OFFICE OF THE INSPECTOR GENERAL
MASSACHUSETTS

The Chapter 30B Manual:

Procuring Supplies, Services And Real Property

Chapter 30B Manual

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Commonwealth of Massachusetts

May 2023

Notice

This manual supersedes the 2016 edition of *The Chapter 30B Manual*. The contents of older editions may not reflect current law or interpretations of the Office of the Inspector General. You may download this manual from our website at www.mass.gov/ig or purchase copies from the State Bookstore, Room 116, State House, Boston, MA 02133, (617) 727-2834.

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OFFICE OF THE INSPECTOR GENERAL
MASSACHUSETTS

JEFFREY S. SHAPIRO
Inspector General

May 2023

Dear Reader:

I am pleased to issue this updated edition of The Chapter 30B Manual: Procuring Supplies, Services and Real Property. The manual is one component of the Office of the Inspector General's ongoing efforts to prevent fraud, waste and abuse in the expenditure of public funds. It provides comprehensive guidance and information about complying with the Uniform Procurement Act, M.G.L. c. 30B (Chapter 30B).

This new edition of the manual incorporates statutory changes to Chapter 30B, including the most recent changes that went into effect on November 25, 2022. These new thresholds and requirements, from Chapter 198 of the Acts of 2022, that apply to municipal or regional school districts only, are further defined in this manual. The Guide also includes updated forms and checklists, as well as practical advice on conducting a wide range of procurements.

In addition to this manual, the Office publishes Designing and Constructing Public Facilities, which provides both the public and private sectors with the legal guidance necessary to undertake public construction projects. The Office also advises local officials on procurement issues and publishes the quarterly OIG Bulletin.

Further, the Office's Massachusetts Certified Public Purchasing Official (MCPPO) program offers classes on many procurement and contracting issues, including procuring supplies and services in accordance with Chapter 30B, applying best practices when conducting procurements and creating a procurement office. For additional information on the MCPPO program and the Office's other activities, I invite you to contact us or visit our website at www.mass.gov/ig.

The Office welcomes the chance to assist you in understanding the process and practical steps to take with your project. Without question, education, training and learning best practices is the best strategy to mitigating and eliminating fraud, waste and abuse of public funds or assets. We look forward to hearing from you.

Sincerely,

Jeffrey S. Shapiro
Inspector General

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I. INTRODUCTION

Chapter 30B of the Massachusetts General Laws, the Uniform Procurement Act, establishes uniform procedures for local governments to use when buying or disposing of supplies, services or real property. Approximately 1,500 local governmental bodies in Massachusetts (including cities, towns, counties, districts, regional school districts, Horace Mann charter schools and local authorities such as housing and redevelopment authorities) follow the Chapter 30B procedures to award contracts worth billions of dollars each year.

The law, enacted in 1990, resulted from collaboration among the Office of the Inspector General (Office), the Massachusetts Association of Public Purchasing Officials, the Massachusetts Association of School Business Officials, the City Solicitors and Town Counsel Association (now the Massachusetts Municipal Lawyers Association) and local officials. Working together, the group adapted the American Bar Association's Model Procurement Code to reflect Massachusetts case law. The group also designed Chapter 30B to clarify and demystify local contracting for vendors competing for contracts and for the public observing the process. The contracting procedures in Chapter 30B are based on three premises:

1. Uniform contracting procedures promote competition and fairness.
2. Fair, robust competition for larger procurements saves money and promotes integrity and public confidence in government.
3. Scaled procedures based on dollar values reflect that larger contracts merit more attention than smaller contracts and enable local governmental bodies to devote more attention to larger contracts.

Chapter 30B gives you the tools and authority you need to make best-value procurements. This manual is intended to help you use Chapter 30B to obtain the best value for your public dollars. You determine the quality of the supplies and services you need and the factors you will consider in making an award. You also ensure that you contract only with responsible vendors who have the integrity, capability and reliability to do the work.

Since the enactment of Chapter 30B, our Office has provided extensive procurement training and technical assistance to local governments. This manual continues to reflect our commitment to provide assistance. As a result, you will find the most recent session law, Chapter 198 of the Acts of 2022 (the Act), incorporated herein. Notably, the Act amended Chapter 30B by increasing dollar thresholds for municipal and regional school districts only. We hope that you will find the guidance you need in these pages. What you will not find here, of course, are any specifics about your local government's

procurement rules, payment approval procedures or recordkeeping systems. Remember that your procurement process must comply with any special acts, rules, regulations, ordinances and bylaws applicable to your local jurisdiction. For example, your local jurisdiction may have a local rule that requires formal, advertised competition at levels lower than those set forth in Chapter 30B. Often the best source of advice on such matters is your chief procurement officer (discussed in Chapter II of this manual) or legal counsel.

Procurements Subject to Chapter 30B

Chapter 30B establishes procedures for the acquisition of supplies or services, the disposition of surplus supplies, and real property acquisitions and dispositions by local governmental bodies. A governmental body is defined in the law 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.[1] Horace Mann charter schools are governmental bodies subject to Chapter 30B. Chapter 30B does not apply to state agencies, counties that were abolished by M.G.L. c. 34B,[2] county sheriffs,[3] state colleges and universities, or Commonwealth charter schools. Moreover, Chapter 30B does not apply to contracts governed by specific provisions of other statutes, such as the public construction laws, the designer selection law, or the law governing takings by eminent domain. Throughout the remainder of this manual, governmental bodies subject to Chapter 30B will be referred to as "local jurisdictions."

Who pays is irrelevant to whether a contract is subject to 30B. The law applies when there is an agreement between a local government and a vendor. For example, a yearbook contract awarded by a school official falls under the law even though parents or students will pay for the yearbooks.

Supplies or Services

Most local jurisdictions' agreements with vendors for supplies or services, including agreements to buy, rent, lease, lease-purchase or otherwise acquire supplies or services, are subject to Chapter 30B.

[1] M.G.L. c. 30B, § 2.

[2] For laws applicable to abolished counties, see M.G.L. c. 34B.

[3] For laws applicable to the transfer of county sheriffs to the Commonwealth, see M.G.L. c. 37, § 17, and M.G.L. c. 64D, §§ 11 and 12.

"Supplies" are defined in the law as "all property, other than real property, including equipment, materials and printing and further including services incidental to the delivery, conveyance and installation of such property."[4] "Services" are defined as "the furnishing of labor, time or effort by a contractor, not involving the furnishing of a specific end product other than reports."[5]

The definition of services excludes:

- collective bargaining agreements;
- grant agreements between a local jurisdiction and individuals or nonprofit entities for a public purpose of support or stimulation (rather than for the procurement of supplies or services for the benefit or use of the local jurisdiction);[6] and
- employment agreements in which (1) a local jurisdiction withholds or is required to withhold taxes on the individual's wages pursuant to the Internal Revenue Code or M.G.L. c. 62B; or (2) a local jurisdiction and an individual have a common law relationship of employer and employee. An individual is considered an independent contractor and not an employee if each of the following three elements is applicable:
    1. the services are performed free from the control or direction of the employing enterprise;
    2. the services are performed outside the usual course of business of the employer; and
    3. the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.[7]
- The law also contains a list of specific contracts that are exempt from Chapter 30B but are subject to your local rules.[8] Appendix A contains a complete list of all Chapter 30B exemptions and our Office's interpretation of these exemptions.

Keep in mind that you may elect to use Chapter 30B to procure supplies or services that are not subject to Chapter 30B or another procurement law. Using the competitive procedures of Chapter 30B, even for exempt contracts, is a best practice that allows you to obtain the best value for your local jurisdiction through an open, fair process.

Chapter 30B establishes three sets of procedures to follow before you award a contract for supplies or services. The specific procedure you must use is determined by the estimated dollar value of the goods or services you wish to procure. Note, effective November 25, 2022, under Chapter 198 of the Acts of

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[4] M.G.L. c. 30B, § 2.

[5] M.G.L. c. 30B, § 2.

[6] M.G.L. c. 30B, § 2.

[7] M.G.L. c. 149, § 148B.

[8] M.G.L. c. 30B, § 1(b).

2022, the thresholds changed for municipal or regional school districts only. All estimates must include the entire term of the anticipated contract, including any options to renew or extend the contract.

1. ***Supplies or Services Estimated to Cost under $10,000***. Use sound business practices.[9] The phrase "sound business practices" is defined as ensuring the receipt of a favorable price by periodically soliciting price lists or quotes. While the law does not require a formal competitive process, it does require local jurisdictions to ensure that they have received the needed quality of supplies and services at a reasonable price.
2. ***Supplies or Services Estimated to Cost at least $10,000 but not more than $50,000***.[10] Seek written price quotes from at least three vendors based on a written purchase description and award the contract to the responsible vendor offering the supply or service needed for the best price.[11] See Chapter III for more information on procuring supplies or services using quotes and the recordkeeping requirements under Chapter 30B.
3. ***Supplies or Services Estimated to Cost more than $50,000***.[12] Conduct a formal, advertised competition by issuing an invitation for bids (IFB) or a request for proposals (RFP). In a bid process, you award the contract to the qualified bidder who meets your specifications and offers you the best price.[13] In a proposal process, you award the contract to the offeror submitting the most advantageous proposal, taking into consideration your specified evaluation criteria as well as price.[14] See Chapters IV and V for more information on soliciting bids and proposals.

For most procurements, the best price is the lowest price from a responsive and responsible offeror.[15] For a revenue-generating contract, however, the best price is the highest price offered by a responsive and responsible offeror through a quote, bid or proposal process. Throughout the discussion of Chapter 30B procurements of supplies or services in this manual, we will refer to the best price as the lowest price.

Surplus Supplies

Chapter 30B applies to the disposal of any supply with resale or salvage value. If the value of the surplus supply is under $10,000, you will follow written procedures approved by your governmental body. For

[9] M.G.L. c. 30B, § 4(c).

[10] At least $10,000 but not more than $100,000 for municipal or regional school districts only, as amended by Chapter 198 of the Acts of 2022.

[11] M.G.L. c. 30B, § 4(b).

[12] More than $100,000 for municipal or regional school districts only, as amended by Chapter 198 of the Acts of 2022.

[13] M.G.L. c. 30B, § 5(g).

[14] M.G.L. c. 30B, § 6(g).

[15] For a definition of the term "responsive and responsible offeror" see chapter IV of this manual.

supplies valued at $10,000 or more, Chapter 30B procedures include solicitations for sealed bids, public auctions or the use of an established market.[16] See Chapter VII for more information on disposing of surplus supplies.

Real Property

Chapter 30B governs agreements to rent, convey or otherwise dispose of an interest in real property, as well as agreements to acquire an interest in real property. The law does not apply to residential rentals to qualified tenants by a housing or community development authority.[17] See Chapter VIII for more information on real property acquisitions and dispositions.

Small Public Works Construction Contracts and Construction Materials Contracts

In general, Section 39M of Chapter 30 (M.G.L. c. 30, § 39M), applies to the construction, reconstruction, alteration, remodeling or repair of any public work and for any contract for construction materials. Public works are essentially all non-building construction projects, such as work on a road, bridge, traffic signal, water main or sewer main, including public works that include a pumping station.

Local jurisdictions have the option of soliciting bids (not proposals) under Section 5 of Chapter 30B, instead of following the competitive requirements of M.G.L. c. 30, § 39M, for any public works construction estimated to cost no more than $50,000 and for any contract for construction materials. Section 5 of Chapter 30B, requires an advertised bid process. The principal differences between these two sets of procurement procedures are that M.G.L. c. 30, § 39M, does not require newspaper advertising for contracts estimated to cost at least $10,000 but not more than $50,000, but does require posting the solicitation both on the jurisdiction's website and in the jurisdiction's office. Regardless of which law you follow, the following requirements will apply to the procurement:

- *Central Register* advertising. Section 20A of Chapter 9 and accompanying regulations require all contracts for construction services and all contracts for construction materials estimated to cost $10,000 or more to be advertised in the *Central Register*.
- COMMBUYS advertising.
- Labor harmony and Occupational Safety and Health Administration training certifications.[18]

[16] M.G.L. c. 30B, § 15.

[17] M.G.L. c. 30B, § 16(h).

[18] M.G.L. c. 30, § 39S.

- If the contract price exceeds $25,000, the selected contractor must furnish a payment bond in the amount of at least 50 percent of the contract price.[19]
- Prevailing wage law applies to all construction contracts.

In addition, all jurisdictions have the option to procure small construction contracts or construction materials contracts through an OSD statewide contract.[20] See Chapter IX for additional information on procuring public construction services and construction materials.[21]

Documentation and Recordkeeping Requirements

All Chapter 30B contracts in the amount of $10,000 or more must be in writing and your local jurisdiction may not pay for any supplies or services received prior to the execution of a written contract.[22] We recommend that you document all contracts, including those with a value below the $10,000 threshold cited above. For larger contracts, we recommend that your legal counsel draft standard contract terms and conditions that can be modified as necessary for your Chapter 30B contracts.

A purchase order containing all material terms and signed by both the awarding authority and the vendor will suffice as a written contract under Chapter 30B. However, an invoice from a vendor is generally not considered sufficient to fulfill the written contract requirement.

You are required to maintain a written contract file for all Chapter 30B contracts in the amount of $10,000 or more. All written records required by Chapter 30B must be maintained for a period of six years from the date of final payment under the contract. All of these records must be available for public inspection, except that proposals submitted in response to an RFP remain confidential until the completion of the evaluations or until the time for acceptance specified in the RFP,[23] whichever is earlier. The specific recordkeeping requirements that apply to each Chapter 30B procurement procedure are discussed in later chapters of this manual.

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[19] M.G.L. c. 149, § 29.

[20] M.G.L. c. 30, § 39M(d), as amended by Chapter 218 of the Acts of 2016.

[21] The Inspector General's manual, *Designing and Constructing Public Facilities*, contains detailed guidance on the laws that apply to public design and construction contracts in Massachusetts. This manual can be downloaded from our website at www.mass.gov/ig.

[22] M.G.L. c. 30B, § 17(a).

[23] M.G.L. c. 30B, §§ 3 and 6.

The Inspector General's Role

The Office of the Inspector General is charged with preventing and detecting fraud, waste and abuse in the use of public funds. Whenever possible, we emphasize prevention to avoid problems before they occur. Consequently, we focus much of our efforts on providing training and technical assistance to public officials. This manual reflects that focus, as does our Massachusetts Certified Public Purchasing Official (MCPPO) program described on the next page. We also publish a newsletter, the *OIG Bulletin*, with answers to frequently asked questions, articles relating to municipal procurement, and information about legislative and other developments of interest to procurement officials. We invite you to send us questions, comments and articles for upcoming editions.

Our staff is available to answer technical questions that arise when you undertake a new procurement. See Appendix D for our contact information and other sources for advice and assistance.

An enforcement provision contained in the law prohibits any payment by a local jurisdiction under an invalid contract, even if supplies have been delivered or work has been performed.[24] This is a law in Massachusetts that applies where a violation of Chapter 30B has occurred, even if all parties have acted in good faith. However, minor informalities in the contracting process will not invalidate a contract.[25] A second enforcement provision in the law provides that civil penalties can be imposed for Chapter 30B violations.[26]

The Massachusetts Certified Public Purchasing Official Program

The MCPPO program offered by the Office provides classes about compliance with Massachusetts public procurement laws to public purchasing officials and individuals working in the private sector in real-time and self-paced formats in an online learning environment. The program promotes professionalism and excellence in public procurement, preparing participants to make best-value procurements in compliance with Massachusetts procurement laws. The three core classes are offered several times throughout the year and each one concludes with an examination. Additional special purpose classes and webinars are offered periodically. Our Office developed this program in consultation with public purchasing officials,

[24] M.G.L. c. 30B, § 17(b).

[25] Under M.G.L. c. 30B, § 2, minor informalities are minor deviations, insignificant mistakes and matters of form rather than substance that can be corrected without prejudicing full and fair competition.

[26] M.G.L. c. 30B, § 17(c).

including members of the Massachusetts Association of Public Purchasing Officials, the Massachusetts Association of School Business Officials, and the Massachusetts Municipal Lawyers Association. The MCPPO program meets standards set by several professional organizations for continuing education credits. Additionally, the Massachusetts Department of Elementary and Secondary Education has designated our Office a registered provider of professional development for educators in Massachusetts.

Local jurisdictions often require procurement officials to have or obtain an MCPPO designation. A certificate issued by the MCPPO program is required by law in the following cases:

- Chapter 46 of the Acts of 1997 requires charter school administrators who are responsible for procurement to attain MCPPO certification. Charter school administrators can fulfill this requirement by successfully completing the Public Contracting Overview or Charter School Procurement class.
- Under the Massachusetts School Building Authority's (MSBA) regulations, when a school building project receives MSBA funds, the "Eligible Applicant" must be designated as an MCPPO for Design and Construction Contracting.[27] In addition, both the project director for the owner's project manager and the individual directly assigned to the project by the project designer must be certified in the MCPPO program.[28]

For additional information about the MCPPO program please visit our website at www.mass.gov/oig-education-and-training or email the MCPPO program director at ma-igo-training@mass.gov.

[27] 963 CMR 2.03(2)(o).

[28] 963 CMR 2.11(12) and 2.12(6).

II. PROCURING SUPPLIES OR SERVICES: GETTING STARTED

Chapter 30B establishes general procedures you must follow when securing supplies or services for your local jurisdiction. Your local jurisdiction is responsible for developing the details of its own purchasing system by deciding, for example, what forms must be used, who has to approve purchases, and who may make purchases. Also, your local bylaws or ordinances may establish additional rules governing purchasing that you must follow even where they are more stringent than Chapter 30B. This chapter briefly considers topics relating to your local organization and then examines some first steps to take in preparing for a procurement of supplies or services under Chapter 30B.

Local rules may dictate more rigorous procedures for smaller purchases or for exempt contracts. For example, if your local government has a bylaw or ordinance requiring formal advertised competition on contracts over $10,000, you must comply with the local rule. If you have any questions about the existence or applicability of local rules, contact your Chief Procurement Officer or legal counsel.

Chief Procurement Officer

A local jurisdiction that wishes to use Chapter 30B's request for proposals process to procure supplies or services must appoint a Chief Procurement Officer (CPO) to oversee the procurement of all supplies or services.

The CPO is responsible for all activities related to buying, leasing, renting or otherwise acquiring supplies or services for all departments regardless of the contract value.[29] This responsibility includes overseeing the solicitation; evaluating quotes, bids and proposals; and awarding contracts. The CPO ensures that the local jurisdiction's contracting practices are carried out in accordance with state law and local requirements.[30] Centralization of purchasing under a CPO can result in greater efficiency, improved quality of supplies and services, and cost savings.

