

June 2021

Volume 2, Issue 2



OIG BULLETIN

Official Newsletter of the Office of the Inspector General

Greetings,

Thank you for reading the second *OIG Bulletin* of 2021. It is a hopeful time — COVID-19 vaccines are widely available, the state is easing public health restrictions and students are returning to their classrooms. As the Commonwealth re-opens its economy, I want to remind public employees that our Massachusetts Certified Public Purchasing Official (MCPPO) program is here to help.

The MCPPO program offers courses that teach public employees and contractors who work on public projects about following Massachusetts public procurement laws and protecting their jurisdictions from fraud, waste and abuse. Last year, the MCPPO program worked quickly to move its classes online, create COVID-19-focused content and expand its ability to provide targeted technical assistance to municipalities in the wake of the public health crisis. As a result, our staff was able to train over 5,000 students – more than any year since the creation of the MCPPO program in 1997. Because of this excellent work, the Regulatory and Compliance Division, which administers the MCPPO program, received the OIG's John William Ward Performance Recognition Award for 2020. I encourage you to take a look at our MCPPO class offerings and resources on the [OIG's website](#).

In addition to this important educational work that fulfills our prevention mandate, the OIG has continued to investigate allegations of fraud, waste and abuse in the expenditure of public funds and to recover those funds whenever possible. Since our last issue, the OIG, in partnership with the Office of the Attorney General (AGO) and with assistance from the Massachusetts Department of Transportation (MassDOT), reached an agreement with a bridge contractor, who agreed to pay \$700,000 to the Commonwealth to resolve allegations that it overbilled MassDOT. The OIG and AGO also secured consent judgments with two former Massachusetts State Police troopers, who returned \$110,000 to the Commonwealth for alleged unworked overtime. Please see [page 4](#) for more information about these and other recent investigations.

These are just a few examples demonstrating how the OIG, while handling new challenges presented by the public health crisis, continues to work hard for the people of the Commonwealth. For more information about the OIG's recent work, I encourage you to read our 2020 Annual Report, where we describe other OIG investigations and recoveries; the OIG's COVID-19 response; and the OIG's efforts to promote diversity, equity and inclusion in our workplace. For a summary of this report, see [page 3](#).

This issue includes contributions from the OIG's Audit, Oversight and Investigations Division, the Policy and Government Division, the Regulatory and Compliance Division and the Division of State Police Oversight. It also includes information about some upcoming changes to the MCPPO program and answers to frequently asked questions about Chapter 30B. In our next issue this fall, we look forward to presenting a special edition of the *OIG Bulletin* commemorating the 40th anniversary of the creation of the Massachusetts Office of the Inspector General — the first state-level OIG in the nation. Please stay tuned!

Thank you again for your ongoing commitment to integrity in government. Do not hesitate to contact us if you need assistance.

Sincerely,

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

Glenn Cunha

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PROTECT YOUR COMMUNITY

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



[OIG Fraud Reporting Form](#)



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

HAVE A QUESTION ABOUT CHAPTER 30B?



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Highlights from the 2020 Annual Report

In 2020, the Office of the Inspector General (OIG) continued to fulfill its mission to prevent and detect fraud, waste and abuse of public funds, while transforming its operations in response to the COVID-19 public health emergency. After ensuring that Office staff had the equipment necessary to work remotely, the Office worked to bring its professional training program fully online, develop standards for conducting remote investigations and review and enhance internal controls to protect public funds. The Office also responded to an increased number of calls to our Chapter 30B Technical Assistance Hotline, reflecting new fraud risks that have developed during the pandemic. The Office worked to provide resources for public employees related to COVID-19 while monitoring public funds for fraud and waste. In addition, the Office continued pursuing its regular work, including investigations, recoveries, reviews, collaborations and efforts to cultivate a diverse, skilled and engaged workforce dedicated to excellence, teamwork and the highest standards of professional conduct.

Here are a few highlights from last year:

- Recovered \$1.8 million in restitution and settlements.
- Provided training in a new online format to over 5,000 participants, a dramatic rise in attendance over previous years.
- Received and responded to 2,986 complaints on our fraud hotlines, more than double the number of complaints from 2019.
- Launched a consolidated OIG COVID-19 Information and Resources page on the OIG's website.
- Collaborated with the Commonwealth's COVID-19 Response Command Center to address hotline complaints.
- Established our Diversity, Equity and Inclusion Committee, which strives to help the

OIG implement best practices to promote diversity, equity and inclusion in the workplace.

