

Procurement Bulletin

Letter from the Inspector General

Dear Public Officials:

Congratulations to the most recent designees of the Massachusetts Certified Public Purchasing Official Program. A list of those public officials who have recently received their delegation can be found on page 5 of this issue.

I would like to inform you of a recent Massachusetts School Building Authority (MSBA) initiative to save tax payers substantial sums. In August, after a contest in which more than 10 school building designs were submitted, the MSBA selected two prototype designs for use by municipalities contemplating new high schools with between 900 to 1,350 students.

In 2003, this office recommended to then Governor Romney that the Commonwealth consider establishing a program to create prototype designs for state-financed public school buildings. It was this office's opinion that having such designs available for municipalities would not only reduce the cost of design services related to state-financed public school buildings, but would also lead to reduced opportunity for inadequately or overly-designed schools, lead to a quicker review and approval by governmental bodies and state agencies, as well as allow opportunities to benefit from the application of value engineering and careful considerations of total life-cycle costs, energy efficiency, and environmental suitability. Early this summer the MSBA advanced this worthy program. I am very hopeful that such a program will be a great success.

Are you a charter school official that has not yet received your MCPPO certification? Pursuant to Chapter 46 of the Acts of 1997, charter school administrators who serve as school procurement officers must attain a MCPPO certificate. (Horace Mann Charter school administrators who are responsible for procurement are also required to attain MCPPO certification). In order to obtain this certification, you must attend and successfully complete either the *Public Contracting Overview* seminar or the *Charter School Procurement* seminar to meet this require-

Inside this issue:


The Chief Procurement Officer	Page 2
Chapter 30B Questions and Answers	Page 3
Recent Amendments to the Prevailing Wage Laws	Page 4
Recent MCPPO Designees	Page 5
Collaborating on Exempt Contracts	Page 5
MCPPO Registration Form	Page 6

ment and attain a certificate. Currently, there are openings available in this semester's two-day Charter School Procurement seminar which will be held on October 15 and 16, 2008.

Additionally, there are still openings in the class developed to explain the new way to procure construction projects *Construction Management at Risk under M.G.L. c.149A* (CM at Risk). The class will be held on November 13, 2008. The one-day course will provide an overview of the legal requirements, explain the roles of major participants in the process, and identify sources of risk and best practices for controlling risk in CM at risk projects. If you are interested in attending either Charter School Procurement or Construction Management at Risk Under M.G.L. c.149A, please fill out the registration form found on page 6 of this issue and fax it to 617.723.2334.

As always, I encourage you to visit our website periodically to obtain the most up-to-date information on the public bidding laws, the MCPPO program, and to access our reports, advisories and other publications. If you have any questions regarding Chapter 30B, please call 617-722-8838.

Sincerely,



Gregory W. Sullivan
Inspector General

OIG Articles

The Chief Procurement Officer

Over the years, this office has received many questions regarding the Chief Procurement Officer's role, the delegation of authority and the autonomy of certain departments. Below, you will find the answers to the most commonly asked questions this office has received in regards to the CPO.

What is a Chief Procurement Officer?

A chief procurement officer (CPO) is the person in charge of purchasing *all* supplies and services for the governmental body, including its departments, boards, commissions and instrumentalities. The CPO is either the statutorily appointed purchasing agent pursuant to M.G.L. c.41, §103 (the purchasing agent statute), if the governmental body has established the position, or, if the position has not been established, an individual appointed as the CPO. A governmental body can have only one CPO. While the position of CPO is not required, a governmental body cannot use the request for proposal process unless it has first appointed a CPO.

How does a municipality appoint the CPO?

