a lower price.

- Verify the terms and conditions in the contract, including delivery terms. Verify whether the contract includes shipping, warranty or other costs.
- Understand dispute resolution procedures before using a cooperative purchasing agreement. For example, how are disputes related to contract performance resolved? If a product is defective, where and how can the jurisdiction seek a remedy?

A collective procurement is different from a cooperative purchasing agreement. [Section 1\(c\) of Chapter 30B](#) authorizes collective procurements (also commonly known as collaborative procurements) where two or more local jurisdictions join together to procure supplies or services as a group. In a collective procurement, one jurisdiction serves as the lead jurisdiction and acts on behalf of the others to solicit and award a contract for the benefit of the entire group. The lead jurisdiction must comply fully with Chapter 30B, and each participating jurisdiction must accept sole responsibility for payment for its purchases and for compliance with all of the contract terms. See [M.G.L. c. 30B, § 1\(c\)](#). It is important to note that a local jurisdiction must be a member of the group before the contract solicitation. Local jurisdictions cannot “piggyback” onto an existing collective procurement.

Resources and Training Opportunities

The OIG is committed to helping public employees, vendors and members of the public learn more about local government, procurement processes and applicable laws. We have compiled a short list of resources and upcoming training opportunities that may be of interest to our readers. All of the resources and trainings described below are free.

1. The Division of Local Services (DLS) at the Massachusetts Department of Revenue has created a Municipal Finance Training and Resource Center to provide general information to municipal officials and others interested in local government. DLS updates these documents and training videos regularly. Topics include overviews of municipal management, financial management, municipal finance best practices and more. Click [here](#) for additional information.
2. The Commonwealth’s Operational Services Division (OSD) offers buyer training courses. These live webinars and recorded webcasts include *Essentials of State Procurement* and *Advanced Purchasing in COMMBUYS*. Click [here](#) for course descriptions and information about dates and times.
3. OSD also offers vendor training courses. These courses are designed for a variety of audiences, from businesses considering working with the Commonwealth to seasoned statewide contractors. Courses include *Connecting Your Business to the Commonwealth*, *COMMBUYS: The Seller Role* and *Demystifying the RFR*. Click [here](#) for course descriptions and information about dates and times.
4. The Massachusetts Attorney General’s Office provides training about the state’s Open Meeting Law. They currently offer a free webinar with updates and guidance about compliance with the Open Meeting Law. Click [here](#) to register.

OIG Spotlight:

The Internal Special Audit Unit for MassDOT

Did you know there is a separate unit within the Office of the Inspector General (OIG) that specializes in preventing and detecting fraud related to the state's transportation spending? Meet the Internal Special Audit Unit!

Created by the Legislature in 2009, the OIG's Internal Special Audit Unit (ISAU) for the Massachusetts Department of Transportation (MassDOT) monitors the quality, efficiency and integrity of MassDOT operating and capital programs. As part of its statutory mandate, the ISAU seeks to prevent, detect and correct fraud, waste and abuse in the expenditure of public and private transportation funds. The ISAU also examines and evaluates the adequacy and effectiveness of MassDOT's operations, including its governance, risk management practices and internal processes. The ISAU

- Three certified fraud examiners, one certified financial crimes specialist and two analysts with advanced degrees in business and law; and
- Industry experience in transportation, construction, contract administration, insurance, homeland security, accounting, finance, economic assistance and benefits fraud.

The ISAU works collaboratively with all other OIG units, as well as state and federal agencies, on many different types of investigations and reviews. Some of the ISAU's notable investigations and reviews include:

Abuse of Disability Placards: Since 2007, the OIG conducted four investigations into disability placard abuse. The ISAU completed the fourth investigation and published a [comprehensive report in February 2016](#). The investigations found repeated incidents of placard abuse including the use of placards belonging to deceased persons, the use of placards by non-disabled relatives when the placard holder was not present, and false reports of placards as lost or stolen. The OIG believed stricter penalties were necessary to prevent placard abuse and proposed new legislation, which the Legislature enacted. The new law increases fines and extends license suspensions for individuals who misuse disability placards, which makes parking more accessible for those who need it.