[29] M.G.L. c. 30B, § 2.

[30] Note, however, that the CPO may not have legal authority to exercise other powers, such as final approval of budgets or contracts, which may be vested by statute or local rules in other officials.

Appointing a CPO

Before a CPO is appointed, you should review all local charters, bylaws and ordinances and make any changes needed to centralize purchasing for all departments. Under Chapter 30B, the CPO is appointed as follows:

- In a city or town that has appointed a statutory purchasing agent pursuant to M.G.L. c. 41, § 103, the purchasing agent will automatically be the CPO under Chapter 30B. For any other municipality, the CPO can be appointed in accordance with the applicable charter or bylaw provisions, by the city or town manager if there are no applicable charter or bylaw provisions, or by the board of selectmen if there is no town manager.
- In a county with a county executive, the county executive can appoint the CPO; in a county with no county executive, the county commissioners can make the appointment.
- In a district, the prudential committee or the commission can appoint the CPO.
- In a regional school district, the district committee can appoint the CPO.
- In a housing authority, redevelopment authority or other local jurisdiction subject to Chapter 30B, the governing board can appoint the CPO.

CPO delegations of purchasing authority

Chapter 30B allows a CPO wide latitude to delegate powers and duties to other employees. A delegation can be specific and limited to a particular purchase or class of purchases, or it can be more general. Any delegation of the CPO's responsibilities, and any amendment to or revocation of a delegation, must be in writing, signed by the CPO, and submitted to our Office. A delegation form is available on our website and in Appendix B. The delegation, amendment or revocation will not take effect until a copy has been filed with our Office.[31] A delegation filed with our Office will remain in effect until amended or revoked by the CPO unless the delegation includes an expiration date.

A delegation applies to the position, rather than to the person holding the position. It is not necessary to file a new delegation form simply because of a staff change.

[31] M.G.L. c. 30B, § 19.

If your local jurisdiction has a charter, bylaw or ordinance governing the exercise of purchasing powers, any delegation of Chapter 30B powers and duties is subject to those provisions.[32] For example, a bylaw that requires the town manager to purchase all supplies would prohibit the transfer of that responsibility through a Chapter 30B delegation. If you have any questions about your local procurement system, contact your CPO or legal counsel.

It is not necessary to file delegation forms for staff working on procurements under the direction of the CPO or another official to whom authority has been delegated. The CPO or official to whom authority has been delegated retains responsibility for overseeing procurement functions carried out by staff.

We strongly recommend that CPOs, as well as other local officials with delegated authority for major procurements, be certified through our MCPPO program. Information on the MCPPO program is available at www.mass.gov/oig-education-and-training.

Procuring Supplies or Services: First Steps

There are several steps you will take before your award any contract for supplies or services, regardless of the contract amount or the procurement method (quotes, bids or proposals) that you use.

Centralized Procurements and the New Thresholds

Some jurisdictions use a centralized or consolidated procurement function. This means that a city or town procurement office conducts most (or all) procurement functions for its departments, including its school department. Using a centralized procurement function saves staff time and resources and a jurisdiction may be able to obtain better pricing from vendors by making larger purchases. Using a centralized or decentralized procurement process is a policy decision for the jurisdiction. This is not a Chapter 30B requirement.

Generally, if a non-school department conducts a Chapter 30B procurement process under a centralized procurement structure, then, even if a school-related purchase is included, the thresholds applicable to the non-school department apply. In other words, the threshold applies to the jurisdiction or department conducting the procurement.

But what if a school department working within a centralized procurement structure wants to change the centralized procurement policy and conduct its own procurement using the higher Chapter 30B thresholds

[32] M.G.L. c. 30B, § 19.

applicable to the school department? In response to the school department, the chief procurement officer (CPO) or other relevant authority in the jurisdiction could consider the following options. The jurisdiction may: 1) change the procurement policy to decentralize the procurement function so the school department can conduct its own procurement process; 2) make a limited policy change by using the CPO's delegation authority (see Section 19 of Chapter 30B) to revert some school-related procurements back to the school department (for example, price quotation-related procurements only); 3) keep a centralized process but the CPO can make separate purchases for the school department using the higher school-related thresholds; or 4) maintain the current centralized policy to ensure continued economies of scale in purchasing. The choice rests with the jurisdiction regarding the type of procurement structure it uses.

Note that this Office recognizes that in a decentralized procurement structure, there might be certain limited situations where the city or town may join a school department-initiated procurement for cost savings or other resource considerations. However, the decision to do this should be done with due consideration for procurement integrity and without the appearance of evading Chapter 30B requirements. Conducting a joint procurement to simply take advantage of the higher Chapter 30B school-related thresholds could be viewed as an intentional evasion of Chapter 30B. This could nullify the procurement and any contract resulting from the procurement and would prohibit vendor payments.

Please contact the Chapter 30B Technical Assistance hotlines if you would like to discuss the specific procurement structure in your jurisdiction.

Step 1: Determine what you need

The first step in any procurement is to determine what you need. Often, identifying what you need will be simple, as when your inventory of stationery is low and you need to buy the same type and amount of stationery that you have bought in the past. In other cases, a procurement may be unavoidably complex.

Researching the market is often essential, and an ongoing effort to collect market information may be worthwhile. For example, consider contacting your counterparts in other local jurisdictions or other members of your professional association. You may also need to determine whether prices for what you are buying are temporarily high or low, in which case you can adjust your purchase quantities accordingly.

It may be cost-effective to pay a consultant to identify your contract requirements. However, you should not rely on a consultant to define your local jurisdiction's needs if that consultant is seeking to obtain the

contract, since the consultant's recommendations may well be tailored to favor the consultant's own company. Your contract with the consultant is subject to Chapter 30B.

Combine your needs in large-volume or blanket contracts. A centralized purchasing department may award "blanket contracts" for standard items such as office supplies, which are used by many different departments. Under a blanket contract, each department can obtain supplies as needed, taking advantage of the lower prices obtained through bulk purchasing. As a general rule, you will realize savings by purchasing in larger volumes. Vendors may price supplies or services more aggressively for larger contracts and larger contracts will often attract greater competition. Volume purchasing also results in administrative efficiencies since you can concentrate your limited resources on a few large procurements rather than managing many small procurements. Examples of supplies that can most easily be purchased this way include auto parts, office supplies and custodial supplies.

To realize the benefits of volume purchasing, review your purchasing needs over a period of time – at least for the upcoming fiscal or school year – and identify the amount of supplies or services you will need. Your solicitation may allow for delivery and payments to be made on an installment basis throughout the contract term. Consider your purchases in prior years and any special or unusual needs that you expect to arise during the period for which you are making the purchase. Combine like items or services in one procurement whenever feasible. It is permissible, and may be preferable, to use one solicitation for a large number of different items and specify that each item will be procured from the vendor offering the lowest price for that item.

Chapter 30B allows several options for large-volume purchases:

- ***Statewide contract purchases*.** The Operational Services Division (OSD) awards a variety of statewide contracts that local jurisdictions may use without conducting a separate procurement under Chapter 30B. Some of these contracts have specific rules that must be followed. Where there are no rules and where there are multiple statewide contracts for the supplies or services you are purchasing, we recommend that you solicit quotes from each of the vendors on the statewide contract and award the contract to the responsible vendor offering the needed quality of supplies or services at the lowest price. (Appendix B contains a sample record and evaluation of quotations form.) A local jurisdiction that purchases supplies or services from a statewide contract must understand and comply with contract terms and conditions and should verify with OSD that the vendor is authorized to sell the item(s) it is buying. We strongly recommend that a local jurisdiction execute its own contract with a statewide contract vendor, including any additional legal terms. By incorporating the terms of the statewide contract into your contract, you ensure that the benefits of the statewide contract are applicable to your jurisdiction. You are responsible for contract management, performance issues and payment issues relative to the contract.

- ***Department contract purchases.*** Local jurisdictions may use certain supply or service contracts procured by Commonwealth "departments" (a term that includes any office, department, agency, division, board, commission or institution within the executive branch) that procure commodities or services subject to 801 CMR 21.00. Any local jurisdiction using a state department contract must execute its own contract, including any additional legal terms, with the vendor and is responsible for any contract management, performance or payment issues relative to the contract.

- ***Collective purchases (also known as collaborative purchases).*** Chapter 30B and M.G.L. c. 7, § 22B, authorize two or more local jurisdictions to solicit bids for supplies or services as a group. This procurement method authorizes one local jurisdiction, called "the lead jurisdiction," to procure supplies and services and award a contract for the benefit of a designated group. The lead jurisdiction undertakes the bid process in full compliance with Chapter 30B, and each participating local jurisdiction must accept sole responsibility for payment for any purchases that it elects to make under the contract and for compliance with all legal requirements governing administration of the contract.

- ***GSA purchases.*** Local jurisdictions may, pursuant to Section 1(f) of Chapter 30B, purchase supplies and services that are available through U.S. General Services Administration (GSA) federal supply schedules. The GSA serves as a centralized procurement and property management agency for the federal government. You will need to confirm with the GSA that the federal supply schedule that interests you is available for local jurisdictions to use.

- ***Cooperative purchases.*** Local jurisdictions may, pursuant to Chapter 30B, § 22, purchase supplies (but not services) from contracts that have already been procured by an in-state or out-of-state political subdivision, or unit of a political subdivision, or a federal or state agency, as long as the contract is open to local jurisdictions and was procured in a manner that constitutes full and open competition. Prior to purchasing supplies through a cooperative purchasing agreement, you should ensure that the procurement was conducted in accordance with these requirements. (If a Massachusetts local jurisdiction assumes the lead role in making the procurement, acting as the purchasing agent for the group, the procurement will be subject to Chapter 30B.)

Be wary of cooperative purchasing contracts that are akin to mere approved vendor lists! To determine whether a cooperative purchasing agreement was procured using "full and open competition," ask whether the awarding authority took the following five steps:

1. Advertised a procurement solicitation in a relevant publication.
2. Used specific purchase descriptions in the solicitation.
3. Provided for renewed competition.
4. Used a clear rule for award or determination of best value in its solicitation.
5. Used an appropriate comparative evaluation process for choosing vendors.

Step 2: Write a purchase description

Once you have determined what you need, you must describe your needs to vendors in sufficient detail to ensure that you receive responsive quotes, bids or proposals that can be priced and compared in a fair manner. The term used in Chapter 30B for your presentation of what you want to buy is the "purchase description." A sufficient purchase description for some items, such as office supplies, may require only a few words for each item. For more complex procurements, the purchase description will include more detailed "specifications" – that is, particulars regarding size, dimensions, quality, performance, warranties, installation and terms. A purchase description may also include a "scope of services" that details specific services, including the work products or deliverables to be produced under the contract.

Use purchase descriptions from other jurisdictions as templates that you will alter to meet your needs. Find out the source of the purchase description and whether it resulted in strong competition. However, make sure that the purchase description you are using will allow for genuine competition. We have seen numerous cases where communities share a purchase description that originated with, and therefore favored, one vendor.

Effort spent at the outset on a clear purchase description is a good investment. An inadequate purchase description renders effective competition impossible because would-be vendors will not know what you are seeking and will be unable to offer a reliable price. Vague purchase descriptions often result in vendor protests and cancelled procurements. If you do award a contract using a vague purchase description, you may pay for supplies or services you do not need and you are likely to have disputes with the vendor over what the contract does or does not require.

Do not use a single vendor's specifications when drafting your purchase description. It is always a good idea to find out what vendors offer, but relying on a single vendor's specifications is unwise. By doing so, you may be giving that vendor an unfair advantage or creating the appearance of favoritism.

Preparation of the purchase description is often the most difficult – and most important – step of any procurement. Do not reinvent the wheel. Borrow freely from the experience of others. It is very unlikely that you are the first local jurisdiction to procure the supply or service you are trying to describe. Contact your colleagues in other local jurisdictions or national organizations such as the National Institute of Government Purchasing. (See Appendix D of this manual for more information on sources of advice and assistance.) Find purchase descriptions that others have used successfully and adapt these to your needs.

If you experience difficulty in preparing a purchase description, it may be that you have not adequately defined your needs and that you will have to determine what you need with more specificity before you can proceed.

Typical components of a purchase description are discussed below:

- *Description of the supplies or services required*. List and describe each supply or service in sufficient detail for all vendors to understand what you need. If you have samples, drawings or other documents, either append them to the purchase description or incorporate them by reference and tell vendors where they may obtain or review them. When purchasing a service, clearly specify the service or services vendors will be required to perform and the documents, reports and materials they must deliver. Remember that if you fail to include something that you want in the purchase description, the contract will not require a vendor to supply it.
- *Do not present your needs as a problem and ask vendors to suggest solutions.* That approach would, in effect, let vendors write their own purchase descriptions. Massachusetts courts have ruled that "problem-oriented" or "open-ended" solicitations do not meet the legal standard for open and fair competition.[33] It is your local jurisdiction's responsibility to define what it needs with as much specificity as possible to ensure that vendors are offering supplies, services and prices on a clearly defined – and level – playing field.
- *Quantities required*. Indicate the quantity of each supply or service you need and whether the quantity shown is the actual amount or an estimate. Vendors need this information to judge whether they can handle the contract and to submit accurate prices. If you use an estimate, specify a maximum quantity large enough to meet your needs in most circumstances. You should make the quantity or maximum quantity as realistic as you can, because under Chapter 30B you may not increase the quantity of supplies or services called for in a contract by more than 25 percent.[34]

You may hold a bidders' or proposers' conference to supplement the purchase description. A pre-bid or pre-proposal conference may be necessary if, for example, vendors must examine a particular piece of equipment or inspect a facility that will be operated or managed under the contract you are awarding. However, a sufficiently detailed purchase description may make a conference unnecessary. You may choose to make the conference optional or mandatory. In either case, you should include notice of the conference in the purchase description, record all comments, questions, and answers at the conference, and distribute this record to all vendors in time for them to prepare their submittals.

[33] *Datatrol, Inc. v. State Purchasing Agent*, 379 Mass. 679 (1980).

[34] M.G.L. c. 30B, § 13.

- *Schedule for performance*. Specify when you require each supply or service. For example, will all supplies be delivered at once, or within three days of any properly executed order during the term of the contract? On what date must the supplier commence deliveries and on what date must they actually be received? What are the due dates of the deliverables from the consultant? How frequently must a recurring service be performed? The purchase description should include the exact schedule, or an approximate schedule with a statement that it is subject to minor adjustment.
- *Delivery terms*. Specify the delivery terms. Must the supplier deliver the supplies, or will you pick them up? Where must the supplies be delivered? Who is responsible for supplies damaged in transit? Who is responsible for unloading the supplies? To whom must services be provided? At what location in your local jurisdiction must a service be performed?

Proprietary Specifications

Proprietary specifications cite specific brand names or have the effect of restricting the procurement to one vendor or product. You may use proprietary specifications only if "no other manner of description suffices," and then you must provide a written justification for your decision and keep this document in your procurement file. M.G.L. c. 30B, § 14.

In some instances, you may not be able to avoid using proprietary specifications. Even in such cases, you can often foster competition. For example, if you are expanding your computer network to include a new department, you may decide that the new computers should be the same brand and model as the existing computers because you need compatible applications, communication between computers and efficient training of computer users. In cases such as this, you may specify the brand name of the computer manufacturer. Since several dealers may sell the brand and model of computer equipment you are seeking, you will still be able to obtain competitive quotes, bids or proposals in response to your proprietary specifications.

Step 3: Prepare the contract terms and conditions

You must develop the contract terms and conditions prior to soliciting bids or proposals because all contractual terms and conditions applicable to the procurement must be included in an invitation for bids (IFB) or request for proposals (RFP). We recommend that you consult with your legal counsel to develop standard contract terms and conditions, rather than allowing vendors or their attorneys to draft the contract terms and conditions for you. The amount of detail in the contract will depend, at least in part,

upon the size and nature of the procurement. In preparing the contract, you may find the checklist on the next page useful.

Contract Terms and Conditions Checklist

Every Chapter 30B contract of $10,000 or more must be signed by the person authorized in your local jurisdiction to execute contracts. Consult with your CPO or legal counsel if you are unsure who has the authority to sign a contract on behalf of your local jurisdiction. Note, however, that the contract is a new document that incorporates the information below.

- Identify the parties to the contract and the responsible parties to receive any notices under the contract.
- Include the selected vendor's quote, bid or proposal (including, for proposals, any plans for providing the supplies or services).
- Include the purchase description.
- Specify the term of the contract, including any renewal, extension or other options. If there are any options, specify that they may be exercised by your local jurisdiction at its sole discretion, and how and when the options may be exercised.
- Identify the payment terms, including when payments will be made and what documents must be submitted for payment. There are different legal rights and obligations arising from various payment terms.
- If the contract is subject to the state's prevailing wage law, incorporate the wage schedule obtained from the state Department of Labor Standards.
- Specify that payment is subject to appropriation or the availability of other funds (e.g., state or federal grants).
- Specify remedies for default (*e.g.*, liquidated damages).
- Specify the vendor's responsibility for providing liability and workers' compensation insurance.
- Specify the vendor's responsibility for providing bonding (e.g., a payment or performance bond).
- Specify that all contract amendments must be in writing and signed by officials with authority to bind the local jurisdiction.
- Specify whether the contract may be assigned and who must approve the assignment.
- Specify what constitutes cause to terminate the contract, what notice must be provided prior to termination, and what opportunity will be granted to correct any problem.
- Prohibit any activity that would constitute a violation of M.G.L. c. 268A, the state conflict of interest law.
- Include a certification of tax compliance by the vendor (required by M.G.L. c. 62C, § 49A).
- Specify that the document is the entire contract and that there are no agreements other than those incorporated therein.

Please note that this checklist is not exhaustive; the terms and conditions of a particular contract may differ.

Contract duration. You may – subject to local ordinances, bylaws or rules – enter into a Chapter 30B procurement contract for up to three years, including the term of any renewal, extension or option. A contract for supplies or services with a term of more than three years, including the term of any renewal, extension or option, is permissible only if a longer contract has been authorized by a majority vote of the governing body of your local jurisdiction before you award the contract.[35]

The authorization may apply to a single contract in excess of three years, or it may specify time limits for any number or types of contracts.

In addition, you may not enter into a multi-year contract unless funds are available for the first fiscal year of the contract. The payment and performance obligations for each succeeding year of a multi-year contract must be subject to the appropriation or availability of other funds, such as state or federal grants.[36]

The majority vote required to approve contracts that are or may be longer than three years must be taken by:

- for towns or districts, a duly called town or district meeting;
- for cities, the city council or the city commissioners, with the approval of the mayor if such approval is required under the city charter;
- for counties, the county commissioners;
- for regional school districts, an affirmative vote by two-thirds of the members of the school committee; and
- for a redevelopment, housing, or other authority, the governing body.

