



PROCUREMENT BULLETIN

Dear Public Officials:

Season’s greetings! I am happy to announce some recent staff changes that have taken place at the Inspector General’s Office. Mary Kolesar, Senior Policy Analyst, has been a dedicated employee of this Office for over 25 years. Mary has accepted further responsibilities in addition to her current role as Senior Policy Analyst; she will also serve as Curriculum Specialist. In this position, Mary will work with the MCPPO program and members of that team to develop new class segments and refine current course curriculums to ensure that we provide the most relevant procurement information and topics to all attendees. Elizabeth Unger has accepted the position of Associate General Counsel/Curriculum Coordinator for the MCPPO program. Throughout her time at the Inspector General’s Office, Liz has demonstrated a strong work ethic and outstanding legal skills, and we look forward to having her positive energy in the classroom.

Mark Till has accepted the position of 30B Analyst/MCPPO Instructor. Mark, who has already been assisting the MCPPO program by leading some segments of our classes, has received rave reviews for his thorough and entertaining teaching style. Mark will continue to teach and work closely with MCPPO Director Joyce McEntee Emmett and other members of our MCPPO team. Last but not least, Natasha Bizanos has been promoted to Senior Counsel/30B Coordinator. Natasha and her team do an exceptional job of handling the daily constituent calls received through the Office’s Chapter 30B Hotline. Natasha’s ability to multitask is truly remarkable. She effectively divides her time between teaching in the classroom for the MCPPO program, giving presentations at numerous external group events, and providing leadership and guidance to the 30B team. Please join me in congratulating Mary, Liz, Mark and Natasha for their accomplishments. I am proud to work with them and appreciate their commitment to serving the people of the Commonwealth.

In this issue you will find a comprehensive article on procuring school bus transportation services, as well as answers to some common procurement questions. Also, be sure not to miss the seminar highlights from Massachusetts Maritime Academy, which serves as one of our newest videoconference locations.

I would like to thank the staff at the Massachusetts Maritime Academy who generously provide conference space and help make our classes such a success. Likewise, I appreciate the contributions of all of you who have given back to the MCPPO program this year by, for example, teaching segments of our classes, offering thoughtful advice, providing classroom space, and giving us meaningful evaluations. Your efforts help us continue our mission to provide education as a tool for the prevention of fraud, waste and abuse.

Once again, I want to thank you for your time and consideration in reviewing the Office’s publications and I wish you all a very happy and healthy New Year!

Sincerely,

Glenn A. Cunha
Inspector General

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NOTICE:

The MCPPO class schedule for the approaching 2014 semester will be available in the near future. Information regarding all upcoming classes will be posted on our website at: <http://www.mass.gov/ig/mcpo/>.

Highlights from some recent classes can also be found within this publication.

