
PROCUREMENT BULLETIN

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Chapter 30B Sole Source Provision Amended

On April 16, 1998, the Governor signed into law an amendment to M.G.L. c. 30B, §7, which is the section of M.G.L. c. 30B concerning sole source procurements. The law now reads as follows (changes are in italics):

Section 7. (a) A procurement officer may award a contract in an amount of less than ten thousand dollars or any contract for the procurement of library books, school textbooks, educational programs, educational courses, educational curricula in any media including *educational software, newspapers, serials, periodicals, audiovisual materials or software maintenance* without competition when, after a reasonable investigation, the procurement officer determines in writing that only one practicable source for the required supply or service exists. The procurement officer shall procure a proprietary item by competition if more than one potential bidder or offeror for that item exists.

This Inspector General originally filed this amendment as part of a package to streamline the procedures set out in M.G.L. c. 30B. Although the entire package has not yet passed, we are pleased with the passage of this small piece.

Please note that it is our opinion that the term "audiovisual materials" includes items such as documentary films and educational videotapes, but not equipment, such as film projectors or VCRs.

This Office will continue to monitor legislation that affects public procurement and will keep you informed of any legislation that may be of interest to you.

Procurement Manual Revision

This Office's procurement manual entitled *Municipal, County, District and Local Authority Procurement of Supplies, Services and Real Property* has recently been updated. As most of you know, this procurement manual is a comprehensive, step-by-step guide to the requirements of M.G.L. c. 30B. You may obtain a copy of the manual:

- for free by downloading the manual from our website: <http://www.state.ma.us/ig>;
- for \$14.40 from the State Book Store by calling (617) 727-2834 or by writing to the State Book Store, State House, Room 116, Boston, MA 02133. (The charge includes shipping.); or
- for free by enrolling in the Massachusetts Certified Public Purchasing Official Program Supplies and Services Seminar.

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Questions About Chapter 30B

The special needs department of our local high school is procuring a contract for an administrator to handle Medicaid claims for special need students. Is this contract exempt under M.G.L. c. 30B, §1(b)(8), which applies to agreements for the provision of special education pursuant to M.G.L. c. 71B and regulations promulgated pursuant thereto?

No. This exemption applies to direct services delivered to children with special needs, such as transportation, counselling or education under an individual education program, as well as to any supplies used by children with special needs as part of an educational program. Other supplies and services, however, are not exempt simply because they are procured by the special education department. For example, office supplies or computers to be used for office administration would not fall under this exemption. In our opinion, the rental of office space for the use of the special education department does not fall within this exemption.

Contracts for Health Agents

It has recently come to our attention that there is some confusion regarding what entities are exempt from M.G.L. c. 30B under the municipal department of health exemption. Specifically, we have been asked whether **elect**ed Boards of Health must follow M.G.L. c. 30B.

M.G.L. c. 30B exempts "contracts or agreements entered into by a municipal hospital or a *municipal department of health*." M.G.L. c. 30B, §1(b)(27) (emphasis added.) A municipal department of health is a different statutory entity from a board of health. In order to create a department of health, a town must vote to accept the provisions of M.G.L. c. 111 §§26A through 26E. Upon such vote and acceptance, the municipal department of health replaces the board of health.

The statute expressly limits the exemption to municipal departments of health. Therefore, contracts entered into by boards of health must comply with M.G.L. c. 30B.

Helpful Tips for Writing IFBs and RFPs

If you are requiring a successful bidder to provide a performance bond, consider asking the selected bidder to provide the bond prior to contract execution time. For example, you might require the selected bidder to furnish the bond within ten days of notification of contract award. Then, if the selected bidder fails to provide the necessary bond, you can go back to your pool of bidders and award the contract to the second lowest responsive and responsible bidder because you will still be within your time for bid acceptance.

DCPO Name Change

The state's Division of Capital Planning and Operations (DCPO) has undergone a name change. The agency's new name is the **Division of Capital Asset Management and Maintenance**. You may see the agency referred to as **Asset Management**. You will now forward your Disclosure of Beneficial Interest Forms for real property transactions to Asset Management, One Ashburton Place, 15th floor, Boston, MA 02108, Attn: Steven Andrews.