When funds are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year, the procurement officer must cancel the contract.[37] Despite this statutory requirement, however, there may be instances in which a local jurisdiction will not be excused from payment obligations under a multi-year service contract because of a failure to appropriate funds. In a 1996 case,[38] the court found that, notwithstanding the general rule that a local jurisdiction cannot incur a liability in excess of the amount of the appropriation, there is an exception to that rule for "constantly recurring duties." The court explained that towns are permitted to make valid multi-year contracts for basic services such as trash disposal and utilities, and

[35] M.G.L. c. 30B, § 12(b).

[36] M.G.L. c. 30B, § 12(a).

[37] M.G.L. c. 30B, § 12(d).

[38] *Browning-Ferris Industries, Inc. v. Town of Swansea*, 41 Mass. App. Ct. 383 (1996).

that the lack of a sufficient appropriation to pay for the services in subsequent years cannot be used as a defense to avoid paying the contractor.

Determine the contract length that would best suit your local jurisdiction's needs. As you make this determination, keep in mind that both short-term and long-term contracts involve tradeoffs. For example, a three-year contract term will lock in prices and avoid the need for a separate procurement each year. However, if prices fall, you may end up paying more than you would under a shorter contract. Longer contracts will make sense in some cases. For example, if vendors will incur high start-up costs, a longer contract will allow them to spread the start-up costs over a period of years.

Contract options for renewal, extension or purchase. When considering the length of the contract, you must also decide whether to provide for any renewal, extension or purchase options. You may not exercise a renewal, extension or purchase option unless (1) the option terms were included in the original solicitation and incorporated into the executed contract; and (2) the contract provides your local jurisdiction with sole discretion – that is, without the vendor's consent – to exercise the option.[39]

Before you can exercise any renewal, extension or purchase option, you must determine whether it is more advantageous to your local jurisdiction to exercise the option or to undertake a new procurement.[40] To make this determination, you need to conduct a reasonable investigation of the costs and benefits and to document your findings in writing. A reasonable investigation must establish that the prices you will pay after exercising the option or renewing the contract are reasonable under current market conditions. It may be possible to make such a determination based on a comparison of prices recently obtained through competition by other local jurisdictions on similar contracts. Alternatively, you may consider conducting a formal, advertised competition for the term of the extension or renewal. Then, if you do not receive a better-priced bid or proposal, you can exercise the contract option. See Chapter VI for more information on renewal, extension and purchase options.

[39] M.G.L. c. 30B, § 12.

[40] M.G.L. c. 30B, § 12(e).

Step 4: Estimate the total cost of the contract

As discussed in Chapter I, the procedures you use to procure supplies and services under Chapter 30B depend on the estimated cost of the contract you will ultimately award. For example, if you are purchasing three vehicles and maintenance services under a single contract, the price of the contract is the total cost for the vehicles and maintenance services, not the cost of each vehicle or the cost of maintenance services alone.

Avoid bid splitting! Bid-splitting is knowingly causing or conspiring to cause the division of any procurement for the purpose of evading the requirements of the law. For example, if you know that you need 40 desks that cost $300 each, for a total of $12,000, you may not buy the desks separately if your intent is to avoid having to seek three written quotes.

For a contract that includes options to renew or extend the contract, for the purposes of deciding the specific procedures you need to use to procure the contract, use the total cost over the entire contract term, including the cost of any options to renew or extend the contract. However, you must award on the basis of the guaranteed contract term, not including any option to renew or extend.

Remember that the Chapter 30B thresholds are minimum thresholds. If your local jurisdiction has established a lower threshold for advertised competition by charter, ordinance or bylaw, you must adhere to that local threshold. If you have any questions about the requirements in your local jurisdiction, check with your CPO or legal counsel.

Step 5: Select the appropriate procurement method

If your estimate of the contract cost is less than $10,000, you will use sound business practices. Sound business practices require you to ensure that your local jurisdiction receives the needed quality of supplies or services at a reasonable price by soliciting price lists or quotes for the items you are purchasing. For items you buy repetitively, you can periodically solicit price lists or quotes. You also should ensure that the supplies or services you are purchasing meet your quality requirements and that the vendor is reputable and capable.

If you estimate the contract will cost at least $10,000 but not more than $50,000,[41] you will use a quote solicitation process to procure the supplies or services. Chapter III provides more information on soliciting quotes under Chapter 30B.

If your estimate of the contract cost is more than $50,000,[42] you must decide whether you want to solicit bids using an IFB or solicit proposals using an RFP. Under both processes, you will award the contract to a responsible vendor that submits a responsive bid or proposal.

The actual contract cost, not your estimate, determines the procedures you must follow. You may not enter into a contract unless you have used the appropriate procedures for the amount of the contract. For example, if you estimated the cost of a contract at $48,000, and the best quote you can obtain is $58,000, you may not execute the contract unless you followed the competitive sealed bid or proposal process required by Chapter 30B for contracts costing more than $50,000.

The IFB and RFP processes differ in some important ways. Bidding is the basic method for procuring contracts for supplies and services of more than $50,000[43] and tends to be more efficient than using an RFP. Generally, when you use the IFB process you will award the contract to the vendor that meets all of your quality requirements and offers you the lowest price.

The RFP process permits you to weigh the relative merits of proposals submitted by competing offerors that meet your quality requirements. You award the contract to the offeror submitting the most advantageous proposal, taking into consideration the proposals' relative merits and prices. Unlike bidding, the RFP process may not always result in selection of the qualified proposer offering the lowest price. Only local jurisdictions that have appointed a CPO may make procurements using RFPs, and they may use the RFP process only when the CPO, or someone with delegated authority, determines in writing that "selection of the most advantageous offer requires comparative judgments of factors in addition to price."[44]

[41] At least $10,000 but not more than $100,000 for municipal or regional school districts only, as amended by Chapter 198 of the Acts of 2022.

[42] More than $100,000 for municipal or regional school districts only, as amended by Chapter 198 of the Acts of 2022.

[43] More than $100,000 for municipal or regional school districts only.

[44] M.G.L. c. 30B, § 6(a).

We recommend that you consider bidding most of your procurements, including service contracts. The key to successful bidding is to define your quality requirements so that you will truly be satisfied with anyone who meets them. For many services, the bid process can work well if you think through and set forth the quality requirements that a vendor must meet.

The following chapters provide step-by-step guidance on using quotes, bids and proposals to procure supplies and services under Chapter 30B.

III. SUPPLIES OR SERVICES ESTIMATED TO COST $10,000 BUT NOT MORE THAN $50,000: WRITTEN QUOTES

To procure supplies or services that are estimated to cost at least $10,000 but not more than $50,000[4546] you must solicit written quotes from at least three vendors who customarily provide the item or service you need. As described below, you must provide each vendor with a written description of the supply or service you need, and you must award the contract to the vendor offering the quality of the supply or service you need at the lowest price. The quote process in Chapter 30B is flexible, straightforward and well-suited to making smaller purchases rapidly.[47]

Step 1: Develop a written purchase description

In order to describe to vendors the supply or service for which you are seeking a quote, you will need a written purchase description. In most cases, developing a written purchase description for small procurements is fairly simple. For example, you could seek quotes for copy paper based on the following purchase description: "Five hundred reams of 20 lb. weight, bright white, 8½ x 11 copy paper, delivered to Town Hall on January 2." However, if you were to procure sophisticated equipment or professional services, a more detailed purchase description would be necessary.

There is an explicit requirement in Chapter 30B that you write a purchase description to ensure that you

If your local government has a CPO, only your CPO or someone with delegated authority from the CPO may solicit bids. (Chapter II has more information on CPOs and delegations.) If you have no CPO, you may solicit bids if:

- you are authorized by statute, charter or bylaw; or
- you have been duly delegated authority; or
- you are a member of a board, committee, commission or other body with procurement responsibilities.
- If you have questions, check with your CPO (if you have one) or legal counsel.

[45] Section 4(d) of Chapter 30B allows you to award contracts of less than $35,000 to purchase agricultural products from Massachusetts farming operations.

[46] At least $10,000 but not more than $100,000 for municipal or regional school districts only, as amended by Chapter 198 of the Acts of 2022.

[47] Section 4(a) of Chapter 30B provides that a governmental body may require that such contracts be subject to the competitive sealed bidding provisions of M.G.L. c. 30B, § 5.

adequately describe what you need to each vendor you contact for a quote.[48] You must provide the purchase description to at least three vendors in person or by telephone, fax, email or standard mail. You must ensure that each vendor's quote is based on the same written description.

You can use current catalog and sale brochure prices as quotes as long as the product in the brochure or catalog meets your written purchase description. This approach can save time when you are purchasing supplies. You must keep a copy of this information in your procurement file.

Step 2: Establish a rule for award

When you solicit quotes under Chapter 30B, you are required to award the contract to the responsible vendor offering the needed quality of supply or service at the lowest price.[49] Chapter 30B requires you to establish a rule for award when the contract term will exceed one year.[50] Although there is no explicit requirement that you write a rule for award when the contract term will be one year or less, we recommend that you do so to provide for a fair, open and transparent procurement process. Based on the previous purchase description for copy paper, the following is an example of a rule for award using quotes:

> *The contract will be awarded to the responsible vendor offering 500 reams of 20 lb. weight, bright white, 8½ x 11 copy paper, delivered to Town Hall on January 2, at the lowest price.*

Step 3: Seek three written quotes

Seek prices from at least three vendors based on the written purchase description you provide them. As stated above, all vendors' quotes must be based on the same written purchase description. You must seek quotes from vendors who customarily provide the supply or service you need. If you have reason to believe that a vendor is not responsible – that is, that the vendor lacks the capability, integrity and reliability for good-faith performance of the contract – do not solicit a written quote from that vendor. If a vendor requests not to be contacted for quotes, document the request and do not attempt to solicit written quotes from that vendor again. It also makes sense not to solicit written quotes from vendors who have not responded to your previous solicitations.

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[48] M.G.L. c. 30B, § 4(a).

[49] M.G.L. c. 30B, § 4(b).

[50] M.G.L. c. 30B, § 12(c)(5).

Chapter 30B requires that you record the following information and maintain it in your procurement file:

- the names and addresses of all persons you contacted for written quotes;
- the written purchase description used for the procurement;
- the names of all persons who submitted written quotes; and
- the date and amount of each written quote.

Note that Chapter 30B requires you to *seek* at least three written quotes. It does not require you to *obtain* three written quotes. If, after making a reasonable effort, you cannot obtain three written quotes for the supply or service you need, you may award the contract on the basis of one or two written quotes. However, you should also consider broadening your search and contacting a few more vendors to ensure that you are getting a competitive price for the supply or service.

You may award a sole-source contract of not more than $50,000 if a reasonable investigation indicates that there is only one practicable source for the supply or service you are procuring. In this case, you need not seek competitive quotes, but you must record and retain in a file:

- the contractor's name;
- the contract amount and type;
- the supplies or services procured; and
- the basis for your determination that only one practicable source exists.
- See Chapter VI for more information on sole-source procurements.

Step 4: Determine the best-priced quote from a responsible vendor and award the contract

After obtaining written quotes, identify the best-priced offer from a responsible vendor offering the quality of supply or service you need. A responsible vendor has the capability to perform fully the contract requirements, as well as the integrity and reliability to assure good-faith performance.[51] Award the contract to the responsible vendor offering the lowest-priced written quote. When a contract requires a vendor to *pay* your local jurisdiction, the best price is the highest price.

Negotiating a lower price. You may negotiate a lower price with the responsible vendor that offered you the lowest-priced written quote. You may not condition such negotiation on any change to the quantity or quality of the supply or service or to the scope of services. Negotiation of price alone is not prejudicial to fair competition.

[51] M.G.L. c. 30B, § 2.

Handling tied quotes. Occasionally you may receive tied price quotes from two responsible vendors. We strongly recommend that all local governments adopt a tie-breaker policy approved by their governing bodies. When you have an approved policy in place, you should use it whenever you receive tied written quotes. If your governing body has not adopted a tie-breaker policy, you may allow for a "second heat" between the tied vendors. This entails contacting the tied vendors, explaining that the written price quotes were tied, and inviting each vendor to submit a second written quote for the same contract by a specific date and time. You may then award the contract to the responsible vendor offering the lowest-priced quote. As an alternative, you may use a coin toss or some other simple, fair and objective process to break the tie. When you break a tied quote through a coin toss, you should invite the affected vendors to your office and flip the coin in their presence.

Canceling a quote process. Under Section 9 of Chapter 30B, you may cancel a solicitation for written quotes when you determine that such cancellation is in the best interests of your local jurisdiction. It may be in your local jurisdiction's best interest to cancel a solicitation when, for example, there are material changes to the purchase description. (Of course, it is never appropriate to cancel a quote process because a favored vendor did not submit the best price.) You must prepare a written statement of the reasons for cancellation. This written statement is a public record and must be kept with the procurement file. You should also inform the vendors who have submitted written quotes that the process has been canceled.

Step 5: Retain records

Remember that all contracts of $10,000 or more must be in writing. All written documents required under Chapter 30B must be maintained in a file for six years from the date of the final payment under the contract. For instance, if you sign a one-year contract for cell phone service and make the final contract payment on December 31, 2020, you must retain the written records until January 1, 2026. These records include the following for a supply or service costing $10,000 to $50,000[52]:

- the names and addresses of all vendors from which quotes were sought;
- the written purchase description used for the procurement;
- the names and dates of all persons from whom quotes were sought;
- the date and amount of each written quote received; and

[52] At least $10,000 but not more than $100,000 for municipal or regional school districts only, as amended by Chapter 198 of the Acts of 2022.

- the executed contract and any contract amendments

We recommend that your local jurisdiction develop a standard form for requesting written quotes that memorializes the names and address of all persons from whom quotations were sought, the names of persons submitting quotations, and the date and amount of each quotation. A sample record and evaluation of quotations form is provided in Appendix B.

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IV. SUPPLIES OR SERVICES ESTIMATED TO COST MORE THAN $50,000: BIDS

Under Chapter 30B, you must use competitive sealed bids to procure supplies or services estimated to cost more than $50,000[53], unless your local jurisdiction has appointed a Chief Procurement Officer (CPO) and the CPO – or an individual to whom the CPO has delegated powers and duties – has determined that a request for proposals should be used instead. You will use a sealed bid process to award a supply or service contract to the responsive and responsible bidder offering you the best price. In using a bid process, your objective is to obtain the best value by establishing evaluation criteria that will ensure that you obtain the quality of supplies or services you need from a vendor that is capable of performing the contract.

If your local government has a CPO, only your CPO or someone with delegated authority from the CPO may solicit bids. (Chapter II has more information on CPOs and delegations.) If you have no CPO, you may solicit bids if:

- you are authorized by statute, charter or bylaw; or
- you have been duly delegated authority; or
- you are a member of a board, committee, commission or other body with procurement responsibilities.

If you have questions, check with your CPO (if you have one) or legal counsel.

Chapter II reviewed the first steps involved in procuring supplies and services under Chapter 30B: determining what you need, writing a purchase description (also called specifications or a scope of services), developing contract terms and conditions, and estimating the value of the contract. You should review that information before continuing with this chapter, which discusses the specific steps involved in soliciting competitive sealed bids under Chapter 30B.

Step 1: Prepare the invitation for bids (IFB)

Your IFB provides vendors with the information necessary to prepare and submit a responsive bid. An IFB consists of the following major components:

- purchase description or scope of services;
- evaluation criteria, including quality requirements and lowest price;

[53] More than $100,000 for municipal or regional school districts only, as amended by Chapter 198 of the Acts of 2022.

- the rule for award;
- documents incorporated by reference, if any;
- contract terms and conditions;
- standard forms; and
- bid submission requirements.

Chapter II provides guidance on developing the purchase description and contract terms and conditions. The remaining elements of the IFB are discussed below.[54]

***Evaluation criteria*.** Defining the criteria that you will use to evaluate the bids you receive is just as important as describing what you intend to purchase. You want to (1) determine which bidders meet your quality requirements; and (2) compare bid prices to identify the bid offering the lowest price. All of the criteria you will use must be included in your IFB. You may not evaluate bids against any other evaluation criteria. For example:

- If you plan to test products offered by bidders, you must specify the standards you will use to determine acceptability, such as quality, workmanship, results of inspections and tests and suitability for a particular purpose.
- If you plan to check references to ensure that the vendor has the required experience, you should so indicate.

Be careful to ensure that the evaluation criteria in the IFB reflect the full range of standards you want to apply to the bids you receive. The advantage of this approach is clear. You maximize the likelihood of receiving responsive bids, geared to the needs of your local jurisdiction.

Quality requirements. Your quality requirements reflect those standards or attributes that you consider essential to the satisfactory performance of the contract. You will use quality requirements to identify *responsive* bids (those that offer the supplies or services requested in the IFB and that contain all of the required information and forms, properly completed) and *responsible* bidders (those with the capability, integrity and reliability to perform under the contract).

Your quality requirements are "yes-or-no" standards that you will apply to every bid; you are not concerned with whether a bidder is good, better or best. Does the bidder meet each quality requirement?

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[54] You may also wish to consult our Office's *Practical Guide to Drafting Effective Invitations for Bids and Requests for Proposals for Supplies and Services*, which can be downloaded from our website at www.mass.gov/info-details/oig-guides-and-advisories#drafting-effective-ifbs-&-rfps-for-supplies-&-services-.

If the answer is "yes," the bid remains under consideration. If the answer is "no," the bid is eliminated from further consideration. For example, in buying tires, you want to identify which bidder meets the standard you specified (perhaps a U.S. Department of Transportation tire rating) in the purchase description, is able to perform well and offers the lowest price. Similarly, in buying a service, you may want to identify the bidder who has a specified amount of relevant experience, staff, and financial capacity to perform the work, and who offers the lowest price. (If you wish to compare quality differences among all vendors who meet your quality requirements, in addition to price, you should solicit proposals instead of bids. See Chapter II for a comparison of the IFB and RFP processes under Chapter 30B.)

If the nature of the work to be performed under the contract demands that the vendor possess a very high level of qualifications and training, then you should set very rigorous quality requirements. However, keep in mind that if you set a higher standard than you truly need, you will reduce the pool of qualified bidders and, in all likelihood, pay more than you should for the supply or service.