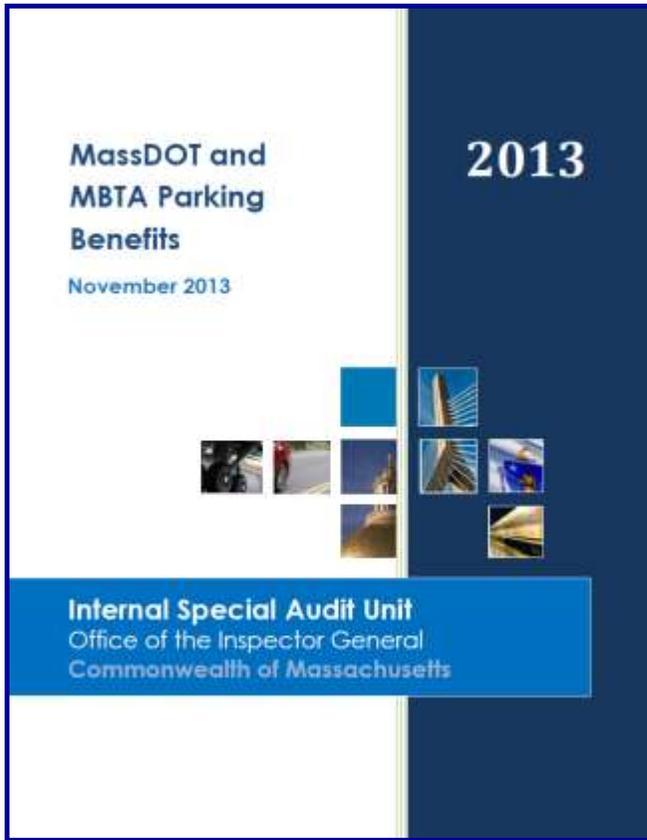




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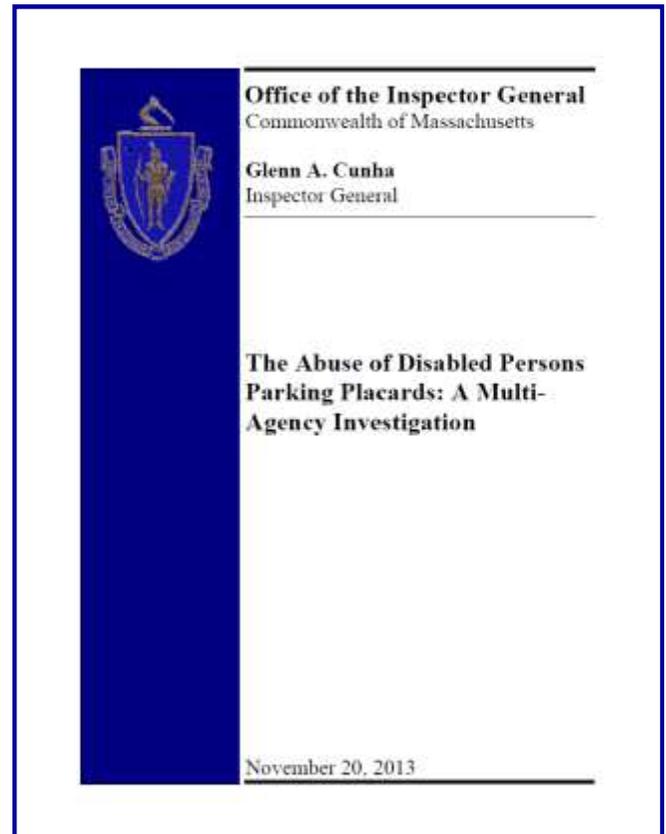
The Internal Special Audit Unit (“ISAU”) was established by the Massachusetts Legislature (M.G.L. c. 6C, § 9) as a unit within the Office of the Inspector General. The ISAU is responsible for monitoring the quality, efficiency and integrity of the Massachusetts Department of Transportation’s (“MassDOT”) operating and capital programs and seeking to prevent, detect and correct fraud, waste and abuse in the expenditure of public and private transportation funds. In November of this year, the ISAU issued a report entitled *MassDOT and MBTA Parking Benefits: Internal Special Audit Unit Report*. The full report can be found on our website or by clicking the link below.

<http://www.mass.gov/ig/publications/reports-and-recommendations/2013/massdot-and-mbta-parking-benefits-11-2013.pdf>



The Office recently completed its third major investigation of the misuse of disabled persons’ parking identification placards (“placards”) in the city of Boston. Upon completion of this investigation, the Office recommends that Massachusetts improve its placard program in the following categories: increasing enforcement of the current law; amending state law to increase the penalties for placard abuse; and tightening administrative controls to make abuse harder to accomplish and easier to detect. To read more about the Office’s findings and recommendations, the full report can be found by going to our website or by clicking on the link below:

<http://www.mass.gov/ig/publications/reports-and-recommendations/2013/abuse-of-disabled-persons-parking-placards-11-2013.pdf>





SOIL PROCUREMENT ADVISORY

In the September 2013 *Procurement Bulletin*, our Office addressed an issue relating to soil procurement for a town seeking fill for its landfill-capping project. Many towns receive payment in exchange for accepting this fill. The September *Bulletin* provided that these soil procurements should be competitively procured as revenue-generating contracts under Chapter 30B. This is generally the case, with some exceptions.

When a soil or landfill purchase is a necessary part of a *public works* contract under Chapter 30, Section 39M, or a *building construction* contract under Chapters 149 or 149A, then that soil purchase would be subject to those laws and not Chapter 30B.

In any event, cities and towns should always check with the Department of Environmental Protection's ("DEP") requirements before accepting fill. DEP regulations apply and should be confirmed prior to taking in these materials.



