



PROCUREMENT BULLETIN

Dear Public Officials:

I am pleased to announce that on June 6, 2014, the Office of the Inspector General’s Hinton State Laboratory Investigation Team received the Manuel Carballo Governor’s Award for Excellence in Public Service. The Commonwealth’s Performance Recognition Program recognizes the outstanding contributions of state employees who play a major role in the successful delivery of quality services to the citizens of Massachusetts. The Manuel Carballo Governor’s Award is the Commonwealth’s highest honor for public employees. A special Selection Committee reviews nominations received from state agencies and makes recommendations to the Governor. The committee is comprised of the Speaker of the House of Representatives, the President of the Senate and community leaders. It is with my sincere gratitude that I congratulate the members of the Hinton State Laboratory Investigation Team on all of their hard work and dedication regarding this comprehensive investigation.

On June 9, 2014, the Office of the Inspector General hosted a delegation of professionals from Russia who were in Boston on an exchange program organized through the U.S. Department of State. The delegation was comprised of representatives from government agencies, businesses, the press and higher education. We had a comprehensive discussion about such topics as the Office’s mission, accountability and transparency in government, maintaining independence from outside influences, and the process for appointing the Inspector General. Members of the delegation were especially interested in learning about the role of the Inspector General’s Office as the state’s primary mechanism for monitoring fraud, waste and abuse in local government. We also discussed how the Office reviews legislation and works with state agencies to identify areas of vulnerability to fraud, waste and abuse.

In this issue of the *Procurement Bulletin*, you will find an article pertaining to procurement files, a piece on how to prepare for emergency procurements and helpful answers to frequently asked procurement questions. Also included within this edition are photos from MCPPO’s most recent presentation of *A Story of a Building*, which the Office co-sponsored with the Massachusetts School Building Authority (“MSBA”). This seminar, held at Maynard High School, offered a unique blend of active learning and traditional presentations. Different panels composed of MSBA staff, school officials, architects, engineers, students and others presented various facets of the construction project. For instance, Maynard’s operations manager spoke about how to adapt to and understand new systems, while students demonstrated the extensive educational capabilities of their personal iPads. A tour of the grounds showcased the incredible design and gave attendees a true feel for the new building. I would like to extend my appreciation to the staff at the MSBA for collaborating with us on this valuable class. I also would like to thank the officials at Maynard High School and all of the presenters for helping to make this such a successful and informative event.

As always, I thank you for your time and consideration in reviewing the Office’s publications and wish you all a wonderful summer.

Sincerely,

Glenn A. Cunha
Inspector General

INSIDE THIS ISSUE:

Letter from Inspector General Glenn Cunha	Pg. 1
Preparing for an Emergency Procurement	Pg. 2
Certifications of Good Faith	Pg. 3
Public Records Information	Pg. 3
What Is a Procurement File?	Pg. 4
Procurement FAQs	Pg. 5
Highlights from <i>Story of a Building</i>, Maynard High School	Pg. 6
Thank You to All MCPPO Presenters	Pg. 7
The OIG Hosts Delegation from Russia	Pg. 7
Subscription Information	Pg. 8

NOTICE:

The MCPPO class schedule for the Fall 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/mcppo/>.

Highlights from some recent classes can also

be found within this

publication.





PREPARING FOR AN EMERGENCY PROCUREMENT

Cities and towns frequently contact this Office seeking guidance on ways in which they can best prepare for conducting emergency procurements. Section 8 of Chapter 30B governs procuring supplies and services during an emergency and states in part:

Whenever the time required to comply with a requirement of [M.G.L. c. 30B] would endanger the health or safety of the people or their property, a procurement officer may make an emergency procurement without following that requirement. An emergency procurement shall be limited to only supplies or services necessary to meet the emergency and shall conform to the requirements of this chapter [M.G.L. c. 30B] to the extent practicable under the circumstances.

However, there are other ways that a city or town can prepare to quickly procure the supplies and services necessary for weathering an emergency.

One way to facilitate dispatching the services needed to quickly manage an emergency is by incorporating **a clause for "unforeseen" services into contracts. For example, a jurisdiction may procure a blanket contract with a cleaning service that includes a provision to provide additional service assistance "as needed" for a fee. Thus, in the event of an emergency that requires quick response (e.g., if a water pipe bursts in the winter), the cleaning crew can begin work immediately. This provides your jurisdiction with a competitively procured service provider whom you can contact at a moment's notice, without having to solicit the service under pressure.**

Furthermore, utilizing the Operational Services Division's ("OSD") contracts is a fast and easy way to comply with Chapter 30B. OSD contracts save time during an emergency but offer the assurance that the supplies and services have been competitively procured.

Please note, however, that compiling a list of providers from which a city or town automatically contracts in the event of an emergency would not comply with Chapter 30B. Section 8 of Chapter 30B requires that a city or town **"conform to the requirements of [Chapter 30B] to the extent practicable under the circumstances."** M.G.L. c. 30B, § 8. Choosing a provider from a pre-existing list would not adequately ensure that the jurisdiction has made **an individualized determination regarding the level of compliance that is practicable for an emergency's unique needs.**

In the event that a city or town does need to utilize the emergency procurement provision in Chapter 30B, it must document the basis for determining the need for an emergency procurement, the name of the vendor utilized, the amount and type of contract, and a list of the supplies or services purchased under each contract. A city or town must submit this record for publication in the *Goods and Services Bulletin* as soon as possible after the emergency.