Lowest price. The IFB must inform bidders of the method you will use to compare prices and determine the lowest bid price. In many cases, identifying the lowest price is straightforward, as when bidders submit a single dollar figure with their bids. In other cases, however, some calculation may be required. For example, if you are awarding a multi-year contract, you must specify whether a single price should be provided for the first year that will apply to each year of the contract term, whether a separate bid price for each year of the contract term should be provided, or whether the initial bid price will be adjusted periodically based on a published index identified in the IFB. In each case, you must state how you will calculate the total price of each bid to identify the bid offering the lowest price.

Rule for award. When using the Chapter 30B bid process, the procurement officer awards the contract to the lowest responsive and responsible bidder.[55]

Your IFB rule for award for a single contract for supplies and/or services may be stated as follows:

> *The contract will be awarded to the responsive and responsible bidder offering the lowest price for the supplies/services specified in the IFB.*

If your solicitation will include an option to renew or extend a contract, your rule for award must be based on the offer for the initial contract term. Your rule for award may be stated as follows:

[55] M.G.L. c. 30B, § 5(g).

> *The contract will be awarded to the responsive and responsible bidder offering the lowest price for the initial contract term.*

When you are procuring multiple items in one IFB, you must determine whether you will award one contract to the responsive and responsible bidder offering the lowest total price for all items or categories of items, or if you will award a separate contract to the lowest responsive and responsible bidder for each item or category of items. Awarding multiple contracts may benefit your local jurisdiction for some procurements. For example, when you are procuring office supplies, you might decide to select the lowest responsive and responsible bidder on the supplies specified in each line item, such as pens, pencils and tape. When procuring office furniture, you might decide to select the lowest responsive and responsible bidder on the supplies specified in each category. For example, you may list multiple items under the categories of tables, chairs or file cabinets. Depending on the approach you choose, the rule for award might resemble one of the following examples:

> *The contract will be awarded to the responsive and responsible bidder offering the lowest total price for all items.*
>
> or
>
> *A contract will be awarded to the responsive and responsible bidder offering the lowest price for each item.*
>
> or
>
> *A contract for all items in a category will be awarded to the responsive and responsible bidder offering the lowest total price for the items in that category.*

Documents incorporated by reference. If you incorporate documents by reference into the IFB, you must specify where bidders may obtain these documents.

Statutorily required forms. Chapter 30B requires each bidder to submit a certification of good faith, often called a non-collusion form, certifying that the bid was made in good faith and without collusion or fraud.[56] It is a good idea to include a copy of the form in your IFB to ensure compliance with this requirement. A sample non-collusion form is included in Appendix B.

Typically, bidders also must complete other standard forms. In bidding a variety of supply items, for example, you should provide a standard bid form listing each item and the quantity you require, leaving a space for the bidder to insert a unit price and total price for each item. This bid form and any other required standard forms should be included in the IFB.

[56] M.G.L. c. 30B, § 10.

Bid submission requirements. The IFB must specify when (date and time) and where sealed bids must be delivered, and the time for award – i.e., the maximum amount of time you reserve to award a contract. You should also provide instructions on how to mark bid packages and how to correct, modify or withdraw bids. You may wish to include a checklist of bid requirements to assist bidders and to draw their attention to the IFB requirements, such as the mandatory non-collusion form.

Step 2: Provide public notice of the IFB

You must give public notice of an IFB within a "reasonable time prior to the date of the opening of bids."[57] The notice must be published at least two weeks before bids are due. Otherwise, what is "reasonable" depends on the nature of the bid. The more complex the bid or the more items included in the bid, the more time vendors may need to prepare their bids. Availability of qualified vendors may also affect the bidding schedule. If you will need to search for and encourage qualified vendors to bid, you may need to allow extra time.

Weigh the pressure to award a contract quickly against the need to maximize competition. Shorter periods of time may favor a vendor who has held the contract in the past or simply eliminate potential competitors who may be able to offer better prices.

The public notice must contain the following information:

- a statement of where, when, and for how long the IFB may be obtained;
- a description of the supply or service to be procured (*e.g.*, a summary of the detailed purchase description or scope of services included in the IFB);
- a notice that your local jurisdiction reserves the right to reject any or all bids; and
- identification of any board, committee, commission or other body that must approve the contract.

You may include other information in the notice. For example, if you have decided to charge a fee for copies of the IFB, indicate the amount of the fee and the form in which it may be paid. The fee must be based on the reasonable cost of reproducing and mailing the documents.

You must post the notice in a conspicuous place in or near your local jurisdiction's offices for at least two weeks before the time specified in the IFB for the receipt of bids. If your local jurisdiction has an official bulletin board or website, that is where the notice should be posted.

[57] M.G.L. c. 30B, § 5(c).

You also must publish the notice at least once, not less than two weeks before the time specified for submitting bids, in a newspaper of general circulation that serves your local jurisdiction and on the COMMBUYS[58] system administered by the Operational Services Division (OSD). You may, of course, publish the notice in more than one newspaper in your area, in newspapers outside your area, and more than once. You may publish the notice elsewhere, including on a website.

If the contract value is more than $100,000, you must also publish a notice in the *Goods and Services Bulletin* published by the Secretary of the Commonwealth.[59] We recommend publishing this notice at least two weeks before bids are due.

You may contact vendors and other interested parties to let them know about the IFB. If you maintain vendor lists for contracts, you may send a copy of the notice or the IFB to those vendors on the list that might be interested in the particular contract. You may also simply call vendors to encourage bids. However, be careful to avoid favoritism or the appearance of favoritism.

Step 3: Distribute the IFB

You must make the IFB available on an equal basis to all who request a copy. Keep a record of all vendors that receive the IFB. If you later issue an addendum to the IFB, send the addendum to all vendors that have already received the IFB. To avoid misunderstandings, include a requirement on the bid form that vendors acknowledge in writing their receipt of all addenda. Also, if vendors are likely to require additional time to respond to the addendum, extend the bid due date.

The IFB may be made available online. If you allow vendors to access the IFB from your jurisdiction's website, and your jurisdiction lacks a mechanism for tracking vendors that have downloaded the IFB, your website should state that vendors who download the IFB are responsible for checking the website periodically for any addenda issued by your jurisdiction.

[58] COMMBUYS is the Commonwealth's electronic procurement system. Any public agency in Massachusetts can post solicitations on the COMMBUYS system free of charge. For additional information, visit www.commbuys.com.

[59] Appendix B provides the website address for the *Goods and Services Bulletin*.

Reverse Auctions

Chapter 30B permits a CPO to use a reverse auction to acquire supplies and services valued at more than $50,000. A reverse auction is an internet-based process that allows vendors to bid anonymously against each other until the auction time expires. In a traditional auction, the winning bidder is the higher bidder. In a reverse auction, however, the winning bidder is the vendor who submits the lowest bid before the auction expires. Registered bidders post their bids electronically on the internet, and the posted bids are updated on a real-time basis. Registered bidders are allowed to lower their bid prices below the lowest bid posted on the internet.

Your solicitation must specify the opening date and time when real-time electronic bids will be accepted and provide that the auction will remain open until the designated closing date and time. Procurements using reverse auctions are subject to Chapter 30B advertising requirements, except that the solicitation need not include the time and date for the receipt of bids, the address of the office to which bids are to be delivered, or the maximum time for bid acceptance. Additionally, you are not required to open bids in a meeting that fulfills the requirements of the state's open meeting law[60] or in the presence of one or more witnesses.

Bids on reverse auctions must be submitted by registered vendors: i.e., vendors that register with your local jurisdiction before the reverse auction opening date and time and, as part of the registration, agree to any terms and conditions and other requirements of the solicitation. You may include a requirement that bids received within a certain amount of time before the closing time will automatically extend the auction.

Step 4: Receive sealed bids

Be prepared to accept sealed bids after you issue the IFB. Keep a register of bids received, including the date and time you received each bid. It is also a good practice to note on the sealed bid package the date and time it was received and to provide the bidders with receipts for their packages upon request.

[60] M.G.L. c. 30A, §§ 18-25.

Prior to the bid opening, bidders may correct, modify or withdraw their bids by following the instructions you provided in the IFB. A bidder that wishes to withdraw a bid must do so in writing.[61] Any correction or modification to a bid also must be submitted in writing. Because the original document must be submitted as a sealed package, the IFB should include a requirement that corrections or modifications to the bid also be sealed when submitted.

Late and overlooked bids. A late bid is a bid that is delivered after the deadline established in the IFB. If a bid is late for any reason, you must reject the bid as nonresponsive to the bid submission requirements. Similarly, you may not accept a bid correction or modification delivered after the bid due date and time. If you do receive such a late correction or modification, you should treat it as a late bid and evaluate only the original bid that was received by the deadline.

An overlooked bid is a bid that was properly delivered on time but was not opened in a timely manner because of an error by the local jurisdiction. An example of an overlooked bid would be a bid that was properly delivered the day before the due date but not opened at the bid opening because the procurement officer neglected to bring it to the bid opening.

In the case of overlooked bids, your two main considerations should be (1) whether the overlooked bid was the best-priced bid from a responsive and responsible bidder; and (2) whether the overlooked bid was held in a secure location from the bid deadline until the time that the overlooked bid was discovered. With these considerations in mind, we recommend that you take the following steps:

- Notify all bidders of the error.
- Open the overlooked bid as you opened the other bids: at a public meeting or in the presence of one or more witnesses. It is advisable to inform the other bidders of the opening and permit them to be present.
- Determine whether the overlooked bid was held in a secure location from the time of receipt to the time of discovery.
- Determine whether the overlooked bid is the lowest-priced bid from a responsive and responsible bidder.
    - If not, award the contract to the winning bidder.
    - If so, and the bid has been held in a secure location, award the contract to the bidder that submitted the overlooked bid.

[61] M.G.L. c. 30B, § 5(f).

- If so, but the bid has not been held in a secure location, we recommend rebidding the contract in the interest of fairness.

- Retain the overlooked bid along with the other bids in the procurement file.

Step 5: Open and record bids in public

Bids must be opened in public. Under Chapter 30B, this means that bids must be opened either in a meeting which fulfills the requirements of the state's open meeting law[62] or in the presence of one or more witnesses.

If the bids are opened in an open meeting, a quorum of the body holding the meeting must be present, and the names of all bidders and the amounts of their bids must be entered into the minutes. If the bids are opened in the presence of one or more witnesses, the procurement officer and the designated witness(es) must sign under the penalties of perjury a statement (1) listing the names of all bidders and the amounts of their bids and (2) declaring that the list is a complete and accurate list of the bids opened in the witnesses' presence.

If the IFB solicited prices for a series of items, such as office supplies, you need not transcribe each bidder's prices for all items into the minutes or onto the signed statement. Instead, you may copy the pages of each bid submission containing the bid prices, attach them to the signed statement or minutes, and incorporate them by reference.

A vendor may withdraw a bid after it has been opened only if a mistake is clearly evident on the face of the document, but the intended correct bid is not. For example, a bidder submits a bid for 12 binders with a unit price of $3.00, but a total price of $24.00; the mistake is evident, but the intended bid is not.

Step 6: Evaluate bids

You must evaluate bids using only the criteria identified in the IFB. The evaluation will address the responsiveness of the bid, the responsibility of the bidder and the price. In many cases, this will require little more than using checklists to confirm that all required information and forms have been submitted and making direct comparisons of costs.

[62] M.G.L. c. 30A, §§ 18-25.

In determining the responsiveness of a bid, you must waive minor informalities or allow the bidder to correct them. According to Chapter 30B, minor informalities are "minor deviations, insignificant mistakes, and matters of form rather than substance of the bid, which can be waived or corrected without prejudice to other offerors, potential offerors, or the governmental body."[63] For example, the omission of a unit price figure is a minor deviation that must be waived when the intended figure is readily ascertainable from other figures in the bid.

Evaluate bids efficiently. It may be wise to first evaluate prices and then consider the responsiveness and responsibility of the bidder submitting the apparent lowest-priced bid. If you find that a bidder fails the full evaluation, go on to evaluate the next apparent lowest-priced bidder. Conversely, if price evaluations may be time-consuming, look first at the responsiveness and responsibility of all bidders and then perform price evaluations only for the responsive and responsible bidders.

After bid opening, a bidder may not impose any conditions on a bid, or change the price or any other provision of a bid, in a manner prejudicial to the interests of your local jurisdiction or fair competition.

You must correct a bid if a mistake and the intended bid are clearly evident on the face of the bid document. For example, you receive four bids that list the following unit prices for a box of pencils: $.90, $.94, $.93 and $9.2. In the latter case, the decimal place was obviously misplaced, and the intended unit price of $.92 is evident. In that case, you must make the correction and notify the bidder in writing that you have done so. The bidder is not permitted to withdraw the bid.

Tied low bids. We strongly recommend that all local jurisdictions adopt a tie-breaker policy and include the policy in all IFBs. In the event that you receive tied bids, wherein two or more responsive and responsible vendors provide the same bid price, and your governing body does not have a pre-approved tie-breaker procedure, you may allow for a "second heat" between the tied vendors. This entails contacting the tied vendors, explaining that the bid prices were tied, and inviting each vendor to submit a second sealed bid for the same contract by a specific date and time. You may then award the contract to the vendor offering the lowest-priced bid. As an alternative, you may use a coin toss or other simple, fair and objective measure to break the tie. When you break a tie through a coin toss, you should invite the tied bidders to your office and flip the coin in their presence. In any event, the coin toss should be

[63] M.G.L. c. 30B, § 2.

conducted in the presence of a witness and the bidders should sign off that they have indeed agreed to the coin toss to resolve the tied bid situation.

Step 7: Award the contract

You must award the contract within the time for award stated in the IFB to the qualified (that is, responsive and responsible) bidder that offers you the lowest price. (If the contract will require the vendor to pay your local jurisdiction, you will award to the qualified bidder that offers you the highest price.) The time for acceptance may be extended for up to 45 days by mutual agreement between the local jurisdiction and the apparent lowest responsive and responsible bidder.[64]

Negotiating a lower price. When using an IFB, you may negotiate the price of a contract downward with the responsive and responsible bidder offering the lowest price. In the case of a revenue-generating contract, you may negotiate a higher price with the responsive and responsible bidder offering the highest price. This is not prejudicial to fair competition because the bidder will be awarded the contract anyway. While you may negotiate a more favorable price, you may not negotiate any change to the purchase description, scope of services, or contract terms and conditions.

Approval of the contract award. The award of a contract may be subject to the approval of a public official or governing entity such as the mayor, the city council, the board of selectmen or the school committee. If you are uncertain about who must approve or sign contracts, check with your CPO or legal counsel.

Canceling the IFB or rejecting all bids. You are not required to award a contract. You may cancel the IFB at any time until the bids are opened. Once bids are opened, you may reject all the bids if you determine that such action is in the best interest of your local jurisdiction. For example, it is in the best interest of your local jurisdiction to reject all bids if the lowest price exceeds your budget or if your purchase description was inadequate or inaccurate. Of course, you may not reject all bids simply because a favored bidder did not submit the lowest bid. You must state in writing the reason for any cancellation or rejection and you must keep this document in your procurement file.

[64] M.G.L. c. 30B, § 5(g).

Step 8: Execute the contract

Execute a written contract with all the terms and conditions stated in the IFB.

Step 9: Retain records

You must retain a file of all written documents required by Chapter 30B for six years from the date of the final payment under a contract. These documents include:

- the IFB, including any amendments;
- the written justification for use of proprietary specifications (if any are used);[65]
- the public notice, including a copy of the newspaper advertisement and your posting on the COMMBUYS system;
- the *Goods and Services Bulletin* notice if the contract value is more than $100,000;
- the record of the bid opening (either the minutes of the open meeting or the signed statement of the procurement officer and witnesses);
- all bids received, including the non-collusion forms;
- any bid corrections, modifications, withdrawals and notices of bid corrections, modifications or withdrawals;
- any notices of bid rejections or cancellation;
- the notice of award; and
- the executed contract.

The contents of the bid file must be open to public inspection.[66]

If the successful bidder refuses to execute the contract, you may award the contract to the responsive and responsible bidder offering the next lowest price, provided that you award the contract within the time for acceptance specified in your IFB or that the time period has been extended by mutual agreement of the parties. Discuss with your legal counsel what action should be taken against the recalcitrant bidder. If the bidder posted a bid bond, consider attempting to collect against the bond.

[65] Chapter II discusses Chapter 30B's rules for using proprietary specifications.

[66] M.G.L. c. 30B, § 3.

V. SUPPLIES OR SERVICES ESTIMATED TO COST MORE THAN $50,000: PROPOSALS

Bidding is the basic method under Chapter 30B for procuring supplies or services estimated to cost more than $50,000.[67] However, when it is in your local jurisdiction's best interest to do so, you may instead use a request for proposals (RFP) to award such contracts.[68] The RFP process permits you to weigh the relative merits of proposals submitted by competing offerors. You award the contract to the offeror submitting the most advantageous proposal, taking into consideration the proposals' relative merits and prices. Unlike the bidding process, the RFP process may not always result in selection of the proposer that meets your quality requirements and offers the lowest price. While service contracts may seem at first glance to be most suited to the RFP process, many service contracts can and should be procured using an invitation for bids (IFB). See Chapter II of this manual for more information on deciding between an IFB process and an RFP process.

You can use RFPs only if your local government has appointed a Chief Procurement Officer (CPO). (Chapter II has more information on the rules for CPO appointment and delegation.) If you have questions, check with your CPO (if you have one) or legal counsel.

Chapter II reviewed the first steps involved in procuring supplies and services: determining what you need, writing a purchase description (also called specifications or scope of services), developing contract terms and conditions, and estimating the value of the contract. You should review that information before continuing with this chapter, which reviews the specific steps involved in soliciting competitive sealed proposals under Chapter 30B.

Under Chapter 30B, only a CPO or a person with delegated authority from the CPO may procure supplies and services using the RFP process. The following discussion assumes you are the CPO or have delegated authority, unless otherwise noted.

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[67] More than $100,000 for municipal or regional school districts only, as amended by Chapter 198 of the Acts of 2022.

[68] Under M.G.L. c. 71, § 7A, you must use an IFB process to procure school bus transportation contracts for which you are seeking state reimbursement.

Step 1: Document your decision to use the RFP process

If you decide that the RFP process is preferable to the IFB process for a given procurement, you must document your decision, along with the reasons for it, in writing. For example, in determining that the RFP process should be used to procure consultant services to assess a city's health coverage requirements, it would *not* be sufficient to state: "I have determined that the RFP process for this procurement will be most advantageous for the city." Your written rationale must specify the reasons for your determination that your local jurisdiction's interests will be served by a process that allows you to select a proposal that exceeds your quality requirements, even if it does not offer you the lowest price. For example, you might state: "The RFP process will enable the city to provide higher ratings to consultants whose key project personnel have extensive experience providing similar services to other cities and towns."

