



OIG BULLETIN

Official Newsletter of the Office of the Inspector General



Greetings,

As I write my first letter for the *OIG Bulletin* and complete my first weeks as the Commonwealth's fifth Inspector General, I have much to be appreciative of and want to share some initial thoughts with you.

Appreciation

I am humbled and honored to have received this appointment and thank the appointing authorities – Governor Baker, Attorney General Healey and Auditor Bump – and the senior members of their offices who were most directly involved with this appointment – Chief Secretary to the Governor Sean Pierce, First Assistant Attorney General Kate

Cook and General Counsel and Deputy Auditor Michael Leung-Tat.

I want to recognize those who have led the Massachusetts Office of the Inspector General (OIG or Office) since it began its work in 1981:

- The late Inspector General Joseph R. Barresi
- Inspector General Robert A. Cerasoli
- Inspector General Gregory W. Sullivan
- Inspector General Glenn A. Cunha
- Acting Inspector General Natalie S. Monroe

Each of these individuals led the Office with a clear vision and passion for our statutory mission, improved the Office on their watch and helped make us the impactful organization that we are today. Thank you.

I want to offer special recognition to my immediate predecessor, Inspector General Glenn Cunha, who managed the Office during a period of significant staffing and budget growth, oversaw the creation of several specialized divisions and produced meaningful results for the people of the Commonwealth. Glenn served this Office and the Commonwealth with distinction during his decade as Inspector General.

Former Acting Inspector General Natalie Monroe was more than a caretaker; she was a leader who continued to advance the mission of the Office and make critical decisions. I am so pleased that Natalie has agreed to continue to serve the Commonwealth as the First Assistant Inspector General.

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Greetings from Inspector General Shapiro (continued)

Additionally, I want to thank the Inspector General Council (IG Council or Council) and their designees, Chair Christopher Walsh, Vice Chair Susan Terrey, Auditor Suzanne Bump, Michael Leung-Tat, Michael Caira, Rachel Ciocci, Attorney General Maura Healey, Gina Kwon, Comptroller William McNamara, Amy Noble and James Morris, who, by statute, have specific and distinct authority to assist and guide the Inspector General and this Office. Each member of the Council brings vast knowledge and experience to their work and collectively, their professional experience helps make the team at the OIG stronger.

For those IG Council members whose service will come to an end when their elected terms of office end in January 2023, Attorney General (and now Governor-elect) Healey and Auditor Bump, I thank you for your service to the Commonwealth and to this Office. Both of you are strong examples of what it means to serve the public.

The OIG's Unique Role

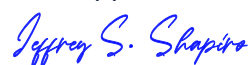
With over 30 years of dedicated public service across a myriad of agencies, I know firsthand the important role that government plays in the lives of so many people. Here at the OIG, we play a unique role in fostering faith in government by working to prevent and detect the misuse of public dollars and assets at the state and municipal level. We can measure our success by our ability to maintain faith in government for some and to restore faith in government for others. I am pleased to work with the outstanding team at the OIG and our colleagues in federal, state and municipal government.

Our mission, as an independent oversight agency, is to promote good government by preventing and detecting the misuse of public funds and public property. We conduct confidential investigations, improve transparency in government, help government run more effectively, and educate government employees and the public to help government operate efficiently and use public funds appropriately.

At the OIG, we understand that it is not our role to decide how or where public dollars are allocated or spent. But it is our charge, in partnership with other operating agencies and oversight departments, to ensure that these public dollars go to the proper agency or entity and are used for the proper purpose.

I hope that you enjoy this issue of the *OIG Bulletin*, and I look forward to our work together.

With appreciation,



Jeffrey S. Shapiro
Inspector General
Commonwealth of Massachusetts

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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



Fill out our
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IGO-FightFraud@mass.gov

Have a Question about Chapter 30B?



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Recent OIG Investigations, Reviews and Recoveries

Former Homeless Shelter CEO Pleads Guilty, Sentenced to One Year in Jail

On September 29, 2022, Manuel Duran, the former CEO of Casa Nueva Vida, Inc. (CNV), pled guilty in Suffolk Superior Court to charges of perjury, larceny and making false entries in corporate books.

An anonymous tip to the fraud hotline at the Office of the Inspector General (Office or OIG) prompted the Office to review CNV's finances. The investigation found that Mr. Duran leased several properties he controlled to CNV at above-market rates and falsely reported that CNV had not engaged in any transactions with officers or directors of the organization. The Office also found that Mr. Duran created, and then approved, false invoices for work that was never performed; he then directed vulnerable employees and associates to cash the checks and give him most of the funds.

