

### THE ARCHITECT, ENGINEER

#### AND RELATED PROFESSIONAL EXEMPTION:

##### WHAT IT MEANS FOR LOCAL GOVERNMENTAL BODIES

In June, 2009, M.G.L. c.30B was amended by adding M.G.L. c.30B, §1(b)(32A), which exempts contracts with architects, engineers and related professionals. In addition, definitions were added to M.G.L. c.30B, §2, to assist in the interpretation of the exemption as to which services are considered exempt. If a given service is not listed in the definitions, it is this Office's opinion that such service is subject to M.G.L. c.30B.

But, keep in mind that just because a contract is exempt from M.G.L. c.30B, it may still be subject to other laws. For example, the designer selection law, M.G.L. c.7, §§38A½ - 380, will apply to certain contracts, such as hiring an architect, engineer or owner's project manager for building construction services if the estimated design services cost is \$10,000 or more and the estimated cost of construction is \$100,000 or more.

##### CONTRACTS WITH ARCHITECTS AND ENGINEERS

"Architect and engineer" is defined in M.G.L. c.30B, §2 as "a person performing professional services of an architectural or engineering nature, as defined by law, which are required to be performed or approved by [an architect or engineer] licensed, registered or certified to provide such services."

If a contract requires professional services of an architectural or engineering nature, and the work is associated with research, planning, development, design, investigations, inspections, tests, evaluations, consultations, program management, value engineering, construction, alteration, or repair of real property, the contract is exempt from M.G.L. c.30B. "Real property" includes land and all things that may be attached or within it, , e.g. buildings, roadways and sewers, or fixtures permanently attached to the land or a structure on it.

Other contracts with architects and engineers that are exempt from M.G.L. c.30B include contracts for services that can be logically or justifiably performed by an architect, engineer or individuals commonly employed by architects and engineers. M.G.L. c.30B, §2 provides the following list of exempt services: studies, investigations, surveying and mapping, soil tests, construction phase services, drawing reviews, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, soils engineering, cost estimates or programs, preparation of drawings, plans, or specifications,

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supervision or administration of a construction contract, construction management or scheduling, and preparation of operation and maintenance manuals and other related services.

##### CONTRACTS WITH RELATED PROFESSIONALS

In addition to exempting services provided by architects and engineers, the services of "related professionals" are also exempt from M.G.L. c.30B. "Related professionals" are professionals engaged in providing services that may include land surveying, landscape architecture, environmental science, planning and licensed site professionals. In order for a contract to be exempt as a contract with a related professional, the professional must be licensed, registered or certified to perform or approve services that are associated with research, planning, development, design, investigations, inspections, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, value engineering, construction, or alteration or repair of real property.

Also, the following services are exempt from M.G.L. c.30B when they can logically or justifiably be performed by related professionals or by individuals in their employ: master plans, studies, surveys, soil tests, cost estimates or programs, preparation of drawings, plans or specifications, supervision or administration of a construction contract, construction management or scheduling, conceptual designs, plans and specifications, construction phase services, soils engineering, drawing reviews, cost estimating, preparation of operation and maintenance manuals, and other related services.

If you are unsure whether a specific contract with an architect, engineer or related professional is exempt from M.G.L. c.30B, please contact the Chapter 30B line at 617-722-8838.

## Establishing a Massachusetts Preference

M.G.L. c.30B, §22 (Section 22), enacted by Chapter 240 of the Acts of 2010, section 72,<sup>1</sup> concerns providing a preference to businesses with their principal places of business in Massachusetts. The provision was effective on August 1, 2010 and creates a 10% preference that governmental bodies are allowed to use to support vendors with a principal place of business in Massachusetts when determining the low bidder. Before you decide to use the “Massachusetts preference” provision for your procurements, this Office recommends that you carefully consider the implementation issues that may arise.