The Office proposed new legislation imposing stricter penalties for placard abuse that the Governor signed into law in December 2017.

Confidential MassDOT Fraud Hotline (855) 963-2580

MassDOTFraudHotline@state.ma.us

Anonymously report any fraud, waste or abuse of MassDOT funds including:

- Theft or misuse of MassDOT property
- Time and materials overbilling
- Kickbacks, bribery and bid rigging
- Vendor and procurement fraud schemes
- Time fraud/overtime abuse
- Disadvantaged business enterprise fraud
- Fraud related to CARES Act funding
- Chapter 90 related fraud schemes

assists the Commonwealth, the public, MassDOT and the Massachusetts Bay Transportation Authority (MBTA) by identifying potential cost savings, waste and misuse of transportation funds.

The ISAU team includes a director, two auditors, two investigators and an attorney. The team's skills and knowledge include:

- Combined 39 years of experience in audits, investigations and litigation;

A Review of Design and Construction Costs of the Veterans Memorial Bridge: MassDOT began construction of the Veterans Memorial Bridge

During its review, the ISAU identified nearly \$20 million in missed opportunities for cost savings.

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OIG Spotlight: ISAU (continued from previous page)

over the Taunton River in 1998 and completed the bridge in October 2014. MassDOT divided the bridge's construction into four phases, each with its own scope, public bid and contract. The ISAU reviewed certain change orders and costs incurred during the design and final phase of construction. In October 2018, the ISAU issued [a report](#) highlighting significant cost overruns on the large-scale bridge project, which included a review of design errors and unexpected construction costs. In response to the ISAU's report, MassDOT reconvened a committee that focuses on cost recoveries from design errors and also appointed a full-time cost recovery administrator.

Privatization of MBTA Warehouse Operations:

From July 1, 2015 to July 1, 2018, the Legislature allowed the MBTA to hire vendors to perform services that public employees typically perform,

Based on the ISAU's concerns and recommendations, MBTA began implementing corrective actions.

commonly referred to as privatization. [Section 196 of Chapter 46 of the Acts of 2015](#) required the ISAU to conduct a review of all MBTA privatization contracts. Pursuant to

this mandate, the ISAU conducted a preliminary review of the MBTA's contract with Management Consulting Inc. (Mancon) for management of warehouse operations. The ISAU identified several instances where Mancon failed to meet its contractual obligations, as well as inadequate MBTA contract administration and failure to provide pre-privatization cost analyses. The ISAU also identified opportunities for the MBTA to bring Mancon's performance in line with its contractual obligations, improve its oversight of Mancon and promote a successful partnership. Following the completion of its review, the ISAU discussed observations with MBTA senior management and provided recommendations for improvement.

The ISAU manages a hotline for MassDOT and MBTA employees, as well as the public, to report instances of potential employee or vendor fraud, waste and abuse. Please do not hesitate to [contact the ISAU](#) if you have questions related to po-

tentially fraudulent activity involving state transportation funds.

Coming Soon: MCPPO Designation and Renewal Policy Changes

The Massachusetts Certified Public Purchasing Official (MCPPO) program is streamlining its requirements and application process for MCPPO designations and triennial renewals. These changes will be implemented in phases beginning in the fall of 2020.

We will maintain our rigorous standards while making the process easier for our applicants and current designees. A simplified application process makes our designation criteria more inclusive because we will credit applicants' professional procurement experience obtained outside of Massachusetts. Under the previous policy, applicants received credit for procurement experience obtained while working for public jurisdictions in Massachusetts only. More information about these upcoming changes will be provided in future editions of the *OIG Bulletin*, on our [website](#) and through our email distribution list. If you would like to be added to our email list, please contact us at MA-IGO-Training@mass.gov.

You may have noticed that we changed the look of our certificates this spring. These new certificates are easier to email and display, and they contain more class and accreditation information.

The MCPPO program is changing to serve you better!

