

# Procurement Bulletin

*A publication of the Massachusetts Office of the Inspector General*

## Legislative changes to M.G.L. c. 30B pass!

**See page 4 for details.**

### Construction Law Update

The Massachusetts Supreme Judicial Court recently decided a case involving M.G. L. c. 149, the public building construction bid law. The case, Annese Electrical Services, Inc. v. City of Newton, 431 Mass. 763 (2000), deals with the awarding authority's right to reject all sub-bids in a particular sub-trade when less than three are received and the prices are not reasonable without further competition. M.G.L. c. 149, §44E(1).

The City of Newton sought general bids and sub-bids on a high school building project. The City received five sub-bids for the filed sub-trade category of electrical work. After the general bid opening, three of the five sub-bidders withdrew their sub-bids because of clerical errors. The two remaining sub-bids exceeded the City's estimate for the work. The City restructured the work to include an alternate and invited electrical subcontractors to bid on the project again. One of the two sub-bids remaining from the first round of bidding protested the bid to the Attorney General's Of-

fice, which concluded that the second sub-bid solicitation was in violation of M.G.L. c. 149. The decision stated that the City should have utilized the substitution procedure in M.G.L. c. 149, §44F(4)(c) rather than rebid.

This case was pursued further in the courts, and the Supreme Judicial Court issued its decision on June 21, 2000. The Court held that the City did not abuse its discretion under M.G.L. c. 149, §44E(1) in rejecting the first round of electrical sub-bids. After Annese, it appears that an awarding authority retains its right to reject all sub-bids in a particular sub-trade when less than three are received and the prices are not reasonable without further competition even after the general bid opening.

If you have any further questions about this case, you should contact your local counsel or the Attorney General's Fair Labor and Business Practices Division, (617) 727-3476.

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# M.G.L. c. 30B

## Questions and Answers



***My jurisdiction is considering establishing a policy of not accepting bids or proposals from vendors who have previously been the subject of debarment or suspension by state or federal agencies. Does your Office have an opinion about such policies?***

We do not recommend a policy of rejecting bids or proposals from a vendor based on a prior debarment or suspension that is no longer in effect. We believe that such a policy raises due process issues.

Debarments and suspensions are established for specific periods of time pursuant to a statutory procedure that provides an opportunity for vendors to respond to the allegations which are the basis of the proposed debarment. A refusal to accept bids or proposals from vendors after their period of debarment or suspension has ended would effectively constitute an extension of the debarment period without affording due process. This would conflict with the concept of the debarment being for a specified period commensurate with the seriousness of the offense(s).

However, awarding authorities certainly may consider whatever conduct caused a vendor to be debarred or suspended in making a responsibility determination. Responsibility means that a vendor has the capability to fully perform the contract, and the integrity and reliability which assures good faith performance. Debarment and suspension information may be evaluated just as other references or past performance information is considered in deciding whether a bidder or proposer is responsible. It is more appropriate to make such an evaluation after a bid or proposal has been submitted rather than establishing a policy of not doing business with anyone who has previously been debarred or suspended.

***Does section 16 of M.G.L. c. 30B apply to the lease of real property (real estate) and space by or to local governmental bodies?***

Yes. Section 16 of M.G.L. c. 30B applies to the leasing of real property to or by a local governmental body, as well as to the sale or purchase of real property. Accordingly, if your local governmental body leases space from a private party which costs more than \$25,000, the lease must be procured using an advertised solicitation for proposals. Please remember that you determine rental space cost by calculating the rental price over the entire contract term length. For example, a three-year office space lease with a monthly rent of \$1,000 has an entire contract cost of \$36,000 and therefore must be procured by an advertised solicitation for proposals.

If a local governmental body is leasing out its own real property or building space to a private party, it must comply with the requirements in section 16 for declaring real property surplus and establishing reuse restrictions, if any. You must also determine the fair market value of the lease. If the fair market value of the entire lease is more than \$25,000, you must advertise to solicit proposals. If you decide to lease the property at less than fair market value, you must publish a notice in the *Central Register* which explains the reason for the decision and discloses the difference between the fair market value and the price received.

For more information about leasing real property, consult this Office's publication entitled, *Municipal, County, District and Local Authority Procurement of Supplies, Services and Real Property*. You may also register for the one-day seminar *Local Government Real Property Transactions Under M.G.L. c. 30B*.