The preference provides as follows:

- (a) Notwithstanding any general or special law to the contrary and to the extent permitted by federal law, a governmental body may, by a majority vote, establish a preference for the procurement of products or services by businesses, as defined in section 3A of chapter 23A, with their principal place of business in the commonwealth.
- (b) If a governmental body establishes such a preference, the procurement officer responsible for procuring products and services on behalf of the governmental body shall effectuate such preference for the procurement in: (i) advertising for bids, contracts or otherwise and making reasonable efforts to facilitate the purchase of such products or services; and (ii) purchasing products or services by businesses, as defined in said section 3A of said chapter 23A, with their principal place of business in the commonwealth, unless the price of such goods or services exceed, by more than 10 per cent, the price of such goods or services produced by businesses with their principal place of business outside of the commonwealth.

After carefully reviewing this section, the Office believes that in establishing a preference, a governmental body can only establish a preference for (1) all supplies; (2) all services; or (3) all supplies and services. However, there are questions that need to be considered by a governmental body before a Section 22 preference can be implemented in a consistent and meaningful way. We therefore recommend that governmental bodies use a thoughtful process, which should include but not be limited to, consideration of the following issues:

1. Whether a dollar limit could be established, e.g. whether the preference applies to all procurements over some figure to be established at adoption, or perhaps to procurements under a certain dollar amount.
2. Whether a vote adopting a preference could be made discretionary, e.g., “The CPO may, at her discretion, adopt a preference ....”
3. How adoption of a preference would affect a governmental body buying from an out of state vendor under a statewide contract, a General Services Administration (GSA) federal supply schedule, or cooperative purchase agreement.
4. Whether, if a local governmental body decides to adopt a preference, it should – in addition to taking a majority vote – also amend conforming local rules.
5. How a business’s “principal place of business” is to be verified.
6. Preference applications are not excluded from RFP procurements, but the 10% margin would be difficult to apply. Consider this closely if applying the preference in an RFP scenario.
7. How specifically should the local governmental body implement the preference during the solicitation and contracting process.
8. What issues a governmental body needs to consider with regard to states that have retaliatory preferences, e.g., Connecticut, which has a procurement rule that will penalize Massachusetts vendors if Massachusetts employs a preference statute that discriminates against a Connecticut vendor.

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1. M.G.L. c.30B, §22, which concerns the use of cooperative purchasing agreements, was enacted by Chapter 188 of the Acts of 2010, section 15. The Legislature is working to correct the numbering of the two sections.

## Prevailing Wage for School Bus Contracts:

### Prevailing Wage Updates Required For Option Years

As you may be aware, M.G.L. c.71, §7A requires that prior to soliciting a contract for the transportation of school children, the awarding authority for a city, town or school district having a population of sixteen thousand or more must request a prevailing wage rate sheet from the Division of Occupational Safety (DOS). The wage rates must be included in the specifications when procuring the contract. It is the opinion of DOS that wage rates apply only to the base term of the contract and do not apply to any options to renew or extend the contract. You will be required to obtain updated prevailing wage rates and provide such to the vendor when entering into the option year(s).

To meet the requirements of M.G.L. c.30B and the directive of DOS, you must plan your procurement carefully. If you solicit prices for optional renewal years, your specifications must indicate that prevailing wage rates in the option years may be different than those rates supplied for the contract term. Vendors are required to give pricing for the option years when responding to a solicitation; but if the prevailing wage rate increases, unless the specifications established a price adjustment clause to apply to the option years, the price offered for the option years must not increase. Therefore, to be fair to vendors, this Office suggests that you include contract language with your solicitation documents that clearly indicates that the contract price can be increased (or decreased) by the exact change in prevailing wage rates.

In order to determine whether prevailing wage rates apply to your school bus contracts and to request prevailing wage sheets, you must complete an online prevailing wage request form at [www.mass.gov/dos/pwrequests](http://www.mass.gov/dos/pwrequests). If DOS determines, using the most recent U.S. Census Data, that a town or city has a population of less than sixteen thousand, it will not set a prevailing wage rate, and will provide notice to the awarding authority. Otherwise, wage rates will be issued. If your town or city is part of a regional school district, the DOS will aggregate the population of the cities and towns that comprise the school district to determine whether the combined population is equal to or greater than sixteen thousand, before issuing prevailing wage rates.

In the instance where an awarding authority does not have access to the internet, it should call DOS at 617-626-6953 to receive instructions on mailing a hard copy request form.