Massachusetts Office
of the Inspector General



Fall Schedule is Now Available



MCPPO
Excellence in Public Procurement

Massachusetts Certified Public Purchasing Official Program

Important 2020 Changes to the Affirmative Marketing Program

*Submitted by Brian K. McPherson, Director of Access & Opportunity
Division of Capital Asset Management & Maintenance*

The Commonwealth, through its Affirmative Marketing Program (AMP), provides opportunities for minority-owned businesses (MBE) and women-owned businesses (WBE) to participate in public building design and construction projects managed by the Division of Capital Asset Management and Maintenance (DCAMM), along with large state-funded municipal projects and certain projects undertaken by other public entities. The AMP supports MBE and WBE participation in many ways, which include setting both project-specific and annual overall spending goals for MBE and WBE participation on these important public building projects, as well as by conducting outreach, education and training.

DCAMM and the Massachusetts Supplier Diversity Office (SDO) are announcing a series of AMP program changes that will be in effect for DCAMM and other affected state and state-funded municipal projects advertised on or after July 1, 2020.

Important changes in effect beginning on July 1, 2020 include:

Separate MBE and WBE Goals - AMP project-specific goals will be set separately, with distinct participation goals set for MBE firm participation and WBE firm participation. This will ensure more representative participation by both MBE and WBE firms.

Project Specific Goals - Goals for individual design and construction contracts will be set on a project by project basis. Awarding authorities will set the project specific, separate MBE and WBE goals prior to advertising design and construction procurements, and the individual MBE and WBE goals will be clearly set forth in the procurement documents. This enables participation goals for an individual project to be specifically tailored to the particular project prior to procurement and ensures

the goals more accurately reflect the availability of contractors or design professionals.

Overall Annual Program Goal - The overall annual program goals applied to overall annual contract awards for construction and design on DCAMM projects is being increased consistent with the findings in the most recent disparity study. The overall annual program goals across all DCAMM project awards are: Construction - MBE 4.2%, WBE 8.8% and Design - MBE 6.6%, WBE 15%.

Increased Supplier Credit – MBE or WBE credit for purchases from SDO-certified material suppliers on DCAMM projects is increased to 15%. Supplier credit on state-funded municipal projects is unchanged.

Again, these changes will be in effect for projects advertised for procurement on or after July 1, 2020.

In addition, Governor Baker has filed legislation that would afford new opportunities for MBEs and WBEs on public building projects. The legislation, if passed, would increase thresholds for certain types of public building procurements and enable DCAMM to include MBE and WBE participation goals in filed sub-bid packages when appropriate. Each of these changes would provide new opportunities for small, minority- and women-owned businesses to participate in these public projects.

For more information on the AMP program for DCAMM projects, visit www.mass.gov/dcamm-contract-compliance or contact DCAMM's Compliance Office at (617) 727-4050 ext. 31435.

For more information on the state-funded municipal program, visit SDO's website <https://www.mass.gov/supplier-diversity-office> or contact SDO's Supplier Diversity Programs Director at (617) 502-8851.

Payroll Oversight Required When Hiring Retired Public Employees

Retired public employees who return to public service are subject to statutory post-retirement earnings limits. If a retiree exceeds these limits, their pension system can withhold future pension payments to recoup the overearnings. The Office of the Inspector General (OIG)'s Audit, Oversight and Investigations Division recently reviewed the post-retirement employment of a former Boston Public Schools (BPS) headmaster and found that her compensation for services to a public charter school violated statutory post-retirement employment restrictions. This article describes the statute governing post-retirement earnings, explains the OIG's investigation and findings regarding the retired headmaster and offers some guidance to public employers who might hire public retirees.

Chapter 32 of the Massachusetts General Laws governs retirement systems and pensions for public employees. In general, "[n]o person[,] while receiving a pension, disability pension or retirement allowance from the commonwealth, or from any county, city, town, district or authority[,] shall, after the date of his retirement[,] be paid for any service rendered to the commonwealth or any county, city, town or district." [M.G.L. c. 32, § 91\(a\)](#). However, [M.G.L. c. 32, § 91\(b\)](#), creates an exception to this general rule: a retiree receiving a pension from a governmental unit under M.G.L. c. 32 "may . . . be employed in the service of the commonwealth, county, city, town, district or authority . . . for not more than nine hundred and sixty hours in the aggregate, in any calendar year; provided that the earnings . . . when added to any pension or retirement allowance he is receiving do not exceed the salary that is being paid for the position from which he was retired." (emphasis added).¹ After a public employee has been retired for a full calendar year, this earnings limit increases by \$15,000. See [M.G.L. c. 32, § 91\(b\)](#). Finally, retired

public employees who exceed their post-retirement earnings cap must return the excess compensation to their post-retirement employer or retirement board. See [M.G.L. c. 32, § 91\(c\)](#). See also [Flanagan v. Contributory Ret. Appeal Bd.](#), 51 Mass. App. Ct. 862, 866-868 (2001).