- Led investigations that resulted in the successful prosecution of two Department of Developmental Services employees who committed larceny while working at state-operated group homes.
- Conducted a joint investigation that led to the indictment of an accountant for allegedly stealing \$930,000 from four Massachusetts towns.
- Found that Methuen's former leaders failed the city's residents, and that the former police chief put his interests above the city's, in connection with two police contracts.
- Examined overtime shifts at the Massachusetts State Police to determine whether overtime abuses exist in various troops within the department.
- Continued an in-depth review of the Merit Rating Board, the unit within the Registry of Motor Vehicles responsible for maintaining and updating driving records.
- Participated in the development of policies and procedures related to the Commonwealth's public design and construction laws, reviewed public land transactions and provided input on more than 100 pieces of legislation.
- Awarded our first-ever John William Ward Performance Recognition Award to the OIG's Regulatory and Compliance Division for their work in moving all MCPPO course offerings online in less than a month to ensure program continuity during the public health emergency.

Please click [here](#) to read the full 2020 Annual Report.

Recent OIG Investigations

Former State Troopers Return \$110,000 to the Commonwealth for Unworked Overtime

Two former Massachusetts State Police (MSP) troopers agreed to pay a combined total of \$110,000 they received for overtime that they allegedly did not work, Attorney General Maura Healey and Inspector General Glenn A. Cunha announced.

Kevin O'Brien and Robert Freniere were members of the MSP's now-disbanded Troop E, which patrolled the Massachusetts Turnpike. In consent judgments filed in Suffolk Superior Court on April 14, 2021, attorneys for Attorney General Healey and Inspector General Cunha allege that the former troopers submitted time cards between 2015 and 2017 for overtime they did not work. These allegations arose out of an MSP investigation of overtime abuse within Troop E, which found that multiple members reported working overtime hours they in actuality did not. The purpose of the overtime shifts was to reduce accidents, crashes and injuries on state highways. This work required troopers to be highly visible and on patrol, targeting aggressive and speeding drivers.

The Commonwealth's complaint alleges that Trooper O'Brien submitted time cards for over 1,000 hours of patrols across 480 shifts when he was supposed to be working, but, in fact, was not. In accordance with a consent judgment filed in Suffolk Superior Court, he paid \$80,000 to the Commonwealth.

According to the allegations in the complaint, Trooper Freniere submitted time cards for over 360 hours across 136 shifts when he was supposed to be working, but, in fact, was not. In accordance with a consent judgment filed in Suffolk Superior Court, he paid \$30,000 to the Commonwealth.

The OIG's Civil Recovery Unit handled this case, with assistance from the OIG's Division of Police

Oversight and Attorney General Healey's False Claims Division.

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

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

Bridge Contractor to Pay \$700,000 to Settle Allegations of Overbilling

NEL Corporation (NEL), a Middleton-based bridge repair and maintenance contractor, has agreed to pay \$700,000 to resolve allegations that it knowingly overbilled the Massachusetts Department of Transportation (MassDOT) to repair and maintain bridges throughout Greater Boston, the South Shore, and the Cape and Islands. The terms are included in an Assurance of Discontinuance reached with Attorney General Maura Healey and Inspector General Glenn A. Cunha, which was filed in Suffolk Superior Court on March 16, 2021.

An investigation by the OIG's Internal Special Audit Unit for MassDOT (ISAU) and Civil Recovery Unit (CRU) found that NEL continually overbilled MassDOT under contracts for bridge repair and maintenance. The contracts included items that NEL was required to provide, including certain tools and equipment, personal protective equipment, sanitary facilities and other items. Instead, NEL knowingly charged MassDOT for these items, resulting in a windfall for NEL.

Continued on next page

Recent OIG Investigations, cont.

The ISAU and CRU worked with Attorney General Healey's False Claims Division on the settlement. The OIG also received assistance from MassDOT's Highway Division and Office of General Counsel during its investigation.

As part of this settlement, NEL agreed to implement measures to prevent future overbilling, including designating a contract manager to ensure that the company only bills MassDOT for work, supplies and equipment allowed under the contract. In addition, NEL must hire an outside auditor to annually review NEL's billing on all open MassDOT contracts. These measures will remain in effect for five years.

