



# OIG BULLETIN

*Official Newsletter of the Office of the Inspector General*



Photograph by Anna Lockett, 2023

Good day:

As summer gets underway, the Office of the Inspector General (OIG) team is busy procuring a new Learning Management System (LMS) that will serve as a new and improved platform for OIG Academy classes. Once this system is operational, we expect that navigating the course offerings, registration, and payment and engaging in learning within the course platform will be much improved. The shift to a new LMS will also involve a curriculum review process that includes plans to bring back some in-person learning options.

I want to commend the OIG Academy team for moving all of our classes online and adapting to the changes brought on by the pandemic. Now that we are in the new post-

pandemic reality, we are excited to broaden our learning opportunities to include self-paced, virtual, hybrid, and in-person classes. We hope to welcome students back to our classroom overlooking the Charles River in the spring of 2025 as well as arrange some regional in-person classes. (Massachusetts may be a small state, but I appreciate just how far Boston is from some communities.)

I am particularly pleased to share that Karla Koza has joined the OIG as our new Director of Learning & Development. Karla is an experienced educator with broad administrative, instructional design, and project management skills. She is passionate about adult learning and professional development.

I would like to thank those 174 communities that took advantage of the One Free Designee pilot program during FY24. Individuals who registered have until the end of FY25 to complete their coursework. The participation rate has been strong, and we are proud of the level of engagement that this pilot has afforded municipalities across the Commonwealth. I encourage the remaining 177 municipalities within the Commonwealth that have not yet enrolled to take advantage of the opportunity prior to the pilot's closing at the end of June 2025. I further encourage those individuals who have earned their Massachusetts Public Purchasing Official (MCPPO) designations through the pilot program to review additional OIG Academy program offerings, such as the summer course offerings described later in this issue.

In late May, I had the pleasure of testifying before the Rhode Island House Committee on Finance about a bill to create an inspector general's office for the state of Rhode Island. A week later, I was pleased to give similar testimony to the Boston City Council Committee on Government Operations about a proposal to create an inspector general's office for the city of Boston. With the first statewide inspector general's office in the nation, Massachusetts is truly a leader and a model in this space. I was glad to share my perspective and outline the necessary elements of a truly independent inspector general's office: a clear mandate, confidentiality, authority to subpoena records and people, a fixed term that is not the same

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*Letter from the Inspector General, continued*

as the appointers', and removal only for cause.

Finally, my efforts to engage with stakeholder groups have led to invitations to speak to a veritable alphabet soup of organizations – MSBA (Massachusetts School Building Authority), MASBO (Massachusetts Association of School Business Officials), and MAPPO (Massachusetts Association of Public Purchasing Officials). The collective efforts of the members of these organizations ensure that children attend well-built and well-equipped schools, that roads are repaired and plowed, that police cruisers and fire trucks are purchased, that computers and phones at city or town hall are upgraded, and that there is paper in the printer. In other words, they make government work.

As always, I am proud to serve as your Inspector General and welcome your thoughts on how the OIG can better serve you.

Wishing you all a safe and pleasant summer.

Sincerely,



Jeffrey S. Shapiro, Esq., CIG  
Inspector General



Photograph by Josh Giles, 2024

*"An inspector general's office must be rooted in transparency and fair dealing. It provides oversight of the government on behalf of the people. Ultimately, having a strong inspector general's office helps to instill a feeling of confidence in government as a whole."*

-IG Shapiro testifying before the Rhode Island House Committee on Finance on a bill to create an inspector general's office for the state of Rhode Island (May 22, 2024).

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The OIG editorial staff revised the federal deadlines for ARPA funds in the article *Planning for ARPA Obligation Deadlines*. The OIG is grateful to the reader who reached out concerning this issue.

## Protect Your Community

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



Fill out our  
**Fraud Reporting Form**



Send us an email at  
**IGO-FightFraud@mass.gov**

## Have a Question about Chapter 30B?



Send us an email at  
**30BHotline@mass.gov**

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## Recent OIG Investigations and Case Updates

### Former Chair of Grafton Select Board Charged with Defrauding Investors

On June 7, 2024, Bruce Spinney, former chair of the Grafton Select Board, was arraigned on fraud charges in the federal district court in Worcester.

Spinney faces three counts of wire fraud and one count of conducting an unlawful monetary transaction related to a scheme to defraud investors in his cannabis company. Following his arraignment, Spinney was released on personal recognizance. He will return to court on July 19, 2024.

According to the indictment, after resigning as chair of the Grafton Select Board in August 2019, Spinney solicited hundreds of thousands of dollars from several investors for a new marijuana dispensary. Spinney already operated a rental equipment and linen business that had accumulated large amounts of debt.

The indictment alleges that Spinney told his new investors that he would use the money to build and license marijuana dispensaries in Grafton and Mendon. However, Spinney allegedly used the investors' money to pay debts associated with his rental equipment and linen business and to cover personal expenses.

The U.S. Attorney's Office is prosecuting the case. The OIG assisted in the investigation.

Spinney is presumed innocent unless and until proven guilty in a court of law.