The Office began working with the Attorney General's Office (AGO) on the case in 2021. The joint investigation by the AGO and the Office, with assistance from Massachusetts State Police assigned to the AGO, led to a nine-count criminal indictment of Mr. Duran in September 2021. He was charged with stealing \$1.5 million from CNV through multiple schemes, covering up his theft by creating false invoices and contracts, and submitting false information in CNV's charity filings.

Mr. Duran pled guilty to four counts of perjury, three counts of larceny through separate fraud schemes and two counts of making false entries in corporate books. He was sentenced to one year in the Suffolk County House of Correction followed by four years of probation, with the conditions that he complete 250 hours of community service and can no longer work as a fiduciary or in transitional housing. He was also ordered to pay restitution of an amount to be determined at a later hearing.

Former Stow Employee Charged with Embezzling Public Funds

The town of Stow's former treasurer was arraigned on September 16, 2022, on embezzlement, forgery and

other charges following a joint investigation by the Middlesex District Attorney's Office and the OIG.

During a routine annual audit in January 2020, the town's outside auditor found a \$133,584 discrepancy between the balance shown on the treasurer's general ledger and the town's account balances at its bank. Through follow-up inquiries, auditors and the town administrator learned that the recently retired treasurer, Pamela Landry, had allegedly taken funds paid to the town and created false bank statements to cover up the thefts.

Investigators from the OIG and the Middlesex District Attorney's Office found evidence that over several years, Ms. Landry allegedly stole town funds by writing checks to herself without the approval or knowledge of the town.

Ms. Landry was arraigned in Concord District Court on one count of larceny of property by single scheme/embezzlement over \$1,200, one count of embezzlement/misapplication by a fiduciary, one count of making a false claim to a government agency, one count of forgery of a document, one count of forgery of checks and one count of uttering a false check.

Ms. Landry worked in the treasurer's office for the town of Stow for over 30 years. She became treasurer in 2005 and officially retired from the town in October 2019.

Ms. Landry is presumed innocent unless and until proven guilty in court.

Retired Boston Headmaster Agrees to Pay Boston Retirement Board More Than \$34,000

Linda Nathan, a retired Boston Public School headmaster, agreed to repay \$34,498 to the Boston Retirement Board to settle allegations that she failed to comply with state laws limiting the compensation a retired public employee can earn from a public employer.

In April 2020, the Office found that Ms. Nathan continued to work for a Boston public school after she had retired from the school system. The Office determined that as the executive director of a non-profit organiza-

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Recent OIG Investigations, Reviews and Recoveries (continued)

tion created to support a charter school in Boston, Ms. Nathan was “rendering service” to a public body and, therefore, was subject to the earning limitations in [Section 91\(b\) of Chapter 32](#) of the General Laws.

Section 91(b) limits earnings so that public employees cannot receive more in public funds after retirement than they did as full-time public employees. [M.G.L. c. 32, § 91\(b\)](#). The OIG further found that Ms. Nathan’s pension combined with her compensation from the non-profit exceeded her pre-retirement salary, in violation of state law.

In October 2021, the Boston Retirement Board held a hearing to determine the dollar amount of Ms. Nathan’s overearnings. The hearing officer issued his decision in March 2022. The Board voted to approve the settlement on April 27, 2022.

To learn more about the investigation, read the OIG’s letter: [Violation of Post-Retirement Earnings Limits](#).

Holyoke Soldiers’ Home Officials Failed to Follow State Law Regarding Certain Funds in Their Custody

The Office conducted a review and found that between May 2016 and February 2020, the Holyoke Soldiers’ Home (Home) and the Home’s Board of Trustees (Board) did not comply with state laws, follow sound management practices or employ adequate fiscal controls over three specific categories of public funds: donations, canteen income and proceeds from lottery sales.

Further, the Office found that the Home and the Board did not treat these funds as public funds and did not follow state laws, regulations and policies regarding these three categories of funds. For example, the Home and the Board did not (a) link bank accounts to the Massachusetts Office of the Comptroller’s accounting management system, (b) provide information about donations to the Comptroller and the Executive Office for Administration and Finance (ANF), (c) consistently use state-approved financial institutions or (d) comply with state procurement laws. Moreover, the Home and the Board had poor internal fiscal controls relating to these public funds.

The Office also found that the Board did not have statutory authorization to invest or spend donations. During the period under review, the Home and its

Board managed bank and investment accounts holding between \$1.5 million and \$2.5 million in donations.

Veterans at the Home can choose to entrust the Home with money to be used to pay for personal services and amenities, and the Home appropriately maintained the funds in a separate account. However, the Home’s management never formally reported information about the account that holds these funds to the Comptroller or other state agencies with oversight responsibility.

