

Massachusetts Office of the Inspector General

Procurement Bulletin

Letter from the Inspector General

Dear Public Officials:

Autumn Greetings!

Based on findings of credit card abuse and excessive spending at certain municipal light plants, this office requested an advisory opinion from the Department of Public Utilities (DPU) requiring municipal light plants to maintain documentation to support expenditures and provide such documentation to municipalities upon request. Recently, DPU issued an advisory opinion prescribing that municipal light plants keep orderly financial records, together with supporting documentation in a way that is useful to municipal auditors, accountants and treasurers. Please find the full text of the opinion at <http://www.mass.gov/Eoca/docs/dte/electric/06-29/82107dpuord.pdf>.

As you may know, section 11 of Chapter 46 of the Acts of 1997 requires that the procurement officers of charter schools participate in the Massachusetts public purchasing official certification program in order to obtain a certificate. To assist charter school officials in meeting this requirement, or if you are looking for a refresher on relevant Massachusetts law, this office created a two-day class entitled *Charter School Procurement*. This class will be offered on October 17 and 18. If you are a charter school official that has not yet met this requirement, please see the description of the seminar at www.mass.gov/ig/mcppo/flyerscs.pdf.

Did you know that applicants for funding from the Massachusetts School Building Authority (MSBA) may, at the discretion of the MSBA, be eligible for an additional 1% of MSBA grant monies for using the CM at Risk delivery method for the construction or renovation of a school building? In order to educate public officials on the use of this delivery

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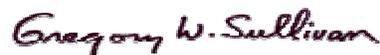
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method, this office offers a one day seminar entitled *Construction Management at Risk Under M.G.L. c.149A*. This class will be offered on September 20, and again on November 20. For more information on this seminar, please visit our website at www.mass.gov/ig/mcppo/flyerscm.pdf.

If you are interested in registering for the above seminars or any other seminars offered in the MCPPO program, please fill out and fax in the MCPPO Registration Form on page 5 of this issue of the *Procurement Bulletin*.

Lastly, I would like to congratulate the newly designated Massachusetts Certified Public Purchasing Officials.

Sincerely,



Gregory Sullivan
Inspector General

OIG Articles

OVERHEAD RATES IN DESIGN CONTRACTS FOR PUBLIC WORKS CONSTRUCTION

As you may know, design services in connection with a specific public works (horizontal construction) project are not subject to the Commonwealth's public bidding statutes. See *Designer Contracts and Chapter 30B*, Procurement Bulletin, v12, n2, p2, May 2006. Although local governments may enter into design services contracts by negotiating fees to be charged, this office recommends conducting a competitive procurement process for those design services associated with a public works construction project estimated to cost more than \$100,000. As stewards of taxpayer money, it is important to ensure that the compensation to be paid, including direct labor costs, direct expenses and overhead rates, is reasonable.

When paying a designer, compensation includes direct labor costs, direct expenses, and an overhead rate. The overhead rate is the cost of non-project related expenses, that is, expenses incurred offsite for the benefit of the project such as those costs associated with running an office including the cost of office space, telephone services, utilities and other indirect labor expenses. Usually, overhead rates are expressed as a percentage of total direct labor costs.

Overhead rates may differ greatly depending on the type of work performed and the firm providing the work. For example, overhead rates for design services in connection with water or sewer projects are generally higher than those for road projects. Also, we have found that design firms that provide such services charge different local governments different overhead rates. For example, one design firm providing water/sewer design services charged one town an overhead rate of 180% while charging a city a rate of 225% for similar scopes of work.

To determine if the overhead rates associated with a design service contract are reasonable, this office recommends that you contact other municipalities or state agencies to find out what rates other public entities are paying. For example, the Massachusetts Water Resources Authority compiles a listing of overhead rates paid for design services for which it contracts. With this information, a local government will be better situated to negotiate reasonable overhead rates for design contracts in connection with public works projects. The savings may be significant.

REAL PROPERTY TRANSACTIONS UNDER M.G.L. c.30B: CHANGE IN *CENTRAL REGISTER* FROM CR-3

The Office of the Inspector General and the Office of the Secretary of State have worked together to provide a more helpful *Central Register* form when advertising real property per the requirements of M.G.L. c.30B.

M.G.L. c. 30B, §16(d) requires that any acquisition or disposition of an interest in real property of more than 2,500 square feet with a cost (in the case of an acquisition) or value (in the case of a disposition) in excess of \$25,000 must be advertised once in the *Central Register*, which is published by the Secretary of State, not less than 30 days before the proposal opening date. As you may know, the *Central Register* is published each Wednesday and contains notices of real property transactions and advertisements for and information about state, county and municipal design and construction contracts.