If the municipality does not have a purchasing agent, the appointment of a CPO is based on the municipality's form of government (See M.G.L. c.30B, §2):

- A town's or city's charter or local by-laws provide for the appointment of the CPO. The appointment must be in accordance with the charter or local by-laws. If there is no charter provision or local by-law pertaining to the appointment of the CPO, then the CPO must be appointed as follows:
 - in a city or town with a city or town manager, by the city or town manager;
 - in a town without a town manager, by the Board of Selectmen.
- In a district the CPO is appointed by the prudential committee, or, if there is no prudential committee, by the commissioners.
- In a regional school district, the CPO is the person duly appointed by the regional school district committee.

- In a county, the CPO is the person duly appointed by the county executive, or if no county executive, by the commission; and
- In an authority or other local governmental body, the CPO is the person duly appointed by the governing board.

Can anyone other than the CPO conduct procurements for the jurisdiction?

Yes. Under M.G.L. c.30B, §19, the CPO may delegate his or her purchasing authority to an employee in your jurisdiction. Additionally, the CPO is only responsible for the procurement of supplies and services. Other types of procurements including real property transactions, design contracts and public construction may be conducted by a person other than the CPO. Check your local by-laws or charters to determine who has the authority to conduct those types of procurements.

How does a CPO delegate his or her authority?

The CPO must send the delegation information to this office in order for the delegation to be effective. To make it easier, this office has created a form for transmitting this information. Remember, the delegation pertains to a position, such as the school business manager, and not the individual holding the title. The delegation may be specific, that is it pertains to a specific procurement or class of procurements, or may be broad, granting the position with authority for any procurement and all phases thereof. Additionally, the CPO can require as a condition of the authority to purchase that certain procedures established by the CPO or the governmental body must be followed.

The delegation form can be downloaded at www.mass.gov/ig/mcppo/cpoform.pdf.

What authority does the CPO have to sign contracts?

Who may sign contracts should be stated in your charter or local by-laws. M.G.L. c. 30B does not speak to who has the authority to sign contracts.

- continued on page 4 -

Chapter 30B Questions and Answers

Q.1. I am a school business manager for a regional school district. I would like to contract with a 403b plan administrator to help the school meet the new regulations established by the Internal Revenue Services for 403b plans. A vendor has offered to perform the services for free. Does Chapter 30B apply to the contract?

A.1. Yes. Chapter 30B applies when there is a contract between a governmental body and a vendor for the procurement of supplies, services and real property, and the disposition of supplies and real property. When a vendor is offering to perform services for free, and you are assured that the vendor is not receiving compensation for the services in any form, this office recommends that you follow sound business practices, as the value of the contract is less than \$5,000. While sound business practices requires ensuring the receipt of a favorable price, in this instance it may be beneficial for you to solicit information from other vendors to determine that the services are appropriate to meet your needs.

Q.2. Does Chapter 30B apply when the 403b plan administrator will be compensated by fees paid by employees and will not be receiving payment from the regional school district?

A.2. As stated in the question and answer above, M.G.L. c.30B applies to a contract for services when there is an agreement between a governmental body and a vendor. To determine the applicable dollar thresholds you must determine the value of the contract to the vendor. That is, an estimate of how much the vendor will receive to perform the services. In this case you will estimate what the vendor will be receiving from the employees to perform the services.

Q.3. I am the CPO of a town and I am conducting an RFP process for the school district in which the Board of Selectmen will be evaluating the proposals received. Chapter 30B, section 6 requires that the contents of the evaluations remain confidential and not be disclosed until the completion of evaluations, or until the time for acceptance specified in the request for proposals, whichever is earlier. However, the Board of Selectmen is

subject to the open meeting law which requires its meeting be open to the public. Which law do I follow?

A.3. Massachusetts General Laws, Chapter 39, §23B generally requires that all meetings of a governmental body be open to the public. The Board of Selectmen is a governmental body subject to the open meeting law. However, the open meeting law contains several exemptions to that general requirement, one of which, M.G.L. c.39, §23B(7), permits a governmental body to go into an executive session "to comply with the provisions of any general or special law," which includes compliance with Chapter 30B, section 6. In this case, the Board of Selectmen would go into an executive session when evaluating or discussing the proposals. As the open meeting law for municipalities is enforced by the district attorney's office of the county in which the municipality is located, all questions on the open meeting law should be directed to your county's district attorney's office.