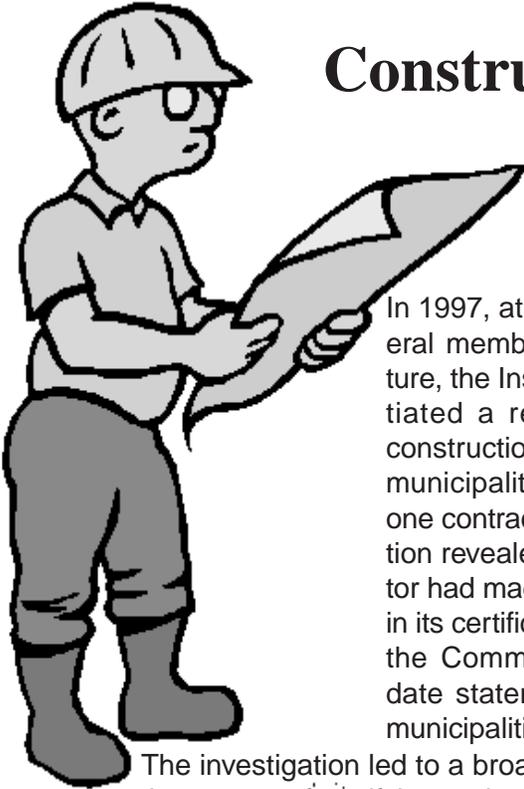
Land Swap Advice

This Office occasionally comes across legislation to exempt local jurisdictions from M.G.L. c. 30B in order to enter into land swap transactions. Our Office will oppose this legislation if the terms of the transaction are unfair to the taxpayers of the local jurisdiction. If you are involved with drafting land swap legislation and would like the advice or assistance of this Office, please feel free to call a member of the Chapter 30B team at (617) 727-9140.

Correction to OSD Website Address

Our June 1998 newsletter contained an incorrect website address for the state's Operational Services Division. The correct website is <http://www.state.ma.us/osd>

Construction Contractor Qualification



In 1997, at the request of several members of the Legislature, the Inspector General initiated a review of deficient construction projects in three municipalities undertaken by one contractor. This investigation revealed that the contractor had made false statements in its certification application to the Commonwealth and update statements to the three municipalities.

The investigation led to a broader examination of the system of certifying and qualifying contractors for public building projects. The Commonwealth's construction bidding process is predicated on the assumption that the system can accurately and reliably restrict public building contracts to qualified contractors. However, the Office's review found several problems with the system, including: inadequate review of contractors' financial condition, overly generous limits on the dollar value of public work contractors may undertake, understaffing of the contractor certification function, and reluctance of some awarding authorities to provide unfavorable evaluations of contractors' performance.

Awarding Authorities' Key Role

Public awarding authorities play a key role in qualifying contractors for public building contracts. All public agencies in Massachusetts are required under M.G.L. c. 149, §44D to complete a standard contractor evaluation form and submit the form to Asset Management (formerly named the Division of Capital Planning and Operations) within 30 days of completing a building project. The evaluation form contains written comments as well as numerical ratings reflecting the contractor's performance on the project. Contractors who meet the Commonwealth's certification standards, including the requirement that they re-

ceive an average numerical rating of 70 or higher on past projects, are certified to bid on public building projects for one year.

However, the Office's review revealed that public owners do not always submit the required contractor evaluations to the Commonwealth. The threat of litigation is reportedly one major deterrent to completing candid contractor evaluations for projects on which contractor performance has been deficient. In other cases, public owners reportedly do not submit the evaluations because they are unwilling to invest the time required to complete a detailed questionnaire.

If public owners fail to complete the required written evaluations of contractors whose performance is deficient, these same contractors will continue to be certified for public building projects.

What Can Be Done?

In August 1998, the Inspector General issued his report on the investigation and review. The report, *Qualifying Contractors for Public Building Projects: A Case Study and System Review*, offers a series of reform recommendations designed to raise the eligibility standards for public building contractors, strengthen the Commonwealth's capacity to screen out unqualified contractors, and encourage awarding authorities to reject unqualified bidders. Regarding contractor evaluations, the Office recommended that legislation be enacted to protect public owners and their designers from litigation in connection with contractor evaluations.

Reforming the current system is essential to ensuring that Massachusetts awarding authorities and taxpayers obtain high-quality construction services at competitive prices. The Inspector General will continue to work with the Legislature, the Administration, awarding authorities, and industry groups to improve and strengthen the system of public construction.

Note: You can download a copy of the report from the Office's internet site at www.state.ma.us/ig.