*Massachusetts Office of the Inspector General*

## *Procurement Bulletin Index*

Since 2000, the Office has been indexing the *Procurement Bulletin* to make the information contained in the publications more accessible. Procurement officials may use the index to research topics, such as developments in the law, noteworthy legal cases, questions and answers about M.G.L. c. 30B, and the Massachusetts Certified Public Purchasing Official program.

The Index has been updated through the September 2010 issue and is available at [http://www.mass.gov/ig/igpubl\\_procbull.htm](http://www.mass.gov/ig/igpubl_procbull.htm).

### OSD to Issue Update Pertaining to Use of the Reverse Auction Contract by Local Jurisdictions

The Operational Services Division (OSD) will issue a revised Update for its Reverse Auction contract, ITS09. The Update is to include an attachment provided by the Office of the Inspector General (OIG) pertaining to use of this contract by jurisdictions subject to M.G.L. c.30B. There are some differences for usage by local jurisdictions, which must abide by the requirements in the attachment. The OIG attachment will appear on the "Forms & Terms" tab with the document description "Important – Other Requirements – M.G.L. c.30B Jurisdictions."

### What is an OSD Update?

Each statewide contract has an OSD Update posted under the "Forms & Terms" tab on Comm-PASS. The OSD Updates constitute the official OSD guidance on how to use the contract and how to specify contract terms such as products, pricing, discounts, warranties, delivery terms, and billing. The OSD Updates provide notification of new contracts and publicize any changes in the terms and conditions of existing statewide contracts, such as contract renewal, new pricing, and addition or deletion of a contractor. The OSD Updates may be enhanced with new guidance on using contracts effectively, updated with new vendors, and/or linked to performance reporting, which can better inform a user's decision about a product or service.



### DHCD Requires MCPPO Certification or Public Contracting Overview for its Accelerated Independent Modernization and Management Program

The Department of Housing and Community Development (DHCD) recently issued guidance regarding its Accelerated Independent Modernization and Management (AIMM) program, which provides Local Housing Authorities (LHA) greater flexibility and autonomy in undertaking capital planning and capital project implementation, expediting project schedules and lowering transaction costs.

In order to apply for this program, DHCD requires that, among other things, the LHA has an appointed Chief Procurement Officer (CPO) who has obtained certification through the Office of the Inspector General’s Massachusetts Certified Public Purchasing Official (MCPPO) program. If the CPO has not obtained MCPPO certification, the CPO will be required to successfully complete the MCPPO Public Contract Overview course within 12 months of the Housing Authority receiving AIMM designation. Information on our MCPPO program can be found at <http://www.mass.gov/ig/mcpo/igmpo.htm>. Our January - June 2011 MCPPO schedule and registration form can be found on page 6 of this Procurement Bulletin.

Information on the AIMM program can be accessed at

<http://www.mass.gov/Ehed/docs/dhcd/ph/formula/acceleratedindependent.pdf>, and

<http://www.mass.gov/Ehed/docs/dhcd/ph/formula/faq.pdf>.

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**Operational Services Division offers “One-Stop Link” to Debarment Lists**

Public agencies and municipalities may obtain information on federal and state debarred vendors through the Operational Services Division’s Comm-PASS website. Commonwealth Executive Branch Departments are required to check the debarred vendor lists before awarding or renewing a contract to ensure that they are not awarding a contract to a debarred vendor. Other public jurisdictions also may be required to or may want to check the debarred vendors lists before awarding or renewing contracts. You may access the list of websites that contain debarment information by going to <http://www.comm-pass.com/> and clicking on the “Vendor Debarment” link under “Other Search Tools” on the left side of the page at the bottom. The websites include: (1) the Federal Government’s Excluded Parties List System, (2) the Division of Capital Asset Management Debarred Contractor’s List, (3) Businesses Issued Stop Work Orders by the Department of Industrial Accidents; (4) the Office of the Attorney General Debarment List, and (5) Contractors Suspended or Debarred by MassDOT.