Q.4. Our fire department recently put out a bid for a fire vehicle. The specifications required a particular model of Goodyear tires for the vehicle. Elsewhere in the specifications, a general provision stated that all brand names listed in the specifications were for description purposes only and were not meant to exclude competition. The low bidder offered a fire vehicle with Michelin tires instead of Goodyear tires. The fire chief has determined that the Michelin tires offered meet the specification requirements. May we accept the bid with this deviation?

A.4. Yes. Chapter 30B requires that you award a contract to the responsive and responsible bidder offering the best price. An awarding authority must reject a bid if it does not conform to the bid specifications in material respects. In this instance, the IFB stated that brand names were used for description purposes only, thereby notifying bidders that other brand names were potentially acceptable.

NOTE: We recommend that you avoid the use of brand names in an IFB or RFP. The use of brand names tends to generate complaints and engender disputes as to whether other brand names are truly

- continued on the following page -

Chapter 30B Questions and Answers, cont.

- continued from previous page -

equal. Instead, it is recommended that you use performance specifications to state what a product must do rather than describe how a product is made. Performance specifications promote competition, place responsibility on the vendor for ensuring that your product will do what you want it to do, and encourage vendors to use the most current available technology.

Q.5. I am the contract manager for my city's one-year contract for lawn mowing services for ten municipal properties. There are four months remaining in the contract. The invitation for bids requested a unit price for mowing each lawn. Bidders multiplied each unit price by the estimated quantities in the specifications and provided a total price. May I reduce the unit price of the contract for the remainder of the term?

A.5. Yes, with the agreement of the contractor, Chapter 30B, section 13(5) allows your jurisdiction to amend a contract to reduce the unit price for supplies or services in a contract paid by your jurisdiction. The agreement to reduce the unit price should be in writing and may be executed at any time during the term of the contract. In addition, if a contract contains an option to renew, extend, or purchase, you may execute a reduction in the unit price when you exercise the option.

Recent Amendments to the Prevailing Wage Laws

On August 8, 2008, there was a change to the prevailing wage laws effective immediately. Awarding authorities will be required to annually update the prevailing wage rates for those multi-year public construction projects bid on or after August 8, 2008. The Division of Occupational Safety (DOS) will be providing an FAQ on its website regarding this change in the coming weeks.

For more information, please contact DOS at 617-626-6953.

OIG Articles, cont.

- The Chief Procurement Officer,
continued from page 2 -

If you are unsure of who has the authority to sign contracts in your jurisdiction, please contact your legal counsel.

What authority does the school (or other departments) have to conduct procurements?

Unless there is a special law, local by-law or a provision in your charter granting the school department authority to conduct procurements, the CPO will be in charge of all procurements of supplies and services for the school (and other departments). As noted, however, the CPO may delegate his or her authority to someone in the school department (or other department) if he or she so chooses.

If the city or town has a CPO, can there be a separate CPO for the school?

No, absent a special law to the contrary. As written, M.G.L. c.30B allows for one CPO. However, as stated above, the CPO may delegate purchasing authority for school department procurements.

Can the town accountant also serve as the CPO?

While Chapter 30B would not prohibit a town accountant serving as a CPO, M.G.L. c.41, §55 states that town accountants cannot hold any office that involves the receipt or disbursement of money, except for the office of town clerk. To ensure compliance with the law and to uphold a sound internal control system, this office does not recommend an organizational structure in which the CPO for the town also serves the role of town accountant.

Are you currently certified as a Massachusetts Certified Public Purchasing Official?

If so, keep an eye on your mailbox. Over the next few months we will be sending out a special thank you gift only to current MCPPPO's!



