

Massachusetts Office of the Inspector General

Procurement Bulletin

New IG Appointment Sullivan Named Inspector General

Governor Jane Swift, Attorney General Tom Reilly, and Auditor Joseph DeNucci recently announced that they have selected Gregory W. Sullivan as the Commonwealth's Inspector General.

"I am pleased that Greg Sullivan has agreed to become the Commonwealth's Inspector General," said Swift. "His decade of experience in the Office of the Inspector General gives him a unique understanding of the challenges facing the Office."

Sullivan, who resides in Norwood, received his A.B. cum laude from Harvard College in 1976. He earned a Master's in Public Administration from the J.F.K. School of Public Administration at Harvard University in 1983 and a Master of Science in Management from the Sloan School of Management at M.I.T. in 1987.

Sullivan has been in the Office of the Inspector General since 1992. From 1993 to 1994 he was Chief of the Management Division and the Financial Investigations Division. In 1994, he became First Assistant Inspector General, where he remained until June of 2001 when he became Acting Inspector General. In 1975, Sullivan was elected to the Massachusetts House of Representatives from the 12th Norfolk District. During his tenure in the Legislature, Sullivan was a member of House Ways and Means and the Post Audit and Oversight Committees. Sullivan left the House in 1992 to join the Inspector General's Office.

Massachusetts Appeals Court Decides "Bad Faith" Public Bidding Case

A recent Massachusetts Appeals Court decision, *Northeast Reclamation Corporation v. Town of Wareham*, 54 Mass. App. Ct. 564 (2002) provides an example of bad faith resulting from a town's rescission of a bid award based on threats of litigation from another disgruntled bidder.

The Town solicited bids pursuant to M.G.L. c. 30, §39M for reclamation and reconstruction of four streets. The Town required that bidders have five years of experience in this type of road work. The Town rejected the low bidder, P.A. Landers, due to material omissions in its bid documents. The Town accepted the next low bid submitted by Northeast Reclamation (Northeast) and awarded a contract. The record indicates that Town officials knew that the principals in the corporation each had more than the requisite five years of experience called for in the invitation for bids (IFB) but that Northeast has been in business as a general contractor under its name for less than one year and had been incorporated for only six months. On that basis, Landers protested and threatened litigation. The Town rescinded the bid award on the grounds that Northeast did not meet its requirements.

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Confidential Hotline

The Office of the Inspector General encourages public employees to report any suspected incidences of fraud, waste, and abuse by calling the Inspector General's toll-free confidential hotline (number below).

1-800-322-1323

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“Bad Faith” Public Bidding Case, cont.

Northeast sued, claiming that the Town had acted in bad faith. At trial, a Superior Court jury found that Northeast should have received the contract. The jury found that the Town’s rescission was not in the public interest, that the Town did not act in good faith in rescinding the bid, and that Northeast’s damages were \$62,500 for lost profits.

The Town then moved for judgment notwithstanding the verdict on grounds that the Town acted within its discretionary power to rescind the bid

for failure to comply with the experience requirement in the specifications and further that the Town acted in good faith. The trial judge only allowed the motion so far as it pertained to good faith, concluding that the jury’s finding that the Town did not act in good faith was not supported by the evidence. The judge reduced the jury’s verdict to \$20,000 for bid preparation costs. Northeast appealed the decision.

The Appeals Court found that the Town acted in bad faith and affirmed the

jury’s original finding even though the awarding authority had not acted with a “hidden agenda” or with animosity toward Northeast. The Appeals Court concluded that where a bid was legitimate and rescission of it was not in the public interest, the Town’s pretextual rejection of a bid because of threats of litigation made by an ineligible bidder was an act of bad faith.

It should be noted that the Appeals Court has previously ruled that concerns over project delay or fear of litigation by dis-

gruntled bidders do not justify rejecting or resoliciting bids. See, *Petricca Construction Company v. Commonwealth*, 37 Mass. App. Ct. 392 (1994). As was the case in *Petricca*, the Appeals Court noted that an awarding authority that was apparently motivated to avoid delay and litigation had failed to avoid either.

M.G.L. c. 30B Questions and Answers

Are real estate revaluation services subject to M.G.L. c. 30B?