## Minor Change made to M.G.L. c. 30B

Section 7 of M.G.L. c. 30B was recently amended to change the words “public utility” to “regulated industry.” The section now reads as follows:

A procurement officer may procure without competition water, gas, electricity, sewer, or telephone services from a *regulated industry* company as defined in section three of M.G.L. c. 25 if the procurement officer certifies in writing that only one practicable source exists.

This minor, technical change merely unifies the lan-

guage set forth in M.G.L. c. 25, which applies to the Department of Telecommunications and Energy (DTE), with the language set forth in M.G.L. c. 30B.

A regulated industry is a company that is regulated by the DTE, including companies that provide telephone, electricity, gas, and water services.

Keep in mind that before you procure utility services on a sole source basis from a regulated industry, you must certify in writing that only one practicable source exists.

## Income from Antenna Spaces Leases

If your jurisdiction owns a water tower or a building on which telecommunications companies can install antennas, you may be able to generate substantial income by leasing the space.

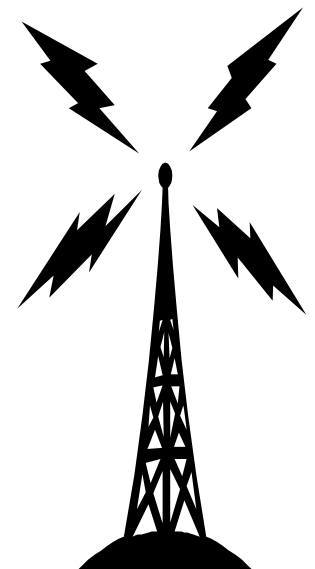
The lease of antenna space by local jurisdictions is usually subject to M.G.L. c. 30B, §16. If the value of the lease is more than \$25,000, it must be awarded through an advertised, sealed proposal process. Through competition, many jurisdictions have leased these spaces at favorable rates.

For example, the Worcester Housing Authority receives \$24,000 per year under a five-year lease of roof space, for a grand total of \$120,000 in income for the entire lease. Worcester Housing Authority also included an additional five-year renewal option with a 15% rent increase, which will total \$138,000 for the additional five years if the option is exercised.

*Metrowest Daily News* reported on June 14, 2000 that the Town of Ashland receives about \$100,000 per year by leasing space on two water towers to cellular companies.

Another good example of the income potential for antenna space leases is the Department of Environmental Management’s lease of space for six antennas on Sudbury Fire Observation Tower. Lease payments begin at \$22,500 for the first year and increase by 3% every year after that for a 10-year grand total of \$257,937 in income to the agency.

For more information about conducting an RFP process for antenna space leasing under M.G.L. c. 30B, call this Office’s 30B team at 617-727-9140, or enroll in the MCPPO course entitled *Local Government Real Property Transactions Under the Uniform Procurement Act* (discussed on pages 6 and 7 of this newsletter).



## Summary of Changes to the Public Procurement Laws

The following is a summary of the changes that appear in the FY 2001 budget. These changes are effective as of July 1, 2000.

### M.G.L. c. 30B

- The intergovernmental agreement exemption, M.G.L. c. 30B, §1(b)(9), has been broadened to permit awarding authorities to purchase supplies and services from, or dispose of supplies to, other state governments or their political subdivisions without following M.G.L. c. 30B procedures.
- The definition of “chief procurement officer” contained in M.G.L. c. 30B, §2 has been broadened to include local authorities, such as housing authorities, and other governmental bodies that are subject to M.G.L. c. 30B but were not specifically included in the previous definition of “chief procurement officer.”
- The threshold for purchases requiring the solicitation of price quotations under M.G.L. c. 30B, §4 has been increased from \$1,000 to \$5,000.
- The threshold for purchases requiring advertised, sealed bids or proposals under M.G.L. c. 30B, §§5 and 6 has been increased from \$10,000 to \$25,000.
- M.G.L. c. 30B has been amended to clarify that the governmental body and the apparent lowest responsive and responsible bidder (highest bidder when the contract requires payment to the awarding authority) are the parties that may agree to an extension of time for bid awards under M.G.L. c. 30B, §5.

Similarly, M.G.L. c. 30B has been amended to

clarify that the governmental body and the responsible and responsive offeror offering the most advantageous proposal as determined by the chief procurement officer are the parties that may agree to a time extension for proposal awards under M.G.L. c. 30B, §6.

