



Free and Low Cost Procurement Training Options

Making sure your M.G.L. c.30B procurements are done right the first time is important, especially when budgets are tight. If you are looking for a free or low cost way to brush up on your procurement knowledge, which you can do at your own pace in the comfort of your office, access our online course, *Bidding Basics: M.G.L. c.30B* at the OIG's website.

This course is helpful for anyone looking for basic procurement training, for a refresher course, for introducing a new hire to M.G.L. c.30B, or to offer to a group. The training will provide an overview of the rules applicable to the acquisition of supplies, services and real property, the disposition of supplies and real property, proprietary specifications as well as sole source and emergency procurements. Additionally, you may earn 2 MCPPO recertification credits upon evidence of completion. The course takes approximately 2-3 hours to complete. It has been designed to be completed through Performance and Career Enhancement (PACE), the Commonwealth's web-based Learning Management System (LMS), or at your standalone computer using a Compact Disc (CD). PACE should be accessible to any entity with an Internet connection. But if you don't have an Internet connection, contact our office to purchase the disk for \$15.00. The disk also provides an opportunity to present the course to a group of municipal officials at the same time. Upon registering with the office, you will be issued a PACE Login ID and Password so you may access the system for free. For more information, or to register for this course, visit our website at http://www.mass.gov/ig/mcpo/bb_online.htm.

Another helpful tool available for \$75.00 is our *Drafting a Model IFB* course. With this option you will draft your own invitation for bids, using a template provided to you on a compact disk. Upon completion, you will send in your model IFB to be reviewed by a Chapter 30B attorney. After you have completed the course, you will be able to use the template when drafting your own procurements. Upon proof of completion you will receive two (2) MCPPO recertification credits. To receive a copy of the disk, please fill out the MCPPO registration form available on the office's website and mail in your payment of \$75.00.

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Charter School Lease Improvements and Prevailing Wage

In response to inquiries regarding the applicability of the Massachusetts Prevailing Wage Law, M.G.L. c.149, §§26-27, to construction projects performed by charter schools in connection with leases of private buildings, the Department of Labor Standards (DOLS) issued Letter PW-2012-02-02.22.12 on February 22, 2012. The opinion letter provides guidance to charter schools that enter into leases of private buildings, including build out of the leasehold premises, for the purposes of using the premises as a school. DOLS's Letter No. PW-2012-02-02.22.12 is available at its website at <http://www.mass.gov/lwd/labor-standards/prevailing-wage-program/opinion-letters/2012/pw-2012-02-02-22-12.html>.

Domain Names, Acquisition of a Top Level Domain Name Under M.G.L. c.30B

Unless an exemption applies, M.G.L. c.30B covers most - but not all - local government transactions relating to the procurement of supplies and services, the disposition of surplus supplies and acquisitions and dispositions of real property. It does not apply to procurement transactions where a right procured is neither a supply nor a service within the meaning of M.G.L. c.30B, §2. ("Supplies" are "all property, other than real property" and "services" are "the furnishing of labor, time, or effort by a contractor, not involving the furnishing of a specific end product other than reports.")

For example, the OIG recently received an inquiry about whether the procurement of a top level domain (TLD) is subject to M.G.L. c.30B. User domain names are located in one of many possible libraries, e.g. ".com," ".net," ".org," which are known as TLDs. The OIG therefore might, for example, want to have a TLD like ".maoig" as a proprietary TLD website address. To register for a private library, however, a registrant must file an application with the sole U.S. company that licenses TLDs, and pay an application fee.

Upon review, the OIG concluded that an application to register a proprietary TLD would not constitute procurement of a supply or service under M.G.L. c.30B. Pursuant to an agreement with the U.S. Government, one company administers TLDs and is the sole issuer of TLD application approvals. Based on these facts, the OIG concluded that the application for assignment of a TLD is more like the registration of a patent or a trademark than the procurement of a service or supply, so M.G.L. c.30B did not apply.

Other examples of where the subject of a contract is not a supply or service are advertising and naming rights. A governmental body may grant naming rights to an athletic field or auditorium without following M.G.L. c.30B since naming rights do not fit the definition of a supply or service subject to M.G.L. c.30B. Please feel free to call the OIG's M.G.L. c.30B line (617.722.8838) for assistance in making this determination.