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**Don’t forget, a Chapter 30B attorney is available Monday through Friday from 9:00 am to 4:30 pm to answer any Chapter 30B questions you have.**

**617-722-8838**

## **MCPPO Designations**

The following is a list of the MCPPO Program's new Designees on applications reviewed (not received) between August 1, 2010 and November 1, 2010:

### **MCPPO**

James S. Albrecht, Sturgis Charter Public School  
Gregory R. Bares, Worcester Public Schools  
Nick J. Breault, Town of East Longmeadow  
Kevin F. Cafferty, Town of Scituate  
Michelle A. Cote, Nashoba RSD  
Yocelyn Delgado, Holyoke Gas & Elec. Co.  
Anthony DiCologero, Stoneham Public Schools  
Joseph V. Elia, Woburn Public Schools  
Robert D. Fisher, Bridgewater State University  
Heidi Kriger, Town of Hopkinton  
Catherine M. Lamica, Minuteman RSVD  
Domenic R. Lanzillotti, Town of Arlington  
Patricia M.W. Meuse, Tewksbury Public Schools  
Michael J. O'Halloran, Town of Reading  
Elizabeth M. Rennard, City of Salem  
Peter J. Romano, Revere Housing Authority  
Stephen Samara, UMASS Medical School  
Timothy O. Sheehan, Salem Public Schools  
Michael A. Szlosek, Town of Uxbridge  
Jennifer L. Ventura, City of New Bedford

### **Associate MCPPO**

Elizabeth W. Burns, Westfield Gas & Elec. Co.  
Kim D. Chandler-Elias, Martha's Vineyard Airport  
Cynthia A. Krawczyk, Southboro Facilities Dept.  
Paula M. O'Leary, Reading Municipal Light Dept.  
Judith A. Pearson, Town of Lexington DPF  
Joanne Marcia Roomey, City of Salem  
Peter E. Royer, UMASS Amherst

### **MCPPO for Supplies & Services**

JoAnn Cathcart, Town of North Attleboro  
Patrice Garvin, Town of Groton  
Russ Kaubris, Franklin County Technical School

### **Associate MCPPO for Supplies & Services**

Nick C. Federico, Town of Uxbridge  
April R. Iannacone, Town of Groton



**MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM  
REGISTRATION FORM January—June 2011**

**Office of the Inspector General  
Gregory W. Sullivan, Inspector General**

**REGISTRATION INFORMATION:**

All seminars will be confirmed based on a minimum of 20 participants.

**GOVERNMENT/NON-PROFIT COURSE PRICE:**

Government employees shall include all employees of the commonwealth, employees of the commonwealth's political subdivisions, employees of other state governments, employees of the federal government and employees of any other municipality, county, or local district. Non-profit employees include any employee of a 501(c)(3) corporation. Proof of non-profit status must be provided with registration.

**Register/ Reserve Seating:**

To reserve seating, fax registration and purchase order to (617-723-2334).

**MAIL ORIGINAL TO:**

Commonwealth of Massachusetts  
Office of the Inspector General  
One Ashburton Place, Rm. 1311  
Boston, MA 02108  
ATTN: MCPPO Program  
**MAKE CHECK PAYABLE TO:**  
OIG

**SUBSTITUTIONS /**

**CANCELLATIONS:** Each seminar is limited and filled on a space available basis. No refunds for cancellations. Registration transfer to someone in your organization is possible with prior notice. The OIG reserves the right to cancel/reschedule any seminar and is not responsible for any costs incurred by registrants. Terms and conditions may change without notice. Alternate course dates may be substituted in the event of an emergency, upon notification.

**NO SHOWS or LATE CANCELLATIONS will be invoiced a \$100 service charge**

For more information regarding administrative policies, such as complaint and refund resolution, please email Joyce McEntee Emmett, Director of the MCPPO Program at MCPPO@maoig.net or go to our website at www.mass.gov/ig.

**PUBLIC CONTRACTING OVERVIEW**

3-day seminar

**Tuition:** \$450 for government/non-profit employees  
\$700 for all others

*No Prerequisite*

- February 1,2,3—2011 **BOSTON**  April 26,27,28—2011 **BOSTON**
- March 22,23,24—2011 **BOSTON**  May 17,18,19—2011 **BOSTON**
- March 22,23,24—2011 **HUNTINGTON**  June 7,8,9—2011 **BOSTON**