The Massachusetts Appeals Court explained the purpose of these limits: "[t]he statute reflects a clear policy that an employee of a governmental unit in Massachusetts generally may not retire, receive a pension, accept employment elsewhere in the government, and, by combining her pension and her new compensation, make more money than if she had not retired." [Bristol Cnty. Ret. Bd. v. Contributory Ret. Appeal Bd.](#), 65 Mass. App. Ct. 443, 447 (2006).

Linda Nathan, the former BPS headmaster investigated by the OIG, claimed that she was in compliance with [M.G.L. c. 32, § 91\(b\)](#), because after her retirement, she served as the executive director of a non-profit organization affiliated with a public charter school, rather than as an employee of the public school itself. It should read: "However, her argument is irrelevant because M.G.L. c. 32, § 91(b), limits a retiree's "employ[ment] in the service of the commonwealth, county, city, town, district or authority." (emphasis added). The Massachusetts Contributory Retirement Appeal Board (CRAB) has repeatedly noted that the statute does not differentiate between a retiree who is paid di-



¹ In light of the public health emergency related to COVID-19, the Legislature has temporarily suspended the limits on earnings and hours for retired public employees who return to public service. See [Section 14 of Chapter 53 of the Acts of 2020](#).

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Payroll Oversight Required When Hiring Retired Public Employees (continued from previous page)

rectly by a public entity and one who is paid by a third party to provide services to that public entity. *See Daley v. Plymouth Ret. Bd. and Pub. Emp. Ret. Admin. Comm'n*, CR-11-441 and 13-409 (CRAB Aug. 7, 2014); *Sarno v. Mass. Teachers' Ret. Sys.*, CR-07-253 (CRAB Oct. 29, 2010).

At the conclusion of the investigation, the OIG found that: (1) the non-profit organization paid Ms. Nathan to provide services to a public charter school; (2) she spent more than 65 percent of her time providing service to the school, meaning that 65 percent of her salary should be attributed to public service; and (3) her pension plus the portion of her salary attributable to public service exceeded what her salary would have been if she had remained a BPS headmaster. Consequently, the OIG concluded that Ms. Nathan owes the Boston Retirement Board at least \$67,979 for exceeding her earnings limits in 2017, 2018 and 2019.

The OIG recommended that the Boston Retirement Board conduct its own time analysis and reduce the former headmaster's pension until she has repaid all her excess earnings. The Boston Retirement Board adopted the OIG's findings and is negotiating with Ms. Nathan about recouping these funds.

Based on this investigation, as well as other investigations and reviews regarding pensions and post-retirement earnings, the OIG offers the following guidance to public bodies. First, state and local officials who employ retirees should observe the statutory limits on post-retirement earnings, outlined in [M.G.L. c. 32](#). These officials should ensure that any retired public employees who return to public service work no more than 960 hours in a calendar year. *See* [M.G.L. c. 32, § 91\(b\)](#).

In addition, public employers should ensure that retirees who return to public service do not exceed their earning limit. *See id.* This limit is specific to each retiree and tied to that retiree's last job. *Id.* Each retirement board may determine its

own methodology for calculating the limit. Therefore, before hiring a retired public employee, the municipality should require the retiree to determine their earnings limit in consultation with both their last pre-retirement employer and their retirement board. Regardless of how an individual retirement board determines the earnings limit, a retiree returning to public service may only earn the difference between their pension and their cap. Municipal officials should limit a retiree's annual salary in accordance with that cap.

Retired public employees sometimes seek to obscure the earnings limit by asking to be hired as a consultant or through a corporation. Municipal officials should remember that [M.G.L. c. 32, § 91\(b\)](#), does not differentiate between a retiree who is paid directly by a public entity and one who is paid by a third party to provide services to that public entity.