Attention Public Purchasers: Join us at the MASSbuys EXPO May 2nd at the DCU Center in Worcester, MA to learn about best practices in public procurement and cost-saving products and services available on Statewide Contracts. MASSbuys is the largest Business to Government (B2G) event in the Commonwealth designed exclusively for public purchasing officials and statewide contractors. Visit us in

the Government Resource Center; a collaborative effort between state agencies and public employee associations intended to bring together government and association experts to provide attendees with useful information and resources from across the Commonwealth. Attend two workshops hosted by the Office of the Inspector General: "Photovoltaic Systems – Procurement Considerations" and "Chapter 30B Basics and Beyond." Connect, collaborate, and communicate with Commonwealth purchasing officials at MASSbuys! Attendance and round-trip transportation is free. Pre-registration is required. To register, please visit: www.mass.gov/osd/massbuys.

Special Requirements for School Bus Transportation Contracts

School bus transportation is a service subject to M.G.L. c.30B. However, you must consider other statutes in addition to M.G.L. c.30B when contracting for school transportation. For example, M.G.L. c.71, §7A provides that municipalities shall be eligible for reimbursement for busing expenses approved by the Department of Elementary and Secondary Education subject to certain requirements. These include a requirement that the school bus drivers be paid prevailing wage under certain circumstances and that the contract be procured in accordance with M.G.L. c.30B, §5. Reimbursement is subject to appropriation by the Legislature and to approval by the state treasurer.

M.G.L. c.71, §7A provides further that, regardless of whether a municipality is seeking reimbursement, municipalities or districts with a population of 16,000 or more shall only award school bus transportation contracts based on the prevailing wage. The prevailing wage law is administered by the Department of Labor Standards (DOLS) within the Department of Workforce Development and is found at M.G.L. c.149, §§26-27. The prevailing wage rate, based on collective bargaining agreements in effect in the area where a municipality or district is located, is the minimum wage payable under a public contract for a specified service.

Municipalities can request a bus driver prevailing wage rate schedule from DOLS. The schedule needs to be included with your solicitation so vendors can calculate an accurate price. Note, however, that rate schedules are only effective for 90 days, so your submission date should not be after the rate schedule expiration date, or you will have to obtain a new schedule. For multiyear contracts, the initial rate schedule will apply for the base term, but any renewal or option term requires a new rate schedule. You must provide updated rate schedules to your contractor before contract is extended.

Regardless of whether or not the school district seeks reimbursement, it must include a requirement that drivers be paid the prevailing wage in the solicitation documents and the contract. Since the prevailing wage requirement only applies to contracts between a public entity and a private contractor, municipalities and districts that provide school bus transportation in house do not have to pay the prevailing wage.

Verizon New England has Agreed to Pay \$800,000 for Overcharging Municipalities

In June 2009, the OIG learned that Verizon New England (Verizon) had been overcharging municipalities for Centrex telephone service since 2006. Emails sent to the state Operational Services Division showed that Verizon was alerted to the billing problem by an outside consultant in the summer of 2006. Emails also showed that Verizon had promised to fix the problem and refund its customers within months.

Instead, Verizon only refunded the customers who noticed their inflated bills and complained. Because of the complexity of Verizon's bills, fewer than half of Verizon's municipal customers noticed the error. From 2006 until 2009, Verizon refunded some \$1.5 million to its municipal customers.

After the OIG began its investigation in 2009 Verizon quickly refunded another \$1.5 million to its municipal customers. The OIG brought its investigation to the Office of the Attorney General in October 2009. In December 2011, Verizon agreed to pay an additional \$800,000 in interest and penalties to settle the case.

Under the settlement Verizon is responsible for making its municipal customers whole by returning approximately \$400,000. Current and former Verizon Centrex customers should call the company to discuss the refunds.

Tips to Avoid School Bus Contract Bid Protests

Obtaining school bus services is one of the most challenging M.G.L. c.30B procurements. It requires a substantial amount of time and effort but, when done effectively, can offer tremendous benefits. Below are some suggestions you may want to consider for inclusion in your next school bus services procurement:

When drafting your school bus service specifications include your actual or estimated need.

M.G.L. c.30B, §12(c) requires that for contracts of more than one year local awarding authorities provide actual or estimated quantities of supplies and services in their specifications. If that section applies, you must provide vendors 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 figures that a vendor will need to prepare a bid or proposal.