*Video Conference hosted by Gateway RSD*

**SUPPLIES & SERVICES CONTRACTING**

3-day seminar

**Tuition:** \$450 for government/non-profit employees  
\$700 for all others

*Prerequisite: Public Contracting Overview or Charter School Procurement*

- February 15,16,17—2011 **BOSTON**  June 14,15,16—2011 **BOSTON**
- March 29,30,31—2011 **BOSTON**  June 14,15,16—2011 **HUNTINGTON**

*Video Conference hosted by Gateway RSD*

**DESIGN & CONSTRUCTION CONTRACTING**

3-day seminar

**Tuition:** \$650 for government/non-profit employees  
\$900 for all others

*Prerequisite: Public Contracting Overview or Charter School Procurement*

- February 8,9,10—2011 **BOSTON**  May 24,25,26—2011 **BOSTON**
- April 5,6,7—2011 **BOSTON**
- April 5,6,7—2011 **HUNTINGTON**

*Video Conference hosted by Gateway RSD*

**ADVANCED TOPICS UPDATE**

2-day seminar

**Tuition:** \$350 for government/non-profit employees  
\$600 for all others

- April 13 & 14—2011 **BOSTON**

**CERTIFICATION for School Project Designers & Owner's Project Managers**

4-Day Training

**Tuition:** \$1200 for private sector

- March 2,3,9,10—2011 **BOSTON**  May 4,5,11,12—2011 **BOSTON**

**RECERTIFICATION for School Project Designers & Owner's Project Managers**

1-Day Training

**Tuition:** \$600 for private sector

- January 27—2011 **BOSTON**  April 12—2011 **BOSTON**
- February 28—2011 **BOSTON**  June 1—2011 **BOSTON**

**CONSTRUCTION MANAGEMENT AT RISK**

1-day seminar

**Tuition:** \$275 for government/non-profit employees  
\$600 for all others

**Under M.G.L. c. 149A: Legal Requirements & Practical Issues**

*\*Introductory material geared to procurement officials who are not construction experts*

- April 25—2011 **BOSTON**

**CHARTER SCHOOL PROCUREMENT**

2-day seminar

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

*No Prerequisite*

- FALL 2011 *To be Announced* **BOSTON**

**Drafting A Model IFB**

Self-paced

**Tuition:** \*\$75 ea. for govt./non-profit employees

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The Commonwealth of Massachusetts Office of the Inspector General is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE sponsors. State Boards of Accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be addressed to the National Registry of CPE Sponsors, 150 Fourth Avenue North, Suite 700, Nashville, TN 37219-2417, www.nasba.org. Web site: [www.nasba.org](http://www.nasba.org)



The Commonwealth of Massachusetts Office of the Inspector General is registered with the Department of Elementary & Secondary Education to award professional development points (PDP).

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# ARRA

American Recovery and Reinvestment Act

## Introduction

This section of the *Procurement Bulletin* focuses on matters pertaining to American Recovery and Reinvestment Act (ARRA) funds. It serves as an information source for issues, questions, guidelines and deadlines concerning ARRA. For more information on ARRA, visit our website at: [www.mass.gov/ig](http://www.mass.gov/ig)

## Jurisdictions in Violation of M.G.L. c.30B Regarding Delegations of Purchasing Authority

A number of jurisdictions are in violation of the M.G.L. c.30B delegation provisions. Specifically, a number of jurisdictions have permitted the administration of procurements by employees who have not received delegated authority from the jurisdiction's Chief Procurement Officer (CPO). In a jurisdiction that has a statutorily appointed purchasing agent pursuant to M.G.L. c.41, §103, the purchasing agent will automatically be the CPO under M.G.L. c.30B, and will make delegations. Only the CPO or someone with delegated authority from the CPO may solicit quotes, bids, or proposals. If your jurisdiction has no CPO, you may solicit quotes or bids if authorized by statute, charter or bylaw; if you have been duly authorized; or if you are a member of a board, committee, commission, or other body with procurement responsibilities.

Delegations of authority help to ensure that individuals who have experience and who are accountable for a lawful process conduct procurements. Your own local government creates the details of your purchasing system. The CPO ensures that you carry out your jurisdiction's contracting practices in accordance with state law and local requirements.

