

### **WHEN MUNICIPALITIES RECEIVE ARRA FUNDS DIRECTLY FROM THE COMMONWEALTH: REPORTING, POSTING AND RECORD KEEPING REQUIREMENTS**

As you may already know, the federal and state rules for spending American Recovery and Reinvestment Act (ARRA) funds place a strong emphasis on accountability and transparency. In addition to the procurement laws that will apply to procurements made with ARRA funds, you must also be aware of the reporting and record retention requirements. This article seeks to address only the reporting and record retention requirements for ARRA funds received directly from the Commonwealth, as opposed to directly from the federal government. Please remember that additional reporting and record retention requirements may apply pursuant to the federal regulations or your grant agreements. To access a specific agency's website or for information on the federal requirements, please visit <http://www.recovery.gov/>.

#### REPORTING

The Executive Office for Administration and Finance has published guidance regarding posting and public notice requirements for procurements and grants, available at [http://www.mass.gov/Aosc/docs/arra/ARRA\\_posting\\_CommPASS.doc](http://www.mass.gov/Aosc/docs/arra/ARRA_posting_CommPASS.doc). Additional information about federal reporting may be found at <http://www.mass.gov/recovery>.

#### POSTING NOTICE

All public entities in the Commonwealth, including governmental bodies, that issue a competitive bid or offer a grant that includes any amount of ARRA funds received directly from the Commonwealth must post all procurement/grant and contract/grant award records on Comm-PASS at [www.comm-pass.com](http://www.comm-pass.com). Additionally, Governor Patrick strongly encourages public entities to follow these guidelines by posting ARRA projects, funded directly from the federal government on Comm-PASS as well.

The posting requirement applies to all procurement and grant documents which are typically created or received during the process, including but not limited to announcements and requests for bids/offers, responses received, and awarded contract/grant recipient information and award values. The posting requirements set specific deadlines by which the postings must occur.

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If you have already received ARRA funds directly from the Commonwealth and issued procurements for projects funded in whole or in part with that money without using this process, please send an email to the Comm-PASS Help Desk at [comm-pass@state.ma.us](mailto:comm-pass@state.ma.us) using the subject "ARRA Procurement: Retroactive Posting Needed" to obtain guidance for fulfilling the requirements.

#### RECORD KEEPING

The Secretary of the Commonwealth provides record retention/disposal schedules for all public records created or received by public entities in the Commonwealth. Those requirements will apply to all ARRA related records. However, it is important to note that the requirements of a specific federal grant or federal agency providing ARRA funds may be different than those of the Commonwealth. In order to ensure that you have met all record retention requirements, you should follow which ever requirement is stricter. The Commonwealth's record retention schedules for the state and municipalities can be found at <http://www.sec.state.ma.us/arc/arcrmu/rmuidx.htm>. Please remember that all records must be complete, auditable, and provide all information necessary to meet the accountability and transparency requirements of ARRA and the particular grant.

Please remember that there may be additional posting and record keeping requirements than those stated herein. It is important to understand what posting and record requirements apply to your specific procurement and grant.

## AMENDMENTS TO CHAPTER 30B AFFECT THE PROCUREMENT OF ARCHITECTS, ENGINEERS AND RELATED PROFESSIONALS BY GOVERNMENTAL BODIES

Recently, SECTIONS 40 – 45 of Chapter 25 of the Acts of 2009 (An Act Modernizing the Transportation Systems of the Commonwealth) made changes to M.G.L. c.30B relative to the procurement of architects, engineers and related professionals who perform design and professional services for public works construction projects or consulting services for non-public building projects. While governmental bodies have not been legally required to procure design work relating to horizontal (or non-building) construction, design services that were not in connection with construction such as traffic studies, peer review services, or land surveying when not done in connection with a construction project, were subject to M.G.L. c.30B. The recent amendments now effectively exempt such non-construction related design services from the procurement rules. For state agencies, defined as “a department, commission, council, board, bureau, committee, institution, agency, state college or university, government corporation, authority or other establishment or procurement office of the commonwealth,” if such a contract is valued at \$25,000 or more, a new qualifications-based selection process must be used, pursuant to M.G.L. c.30B, §21; the remaining section of M.G.L. c.30B will not apply. The definition of “agencies” does not include local governmental bodies.