Since the Office’s review, the Board has made several changes to the Home’s management of donations, but there is additional work to do to address the issues that the Office identified.

Going forward, the Office recommended that the Home and Board work with the Legislature to ensure they act in accordance with their statutory authorization, consult with the Comptroller’s office and ANF on the proper use of the funds they oversee, and adopt fiscal best practices.

The Office issued a public letter describing its review and recommendations. To learn more, read the letter: [Fiscal Practices at the Soldiers’ Home in Holyoke and by its Board of Trustees](#).

Change to Chapter 30B Price Quotations Threshold for School Districts

Since its enactment in 1990, Chapter 30B of the Massachusetts General Laws (Chapter 30B) has used tiered thresholds and scaled procedures to promote open, fair and robust competition for municipal contracts, as well as to reflect that larger contracts merit more attention than smaller contracts. See [M.G.L. c. 30B, §§ 4-6](#). Chapter 30B establishes three sets of procedures that local jurisdictions must follow when procuring supplies or services, based on the estimated dollar value of the supplies or services to be procured. *Id.* Most jurisdictions must adhere to the following thresholds and procedures:

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Change to Chapter 30B Price Quotations Threshold for School Districts (continued)

- Use sound business practices to procure supplies or services estimated to cost less than \$10,000. *Id.* at [§ 4\(c\)](#).
- Solicit written price quotations from at least three vendors to procure supplies or services estimated to cost at least \$10,000 but not more than \$50,000. *Id.* at [§ 4\(a-b\)](#).
- Conduct a formal, advertised competition by issuing an Invitation for Bids (IFB) or Request for Proposals (RFP) to procure supplies or services estimated to cost more than \$50,000. *Id.* at [§§ 5-6](#).

In late August 2022, Governor Baker signed into law [House Bill 596](#), which changed the price quotations threshold for municipal and regional school districts. See [2022 Mass. Acts. c. 198](#). Effective November 25, 2022, municipal and regional school districts may satisfy the requirements of Chapter 30B by soliciting written price quotations from at least three vendors to procure supplies and services estimated to cost “\$10,000 or greater but not more than \$100,000.” *Id.* at [§ 1](#). Please note that the price quotations threshold remains unchanged for all other governmental bodies subject to Chapter 30B. See *id.* In addition, the same notice and recording rules for price quotations outlined in [Section 4 of Chapter 30B](#) still apply to school districts. *Id.* Moreover, school districts may opt to issue an IFB when procuring supplies or services estimated to cost \$100,000 or less. *Id.* Finally, remember that school districts must issue an IFB or RFP for any procurement of supplies or services estimated to cost more than \$100,000. See *id.* at [§§ 3-4](#).

The Office’s Chapter 30B Technical Assistance Team plans to issue additional guidance about this change soon. We will post this guidance on our [website](#), and we will email *OIG Bulletin* subscribers when the guidance is ready.

Do not hesitate to contact us if you have questions about this change or other matters related to Chapter 30B. You can reach the Chapter 30B Technical Assistance Team on our [website](#).

OIG Review of the MBTA’s Absence Management Contract with Workpartners

On October 17, 2022, the Internal Special Audit Unit (ISAU) of the OIG issued a [report](#) detailing its review of the Massachusetts Bay Transportation Authority (MBTA)’s employee absence management contract with University of Pittsburgh Medical Center Benefit Management Services, Inc. (d/b/a Workpartners). The ISAU found that the MBTA’s contract with Workpartners enhanced the authority’s ability to manage employee leave. However, the ISAU determined that Workpartners had overbilled the state for over \$200,000 during the life of the contract. In addition, the ISAU could not fully evaluate the procurement of the contract due to a lack of records at the MBTA.

Background

In July 2015, as part of the fiscal year 2016 budget, Governor Baker signed into law [Section 196 of Chapter 46 of the Acts of 2015 \(Chapter 46\)](#), which eased the provisions of the Taxpayer Protection Act for the MBTA.¹ [2015 Mass. Acts. c. 46, § 196\(a\)](#). Chapter 46 exempted the MBTA from the provisions of the Taxpayer Protection Act for three years to make it easier for the authority to privatize services. *Id.*

In accordance with this exemption, in May 2016, the MBTA entered into a contract with Workpartners. The MBTA’s stated goals for hiring Workpartners included curbing overtime costs, reducing the number of bus trips that the MBTA had to cancel due to employee absences and strengthening its Family and Medical Leave Act (FMLA) process. Under the contract, Workpartners handled various aspects of the MBTA’s employee absence process. This included managing employees’ leave balances, running a call center for employees to call to take sick leave or other unplanned leave, and approving or denying employees’ FMLA applications. The contract ended on April 30, 2022, and the MBTA issued the final payment to Workpartners on July 19, 2022.