Chapter 30B Hotline: (617) 722-8838

Criminal Offender Record Information Update

Please note that as of January 1, 2014 all applications for MCPPO Designation will again require a Criminal Offender Record Information ("CORI") Request Form to be completed. CORI forms can be found on our website, but must be submitted **in person** to the Office of the Inspector General. If you have any questions regarding this policy, please contact Joyce McEntee Emmett at (617) 722-8835 or via email at Joyce.Emmett@MassMail.State.MA.US.





FREQUENTLY ASKED QUESTIONS RELATING TO PROCUREMENT



Q1. I am a Chief Procurement Office and I intend to purchase a copier machine valued at \$8,500 for the town offices. Under the recently enacted thresholds in Chapter 30B, I must use "sound business practices" in conducting my procurement. What does "sound business practices" really mean? What activities meet this standard?

A1. Under Chapter 30B, "sound business practices" is defined as "ensuring the receipt of favorable prices by periodically soliciting price lists or quotes." It is a fairly broad standard. It allows for flexibility in making your determination as long as the practices you employ are sound and reasonable methods of gathering price information for the product you intend to purchase. Reasonable methods to procure a copier include, for example, researching internet prices, checking catalog prices, and calling various suppliers to determine the best price for the machine you seek to procure. You should also record the information you gather from the various vendors (price, availability, etc.) and keep a file of this information. By contrast, however, it would clearly not be considered a sound business practice to split your contract up into smaller amounts in order to avoid soliciting Invitations for Bids or Requests for Proposals under Chapter 30B.



Q2. Our town wants to sell advertising space on public property. Do we need to follow Chapter 30B to select and contract with vendors who want to advertise?



A2. Not necessarily. Chapter 30B applies to the procurement and disposition of supplies, services, and real property. The definitions of supplies, services, and real property do not apply to advertising. Therefore, in general, Chapter 30B does not apply to a contract for advertising. However, when allowing an entity to use public space to advertise, you will need to follow Chapter 30B if you are conveying any rights, other than a license, to real property that your jurisdiction (or local government) owns.

Even when Chapter 30B is not required, the Office recommends that local jurisdictions use sound business practices, follow an open and competitive procurement process, and maintain complete records of the process that it uses. An open and fair procurement helps to foster public confidence in your government and helps ensure that your jurisdiction maximizes the benefits it receives from this type of revenue-generating contract.





FREQUENTLY ASKED QUESTIONS RELATING TO PROCUREMENT (CONTINUED)

Q3. Chapter 30B provides an exemption for energy contracts. Is there anything my city needs to do to ensure that its energy contract is exempt from Chapter 30B?

A3. Yes. Energy contracts for energy or energy-related services are exempt from Chapter 30B provided that the local government claiming the exemption has complied with the Chapter 30B statutory requirements. Specifically, Chapter 30B, § 1(b)(33), states that within fifteen (15) days of the contract’s execution, the local government must submit “a copy of the contract and a report of the process used to execute the contract” to the “department of public utilities, the department of energy resources, and the office of the inspector general.” However, if the contract contains “trade secrets or confidential, competitively-sensitive or other proprietary information” as further defined in M.G.L. c. 4, § 7(s), the governmental body may “maintain a record of the procurement processes and awards for 6 years after the date of the final payment.” M.G.L. c. 30B, § 1(b)(33). In such a situation, the governmental body “shall make such records available to the inspector general upon request.” *Id.* If an energy contract does not comply with these requirements, it is not exempt from Chapter 30B. If the contract is not exempt from Chapter 30B, it must be competitively procured in accordance with Chapter 30B.



Q4. How can I maximize my local government’s cost-savings when using statewide contracts?

A4. Chapter 30B permits local governments to purchase supplies and services from statewide contracts administered by the Massachusetts Operational Services Division (“OSD”). Two often overlooked incentives that OSD vendors offer are prompt-payment discounts and volume-based discounts. Prompt-payment discounts are price reductions that vendors offer to encourage fast payment. A volume discount is a price reduction for large-quantity or high dollar-value orders. The exact amount of the discounts and the names of vendors participating in the discount programs are outlined in each statewide contract’s user guide, which can be found on OSD’s Comm-PASS website.

Although vendors may offer prompt-payment or volume-based discounts, your jurisdiction is responsible for ensuring that vendors properly apply the discounts. For additional requirements for utilizing state contracts,

please see OSD’s *Procurement Information Center* at <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/conduct-a-procurement/procurement-information-center.html>.