Step 2: Prepare the RFP

Your RFP must contain all of the information that proposers will need to prepare a responsive proposal. An RFP consists of the following major components:

- purchase description or scope of services;
- plan for providing the supplies or services, if required;
- evaluation criteria, including quality requirements, comparative evaluation criteria and lowest price;
- rule for award;
- documents incorporated by reference, if any;
- contract terms and conditions;
- standard forms; and
- the requirements for submitting proposals.

Chapter II provides detailed information on developing a purchase description or scope of services and contract terms and conditions. The remaining elements of the RFP are discussed below.[69]

[69] You may also wish to consult our Office's *Practical Guide to Drafting Effective Invitations for Bids and Requests for Proposals for Supplies and Services,* which may be downloaded from our website at www.mass.gov/info-details/oig-guides-and-advisories#drafting-effective-ifbs-&-rfps-for-supplies-&-services-.

Plan for providing the supplies or services, if required. When using the RFP process, you have the option of requiring vendors to include a plan for providing the proposed supplies or services. The contents of the plan must be evaluated, and elements of the proposed plan may be negotiated with the proposer.

In essence, the plan contains specifics as to *how* the proposer will satisfy the purchase description or scope of services. It is not a substitute for a complete purchase description. Rather, it is a tool you can use to evaluate each proposer's plan for meeting your objectives; does the proposer offer the right methodology and resources to best meet your needs? In most cases, it will probably be unnecessary to require a plan, but you have the option to do so when you believe it would benefit your local jurisdiction.

For instance, if you seek proposals for the management and operation of a municipal facility, you might decide to require each proposer to submit a plan, containing a detailed organizational chart showing the chain of command, written job descriptions for the key personnel who will be assigned to the contract, a description of the automated systems the proposer will use to fulfill reporting and record-keeping functions, and a proposed schedule for major maintenance activities. You would later evaluate the plan and you can negotiate with the proposer for changes in the plan to ensure that your objectives are met. The final plan will be incorporated into the contract.

If you require proposers to submit a plan, your RFP must specify the information to be included in the plan. You should also specify a format and set limits on the length.

Evaluation criteria. Defining the criteria that you will use to evaluate the proposals you receive is just as important as describing what you intend to purchase. You want to (1) determine which proposers meet your quality requirements; (2) compare the advantages each proposal offers relative to your comparative criteria; and (3) compare the prices the proposers offer and determine which is the lowest price. All of the criteria you will use must be included in your RFP. You may not evaluate proposals against any other criteria. Be careful to ensure that the evaluation criteria in the RFP reflect the full range of standards you want to apply to the proposals you receive to maximize the likelihood of receiving responsive proposals that are geared to the needs of your local jurisdiction.

Quality requirements. Your quality requirements reflect those standards or attributes that you consider essential to the satisfactory performance of the contract. You will use quality requirements to identify *responsive* proposals (those that offer all of the supplies or services requested in the RFP and that contain all of the required information and forms, properly completed) and *responsible* proposers (those with the capability, integrity and reliability to perform under the contract).

Your quality requirements are "yes-or-no" standards that you will apply to every proposal. Does the proposer meet each quality requirement? If the answer is "yes," the proposal remains under consideration. If the answer is "no," the proposal is eliminated from further consideration. If the nature of the work to be performed under the contract demands that the contractor possess a very high level of qualifications and training, then you should set very rigorous quality requirements. However, if you set a higher standard than you truly need, you will reduce the pool of qualified proposers and, in all likelihood, pay more than you should for the supply or service.

For example, in selecting a consultant to evaluate your local jurisdiction's health coverage requirements, you might determine that only consultants who have successfully completed at least three contracts providing health coverage consulting to a private or public client of similar size are qualified to submit proposals. If you include this criterion in the RFP, you must reject all proposals submitted by consultants who do not meet the standard, since, by your own definition, such consultants are not qualified to perform the work. As this example illustrates, it is important that your quality requirements truly reflect the standards or qualifications necessary to perform the work.

Comparative evaluation criteria. At this point in the RFP development process, you have established your quality requirements to identify the responsive proposals submitted by responsible proposers. Now you need to define the comparative evaluation criteria to be applied to all proposals that meet your quality requirements. In effect, comparative evaluation criteria reflect standards or attributes for which you might be willing to spend more money.

Your RFP must identify each comparative criterion you will use. Make them as specific as possible and connect them as closely as you can to the tasks contained in the purchase description. Do not use vaguely worded phrases such as "past performance" or "creativity of approach," which provide little guidance either to competitors who submit proposals or to those responsible for evaluating the proposals received. Remember that the more specific information you provide, the more likely you are to receive good proposals offering the supplies or services you want. In addition, if your criteria are

If you want proposers to make in-person presentations or attend interviews, you must develop criteria to evaluate the presenters or interviewees. Keep in mind that there is an inherent danger in the use of presentations as an evaluation tool. Proposers may earn high ratings because of effective sales techniques rather than the quality of their services. Make sure that interviews are attended and presentations are made by the staff to be assigned to the contract rather than by marketing or public relations personnel. Ask the same questions of all proposers. Keep in mind that you must be able to articulate and defend the ratings you award to proposers for presentations or interviews.

vague, you will not establish a level playing field for the competition and your RFP will be subject to challenge.

For each comparative criterion you are required to assign a specific rating. You must use some or all of the following ratings: "highly advantageous," "advantageous," "not advantageous" or "unacceptable." You must specify what standard a proposer must meet to achieve each rating. You have flexibility in defining the ratings to best meet your evaluation needs, and you need not include all four rating categories in your RFP if you do not need them all. In fact, the fewer categories you use, the easier it may be to develop the RFP and later evaluate proposals. You may establish whatever rating scheme that makes sense for your procurement. Examples of comparative evaluation criteria ratings are provided on the next page.

You may not substitute numerical ratings for the qualitative ratings. Point systems are often deceptive, creating the illusion that qualitative judgments can be compared with mathematical precision. Point differences may actually reflect small, inconsequential differences between proposals.

If you find in developing the evaluation criteria for a specific procurement that you really have no need for comparative evaluation criteria – *i.e.*, you plan to select the best offer from the pool of vendors meeting your submission and quality requirements – then the RFP process is inappropriate for the procurement. Instead, you should solicit competitive sealed bids in accordance with the procedures set forth in Chapter IV of this manual.

Lowest price. The RFP must inform proposers of the method you will use to compare prices and determine the lowest proposal price. In many cases, identifying the lowest price is straightforward, as when proposers submit prices consisting of a single dollar figure. In other cases, however, some calculation may be required. If you are awarding a multi-year contract, you must specify whether you want proposers to submit a single price that will apply to each year of the contract term, a separate price for each year of the contract term, or an initial price that will be adjusted periodically based on a published index identified in the RFP. In each case, you must state how you will calculate the total price of each proposal in order to identify the proposal offering the lowest price.

Examples of Comparative Evaluation Criteria Ratings

***Example 1: Experience*.** You want to hire a vendor to manage your public golf course. As one evaluation criterion, you decide to compare the experience of the superintendent of each firm that meets your quality requirements. In effect, you believe that it may be worth paying more for additional experience. You require each competing firm to submit the resume and references for the proposed superintendent.

Criterion: Experience managing a golf course.

Highly advantageous: The proposed superintendent has five (5) or more years of experience as a golf course superintendent managing an 18-hole golf course.

Advantageous: The proposed golf course superintendent has three (3) or more years of experience as a golf course superintendent OR five (5) or more years of experience at an assistant golf course superintendent level or higher, managing an 18-hole golf course.

Not advantageous: The proposed golf course superintendent has less than three (3) years of experience as a golf course superintendent OR less than five (5) years of experience at an assistant golf course superintendent level or higher, managing an 18-hole golf course.

Example 2: Computer Software. You are buying municipal finance software. One comparative criterion is ease of staff use, which you will judge based on an on-site municipal demonstration of the system. The evaluators will be the employees using the software.

Criterion: Ease of use.

Highly advantageous: Application screens are clear and set up logically. Fields can be accessed easily and quickly. Multiple screens are logically sequenced and can be quickly accessed from other relevant screens. Users with minimal training and experience can quickly learn to navigate the system with training of one day or less.

Advantageous: Application screens are generally clear and set up logically. Fields can be accessed easily and quickly. Multiple screens are logically sequenced but must be accessed by going through a series of screens. Users with minimal training and experience are likely to require more than a day of training.

Unacceptable: Application screens are unclear and are not set up logically.

Rule for award. When you use an RFP process, you award the contract to the proposer offering the most advantageous proposal, taking into consideration all quality requirements and comparative criteria set forth in the RFP as well as price. This rule for award should be stated in the RFP. For example, a city's rule for award for a management consultant contract might be the following statement:

> *The city will select the responsive and responsible management consultant submitting the most advantageous proposal, taking into consideration the management consultant's experience, staff capacity, references and plan for providing the services, as well as the proposal price.*

Documents incorporated by reference. If you incorporate documents by reference into the RFP, you must specify where proposers may obtain these documents.

Standard forms. Chapter 30B requires each proposer to certify that the proposal was made in good faith and without collusion or fraud.[70] It is a good idea to include a copy of this certification, also called a non-collusion form, in your RFP to ensure compliance with this requirement. A sample non-collusion form is included in Appendix B.

Typically, proposers also are required to complete other standard forms, including a proposal price sheet. Any standard forms should be included in the RFP.

Proposal submission requirements. The RFP must specify when (date and time) and where sealed proposals must be delivered. You must require proposers to submit separate sealed price and non-price (or technical) proposals. Provide instructions on how to mark proposal packages and how to correct, modify or withdraw proposals. Also, you must specify the maximum amount of time you reserve to award a contract.

Step 3: Provide public notice of the RFP

Weigh the pressure to award a contract quickly against the need to maximize competition. Shorter periods of time may favor a vendor who has held the contract in the past, or simply eliminate potential competitors.

You must give public notice of an RFP within a reasonable time prior to the date for the opening of proposals.[71] At a minimum, the notice must be published two weeks before proposals are due. Otherwise, what is "reasonable" depends on the nature of the RFP. The more complex the proposal, or the more items or services included in the proposal, the more time proposers may need to prepare their proposals. The availability of qualified proposers may also affect the RFP schedule. If you will need to search for and encourage proposers, you should allow extra time.

The public notice must contain the following information:

1. a statement of where, when and for how long the RFP may be obtained;
2. a description of the supply or service desired (*i.e.*, a summary of the detailed purchase description included in the RFP);

[70] M.G.L. c. 30B, § 10.

[71] M.G.L. c. 30B, § 6(c).

3. a notice that your local jurisdiction reserves the right to reject any or all proposals; and
4. an identification of any board, committee, commission or other body which must approve the contract.

You may include other information in the notice. For example, if you have decided to establish a charge for copies of the RFP, indicate the amount of the charge and the form in which it must be paid.

You must post the notice in a conspicuous place in or near your local jurisdiction's offices until the time specified in the RFP for receipt of proposals (a minimum of two weeks). If your local jurisdiction has an official bulletin board or website, the notice should be posted there.

You must also publish the notice at least once, not less than two weeks before to the time specified for submitting proposals, in one newspaper of general circulation within the area served by your local jurisdiction and on the COMMBUYS[72] system administered by the Operational Services Division (OSD). You may, of course, publish the notice in more than one newspaper in your area, in newspapers outside your area, and more than once. You may publish the notice elsewhere, including on a website. You may also send a copy of the notice, after it has been posted and published, to anyone who might be interested.

If the contract value will be more than $100,000, you must also publish a notice in the *Goods and Services Bulletin* published by the Secretary of the Commonwealth.[73] We recommend publishing this notice at least two weeks before proposals are due.

You may contact vendors to let them know about the RFP. If you maintain vendor lists for contracts, you may send a copy of the notice or the RFP to those vendors on the list who might be interested in the particular contract. You may also simply call vendors to encourage proposals. However, be careful to avoid favoritism or the appearance of favoritism.

Step 4: Distribute the RFP

You must make the RFP available on an equal basis to all who request a copy. If you charge vendors a reasonable fee for copies of the RFP, you must charge all vendors the same fee. Keep a record of all vendors who receive the RFP. If you later issue an addendum to the RFP, send the addendum to all those who have already received the RFP. To avoid misunderstandings or protests, include a requirement in the

[72] COMMBUYS is the Commonwealth's electronic procurement system. Any public agency in Massachusetts can post solicitations on the COMMBUYS system free of charge. For additional information, visit www.commbuys.com.

[73] Appendix B provides the website address for the online submission form for this notice.

RFP that vendors acknowledge in writing their receipt of any addenda. Also, if vendors are likely to require additional time to respond to the addendum, extend the proposal due date.

Step 5: Designate the individual(s) responsible for evaluating proposals

You must select one or more individuals to evaluate the non-price, or technical, proposals. The CPO could be the sole evaluator or member of the evaluation team. If you are using a committee to conduct the evaluation, our Office recommends an odd number of members, such as three or five individuals. You may, as other local jurisdictions have done, ask staff of the department that will be using the supplies or services to evaluate proposals. These employees often have the expertise to understand complicated technical proposals. Some local jurisdictions ask members of relevant boards to sit on their evaluation committees.[74] You need not limit committee membership to employees of the local jurisdiction. For example, you may employ an independent consultant or appoint a member of the public to participate on your evaluation committee.[75]

Require that evaluators disclose potential conflicts of interest. A potential conflict of interest exists whenever an evaluator has a past or current financial or personal relationship with a potential proposer. If a potential conflict of interest exists, you should verify with the State Ethics Commission whether the evaluator needs to be removed from the process or other action should be taken.

Step 6: Receive the sealed price and non-price proposals

Be prepared to receive separate, sealed price and non-price proposals after you issue the RFP. You must maintain a register of all proposals received. This register is a public record, but the price and non-price proposals are not made public until the evaluation process is completed or until the time for acceptance specified in the RFP, whichever occurs first. It is good practice to note on the sealed price and non-price proposal packages the date and time they were received and to provide proposers with receipts for their proposals upon request.

[74] If the board or committee is subject to the open meeting law, the board or committee must go into executive session to preserve the confidentiality of proposals. M.G.L. c. 30A, § 21(a), permits a governmental body to go into executive session to comply with the provisions of any general or special law, which includes compliance with M.G.L. c. 30B, § 6.

[75] Remember that the contract with the independent consultant is itself subject to Chapter 30B.

Prior to the proposal opening, a proposer may correct, modify or withdraw the proposal (non-price and price) by following the instructions you provided in the RFP. A proposer who wishes to withdraw a proposal must make the request in writing. Any correction or modification to a proposal must be submitted in writing. Because the original proposals must be submitted as sealed packages, the RFP should require that corrections or modifications also be sealed when submitted.

Late and overlooked proposals. A late proposal is a proposal that is delivered after the deadline for submitting proposals. If a proposal is late for any reason, you should reject the proposal as nonresponsive to your proposal submission requirements. Similarly, you may not accept a correction or modification delivered after the proposal due date and time. If you do receive such a late correction or modification, you should treat it as a late proposal and evaluate only the original proposal that was received by the deadline.

An overlooked proposal is a proposal that was properly delivered on time but was not opened in a timely manner because of an error by your local jurisdiction. An example of an overlooked proposal would be a proposal that was properly delivered the day before the due date but not opened at the designated time because the procurement officer neglected to bring it to the proposal opening.

In the case of overlooked proposals, your two main considerations should be (1) whether the overlooked proposal was the most advantageous proposal from a responsive and responsible vendor and (2) whether the overlooked proposal was held in a secure location from the proposal deadline until the time that the overlooked proposal was discovered. With these considerations in mind, we recommend that you take the following steps:

- Notify all proposers of the error.
- Open the overlooked proposal in the presence of one or more witnesses. (In the interest of fairness, we do not recommend returning an overlooked proposal without opening it. If you returned the overlooked proposal and then resolicited proposals for the same contract, this proposer would have an advantage as the only proposer with an unexposed proposal.)
- Determine whether the overlooked proposal was held in a secure location from the proposal deadline to the time of discovery.
- Determine whether the overlooked proposal is the most advantageous proposal from a responsive and responsible proposer.

— If not, award the contract to the proposer submitting the most advantageous proposal, and retain the overlooked proposal along with the other proposals in the procurement file.

— If so, and the proposal had been held in a secure location, award the contract to the proposer.

- If so, but the proposal had not been held in a secure location, we recommend resoliciting proposals.

- Retain the overlooked proposal along with the other proposals in the procurement file.

Step 7: Open and register the proposals

You may not open the proposals publicly. The contents of the proposals are to be kept confidential and not disclosed to competing proposers or any other outside individuals until the evaluation process is completed or until the time for acceptance specified in the RFP, whichever occurs first.

You must separate the price and non-price proposals. The non-price, or technical proposals, must be opened at the time specified in the RFP in the presence of one or more witnesses. At the time of the opening, you must prepare and make available for public inspection a register of proposals, which includes the name of each proposer and the number of proposal modifications submitted by each proposer. You should also record the name(s) of the witness(es).

You may open the price proposals immediately after opening the technical proposals or at a later time. However, be sure that you do not disclose the price proposals to the non-price proposal evaluator(s) until they have completed their evaluations. If you, as the CPO, are one of the evaluators, then you may not open the price proposals until the evaluation of the technical proposals is completed. The separation of technical and price proposals is an important element of the RFP process. The process is structured to allow an orderly, fair comparison of the proposals.

Step 8: Evaluate non-price proposals

As previously noted, the individual(s) chosen to evaluate the technical, or non-price, proposals may not see the price proposals until the evaluation of the technical proposals is complete. Proposal evaluations must be based solely on the criteria set forth in the RFP. The non-price proposal evaluator(s) must examine each proposal to determine whether it meets all of the submission requirements and quality requirements specified in the RFP. Any proposal that fails to comply with the submission requirements or fails to meet any of your quality requirements for responsiveness and responsibility must be eliminated from the competition.

Evaluate proposals efficiently. If you determine that a proposal is nonresponsive or a proposer is not responsible, you should eliminate that proposal from further consideration. You do not need to take the extra time to evaluate these proposals according to your other criteria because they are not eligible for award of the contract.

In determining the responsiveness of a proposal, you must waive minor informalities or allow the proposer to correct them.[76] According to Chapter 30B, minor informalities are "minor deviations, insignificant mistakes, and matters of form rather than substance of the [proposal] ... which can be waived or corrected without prejudice to other offerors, potential offerors, or the governmental body."[77]

You may not "shortlist" proposals. You are using proposals instead of bids because you determined that it is in the best interest of your jurisdiction to compare proposals based on more than price. You must fully evaluate all responsive and responsible proposals that meet your quality requirements and assign each one an overall rating.