Congratulations!

The following is a list of the MCPPO Program's new designees on applications **reviewed (not received)** between January 2, 2008 and June 30, 2008:

MCPPO

David Adrian, UMASS Medical School
 Doreen D. Arruda, UMASS Dartmouth
 Clare H. Barnes, Quabbin RSD
 Maryanne Bilodeau, Town of Westborough
 Robert A. Cox, Town of Shrewsbury
 Michael L. Hartnett, Town of Pepperell
 Thomas M. Holder, Town of Framingham
 Marie A. Hurd, Methuen Public Schools
 Julie A. Merrill-Wisell, UMASS Medical School
 Selina S. Shaw, Town of Boxborough
 Kenneth E. Stone, Braintree Electric Light Dept.

MCPPO for Supplies & Services

David M. DeGennaro, Cohasset Public Schools
 John J. Foley, Boston Fire Dept.
 Michael W. McCue, Town of Avon

Associate MCPPO

Patrick Goddard, Town of Lexington
 Audrey Insalaco, Town of Dedham
 Sarah A. Stanton, Town of Ipswich

Associate MCPPO for Supplies & Services

Duane M. Stinchfield, UMASS Amherst

OIG Articles, cont.

Collaborating on Exempt Contracts Can Save Money

This office has routinely advised that governmental bodies could save money by soliciting competition for exempt contracts; when vendors know that they are competing they are more likely to sharpen their pencils and submit more competitive bids. This office has also advised that governmental bodies can take advantage of volume discounts by combining their needs into a collaborative procurement. A June, 2008 article in The Beacon, takes this line of reasoning one step further: if governmental bodies combine their needs and bid exempt contracts, they will not only obtain the benefits of competitive pricing but also the benefit of volume discounts. See *Three Communities Collaborate on Waste-Hauling Contracts*, The Beacon (The Massachusetts Municipal Association, Boston, M.A.), June 2008 at 13.

According to the article, three Massachusetts cities and towns joined together to procure parallel five-year curbside pick-up contracts and, "along with the additional savings expected from the introduction of single-stream recycling, the three communities anticipate overall waste-related savings in fiscal year 2009 of between 3 and 5 percent." To facilitate the procurement, a negotiating team was formed with representatives from each of the three cities and towns, and a solid-waste consultant was hired to assist in the procurement.

If you are considering joining together with another city or town to procure exempt services you should consider that each participant will have different needs and desires. To that end, each member should be represented by someone familiar with the governmental body's current and future needs. And while members may feel that a consultant may be necessary to facilitate the procurement, the consultant's services will be subject to M.G.L. c.30B, providing members their first opportunity to see how well they can work together.

If you need of assistance with your solid waste contracts, please contact Carolyn Dann, the Municipal Assistance Coordinator at the Division of Environmental Protection, at (978)671-0976.



MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM
REGISTRATION FORM July-December 2008

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 16, 17, 18-2008
November 4, 5, 6-2008

3-day seminar

BOSTON
BOSTON

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

December 2, 3, 4-2008 BOSTON

SUPPLIES & SERVICES CONTRACTING

Prerequisite: Public Contracting Overview or Charter School Procurement

- August 12, 13, 14-2008
October 7, 8, 9-2008

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 30 & October 1, 2-2008
November 18, 19, 20-2008

3-day seminar

BOSTON
BOSTON

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

ADVANCED TOPICS UPDATE

- October 29 & 30-2008

2-day seminar

BOSTON

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

CERTIFICATION for School Project Designers & Owner's Project Managers

- December 10, 11 & 17, 18-2008

4-Day Training

BOSTON

Tuition: \$1200-Private Sector

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

- November 13-2008

1-day seminar

BOSTON

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

CHARTER SCHOOL PROCUREMENT

No Prerequisite

- October 15 & 16-2008

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

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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 Patty Callahan by phone at 617-727-9140.

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