It is important to note the following points regarding M.G.L. c.30B, §§2 and 19 as outlined in the Office of the Inspector General's (OIG) Procurement Manual:

- In jurisdictions that have a CPO, including those with a statutory purchasing agent, that person must delegate authority to an employee, or to a position, to conduct procurements of any amount, except for staff working on procurements under the direction of the CPO or another delegated official. The delegation is not effective unless the OIG receives a copy of the completed delegation form. A form for delegation is available from the OIG website at <http://www.mass.gov/ig/mcppo/cpoform.pdf>.
- A CPO may only delegate powers he or she legally has under Chapter 30B and other applicable statutes, rules, regulations, charters, ordinances, or bylaws. If your local government has a charter, bylaw or ordinance governing the exercise of purchasing powers, any delegation of M.G.L. c.30B powers and duties is subject to those provisions.
- If you have questions, check with your CPO (if you have one) or legal counsel.

## **Notice:**

ARRA extended reporting period is January 11-14, 2011.

## Ethics Reform Law

Many recipients of ARRA funds have identified the requirements of the "Ethics Reform Law" as a substitute for other fraud, waste, and abuse prevention and detection capacities. While the new requirements help to increase the knowledge and training of public employers and employees, they are not a substitute for other measures.

Chapter 28 of the Acts of 2009 recently amended The Conflict of Interest Law, M.G.L. c. 268A. The new requirements have been summarized by the State Ethics Commission: "Every state, county, and municipal employee must be given a summary of the conflict of interest law prepared by the Ethics Commission and must complete an online training program prepared by the Commission. Every municipality must designate a liaison to the Commission. All records of compliance with these requirements must be retained for 6 years. These new requirements apply to all public employees, as defined by the conflict of interest law, except to the extent that an employing public agency exempts certain categories of employees from these requirements in accordance with guidelines set forth in these procedures. Former public employees are not subject to these requirements."

You should incorporate these and other measures to increase your capacity to detect and prevent fraud, waste, and abuse. The OIG and the Office of the State Comptroller offer important fraud information including a list of "Red Flag" or fraud indicators, a table of fraud, waste, and abuse indicators by organizational responsibility, a checklist to combat fraud, and advisories and guidance regarding ARRA expenditures and programs. See the Comptroller Toolkit for Departments to Combat Fraud, Waste, and Abuse: [http://www.mass.gov/Aosc/docs/business\\_functions/bf\\_int\\_cntrls/fraud\\_waste\\_toolkit.doc](http://www.mass.gov/Aosc/docs/business_functions/bf_int_cntrls/fraud_waste_toolkit.doc)

For further information, visit the following websites:

- OIG Guides, Advisories and Other Publications: [http://www.mass.gov/ig/igpubl\\_guides.htm](http://www.mass.gov/ig/igpubl_guides.htm)
- OIG ARRA Information: <http://www.mass.gov/ig/igarra.htm>
- State Ethics Commission Mandatory Training Requirements: <http://www.mass.gov/?pageID=ethsubtopic&L=3&LO=Home&L1=Education+and+Training+Resources&L2=Mandatory+Training+Requirements+-+Summaries%2c+Online+Training%>

## Report Fraud Online

Report fraud, waste, or abuse electronically through a confidential complaint form found on Mass.gov/recovery:

[http://www.mass.gov/?pageID=stimutilities&L=1&sid=Fstim&U=Fstim\\_fraud\\_report\\_form](http://www.mass.gov/?pageID=stimutilities&L=1&sid=Fstim&U=Fstim_fraud_report_form)

## Confidential Fraud Hotline:

Please don't hesitate to use the OIG hotline (800) 322-1323 to report waste, fraud, or abuse of ARRA funds. All calls are confidential. For general questions about ARRA spending call (617) 727-9140.

## ***Procurement Bulletin*** **Subscription Information**

The *Procurement Bulletin* is published on a quarterly basis by the Massachusetts Office of the Inspector General. There is no charge to subscribe. To receive the *Procurement Bulletin* via e-mail, please send an e-mail containing your first and last name, along with your e-mail address, to David Galt at [galt@maoig.net](mailto:galt@maoig.net). To receive a paper copy via mail, please fax your mailing address to David Galt at 617-723-2334.

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### **Massachusetts Office of the Inspector General**

**One Ashburton Place, Room 1311**

**Boston, MA 02108**

**(617)727-9140**

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