M.G.L. c.30B requires that real property advertisements include the terms and requirements of the proposed transaction. The Office of the Secretary of State has modified Form CR-3, *CENTRAL REGISTER – ACQUISITION OR DISPOSITION OF REAL PROPERTY (CR-3 Form)*. The revised CR-3 Form now prompts the writer to state whether the transaction is an acquisition or disposition, and whether the transaction type is purchase or lease. When describing the parcel, the CR-3 Form only allows input of a certain number of characters. While this was always true, the writer previously was not alerted when s/he had reached the maximum number of characters allowed. Going forward, the writer will cut off when the limit is reached. We hope you will find these changes helpful.

The notice form can be seen at the Secretary of State's website, www.sec.state.ma.us/sprpublicforms/RPSubmissionform.aspx.



Chapter 30B Questions and Answers

Q.1. I am the business manager of the school department for a town. I understand that Chapter 30B applies to governmental bodies. Is the school department considered a governmental body?

A.1. Yes. The school department, which is a department of a town, is a governmental body subject to Chapter 30B. Governmental body is defined in Chapter 30B as a city, town, district, regional school district, county or agency, board, commission, authority, department or instrumentality of a city, town, district, regional school district or county. Horace Mann Charter Schools are also considered to be governmental bodies subject to Chapter 30B.

Q.2. My town is disposing of surplus supplies through a public auction. The town will hire an auctioneer who will not be paid by the town, but will receive a percentage of the amount that the town receives from the sale of the surplus supplies. Is the town required to follow Chapter 30B in procuring these services?

A.2. Yes. Chapter 30B applies when there is an agreement between a governmental body and a vendor. When soliciting quotes or bids, you may ask the vendors to provide their price in the form of a percentage, as such is the industry standard. The value of the contract is the estimated dollar amount based on the percentage that the vendor will receive. You will award the contract to the responsive and responsible auctioneer who has offered the lowest percentage.

Q.3. I am the facilities director of a city, and I will be procuring some small public works projects using the Chapter 30B bid process. Must the bidders certify that they can work in harmony with all other elements of labor employed on the site and certify that all employees have completed a ten hour course in construction safety, as per M.G.L. c.30, §39S?

A.3. Yes. M.G.L. c.30, §39S requires that persons bidding on a construction project estimated to cost more than \$10,000 certify that they can work in

harmony with all elements of labor employed on the site and that all employees employed on the site, or in work subject to the bid, successfully complete a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least ten hours in duration. This requirement applies to all construction projects estimated to cost more than \$10,000 regardless of which statute the work is bid under.

For more information on using the Chapter 30B bid process for public works construction estimated to cost more than \$10,000 but not more than \$25,000 please see our *Charts on Local Public Procurement Procedures*, which can be viewed at <http://www.mass.gov/ig/mcppo/charts06.pdf>.

Q.4. I am the procurement officer for a county sheriff's department which is subject to Chapter 30B. The department needs to procure blood testing and x-ray services for prison inmates. Are these services exempt under Chapter 30B if the work is being performed by a laboratory technician?

A.4. Yes. Contracts with physicians, dentists, and other health care individuals or persons including nurses, nurse's assistants, medical and laboratory technicians, health care providers including diagnosticians, social workers, psychiatric workers, and veterinarians are exempt from Chapter 30B, pursuant to section 1(b)(16). Because the testing is being done by a laboratory technician, this service would be exempt from the competitive selection procedures of Chapter 30B.

Q.5. I am the business manager of a school district and would like to enter into a contract with a vendor to provide and manage all of the school system's substitute teachers. A representative of the company said that bidding was not necessary and that several municipalities had already hired the firm. May I assume that the firm is on the statewide contract?

-Continued on following page-



Chapter 30B Questions and Answers Cont.

-Continued from previous page-

A.5. No. It is essential that you clarify with the company and also that you independently verify whether the vendor is on the statewide contract and authorized to sell the specific supply or services needed by contacting the Procurement Team Leader at OSD. If the vendor is not on the statewide contract for this service you must use Chapter 30B for this procurement.

Q.6. My town purchased telecommunications equipment from a vendor on the statewide contract. Some of the items purchased are not listed on the statewide contract and may not have been part of the statewide contract at the time of the purchase. Was this purchase of telecommunications subject to Chapter 30B?

A.6. Yes. Statewide contracts often do not include every item that a vendor sells. The procurement was subject to Chapter 30B because not all of the items purchased were covered by the statewide contract. By purchasing items in violation of Chapter 30B, your jurisdiction entered into an invalid contract upon which payment may not be made. The Commonwealth's Operational Services Division (OSD) procures certain supplies and services pursuant to specifications as part of a competitive process. Only items that are procured through that competitive process are covered by the statewide contract. To avoid any violation of the law, be sure to find the contract on the OSD website and verify that the supplies and services you are purchasing are covered.

Q.7. Are governmental bodies permitted to make use of contracts procured through the Massachusetts Higher Education Consortium (MHEC)?

A.7. No. The MHEC has informed this Office that local cities and towns may not purchase from MHEC Contracts. Pursuant to MHEC's enabling legislation, it is MHEC's position that its contracts are only to be utilized by public and private higher education institutions.