- The time extension for bid and proposal awards to which the parties may agree is now limited to an additional 45 days.

- Sole source procurements under M.G.L. c. 30B, §7 are now permissible for contracts of less than \$25,000 (raised from \$10,000) when a procurement officer determines that there is only one practicable source.

- Awarding authorities are now permitted under M.G.L. c. 30B, §13 to increase the amount of supplies or services purchased under a contract provided that the increase in the total contract price does not exceed 25 percent (raised from 10 percent).

The amendment permits awarding authorities to exceed the 25 percent cap for special fuel and all ice and snow control supplies, in addition to gasoline, fuel oil, and road salt.

- M.G.L. c. 30B, §13 now explicitly states that awarding authorities may negotiate a reduction in the unit price paid for supplies or services at any time during the term of the contract or when an option to renew, extend, or purchase is exercised.
- The threshold for the disposal of surplus supplies under M.G.L. c. 30B, §15 has been increased from \$500 to \$5,000.

### Remember!

**The construction bid law thresholds have not changed! Therefore, if you are bidding a small construction project under M.G.L. c. 30B (projects estimated to cost more than \$10,000, but not more than \$25,000), you must still procure that work using a sealed bid process— you may not use quotations. M.G.L. c. 30, §39M allows you to use M.G.L. c. 30B for these smaller projects, but it still requires you to use M.G.L. c. 30B, §5 bidding procedures.**

## Summary of Changes to the Public Procurement Laws, cont.

- M.G.L. c. 30B, §16 now contains explicit language, consistent with the Office of the Inspector General's long-standing interpretation, that intergovernmental acquisitions or dispositions of real property interests are exempt from the competitive proposal requirement of M.G.L. c. 30B, §16.

### M.G.L. c. 7

- M.G.L. c. 7, §38E now provides qualified immunity to protect individuals responsible for completing standard designer evaluation forms on behalf of awarding authorities from lawsuits. M.G.L. c. 7, §38E also requires the awarding authority to provide legal representation and indemnification for those individuals in lawsuits stemming from contractor evaluations. The Division of Capital Asset Management (DCAM) is required to develop a standard designer evaluation form under this provision.

Completion of standard designer evaluation forms is now a prerequisite for the disbursement of state funding for subsequent construction projects.

- M.G.L. c. 7, §38H(d) has been repealed. M.G.L. c. 7 now permits all awarding authorities to contract with the same designer for study and subsequent design services on building projects. (Note: M.G.L. c. 7, §38H(i) still requires cities and towns to obtain a satisfactory independent review of the study designer's work prior to contracting with the same designer for subsequent design services.)

### M.G.L. c. 149

- Contractors are now required under M.G.L. c. 149, §44D to disclose financial or familial relationships with any of the construction project owners listed on their certification applications.
- M.G.L. c. 149, §44D now provides that any material false statement in a contractor's certification application or update statement shall subject the contractor to the penalties of perjury as set forth in M.G.L. c. 268, §1.

- M.G.L. c. 149, §44D now permits DCAM to reduce the classes of work and the amount of work on which a contractor can bid if DCAM receives additional information regarding the contractor's qualifications during its certification period.
- M.G.L. c. 149, §44D now provides qualified immunity to protect individuals responsible for completing standard contractor evaluation forms on behalf of awarding authorities from lawsuits. M.G.L. c. 149, §44D also requires the awarding authority to provide legal representation and indemnification for those individuals in lawsuits stemming from contractor evaluations. DCAM is required to develop a new standard contractor evaluation form under this provision.
- Completion of contractor evaluation forms is now a prerequisite for the disbursement of state funding for subsequent construction projects.

### M.G.L. c. 30, §39M

- M.G.L. c. 30, §39M has been amended to clarify that the awarding authority makes the determination as to whether a bid item is equal to that named in a specification.
- M.G.L. c. 30, §39M has been amended to clarify that awarding authorities subject to M.G.L. c. 30B may purchase construction materials (materials only, no labor) under either M.G.L. c. 30B as a "supply" contract or M.G.L. c. 30, §39M as a "materials" contract.