Yes. If the revaluation services will cost \$25,000 or more, you must conduct an IFB or RFP process to procure such services. If the revaluation services cost \$5,000 or more but less than \$25,000, you must solicit three oral or written price quotations.

I advertised an IFB for roof repair work estimated to cost \$14,000 in the newspaper one

week ago. I am using the procedure set forth in M.G.L. c. 30B, §5 to conduct the procurement. No one has picked up the IFB. May I mail copies of the IFB to a few contractors in my area?

Yes. You may mail copies of an IFB to potential contractors after you have advertised. Be sure to keep a record of the names and addresses of everyone who received an IFB in the event you issue an addendum.

The rule for contract award in our custodial supplies IFB stated that we would award multiple contracts: one contract to the lowest bidder for each item. We opened bids and realized that it would be easier to award a single contract to the total lowest bidder for the sum of all items in the IFB. May we change the rule for contract award after bids have been opened?

No. You may not change your rule for contract award after you have

opened bids. If you can make a written determination that it is in the best interest of your jurisdiction to cancel the IFB and redraft the IFB to incorporate a rule which will permit award of a single contract to the low bidder for the total of all items in the IFB, then you may cancel the IFB process and resolicit bids for a single contract.

If you realize that you want to change your rule for contract award before the bid

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Town's Discretion to Establish Bidder Qualification Requirements Upheld by Superior Court

A Middlesex Superior Court decision, *Keystone Elevator Co., Inc. v. Town of Bedford* (WL 1809812; Mass. Super. 2001, No. 992283), serves as a good reminder of the right of awarding authorities to establish reasonable qualifications requirements for vendors bidding on public contracts.

An awarding authority required bidders on an M.G. L. c. 149 elevator maintenance contract to have "maintained an elevator maintenance organization comprised of at least five regularly employed licensed elevator mechanics for a minimum of five years prior to the date of the bid." After bids were opened, the Town rejected Keystone

Elevator, the low bidder, asserting that it did not have the requisite five years of experience. (Keystone Elevator had previously been awarded a one-year contract for preventive maintenance by the Town.)

A bid protest and litigation ensued. The court identified the primary issue as whether the five-year requirement complied with a previous determination by the Attorney General that "there should exist a reasonable nexus between a bidding requirement imposed by an awarding authority and the objective sought by the awarding authority in imposing the requirement."

The court was persuaded by the awarding authority's contention that the five year requirement was a reasonable means of protecting the Town by helping to ensure that it contracted with a "geographically stable" business that would remain in Massachusetts and a business which had demonstrated success and stability. Furthermore, the Town persuaded the court that the experience requirements furthered the objective of dealing with a company large enough to provide year round coverage for emergencies for the duration of a three-year contract.

Thus, the court reasoned, the Town could reject the

vendor in question for a three-year, full-service contract even though the same vendor had earlier been awarded a one-year, preventive maintenance contract by the same community. The court concluded that it was within the Town's discretion to establish different bidding criteria for different types of contracts.

This Office cautions procurement officials to consider whether qualification requirements overly restrict competition and exceed what is

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M.G.L. c. 30B Questions and Answers, cont.

due date, you may issue an addendum to your IFB.

Our jurisdiction needs to issue an addendum to an IFB and there are only two days remaining until the bid due date. May we issue an addendum at this juncture in the IFB process?

Yes. Under M.G.L. c. 30B, you may issue an addendum at any time up until the time and date your bids

are due. If your addendum requires extra time for bidders to adequately prepare their bids, we recommend that you also include an extension to your bid due date in the addendum. Be sure to send a copy of the addendum to everyone who picked up the IFB.

We awarded a contract for fuel to the lowest responsive and responsible bidder. After contract award, the low bidder refused to

perform the contract and we were left without a fuel contract for the upcoming fiscal year. What actions may we take?

If the time for acceptance in your IFB has not expired, you may cancel your award to the lowest bid and award a contract to the second low bid. If you required a bid deposit, you may keep the difference between the low bidder's price and the second low bidder's price.

If the time for bid acceptance stated in your IFB has expired, then you will need to rebid the contract. If you obtained a performance bond as part of the original fuel contract, you should contact your city solicitor or town counsel about collecting from the performance bond.