¹ In 1993, the Massachusetts Legislature passed the Act Providing for the Delivery of State Services in a Fiscally Responsible Manner (the Taxpayer Protection Act). [1993 Mass. Acts c. 296](#) (codified as amended at [M.G.L. c. 7, §§ 52-55](#)). The Taxpayer Protection Act establishes a process that state agencies and applicable authorities, such as the MBTA, must follow before hiring a private company to perform services valued at \$500,000 or more that “are substantially similar to and in lieu of” services that employees of the agency provide. [M.G.L. c. 7, §§ 53-54](#).

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OIG Review of the MBTA's Absence Management Contract with Workpartners (continued)

Chapter 46 also requires the OIG to analyze all contracts that the MBTA entered into pursuant to Chapter 46 and to issue a report within 90 days after the complete performance of such a contract. [2015 Mass. Acts. c. 46, § 196\(c\)](#). These reviews must address the following four areas:

- The competitiveness and fairness of the procurement process resulting in the contract.
- The quality of the services provided by the contract.
- The expected and actual cost of the contract.
- An analysis of whether the cost of the contract exceeded the benefits derived from the contract. *Id.*

Analysis and Findings

As more fully described in its report, the ISAU's analysis of the Workpartners contract found:

- The MBTA fairly and competitively advertised and solicited responses to its request for proposals. Three offerors submitted proposals.
- In its procurement manual and request for proposals, the MBTA outlined a fair process for evaluating proposals and selecting a winning company. However, the ISAU could not evaluate whether the MBTA followed its prescribed process when selecting Workpartners because the MBTA did not retain adequate records of its selection and evaluation process.
- Workpartners consistently produced required reports that assisted the MBTA with data-driven decision-making.
- Workpartners answered employee phone calls in a timely manner, followed intake scripts, responded to a high number of calls and received satisfactory ratings on performance and professionalism from MBTA employees.
- Workpartners did not always approve FMLA applications within the five-day period required by federal law; Workpartners approved 21% of FMLA applications between 6 and 98 days.

- A small sample of MBTA supervisors had mixed experiences with Workpartners' management of unscheduled absences and accuracy of notifications.
- Between October 2016 and February 2021, Workpartners inaccurately billed the MBTA. Since the MBTA did not discover the invoicing errors, this resulted in a \$222,934.40 overpayment to Workpartners. The company reimbursed the MBTA in February 2022.
- As a percentage of total wages, overtime wages increased during the first two fiscal years of the Workpartners contract and then decreased by one percentage point the following three fiscal years.
- The number of dropped bus trips decreased by 50% between 2017 and 2020.
- Prior to the privatization, 31.7% of MBTA employees were approved to use FMLA leave. The percentage of MBTA employees with approved FMLA leave dropped to between 6.4% and 16.4% during the contract period.
- The MBTA gained central reporting and actionable leave data for decision-making because of the contract. The MBTA could analyze and identify employee leave trends, which assisted the MBTA with operational scheduling and planning.

Recommendations

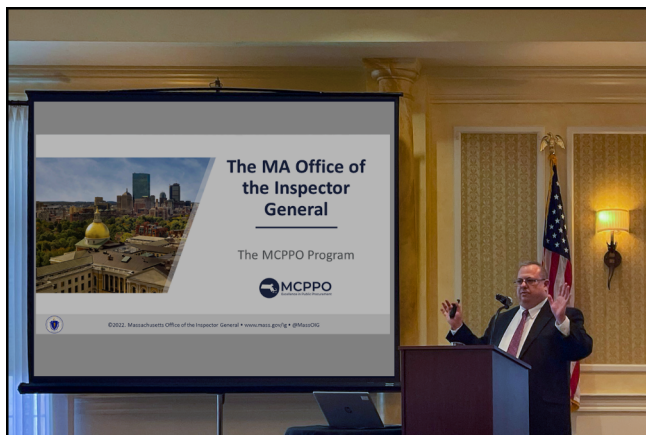
The ISAU developed several recommendations that the MBTA should implement to enhance procurement practices, contract administration and vendor oversight to ensure that the authority appropriately uses its funds. These include developing record retention policies and procedures, training employees on effective record management and invoice review processes, performing independent cost estimates for procurements before receiving bids or proposals, and using sole source procurements only in limited circumstances. For new contracts, including the second contract the MBTA entered into with Workpartners in May 2022, the ISAU recommended that the MBTA monitor vendor performance against performance metrics and hold vendors accountable if they do not meet the metrics.