Former Accountant for Multiple Towns Faces New Charges for Allegedly Stealing More Than \$200,000

On March 25, 2021, a statewide grand jury indicted the former accountant of Uxbridge and Wenham for allegedly embezzling more than \$200,000. This is the second indictment against the former accountant, Justin Cole.

According to the new indictments, Justin Cole allegedly stole more than \$201,617 from the towns of Uxbridge and Wenham between March 2014 and February 2017. Mr. Cole was previously indicted in July 2020 for allegedly stealing \$729,000, bringing the total amount allegedly stolen to nearly \$930,000. The additional charges are one count of larceny over \$250 and one count of pre-

sentation of a false claim. The charges resulted from a continuation of the investigation conducted jointly by the Massachusetts Office of the Inspector General and the Massachusetts Attorney General's Office.

Mr. Cole worked as the town accountant for the town of Uxbridge and provided contracted accounting services to the town of Wenham through his company, Baystate Municipal Accounting Group. In the latest indictment, Mr. Cole allegedly diverted the towns' funds to a company that he operated by submitting false invoices for services that were never provided.

Former Marblehead METCO Director to Pay Restitution

On March 22, 2021, Francois Fils-Aime, a former director of the Marblehead METCO program, admitted to sufficient facts for a guilty finding on larceny charges for stealing money intended to benefit students.

METCO is a voluntary school integration program that enrolls Boston students entering kindergarten through grade 10 in high-performing public schools in the suburbs to reduce racial isolation.

Mr. Fils-Aime admitted to using a bank account referred to as "The Marblehead METCO Sunshine Fund" for his personal expenses, including restaurant meals. The account was funded by METCO parents' yearly dues, as well as by donations from individuals and organizations.

Mr. Fils-Aime received a year of unsupervised probation and 100 hours of community service. He must also pay \$10,000 in restitution to the Marblehead Public Schools. The case was continued without a finding subject to Mr. Fils-Aime successfully completing his probation.

An Essex County grand jury indicted Mr. Fils-Aime in 2019 based on a joint investigation by the OIG and the Essex County District Attorney's Office.



Continued on next page

Recent OIG Investigations, cont.

Former Employee of a DDS Group Home Ordered to Serve Probation and Pay Restitution

A former employee of a Department of Developmental Services (DDS) group home has admitted to larceny and false claims in relation to a time fraud scheme and was ordered to pay \$11,500 in restitution.

Katelynn Sullivan, of Lowell, was prosecuted by the Attorney General's office, based on an investigation by the OIG, with assistance from DDS. A complainant contacted the OIG's fraud hotline to report concerns about the overtime fraud.

On February 5, 2020, a Superior Court judge continued the case without a finding and sentenced Sullivan to three years of probation. On February 23, 2021, another Superior Court judge ordered her to pay \$11,500 of restitution in monthly increments of \$500 throughout the probationary period. If Sullivan pays the restitution and completes the probationary period, the indictments will be dismissed.

Oversight of Deputy Tax Collectors

Municipal tax collectors have an important role in ensuring that a municipality's finances are balanced. Failure to collect taxes can severely hamper a municipality's ability to provide services to its residents. Municipal treasurers and collectors can perform this vital function in-house, or they can deputize a private individual or company to collect taxes. See [M.G.L. c. 60, § 92](#). If municipalities choose to outsource tax collection, however, it is essential that they maintain oversight of deputy tax collectors and ensure compliance with all statutory requirements.

Massachusetts law allows municipal tax collectors to appoint deputy tax collectors as needed. *Id.*

State law requires that all deputy tax collectors do the following:

- 1) Keep a cash book recording the details of all sums collected;
- 2) Prepare a report at least once a month of all uncollected warrants;
- 3) Obtain a surety bond; and
- 4) Turn over to the municipality or deposit all sums collected at least weekly.

Id. In addition, deputy tax collectors can withdraw only their fees from the municipality's designated deputy deposit accounts; they cannot withdraw any other money from these accounts. *Id.*

Even with these statutory safeguards in place, municipalities still must maintain oversight of deputy tax collectors in order to protect their jurisdictions - and taxpayers - from fraud and mismanagement. The consequences of lack of oversight became apparent during an OIG investigation into a company that performed tax collection for Massachusetts municipalities. Municipal officials had become lax in their oversight of the company because they had long done business with it. Because officials did not have appropriate controls in place, the deputy tax collector failed to follow state law requirements regarding weekly deposits, surety bonds and recordkeeping, which ultimately cost the municipality significant sums in uncollected tax revenue.