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

State House Station
P.O. Box 270
Boston, MA 02133
(617) 727-9140
(617) 523-1205

Who Should Attend

Local government officials and others interested in local government contracts for supplies, services, real property, and construction.

Earn Professional Certification

For an in-depth description of courses offered, please visit our website at www.mass.gov/ig and download a course catalog, or you may call 617-727-9140 to request a catalog, or fax a request to 617-723-2334.

Courses available in your own city or town:

Bidding Basics and Contract Administration

This brief four-hour course is packed with the basics you need to begin understanding public purchasing for local governmental bodies in Massachusetts. You may earn .4 CEUs and 4 CPEs for completion of this course. This course does not contain an examination and may not be applied toward MCPPO certification or recertification. You will receive a certificate of completion. This seminar can be offered at a location in your jurisdiction with a minimum of 35 attendees.

Bidding For Better Results

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. There is no written examination. This seminar qualifies for 6 continuing education credits that may be applied toward MCPPO and MCSPO recertification.

Call Joyce McEntee Emmett to schedule a seminar in your area at 617-523-1205.

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 Vietnamera 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 Joyce McEntee Emmett, Program Director, at 617-523-1205.



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The Massachusetts Office of the Inspector General is part of the American Council on Education's College Credit Recommendation program.



The Massachusetts Office of the Inspector General is a registered provider with the American Institute of Architects Continuing Education System. Please notify us of your AIA membership number so that we can notify AIA of your participation.



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



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

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Seminars Offered for 2002

For full course descriptions, please download a catalog from <http://www.mass.gov/ig/mcpo/catal02.pdf>

Core Seminars

The following seminars may be applied toward earning an MCPPO designation.

Public Contracting Overview **3-day seminar**
Tuition: \$300 for government/non-profit employees
\$500 for all others

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. You may earn 20 CPE, PDP and LU hours and 2 CEU credits.

September 24-26, 2002	8:30-4:30	Taunton
October 1-3, 2002	8:30-4:30	Danvers
October 4, 8, 18, 2002	8:30-4:30	Chicopee
October 29-31, 2002	8:30-4:30	Worcester

State Contracting Overview **4-day seminar**
Tuition: \$390 for government/non-profit employees
\$650 for all others

An overview of legal requirements and best practices for public contracting by state agencies, with hands-on workshops that apply contracting knowledge and skills to practical problems faced by state officials. A prerequisite for *Design and Construction Contracting*, this four-day seminar concludes with a written examination. You may earn 26 CPE, PDP and LU hours and 2.6 CEU credits.

September 9-10 and 17-18, 2002	8:30-4:30	Boston
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Design and Construction Contracting **3-day seminar**
Tuition: \$400 for government/non-profit employees
\$600 for all others

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. You may earn 20 CPE, PDP and LU hours and 2 CEU credits.

October 15-17, 2002	8:30-4:30	Methuen
November 13-15, 2002	8:30-4:30	Taunton
December 4-6, 2002	8:30-4:30	Boston
December 11-13, 2002	8:30-4:30	Worcester

Supplies and Services Contracting **3-day seminar**
Tuition: \$300 for government/non-profit employees
\$500 for all others

Prerequisite: *Public Contracting Overview*

Comprehensive and challenging, this 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. You may earn 20 CPE, PDP and LU hours and 2 CEU credits.

October 9-11, 2002	8:30-4:30	Taunton
November 6-8, 2002	8:30-4:30	Boston
November 20-22, 2002	8:30-4:30	Danvers



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Massachusetts Office of the Inspector General**

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(617) 727-9140 (617) 523-1205

Seminars Offered for 2002

For full course descriptions, please download a catalog from <http://www.mass.gov/ig/mcpo/catal02.pdf>

Advanced Topics in Procurement **2-day seminar**
Tuition: \$180 for government/non-profit employees
\$300 for all others

This seminar is geared toward to the MCPPO designee who wants to learn more about topics covered in *Public Contracting Overview*. This course will give you an update of M.G.L. c. 30B, the construction bid laws and the designer selection law. Current local procurement issues will be discussed, including energy issues, telecommunications, and revenue-generating contracts. There will also be brief presentations on the open meeting law and the public records law. Participants will earn 13 continuing education credits or 13 CPE, PDP and LU hours and 1.3 CEU credits.

