

Massachusetts Office of the Inspector General

Volume 18, Issue 2

June, 2012

Procurement Bulletin

Dear Public Officials,

After ten years, my tenure as Massachusetts Inspector General is coming to an end this August. I have been honored to serve the taxpayers of this Commonwealth and to have had the pleasure of partnering with all of you to further the goals of good government. I have the highest degree of respect for procurement officials and the great work you all do every day on behalf of your jurisdictions. As I have said many times, you are our allies in preventing and detecting procurement problems at the local level. Your great leadership accounts for the many successes we have had together ensuring government works well for all.

In my final *Procurement Bulletin* letter, I am very happy to announce that the Office of the Inspector General has a new website. Please take a moment to visit us at www.mass.gov/ig. You will find all of the same information and content in a much improved and user friendly format. It is easier for you to find helpful OIG materials to assist you in your important daily work.

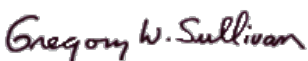
This *Bulletin* includes a series of frequently asked questions dedicated to specifications. There is an article on Inventory and Asset Management and one on Construction Materials Procurements.

Enclosed you will find the fall 2012 Massachusetts Certified Public Purchasing Official (MCPPO) schedule. As always, I encourage you to continue to take advantage of the procurement resources on the OIG website and to visit the website periodically to obtain the most up-to-date information on the public bidding laws, the MCPPO program, and to access our reports, advisories and other publications.

Lastly, after more than 20 years with the Inspector General's Office Deputy General Counsel, Helen Flaster, is retiring. She is moving to New Jersey with her husband where she plans to get acclimated and then take the New Jersey bar exam. We thank her for her years of service to the Inspector General's Office and wish her all the best.

Once again thank you for ten productive years as Massachusetts Inspector General.

Sincerely,



Gregory W. Sullivan
Inspector General

INSIDE THIS ISSUE

Construction Materials (Without Labor) Procurements	Page 2
Specification FAQ's	Page 3
Inventory and Asset Management	Page 4
Former Methuen School Business Manager Pleads Guilty to Embezzlement and Larceny	Page 5
Former Lawrence Public School Department Graphic Designer Cited for Accepting Bribes	Page 5
MCPPO Designees	Page 6
Fall MCPPO Schedule	Page 7

An Awarding Authority Has Discretion to Use Information Beyond the DCAM Certification File in Determining a Bidder's Responsibility

On May 3, 2012 the Supreme Judicial Court of Massachusetts ruled that when an awarding authority is making a determination as to a bidder's responsibility, it is not restricted to only the materials compiled by the Department of Capital Asset Management (DCAM). An awarding authority is permitted, if it so chooses, to conduct an independent investigation into whether a bidder is responsible from whatever sources it deems appropriate. For the complete legal opinion, please refer to *Barr Incorporated v. Town of Holliston*, 462 Mass. 112 (2012).

CONSTRUCTION MATERIALS (WITHOUT LABOR) PROCUREMENTS

A procurement of construction materials estimated to cost more than \$10,000, without the procurement of related labor, is governed by M.G.L. c.30, §39M. However, under M.G.L. c.30, §39M a governmental body (as defined in M.G.L. c.30B, §2) may instead use M.G.L. c.30B, §5 to procure construction materials without labor. M.G.L. c.30, §39M(d)(5) exempts any “contract solely for the purchase of material awarded by a governmental body, as defined by section 2 of chapter 30B, in accordance with section 5 of said chapter 30B.” See also *Chapter 30B Manual: Legal Requirements, Recommended Practices, and Sources of Advice for Procuring Supplies, Services, and Real Property* (6th ed.)(5/11), pp. 6 & 109-10 (<http://www.mass.gov/ig/publications/manuals/30bmanl.pdf>).

Construction materials without labor procurements are subject to advertising requirements established by M.G.L. c.149, §44J(a) and the Secretary of the Commonwealth (Secretary). Under M.G.L. c.9, §20A and the Secretary’s regulations at 950 CMR 21.03(2), all procurements of construction materials without labor with an estimated value of more than \$10,000 must be advertised once in the *Central Register* at least two weeks prior to the bid opening. So, even if you elect to use M.G.L. c.30B, §5 to procure the materials, you must advertise in the *Central Register*. If you use M.G.L. c.30B, §5 you will not need to advertise in the *Goods and Services Bulletin*, even if the estimated contract amount is over \$100,000.

Accordingly, under M.G.L. c.30, §39M and M.G.L. c.30B, §5 construction materials without labor procurements are very similar. Both are sealed bid processes, with the same advertising requirements, including -in addition to publishing in the *Central Register*-advertising in a local newspaper and posting in your municipal offices. The only difference is that M.G.L. c.30, §39M requires bidders to include a bid deposit with their submission in the amount of five percent of the bid, whereas M.G.L. c.30B, §5 does not.