For example, for close to ten years, the deputy tax collector failed to deposit collections at least weekly with the municipality. Over time, the deputy collector's erratic voluntary deposits became nonexistent, and they turned over receipts only in response to phone calls from the municipality. Ultimately, they stopped making deposits to the municipality altogether. During this period, the deputy tax collector continued to send collection notices to taxpayers, and taxpayers continued to submit checks. Yet the deputy tax collector failed to negotiate many of the checks, neither depositing them into the bank nor turning them over to the municipality.

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Oversight of Deputy Tax Collectors, cont.

Eventually, the municipality fired the deputy tax collector. However, municipal officials then discovered that the deputy tax collector's bond had lapsed years before. Without a bond, the municipality could not collect the disputed amounts from an insurance company, nor could they collect this money from the deputy tax collector, who by that time was out of business.

The municipality attempted its own collection process after terminating the deputy tax collector. However, the deputy collector's years of poor recordkeeping made collecting overdue taxes nearly impossible. When the municipality started a new collection process based on their own unreconciled internal records, numerous taxpayers stated they had already paid the deputy collector. Because the municipality did not have documentation from the terminated deputy collector to dispute taxpayers' claims, it had to write off a significant amount of uncollected tax bills.

Other municipalities can avoid a similar situation by maintaining strict oversight of deputy tax collectors and ensuring they abide by state law requirements. The OIG recommends that the governing bodies of local jurisdictions review their policies regarding their deputy tax collectors to make sure they are comprehensive. Municipalities should keep updated internal excise tax records, reconcile internal records with deputy collector records at least monthly, confirm annually that the deputy has an appropriate surety bond and attend trainings on the municipal oversight of deputy collectors. These actions will help municipalities maintain the finances necessary to provide essential services to their residents.

Investigation of State Police Troop A Highway Overtime Shifts

Pursuant to [M.G.L. c. 22C, § 72\(c\)](#), the Office of the Inspector General's Division of State Police Over-

sight (Division) is responsible for monitoring the quality, efficiency and integrity of the Massachusetts State Police (MSP) operations, organizational structure and management functions. During 2020, the Division conducted several reviews, including a comprehensive review of Troop A's federally funded highway overtime shifts during calendar year 2016. Troop A is the MSP troop responsible for patrolling the northeastern part of Massachusetts.

These federally funded, four-hour overtime shifts are similar, but not identical, to the Accident Injury Reduction Effort (AIRE) shifts that were at the center of a criminal investigation into overtime abuses by members of Troop E. (Troop E was the MSP troop responsible for patrolling the Massachusetts Turnpike and the Boston tunnels until it was disbanded in 2018.) The review of Troop A overtime shifts was part of the Division's ongoing effort to examine whether comparable overtime abuses exist in other troops. As a result of this review, the Division identified controls and safeguards that the MSP should put in place to prevent overtime abuse in the future.

Records from the radios installed in all MSP cruisers indicate that many troopers in Troop A did not work their full overtime shifts during 2016. However, the Division did not find a comparable scale of overtime abuse as was the case in Troop E. The individual troopers in Troop E who were convicted in state and federal court failed to work anywhere from approximately 90 to 400 hours of overtime. In Troop A, the Division reviewed 207 overtime shifts and found 93 instances in which police radio records indicated that the trooper was absent for at least 15 minutes of the overtime shift. Overall, the Division found that only 10 of the 43 troopers assigned federally funded highway overtime shifts in 2016 always worked their full shift. The remaining 33 troopers did not work a combined total of 79.2 hours across 93 shifts. One trooper was absent for more than three hours of an overtime shift. The Division did not find any trooper who was absent for a full four-hour overtime shift.

The Division also found that troopers often treated their commuting time as part of the four-hour overtime shift. However, MSP policy does not permit troopers to use commute time in this way.

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State Police Troop A Highway Overtime Shifts, cont.

That is, MSP policy is clear that any commute time is not included in a trooper's hours of work for an overtime shift.