### OIG Identifies Problems with Execution of Uxbridge Host Community Agreement



On May 30, 2024, the OIG issued a public letter outlining its findings and recommendations following an investigation into the circumstances surrounding the execution of a host community agreement (HCA) for Ironstone Express, Inc., an Uxbridge marijuana retail business. Ironstone Express was owned by Barry Desruisseaux, a former member of the Uxbridge Planning Board.

The OIG began its investigation after receiving a complaint about the matter on its General Fraud Hotline. State law requires that a marijuana retailer execute an HCA with the municipality in which it will operate before receiving a license from the Cannabis Control Commission.

The OIG found that Desruisseaux altered the proposed HCA with Uxbridge after the town rejected his requested changes. He deleted certain key provisions, including those related to business hours, town input on facility managers, and the circumstances under which the town could terminate the HCA. After renumbering the paragraphs, Desruisseaux signed and hand-delivered the HCA to Uxbridge Town Hall. The then-acting town manager, who was not involved

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*Recent OIG Investigations, continued*

in the original HCA negotiations, signed the agreement without reviewing it.

The OIG also found that certain town board members had not completed mandatory state ethics law training as required by [M.G.L. c. 268A, § 28](#).

The OIG recommended that the town implement measures to prevent and detect changes to contracts and other legal agreements prior to execution by ensuring that documents are locked once parties come to an agreement and by establishing a final review process before documents are signed. The OIG also recommended that the town review the Ironstone Express HCA with legal counsel to determine if legal remedies are available. Finally, the OIG recommended that the town ensure that all town employees complete required state ethics training.

The town of Uxbridge has responded to the OIG's recommendations.

The full [letter](#) is available on the OIG's website.

### **Plymouth Woman Arrested for Paycheck Protection Program Fraud**

On May 8, 2024, Katherine Reynolds, of Plymouth, was arraigned on two counts of wire fraud for allegedly submitting fraudulent Paycheck Protection Program (PPP) loan applications on behalf of herself and her father. Reynolds was released on her own recognizance after her initial appearance in federal district court in Boston. Reynolds was scheduled to return to court on July 8, 2024.

The indictments allege that Reynolds submitted two fraudulent applications seeking loans for herself and her father under the PPP. According to the indictments, the loan applications falsely claimed that Reynolds and her 86-year-old father earned over \$100,000 per year providing massage services from their home. The indictments also allege that the loan

applications included fraudulent tax forms that had not been filed with the IRS.

The OIG began an investigation after receiving a complaint on its General Fraud Hotline and worked with the Plymouth Police Department and the U.S. Department of Homeland Security. The U.S. Attorney's Office is prosecuting the case.

Reynolds is presumed innocent unless and until proven guilty in a court of law.

### **Former Leyden Police Chief Arraigned on Theft Charges**



On April 22, 2024, Daniel Galvis, former police chief for the town of Leyden, was arraigned in Greenfield District Court on multiple charges alleging that he stole from the town.

Galvis was charged with two counts of larceny of a motor vehicle, two counts of larceny over \$1,200, and three counts of violating the standards of conduct for public employees. The judge released Galvis on his own recognizance. He will return to court on August 9, 2024.

The OIG began an investigation after receiving a complaint on its General Fraud Hotline. During the investigation, the OIG found evidence that Galvis improperly transferred the title of equipment from the Leyden Police Department, including a skid steer loader, a motor, a trailer, and a truck. The OIG also found evidence that Galvis sold these items without returning the

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*Recent OIG Investigations, continued*

proceeds to the town.

The Northwestern District Attorney's Office is prosecuting the case.

Galvis is presumed innocent unless and until proven guilty in a court of law.

### **Plymouth Man Pleads Guilty to Pandemic Unemployment Fraud**

On April 17, 2024, Aaron Fernandes, of Plymouth, pleaded guilty in Suffolk Superior Court to charges that he fraudulently collected pandemic unemployment benefits. He pleaded guilty to three counts of larceny over \$1,200, two counts of unemployment fraud, one count of identity fraud, and one count of conspiracy to commit larceny. Please see the [December 2023 issue](#) of the *OIG Bulletin* for additional information about these offenses.

The judge sentenced Fernandes to six months in the Plymouth County House of Correction. The judge also sentenced him to three years of probation after his release from incarceration and ordered him to pay \$44,823 in restitution to the Massachusetts Department of Unemployment Assistance.

The charges against Fernandes's co-defendants, Rebecca Holmes and Katherine Quigley, are still pending. The three defendants allegedly collected over \$97,000 in pandemic unemployment assistance. Holmes and Quigley are presumed innocent unless and until proven guilty in a court of law.

The charges against Fernandes resulted from a joint investigation by the Attorney General's Office and the OIG. The investigation originated with a complaint to the OIG's General Fraud Hotline.

The case against Fernandes was prosecuted by the Attorney General's Insurance and Unemployment Fraud Division.

## **2023 OIG Annual Report**

On April 30, 2024, the OIG issued its 2023 Annual Report, which summarizes the accomplishments of the OIG under the first full year of Inspector General Jeffrey S. Shapiro's leadership. The report reflects IG Shapiro's approach to combating fraud, waste, and abuse of government funds, and to improving oversight of government services by mitigating waste in government spending, with a greater emphasis on education, training, and stakeholder outreach.