Unless the estimated contract amount is \$10,000 or less, construction materials without labor cannot be purchased from statewide or departmental contracts (M.G.L. c.30B, §1(c)), General Services Administration federal supply schedules (M.G.L. c.30B, §1(f)), or cooperative contracts (M.G.L. c.30B, §22), since those provisions relate to compliance with M.G.L. c.30B, not with M.G.L. c.30, §39M.

The Office of the Inspector General has published summary charts of the procurement laws which can be found at <http://www.mass.gov/ig/publications/guides-advisories-other-publications/charts-proc.pdf>. The Office has added a new summary chart entitled “Construction Materials Procurements (Without Labor)” to highlight this specific legal interpretation.

Neither M.G.L. c.30B nor M.G.L. c.30, §39M specifically state how to procure construction materials without labor costing \$10,000 or less. This Office recommends that as a best practice such procurements should be made using a quote process as provided in M.G.L. c.30B, §4(a).

**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

Specification FAQ's

1. Q. What are specifications?

A. The term "specification" refers to any description of the physical or functional characteristics, or of the nature or scope of a supply or service. It generally incorporates the scope of services or the purchase description of the item being purchased. It may also include a description of any requirements for inspecting, testing or preparing a supply or service.

2. Q. How do specifications work?

A. Specifications are part of an IFB, RFP or quote solicitation. Specifications enable vendors to understand what must be provided. Specifications are used during the evaluation process to determine whether or not bids, proposals or quotes are responsive to all aspects of the specifications.

3. Q. What is a purchase description?

A. The term "purchase description," as defined in M.G.L. c.30B, §2, refers to the "words used in a solicitation to describe the supplies or services to be purchased, including specifications attached to or incorporated by reference into the solicitation."

4. Q. What should be included in a purchase description?

A. The purchase description should include a description of supplies needed. A purchase description may also include a "scope of services" that details specific services, work products or deliverables to be provided under the contract. It should incorporate enough information about the quantities needed (using either actual quantities or the best available estimates) to permit vendors to submit a firm price. The purchase description should also include the schedule for performance, delivery terms, warranty terms, and other required business terms of the procurement.

5. Q. What are some sources of assistance when drafting specifications?

A. To write effective specifications, collect as much information as possible from your jurisdiction's end user and from the industry (brochures, catalogs). It may also be prudent to consult an expert. (If you are paying for consultant services your contract with the expert will be subject to M.G.L. c.30B depending on the applicable dollar threshold.) In addition, this Office published a "*Practical Guide to Drafting Effective Invitations for Bids and Requests for Proposals for Supplies and Services*" which is available on the Office's website at <http://www.mass.gov/ig/publications/guides-advisories-other-publications/online-guide-to-drafting-ifbs-rfps-for-supplies-services.html>. The *Guide* offers many useful suggestions and examples for preparing effective specifications.

6. Q. When writing specifications, when should I use "must," "shall," "should" or "may"?

A. Use precise terms and unambiguous wording. If the contractor must provide something, use the words "must" or "shall," which denote imperative, not the words "should" or "may" which denote permissive. Whatever terms you use, it should be clear what is required and what is optional.

7. Q. What is the ultimate goal of writing effective specifications?

A. The goal of the Massachusetts procurement statutes is to assure that all procurements are made using competition that is open and fair, i.e., that all bidders have relevant information and that no one bidder has an advantage over any of the others. Effective specifications give bidders all information they need to submit a responsive bid and assure that all bidders get the same information.

8. Q. May I use a model specification from another jurisdiction?

A. You may borrow freely from other jurisdictions and national organizations, such as the National Institute of Government Purchasing, and adapt their specifications to your jurisdiction's needs. Remember that other specifications should only be used for guidance and your jurisdiction is ultimately responsible for making sure the specifications are effective. Be careful not to duplicate flawed specifications. The use of vendor supplied specifications is not prohibited. However, if you choose to solicit specifications from the vendor community you should consult similar specifications from several vendors and consider them as "starting points" for the development of specifications that will meet your particular needs.

Inventory and Asset Management

We sometimes overlook the fact that inventory, equipment, and other assets in our possession at work have value which puts them at risk for misappropriation. Assets are, in fact, vulnerable to outright theft. Having adequate controls over assets can deter and detect these forms of misuse. Public assets constitute a variety of items from staplers, paper and other office supplies to lap tops, tools, desks and other furniture and equipment. To protect what is in your possession and to follow sound accounting and control practices we recommend you use inventory and asset controls to prevent theft, fraud, waste and abuse. The following are just a few of the control measures that your jurisdiction could use in an effort to better protect public assets:

1. *Inventory access*: Restricting access, such as locking supply closets, using other physical security measures (cameras, access control, fencing etc.) and using a system of “signing out” equipment or requiring “signing in” for access is an important control measure for greater accountability.
2. *Asset management*: Equipment, tools and other assets dedicated to longer term use should be “tagged” (using asset tags, bar-coding, etching etc.) immediately upon certification of receipt even if not placed into immediate use, to allow for tracking. This is important for monitoring and audit as well as for insurance purposes in the event of a claim. For example, an office with a “tagged” asset inventory can regularly verify that equipment, furniture etc, it should have on site is accounted for at all times.
3. *Inventory management*: For other goods, such as office supplies and other items ordered in larger quantities and stored, there should be a process to track the receipt of these goods, verify delivery, monitor stock, and to monitor usage. In other words, if a jurisdiction orders 25 cartons of copier toner, it should know where these cartons are stored, who has access to the storage closet, and how many cartridges of toner were used and by whom.
4. *Segregation of duties*: Similar to cash management, there should be a segregation of duties for inventory management and asset control. For example, the person purchasing the goods should not be responsible for monitoring inventory and the person monitoring inventory should not be responsible for inventory counts or audits. Also, the surplus or disposal of inventory should not be handled by those who have control over the inventory. This segregation of duties creates another layer of accountability to safeguard public assets.
5. *Oversight*: An appropriate level of oversight should be used based on the level of risk assigned to an asset or to inventory. Risk is often based on the value of items and how they are safeguarded. An assessment of risk should be performed to determine the oversight level needed. For example, individual pens and pencils needn't be tagged because they have very low value. However, if a municipality purchases gasoline in bulk for its vehicle fleet, the use of this gasoline should be controlled because it has value, is a widely used commodity, and its illicit use would be nearly impossible to track. As a result, fuel inventory has a much higher level of risk. Fuel pump security including access control as well as other measures should be used for adequate oversight to ensure that the fuel is not stolen or that abuse does not occur.
6. *Training*: Educating individuals who are entrusted with spending taxpayer dollars is a key element to proper inventory and asset management. Jurisdictions should take advantage of training opportunities that are offered by various public and private agencies.

It is also important to understand that a significant fraud risk exists through procurement schemes. For example, a staff member may order supplies that are shipped to a private address, goods may be purchased and stolen or “borrowed” at the point of delivery, or “fake” procurement transactions may be used to mask embezzlement, kick-backs or other frauds. Credit card use also poses significant risks. Card users can purchase goods or services in a variety of ways that deprives a jurisdiction of inventory often before it is received. Significant frauds can occur without vigilant oversight by administrators and the tracking of purchased goods and services. For example, if the school business manager is authorized to buy a new lawn mower using the school credit card, another responsible person should verify the possession of this mower by the school department.

Inventory and Asset Management Cont'd

For some additional helpful information, please visit the following:

- **Advisory for Local Officials: Controls and Use of Public Equipment and Resources** at <http://www.mass.gov/ig/publications/reports-and-recommendations/archive-publications/2009-2005/equipadv.pdf>
- **Guide to Administering and Complying with Vehicle Management Policies** at <http://www.mass.gov/ig/publications/guides-advisories-other-publications/vmadv.pdf>
- **Municipal Fuel Management Advisory** at <http://www.mass.gov/ig/publications/guides-advisories-other-publications/fuel-advisory.pdf>

FORMER LAWRENCE PUBLIC SCHOOL DEPARTMENT GRAPHIC DESIGNER CITED FOR ACCEPTING BRIBES

The State Ethics Commission approved a Disposition Agreement in which former Lawrence Public School Department (LPS) Graphic Designer John Laurenza admitted to violating M.G.L. c.268A, the conflict of interest law, by accepting payments from a vendor, Wellington House Publishing, to rig bids on two LPS contracts in Wellington's favor. According to the Agreement, Laurenza will pay a \$4,000 civil penalty for accepting bribes from Wellington and will pay a \$536 civil forfeiture to the City of Lawrence for the money paid to him by Wellington. For additional information, please visit www.mass.gov/ethics/.

Former Methuen School Department Business Manager Pleads Guilty to Embezzlement and Larceny

A joint investigative effort of the Massachusetts Office of the Inspector General, the Essex County District Attorney's Office, the Methuen Police Department and the FBI, Lowell Resident Agency, has led to the guilty plea in Lawrence District Court of former Methuen School Department Business Manager Joseph Salvo. Salvo pled guilty to embezzlement by a municipal officer of municipal property and larceny over \$250 by misuse of school credit cards by purchasing items for personal use. The total cost of the items was approximately \$38,000. The items purchased were never placed in the school department's inventory and were kept by Salvo for personal use.

Judge Michael Brooks sentenced Salvo, 66, of Methuen, to six months in the Essex County House of Correction, 90 days to be served. The balance was suspended for one year with probation.