The Division's finding that a trooper was absent for a portion of an overtime shift is not necessarily a specific finding of wrongdoing. Further investigation would be needed to make that specific determination.

Based on these findings, the Division recommended that the MSP clarify through policy and training that highway overtime shifts do not begin until the trooper is present at the assigned shift location, and that the shift continues at the assigned location for four hours thereafter, with the trooper performing their assigned overtime duties. The Division also recommended that the MSP should stress through policy and training that commute time is not part of the overtime shift.

Succession Planning with Procurement Staff

Procurement is an essential part of most organizations. In general, you rely on professional staff with the experience and expertise necessary to successfully manage procurement activities. However, have you considered what will happen to your organization when your procurement personnel changes? Staff may retire or leave for other reasons, or organizational growth may require that you expand your procurement functions. To the extent possible, you should be prepared for such changes.

Qualified candidates for public procurement positions often are not easy to find, and hiring and training new staff takes time. How can you ensure the continuity of procurement functions beyond simply hiring new staff when the time arrives? Here are some suggestions:

- 1) **Back-up staff:** Identify current employees who can be trained to conduct or assist

with procurements. Consider paying for these employees to take the MCPPO (Massachusetts Certified Public Purchasing Official) program core classes. With proper training and supervision, these employees can support current procurement staff and provide interim support in the event of staffing changes.

- 2) **Automation:** Use an electronic bidding platform and shift to electronic records. These changes could simplify the procurement process and make it easier to transition to new staff because electronic records are more easily accessible. Third-party electronic bidding platforms are available, including the state's free COMM-BUYS system.
- 3) **State contracts:** Take advantage of existing contracts that are Chapter 30B compliant. See [M.G.L. c. 30B, § 1\(c\)](#). The state has many existing contracts created specifically for use by local jurisdictions. Additionally, local jurisdictions can participate in cooperative purchasing agreements (see [M.G.L. c. 30B, § 22](#)) and collective procurements (see [M.G.L. c. 30B, § 1\(c\)](#)). Using existing contracts significantly reduces the workload of your procurement staff and could simplify new staff transitions.
- 4) **Templates:** Create standard documents for all types of procurements whenever possible, including specifications, scopes of work and contracts. Develop a library of these templates that can be reused for future procurements. Because most jurisdictions purchase similar supplies and services, this library could include procurement documents from other jurisdictions. Always review information obtained from other jurisdictions to ensure that it is appropriate for your jurisdiction and that it has been prepared correctly.
- 5) **Evaluation:** Take time each year to review your organization's procurement policies and identify best practices to incorporate into future work.

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Best Practice for Proposal Review: Evaluation Guidelines

Certain Chapter 30B procurements require the evaluation of vendor proposals. See [M.G.L. c. 30B, § 6](#). A jurisdiction's Chief Procurement Officer (CPO) designates the individual or individuals responsible for evaluating proposals for supplies and services. *Id.* at [§ 6\(e\)](#). When assembling a team of evaluators to review vendor responses to a request for proposals (RFP) under Chapter 30B, jurisdictions should consider creating evaluation guidelines. Without clear, written guidelines in place, jurisdictions are forced to rely on assumptions about how the evaluation process will work, and evaluators may make up rules as they go along. This can create confusion and inconsistency, which could delay contract awards, lead to vendor protests and fail to promote fairness and transparency.

Effective evaluation guidelines can be simple. The guidelines can be structured as a to-do list or checklist for each evaluator, along with an outline of the evaluation criteria for the proposal under consideration and a restatement of the rule for award. This creates a roadmap for all evaluators to follow and makes their obligations clear. In addition, jurisdictions can create a general template for all proposal evaluations, describing the evaluation process, relevant timeframes, information about group size and membership (using titles or expertise rather than names) and evaluator responsibilities, including reminders about confidentiality and objectivity.

Evaluation guidelines remind evaluators that they must focus solely on the evaluation criteria contained in the specific proposal under review. See *id.* This reminder can be helpful for group members who have additional information or biases and want to consider factors beyond the evaluation criteria. For example, an evaluator may want to increase a vendor's rating because the vendor offered the jurisdiction free items that were not part of the RFP. Despite the added value to the jurisdiction, evaluators should not consider

the free items in the evaluation process because such items were not included by the jurisdiction in the original RFP. Similarly, an evaluator may be aware of poor performance by a vendor years before in another jurisdiction. Although this information may be relevant in a reference check, it should not influence an objective proposal evaluation. Considering factors outside of the solicitation or a vendor's response could prejudice the vendors and the procurement process.