Finally, public employers should remember that the state's pension system is underfunded: its assets fall far short of the total value of benefits it owes to all current and future retirees. In fact, the Commonwealth, which does not have enough current employees paying into the pension system to cover its annual pension payouts, must make annual appropriations to cover a portion of its pension costs. Most municipalities are in the same financial situation. Although public officials often hire retired public employees, believing that taxpayers are getting expertise at a bargain basement price, retirees who return to public service put a further strain on taxpayers by collecting a paycheck and a pension simultaneously. While these retirees contribute valuable experience to the Commonwealth's work force, employers should be aware that this experience comes at a cost.

Frequently Asked Questions

Q. Our city received only one proposal in response to our request for proposals (RFP). Must we evaluate the price and non-price criteria of this one proposal separately?

A. Yes. Chapter 30B requires that you evaluate the price proposal and the non-price, or technical, proposal separately. See [M.G.L. c. 30B, § \(6\)\(d\)](#) (“The chief procurement officer . . . shall open the price proposals so as to avoid disclosure to the individuals evaluating the proposals on the basis of criteria other than price.”). The price proposal must not be known to the individual(s) evaluating the non-price criteria. This separation of technical and price proposals is an important element of the RFP process, which is structured to allow for an orderly, fair comparison of the price and non-price proposals. Jurisdictions must adhere to the requirements of [Section 6 of Chapter 30B](#) when evaluating proposals, regardless of the number of proposals received.

Q. Our jurisdiction sent out an invitation for bids (IFB) for food services under Section 5 of Chapter 30B. We received only one bid in response. The bid amount exceeded what we currently pay to the company providing the service. Must we accept this bid, or can we send out a new IFB?

A. Your jurisdiction is not obligated to accept this bid. Chapter 30B allows a jurisdiction to reject all bids if it is in the best interest of the jurisdiction to do so. See [M.G.L. c. 30B, § 9](#). Such a situation could arise if, for instance, the bid prices received did not fit within a jurisdiction’s budget. Note, how-

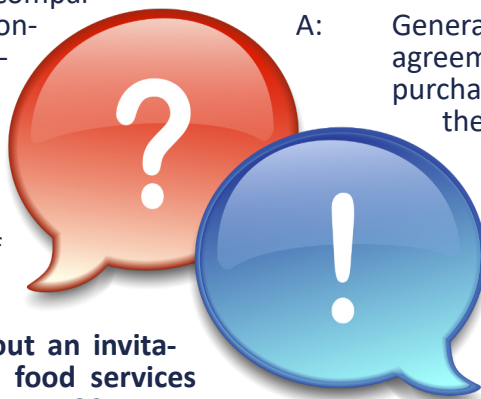
ever, that it is not appropriate to cancel a bid process because a favored vendor did not submit the best price.

If you decide to cancel the bid process, you must prepare a written statement of the reason(s) for cancellation. As a best practice, you may want your jurisdiction’s counsel to review this statement. It is a public record, and you must keep this document in your procurement file. You should also inform the vendor who submitted the bid that the process has been cancelled.

Q: In the past, I have procured supplies under a cooperative purchasing agreement. May I also procure services under the same agreement?

A: Generally, no. A cooperative purchasing agreement allows local jurisdictions to purchase supplies without conducting their own competitive procurement.

See [M.G.L. c. 30B, § 22](#). While [Section 22 of Chapter 30B](#) allows jurisdictions to use cooperative purchasing agreements “for the procurement of supplies,” it does not mention services. See *id.* Chapter 30B defines “supplies” as “all property, other than real property, including equipment, materials, printing, and insurance and further including services incidental to the delivery, conveyance and installation of such property.” [M.G.L. c. 30B, § 2](#). As a result, any purchase from a cooperative purchasing agreement must be for supplies as defined in Chapter 30B. This means that you cannot procure services from a cooperative purchasing agreement, unless those services are “incidental to the delivery, conveyance and installation of” supplies you have purchased. For example, the installation and testing of a new pho-



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Frequently Asked Questions (continued from previous page)

tocopier by a vendor's maintenance technician would be considered a service incidental to your purchase of the photocopier.