In 2023, the OIG received 2,130 complaints on its General Fraud and MassDOT Fraud Hotlines related to suspected fraud, waste, and abuse of public resources, conducted investigations resulting in five guilty pleas and six indictments, and recovered over \$1.7 million on behalf of the Common-

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*2023 OIG Annual Report, continued*

wealth. It trained 2,112 individuals on Massachusetts procurement law and fraud prevention through its OIG Academy, provided or renewed Massachusetts Certified Public Purchasing Official (MCPPO) Designations for 489 individuals, and provided training to 109 communities through its One Free Designee Program.

Highlights from the Annual Report include the following:

- The OIG conducted reviews and made recommendations to improve data quality management and fraud prevention for the Department of Transitional Assistance, as well as to improve vendor management for the Department of Developmental Services and the Department of Mental Health.
- The OIG questioned the integrity of changes made to the Massachusetts State Police's (MSP) paid police detail compensation system and made recommendations for improvements to the MSP's outside employment policies.
- IG Shapiro opposed two bills that would create exemptions to the "return-to-work" law for public retirees, and would thus allow holders of specific positions to return to work for a public entity and collect full salaries while also collecting full public pensions, contrary to existing law. IG Shapiro views these proposal bills as inequitable and ineffective because they do not actually address underlying issues around making these jobs attractive to those entering the workforce or looking to transition within these agencies.
- IG Shapiro created two new divisions within the OIG: the Healthcare Division (HCD) and the Veterans' Services Oversight Division (VSOD). The creation of the HCD expands the OIG's oversight capabilities over the Massachusetts Medicaid (MassHealth) and Health Safety Net programs. The VSOD was created in the wake of the formation of the Executive Office of Veterans Services, for the purpose of ensuring greater oversight over the management of the Commonwealth's veterans' homes and other veterans' services.
- The OIG issued a report detailing its review of the Massachusetts Bay Transportation Authority's (MBTA) in-station customer service contract with Mydatt Services, Inc. (d/b/a Block by Block), as well as a supplemental report detailing its review of the MBTA's procurement process for its police dispatch services contract with IXP Corporation. The OIG further identified a list of shortcomings and recommendations for improvement in the MBTA's procurement and contract oversight practices.

The 2023 Annual Report also previewed several areas of focus for the current year, including an internal restructuring of the OIG into three bureaus and an upcoming report on the OIG's investigation into government spending on the Star Store building in New Bedford.

The [2023 Annual Report](#) is available on the OIG's website.

### 2023 Annual Report Highlights

**2,130** hotline complaints received

**\$1.7 million** recovered for the Commonwealth

**2,112** individuals registered for **90** OIG

Academy classes

**31** external trainings conducted

**6** indictments and **5** guilty pleas resulted

from OIG investigations

Over **1,200** technical assistance hotline questions answered

# Attorney General's Office Issues Public Construction Bid Protest Decision

*Submitted by the Office of the Attorney General's Fair Labor Division Bid Unit*

## **Awarding Authority's Failure to Include Statutorily-Required Workforce Participation Goals Violates Massachusetts's Public Construction Bid Laws**

A recent bid protest filed with the Office of the Attorney General's Fair Labor Division concerned the bidding procedures used by a public university for a roof replacement project. The protestor asserted that the university violated the public bidding laws by failing to include the Workforce Participation Goals (currently 6.9% for women and 15.3% for people of color) in the bid documents for the project as required by G.L. c. 149, § 44A(2)(G). The university, unaware of this statutory requirement, did not dispute the protestor's assertion. The decision clarified awarding authorities' obligation to include Workforce Participation Goals, including reporting and enforcement procedures, in their Invitation to Bid and contracts. Such requirements apply to "every contract by a state agency or state assisted contract for design, construction, reconstruction, installation, demolition, maintenance or repair." The protest was allowed, and the decision was issued prospectively as of May 17, 2024.

**Awarding authorities are on notice: Failure to comply with this statutory requirement of the public construction bid laws may result in a mandatory rebid of a project.**

For more information about Workforce Participation Goals required under G.L. c. 149, § 44A(2)(G), please see the following resources:

- [Foundation for Fair Contracting of Massachusetts v. Fitchburg State University - Bid Protest Decision May 17, 2024](#)
- [Why and How: Workforce diversity requirements in the Massachusetts public construction workforce](#), a 2021 training presented by the Office of the MA Attorney General's Fair Labor Division and the UMass Building Authority (PPT slides)
- [Section 16 of the Office of the Attorney General's Public Construction Bidding in Massachusetts FAQ](#)
- [OIG Bulletin, November 2020: Workforce Participation Goals for Minorities and Women](#)
- [ANF Bulletin: Equal Opportunity and Non-discrimination on State and State-Assisted Construction Contracts \(A&F 14\)](#)
- [Finishing the Job: Best Practices for a Diverse Workforce in the Construction Industry, A How-to Manual produced by the Policy Group on Tradeswomen's Issues](#)
- [Weekly Certified Payroll Report and Workforce Participation Form](#) (useful to facilitate contractor reporting of workforce participation to an awarding authority)

*The Attorney General's Fair Labor Division Bid Unit enforces the state's public construction bidding laws and also decides appeals brought by contractors challenging DCAMM's certification decisions. Learn more at: [www.mass.gov/public-bidding](http://www.mass.gov/public-bidding).*



## OIG Calls for Greater Controls and Enforcement of Post-Retirement Earnings Caps

In a report issued in March 2024, IG Shapiro called for statutory changes to increase oversight and enforcement of the statutory cap on earnings for public retirees who return to public service.