MCPPO Outside Speaking Engagements

Since 1997, the MCPPO program has trained tens of thousands of government employees and other individuals about public procurement laws and best practices that aid in the prevention and detection of fraud, waste and abuse of public funds. The core of the MCPPO program remains its trainings, which are open to everyone. In addition, the MCPPO program can provide trainings designed to meet the needs of individual jurisdictions or organizations.

Upon request, MCPPO program instructors may be able to schedule an in-person or online presentation specifically for your jurisdiction or organization. We refer to these presentations as “outside speaking engagements.” In 2021, the Office participated in 25 outside speaking engagements with other governmental entities and professional organizations. Over just the past two months, MCPPO staff members presented to several professional groups and state and local jurisdictions, including the Massachusetts Organization of Educational Collaboratives (MOEC), the Massachusetts Charter Public School Association (MCPSA), the University of Massachusetts at Boston, the Massachusetts Municipal Auditors’ and Accountants’ Association, Inc. (MMAAA), the town of Chelmsford, the Massachusetts Association of School Business Officials (MASBO) and the Massachusetts Facilities Administrators Association (MFAA).

Please visit our [website](#) for the list of trainings the MCPPO program offers. If your jurisdiction or organiza-



Neil Cohen, Director of the OIG's Regulatory and Compliance Division, addresses members of the MMAAA, November 2022

tion is interested in hosting a training in your area or would like to request a virtual training, please contact us at MA-IGO-Training@mass.gov.

Upcoming MCPPO Offerings: New Classes and Free Webinars

MCPPO program offerings for our Fall 2022 – Spring 2023 session are underway!

As always, students can register for our MCPPO Designation and Designation Renewal classes, Certification and Recertification classes, MCPPO electives and MCPPO training webinars. We are excited to offer several new classes as well as free webinars during this session. Please note that we will hold all classes online. Registration closes two weeks before the class start date.

New MCPPO Classes

The MCPPO program offered its first new class of the fall semester, [Making a Choice: Design-Bid-Build or Construction Management at-Risk](#), on November 9, 2022. This three-hour training was designed to help jurisdictions determine which delivery method would work best for their construction projects. Topics included an overview of each project delivery method, the major procurement requirements of each method, the differences in oversight requirements and the suitability of projects to each delivery method.

We will offer two more new classes later this year and in 2023:

1. Design and Construction Law Considerations

- Class description: This class is intended for public employees, contractors and others involved in the design and construction of public buildings and public works. The class also provides practical information on implementing best practices.
- Class dates:
 - Date 1: December 13, 2022
 - Date 2: June 13, 2023
- Class time: 8:30 a.m. – 3:30 p.m.

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*Upcoming MCPPO Offerings: New Classes and Free Webinars (continued)***2. Public Building Project Procurement and Oversight Basics**

- Class description: This class provides a broad overview for public officials, public board and commission members, and private contractors interested in a brief introduction to Massachusetts public construction procurement, project oversight requirements and best practices. The class is designed for nonexperts seeking basic information on the laws and best practices that apply to public building projects in Massachusetts. Attendees will learn about the requirements for procuring contracts with building designers, owner's project managers and contractors, and receive a brief overview of other important construction-related topics such as the prevailing wage law, change orders, bonds, bid protests and effective project oversight.
- Class date: March 2, 2023
- Class time: 8:30 a.m. – 11:30 a.m.

Free MCPPO Classes

The MCPPO offered these four training webinars at no cost earlier this year, and they will be back by popular demand in 2023:

1. American Rescue Plan Act (ARPA) Training: Eligibility, Procurement and Reporting

- Class description: The American Rescue Plan Act (ARPA) has brought millions in public dollars to cities, towns and other public entities to respond to the COVID-19 pandemic and its economic consequences. This webinar, our second free ARPA-related training, discusses the differences between subrecipients and contractors under the federal rules, fiscal recovery fund spending that is presumed eligible due to the nature of the beneficiaries or the type of project, and rules relating to using fiscal recovery funds on capital expenditures.
- Class dates:
 - Date 1: February 21, 2023
 - Date 2: April 18, 2023
 - Date 3: June 1, 2023
- Class times:
 - Date 1: 10:00 a.m. – 11:30 a.m.

- Date 2: 2:00 p.m. – 3:30 p.m.
- Date 3: 10:00 a.m. – 11:30 a.m.

2. Chief Procurement Officer Responsibilities and Delegation Authority

- Class description: Under Chapter 30B, local jurisdictions may appoint a chief procurement officer (CPO) to oversee the procurement of supplies or services or to dispose of surplus supplies. Learn about the CPO's responsibilities and how and when the delegation of CPO authority must be reported to the Office of the Inspector General. The training will also discuss the benefits and challenges of a centralized versus decentralized procurement process.
- Class date: May 9, 2023
- Class time: 10:30 a.m. – 12:00 p.m.