Finally, please be aware that Section 44A of Chapter 149 governs **emergency procurements in the construction context, and the statute's requirements are different from those of Chapter 30B.**





Certifications of Good Faith

Section 10 of Chapter 30B requires vendors to submit a “certification of good faith,” commonly referred to as a non-collusion statement, with any bid or proposal. Municipalities should include this certification as a standard form in their invitations for bids and requests for proposals. As a statutory requirement, if a vendor fails to submit a certification with its bid or proposal, you must reject the bid or proposal. You may not consider the omission a correctable, minor informality. This certification helps to ensure that vendors submit bids and proposals in good faith and without collusion or fraud. However, this certification alone should not be viewed as a substitute for responsible oversight, careful contract administration and due diligence on your part. For your convenience, a sample certification form can be found in Appendix B of our *Chapter 30B Manual*, which is available at www.mass.gov/ig.



Chapter 30B Hotline: (617) 722-8838



PUBLIC RECORDS

Did you know that, under Chapter 30B, all procurement documents are considered public records? Even financial information that the bidders submit during an invitation for bids (IFB) or request for proposals (RFP) will eventually become a public record. For an IFB, records become public after you open the bids. For an RFP, the proposals become public after you complete the proposal evaluations or after the proposal acceptance date, whichever is earlier. For an RFP in a real property transaction, the submissions become public immediately upon opening of the proposals since there is a public opening in this process. Massachusetts’ public records law requires that you keep all procurement-related documents for at least six years following final payment. For more information about the public records law, contact the Office of the Secretary of State (www.mass.gov/sec) or the Office of the Attorney General (www.mass.gov/ag). For procurement recordkeeping requirements, please consult chapter 1 of our *Chapter 30B Manual*, which is available at www.mass.gov/ig.



WHAT IS A PROCUREMENT FILE?

The term “procurement file” is an accepted and acknowledged term within the procurement profession and is commonly defined as the “records needed to sufficiently detail the history of a purchase, acquisition or disposition.” Procurement files help ensure accountability and transparency. Therefore, these files should contain enough detail for a third party to fully understand the manner in which you conducted your procurement and to determine the basis for your contract award.

Chapter 30B specifically requires that you maintain a procurement file. Chapter 30B, Section 3, states: “A procurement officer who awards a contract in the amount of \$10,000 or more shall maintain a file on each such contract and shall include in such file a copy of all written documents required by this chapter...” However, the Office recommends maintaining a procurement file for all purchases, including those below the \$10,000 threshold and those that are exempt from Chapter 30B.

You should create a separate file for each procurement. The following is a representative list of the documents you should include. The specific documents you include will depend on the procurement process that you use (e.g., sound business practices or an RFP).

1. The Invitation for Bids (IFB) or Request for Proposals (RFP)
2. All documents incorporated by reference in an IFB or RFP
3. Amendments, addenda or any modifications to an IFB or RFP
4. Advertisements, postings, solicitations and notices
5. All bids and/or RFP submissions your jurisdiction receives
6. Evaluations of bids, proposals or other submittals, including the names of the evaluators, any committee minutes or notes, and all written evaluations of the bids or proposals
7. The awarded contract and all amendments, addenda, modifications, extensions and exercises of options, as well as the written explanation of any increases or decreases in scope, price or quantity
8. The notice of award pertaining to the awarded contract
9. Any required authorizations or approvals needed to initiate the procurement and/or approve the contract award
10. The delegation of authority for the procurement (if applicable)
11. All key correspondence between the jurisdiction and the bidders, proposers and winning vendor
12. Any vendor licensure, registration or pre-qualification requirements
13. Certifications of good faith, tax compliance forms and other required certifications
14. Documentation of any negotiations with the apparent low bidder
15. Documentation pertaining to cooperative purchasing agreements, state contracts or the use of any purchasing process that did not originate in your jurisdiction
16. Documentation of your determination of the need to use a sole-source procurement and/or proprietary specifications
17. The written determination of the need to conduct an emergency procurement and all documents related to the procurement
18. For an RFP: a register of proposals and, if applicable, the written determination of an award to a vendor other than the proposer offering the lowest price
19. For quotes: the scope of the supply or service requested, the vendors’ names and contact information, the quote solicitation and each vendors’ quote (in addition to the contract and other documents listed above)
20. For procurements using sound business practices: documentation of the activities, research and due diligence your jurisdiction conducted for the procurement (in addition to the contract and other documents listed above)
21. For a real property transaction (in addition to the documentation referenced on this list): appraisals, valuations, solicitations, notifications, emergency declarations, unique acquisition determinations and any other documentation specific to the real property acquisition or disposition
22. Justification for the rejection of any bid or proposal
23. Justification for the cancellation of a procurement process

In addition to a procurement file, you should also maintain a contract file to assist in the administration of the contract, as well as to ensure accountability and transparency in both the contract process and the vendor’s performance. This contract file should include key documents, such as correspondence, insurance and warranty information, bonds, performance evaluations, inspections, monitoring and other reports, complaints, payment requests and payroll information. If you have further questions about the contents of your procurement or contract file, please review the relevant statute, regulations, guidance or other rules applicable to your particular procurement.