When drafting your specifications specify the length of the contract and include a rule for award.

If you plan on entering into a school bus contract that exceeds three years (including any renewals, extensions or options), you must ensure that you get majority vote approval from your local governing body **prior** to awarding the contract.

Include an extension or renewal clause in your specifications if you believe that you may want to extend the contract longer than the base term. With 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.

Other requirements to consider for your specifications.

As part of drafting your specifications, you should take the time to 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;
- Whether there are any challenges in completing any routes;
- What bus safety features your jurisdiction needs;
- What training and public safety features you require from a contractor;
- What garaging requirements, if any, your jurisdiction has.

By not specifying a requirement for the desired age of the buses, for example, you may be forced to award the bid to a low bidder whose buses are older than you would have preferred.

Include a fuel adjustment clause in the contract.

Fuel prices are extremely volatile, and if you do not include a fuel adjustment clause, you are requiring your contractor to assume the risk of cost increases. On the other hand, if there is no adjustment clause you will receive no benefit if fuel prices decrease. When a bidder calculates its bid, it will take this risk into consideration, which will most likely result in an inflated bid (to cover the risk). To obtain a more realistic bid, your invitation for bids should specify a formula to be used in calculating the contract price adjustments to which you and the contractor will be entitled. Under such a formula, the cost of fuel will go up and down based on the market, and neither party will carry sole risk of market changes. You should use a published index of wholesale fuel prices, and include the title of the index in your invitation for bids. See www.mass.gov/ig/mcppo/schbidfs.pdf for sample fuel adjustment clauses.

Tips to Avoid School Bus Contract Bid Protests cont'd

Allow your jurisdiction enough time to procure school bus services.

Procuring school bus services contracts can be very challenging. Contingencies may arise that require bid specifications to be changed and due dates to be extended. Evaluation of bids also takes time. Sometimes during the evaluation process issues arise that require a new bid process.

When planning your transportation services contract leave enough time to conduct a full bid process. It is vitally important for a school district to anticipate all possibilities and begin a procurement planning process with ample time to handle any and all reasonable procurement contingencies.

Hold a pre-bid conference.

Holding a pre-bid conference will allow prospective bidders to ask questions about the invitation for bids and raise any possible concerns that the bidders may have. At the conference, the awarding authority may discover that addenda should be issued to address mistakes in the specifications or to provide further clarity. By addressing these issues before the bid due date, you will reduce the likelihood of a bid protest and/or possible rebid. All questions asked and answers should be faxed or sent to all entities that picked up the bid specifications.



CHAPTER 30B FAQ's

Q1. I am a school business manager. What items can I purchase as a sole source and in what amounts?

A1. A sole source procurement is a purchase of supplies or services without advertising or competition. M.G.L. c.30B, §7 outlines the steps you must take in order to make a sole source procurement. In order for your school district to make a sole source procurement, you must first do the following:

- Conduct a reasonable investigation and determine there is only one practicable source for the supply or service;
- Make a determination in writing that only one practicable source (including any resale outlets) exists;
- Keep the written determination in the procurement file.

Once you have made the determination that only one practicable source exists, you may procure any supply or service in an amount less than \$25,000 from a sole source. Only certain items

costing \$25,000 or more may be purchased using the sole source method (after you've determined there is only one practicable source). They are:

- Library books;
- School textbooks;
- Educational programs;
- Educational courses;
- Educational curricula in any media, including educational software, newspapers, serials, periodical, audiovisual materials;
- Software maintenance; and
- Certain regulated utilities (see M.G.L. c.25, §3).

Q2.What is the difference between a sole source procurement and a proprietary specification?

A2. A sole source procurement under M.G.L. c.30B, §7 is made without advertising or competition; a procurement using proprietary specifications, M.G.L. c.30B, §14, must be conducted with advertising and/or competition. Both methods of

FAQ's Continued

procurement are exceptions to the general M.G.L. c.30B requirement that procurements be open and fair. For sole source procurements, the basis for the exception is that there is only one practicable source for a supply or service. For a proprietary specification procurement, the basis for the exception is that only one particular brand will suffice. Except for certain supplies and services noted in Question 1 above, the sole source method of procurement cannot be used if the purchase is estimated to cost \$25,000 or more; there is no dollar cap on the proprietary specification method of procurement. Both procurement methods require specific documentation justifying why the governmental body was authorized to use the respective procurement method. If the supply or service is available from only one source but the estimated contract amount is \$25,000 or more and it is not an exception listed in Question 1, you conduct the procurement using proprietary specifications.