3. Fraud Awareness

- Class description: Students will learn the basics of fraud awareness and detection and how they can protect their organizations from fraud, waste and abuse.
- Class date: February 15, 2023
- Class time: 2:00 p.m. – 3:00 p.m.

4. Preventing Common Frauds and Scams

- Class description: Unfortunately, municipalities are often targets for fraudsters and scammers. Using real-world examples from a recent OIG investigation, this training will cover "red flags" to watch out for, how following Chapter 30B can actually prevent a scam and other ways your municipality can keep from becoming a victim. This training is useful for municipal accounting and finance professionals, city and town legal counsel, and anyone who is involved in municipal purchasing decisions or contracting.
- Class date: June 20, 2023
- Class time: 11:00 a.m. – 12:00 p.m.

To register for a class, visit our [website](#). If you have questions or ideas for new classes, contact the MCPPO program by phone at (617) 722-8884 or by email at MA-IGO-Training@mass.gov. We hope to see you in class soon!

Subrecipients and Contractors: Determining the Difference when Disbursing Federal Funds



The American Rescue Plan Act of 2021 (ARPA) has distributed billions of dollars in funding to local and tribal governments through the Coronavirus Local Fiscal Recovery Fund (FRF). FRF recipients, including cities and towns, are authorized to disburse funds to other parties, generally referred to

in this article as “transferees.” The federal regulations governing the eligible uses of ARPA funds specifically authorize recipients to disburse FRF funds to three types of transferees: beneficiaries, contractors and subrecipients. See *Coronavirus State and Local Fiscal Recovery Funds: Final Rule (SLFRF Final Rule)*, [87 Fed. Reg. 4338, 4393-4394](#) (Jan. 27, 2022)(to be codified at [31 C.F.R. pt. 35](#)). Beneficiaries are individuals or entities that are intended to directly benefit from the use of FRF funds. See *id.* Subrecipients and contractors, on the other hand, are individuals or entities that play a role in carrying out an FRF-related program. See *id.* (describing role of FRF subrecipients); [2 C.F.R. § 200.331](#) (discussing the role of contractors more generally).

Although it can be difficult to determine whether a non-beneficiary transferee should be classified as a subrecipient or a contractor, federal regulations require recipients of federal funds to make this determination. See [2 C.F.R. pt. 200](#) (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (Uniform Requirements), which apply to the disbursement of FRF funds).² In fact, this determination is critical because different selection, monitoring and reporting rules apply to FRF subrecipients and contractors under federal law. See [U.S. Department of the Treasury, Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds at 10-11 \(Sept. 20, 2022\)](#). Specifically, FRF recipients must use a competitive process to select contractors, but they need not monitor contractors as closely as subrecipients under federal law. See *id.* at 10. Although recipients need not use a competitive process to select subrecipients, they must monitor subrecipi-

ents more closely than contractors to comply with heightened reporting requirements. See *id.* at 11. FRF recipients must be aware of these differences and properly classify transferees to ensure compliance with all laws regarding the disbursement of federal funds. Fortunately, federal regulations provide some guidance to help recipients determine whether a transferee should be classified as a subrecipient or a contractor.

A subrecipient is a transferee that receives funds, or a “subaward,” from the FRF recipient to carry out a portion of a federal award on behalf of the recipient. See [2 C.F.R. § 200.331\(a\)](#). Under the FRF program, a subrecipient can be a government entity, a non-profit or for-profit entity, or an individual. [SLFRF Final Rule, 87 Fed. Reg. at 4342 n.18](#). To determine whether a transferee is a subrecipient, ask the following questions:

- Does the transferee determine who is eligible to receive the federal assistance it distributes?
- Is the transferee’s performance measured by whether it meets the objectives of the federal program through which the funds are distributed?
- Is the transferee responsible for programmatic decision-making?
- Does the transferee have a role in ensuring compliance with federal program requirements specified in the award?
- Does the transferee use the federal funds to implement a program for a public purpose, as opposed to providing goods or services for the benefit of the recipient?

If an FRF recipient can answer these questions affirmatively, then the transferee in question is most likely a subrecipient. See [2 C.F.R. § 200.331\(a\)](#).

A contractor, on the other hand, is a transferee who provides goods or services for use by the FRF recipient. *Id.* at [§ 200.331\(b\)](#). A contractor’s relationship with a recipient is therefore considered a procurement rela-

² The Uniform Requirements codified at [2 C.F.R. pt. 200](#) are not limited to ARPA funds. These rules apply to the disbursement of federal funds more broadly.