Please note that the designer selection law, M.G.L. c.7, §§38A½ - O, will continue to apply to design services procured in connection with public building projects.

Regardless of the exemption, it is always prudent and in the interest of the taxpayers to subject contracts to competition. This Office recommends that governmental bodies subject design services to advertised competition when the non-building construction is estimated to cost \$100,000 or more. Furthermore, we recommend that the competition be modeled on the request for proposals process in M.G.L. c.30B, §6. If there is no anticipated construction, this Office recommends advertised competition when the services cost \$25,000 or more. Best price is most often met when the project scope is well defined and subject to competition. There is no shortage of qualified companies in the Commonwealth to compete for contracts.

It is important to note that public officials, government attorneys, and industry groups are reviewing these new sections and it is possible that an amendment will be filed to attempt to clarify gray areas. We will continue to keep you apprised of any final legislative changes made to the procurement laws. Additionally, we note that the Office’s role in interpreting M.G.L. c.30B is advisory only,

and we do not know how a superior court judge would interpret these new sections.

Although Chapter 25 included an emergency preamble, the implementation date was amended by Chapter 26 of the Acts of 2009. The law will be in effect as of November 1, 2009.

The full text of the amendment, including the definitions for architect, engineer and related professionals, may be viewed at <http://www.mass.gov/legis/laws/seslaw09/sl090025.htm>. When accessing the document, the M.G.L. c.30B amendments begin at “SECTION 40”, not “Section 40”, which will appear first.

### IG MODEL PURCHASE ORDER FORM FOR STATEWIDE AND DEPARTMENT CONTRACTS

This office has issued a model Purchase Order Form (June 2009) for purchases by Commonwealth of Massachusetts cities, towns, districts, counties, and authorities (cities and towns) from vendors on Massachusetts Operational Services Division (OSD) statewide contracts and certain contracts issued by an executive department, pursuant to 801 CMR 21.00. The model purchase order form was accomplished through a working group of the Inspector General’s Office; Bill McAvoy, General Counsel, Operational Services Division; Jenny Hedderman, General Counsel, Office of the Comptroller; along with municipal counsel Carol Hajjar McGravey, Urbelis & Fieldsteel, LLP, and Katharine M. Sacca, Chief Procurement Officer for the City of Chelsea.

The objective of the working group was to create a contracting document that incorporates the safeguards of the state’s terms and conditions to cities and towns, including provisions related to vendor record-keeping requirements, contract assignment, and indemnification. The Purchase Order Form is available on our website at <http://www.mass.gov/ig/igpubl.htm#forms>.

We hope that you find the Purchase Order Form useful and are interested to hear any comments that you have on the Purchase Order Form. Please direct your comments to Helen Flaster, Deputy General Counsel, at [Flaster@maoig.net](mailto:Flaster@maoig.net) or 617-722-8821.

## Chapter 30B Questions and Answers

**Q.1. I am the chief procurement officer of a town and recently solicited bids for consultant services estimated to cost more than \$25,000. While several vendors requested the specifications, I did not receive any bids. May I award a contract to a vendor that did not submit a bid?**

A.1. No. Chapter 30B sets forth competitive procurement procedures for all contracts for supplies and services of \$5,000 or more. To hire a consultant, you will have to rebid.

A situation where no bids are received may be indicative of a problem with your advertisement, your specifications, or a failure to provide enough time for submission of bids. Before re-advertising your solicitation, you should contact the vendors that requested the specifications and ask why they did not bid. You may find from their comments that your advertisement did not adequately describe the procurement, or that the specifications were too vague to be helpful, or that your specifications were overly restrictive, making it impossible for a vendor to submit a meaningful bid.

In order to encourage greater competition, when re-advertising the procurement you may want to consider advertising in a broader area or sending the specifications to vendors whom you know to be in the business of providing the needed supply or service.