Q3. Our School Department is getting ready to make book purchases for the next academic year. We need several hundred copies of various classic novels, which will cost more than \$25,000. Our curriculum vendor sells all of the classic novels we want to purchase. Can we purchase the classic novels as a sole source procurement from the vendor?

A3. For sole source procurements, M.G.L. c.30B, §7 requires that the procurement officer determine in writing that only one practicable source for the required supply or service exists. This includes any resale outlets. Although M.G.L. c.30B, §7 allows sole source procurements of "library books, school textbooks, educational programs, educational courses, educational curricula" in any amount, your jurisdiction's procurement officer must first evaluate whether any of these items qualify as sole source procurements. See question 1. Works of classic literature, such as *Macbeth* or *To Kill a Mockingbird*, can be purchased from

many different vendors and therefore cannot be sole source procurements.

Q4. My jurisdiction is spending \$7,000 on "Titleist" golf balls, a proprietary item for which there are many sources, must we use M.G.L. c.30B to buy the golf balls?

A4. Section 7 of M.G.L. c.30B provides in part that a proprietary (named brand) item shall be procured by competition if there is more than one potential bidder for that item. So you would be required to solicit three or more oral or written quotes.

Q5. My jurisdiction recently received bids for cleaning services. The bids were opened in the presence of all bidders. Our procurement officer recorded the names of the bidders and the amounts of their bids. Are there any other M.G.L. c.30B requirements?

A5. Yes. M.G.L. c.30B requires that the procurement officer and any witnesses to the bid opening sign a statement under the pains and penalties of perjury. The statement must include the names of all bidders and the amounts of their bids. The statement must also declare that it is a complete and accurate list of bids opened in the presence of the witnesses. The statement, or a certified copy of the statement, must be filed with the contract. M.G.L. c.30B, §5(d) (2).

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

SOLID WASTE

M.G.L. c.30B, §1(b)(30) Exemption

A competitive process may result in the best deal for your jurisdiction, however, a governmental body is not required to use a M.G.L. c.30B procurement process when contracting "for the collection, transportation, receipt, processing or disposal of solid waste, recyclable or compostable materials." M.G.L. c.30B, §1(b)(30). The terms "solid waste," "recyclable materials" and "compostable materials" are not defined in the statute, and the OIG is often asked to interpret these terms when determining the scope of the exemption.

The OIG looks to the regulations of the Massachusetts Department of Environmental Protection to define the terms used in the exemption. 310 CMR 19.006. "Solid waste" is defined as "useless, unwanted or discarded solid, liquid or contained gaseous material" but specifically excludes nine types of waste, including sludge or hazardous wastes, the disposal of which is subject to M.G.L. c.30B. "Recyclable materials" means "a material that has the potential to be recycled and which is pre-sorted and not contaminated by significant amounts of toxic substances." Finally, "compostable materials" means "organic material, excluding water treatment residuals, that has the potential to be composted," provided they too are "pre-sorted and not contaminated by significant amounts of toxic substances." Based on the foregoing, the OIG has determined that the following are not covered by the exemption: medical waste (as it is hazardous material), operation of a landfill, operation of a trash transfer station, and purchase of machinery used for waste management.

The exemption only applies to material that has no residual value. If unwanted material has value, no matter how low, it must be disposed of in accordance with the provisions relating to surplus supplies. M.G.L. c.30B, §15. If your jurisdiction has scrap metal or abandoned vehicles, for example, it must value them before consigning them to the trash collector. If it is determined they have value, M.G.L. c.30B, §15 rather than M.G.L. c.30B, §1(b)(30) will apply.

Remember also that other laws may apply to transactions exempt under M.G.L. c.30B. Under M.G.L. c.149, §27F, for example, contracts for "trash hauling, street sweeping or catch basin cleaning" are subject to the prevailing wage law. Governmental bodies must obtain the Wage Rate Schedule from the Department of Labor Standards (mass.gov/dols/pw).