Although not required by Chapter 30B, we recommend that jurisdictions create evaluation guidelines as a best practice, to ensure that evaluators know their responsibilities and review proposals in a fair, objective and consistent manner.

MCPPO Designation Application: CORI Check

The Massachusetts Certified Public Purchasing Official (MCPPO) program requires that all designation and designation renewal applicants acknowledge that the program will perform a Criminal Offender Record Information (CORI) check as part of the application process. Our Office conducts these CORI checks to help maintain high standards and integrity in Massachusetts public procurement. In a CORI check, the state Department of Criminal Justice Information Services (DCJIS) uses a person's name and birth date to search the Massachusetts court system for arraignment records, including information about case status and disposition.

The MCPPO program conducts CORI checks only for purposes authorized by DCJIS and Massachusetts law and only after the applicant submits a completed [CORI Acknowledgement Form](#). The CORI Acknowledgement Form will remain valid for one year from the date of the applicant's signature and must include:

- A clear photocopy or digital scan of the applicant's government-issued identification, such as a driver's license, passport, law enforcement badge or other government-issued credential;

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MCPPO Designation Application: CORI Check, *cont.*

- The signature of the applicant; and
- The signature and stamp of a notary public.

Please note, the failure to submit a notarized form, provide legible identification or fully complete and sign the application may delay processing.

Reminder: MCPPO Designation Requirements are Changing

The Massachusetts Certified Public Purchasing Official (MCPPO) designation requirements are changing to ensure that all MCPPO designees have a uniform understanding of Massachusetts public procurement laws and practices.

Remember that these changes relate to MCPPO designations only. The Charter School Certification, required by statute, and the School Project Designers and Owner's Project Managers Certification, required by Massachusetts School Building Authority (MSBA) regulations, have not changed. These certifications are not related to the MCPPO designations.

We are implementing the following changes effective July 1, 2021:

- **We are reducing the number of MCPPO designations from six to two:** an MCPPO designation for applicants with three or more years of procurement-related experience, and an Associate MCPPO designation for applicants with less than three years of procurement-related experience.
- **We are eliminating the following designations:** the MCPPO for Supplies and Services Contracting, the Associate MCPPO for Supplies and Services Contracting, the MCPPO for Design and Construction Contracting and the Associate MCPPO for Design and Construction Contracting. Current holders of these eliminated designations must convert to the MCPPO or Associate MCPPO designation by taking one additional class.
- **Classes required for new applicants:** New MCPPO designation applicants must successfully complete all three core classes – *Public Contracting Overview (PCO)*, *Supplies and Services Contracting (SSC)* and *Design and Construction Contracting (DCC)* – within a three-year period.
- **Converting designations:** If you currently hold an MCPPO or Associate MCPPO for Supplies and Services Contracting or an MCPPO or Associate MCPPO for Design and Construction Contracting, you will not be able to renew your designation. You must convert to an MCPPO or Associate MCPPO designation by taking the third core class. For example, if you currently hold an MCPPO for Design and Construction Contracting, you must take the *Supplies and Services Contracting* class.
 - Note that during your renewal period, you may take the third core class instead of the 14-credit *MCPPO Designation Renewal* class.
 - You must take the exam at the end of the core class.
- **Changes to requirements:** We are simplifying the MCPPO designations' work experience and educational requirements to promote diversity and inclusion. Previously, the designations required Massachusetts public sector work experience. Beginning on July 1, 2021, however, we will consider any procurement-related work experience, including private sector experience and public sector experience from outside of Massachusetts. We are also expanding our

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MCPPO Designation Changes, cont.

definition of procurement experience to incorporate contract management and supply-chain activities. Finally, we are eliminating educational requirements for the designations. Work experience will replace educational requirements.

- **Changes to renewal class:** We are changing the name of the class required to renew an existing designation from *Recertification for MCPPO* to *MCPPO Designation Renewal* because many students found the term “recertification” confusing in light of other certifications we offer. Additionally, we plan to offer the *MCPPO Designation Renewal* class as an online hybrid class on our e-learning platform later in 2021. This hybrid class will combine self-paced lessons and live webinars. In response to student requests, we are also creating an advanced track of this class for designees with significant procurement-related experience.