**Q.2. I am the chief procurement officer (CPO) of a city and have recently conducted a request for proposals for emergency preparedness consulting services. The evaluators have finished evaluating the technical proposals, and only one vendor received a highly advantageous on all comparative criteria. Is it necessary to consider the price proposals before awarding the contract?**

A.2. Yes. While the technical proposals are evaluated without knowledge of price, and although price is not a controlling factor in an RFP process, price does play a role in your decision to award. Chapter 30B requires that, in the RFP process, you determine the most advantageous proposer, taking into consideration the technical proposal *and* price. While one vendor may be rated higher than the others during the technical proposal evaluation process, you may find once you open the prices that that vendor simply costs too much and that another vendor is actually the most advantageous to your jurisdiction. Additionally, Chapter 30B requires that if you do not award the contract to the proposer offering the lowest price (or the highest price when you are receiving payment), you must put your reason in writing for the procurement file.

**Q.3. I am the business manager for the school department. We are in the third year of a four year contract for**

**janitorial services. In reviewing the contract file, I found that the school did not receive the majority vote approval required for contracts that exceed three years in length prior to the award of the contract. Is this contract invalid?**

A.3. Yes. Chapter 30B, section 12(b) requires that you obtain majority vote approval **prior** to awarding a contract that will exceed three years in length, including any options to renew or extend. Failure to obtain majority vote approval will result in an invalid contract under which no payment can be made. In this situation, you should contact your legal counsel regarding the services already provided under the contract, and act as soon as possible to procure the services under a valid contract.

The majority vote required to approve contracts that are or may be longer than three years must be taken by:

- for towns and districts, a duly called town or district meeting;
- for cities, city council or city commissioners with the approval of the mayor, if required;
- for counties, the county commission;
- for regional school districts, a two-thirds vote of the school committee; and
- for redevelopment, housing or other authorities, the governing body.

A school department of a city or town will obtain majority vote in the same way as the city or town. For example, majority vote for a school department of a town will be a majority vote at town meeting.

**Q.4. My jurisdiction plans to award several contracts with terms that exceed three years in length, including any options to renew or extend. May we accomplish this by passing a town bylaw that authorizes the solicitation and award of contracts exceeding three years without further obtaining majority vote approval for a specific contract or contracts?**

A.4. No. It is this Office's opinion that a bylaw that authorizes the solicitation and award of contracts exceeding three years without further obtaining majority vote approval of a specific contract or contracts does not comply with Chapter 30B because the proposed authority is too broad. Putting a governmental body on notice of the risks of long-term contracts in advance of entering into them is the public policy rationale behind the law, and such a bylaw does not accomplish that goal.

Where Chapter 30B, §12(b) requires that contracts for supplies and/or services with a term exceeding three years in length, including any options to renew or extend, are permissible only if authorized by a majority vote of the governing body of your jurisdiction prior to the award of the contract, this Office is of the opinion that you would need to identify specific types of contracts that may be in effect for longer than three years, and obtain majority vote approval prior to entering into those contracts.

## Important information from the Inspector General

### PROTECT RECOVERY ACT FUNDING AND BLOW THE WHISTLE ON FRAUD, WASTE, AND ABUSE

The best way to stop the theft and misuse of your tax dollars is to report it to the proper authorities. Your reporting is the number one weapon we have in the fight against fraud, waste, and abuse. Being a whistleblower when you see the inappropriate use of taxpayer money could save the Commonwealth millions of dollars. Blowing the whistle is particularly important now because cities, towns, school districts, not-for-profits, private corporations, and individuals are on the verge of receiving a total of nearly \$9 billion in federal stimulus funding under the American Reinvestment and Recovery Act. Together we can ensure that this stimulus money is spent free of fraud, waste, and abuse.

**Report evidence of fraud, waste, or abuse to the  
Massachusetts Office of the Inspector General at  
1-800-322-1323.**

The federal Recovery Act extends federal whistleblower protection to state and local employees, contractor and vendor employees, and employees of other private or not-for-profit entities receiving federal funding when they report fraud, waste, or abuse to proper authorities. **This added protection means that you cannot be fired, demoted, or discriminated against as a reprisal for making a disclosure as a whistleblower.** For more information about federal whistleblower protections go to <http://www.recovery.gov/> or the U.S. Office of the Special Counsel at <http://www.osc.gov/>.