A proposal may be withdrawn after it has been opened only if a mistake is clearly evident on the face of the document, but the intended correct answer is not evident.[78] You must correct a proposal if a mistake and the intended offer are clearly evident on the face of the proposal document. In such a case, you must make the correction and notify the proposer in writing. The proposer must not be permitted to withdraw its proposal.[79] A proposer may not impose any conditions on a proposal, or change the price or any other provision of a proposal, in a manner prejudicial to the interests of your local jurisdiction or fair competition.[80]

Proposal evaluations must be in writing. First, evaluators must specify in writing a rating of "highly advantageous," "advantageous," "not advantageous," or "unacceptable" corresponding to each comparative evaluation criterion set forth in the RFP. We recommend that you require all evaluators to prepare their own ratings for each comparative evaluation criterion. However, you may require the evaluators to reach a consensus as a group on a rating for each comparative evaluation criterion. Whichever method you choose, the evaluators must also state in writing the reasons for each rating.[81]

Next, the evaluators must specify in writing an overall composite rating to each proposal and the reasons for the rating. Taking the ratings for each comparative evaluation criterion into consideration, the

[76] M.G.L. c. 30B, § 6(f).

[77] M.G.L. c. 30B, § 2.

[78] M.G.L. c. 30B, § 6(f).

[79] M.G.L. c. 30B, § 6(f).

[80] M.G.L. c. 30B, § 6(f).

[81] M.G.L. c. 30B, § 6(e)(1).

evaluators must assign each proposal a composite rating and state in writing their reasons for the rating.[82] Of course, each composite rating must rationally reflect the underlying ratings for each criterion. For example, a proposal receiving "advantageous" ratings for all comparative criteria likely would not warrant a "highly advantageous" composite rating. Keep in mind that if you are following the Office's recommended practice of having evaluators prepare individual ratings for each proposal, all evaluators should prepare their own composite ratings. We recommend providing evaluators with a uniform evaluation sheet to assist in applying the comparative criteria to each proposal that has met the submission and quality requirements set forth in your RFP. A sample RFP evaluation form is included in Appendix B.

The evaluators' written explanation of each rating is the place to provide further information on the proposal characteristics to help guide the CPO in the final selection. Is the proposal vastly superior to all others for this criterion and, therefore, worth a substantial cost premium? What attributes of a proposal makes it warrant a "highly advantageous" composite rating? How does it compare to other "highly advantageous" proposals? For example, if a "highly advantageous" proposal is only marginally better than those rated "advantageous," such information should be communicated on the evaluation sheet to the decision-maker (*i.e.*, the CPO or person with authority delegated by the CPO). The more qualitative information provided in the written explanations accompanying the ratings, the better equipped the decision-maker will be to weigh those ratings against the proposal prices to identify the most advantageous proposal.

The evaluators' ratings may not be conditioned on negotiating changes to the proposal with one exception; the exception applies if you have required proposers to submit a plan for providing the supplies or services.[83] An example of the use of a plan for providing the supplies and services is provided on the next page.

Step 9: Evaluate price proposals

The CPO or person with authority delegated by the CPO will open and evaluate the price proposals following the method specified in the RFP to determine the best price. The price evaluation can be performed while non-price proposals are being evaluated as long as the prices are not disclosed to the

[82] M.G.L. c. 30B, § 6(e)(2).

[83] M.G.L. c. 30B, § 6(e)(3).

individuals responsible for evaluating the non-price proposals. Remember, however, that if you are both the CPO and an evaluator, you may not open the price proposals until after the evaluation of the technical proposals is completed.

As with technical proposals, you must waive minor informalities[84] or allow the proposer to correct them. For example, the omission of a unit price figure is a minor deviation that must be waived if the intended figure is readily ascertainable from other figures in the proposal.

You must correct a price proposal if a mistake and the intended offer are clearly evident on the face of the proposal document. In such a case, you must make the correction and notify the proposer in writing. The proposer must not be permitted to withdraw its proposal.

[84] M.G.L. c. 30B, § 6(c). Furthermore, M.G.L. c. 30B, § 2, states that minor informalities are "minor deviations, insignificant mistakes, and matters of form rather than substance of the … proposal … which can be waived or corrected without prejudice to other offerors, potential offerors, or the governmental body."

Evaluating a Proposer's Plan for Providing the Supplies or Services

This plan is a detailed plan describing how the proposer will provide the needed supplies or services. For most contracts, you do not need this level of detail and you should not require proposers to submit a plan. In general, it makes more sense to spell out the performance measures or the deliverables required and to evaluate proposers based on their qualifications and track records, rather than to attempt to evaluate exactly how they propose to get the job done.

For an unusually complex contract, however, you may want to evaluate the staffing plan, the methodology, or other specific information about how each proposer intends to meet the contract requirements; for such a contract you may require a plan for providing the services. In evaluating a plan for providing services, you should specify the rating for each criterion on the basis of the plan presented in the proposal; you may also specify what the improved rating would be if specific changes are negotiated.

Example: You have issued an RFP for a contract to manage and operate a municipal golf course. The RFP requires each proposer to submit a plan, which consists of an organizational chart with the name, position, and resume of each individual who will be employed full time under the contract with overall responsibility in each of the following areas: financial management, golf pro services and groundskeeping services.

The RFP specifies the rating scheme with respect to each of the key positions. The rating scheme for the individual identified as having overall responsibility for financial management is as follows:

Criterion: Qualifications and experience in financial management.

> *Advantageous:* At least a bachelor's degree in accounting and four or more years in a position with overall financial management responsibility for an operation at least comparable in size and complexity to the golf course.
>
> *Not advantageous:* At least an associate's degree in accounting and at least one year but less than four years in a position with overall financial management responsibility for an operation at least comparable in size and complexity to the golf course.
>
> *Unacceptable:* Less than one year in a position with overall financial management responsibility for an operation at least comparable in size and complexity to the golf course or less than an associate's degree in accounting.

The evaluators review a proposal that is rated advantageous in all other categories but has proposed a financial manager with only three years' experience. The evaluators may recommend negotiating a change in staffing to replace the individual slated for this position with a more experienced financial manager. In this case, the proposal as submitted would earn a "not advantageous" rating on this criterion, but the evaluators would specify that the rating will change to "advantageous" if the proposer agrees to place an individual with four or more years' experience and at least a bachelor's degree in accounting.

Step 10: Identify the most advantageous proposal

The CPO, or person with authority delegated by the CPO, identifies the most advantageous proposal, taking into consideration the proposal evaluations and the proposal prices. This selection decision may

be easy when, for example, the lowest-priced proposal received the highest overall ratings, or all proposals received the same rating and the differences are so insignificant that you decide to go with the lowest-priced.

In other cases, you will have to carefully consider whether it is worthwhile for your local jurisdiction to spend more money to contract with the higher-rated proposer. For example, if one proposal is rated "highly advantageous" and has a higher price than the lowest-priced "advantageous" proposal, you need to determine which proposal best meets the needs of your local jurisdiction. The extra benefits afforded by the "highly advantageous" proposal may not be worth the cost premium you would incur by selecting that proposal. Then again, it may be. There is no mechanical process for making the tradeoff.

Step 11: Negotiate changes (if any) to the plan for providing the supplies or services

If you required a plan, you may condition the contract award on the successful negotiation of any revisions to the proposer's plan that the evaluator(s) identified during the evaluation phase of the process. The scope of these negotiations is limited to the plan. That is, the RFP specifications, scope of services and contract terms are non-negotiable.

If the RFP did not require proposers to submit a plan, or if the evaluators identified no recommended changes in the plan, there is nothing to negotiate.

Step 12: Award the contract

You should give notice of the award decision to the selected proposer within the time for acceptance that you specified in the RFP. The time for acceptance may be extended by mutual agreement between the parties. If you do not award the contract to the responsive and responsible proposer offering the lowest-priced proposal, you must prepare a written explanation of your reasons and detail your basis for determining that the quality of supplies or services under the contract will not exceed your needs.[85] For example:

> The lowest-priced proposal received a composite rating of "not advantageous" because the sample training materials were poorly written and lacked specific step-by-step instructions to guide those being trained. I have determined that the cost savings offered by this proposal do not compensate for the lower quality of this proposer's training materials in comparison with the training materials provided by other proposers. Therefore, I am awarding this contract to the next lowest-priced proposal, which received

[85] M.G.L. c. 30B, § 6(h).

a composite rating of "advantageous" and will provide us with more effective training materials.

Sometimes a contract will require payment of a monetary sum to your local jurisdiction. For example, you might award an auditorium management contract under which the management firm pays you a monthly fee and retains the auditorium revenues. If you award the contract to anyone other than the proposer submitting the highest price, you must explain in writing the reasons for the award.

If you did not include in the contract a revision recommended by the evaluator(s) to the vendor's plan, you must explain in writing the reasons for omitting the revision from the plan, as the plan will be incorporated by reference into the contract.

Canceling the RFP or rejecting all proposals. You are not required to award a contract. You may cancel the RFP at any time until the proposals are opened, or you may reject all proposals after they are opened, if you determine that canceling the RFP or rejecting all proposals is in the best interest of your jurisdiction.[86] For example, you might determine that rejecting all proposals is in the best interest of your jurisdiction if you discover your purchase description was inadequate or inaccurate. Of course, you may not reject all proposals simply because a favored proposer did not submit the most advantageous proposal. You must state in writing the reason for any cancellation or rejection.

Step 13: Execute the contract

After you notify the successful proposer of the award, execute a written contract containing all the terms and conditions stated in the RFP. You may not change the terms and conditions of the contract.

If you are unsure about who has the appropriate authority to sign the contract, consult with your legal counsel.

If the successful proposer refuses to execute the contract, you may award the contract to the proposer you determine to have offered the next most advantageous proposal, provided that the award is still within the time for acceptance specified in your RFP or that the time period has been extended by mutual agreement of the parties. Discuss with your legal counsel what action should be taken against the recalcitrant proposer. If the proposer posted a bid bond, consider attempting to collect against the bond.

[86] M.G.L. c. 30B, § 9.

Step 14: Retain records

You must maintain a file of all written documents required by Chapter 30B for six years from the date of final payment under a contract. These documents include the following:

1. the written rationale for the decision to use an RFP;
2. the RFP, including any amendments;
3. the justification for using proprietary specifications (if any);[87]
4. the public notice; including a copy of the newspaper advertisement and your posting on the COMMBUYS system;
5. the *Goods and Services Bulletin* notice if the contract value is more than $100,000;
6. the register of proposals;
7. all proposals received, including the non-collusion forms;
8. any proposal corrections, modifications, withdrawals, as well as any notices of proposal corrections, modifications or withdrawals;
9. any notices of proposal rejections or procurement cancellation;
10. the individual and composite proposal ratings and written explanations;
11. the written rationale for the contract award, if the contract was not awarded to the proposer submitting the lowest price;
12. any written rationale for omitting from the contract any of the evaluators' recommended revisions to the plan for providing the supplies or services;
13. the notice of the contract award; and
14. the executed contract.

The contents of the proposal file must be open to public inspection.[88]

[87] Chapter II discusses the Chapter 30B rules for using proprietary specifications.

[88] M.G.L. c. 30B, § 3.

VI. SUPPLIES OR SERVICES CONTRACTS: SPECIAL CASES AND CONTRACT INCREASES

This chapter summarizes three unique and limited methods for awarding supply or service contracts under Chapter 30B: sole-source procurements; emergency procurements; and contract options for renewal, extension or purchase. This chapter also provides the rules for increasing the quantity of supplies or services specified in a contract.

Sole-Source Procurements

A "sole-source" procurement is a purchase of supplies or services without advertising or competition. Chapter 30B places strict limitations on sole-source procurements.

You can accept a single written quote, bid or proposal submitted in response to a proper solicitation of written quotes, bids or proposals. Receiving one response is not the same as making a sole-source procurement.

Contracts of $50,000 or less

You may make a sole-source procurement of any supply or service that is estimated to cost not more than $50,000[89] when a reasonable investigation shows that there is only one practicable source for the required supply or service. Your determination that only one practicable source exists must be in writing.

Contracts of more than $50,000

You may *not* make a sole-source procurement of more than $50,000[90] *except* for the following:

1. *Software maintenance, library books and educational materials:* You may make noncompetitive purchases in any amount for software maintenance; library books; school textbooks; or educational programs, courses or curricula in any media, including educational software, newspapers, serials, periodicals and audiovisual materials, if you determine in writing, after reasonable investigation, that there is only one practicable source for the items.[91]

[89] Not more than $100,000 for municipal or regional school districts only, as amended by Chapter 198 of the Acts of 2022.

[90] $100,000 for municipal or regional school districts only, as amended by Chapter 198 of the Acts of 2022.

[91] M.G.L. c. 30B, § 7(a).

2. *Utilities:* You may make noncompetitive purchases of water, gas, electricity,[92] sewer and telephone services in any amount from a regulated industry company if you determine in writing that there is only one practicable source for the services.[93]

Recordkeeping

You must maintain a written record of every sole-source procurement, specifying the contractor's name, the amount and type of contract awarded, a listing of the supplies or services procured, and the basis for your determination that there was only one practicable source for the purchase.

Emergency Procurements

If the time required to comply fully with Chapter 30B would endanger the health or safety of people or their property due to an unforeseen emergency, you may procure the needed item or service without complying with all of Chapter 30B's requirements. Even under emergency circumstances, however, you must comply with Chapter 30B to the extent possible. For example, if you do not have time to advertise for two weeks, you can shorten the advertising period; or, if you have no time to advertise, you can solicit quotes. You may procure only those supplies or services necessary to meet the emergency.[94]

You must maintain a record of each emergency procurement, documenting the basis for determining that an emergency exists, the name of the vendor, the amount and type of contract, and a list of the supplies or services purchased under each contract. We recommend that you also include in your record all procedures followed to elicit competition. Your record of an emergency procurement must be submitted as soon as possible to the *Goods and Services Bulletin* for publication.[95]

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[92] Contracts for energy or energy-related services are exempt from Chapter 30B; however, for the contract to be exempt, within 15 days of contract execution, a governmental body must submit a copy of the energy or energy-related contract and a report of the process used to execute the contract to the Department of Public Utilities, the Department of Energy Resources, and the Office of the Inspector General. M.G.L. c. 30B, § 1(b)(33). Appendix B of this manual provides a form entitled "Contracts for Energy and Energy-Related Services Reporting Requirements," which the Office developed for use in complying with this requirement.

[93] M.G.L. c. 30B, § 7(c).

[94] M.G.L. c. 30B, § 8.

[95] Appendix B provides the website address for the online submission form for this notice.

A local jurisdiction may not artificially create an emergency by postponing normal purchases.[96] If you had reason to know in advance that you needed the supplies or services and you failed to act until the need became critical, you will have difficulty justifying an emergency procurement. Invoking the emergency procedures in the absence of a genuine emergency could invalidate your contract.

Exercising Options for Renewal, Extension or Purchase

Chapter 30B places strict limits on contract renewal, extension and purchase options.[97] You may exercise a renewal, extension or purchase option only if (1) the option terms were included in the original solicitation; (2) they were incorporated into the executed contract; and (3) the contract provides your local jurisdiction with the sole discretion to exercise the option.

Before exercising any renewal, extension or purchase option, you must determine whether it is more advantageous to your local jurisdiction to exercise the option or to undertake a new procurement.[98] To make this determination, you must conduct a reasonable investigation of the costs and benefits and document your findings in writing. A reasonable investigation must establish that the prices you will pay after exercising the option or renewing the contract are reasonable under current market conditions. If you choose to do so, you may conduct a formal, advertised competition for the term of the renewal or extension. Then, if you receive no better bid or proposal, you can exercise the contract option.

The price of the renewal or extension option may not exceed the option price stated in the contract. However, it is commonplace for vendors to offer reduced prices for contract options in order to remain competitive under current market conditions. If the vendor agrees to reduce the option price below the price stated in the contract, you may agree in writing to the price reduction.[99] In addition, you may not exercise a renewal or extension option to procure supplies or services that were not procured in the original contract.

A "self-renewing" agreement for supplies and services, which is extended automatically from year to year without the affirmative approval of your local jurisdiction, violates Chapter 30B. Pursuant to Chapter 30B,

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[96] See *Safford v. City of Lowell*, 255 Mass. 220 (1926).

[97] M.G.L. c. 30B, § 12.

[98] M.G.L. c. 30B, § 12(e).

[99] M.G.L. c. 30B, § 13(5).

the governmental body shall retain sole discretion in exercising an option to renew or extend and no exercise of an option shall be subject to agreement or acceptance by the vendor.[100]

Contract Increases

During the course of a contract term, you may find that you need to increase the quantity of supplies or services specified in your contract. For example, you may have contracted for 12 computers and later need to purchase an additional computer.

Chapter 30B permits you to increase the quantity of supplies or services specified in your contract, provided that the following four conditions are met:

1. the unit prices remain the same or less;
2. the procurement officer documents in writing that an increase is necessary to fulfill the actual needs of the local jurisdiction and is more economical and practical than awarding another contract;
3. the parties agree to the increase in writing; and
4. the cost of the increase does not exceed 25 percent of the contract price.

You may not amend a contract in excess of 25 percent of the contract price. If you need additional supplies or services, in excess of 25 percent of the contract price, you must conduct a new procurement.

If you have procured multiple items (for example, desks, chairs and file cabinets) under a single office equipment contract, and you need to purchase additional desks, your purchase limit is 25 percent of the total contract price for all of the items purchased, not 25 percent of the total price of the desks purchased under the contract.

Contracts for the purchase of gasoline, special fuel, fuel oil, road salt and other ice and snow control supplies are not subject to the 25 percent limitation. However, you must meet the first three conditions listed above before purchasing additional supplies under the existing contract. [101]

[100] M.G.L. c. 30B, § 12(c)(5).

[101] M.G.L. c. 30B, § 13(4).

VII. DISPOSAL OF SURPLUS SUPPLIES

Chapter 30B sets out procedures to ensure that you obtain good value when you dispose of supplies that your local jurisdiction no longer needs.[102] These rules apply to all tangible surplus supplies with a resale or salvage value, including motor vehicles, machinery, computer equipment, furniture, and other materials and supplies. The term "supplies" does not include real property.