**NOTE:** M.G.L. c. 30, §39K, which governs contractor payments on public building construction contracts, has been amended to include an additional mandatory provision providing some recourse to an awarding authority when a general contractor fails to complete a punch list after written notice thereof. The awarding authority is now permitted to terminate the contract and complete the work at the original contractor's expense. The awarding authority is required to note the termination on the contractor evaluation form filed with DCAM.





**Massachusetts Certified Public Purchasing Official Program  
Massachusetts Office of the Inspector General**

State House Station

P.O. Box 270

Boston, MA 02133

(617) 523-1205

(617) 727-9140

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(For a complete MCPPO catalog, call Anne Tierney at 617-523-1205)

**New Course**

**Bidding for Better Results Tuition \$90**

Participants in this six-hour seminar will practice writing and critiquing specifications to maximize best value for supplies and services. Participants will also learn the best way to handle late-bids and how to avoid the appearance of bid splitting. This advanced seminar is filled with hands-on exercises. There is no written examination. This seminar qualifies for six continuing education credits that can be applied to MCPPO recertification.

**Local Government Real Property Transactions Under M.G.L. c. 30B Tuition \$75**

This one-day seminar covers the M.G.L. c. 30B request for proposals process for the acquisition and disposition of land and buildings by local governmental bodies. This seminar qualifies for five continuing education credits that can be applied to MCPPO recertification.

**Public Contracting Overview Tuition \$250**

An overview of legal requirements and best practices for public contracting by local governmental bodies, with hands-on workshops that apply contracting knowledge and skills to practical problems faced by the procurement official. A prerequisite for *Supplies and Services Contracting* and *Design and Construction Contracting*, this three-day seminar is invaluable both for experienced public officials and those who have recently entered the field or are working in a support capacity. This seminar concludes with a written examination.

**Policy of Non-Discrimination**

The Office of the Inspector General does not discriminate on the basis of race, color, national origin, ancestry, religion, sex, age, disability, sexual orientation, political affiliation, or Vietnam-era or disabled-veteran status in its employment, admission policies, or in the administration or operation of, or access to its programs and policies. The Office of the Inspector General does not discriminate on the basis of disability in violation of Section 504 of the Rehabilitation Act of 1973. Inquiries pertaining to the Office's non-discrimination policy for MCPPO programs may be addressed to Anne Tierney.

**Design and Construction Contracting Tuition \$350**

**Prerequisite: Public Contracting Overview or State Contracting Overview**

This in-depth, three-day seminar is tailored to professionals facing the complex issues of today's design, public building construction, and public works construction projects. Participants will learn practical applications and effective strategies to guide them through procurement and administration of design and construction contracts. This seminar concludes with a written examination.

**Supplies and Services Contracting Tuition \$250**

**Prerequisite: Public Contracting Overview**

Comprehensive and challenging, this three-day seminar focuses on procurements under the Uniform Procurement Act, M.G.L. c. 30B. Presented in an easy-to-follow, hands-on workshop format, participants are guided through practical applications of this law. Participants will learn about writing effective specifications, obtaining best value using an invitation for bids, making the request for proposals process work, common bidding problems and how to resolve them, effective contract administration, and more. This seminar concludes with a written examination.



The Massachusetts Office of the Inspector General has been reviewed and approved as an Authorized Provider of continuing education and training programs by the International Association for Continuing Education and Training. Authorized Provider #101811.



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**Office of the Inspector General**  
 (617) 727-9140  
 Fax: (617) 723-2334

**Massachusetts Certified Public Purchasing Official Program  
 Registration 2000**

**REGISTRATION:**

*Registration and payment must be received 10 days prior to course date in order to process a confirmation. Off-site registration and payment must be received 30 days prior to the seminar date in order for this office to confirm the seminar. Off-site seminars will be confirmed based on a minimum of 50 registrants.* In the event of a cancellation of an off-site location, an alternate date will be offered. Confirmation letters, with directions, will be mailed 10 days prior to seminar. Terms and conditions are subject to change without notice.

**RESERVE SEATING:**

To reserve seating, fax this registration form with a purchase order to (617-723-2334).

**Mail originals to:**

Commonwealth of Massachusetts  
 Office of the Inspector General  
 P.O. Box 270- State House Station  
 Boston, MA 02133  
 ATTN: MCPPO

**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. Alternate course dates may be substituted in the event of an emergency, upon notification. Change in seminar date and/or cancellations must be received by fax at least 2 business days prior to the seminar date and are subject to a \$25 transfer fee - NO-SHOWS WILL BE INVOICED A \$50 SERVICE CHARGE..