FREQUENTLY ASKED QUESTIONS RELATING TO PROCUREMENT

Q1: I am the Chief Procurement Officer for a town. The Selectmen would like to extend the town’s existing waste disposal and recycling contract, as well as amend the contract to include additional types of material for recycling, without going out to bid. Is an extension and amendment of a current recycling and disposal contract exempt from Chapter 30B? Does M.G.L. c. 30B, § 13A, affect the town’s recycling and waste disposal contract?

A1: Yes, the contract is exempt. A contract for the collection, transportation, receipt, processing or disposal of solid waste, recyclable items or compostable materials is exempt from Chapter 30B under Section 1(b)(30) of the statute. As such, your town is free to extend and amend the existing solid waste disposal and recycling contract without following the competitive procedures of Chapter 30B. Keep in mind, however, that you may use the procedures in Chapter 30B to procure services that are not subject to another procurement law. Using the competitive procedures of Chapter 30B is a best practice that allows local jurisdictions to obtain the best value through an open, fair process.



Turning to your second question, Section 13A of Chapter 30B does not apply to your town’s contract. Section 13A involves contracts for the breakdown and remanufacturing of solid waste and recyclables; it does not pertain to collecting, transporting, receiving, processing or disposing of such materials.

Note, however, that contracts exempt from Chapter 30B remain subject to your local rules.

Q2: I am a school business administrator at a vocational school that sells student-built sheds and student-repaired cars. The cars are donated. Are the sales of the sheds and cars considered a “disposition of surplus supplies” under M.G.L. c. 30B, § 15?



A2: Yes. Both the student-built sheds and the student-repaired cars meet the definition of “supplies” under Section 2 of Chapter 30B. The term “supplies,” as it is used in Chapter 30B, refers to all property other than real property and includes equipment and materials. The materials used in building the sheds and repairing the cars are school property.

Also, these end products evidently have “resale value” because they are able to be sold easily. Because these items meet the definition of “supplies,” and they have value, the sales of the sheds and the cars fall under M.G.L. c. 30B, § 15, which governs the disposition of surplus supplies. The fact that the students build the sheds and repair the cars does not take the disposition of these items outside the purview of Chapter 30B. You should also consult with your school counsel to discuss issues and laws

relating to automobile sales in Massachusetts.

Q3. I am the Chief Procurement Officer for a local community. I solicited three quotes for paper goods with an estimated value of \$20,000 from vendors and documented my solicitations as required. Two out of the three vendors did not provide any quotes or get back to me in any manner, however. Did I comply with Chapter 30B?

A3. Yes. Under Chapter 30B, a city or town is only required to *solicit* three quotes and document the vendor information and quotes it receives. If the official does not hear back from one or more of the contacted vendors, it is acceptable to consider only the quotes received. If the purchasing official receives no quotes at all, then he or she may re-write the purchase description and re-issue it to elicit quotes.

If a purchasing official receives no quotes (or only one quote), it may be helpful to evaluate the specifications and determine whether they were too specific or improperly drafted. This would help to determine why vendors did not provide quotes in the first place. However, the statute only requires the solicitation of no fewer than three quotes for purchases between \$10,000 and \$24,999 in value. There is no requirement that the city or town receive three quotes.





Highlights from the most recent presentation of

STORY OF A BUILDING

Maynard High School — May 29, 2014

Co-sponsored by the Massachusetts School Building Authority

THANK YOU to MSBA staff, Maynard High School staff and Perkins+Will
for their work and coordination of this successful event!

Charles Caragianes,
Principal



Robert Gerardi,
Superintendent



Maynard High School



Stained Glass in Art Room



School Library



Outdoor Dining Area



Story of a Building Panelists



Weight Room/Gym



Be sure to keep an eye out for future "Story of a Building" seminars and locations.



A Sincere Thanks to All of Our MCPPO Presenters

As the MCPPO year winds down for the summer, we would like to sincerely thank all of our guest presenters for making the significant time, effort and commitment necessary to teach in our program. Due in large part to our guest presenters, the program has had



another very successful year. By sharing their knowledge and experience, these presenters have continued to help the Office provide our students with informative material, lessons learned, and best practice tips pertaining to their roles in the procurement world. Kudos and thank you to all of our presenters!

The Inspector General's Office Hosts a Delegation From Russia



In the photo: Inspector General Cunha (back row, third from left), Office staff and members of the Russian delegation.

On June 9, 2014, the Office of the Inspector General hosted a delegation of professionals from Russia who were in Boston through a professional exchange program managed by World Boston, a local partner of the U.S. Department of State.



SUBSCRIPTION INFORMATION

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

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.

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.

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