The report, *Post-Retirement Earnings Limits for Massachusetts Public Employees: A Review of a Flawed System*, examines the challenges in enforcing the state's "return-to-work" statute. Section 91 of Chapter 32 of the Massachusetts General Laws (Section 91) limits how much a public retiree can earn in post-retirement employment for the Commonwealth or its subdivisions. See [M.G.L. c. 32, § 91](#). The purpose of the earnings cap is to prevent retirees from working full time for a Massachusetts state, quasi-public, or municipal body while simultaneously receiving a Massachusetts public pension.

A significant barrier to enforcement is the complexity of the formula by which a retiree calculates their earnings cap. Section 91 states that each retiree's earnings cap is based on the "salary that is being paid" for their former position but is silent on how to determine that figure. *Id.* at [§ 91\(b\)](#). As a result, each of the Commonwealth's approximately 238,000 public retirees has a unique post-retirement salary cap based on a moving number. This makes oversight and enforcement of the cap next to impossible.



The report outlines several recommendations including strengthening the role of the Public Employee Retirement Administration Commission (PERAC) in overseeing and enforcing the earnings cap (or creating a new entity with oversight and enforcement authority), simplifying the formula used to calculate the earnings cap, and creating more reporting requirements for public retirees and their employers.

The [report](#) is available on the OIG's website.

In response to the OIG's recommendations, the Massachusetts Senate included in its FY 2025 budget proposal the creation of a task force to study and report on post-retirement earnings caps. The provision is currently before the Conference Committee.

## Summer 2024 OIG Academy Offerings

The OIG Academy, formerly known as the MCPPO program, offers classes about legal requirements and best practices in public procurement, contract administration, fraud awareness, ethics, and governance. Our mission is to promote excellence in public procurement, sound governance principles, and the protection of public assets and resources. OIG Academy classes are open

to state and local officials, public employees, private vendors, and members of the public.

**Registration for OIG Academy summer classes opened on Monday, July 1, 2024.** Participants register on a first-come, first-served basis. We do not maintain waiting lists, so we encourage you to

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*Summer 2024 OIG Academy Offerings, continued*

register early. Registration typically closes two weeks before the class start date.

All OIG Academy classes will be held online this summer. The OIG Academy uses the online learning platforms Blackboard and GoTo; we will email login information to participants two business days before the class start date. Please review our [policies](#) and our online [class technical specifications](#) before registering for a class.

This summer, we are pleased to offer two multi-day MCPPO Designation classes as well as a number of shorter webinars. Below is a summary of our summer schedule, highlighting two new webinars and three free webinars. Detailed class information, including descriptions of topics covered and cost, is available [online](#).

### MCPPO Designation Classes

- **Design and Construction Contracting**
  - Part 1: Complete at your own pace from July 15 to August 20.
  - Part 2: Attend online class on October 31, 2024, 8:15 a.m. – 4:00 p.m.
  - Participants must complete both parts.
- **Supplies and Services Contracting**
  - Complete at your own pace from July 22 to August 27.

### Webinars

- **Chief Procurement Officer Responsibilities and Delegation Authority \*FREE\***
  - August 20, 2024, 1:00 – 2:15 p.m.
- **Contract Administration Overview**
  - August 28, 2024, 10:00 – 11:15 a.m.
- **Emergency Procurement**
  - July 16, 2024, 10:00 – 11:00 a.m.

- **Fraud Awareness \*FREE\***
  - July 23, 2024, 10:00 – 11:30 a.m.
- **Surplus Supply Disposition Practices under Chapter 30B**
  - August 14, 2024, 10:00 – 11:00 a.m.
- **Winter-Related Procurement**
  - August 6, 2024, 10:30 a.m. – 12:00 p.m.

### New Webinars

- **Meaningful Involvement in the Budgeting Process \*FREE\***
  - This webinar explores best practices to encourage meaningful public engagement in the development and implementation of public budgets. Public input improves transparency, builds trust in the budgetary process, and helps develop a budget that truly reflects public needs.
  - July 30, 2024, 10:00 – 11:00 a.m.
- **Revenue-Generating Contracts**
  - This webinar focuses on legal requirements and best practices in developing revenue-generating contracts to procure services under Chapter 30B. Examples of revenue-generating services include parking lot management, payment kiosks, and vending machines.
  - August 7, 2024, 11:00 a.m. – 12:00 p.m.

Please visit our [website](#) to view additional information or to register for a class. We plan to publish our Fall 2024 schedule later this summer.

Feel free to contact the OIG Academy with questions by email at [MA-IGO-Training@mass.gov](mailto:MA-IGO-Training@mass.gov) or by phone at (617) 722-8884. We hope to see you in class soon!