**FOR MORE INFORMATION:**

Please contact Program Director  
 Anne Tierney

**PUBLIC CONTRACTING OVERVIEW**

(prerequisite for *Supplies and Services Contracting* and *Design and Construction Contracting*)

Earn 20 CPE, PDP and LU hours and 2 CEU credits

- SEPTEMBER 12-14, 2000 BOSTON
- NOVEMBER 7-9, 2000 TAUNTON
- DECEMBER 5-7, 2000 BOSTON

**3-day seminar**  
 Tuition \$250

**STATE CONTRACTING OVERVIEW**

(prerequisite for *Design and Construction Contracting* for state employees)

Earn 26 CPE, PDP and LU hours and 2.6 CEU credits

- OCTOBER 5, 6, & 11, 12, 2000 BOSTON
- FEBRUARY 7, 8 & 13, 14, 2001 BOSTON

**4-day seminar**  
 Tuition is \$375

DESIGNED FOR  
 STATE EMPLOYEES

**SUPPLIES & SERVICES CONTRACTING**

Prerequisite: *Public Contracting Overview*

Earn 20 CPE, PDP and LU hours and 2 CEU credits

- OCTOBER 25-27, 2000 BOSTON
- JANUARY 10-12, 2001 BOSTON

**3-day seminar**  
 Tuition \$250

**DESIGN & CONSTRUCTION CONTRACTING**

Prerequisite: Either *Public Contracting Overview* or *State Contracting Overview*

Earn 20 CPE, PDP and LU hours and 2 CEU credits

- NOVEMBER 28-30, 2000 BOSTON
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 UNDER M.G.L. c. 30B**

Earn 5 CPE, PDP and LU hours and .5 CEU credits

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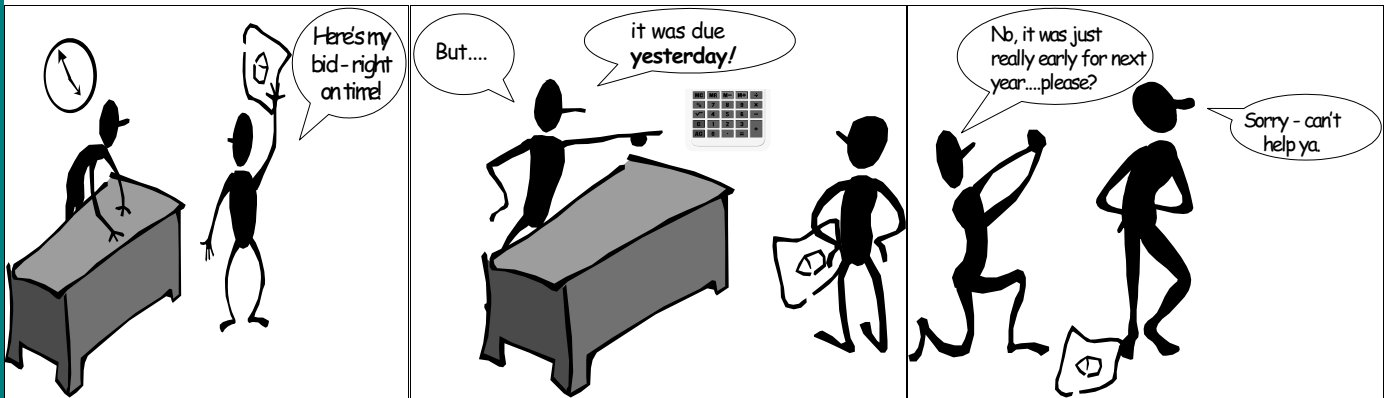
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American Institute of Architects (AIA) members, please provide your member number here so we can notify AIA of your participation. \_\_\_\_\_



New Course

## Bidding For Better Results

Want to refine or practice writing specifications? Join us for a morning of hands-on exercises in specification writing for both supplies and services. Ever wonder what to do when a bid arrives on time but is for some reason not opened on time? Can you keep the bid or must you reject it? Come find out what to do! You'll be surprised at what you will learn. Has your jurisdiction ever been accused of bid splitting or creating the appearance of bid splitting? Using a fun format this course will demonstrate how to avoid bid splitting or the appearance of bid splitting and effectively defend your procurement.

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