Q: My jurisdiction would like to dispose of a parcel of public land through a lease. In addition to the requirements under Section 16 of Chapter 30B, are we required to get majority vote approval under Section 12(b) if the lease duration will exceed three years?

A: No. [Section 12\(b\) of Chapter 30B](#) requires majority vote approval for a "contract" with a term exceeding three years. Chapter 30B defines a "contract" as an "agreement for the procurement or disposal of supplies or services . . ." [M.G.L. c. 30B, § 2](#). In addition, the definition of "supplies" in Chapter 30B expressly excludes real property. *See id.* (defining "supplies" as "all property, other than real property . . ."). As a result, under the specific definitions provided by Chapter 30B, the term "contract" does not include a lease for the disposition of real property. This means that the requirement for majority vote approval for "a contract exceeding three years" does not apply to real property agreements under [Section 16](#). This distinction is reflected in the use of the term "agreement" rather than "contract" in [Section 16 of Chapter 30B](#) regarding real property transactions.



Q: I am the purchasing agent for my town's facilities maintenance department. We want to purchase energy-efficient lightbulbs for our schools. Would this purchase be exempt from Chapter 30B as an energy-related service?

A: No. The exemption for energy or energy-related services would not apply. *See* [M.G.L. c. 30B, § 1\(b\)\(33\)](#). That exemption applies to the purchase of energy or services related to the generation, transmission or distribution of energy, including the services of an energy broker. *See* [Northeast Energy Partners LLC v. Mahar Reg. Sch. Dist.](#), 462 Mass. 687, 695-699 (2012). Lightbulbs, even energy-efficient lightbulbs, are a supply under Chapter 30B, not an energy-related service. Therefore, your jurisdiction would have to follow the procurement procedures outlined in [Section 4](#), [5](#) or [6](#) of Chapter 30B to purchase the lightbulbs.

Please remember to dispose of the discarded lightbulbs according to state and local environmental guidelines.

Congratulations New MCPPO Designees

The following is a list of the MCPPO program's new Designees, based on applications approved between January 1, 2020 through June 30, 2020.

MCPPO Designees

Jennifer Ball, Town of Ashland
 Mary Bench, Mass. Sch. Bldg. Auth.
 Jo Ann Bentley, Bristol Cmty. Coll.
 Michael Blatus, Middlesex Sheriff's Dep't
 Carrie Burnett, City of North Adams
 Mark Carmody, Bristol Cmty. Coll.
 Robert Conry, Berlin-Boylston Reg'l Sch. Dist.
 Kathryn Copley, Town of Needham
 Derek Costa, Bristol Cnty. Agric. High Sch.
 Steven Ellis, Town of Montague
 Robert Gerardi, Jr., Minuteman Reg'l Vocational High Sch.
 Lindsey Hancock, Middlesex Sheriff's Dep't
 Marilyn Haraden, Cohasset Pub. Sch.
 Sean Harrington, Town of Needham
 Sarah Hough, Dep't of Mental Health
 Jeanne, Irwin, Tewksbury Pub. Sch.
 Lori Kabel, Town of Watertown
 Bryan LeBlanc, Town of Natick
 Christine Lindberg, Town of Dracut
 Michael Lorenzo, Town of Eastham
 William Mannix, Jr., Berkshire Cmty. Coll.
 Michael McGovern, Town of Shirley
 Robert Miller, City of Boston
 Susan Murray, Nauset Reg'l Sch. Dist.
 James Novello, UMass Boston
 Philicia Pacheco, Bristol Cmty. Coll.

Bradley Perron, Salem & Beverly Water Supply Bd.