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Classifying Subrecipient and Contractor Relationships in the Disbursement of Federal Funds (continued)

tionship. *Id.* To determine whether a transferee is a contractor, ask the following questions:

- Does the transferee provide goods and services to the recipient within normal business operations?
- Does the transferee provide similar goods or services to many different purchasers?
- Does the transferee normally operate in a competitive environment?
- Does the transferee provide goods or services that are ancillary to the operation of the federal program?
- Is the transferee not subject to compliance requirements of the federal program because of its agreement with the recipient?

If an FRF recipient can answer these questions affirmatively, then the transferee in question is most likely a contractor. *See id.*

Ultimately, federal regulations emphasize that the substance of the relationship between a recipient that receives funds directly from the federal government and a transferee is more important than the form of the agreement between the parties. *Id.* at [§ 200.331\(c\)](#). In other words, even if the terms of the relationship are defined by a contract, a recipient may still need to characterize a transferee as a subrecipient and not a contractor, based on the nature of their relationship. *See id.*

A municipality is not required to follow Chapter 30B in selecting an FRF subrecipient, as choosing a subrecipient does not constitute a procurement as defined by Chapter 30B. *See M.G.L. c. 30B, § 2*. However, in carrying out its role in the federal program, a subrecipient that receives ARPA funds from a municipality must follow Chapter 30B when it procures supplies, services or real property if the municipality would also be required to do so. *See 2 C.F.R. § 200.318(a)*. Additionally, FRF recipients must comply with other federal requirements related to subrecipients, including:

- Ensuring that all subawards are clearly identified to subrecipients as subawards, including information described in [2 C.F.R. § 200.332\(a\)](#);

- Monitoring subrecipients in accordance with [2 C.F.R. § 200.332\(d\)](#);
- Ensuring that subrecipients that expend more than \$750,000 in a fiscal year are audited, as required by [2 C.F.R. § 200.501](#);
- Reporting on subrecipient use of FRF in accordance with federal regulations. *See generally U.S. Department of the Treasury, Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds (Sept. 20, 2022)*; and
- Evaluating subrecipient risk of noncompliance with federal statutes, regulations, and subaward terms and conditions. *Id.*

Under federal law, recipients need not monitor contractors as closely as subrecipients. However, federal procurement law requires recipients to use documented procurement procedures that are “consistent with [s]tate, local, and tribal laws and regulations.” [2 C.F.R. § 200.318\(a\)](#). Therefore, a municipality must follow Chapter 30B when selecting a contractor to procure supplies or services using FRF funds. Remember that federal procurement requirements take precedence over state law if the two conflict. *See M.G.L. c. 30B, § 1(d)*.

At times, it may not be simple to determine whether a transferee is a subrecipient or a contractor. However, FRF recipients must be able to make this determination because different selection, monitoring and reporting rules apply to subrecipients and contractors under federal law. Federal regulations provide helpful criteria to assist recipients, but ultimately, a recipient must use its best judgment to make this determination. If, after reviewing the federal regulations and other guidance, an FRF recipient is still unsure whether to classify a transferee as a contractor or a subrecipient, the recipient can incorporate elements from both sets of requirements. In other words, the recipient can use a competitive selection process for the transferee, as required for contractors, while monitoring the transferee closely to ensure that it meets the objectives of the FRF program, as required for subrecipients.

New OIG Data Analytics Division

The Office of the Inspector General has long understood the value of data-driven decision-making, and the Office has employed data analysts for many years. We are pleased to announce that this summer, the Legislature authorized funding for the Office to establish a unit dedicated to data analytics. The new Data Analytics Division will collaborate with other divisions of the Office on data analytics projects to prevent and detect fraud, waste and abuse in the use of public funds. We look forward to increasing our capability and scope in this important aspect of our work.

We encourage local jurisdictions to incorporate data analysis into their work whenever possible. Not sure where to start? In 2020 – 2021, we published a series of articles in the *OIG Bulletin* to [demystify data analytics](#), offer ideas about [collecting and creating data](#), and share information about [data visualization techniques](#).



Frequently Asked Questions about Chapter 30B

Q: My town would like to lease to a third party a town-owned piece of property, part of which is undeveloped. We know that Chapter 30B requires jurisdictions to advertise in the *Central Register* when disposing of property greater than 2,500 square feet in area. Does the undeveloped land count toward the square footage of the property for the purposes of Chapter 30B's advertising requirements?

A: Yes. Your town must consider the total area of the property to be leased, including developed and unde-

veloped sections, to determine the square footage of the property and the applicable Chapter 30B requirements.

