



Office of the Inspector General Commonwealth of Massachusetts

Procuring Energy Efficiency and Conservation Consulting Services: Advisory for School Business Officials and Other Procurement Officials, September 2009

The Office of the Inspector General is issuing this advisory to school districts and other entities that are considering procuring the services of energy efficiency and conservation consultants that it is in your best interests to ensure that the promises of savings be verifiable. These consultants assist in reducing energy costs through education, training, or other methods that do not involve the purchase or retrofit of equipment, fixtures, or other assets. Their compensation is extracted from school district energy cost savings which the vendor asserts are guaranteed.

In a June 2008 letter this office confirmed its agreement with the Department of Energy Resources (DOER) that the Commonwealth must put in place an efficient system to provide municipalities with energy advice and solutions, noting that: "municipalities lack the resources to fully evaluate the services being offered by private sector entities [energy efficiency and conservation consultants]" and that "promises of savings made to cities and towns [should be] verifiable."

When procuring these services you must use either M.G.L. c.25A (Chapter 25A) or M.G.L. c.30B (Chapter 30B). However, after consultation with DOER, this office and DOER strongly recommend M.G.L. c.25A, §11I as the preferred method of contracting for energy consulting services, not Chapter 30B. Chapter 25A includes the following safeguards for municipalities:

- DOER provides oversight of energy education contracts with school districts.
- Prior to soliciting a request for qualifications, the awarding authority must notify the commissioner of DOER who will issue an acknowledgment of receipt upon successful compliance with the requirements Chapter 25A.
- The awarding authority must provide public notice of the meeting to award the contract and must provide DOER with a copy of the contract.
- In accordance with Chapter 25A, the energy consultant's method for measurement and verification of guaranteed savings must conform to the most recent standards established by the Federal Energy Management Program (FEMP) of the U. S. Department of Energy.
- Chapter 25A includes a requirement for energy efficiency and conservation consultants to file with the awarding authority a performance bond equal to 100 per cent of the estimated contract value.
- Chapter 25A requires that the consultant submit information annually to allow for regular monitoring of the costs and benefits of contracts for energy management services.

Vendors may prefer Chapter 30B which does not require the posting of a performance bond and has no provision for DOER oversight. These Chapter 25A requirements may be inconvenient for them. However, these measures under Chapter 25A are designed as safeguards for municipalities and should be sought whenever your contract will include so called "guarantees".

This office and DOER remind municipalities of the negative consequences that can occur from use of specifications provided by a vendor. Vendor supplied specifications often lead to decreased competition and increased costs because the specification is written for one vendor's product or service. Be sure that ultimately your specifications foster full and fair competition.

As always, we recommend that you perform due diligence before conducting the procurement to find free or low cost energy services. Public companies, state agencies, and other entities offer free energy consulting services and may make some of the same recommendations as an energy management consultant, allowing you to take full advantage of the savings you create. Do not short change yourself by paying a consultant for energy savings that you achieved or can achieve prior to entering into the contract. Lastly, this office strongly recommends that you work with an independent energy consultant prior to entering into a contract. The consultant will be able to help you draft non-proprietary specifications of the energy management consultant and should be able to assist in verifying whether the savings guaranteed under the contract have been realized. Remember that contracts funded through energy savings are not "free" or "no cost" services.

Do not enter into a contract unless you: 1) understand how you will be charged for services; 2) will be able to verify what services were provided to incur these charges; 3) will be able to verify any vendor savings estimates; and 4) understand all contract related costs.

Please do not hesitate to contact this office if you have any questions, concerns, or require assistance regarding this or any other issue.

For more information on this topic, see [Advisory for the Procurement of Energy Management/Conservation Services](#) (January 2009).