### Charter School Procurement Seminar: Openings Still Available

Are you a charter school official that has not yet received your MCPPO certification? Pursuant to Chapter 46 of the Acts of 1997, charter school administrators who serve as school procurement officers must attain a MCPPO certificate. (Horace Mann Charter school administrators who are responsible for procurement are also required to attain MCPPO certification). In order to obtain this certification, you must attend and successfully complete either the *Public Contracting Overview* seminar or the *Charter School Procurement* seminar. Currently, there are openings available in this semester's two-day Charter School Procurement seminar which will be held on October 27 and 28, 2009. If you are interested in taking this course, please fax the completed registration form on page 5 of this bulletin 617-723-2334.

### ADVISORY ON MUNICIPAL GOLF COURSE MANAGEMENT CONTRACTS, JUNE 2009

This Office recently published an Advisory on Municipal Golf Course Management Contracts. This advisory is the culmination of a review of contracts pertaining to 63 municipal golf courses, as well as independent financial and internal control audits of 4 courses. The review found that municipalities need to improve contract preparation and oversight and that many municipalities have no assurance that they are receiving a fair share of golf course revenue. The advisory provides several recommendations to ensure compliance with the laws, greater oversight, fair revenue collection and sound business operations.

The advisory can be accessed at [http://www.mass.gov/ig/publ/golf\\_rpt.pdf](http://www.mass.gov/ig/publ/golf_rpt.pdf).

**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 might have.**

**617-722-8838**

### THE CENTRAL REGISTER AND GOODS AND SERVICES BULLETIN ARE NOW AVAILABLE EXCLUSIVELY ONLINE

The two main publications used to advertise public bids, the *Central Register* and the *Goods and Services Bulletin*, are now exclusively available online. This new service allows users to access both periodicals electronically and allows users to search a state or local government bid notice by agency name, publication date or by description. The subscription service fee for the *Goods and Services Bulletin* is \$42.00/yr (including an expedited fee of \$5.00). The subscription service fee for the *Central Register* is \$100.00/yr (including an expedited fee of \$8.50).

Previously, hard copies of these publications were made available through public libraries throughout the state. Access to these publications will still be available at those libraries electronically as well as through the State Library of Massachusetts at <http://archives.lib.state.ma.us/>.

To subscribe to one or both of the electronic periodicals, please visit: <http://www.sec.state.ma.us/PublicationSubscriptionPublic/NewRegistration.aspx>.



MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM
REGISTRATION FORM July-December 2009

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. Non-Profit employees include any employee of a 501 (c)(3) corporation. Proof of non-profit status must be provided with registration.

RESERVE SEATING:

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

MAIL ORIGINAL TO:

Commonwealth of Massachusetts
Office of the Inspector General
One Ashburton Place, Rm. 1311
Boston, MA 02108

ATTN: MCPPO Program

MAKE CHECK PAYABLE TO: OIG

SUBSTITUTIONS /

CANCELLATIONS: Each seminar is limited and filled on a space available basis. No refunds for cancellations. Registration transfer to someone in your organization is possible with prior notice. The OIG reserves the right to cancel/reschedule any seminar and is not responsible for any costs incurred by registrants. Terms and conditions may change without notice. Alternate course dates may be substituted in the event of an emergency, upon notification. NO -SHOWS WILL BE INVOICED A \$100.00 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.

Table with 4 columns: Course Title, Prerequisite, Dates, Tuition. Rows include: PUBLIC CONTRACTING OVERVIEW, SUPPLIES & SERVICES CONTRACTING, DESIGN & CONSTRUCTION CONTRACTING, ADVANCED TOPICS UPDATE, CERTIFICATION for School Project Designers & Owner's Project Managers, CONSTRUCTION MANAGEMENT AT RISK Under M.G.L. c. 149A: Legal Requirements & Practical Issues, CHARTER SCHOOL PROCUREMENT, Drafting A Model IFB.

POLICY OF NON-DISCRIMINATION:
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The Commonwealth of Massachusetts Office of the Inspector General is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE sponsors.



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

Payment Method : [ ] CHECK/M.O. [ ] PURCHASE ORDER # [ ] I/E/IV

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

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

If you previously subscribed to the *Procurement Bulletin* and have not received a copy, please contact Patty Callahan by phone at 617-727-9140.

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