# Planning for ARPA Obligation Deadlines

The deadlines to obligate American Rescue Plan Act (ARPA) funding from the Fiscal Recovery Fund (FRF) and Elementary and Secondary School Emergency Relief Fund III (ESSER III) programs are approaching. A [March 2024 \*OIG Bulletin\*](#) article explained the definition of “obligation” according to federal guidelines and discussed the December 31, 2024 obligation deadline for FRF funds and the September 30, 2024 deadline for ESSER III funds. The following article provides some best practices to keep in mind as you plan to use your jurisdiction’s remaining FRF and ESSER funds.



## **1. Account for the length of the procurement process in your planning timeline.**

Planning a project and conducting related procurements properly takes time. Make sure to include adequate time in your program schedule for project administration. This work includes identifying key performance indicators, drafting related bid specifications, posting the bid, waiting for responses, evaluating responses, and drafting a contract. To prepare a contract made with ARPA funds, please review [the \*OIG’s Checklist of Requirements for Contracts Using Federal Grant Funds\*](#), which provides an overview of necessary federal requirements. The Department of Elementary and Secondary Education’s (DESE) [Quick Reference Guide](#) for ESSER III-funded programs also includes a useful summary of the program objectives and steps to meet program requirements.



## **2. Determine early what data you should collect to evaluate the success of your program.**

How will you be able to assess whether your program is achieving the purpose for which it was created? One effective strategy is to periodically collect meaningful data that reflects program success. During the planning phase of your project, identify both qualitative data – such as feedback from surveys of affected groups – and quantitative data – such as number of jobs created by an economic development program – and determine how to collect such data regularly throughout the program’s lifetime. The quantitative data, in particular, can serve as key performance indicators that your jurisdiction can point to as evidence of success and help future public servants determine what program models are most effective.



## **3. Collaborate with other state and municipal ARPA recipients.**

Your jurisdiction will not be facing these deadlines alone. Consult with other ARPA funding recipients about their plans to obligate the remaining funds. Consider working with existing regional planning agencies and other collaborative initiatives with public entities, such as municipal partnerships with neighboring communities. Consult with Commonwealth officials about their plans, especially on infrastructure projects, to reduce the chance of overlapping projects.

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*Planning for ARPA Obligation Deadlines, continued***4. Plan to meet the liquidation deadlines as well.**

Generally, recipients of federal funds must liquidate the funds within 120 calendar days of the end date of the period of performance. See [2 C.F.R. § 200.344\(b\)](#). For ESSER III funds, the liquidation deadline is January 28, 2025. See [U.S. DEPT. OF EDUC., GENERAL AND TECHNICAL FREQUENTLY ASKED QUESTIONS \(FAQs\) FOR CARES ESSER, CARES GEER, CRRSA ESSER, CRRSA GEER, CRRSA EANS, ARP ESSER, AND ARP EANS LIQUIDATION EXTENSION REQUESTS \(ESSER FAQs\), at 6 \(2024\)](#). FRF funds must be obligated by December 31, 2024, and most FRF funds must be spent by December 31, 2026. [U.S. DEP'T OF THE TREASURY, CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS FREQUENTLY ASKED QUESTIONS, at 21 \(2024\)](#). For additional guidance about liquidating federal funds, contact the agency administering your federal award.

Foreseeing the need for extensions for the fast-approaching ESSER III liquidation deadline, the federal Department of Education (DOE) has announced that, upon request from a recipient, DOE may approve an extension of the deadline for ESSER III funds for up to an additional 14 months. See [ESSER FAQs at 1](#). The request to DOE must come through a state's education agency. See *id.* at [1-2](#). In Massachusetts, that agency is DESE. Therefore, a school district in need of a liquidation extension must contact DESE. Note, however, that an extension is not automatic. *Id.* at [2](#). The most prudent thing your school district can do is to plan to meet the liquidation deadline for every ESSER III-funded project without relying on a possible extension. DESE has published an [ESSER III resource page](#), which includes a guide on the ESSER III expenditure extension option, in addition to instructions on how to apply for it under the "Late Liquidation" heading.

As the FRF and ESSER spending deadlines approach, be aware that the federal government is continuing to issue updated guidance about compliance deadlines. Please check the [OIG's Pandemic Funding Oversight Resources](#) regularly, as we will share updated information about these deadlines when it becomes available. In the meantime, feel free to reach out to the [OIG](#) with questions.

## Snow-Related Procurements

It is never too early to start thinking about procuring snow-related supplies and services to meet your municipality's needs for next winter. The [OIG](#) recommends that you anticipate your needs and have contracts in place well in advance of the winter season rather than rely on a last-minute search. Before you begin the process, however, make sure you are familiar with the applicability of Chapter 30B to snow-related supplies and services procurements.

As a result of his many meetings with municipal officials, [IG Shapiro](#) has advocated for common-sense changes in Chapter 30B. As discussed in the [December 2023 \*OIG Bulletin\*](#), [IG Shapiro](#) supports a

proposed change to Chapter 30B that would include snow hauling and snow removal in the statutory exemption. Unless or until this proposal passes, municipalities cannot take advantage of the statutory exemption for snow plowing if they wish to include snow hauling or snow removal in the same procurement.