The scheme for which Salvo pled guilty took place from November, 2005 until his sudden resignation in 2008. Investigators believe there were more items purchased prior to 2005, but the statute of limitations had expired. Among the items purchased were two desktop computers, two high end laptops, three scanners, four high end cameras, a number of industrial hammer drills, two ladder systems, Italian tile, a fax machine, a miter saw, an air compressor and a printer.

MCPPO Designations

*The Following is a list of the MCPPO Program's new Designees on applications **reviewed (not received)** between Feb. 2, 2011 and June 6, 2012:*

MCPPO

Angela Morin Allen, City of Somerville
Jesse A. Bell, Nantucket Islands Land Bank
Michael F. Farrell, Town of Georgetown
Patricia E. Fay, Town of Grafton
Patricia Coppola-Lugo, E. Bridgewater Public Schools
Michelle L. Cresta, Stoneham Public Schools
David M. DeGennaro, Cohasset Public Schools
Ralph O. Dumas, Jr., Hopkinton Public Schools
John J. Foley, Boston Fire Department
Mark A. Friedman, Martha's Vineyard RHS
Nancy L. Haines, North Middlesex RSD
Roger P. Hatfield, Foxborough Fire Department
Jennifer A. Hill, City of Newton
Audrey M. LaBonte, Town of Greenfield
Paul O. Landers, Framingham Housing Authority
Judi A. LaPan, Town of Medway
Nancy M. Macedo, Brockton Housing Authority
Maria B. Maggio, Town of Andover
Cynthia D. Mahr, Weston Public Schools
Susan E. Nauman, Duxbury Public Schools
Dana M. O'Brien, City of Gloucester
Janet A. Pierce, Central MA Planning Comm.
Raymond T. Santilli, Town of North Andover
Julie M. Surprenant, North Middlesex RSD
Benjamin Yeskey, Framingham Housing Authority
Marie E. Zelandi, City of Revere

MCPPO for Supplies & Services

Joan M. Bernstein, Franklin Cty. Reg. HRA
Patrick A. Roach, Springfield Public Schools
Elizabeth R. Thurlow, Town of Grafton

Associate MCPPO

Susan C. Bruce, Barnstable Cty. Sheriff's Office
Helen D. Gates-Bryant, City of Springfield
Maria A. Gomes, City of Springfield
Brian W. Kenney, City of Springfield
Theresa M. Maggi, City of Springfield
Matthew G. Wells, Concord-Carlisle RSD

Associate MCPPO for Design & Construction

Sen L. Blankinship, UMASS Boston



MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM
REGISTRATION FORM July-December 2012

Happy 15th Anniversary
1997-2012

Office of the Inspector General
Gregory W. Sullivan, Inspector General
MCPPO@maoig.net Fax: (617) 723-2334

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.

Register/ Reserve Seating:

To reserve seating, fax or email 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

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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.

NO-SHOWS 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

No Prerequisite

September 11, 12, 13-2012

BOSTON

September 11, 12, 13-2012*

HUNTINGTON

*Video Conference hosted by Gateway RSD

3-day seminar

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

October 24, 25, 26-2012

BOSTON

SUPPLIES & SERVICES CONTRACTING

Prerequisite: Public Contracting Overview or Charter School Procurement

September 18, 19, 20-2012

BOSTON

October 30, 31, November 1-2012 BOSTON

October 30, 31, November 1-2012* HUNTINGTON

*Video Conference hosted by Gateway RSD

3-day seminar

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

DESIGN & CONSTRUCTION CONTRACTING

Prerequisite: Public Contracting Overview or Charter School Procurement

September 25, 26, 27-2012

BOSTON

September 25, 26, 27-2012*

HUNTINGTON

*Video Conference hosted by Gateway RSD

3-day seminar

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

November 6, 7, 8-2012

BOSTON

ADVANCED TOPICS UPDATE

November 14 & 15-2012

BOSTON

November 14 & 15-2012*

HUNTINGTON

*Video Conference hosted by Gateway RSD

2-day seminar

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

CERTIFICATION for School Project Designers & Owner's Project Managers

October 10, 11 & 17, 18 -2012

BOSTON

4-Day Training

Tuition: \$1200 for private sector

November 28, 29 & December 5, 6 -2012 BOSTON

RECERTIFICATION for School Project Designers & Owner's Project Managers

October 2-2012

BOSTON

1-Day Training

Tuition: \$600 for private sector

November 27-2012

BOSTON

CONSTRUCTION MANAGEMENT AT RISK

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

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

October 4-2012

BOSTON

1-day seminar

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

CHARTER SCHOOL PROCUREMENT

No Prerequisite

December 11 & 12-2012

BOSTON

2-day seminar

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

Drafting A Model IFB

Self-paced

Disk program requiring Microsoft Word 7.0 or higher

*Registration for this course must be accompanied by a check

Tuition: *\$75 ea. for govt./non-profit employees \$200 for all others

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