Textbook Procurement

Please be advised that textbook purchases are not necessarily exempt under M.G.L. c.30B. Only in limited circumstances are you allowed by law to purchase textbooks without competition using M.G.L. c.30B, §7, the sole source method of procurement. Purchasing officials must conduct a reasonable investigation to determine that no other practicable source exists to obtain the textbook. Whether using the sole source method or not, jurisdictions should take advantage of volume discount pricing in order to ensure the best price possible for textbooks sought. Recently, the Office of the Inspector General issued a letter referencing the procurement of textbooks and use of the sole source provision. Please refer to: Letter to Methuen Public Schools Regarding Use of 2011 Stabilization Funds, which can be found at www.mass.gov/oigarra/arra-sfsf-methuen-feb-2012.pdf.



The following is a list of the MCPPO Program's new designees on applications **reviewed (not received)** between October 2, 2011 and February 1, 2012:

[MCPPO](#)

Lauri L. Antonacci, City of Methuen
Kathleen T. Breck, Springfield Redev. Authority
Peter V. Brennan, Wachusett RSD
Varsha Gandhi, Merrimack Valley W.I. Board
Michael J. Gorman, Algonquin Reg. District
Jeanne E. Johnson, Dedham Public Schools
John E. Kane, Westfield Public Schools
Timothy R. Kennedy, OSD
William M. Manzi III, City of Methuen
Joan M. Miller, MHEC/UMASS Amherst
Monique I. Pierangeli, Webster Public Schools
Roger Pontbriand, Jr. Spencer E. Brookfield RSD
Suzanne Sutherland, Masconomet RSD
Judith A. Thornton, MHEC/UMASS Amherst
Heather Tziotziouras, UMASS Lowell
Stephen A. White, MAPC
Andrea M. Woods, Franklin Reg. Council Govts.
Wayne E. Walkden, City of Taunton

[MCPPO for Supplies & Services](#)

Heidi J. Perkins, Dover-Sherborn RSD
Timothy P. McInerney, Town of Grafton

[MCPPO for Design & Construction](#)

Barbara E. Bartlett, Duxbury Public Schools

[Associate MCPPO](#)

Angela L. Cavanaugh, Town of Warren
Kathleen A. Conley, Stoughton PWD
Timothy Cummings, Town of Marlborough
Nancy L. Fisher, Stoughton PWD
Nancy Holt, Town of Marshfield
Melissa Rodriguez-Monahan, Fitchburg Public Schools
Nicole M. Verronneau, Fairhaven Public Schools

[Associate MCPPO for Supplies & Services](#)

Angela T. Burke, Gateway RSD
Linda E. Coffey, Gateway RSD



MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM

REGISTRATION FORM January-June 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).

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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.

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

3-day seminar

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

No Prerequisite

- January 31, February 1, 2 - 2012 BOSTON
March 27, 28, 29 -2012 BOSTON
March 27, 28, 29 -2012* HUNTINGTON

- May 8, 9, 10 -2012 BOSTON
June 19, 20, 21 -2012 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 7, 8, 9 -2012 BOSTON
April 3, 4, 5 -2012 BOSTON

- May 22, 23, 24 -2012 BOSTON

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 14, 15, 16 -2012 BOSTON
April 10, 11, 12 -2012 BOSTON
April 10, 11, 12 -2012* HUNTINGTON

- June 12, 13, 14 -2012 BOSTON

*Video Conference hosted by Gateway RSD

ADVANCED TOPICS UPDATE

2-day seminar

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

- April 25 & 26 -2012 BOSTON

CERTIFICATION for School Project Designers & Owner's Project Managers

4-Day Training

Tuition: \$1200 for private sector

- March 13, 14, 20, 21 -2012 BOSTON

- May 30, 31, June 6, 7 -2012 BOSTON

RECERTIFICATION for School Project Designers & Owner's Project Managers

1-Day Training

Tuition: \$600 for private sector

- February 29 - 2012 BOSTON

- May 11 -2012 BOSTON

CONSTRUCTION MANAGEMENT AT RISK Under M.G.L. c. 149A: Legal Requirements & Practical Issues

1-day seminar

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

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

- May 1 -2012 BOSTON

CHARTER SCHOOL PROCUREMENT

2-day seminar

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

No Prerequisite

- FALL 2012 To be Announced BOSTON

Drafting A Model IFB

Self-paced

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

Disk program requiring Microsoft Word 7.0 or higher

*Registration for this course must be accompanied by a check

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