Local jurisdictions must have written procedures for surplus supplies valued at less than $10,000. You may dispose of a surplus supply with a resale or salvage value of less than $10,000 using any method authorized by the written procedures established by your local jurisdiction. Your local jurisdiction must adopt written procedures before disposing of surplus supplies. These written procedures might include a process for posting the sale of surplus supplies on your local jurisdiction's website, advertising them in the local newspaper or seeking informal quotes for the supplies. Alternatively, your procedures might allow your local jurisdiction to hold a yard sale or a silent auction to sell the items

Develop and distribute to all departments a set of the approved procedures related to the disposal of surplus supplies.

You can swap or sell surplus supplies within your own local jurisdiction, with other local governments, with the Commonwealth or other state governments, or with the federal government. These transactions are not subject to the surplus supply disposal procedures of Chapter 30B because they are intragovernmental agreements or intergovernmental agreements.

Sale by bid or auction for surplus supplies valued at $10,000 or more. For supplies with a resale or salvage value of $10,000 or more, you can use either of two methods of sale: sealed bids or public auction.[103] As discussed in more detail in this chapter, you also may trade in surplus supplies when making new purchases.

The following steps apply to the sale of surplus supplies by either soliciting bids or holding a public auction:

[102] M.G.L. c. 30B, § 15.

[103] Police departments must auction unclaimed property pursuant to M.G.L. c. 135, § 8.

Step 1: Prepare a notice of sale

The notice must include the following information:

- a description of the surplus supplies offered (you may refer to other documents that provide detailed information if you specify where bidders may obtain those documents);
- when, where and how the surplus supplies can be inspected by the public prior to the bid opening or auction;
- all terms and conditions of the sale, such as any deposit required to participate in the bid or auction, any minimum bid amount, the form of payment required, the rules governing the bid or auction, and the time by which the supplies must be removed after the purchase;
- the place and deadline for submitting bids and the place, date and time for the bid opening or auction; and
- a statement that your local jurisdiction retains the right to reject any and all bids.

You can advertise and bid multiple surplus supplies together. This will make sense when you are disposing of supplies that fall into the same category, such as office equipment. You have the option of accepting a lump-sum offer on a package of supplies or accepting the highest bid on each individual item, whichever will yield the best price. For example, if you receive separate offers on three items and a lump-sum offer that is higher than the sum of the highest bid on each item, then you can accept the lump-sum offer.

Every bid must be accompanied by a signed non-collusion form.[104] It is a good idea to note this requirement in your notice of sale. A sample non-collusion form is included in Appendix B.

Step 2: Establish a rule for award.

You should establish a rule for award for the bid or auction process. You may accept the highest bid from a responsive bidder. However, you also have the right to reject all bids and issue a new notice of sale. You may also reject all bids and negotiate the sale of the surplus supplies, as long as the negotiated sale price is higher than the highest bid price. Thus, the rule for award for disposal of a surplus vehicle might state:

> *The surplus supplies will be awarded to the responsive bidder offering the highest price for the vehicle described in the invitation for bids. The awarding authority reserves the right to reject any and all bids and to dispose of the vehicle through a negotiated sale, provided that the negotiated sale price is higher than the highest bid received from a responsive bidder.*

[104] M.G.L. c. 30B, § 10.

Step 3: Advertise the sale

You must advertise the sale of all supplies valued at $10,000 or more at least two weeks before the bid opening or auction. You must advertise by both posting the notice of sale in a conspicuous place in or near your offices and publishing the notice in a newspaper of general circulation in your local jurisdiction and on the COMMBUYS system administered by the Commonwealth's Operational Services Division. You may, of course, publish the notice in more than one newspaper, in newspapers outside your area, and more than once. You may publish the notice elsewhere, including on a website. After the notice has been posted and published, you may also send a copy of the notice to anyone who might be interested.

If the supplies you are selling have an estimated value of more than $100,000, you must also publish a notice in the *Goods and Services Bulletin* published by the Secretary of the Commonwealth.[105]

Step 4: Open the bids or hold the public auction

If you have solicited sealed bids, open the bids in public. You must reject any bid that is not responsive: *i.e.*, one that does not conform to the terms and conditions set forth in your notice of sale or bid documents.

If you hold an auction, it must be open to the public. You may want to confer with or use the services of a professional auctioneer. (A service contract with an auctioneer is subject to Chapter 30B.) The auction must, of course, be conducted in conformity with the rules spelled out in the notice of sale.

Online auctions. It is the Office's opinion that you may dispose of surplus supplies using an online auction service that is open to the public as long as the disposal process complies with all of the advertising requirements listed above. Your advertisement should reference the auction website and state the opening and closing dates of the auction as well as any keyword or auction number that could be used to locate the item on the website. You should also clearly notify potential bidders of the requirement to submit a signed non-collusion form.[106]

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[105] Appendix B provides the website address for the online submission form for this notice.

[106] It is the Office's opinion that the requirement for a signed non-collusion form would be met if the jurisdiction provides, on the online website item description, the non-collusion language and the following statement: "Upon winning the auction, the winning bidder must submit a signed non-collusion form to the jurisdiction prior to the receipt of the supply (or supplies)." Appendix B provides the non-collusion form language required by Chapter 30B.

You may also want to use the following language in your notice: "Inspection of the supplies may be done either (1) at the web address above or (2) in person by visiting the [awarding authority's office] on [specific date and time]." You should provide sufficient information and photographs on the website to allow for inspection.

It is important to note that some online auction services charge a fee for the auction. These services must be procured in accordance with Chapter 30B. Thus, if the estimated fee will be at least $10,000, but not more than $50,000, you will need to solicit three written price quotes for the auction services. If the fee will be more than $50,000, you must issue an IFB or RFP. In most instances, auction fees are between one percent and two percent of the final sale price. If you estimate in advance that your final sale price will be $500,000, and the auction fee is two percent of that amount, then the estimated auction fee will be $10,000, meeting the Chapter 30B threshold for soliciting three written quotes.

Step 5: Record the sale or execute a sales agreement

If you believe bids are too low, you can reject all bids and readvertise or negotiate the sale. If you decide to negotiate a sale, the sale price must be higher than the highest bid price you received.

The surplus supply or supplies must be sold to the highest responsive bidder in conformity with all the terms and conditions spelled out in the notice of sale. As previously discussed, however, you may reject all bids. If the successful bidder takes possession of the supply or supplies on the spot, you should record the transaction, and the purchaser should sign a written acknowledgement of receipt of the supply or supplies. If the items are to be picked up and paid for later, you should execute a written sales agreement with the successful bidder as soon as you accept the bid.[107] The agreement should include the description of the supply or supplies sold, the price and all other conditions of the sale.

Trade-Ins

Surplus supplies can be traded in as part of a Chapter 30B bid or proposal process. However, Chapter 30B does not permit trade-ins as part of a written quote process unless the value of the supplies is less than $10,000 and your local jurisdiction's written procedures (discussed earlier in this chapter) specify that trade-ins are permissible. Your solicitation should clearly describe the items to be traded in as part of the

[107] M.G.L. c. 30B, § 17(a), provides that all Chapter 30B contracts in the amount of $10,000 or more must be in writing.

procurement. Keep in mind that you may get a better price for surplus supplies from someone other than the offerors responding to your solicitation. It will often be more cost-effective to separate the transactions by selling the surplus supplies through a bid or an auction before or after you have purchased the new supplies.

Charitable Donations

Some local jurisdictions may consider donating surplus supplies to charitable organizations at less than fair market value under Section 15(g) of Chapter 30B. Section 15(g) of Chapter 30B allows local jurisdictions to dispose of tangible supplies that are no longer useful, but have a resale or salvage value, to a charitable organization that received a tax exemption from the United States by reason of its charitable nature. In considering whether to donate to any 501(c)(3) non-profit pursuant to Section 15 of Chapter 30B, this Office recommends that you contact your legal counsel to ensure that your donation does not violate the Anti-Aid Amendment to the Massachusetts Constitution[108] or any other applicable law. Also, you must verify the charitable status of an organization with your legal counsel, the Internal Revenue Service or the Public Charities Division of the Massachusetts Office of the Attorney General.

[108] Art.18, §§ 46 & 103.

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VIII. REAL PROPERTY TRANSACTIONS

Overview

Chapter 30B applies to the purchase, sale, lease or rental of real property (including interests in real property). Chapter 30B establishes an advertised proposal process that you must follow in **acquiring** real property by purchase or rental with a **cost** greater than $35,000, and in **disposing** of real property by sale or rental with a **value** greater than $35,000.[109] Chapter 30B has additional requirements for the disposition of real property, regardless of its value.

Real property is defined as property consisting of land, buildings, crops, or other resources still attached to or within the land or improvements or fixtures permanently attached to the land or a structure on it. Interests in real property include leases, mortgages, preservation restrictions, easements and profits à prendre (such as the right to remove gravel or ledge from land).

The following real property transactions are *not* subject to Chapter 30B, either because they are specifically exempted or because the transactions are governed by other statutes:

M.G.L. c. 7C, § 38, requires that a disclosure of beneficial interests be filed for each real property transaction regardless of the cost or value of the acquisition or disposition. The person acquiring property from, or selling or leasing property to, a public agency must file the disclosure. No agreement, renewal or extension is valid until the disclosure is filed with the Division of Capital Asset Management and Maintenance. Also, a new disclosure must be filed within 30 days of a change in beneficial interests during the term of an agreement.

Profits à prendre do not include the right to enter property to remove standing wood or timber. Under Massachusetts case law, transactions involving the right to remove standing wood or timber are not considered to be interests in real property subject to Section 16 of Chapter 30B. Such transactions are subject to the rules governing the sale of surplus supplies contained in Section 15 of Chapter 30B.

[109] M.G.L. c. 30B, § 16.

- eminent domain takings;[110]
- rental of residential property to qualified tenants by a housing authority or a community development authority;[111]
- a contract to sell, lease or acquire residential, institutional, industrial or commercial real property by a public or quasi-public economic development agency or urban renewal agency engaged in the development and disposition of said real property in accordance with a plan approved by the appropriate authorizing authority;[112]
- a redemption or auction of tax title property authorized under the provisions of M.G.L. c. 60[113]
- an acquisition from the Commonwealth;[114]
- an agreement between agencies, boards, commissions, authorities, departments or public instrumentalities of one city or town;[115]

Licenses or permits to use real property are not subject to Chapter 30B. A license is a revocable permit to enter the property of another for a particular activity. The use of an auditorium for a performance and the use of ball fields for baseball games are typical examples of licenses to use property: the use is temporary and the user does not actually control the property. Such licenses do not convey an interest in the property. However, any transaction that does involve the transfer of an interest is not exempted simply by incorrectly labeling it a license or permit. For example, agreements to install cellular phone towers on public land are sometimes labeled licenses: however, these agreements are leases that must be awarded following the competitive procedures summarized in this chapter.

- the exercise of an option to purchase forest, agriculture or recreation land for conservation purposes under M.G.L. c. 61, c. 61A, or c. 61B;
- an acquisition of real property or an interest therein by a community preservation committee under M.G.L. c. 44B, § 5(f); and
- licenses or permits for limited use of real property.

In addition, it is our Office's opinion that Chapter 30B does not apply a private party's exercise of a unilateral option, granted prior to the enactment of Chapter 30B, to renew or extend a lease for real property if the right to exercise that option, and all the terms and conditions that govern the option, were

[110] See M.G.L. c. 79 for eminent domain procedures.

[111] M.G.L. c. 30B, § 16(h).

[112] M.G.L. c. 30B, § 1(b)(25).

[113] However, any sale of tax title property, including sale after foreclosure, other than by an auction pursuant to M.G.L. c. 60 is subject to Chapter 30B. Procedures for tax title takings are set forth in M.G.L. c. 60, §§ 37-60. Procedures for tax title sale after foreclosure are set forth in M.G.L. c. 60, § 77B.

[114] M.G.L. c. 30B, § 1(b)(4).

[115] M.G.L. c. 30B, § 1(b)(7).

spelled out in the original lease. A typical example would be a lease, executed by your local jurisdiction prior to the effective date of Chapter 30B in May 1990, that gives the lessee one or more unilateral option(s) to extend or renew the lease. However, Chapter 30B would apply to any change to the lease outside of the original terms.

Chapter 30B allows you to shorten the period for advertising for proposals or dispense with advertising altogether in only two special circumstances: (1) in an emergency, if you determine that the time required would endanger the health or safety of people or property; or (2) for an acquisition, if you determine that advertising for proposals would not benefit your local jurisdiction because of the unique quality or location of the property you need. Additional information on these circumstances is presented at the end of this chapter's section on real property acquisitions.

Under Chapter 30B you must conduct an open and fair competition that places all proposers on common footing, solicit information that will allow manageable and meaningful comparisons of offers and base your decisions solely on the information you solicited.

Chapter 30B gives you flexibility in fashioning a proposal solicitation process (solicitation) for real property transactions. You may structure your solicitation to resemble a bid, through which you will select the proposer that meets your quality requirements and offers the best price, or to resemble an RFP for supplies or services, through which you will also consider the relative merits of the proposals submitted. It is important to note that even though Section 16 of Chapter 30B requires you to solicit proposals, you do not solicit and evaluate these proposals using the RFP process for supplies and services discussed in Chapter V.[116]

Chapter 30B places no restrictions on who within your jurisdiction may undertake or approve a real property transaction. Consult with your legal counsel if you have questions about who is authorized by your local charter, bylaws, ordinances, or other local rules to conduct real property transactions.

The following sections of this chapter summarize the required procedures and recommended practices for acquiring and disposing of real property under Chapter 30B.[117] Although the requirements of Chapter 30B in this area are flexible, they do require adherence to the general principles of open, transparent and fair competition.

[116] M.G.L. c. 30B, § 6.

[117] M.G.L. c. 30B, § 16.

Real Property Acquisitions

You must solicit proposals to acquire real property by lease or purchase at a *cost* of more than $35,000. The *value* of the property is irrelevant to determining whether Chapter 30B applies. For example, you may lease a valuable piece of property for ten years for $1.00 per year without issuing a solicitation because the cost to your jurisdiction is less than $35,000, even if the value of the property is higher.

If you are leasing space, you determine the value of the acquisition by calculating the lease price over the entire contract term. For example, if a three-year lease with a monthly rent of $1,000 has an entire contract cost of $36,000, it must be procured by an advertised solicitation.

Step 1: Determine what you need to acquire

As a practical matter, before you acquire any property you must determine what you need. The initial cut at determining your needs may be simple: for example, you need land for a public works yard, a parking lot or office space. However, you should consider the details. For example:

- Do you want to purchase the property or lease it?
- How much land or office space is needed? Are you interested in acquiring a set amount, or are you willing to consider offers for more than your minimum needs?
- What level of finish do you want for office space?
- What are your location requirements? Is any area in your local jurisdiction acceptable?
- How much parking is needed? Is there access to public transportation?
- Is the space accessible to persons with disabilities?
- Are there any environmental issues relevant to the site?
- Do you have any special utility requirements?

Once you have identified what you need, check to see whether your local government already owns a suitable property. If you have a real property inventory, consult it. Also, consult with department heads and other officials concerning the current and future availability of property that meets your needs.

Determining what you need is not the same as identifying the particular parcel or building you want. Although your research may identify one parcel or building that is suitable, you will not know before advertising whether you have found the only property that meets your needs. If you suspect there may only be one suitable parcel or building, consider whether your definition of your needs is unnecessarily restrictive.

You may not use Chapter 30B to contract for building construction services. A contract to lease or purchase a building that will be constructed to your specifications may be a public building contract subject to the designer selection and construction bid laws. Chapter IX briefly reviews information about these laws. If you are unsure about whether or not your lease or purchase is subject to these laws, we recommend that you seek guidance from the Office of the Attorney General, which enforces the designer selection and construction bid laws.

Step 2: Develop the solicitation

Your solicitation provides property owners with the information necessary to prepare and submit a responsive proposal. Chapter 30B offers the flexibility of drafting your real property solicitation as an IFB that you will use to select the proposer who meets your quality requirements and offers the lowest price. Your solicitation may also be structured as a traditional RFP, similar to the process required by Chapter 30B for procuring supplies and services, which will allow you to compare the relative merits of the proposals you receive in addition to price. Regardless of the structure you choose, the major components of a solicitation are as follows:

- description of the property and interest required;
- evaluation criteria;
- rule for award;
- proposal submission requirements; and
- contract terms and conditions.

Property description. Your solicitation should describe what type of property you need and whether you want to acquire the property by purchase or lease. You should, at a minimum, identify the following:

- the type and amount of property you need (for example, “20,000 square feet of land”);
- the purpose for which the property is to be used (for example, “a public works yard”);
- any special requirements (for example, “the property may not be adjacent to wetlands or over an aquifer”);
- the method of acquisition, such as a lease or purchase; and
- the planned occupancy date and, if you plan to lease the property, the lease term.

You may append other documents (for example, a study of your need for a public works yard) or describe them and indicate how they may be obtained.

Evaluation criteria. Indicate how you will select a proposal from among the competing proposals. The process is similar to developing evaluation criteria for supplies or services (described in Chapters 4 and 5). You should establish:

- criteria to evaluate responsiveness (whether the proposer agrees to provide property that meets your specifications and whether the proposal contains all the required documents and forms, properly completed) and responsibility (whether the proposer has the capability, reliability and integrity to perform under the contract);
- comparative criteria, if you decide that you want to look at the relative merits of the property proposals rather than selecting the responsive and responsible proposal that offers the best price; and
- a method to evaluate prices.

You may establish any rating scheme that preserves open and fair competition, keeps proposers on a common footing, and allows manageable and meaningful comparisons. You have the option to use the same rating categories that are used in Chapter 30B RFPs for supplies and services: highly advantageous, advantageous, not advantageous and unacceptable. However, you are not required to do so.

The box on the next page illustrates two alternate methods of using evaluation criteria in real property acquisitions. The first is, in effect, a bid process through which you will acquire property by selecting the lowest-priced proposal meeting your defined requirements. The second is a proposal process through which you may select a higher-priced proposal because of advantages the higher-priced property offers.

Real Property Acquisitions: Examples of Evaluation Criteria

Example 1: Parking lot. Your local jurisdiction has a shortage of public parking in the central business district. You have decided to purchase land to accommodate between 100 and 150 standard-sized parking spaces. You have obtained an engineering estimate for the cost of paving, painting and installing meters. Your criteria for a suitable site are: minimum square footage, suitable grade and drainage, and located within a one-half mile radius of a particular governmental office.

All of your criteria are stated as quality requirements, so you can evaluate all of the proposals that meet your criteria on the basis of price per parking space. If you want to consider proposals for paved and unpaved sites, you will add the cost of paving to any proposal offering an unpaved site when you compare prices.

This solicitation process resembles a bidding process in which you will select the lowest-priced responsive and responsible proposal. This method of evaluating proposals is the simplest and most straightforward. You must be sure, however, to include all of your quality requirements in your solicitation.