We expect to make other changes to the MCPPO program in the upcoming year. We will ensure that all current and future designees have ample notice to prepare for these changes. Please note that we are in the process of updating the application form and designation information on our website. In the meantime, please view the current class schedule on our [website](#), and feel free to contact us with any questions. You can reach us by email at MA-IGO-Training@mass.gov or by phone at (617) 722-8884.



Frequently Asked Questions

Q: Our jurisdiction wants to purchase a new computer mainframe. Our IT director found a statewide contract for the mainframe, but the cost is \$75,000. My finance director insists that we cannot use the statewide contract because the value of the mainframe is over \$50,000. Instead, they think that we have to put the contract out to bid and conduct our own procurement under Chapter 30B. Do we need to conduct a separate procurement, or can we use the statewide contract?

A: Your jurisdiction may use the statewide contract to purchase the computer mainframe without conducting your own separate procurement under Chapter 30B. A statewide contract is a contract that the Commonwealth’s Operational Services Division (OSD) has already procured in accordance with state procurement law on behalf of local jurisdictions and other eligible public entities. Jurisdictions do not need to follow the procedural requirements of Chapter 30B when using a statewide contract because OSD satisfied the statutory requirements when procuring the contract. See [M.G.L. c. 30B, § 1\(c\)](#). Chapter 30B thresholds do not apply when a jurisdiction purchases supplies or services through a statewide contract. See *id.*

However, there are some important points to keep in mind when using a statewide contract. First, a jurisdiction that purchases supplies or services from a statewide contract must comply with the contract’s terms and conditions. OSD’s user guide for each statewide contract outlines these requirements.

Second, the jurisdiction should verify with OSD that the statewide contract vendor is authorized to offer the specific supplies or services sought by the jurisdiction. Remember that the jurisdiction cannot alter the

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FAQs, cont.

scope of the statewide contract or the type of product or service offered under the contract. For example, if a statewide contract offers white tents, you cannot procure a different color tent or another type of covering under that contract.

Finally, we strongly recommend that a local jurisdiction execute its own contract with a statewide contract vendor that incorporates the terms of the statewide contract. A jurisdiction should also consult with legal counsel about any additional terms and conditions to include. Remember that the jurisdiction is responsible for contract management, performance issues and payment issues relative to the contract.

Q: What are the Chapter 30B procurement rules concerning proprietary specifications, and how do proprietary specifications relate to sole source procurements?

A: Chapter 30B allows the use of proprietary specifications in the purchase description of supplies or services only in certain narrow circumstances.

Creating a clear and detailed purchase description is an essential part of the procurement process. See [M.G.L. c. 30B, §§ 4\(a\), 5\(b\), 6\(b\)](#). This description needs to be clear and detailed enough that potential respondents can understand what your jurisdiction is seeking and can determine if and how they will respond to the solicitation.

As a general rule, Chapter 30B prohibits you from including in the purchase description brand names or other proprietary specifications that would restrict the procurement to one manufacturer or supplier. *Id.* at [§ 14](#). However, you may include proprietary specifications if “no other manner of description suffices.” *Id.* If you include proprietary specifications, you must provide a written justifica-

tion of why they were necessary, which you should keep in your procurement file. *Id.*

Even if a proprietary specification is necessary, it does not automatically mean that you can procure the supply or service from a sole source without competition. Indeed, Chapter 30B specifically directs procurement officers to procure proprietary items by competition if more than one potential bidder exists. *Id.* at [§ 7\(a\)](#). For example, several vendors may sell the same brand or model of the specific item or items you are seeking. Therefore, you may be able to obtain multiple competitive quotes, bids or proposals for an item even if you use proprietary specifications.



Q: Our town is seeking a contract for alternative energy credits to decrease its electricity bills. Does Chapter 30B apply?