### **Current snow-related procurement requirements and exemptions under Chapter 30B**

For most procurements of snow-related supplies and services, including snow hauling, the sanding and salting of roads (when not plowing), and the purchasing of

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*Snow-Related Procurements, continued*

salt and sand, you must follow Chapter 30B requirements. For supplies or services costing less than \$10,000, you must use sound business practices. [M.G.L. c. 30B, § 4\(c\)](#). For supplies or services in the amount of \$10,000 but not more than \$50,000 (or \$100,000 for regional or local school districts) you must use a written purchase description to solicit written quotations from no fewer than three vendors that customarily provide the supply or service. *Id.* at [§ 4\(a\)](#). For supplies or services valued at greater than \$50,000 (or \$100,000 for regional or local school districts), you must issue an invitation for bids (IFB) or request for proposals (RFP). *Id.* at §§ [5](#), [6](#).

Snow plowing, however, is an exempt service under Chapter 30B. *Id.* at [§ 1\(b\)\(17\)](#). Despite this exemption, the OIG recommends that you use a competitive and open process to procure snow plowing services. Doing so can help your jurisdiction receive the most competitive price possible from a responsive and responsible vendor. Using a competitive procurement process can also help you gain more information regarding a vendor's past experience.

Once you have entered into a contract for ice and snow-control supplies, note that those supplies (such as road salt or sand) are exempted from Chapter 30B's "25 percent" rule. *Id.* at [§ 13](#). Under that rule,

Chapter 30B prohibits increases in the quantity of supplies and services specified in a contract by more than 25% of the original contract price. *Id.* Chapter 30B expressly exempts a contract for the purchase of road salt or other ice and snow control supplies from this limitation. *Id.* However, if you decide to increase the quantity of supplies or services specified in a contract for ice and snow control supplies, other requirements still apply:

1. The unit price must be the same or less than the price in the original contract;
2. Your jurisdiction's procurement officer must document in writing that an increase is necessary to fulfill the actual needs of the jurisdiction and that it is more economical and practical than awarding another contract; and
3. Both parties must agree to the price and the additional quantity in writing. *Id.*

In rare instances, a storm may be so large that your jurisdiction may need to supplement a snow hauling contract with extra help. In such a circumstance, the emergency procurement exception to Chapter 30B may apply. Whenever the time required to comply with Chapter 30B would "endanger the health or safety of the people or their property," a procurement officer may procure supplies or services without



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*Snow-Related Procurements, continued*

following Chapter 30B requirements that would otherwise apply. See *id.* at [§ 8](#). The OIG interprets this exemption to apply to unexpected or unanticipated events. Therefore, a lack of planning for reasonably expected snow accumulation during a winter does not constitute an emergency.

Even under an emergency procurement, a procurement officer must conform to the requirements of Chapter 30B to the extent practicable and limit the procurement only to supplies and services necessary to address the emergency. *Id.* As soon as practicable after the procurement, the procurement officer must make a record of the emergency, which must include the reason for determining an emergency procurement was necessary, and submit a copy of the record to the [Commonwealth's Secretary of State](#) for publication in its *Goods and Services Bulletin*. *Id.*

Note that the Massachusetts Department of Revenue's Division of Local Services (DLS) publishes information for cities and towns about appropriations and expenditures related to snow and ice removal. For more information, please view [guidance on snow and ice expenditures](#) on DLS's website.

**Best practices**

**1. Anticipate your needs.** Estimating the quantities of ice and snow-related supplies that your jurisdiction may need for the upcoming winter can be challenging. However, providing fair and reasonable estimates – to the extent possible – is important to allow vendors to accurately price and plan for the quantities you may need. The OIG recommends estimating these quantities by reviewing the actual usage in prior years, checking weather and climate predictions for the upcoming season, and consulting with other jurisdictions or agencies, including the Massachusetts Department of Transportation. You may also include contract terms expressly notifying vendors that you may require additional supplies depending on weather conditions. Also, consider soliciting for a contract that includes a “not-to-exceed” dollar amount.

**2. Consider all contract options.** Check for available statewide contracts on [COMMBUYS](#), the Operational Services Division's procurement website. Statewide contracts may provide supplies or services you need at a competitive price. As long as you comply with the applicable contract's user guide, you will also meet the requirements of Chapter 30B. [M.G.L. c. 30B, § 1\(c\)](#).

**3. Require the necessary liability insurance coverage.** As part of a contract for snow plowing or hauling services, your jurisdiction should require drivers to have sufficient proof of commercial insurance coverage in the event they damage property or injure someone. Check with your insurance provider or legal counsel to determine the amount and type(s) of liability insurance coverage contractors or drivers must carry.

**4. Avoid ethics issues.** Keep in mind when hiring for snow plowing or hauling services that a municipal employee generally may not have a financial interest, directly or indirectly, in another municipal contract with the same municipality. See [M.G.L. c. 268A, § 20](#). In addition, municipal employees may not participate as a municipal employee in a particular matter in which, to their knowledge, their immediate family or partner, or their business has a financial interest. *Id.* at [§ 19](#). Contact the State Ethics Commission for guidance on the application of the ethics law to specific circumstances.

Each city or town is different in size and weather resources. Therefore, you must tailor winter weather-related procurements and best practices to your jurisdiction. For procurement questions, contact our Chapter 30B Technical Assistance Hotline at (617) 722-8838 or [30BHotline@mass.gov](mailto:30BHotline@mass.gov).