Naveen Reddy, City of Boston
 Marie Ryan, Town of West Stockbridge
 Lorraine See, Town of Braintree
 Robert Shaheen, New Bedford Pub. Sch.
 Jason Silva, Town of Marblehead

MCPPO Associate Designees

Kelsi Champley, Metro. Area Planning Council
 Caroline Graham, Metro. Area Planning Council
 Kyle Grendell, City of Framingham
 Christopher Haraden, Southeastern Mass. Educ. Collaborative
 Kim Hergert, Fitchburg Hous. Auth.
 Sarah Hickey, Town of Middleborough
 Danielle Lamminen, Dennis-Yarmouth Reg'l Sch. Dist.
 Matthew Leahy, Holyoke Hous. Auth.
 Cathryn Meagher, Town of Wellesley
 Austin Murray, Metro. Area Planning Council
 Bonnie, Tanner, Town of Saugus
 Richard Travers, Monomoy Reg'l Sch. Dist.

MCPPO DCC Designees

Peter Gray-Mullen, UMass Bldg. Auth.
 Matt Salad, Tecton Architects

MCPPO DCC Associate Designees

Stephen Gentile, Town of Needham
 Colin Loiselle, Town of Tyngsborough
 Kenneth Sargent III, Town of Needham

MCPPO Fall Class Schedule

MCPPO Online Registration and Payment Form - All Classes

MCPPO Classes

Public Contracting Overview

September 15, 16, 17 2020
 October 13, 14, 15 2020
 November 4, 5, 6 2020
 December 15, 16, 17 2020

Supplies and Services Contracting - Eight-week Self-paced Online Class

September 8 - November 1, 2020
 October 5 - November 29, 2020
 November 2 - December 27, 2020
 November 30 - January 24, 2021
 December 14 - February 7, 2021

Design and Construction Contracting

September 22, 23, 24 2020
 October 27, 28, 29 2020
 December 8, 9, 10 2020

Recertification for MCPPO

October 6, 7, 2020
 November 17, 18 2020

MSBA Classes

Certification for School Project Designers and Owner's Project Managers

November 12, 13, 19, 20 2020

Recertification for School Project Designers and Owner's Project Managers

November 24, 2020

Charter School Certification

Charter School Procurement

September 30 - October 1, 2020

Electives

Advanced Topics: Fall 2020

October 23, 2020

Construction Management at-Risk Under M.G.L. c. 149A

October 22, 2020

Contract Administration

October 8, 2020

Cybersecurity 101: Addressing Threats to Local Government

November 10, 2020

Invitations for Bids & Requests for Proposals

October 20, 2020

Prevailing Wisdom—Confronting Potential Pitfalls and Applying Solutions on Prevailing Wage/Public Construction Projects

December 2, 2020

Real Property Transactions Under M.G.L. c. 30B - Five-week Self-paced Online Class

September 14 - October 18, 2020
 November 16 - December 20, 2020

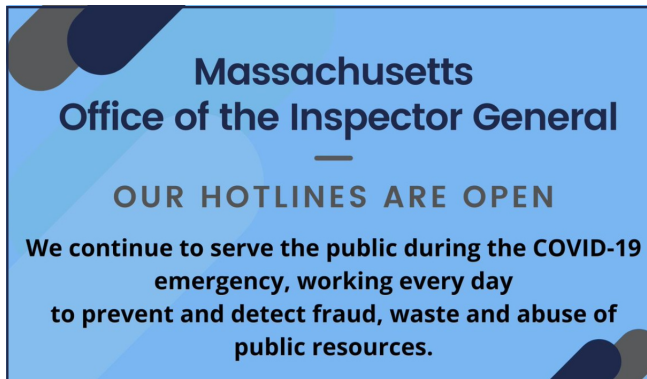
Spotlight on Schools

December 3, 2020

Story of a Building

To be announced

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If you have any other questions, please contact us at (617) 727-9140.

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One Ashburton Place, Room 1311, Boston, MA 02108

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- MassDOT Fraud Hotline (855) 963-2580
- MCPPO Training (617) 722-8884
- Chapter 30B Assistance Hotline (617) 722-8838
- Media Inquiries (617) 722-8822

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- MassDOT Fraud Hotline
MassDOTFraudHotline@state.ma.us
- Chapter 30B Assistance Hotline
30BHotline@state.ma.us
- Training/MCPPO Inquiries
MA-IGO-Training@state.ma.us
- Employment Inquiries
IGO-Employment@state.ma.us



Class Schedule

To view the current MCPPO class schedule or to register for a class electronically, click the links below:

- [Class schedule](#)
- [Class registration](#)