A: Municipal contracts for energy or energy-related services are exempt from Chapter 30B's procurement requirements. See [M.G.L. c. 30B, § 1\(b\)\(33\)](#). However, within fifteen days of signing a contract for energy or energy-related services, Chapter 30B requires a municipality to submit to the Department of Public Utilities, the Department of Energy Resources and the Office of the Inspector General a copy of the contract and a report of the process the municipality used to execute the contract. *Id.* If the contract contains confidential information pursuant to [M.G.L. c. 4, § 7\(s\)](#), the municipality instead must maintain a record of the

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FAQs, cont.

procurement processes and awards for six years after the date of the final payment. *Id.* The OIG's [Chapter 30B Manual](#), available on our website, contains a sample compliance form for energy and energy-related services contracts for municipalities to fill out and submit.

Although energy and energy-related contracts are exempt, the OIG recommends that municipalities still follow the procurement process outlined in Chapter 30B for non-exempt contracts. Doing so can help a municipality obtain the best price possible through fair and open competition.

Q: Our school food service management contract expires at the end of this year. We receive funding from the U.S. Department of Agriculture (USDA) to help pay for our free and reduced-price meal programs. If we issue a request for proposals (RFP) for a new food service management contract, do we follow Chapter 30B or federal procurement regulations?

A: Most likely, both. Federal regulations require you to apply state and local procurement laws when conducting federally funded procurements, provided that the state and local procurement laws conform to federal law and regulations. See [2 C.F.R. § 200.317-318](#). This means that you would generally follow Chapter 30B when issuing an RFP for a school food service management contract. However, if any Chapter 30B

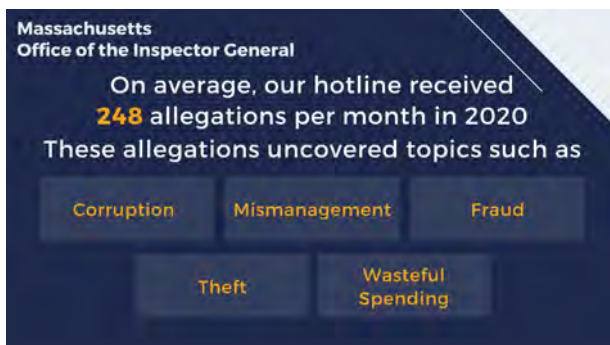
requirement conflicts with federal law or regulations, then you would not follow those specific provisions of Chapter 30B. See [M.G.L. c. 30B, § 1\(d\)](#). A direct conflict between Chapter 30B and federal law and regulations is rare. If you think there may be a conflict, you should discuss it with your legal counsel.

Q: What about the USDA's *Contracting with Food Service Management Companies: Guidance for School Food Authorities* (USDA guidance), which says when using an RFP, "price remains the primary consideration when awarding a contract under the competitive proposal method"? Does this mean we do not follow Chapter 30B for our RFP?

A: No. You must still follow Chapter 30B as doing so would not conflict with the federal regulations on which the USDA guidance is based. The USDA guidance requires you to award the contract to the responsible offeror whose proposal is "most advantageous to" your school, with "price and other factors considered." [USDA guidance at 54](#); see also [2 C.F.R. § 200.320\(b\)\(2\)\(iii\)](#). This requirement is very similar to Section 6 of Chapter 30B, which requires you to award the contract to a responsible and responsive offeror with the most advantageous proposal, taking into consideration price and non-price criteria. See [M.G.L. c. 30B, § 6](#). The USDA guidance and Chapter 30B do differ in that the USDA explicitly requires you to consider price the "primary consideration" in awarding contracts. [USDA guidance at 52](#). However, this requirement does not conflict with Chapter 30B, which also requires you to consider price. While Chapter 30B does not make price the primary factor for determining which offer is most advantageous when using an RFP, the statute does require that you provide a written explanation when choosing a vendor who did not offer the lowest price. See [M.G.L. c. 30B, § 6\(h\)](#).

For more information on paying for supplies or services with federal funds, see the [November 2020 issue of the OIG Bulletin](#).

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Room 1311, Boston, MA 02108

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- MCPPO Training (617) 722-8884
- Chapter 30B Assistance Hotline (617) 722-8838
- Media Inquiries (617) 722-8822

Fax

- (617) 723-2334

Email

- Main Office
MA-IGO-General-Mail@mass.gov
- Fraud, Waste and Abuse Hotline
IGO-FightFraud@mass.gov
- MassDOT Fraud Hotline
MassDOTFraudHotline@mass.gov
- Chapter 30B Assistance Hotline
30BHotline@mass.gov
- Training/MCPPO Inquiries
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