November 4-5, 2002 **8:30-4:00** **Boston**

Drafting Specifications for Public Safety Vehicles
1-day seminar
Tuition: \$75 for government/non-profit employees
\$125 for all others

This course consists of a limited lecture segment on the various types of specifications, interspersed with an intensive hands-on workshop in which participants evaluate and convert actual manufacturer's specifications into non-proprietary, performance-based specifications. Participants may bring to class any draft IFBs for public safety vehicles for workshop use and commentary. Anyone responsible for purchasing large capital equipment can benefit from this workshop. This course provides 5 continuing education credits or 5 CPE, PDP and LU hours and .5 CEU credits.

September 19, 2002 **9:00-3:00** **Stow**
October 22, 2002 **9:00-3:00** **Springfield**

Bidding for Better Results **1-day seminar**
Tuition: \$90 for government/non-profit employees
\$150 for all others

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. This course provides 6 continuing education credits or 6 CPE, PDP and LU hours and .6 CEU credits.

October 24, 2002 **8:30-3:30** **West Springfield**
December 2, 2002 **8:30-3:30** **Worcester**

Spotlight on Schools **1-day seminar**
Tuition: \$90 for government/non-profit employees
\$150 for all others

This six-hour seminar focuses on the specialized issues and challenges confronting school business officials and staff members. Participants will apply the principles of public procurement under M.G.L. c. 30B to traditional and emerging areas of school buying, including revenue-producing arrangements, technology purchasing, and sole-source procurements. This course provides 6 continuing education credits or 6 CPE, PDP and LU hours and .6 CEU credits.

September 20, 2002 **8:30-3:30** **Boston**
October 25, 2002 **8:30-3:30** **West Springfield**
December 9, 2002 **8:30-3:30** **Worcester**

Local Government Real Property Transactions Under M.G.L. c. 30B **1-day seminar**
Tuition: \$75 for government/non-profit employees
\$125 for all others

This five-hour 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 course provides 5 continuing education credits or 5 CPE, PDP and LU hours and .5 CEU credits.

October 7, 2002 **9:00-3:00** **Boston**
October 23, 2002 **9:00-3:00** **West Springfield**
December 16, 2002 **9:00-3:00** **Taunton**



MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM REGISTRATION

Office of the Inspector General
(617) 727-9140 or (617) 523-1205 Fax: (617) 723-2334

REGISTRATION INFORMATION:

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 SEMINAR DATE IN ORDER FOR THIS OFFICE TO CONFIRM SEMINAR. **Off-site seminars will be confirmed based on a minimum of 25 registrants.** In the event of cancellation of an OFF-SITE location, an alternate date will be offered. Confirmation letters, with directions, will be mailed 10 days prior to seminar.

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).

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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. Terms and conditions may change without notice. Alternate course dates may be substituted in the event of an emergency, upon notification. Change in seminar date and/or cancellations received (BY FAX) less than 2 business days prior to the seminar date are subject to a \$25 transfer fee - NO-SHOWS WILL BE INVOICED A \$50 SERVICE CHARGE.

FOR MORE INFORMATION:

Please contact the Program Director, Joyce McEntee Emmett, at (617) 523-1205.

THIS FORM MAY BE DUPLICATED

PAYMENT:

- CHECK/M.O. PURCHASE ORDER #
 I/E/IV

PUBLIC CONTRACTING OVERVIEW <input type="checkbox"/> SEPTEMBER 24-26, 2002 <input type="checkbox"/> OCTOBER 1-3, 2002 <input type="checkbox"/> OCTOBER 4, 8, 18, 2002 <input type="checkbox"/> OCTOBER 29-31, 2002	3-day seminar TAUNTON DANVERS CHICOPEE WORCESTER	Tuition: \$300 for government/non-profit employees \$500 for all others
STATE CONTRACTING OVERVIEW <input type="checkbox"/> SEPTEMBER 9-10, 17-18 2002	4-day seminar BOSTON	Tuition: \$390 for government/non-profit employees \$650 for all others
SUPPLIES & SERVICES CONTRACTING Prerequisite: Public Contracting Overview <input type="checkbox"/> OCTOBER 9-11, 2002 <input type="checkbox"/> NOVEMBER 6-8, 2002 <input type="checkbox"/> NOVEMBER 20-22, 2002	3-day seminar TAUNTON BOSTON DANVERS	Tuition: \$300 for government/non-profit employees \$500 for all others
DESIGN & CONSTRUCTION CONTRACTING Prerequisite: Public or State Contracting Overview <input type="checkbox"/> OCTOBER 15-17, 2002 <input type="checkbox"/> NOVEMBER 13-15, 2002 <input type="checkbox"/> DECEMBER 4-6, 2002 <input type="checkbox"/> DECEMBER 11-13, 2002	3-day seminar METHUEN TAUNTON BOSTON WORCESTER	Tuition: \$400 for government/non-profit employees \$600 for all others
ADVANCED TOPICS IN PROCUREMENT <input type="checkbox"/> NOVEMBER 4-5, 2002	2-day seminar BOSTON	Tuition: \$180 for government/non-profit employees \$300 for all others
LOCAL GOVERNMENT REAL PROPERTY TRANSACTIONS UNDER M.G.L. c. 30B <input type="checkbox"/> OCTOBER 7, 2002 <input type="checkbox"/> OCTOBER 23, 2002 <input type="checkbox"/> DECEMBER 16, 2002	1-day seminar BOSTON WEST SPRINGFIELD TAUNTON	Tuition: \$75 for government/non-profit employees \$125 for all others
BIDDING FOR BETTER RESULTS <input type="checkbox"/> OCTOBER 24, 2002 <input type="checkbox"/> DECEMBER 2, 2002	1-day seminar WEST SPRINGFIELD WORCESTER	Tuition: \$90 for government/non-profit employees \$150 for all others
DRAFTING A MODEL IFB Self Paced BY MAIL Program <input type="checkbox"/> Disk Program requiring Microsoft Word 7.0 or higher Registration for this course must be accompanied by a check		Tuition: \$60 for government/non-profit employees \$100 for all others
SPOTLIGHT ON SCHOOLS: PROCUREMENT ISSUES, CHALLENGES, AND TRENDS <input type="checkbox"/> SEPTEMBER 20, 2002 <input type="checkbox"/> OCTOBER 25, 2002 <input type="checkbox"/> DECEMBER 9, 2002	1-day seminar BOSTON WEST SPRINGFIELD WORCESTER	Tuition: \$90 for government/non-profit employees \$150 for all others
DRAFTING SPECIFICATIONS FOR PUBLIC SAFETY VEHICLES <input type="checkbox"/> SEPTEMBER 19, 2002 <input type="checkbox"/> OCTOBER 22, 2002	1-day seminar STOW WEST SPRINGFIELD	Tuition: \$75 for government/non-profit employees \$125 for all others
INFORMATION TECHNOLOGY PURCHASING Self Paced CD-ROM Course <input type="checkbox"/> CD-ROM requiring Windows 95 or higher and Internet Explorer 5.0 or higher Registration for this course must be accompanied by a check		Tuition: \$60 for government/non-profit employees \$100 for all others

NAME: _____ PHONE: _____

SIGNATURE OF APPLICANT: _____ E-MAIL: _____

ORGANIZATION/JURISDICTION: _____

TITLE: _____ FAX: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

HOW LONG HAVE YOU BEEN EMPLOYED AS A PURCHASING OFFICIAL? _____

Do you need special accommodations? _____

American Institute of Architects (AIA) members must provide a membership number for LU credit. _____

Bidder Qualification Requirements, cont.

needed to assure bidder competence. There are also circumstances that may give rise to the appearance of bad faith if the qualifications appear to deliberately favor certain vendors or to eliminate others. This is particularly the case if, for example, a jurisdiction requires three years of experience for a particular contract and then, two years later, issues an IFB for the same contract with a five-year experience requirement without any rationale explaining the increase in the experience requirement.

It is also useful for the awarding authority to consider which is more important: the number of years that the company has been in business or the experience of key personnel (e.g., a company formed two years ago may have key personnel with 20 years of experience delivering the service you need).

This Office is available to assist awarding authorities in structuring these requirements. Please contact the M.G.L. c. 30B team at 617-727-9140 with any procurement questions you may have.

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