The following is a list of the MCPPO Program's *new Designees* on applications **reviewed** between July 1, 2007 and August 31, 2007:

MCPPO

Michele C. Bernier, *Town of North Attleboro*
 William J. Clabaugh, *Narragansett RSD*
 R. Thomas Delaney, Jr., *Groton Highway Dept.*
 Geoffrey A. DiCiaccio, *UMASS Medical School*
 Laurie A. Elliot, *Greater Lawrence Sanitary Dist.*
 Elaine A. Espindle, *Dracut Public Schools*
 Edward J. Fahey, *Malden Housing Authority*
 Andrew G. Graham, *Dracut Public Schools*
 Marie Jane Handy, *Pathfinder Regional VTHS*
 Monique J. Hicks, *Northeast Metro. RSVD*
 Albert C. Hill, Jr., *City of Salem*
 Tammy Lajoie, *Montachusett Reg. Voc. Tech.*
 Stephen F. Merriam, *DHCD*
 Pamela T. Nolan, *Town of Truro*
 Ruth A. Quinn Berdell, *Wellesley Public Schools*
 Martha Shewan, *Montachusett Reg. Voc. Tech.*
 Christine D. Suckow, *Pembroke Public Schools*
 Deborah J. Williamson, *Quincy Housing Authority*

MCPPO for Supplies & Services

Clare Lucente Jeannotte, *Nashoba RSVD*
 Katherine A. Pye, *City of Cambridge*

MCPPO for Design & Construction

Caesar P. Cardozo, *Boston Housing Authority*
 John O. Martin, *UMASS Amherst*

Associate MCPPO

Kristie Breen, *UMASS Biologic Labs*
 Michelle A. Cote, *Nashoba RSD*
 Marianne Fabbri, *Reading Municipal Light Dept.*
 Yocelyn Figueroa, *City of Holyoke Gas & Elec.*
 Paul W. Gargano, *Town of Canton*
 David J. Gelineau, *City of Beverly*
 Susan J. Harvey, *Town of North Attleboro*

Associate MCPPO for Supplies & Services

Sarah A. Bissonnette, *Town of Framingham*

Associate MCPPO for Design & Construction

Eric V. Johnson, *Town of Framingham*



MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM
REGISTRATION FORM July-December 2007

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.

PUBLIC CONTRACTING OVERVIEW

No Prerequisite

- September 11,12,13-2007
November 27, 28, 29-2007

3-day seminar

BOSTON
BOSTON

Tuition: \$450 for government/non-profit employees
\$700 for all others

SUPPLIES & SERVICES CONTRACTING

Prerequisite: Public Contracting Overview or Charter School Procurement

- August 7, 8, 9 -2007
October 23, 24, 25-2007

3-day seminar

BOSTON
BOSTON

Tuition: \$450 for government/non-profit employees
\$700 for all others

DESIGN & CONSTRUCTION CONTRACTING

Prerequisite: Public Contracting Overview or Charter School Procurement

- September 25, 26, 27-2007
November 6, 7, 8-2007

3-day seminar

BOSTON
BOSTON

Tuition: \$650 for government/non-profit employees
\$900 for all others

ADVANCED TOPICS UPDATE

- November 15 & 16-2007

2-day seminar

ASSABET VALLEY REG. TECH. HIGH SCHOOL- Marlborough, MA

Tuition: \$350 for government/non-profit employees
\$600 for all others

CERTIFICATION for School Project Designers & Owner's Project Managers

NEW

- July 11, 12 & 18, 19-2007
October 2, 3, 4, 5-2007

4-Day Training

BOSTON
BOSTON

Tuition: \$1200

Tentative Date December 5, 6 & 12, 13 -2007
BOSTON

CONSTRUCTION MANAGEMENT AT RISK Under M.G.L. c. 149A: Legal Requirements & Practical Issues

*Introductory material geared to procurement officials who are not construction experts

- September 20-2007

1-day seminar

BOSTON

Tuition: \$275 for government/non-profit employees
\$600 for all others

November 20-2007 BOSTON

CHARTER SCHOOL PROCUREMENT

No Prerequisite

- October 17 & 18-2007

2-day seminar

BOSTON

Tuition: \$400 for government/non-profit employees
\$600 for all others

Drafting A Model IFB

Disk program requiring Microsoft Word 7.0 or higher

*Registration for this course must be accompanied by a check

Self-paced

Tuition: \$75 ea. for govt./non-profit employees
\$200 for all others

POLICY OF NON-DISCRIMINATION:

The Commonwealth of Massachusetts 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 Joyce McEntee Emmett, Program Director, at 617-727-9140.



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. State Boards of Accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be addressed to the National Registry of CPE Sponsors, 150 Fourth Avenue North, Suite 700, Nashville, TN 37219-2417, www.nasba.org.



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

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

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