INTRODUCING MCPPO'S NEWEST VIDEOCONFERENCE LOCATION...

Massachusetts Maritime Academy

BAYSTATE CONFERENCE CENTER, Buzzards Bay, MA

Recent videoconference classes at this facility include: Public Contracting Overview, Supplies & Services Contracting, and Design & Construction Contracting. A big THANK-YOU goes out to the staff at MMA for all of your kind hospitality!



Be sure to keep
an eye out for
future classes at
this location!



M.G.L. c. 30B AND SCHOOL BUS TRANSPORTATION CONTRACTS

Obtaining school bus services is one of the most challenging procurements under the Uniform Procurement Act, M.G.L. c. 30B (“Chapter 30B”). It requires a substantial amount of time and effort, but when properly completed can offer tremendous benefits to the jurisdiction. Below is a list of applicable statutes, some suggestions you may want to include when drafting your bid specifications, and special considerations for your next school bus service procurement.

The procurement of school bus transportation services is primarily governed by Chapter 30B. School bus transportation contracts generally rise above the \$25,000 threshold and therefore require a local government to solicit either bids or proposals for the service. Section 5 of Chapter 30B governs the procedure for soliciting bids (“IFB”), a process designed to award a contract to the lowest priced vendor. Section 6 of Chapter 30B governs the procedure for soliciting proposals (“RFP”), a process designed to select a vendor by taking into consideration specified evaluation criteria as well as price. Your local government’s needs will determine which of the two procedures will work best to procure your school bus transportation contract.

NOTABLE STATUTORY PROVISIONS

In addition to Sections 5 and 6 of Chapter 30B, you should also be aware of the following statutory provisions when procuring school bus transportation services:

1. If the contract for school bus service exceeds \$100,000, you must place a notice of the procurement in the Secretary of the Commonwealth’s *Goods and Services Bulletin*. M.G.L. c. 30B, § 5(c) (5).
2. If the contract for school bus service will exceed three years (including any renewals, extensions, or options), you must have majority-vote approval from your local governing body before awarding the contract. M.G.L. c. 30B, § 12(a).
3. To be eligible for school bus transportation reimbursement from the state treasurer under M.G.L. c. 71, § 7A, a jurisdiction must use Chapter 30B, § 5 (“Invitation for Bids”), and not Chapter 30B, § 6 (“Request for Proposals”).



DRAFTING YOUR BID SPECIFICATIONS

Include a clear rule for determining the present value of the bids. When drafting your invitation for bids, you must include a clear rule for award. You should specify whether your jurisdiction will award one contract to the lowest responsive and responsible bidder overall, or separate contracts to the lowest responsive and responsible bidder for each route or type of bus service (*e.g.*, there could be separate contracts awarded for daily bus routes and afterschool activities). If you are permitting bidders to submit different prices for each year of the contract, you should also include the method for calculating the present value of the bids so that you may compare bids on an equal basis to determine the low bidder.

Include your actual or estimated need. For contracts of more than one year, Section 12(c) of Chapter 30B requires local awarding authorities to provide actual or estimated quantities of the requested supplies and services in the bid specifications. If the term of your school bus contract will be more than one year, therefore, you must provide bidders with actual or estimated routes, the number of children to be transported, the number of buses for a specified amount of days, and other relevant information that a bidder will need to prepare the bid or proposal.



M.G.L. c. 30B AND SCHOOL BUS TRANSPORTATION CONTRACTS (CONTINUED)

Include a fuel adjustment clause in the contract. Fuel prices are extremely volatile. If you do not include a fuel adjustment clause in your contract, it is a lose-lose situation: your vendor will have to assume the risk of cost increases and you will receive no benefit if fuel prices decrease. Moreover, when a bidder calculates its bid, it likely will take this risk into consideration and may submit an inflated bid to cover the risk. To avoid this from happening, your bid specification should include a formula that will calculate contract price adjustments as the market fluctuates. Thus, as the cost of fuel rises and falls, neither party will carry the sole risk of market changes. You should use a published index of wholesale fuel prices, and include the title of the index in your bids specification documents. See www.mass.gov/ig/mcppo/schbids.pdf for sample fuel adjustment clauses.