Chapter 30B requires that jurisdictions disposing of real property valued at more than \$35,000 follow an advertised proposal process. [M.G.L. c. 30B, § 16](#). The jurisdiction must advertise to solicit proposals in a local newspaper at least once a week for two weeks. *Id.* at [§ 16\(d\)](#). If the property being leased is greater than 2,500 square feet in area, the jurisdiction must also advertise for the solicitation of proposals in the [Central Register](#) at least 30 days prior to the opening of proposals. *Id.*

Your town therefore must advertise the proposed lease in both a local newspaper and the [Central Register](#) if the developed and undeveloped land together are more than 2,500 square feet in area and the value of the lease exceeds \$35,000.

If your town wants the undeveloped portion of the property to remain undeveloped, you can include restrictions in the proposal materials and any advertisements.

Q: Does Chapter 30B permit our jurisdiction to reject the lowest bidder if we have concerns that the vendor may be overextended because they are a small business?

A: Maybe. Chapter 30B requires jurisdictions to award contracts to the “responsible and responsive” bidder offering the best price. [M.G.L. c. 30B, § 5\(g\)](#). A “responsible” bidder is one that has the capability to fully perform the contract requirements and the integrity and reliability to assure good faith performance. *Id.* at [§ 2](#). You should research whether a vendor has the capability, integrity and reliability to fulfill a contract prior to awarding the contract.

A thorough check of a bidder's references is an essential part of determining whether a bidder is responsible. You may also require bidders to submit certain information relevant to that determination as part of your invitation for bids. For instance, you can request that bidders submit a complete list of their past contracts that were similar in size and scope to your contract. Or you can request audited financial statements or information from a credit reporting agency about bidders.

If you find, after a reasonable investigation, that the lowest bidder's business operations are not financially

Continued on next page

Frequently Asked Questions about Chapter 30B (continued)

sound, or that the lowest bidder had problems completing similar contracts or provided unacceptable supplies or services to your jurisdiction in the past, you may reject the vendor as not responsible.

However, if your concerns about the lowest bidder's ability to perform under the contract are purely speculative, based on the size of the business rather than a demonstrated lack of capability or financial solvency, then you cannot reject the bid on the basis that the bidder is not responsible. Be sure to conduct a thorough reference check, and consider whether the bidder has successfully completed similar contracts previously, either for your jurisdiction or other jurisdictions.

Q: Our jurisdiction received a bid submission from a vendor, who stated that they would decrease their bid price by five percent if we received a lower bid from another vendor. Is this allowed under Chapter 30B?

A: No. A vendor offering to decrease their bid price based on another vendor's bid would be considered a conditional bid, which is not permitted under Chapter 30B.

Your jurisdiction must evaluate all bids received based solely on the requirements and criteria set forth in your invitation for bids. [M.G.L. c. 30B, § 5\(e\)](#). When awarding a contract to a vendor, your jurisdiction must unconditionally accept the vendor's bid without alteration or correction. *Id.* at [§ 5\(f\)](#).

Chapter 30B requires a jurisdiction to waive or allow the vendor to correct minor informalities after the bid opening. *Id.* Minor informalities are "minor deviations, insignificant mistakes and matters of form rather than substance" that a jurisdiction can waive or correct

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without prejudice to other offerors, potential offerors or the jurisdiction itself. [M.G.L. c. 30B, § 2](#).

A conditional change in price is not a minor informality. The offer to change a bid price to undercut a competitor's bid is prejudicial to the interests of fair competition and therefore is not allowed under Chapter 30B. *See id.* at [§ 5\(f\)](#).

Q: Does Chapter 30B require vendors to provide bid bonds when procuring supplies or services estimated to cost more than \$50,000?

A: No. Chapter 30B does not require bid bonds, but a jurisdiction may opt to require bid bonds in their invitation for bids.

A bid bond is a guarantee that if a jurisdiction enters into a contract with a bidder, and the bidder fails to honor the terms of the contract, the jurisdiction will receive some compensation. Requiring a bid bond may help to ensure the bidder fulfills the terms of the contract. Bidders can typically obtain a bid bond through an insurance company or bank.

Bid bonds are often associated with construction contracts, *see, e.g.,* [M.G.L. c. 149, § 29](#), and they are neither required nor prohibited by Chapter 30B. Be aware, however, that requiring a bid bond for a Chapter 30B procurement may restrict competition, as some vendors may not be able or willing to post a bond, particularly for smaller contracts. Before choosing to require a bid bond, a jurisdiction should consider the length and total value of the contract to determine whether a bid bond is necessary.

**Check out our
Procurement FAQs
webpage on
Municipal Opioid
Abatement Funds**

Contact and Subscription Information



Contact the Massachusetts Office of the Inspector General

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- MCPPO Training (617) 722-8884
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Attorney General's Office

For questions related to public construction, public works or designer selection, please contact the AGO at (617) 963-2371.



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