Should the Legislature enact the proposed exemptions under Chapter 30B for snow hauling and snow removal, we will share updated guidance in a future issue of the *OIG Bulletin*.

## Frequently Asked Questions

**Q: Our Department of Public Works (DPW) plans to replace windows at several town buildings. The new windows will cost \$15,000. Town employees will install the new windows on an as-needed basis. What procurement method should we use for this purchase?**



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**A:** Several procurement methods are available to you for this purchase. Because windows are considered construction materials, your DPW could purchase the windows using the procurement process for construction materials outlined in Chapter 30, Section 39M. See [M.G.L. c. 30, § 39M\(e\)](#) (defining construction materials). Under Chapter 30, Section 39M, you can procure construction materials that cost at least \$10,000 but not more than \$50,000 without labor by seeking written responses from vendors. See *id.* at [§ 39M\(a\)](#). You must draft written specifications and solicit responses from no fewer than three vendors. *Id.* You must advertise your solicitation by placing a notice on your town's website, on [COMMBUYS](#), in the [Central Register](#), and in a conspicuous place near your office at least two weeks before responses are due. *Id.* Once you have reviewed the responses, award the contract to the responsible and eligible vendor offering the lowest price. *Id.* at [§ 39M\(c\)](#). If you have questions about procuring construction materials under Chapter 30, Section 39M, you can con-

tact the Construction Bid Unit at the Attorney General's Office at 617-963-2371.

Another option is to procure the windows under Chapter 30B. Construction materials are typically exempt from Chapter 30B. See [M.G.L. c. 30B, § 1\(b\)\(1\)](#). However, Chapter 30, Section 39M explicitly permits jurisdictions to purchase construction materials using the Invitation for Bids (IFB) process outlined in Section 5 of Chapter 30B. See [M.G.L. c. 30B, § 39M\(d\)\(5\)](#). Note that you must follow the IFB process when purchasing construction materials under Chapter 30B, regardless of the value of the contract. See *id.* You must give public notice of the IFB a reasonable time prior to the date for the opening of bids. See [M.G.L. c. 30B, § 5\(b\)](#). Notice includes posting the IFB at least two weeks prior in a conspicuous place in or near your offices, in a newspaper of general circulation within the area served by your government, and on [COMMBUYS](#). See *id.* You must award the contract to the responsive and responsible bidder offering the lowest price. See *id.* at [§ 5\(g\)](#). If you have any questions about conducting this procurement under Chapter 30B, you can contact the OIG's Chapter 30B Technical Assistance Line by phone at 617-722-8838 or by email at [30BHotline@mass.gov](mailto:30BHotline@mass.gov).

Finally, you may be able to purchase the windows through a statewide contract. Local jurisdictions are deemed to have complied with state procurement law when they obtain goods or services through statewide contracts because the Commonwealth has already competitively procured those supplies and services. See [M.G.L. c. 30B, § 1\(c\)](#); [M.G.L. c. 30, § 39M\(d\)\(5\)](#). For more information on statewide contracts, check out the [April 2023 OIG Bulletin](#) article, *Statewide Contract Vendors: What Municipalities Need to Know*. You can also contact the Commonwealth's

*Continued on next page*



*Frequently Asked Questions, continued*

Operational Services Division at 617-720-3300 for more information about making purchases using statewide contracts.

**Q: Our city conducted a request for proposals (RFP) for a major IT project. We evaluated four proposals, and after applying our evaluation criteria, we rated one proposal far above the others. When we opened the price proposals, we discovered that the highest-rated proposal was significantly more expensive than the other proposals, and the price was greater than the funds we have appropriated for the contract. There is disagreement on the committee about what we should do; one member insists that we must choose the highest-rated proposal. Do we have to choose the highest-rated proposal even if we cannot afford it? Also, if we choose to award the contract to the vendor who submitted the highest-rated, but more expensive, proposal, can we negotiate with that vendor to find a price that fits within our budget?**

**A:** The answer to your first question is no; you are not required to choose the highest-rated proposal. Local jurisdictions must solicit an invitation for bids (IFB) or request for proposals (RFP) for contracts estimated to cost more than \$50,000 (or \$100,000 for municipal and regional school districts). M.G.L. c. 30B, §§ 5, 6. For the RFP process, a local jurisdiction must award the contract to the most advantageous proposal from a responsible and responsive offeror, taking into consideration price and evaluation criteria set forth in the RFP. *Id.* at § 6(g). Chapter 30B allows a jurisdiction to choose a proposal that is not the lowest price if the jurisdiction can justify the selection after rating the evaluation criteria and considering the price. *Id.* at § 6(h). However, Chapter 30B does not allow you to enter into a contract unless funds are available for the first fiscal year at the time of contracting. See *id.* at

§ 12(a). Therefore, you cannot award the contract to the proposal that is costlier than the funds your city has appropriated for the contract. Taking into consideration price and evaluation criteria, you may choose to award the contract to the second highest-rated vendor.