Consider general bus garaging requirements. You should consider using general garaging requirements to encourage open and fair competition. Requiring a successful bidder to garage the buses within a specific geographic area could narrow the field of eligible bidders and result in higher prices for bus services. Rather, municipalities could address concerns about timely responses to bus breakdowns in less restrictive ways. For instance, your specifications may state that the successful bidder must respond to a bus breakdown within a fixed period of time, or the contract language may include specific monetary penalties if the bus company fails to respond to the breakdown within the fixed time period. Another alternative might be to consider offering to lease public space (e.g., department of public works, town hall, fire department) to the successful bidder to garage the buses.

Specify age and mileage limits for the buses. You should consider whether your jurisdiction will require new buses, or will allow used buses no older than a certain number of years or that do not exceed a certain mileage limit. By not specifying whether you require new or old buses, you may face problems determining the low bidder, or you may be forced to award the bid to the low bidder even if the buses are older than you would have preferred.

Consider unique requirements. As part of drafting your specifications, you should consider:

1. Whether there are any unique challenges in completing any routes;
2. What bus safety features your jurisdiction needs; and
3. What training and public safety features you will require from your vendor.

Include an extension or renewal clause in your specifications. You may only extend or renew a contract without re-bidding if there is a renewal or extension clause in the original bid specifications and contract. As a result, even if you are unsure now whether you would choose to extend or renew a contract in the future, it is prudent to include an extension or renewal clause in your bid specifications and contract. When adding this type of clause to your bid specification document, you must state that the determination to renew or extend will be at the sole discretion of the awarding authority.

For school bus services contracts of longer than one year, you must specify a rule for award so there are no difficulties in determining the lowest responsive and responsible bidder, but prices for extensions or renewals of contracts cannot figure into your award decision. In other words, your award must be based on the contract price without consideration of the prices for any option or extension.





M.G.L. c. 30B AND SCHOOL BUS TRANSPORTATION CONTRACTS (CONTINUED)

EMERGENCY BUS PROCUREMENT

Chapter 30B, § 8, provides that if the time required to comply fully with Chapter 30B would endanger the health or safety of people or property due to an unforeseen emergency, you may procure the needed item or service without meeting all of Chapter 30B's requirements. A bus service procurement is no exception. However, for an emergency procurement, you must comply with Chapter 30B to the extent possible. You must also maintain a record of each emergency procurement, documenting the basis for determining that an emergency existed, the name of the vendor to which the contract was awarded, the amount and type of contract, and a list of the supplies and services purchased under the contract. You must submit this record as soon as possible to the *Goods and Services Bulletin* for publication.

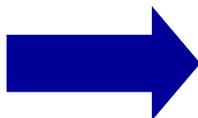
You should note that an emergency does not exist as the result of a deferral of normal purchases or maintenance. If a jurisdiction had reason to know in advance that it needed to procure supplies or services but failed to act until the need became critical, the jurisdiction will have difficulty justifying an emergency procurement.

SCHOOL BUS SERVICE

PROCUREMENT — REMINDERS

1. Specify a clear scope of services that provides bidders with enough information to price the contract, such as estimated mileage and routes.
2. Include a clear rule for awarding the contract; specify whether you will award one contract to the lowest overall bidder or separate contracts to the lowest bidder for each route or type of bus service.
3. If you are permitting bidders to submit different prices for each contract year, incorporate a method for calculating the present value of payments.
4. Include extension and renewal options in your bid specification if you want to include them in your contract.
5. Place a notice in the *Goods and Services Bulletin* if the contract cost will be \$100,000 or more.
6. Hold a pre-bid conference to answer bidders' questions, clarify issues contained in the bid documents, and address mistakes in the bid specification. This will help you receive better bids and reduce the chances of a bid protest.
7. Issue addenda to the IFB or RFP when necessary.

**Report
Fraud, Waste, or Abuse**



24-Hour Hotline Number is 800-322-1323



SUBSCRIPTION INFORMATION

The Massachusetts Office of the Inspector General publishes the *Procurement Bulletin* on a quarterly basis. There is no charge to subscribe.

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To receive the *Procurement Bulletin* electronically, please send an email containing your first and last name to Michelle.Joyce@state.ma.us. If you prefer to receive a printed copy via first-class mail, please indicate this in the email and provide your mailing address.

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If you previously subscribed to the *Procurement Bulletin* and have not received a copy or have any other related questions, you may contact Michelle Joyce at (617) 722-8842.

Happy Holidays

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