The answer to your second question is also no. You are not permitted to negotiate price when conducting an RFP because you cannot determine what proposal is most advantageous for your jurisdiction on price alone. See *id.* at § 6(a), (g). Allowing offerors to negotiate down the price of their proposal could therefore undercut fair competition. (Note that when using an IFB, you may attempt to negotiate price downward with the responsive and responsible vendor offering the lowest price. This is not prejudicial to fair competition because this vendor will be awarded the contract regardless of whether they negotiate a lower price with you.)

If you choose not to award the contract to one of the vendors who responded to your RFP, you can cancel the RFP, reappropriate more funds, and solicit a new RFP. Keep in mind, however, that vendors may not respond a second time, and there is no guarantee vendors responding to the new RFP will propose prices that are within your city's budget.

**Q: We conducted an invitation for bids (IFB) for landscaping services for our municipality. When we opened the bids, we discovered that the lowest bidder is a vendor with whom we had major issues several years ago. They were difficult to work with, did not respond to our concerns about their performance, and left a bad impression overall. This vendor's bid price is thousands of dollars less than the next lowest bidder, which is a positive, but we are hesitant to award them the contract based on our past experience. Is that a justification for rejecting their bid, or do we need to award them the contract?**

*Continued on next page*



*Frequently Asked Questions, continued*

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A: You may be justified in rejecting the bid based on your past experience with the vendor. For supplies or services estimated to cost more than \$50,000 (or more than \$100,000 for municipal or regional school districts), your town must use either an invitation for bids or request for proposals process. [M.G.L. c. 30B, §§ 5, 6](#). If you choose to issue an IFB, Chapter 30B requires you to award the contract to the responsive and responsible bidder that offers the lowest price. *Id.* at [§ 5\(g\)](#). Chapter 30B defines a “responsive bidder” as one who submits a bid that “conforms in all respects” to the IFB. *Id.* at [§ 2](#). The statute defines a “responsible bidder” as one “who has the capacity to fully perform the contract requirements, and the integrity and reliability which assures good faith performance.” *Id.*

Therefore, although the vendor in question has offered the lowest price, the question you must answer is whether they are responsible, *i.e.*, whether they have the capability, integrity, and reliability to perform under the contract. If you had a bad experience with the vendor in the past and have documentation showing that they did not fulfill the previous contract as outlined in the terms and conditions, were difficult to work with, or did not respond to your concerns, you could determine that they are not responsible. These issues should be documented in your procurement file for the previous contract. You may also decide to consult with the attorney for your municipality to determine whether

you have sufficient basis to determine the vendor is not responsible. If you do make that determination, you must award the contract to the next lowest bidder who is responsible and responsive.

**Q: My town is seeking to procure equipment for our facilities maintenance department. The price for the equipment itself is less than \$10,000, but the delivery fee puts the total contract cost above \$10,000. For determining what rules should govern the procurement under Chapter 30B, is the delivery fee included in the total estimated cost of the contract?**

A: Yes. You must include the delivery fee when estimating the cost of the contract. Chapter 30B applies to your jurisdiction’s procurement of all supplies or services unless an exemption exists. See [M.G.L. c. 30B, § 1](#). The specific procurement process you must follow depends on the estimated total cost of the supplies or services. See *id.* at §§ [4](#), [5](#), [6](#). For the procurement of supplies or services costing less than \$10,000, towns must exercise sound business practices. *Id.* at [§ 4\(c\)](#). When procuring supplies or services estimated to cost at least \$10,000 but not more than \$50,000 (or not more than \$100,000 for municipal or regional school districts), Chapter 30B requires that towns seek written quotations from at least three persons that customarily provide the supplies sought. *Id.* at [§ 4\(a\)](#). For supplies or services estimated to cost more than \$50,000 (or more than \$100,000 for municipal or regional school districts), your town must use either an invitation for bids or a request for proposals. *Id.* at §§ [5](#), [6](#). The estimated value of the contract must include all costs for the supplies or services, including any delivery fees. Therefore, as the estimated total cost of the equipment you wish to procure is more than \$10,000, you must seek written quotations from at least three persons that customarily provide that equipment.

# Contact and Subscription Information



**Contact the  
Massachusetts Office  
of the Inspector General**  
One Ashburton Place, Room 1311  
Boston, MA 02108



## Phone

**Main Office** (617) 727-9140

**Fraud, Waste and Abuse Hotline**  
(800) 322-1323

**MassDOT Fraud Hotline**  
(855) 963-2580

**Chapter 30B Assistance Hotline**  
(617) 722-8838

**OIG Academy** (617) 722-8884

**Media Inquiries** (617) 722-8894

## Email

Fraud, Waste and Abuse Hotline  
[IGO-FightFraud@mass.gov](mailto:IGO-FightFraud@mass.gov)

MassDOT Fraud Hotline  
[MassDOTFraudHotline@mass.gov](mailto:MassDOTFraudHotline@mass.gov)

Chapter 30B Assistance Hotline  
[30BHotline@mass.gov](mailto:30BHotline@mass.gov)

Training/OIG Academy Inquiries  
[MA-IGO-Training@mass.gov](mailto:MA-IGO-Training@mass.gov)

Employment Inquiries  
[IGO-Employment@mass.gov](mailto:IGO-Employment@mass.gov)

## Attorney General's Office

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

## Class Information

To view the current class schedule or to register for a class electronically, please use the links below. If you have any questions, please contact us at (617) 722-8884.

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

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