Example 2: Office space. You need to acquire office space and have decided that a five-year lease would best meet your immediate needs and preserve your long-term options. You prepare a solicitation that incorporates all of your requirements for space needs, accessibility, improvements and amenities. You establish the following quality requirements for location*:*

- within your local jurisdiction in an area zoned for commercial use; and
- within four blocks of public transportation.

You also establish comparative criteria to identify the features that you prefer but do not require. You decide to give a higher rating to any proposal that meets one or both of the following comparative criteria:

- within one-half mile of town hall; and
- within two blocks of public transportation.

Using this evaluation scheme, you can select the lowest-priced proposal that meets only your quality requirements, or choose a higher-priced proposal that meets your quality requirements and offers a preferred location, if you determine that the added convenience justifies the price.

You should also require a proposal deposit to ensure that only serious proposers participate; a successful proposer that fails to close on the deal would forfeit the deposit.

Whatever process you use, you should inform proposers how you will determine the best price. For example, in a multi-year lease, will you accept proposals for level monthly payments over the term or will proposers be allowed to propose escalating rents for each year of the lease? If rent escalators may be proposed, you should state how you will calculate the present value of the rental payments and include the formula in your solicitation.

Similarly, if you plan to accept price proposals for a lease that includes utilities and for a lease that does not, you should include in the solicitation the method you will use to determine the value of the utilities. To simplify price comparisons in a lease acquisition, it is helpful to provide a standard price form for all proposers to complete.

You may solicit prices for two different lease terms if you state a rule for how you will decide which term to select. This can be useful if you want to compare, say, a five-year lease to a ten-year lease. Be careful to establish a clear decision rule up front and follow it to avoid the appearance of favoritism.

Rule for award. Your solicitation should contain a clear rule for award stating how the winning offer will be selected. For example, if you plan to select the lowest-priced offer of leased space meeting your evaluation criteria, your rule for award might be stated as follows:

> *The lowest-priced offer from a responsive and responsible proposer will be selected.*

If you plan to weigh offers from responsive and responsible proposers, your rule for award might be stated as follows:

> *The most advantageous offer from a responsive and responsible proposer, taking into consideration all evaluation criteria and price, will be selected.*

Submission requirements. Your solicitation should state the rules for proposal submission. Specify when (date and time) and where sealed proposals must be delivered, how proposal packages should be marked, and how proposers may correct, modify or withdraw proposals. State that the selected proposer will be required to submit a disclosure of beneficial interests to the Division of Capital Asset Management and Maintenance (DCAMM), as required by M.G.L. c. 7C, § 38. It is good practice to include any standard forms proposers must submit. You should also state the proposal opening date and time, as well as the contract award schedule.

Contract terms and conditions. Any terms and conditions you will require in the agreement must be specified in the solicitation and in the contract, including the terms of any renewal, extension or purchase options. For some leases, it may be in your local jurisdiction's interest to specify that any renewals will be exercisable at your local jurisdiction's sole discretion.

Price and non-price proposals need not be submitted separately. Unlike the Chapter 30B RFP requirements for supplies and services, the Chapter 30B requirements for real property transactions do not require separate submissions of price and non-price proposals. Moreover, real property proposals, including price proposals, are not confidential after they are opened.

It is important to note that Chapter 30B does not limit the length of real property contracts. (The Chapter 30B majority vote requirement for supply and service contracts exceeding three years[118] does not apply to Chapter 30B real property contracts.) However, there may be other statutory or local restrictions that apply to your real property contracts. For example, M.G.L. c. 40, § 3, limits the term of public building leases by towns to 30 years, and the term of leases of schoolhouses in use to 25 years. A Massachusetts Appeals Court decision affirmed a Superior Court ruling that held that an automatic renewal clause beyond the term violated M.G.L. c. 40, § 3.[119] Consult your legal counsel regarding restrictions that may apply to your local jurisdiction's real property transactions.

The box below contains information about contract terms and conditions for real property acquisitions.

Real Property Acquisitions: Contract Terms and Conditions

Purchases. If you are purchasing real property, have your attorney draft any required terms into the purchase and sale agreement. Include any mandatory purchase terms in the solicitation. Require a certification of tax compliance from the seller (M.G.L. c. 62C, § 49A) and a disclosure of beneficial interests (M.G.L. c. 7C, § 38).

Leases. If you are acquiring property by lease, spell out mandatory lease terms in the solicitation. A typical lease should:

- Name the parties to the lease and the responsible parties to receive any notices under the lease.
- Include the proposal chosen, including a detailed description of the leased property.
- Specify the duration of the lease, including any renewal, extension or other options. If the lease will include a renewal option, you must specify how the rent will be determined for the renewal period.
- Identify the payment terms, including when payments are due.
- Spell out all of the responsibilities and obligations of the parties for maintenance, cleaning, utilities, rubbish disposal, snow removal, liability and casualty insurance, etc.
- Specify that lease amendments must be in writing and signed by individuals authorized to contract on behalf of your local government.
- Specify what constitutes cause to terminate the lease, what notice must be provided prior to termination and what opportunity must be granted to correct any problem.

[118] M.G.L. c. 30B, § 12(b).

[119] *Comets Community Youth Center, Inc. v. Town of Natick*, 56 Mass. App. Ct. 1109 (2002).

- Prohibit any activity that would constitute a violation of the conflict-of-interest law (M.G.L. c. 268A).
- Specify that the lease constitutes the entire agreement and that there are no agreements other than those incorporated therein.
- Require a certification of tax compliance by the lessor (M.G.L. c. 62C, § 49A) and a disclosure of beneficial interests (M.G.L. c. 7C, § 38).

Step 3: Advertise for proposals

You must advertise for proposals in a newspaper with a circulation sufficient to inform the people in the affected locality.[120] The advertisement must be published at least once a week for two consecutive weeks before the day you selected for opening proposals. The last publication must occur at least eight days before the proposal opening. You may, of course, also advertise on a website, in more newspapers, in newspapers outside your area and more frequently. The advertisement must specify the geographical area in which you are looking for property, the terms and conditions of the proposed lease or purchase, the time and place for submission of proposals, and where and when prospective proposers may obtain a copy of the solicitation.

You may contract with an agent to assist you in finding property that meets your needs. The agent's task will be to find suitable property and encourage owners to submit proposals in response to your solicitation. Your contract with the agent will be subject to Chapter 30B.

You may inform potential proposers, including brokers and developers, of the availability of the solicitation. Be careful to avoid favoritism or the appearance of favoritism.

If the proposed acquisition involves more than 2,500 square feet, an advertisement must also be published at least 30 days before the opening of proposals in the *Central Register*, which is published by the Secretary of the Commonwealth.[121]

[120] M.G.L. c. 30B, § 16(d).

[121] M.G.L. c. 30B, § 16(d). Appendix B provides the website address for the online submission form for this advertisement, and Appendix D contains contact information for the Secretary of the Commonwealth.

Step 4: Distribute the solicitation

You must make the solicitation documents available on an equal basis to all who request a copy. If you charge a fee to cover your costs for copying the solicitation, make sure you charge everyone the same fee.

Keep a record of the names, email addresses, telephone numbers and fax numbers of everyone who received the solicitation. If you later issue an addendum to the solicitation, send the addendum to everyone who has received the original solicitation. To avoid misunderstandings or protests, include a requirement in the solicitation that proposers acknowledge in writing their receipt of any addenda and submit a written acknowledgement with their sealed proposals. If proposers are likely to require additional time to respond to the addendum, extend the proposal due date.

Step 5: Open and evaluate proposals

Proposals must be opened in public at the time and place specified in the solicitation. You should record the name of each proposer, the location of the property each proposer is offering and each proposal price. The proposals become public information when they are opened. All documents should be submitted in one sealed envelope.

You must evaluate the proposals using only the criteria you identified in the solicitation. If your solicitation states that you will make an award to the responsive and responsible proposer that offers the best price (in essence, a bid process), you may simply identify the lowest-priced proposal and then evaluate that proposal to determine whether it meets the requirements stated in the solicitation. If the proposal does not meet the requirements, reject it and proceed to evaluate the next lowest-priced proposal.

If your solicitation states that you will evaluate proposals using comparative evaluation criteria, it will usually be most efficient to first look at the responsiveness and responsibility of the proposals and reject any that you deem nonresponsive or not responsible. Then evaluate all the remaining proposals on the basis of your comparative criteria and price, prepare written evaluations and decide which proposal best meets the needs of your local jurisdiction, considering the evaluation criteria and price.

If you determine that it is not in the best interest of your local jurisdiction to award the contract, you may choose to cancel the proposal process.[122] You may do so before or after you open and evaluate proposals. However, after you have executed a contract, you will not be able to cancel the transaction.

[122] See *Mangano v. Town of Wilmington*, 51 Mass. App. Ct. 857 (2001).

Step 6: Submit disclosures

You must submit the name of the selected proposer and the amount of the transaction to the *Central Register*, which is published by the Secretary of the Commonwealth.[123]

Also, M.G.L. c. 7C, § 38, requires disclosure of all beneficial interests in real property acquired or disposed of by a public agency. The selected proposer must file a disclosure of beneficial interests with DCAMM. No contract to lease or sell property, and no renewal or extension of such an agreement, is valid until the seller or lessor files this form with DCAMM.[124] An updated disclosure form must be filed within 30 days of any change in beneficial interests during a lease term.

Step 7: Execute the contract

If you are purchasing real property, have your legal counsel ensure that any mandatory terms required by the solicitation are incorporated into the purchase and sale agreement. If you are acquiring property by lease, execute a lease that incorporates all of the terms and conditions required by the solicitation.

Step 8: Retain records

You must maintain a file of all written documents required by Chapter 30B for a period of six years from the date of final payment under the contract. These include:

- the solicitation documents and any amendments;
- the public advertisement;
- all *Central Register* notices;
- all proposals received;
- evaluation materials;
- a copy of the disclosure of beneficial interests; and
- the signed purchase and sale agreement or lease.

[123] Appendix B provides the website address for the online submission form for this notice, and Appendix D provides contact information for the Secretary of the Commonwealth.

[124] Appendix B contains the website address for a DCAMM real estate transaction disclosure form, and Appendix D provides contact information for DCAMM.

Real Property Acquisitions: Unique Property Acquisitions and Emergencies

Unique Acquisitions

Chapter 30B does not require you to solicit proposals to acquire property if your local jurisdiction has determined that it needs a particular piece of property because of its unique qualities or location.[125] For example, you may use this Chapter 30B provision to acquire open land abutting an existing park or a particular parcel of wooded land for conservation purposes. You may not, however, use this provision to acquire property simply because you are not aware of any other property that will meet your requirements. For example, if you need space for an office in a particular area, you may be aware of only one available location, but you still must advertise for proposals to test the market.

Chapter 30B does not authorize "swaps" of real property between a local government and a private party. You can acquire a property without competition if it meets the requirements for a unique acquisition, but there is no basis for disposing of property without an advertised competition. Acquisitions and dispositions of real property must be carried out as separate processes under the statute.

The Chapter 30B rules for acquiring unique property require you to make a written determination that advertising will not benefit your local jurisdiction because of the unique qualities or location of the property needed. The determination must specify how the property proposed for acquisition satisfies the unique requirements of your local jurisdiction.

Although such an acquisition of real property is exempt from the advertised solicitation process, you must publish a notice in the *Central Register* at least 30 days prior to executing a binding agreement to acquire the property.[126]

You may execute a separate option contract to purchase unique property before publishing a public notice, as long as the contract does not require you to purchase the property. After you have identified property that meets the standard for waiving the advertised solicitation process, you may secure an option for the property obliging the owner to sell it to you for an agreed-upon price. You can then publish the required 30-day notice in the *Central Register.*

[125] M.G.L. c. 30B, § 16(e)(2).

[126] M.G.L. c. 30B, § 16(e)(2).

The notice must include:

- the written determination of uniqueness and the reasons for the determination;
- the names of the parties with a beneficial interest in the property;
- the location and size of the property; and
- the proposed purchase price or rental terms.[127]

M.G.L. c. 7C, § 38, requires disclosure of all beneficial interests in real property acquired or disposed of by a public agency. Therefore, in a unique property acquisition, the seller or lessor must file the disclosure of beneficial interests with DCAMM. No contract to lease or sell property, and no renewal or extension of such an agreement, is valid until the seller or lessor files this form with DCAMM.[128] An updated disclosure form must be filed within 30 days of any change in beneficial interests during a lease term.

Emergencies

If an emergency arises and the time required to advertise for real property proposals would endanger the health or safety of people or their property, you may shorten the advertising period or waive it completely. Simple administrative inconvenience will not suffice as a justification for invoking the emergency provisions of Chapter 30B; a genuine emergency must exist. If you have reason to know in advance that additional leased space or a property purchase will be needed, and you fail to act until the need has become critical, you will have difficulty justifying the use of emergency procedures. If you invoke this provision, you must publish a notice in the *Central Register* at the earliest opportunity stating the reason for declaring the emergency.[129]

M.G.L. c. 7C, § 38, requires disclosure of all beneficial interests in real property acquired or disposed of by a public agency. The selected proposer must file the disclosure of beneficial interests with DCAMM. No contract to lease or sell property, and no renewal or extension of such an agreement, is valid until the

[127] Appendix B provides the website address for the online submission form for this notice, and Appendix D provides contact information for the Secretary of the Commonwealth.

[128] Appendix B contains the website address for DCAMM's real estate transaction disclosure form for this purpose, and Appendix D provides contact information for DCAMM.

[129] Appendix B provides the website address for the online submission form for this notice, and Appendix D provides contact information for the Secretary of the Commonwealth.

seller or lessor files this form with DCAMM.[130] An updated disclosure form must be filed within 30 days of any change in beneficial interests during a lease term.

[130] Appendix B contains the website address for DCAMM's real estate transaction disclosure form for this purpose, and Appendix D provides contact information for DCAMM.

Real Property Dispositions

For any disposition of real property, regardless of value, you are required to declare the property available for disposition and determine the value of the property. Also, if you dispose of the property for less than the value determined, you must post a notice in the *Central Register* explaining the reasons for your decision and disclosing the difference between the value and the price to be received.[131] If the value of the property exceeds $35,000, you must solicit proposals to dispose of the property. The requirement for competition is triggered by the *value* of the property, not the price your local jurisdiction expects to receive for the property.

If you are leasing space, you determine the value of the disposition by calculating the fair market value of the lease over the entire contract term. For example, if you are leasing out a portion of a municipal building for five years with a market value of $1,000 per month, the entire contract is valued at $60,000. Therefore, it must be awarded using an advertised solicitation process.

In assessing whether and how to dispose of surplus property, consider both current and possible future needs. It is best to be systematic. Develop an inventory of your local jurisdiction's property, survey department heads and invite public comment. If you find that your local jurisdiction might need the property in the future, be sure to structure a lease term so that the property is available for use when needed.

Step 1: Declare property available for disposition and identify reuse restrictions

Before you can sell or lease property, regardless of its value, it must be declared available for disposition by the individual or body with the authority to make such a determination for your local jurisdiction. If your local jurisdiction wishes to impose any restrictions on the use of the property, these restrictions must be specified as part of the declaration that the property is available for disposition. For example, if you are selling or leasing a surplus school building, you may not care how the new owner or lessee will use the building, as long as the building use is legal and conforms to local zoning requirements. In that case, you would not specify a use restriction. However, if you were leasing only part of a school building, M.G.L. c. 40, § 3, would require you to specify that the use be compatible with the functioning of the school.

[131] Appendix B provides the website address for the online submission form for this notice, and Appendix D provides contact information for the Secretary of the Commonwealth.

Step 2: Determine the value of the property

You must determine the value of the property before you can dispose of it. Chapter 30B requires that you determine the property's value by using procedures customarily accepted as valid by the appraising profession. You may hire an appraiser, although you are not required to do so. You may also rely on the municipal assessment of a property's value if it is current, if the municipality is assessed at 100 percent, and if the assessment is determined through valid procedures. The value of most parcels of property will likely exceed the $35,000 threshold for advertised competition. For a lease, you may use market rent data, or even advertised rental rates, if the number of similar properties on the market is sufficient to determine the lease value.

Step 3: Develop the solicitation

If the value of the property exceeds $35,000, you must solicit proposals. Your solicitation provides interested parties with the information they need to decide whether they want the property and to submit a responsive proposal. The major components of a real property disposition solicitation are as follows:

- a description of the property and interest in the property you plan to sell or lease (the "property description") and any use restrictions;
- evaluation criteria;
- rule for award;
- proposal submission requirements; and
- the contract terms and conditions.

Property description. The property description must be detailed enough for interested parties to understand what you are offering. Be sure to identify use restrictions established by your local jurisdiction. If the property is being offered for sale, include a reference to a deed or survey. Also identify in the property description the buildings and structures included in the disposition and any restrictions on their use, such as deed restrictions. Drawings, plot plans and other relevant documents should either be appended to the specifications or be incorporated by reference.[132] The notice must state the terms of the disposition, including whether it is a sale or lease. If it is a lease, state its duration and whether utilities will be included in the lease price or whether they must be paid separately by the lessee.

[132] You can incorporate a document by reference in your specifications. Describe the document and indicate where the document is located and how it can be obtained.

Evaluation criteria. Indicate how you will select a proposal from among the competing proposals. The process is similar to developing evaluation criteria for supplies or services (described in Chapters 4 and 5). You should establish:

- criteria to evaluate *responsiveness* (whether the proposer agrees to meet your terms and the proposal contains all the required documents and forms, properly completed) and *responsibility* (whether the proposer has the capability, integrity and reliability to perform under the contract);
- *comparative criteria* if you decide that you want to weigh the relative merits of proposals rather than selecting the responsive and responsible proposal that offers the best price; and
- a method to evaluate *prices*.

You may establish any rating scheme that preserves open and fair competition, keeps proposers on a common footing, and allows manageable and meaningful comparisons. You have the option to use the same rating categories that are used in Chapter 30B RFPs for supplies and services: highly advantageous, advantageous, not advantageous and unacceptable. However, you are not required to do so.

Note that although Chapter 30B requires proposals, you have the discretion to structure your solicitation so that it is, in effect, an IFB. If your objective is simply to dispose of property that you do not need, you should sell the property to the proposer offering the highest price. In this instance, your solicitation should set out simple criteria and award the contract to the qualified proposer offering the highest price for the property. Your criteria might include:

- a proposal deposit requirement to ensure that only serious proposers participate (a successful proposer that fails to close on the deal would forfeit the deposit);
- evidence of the proposer's ability to obtain financing; and
- best price.

You should inform proposers how you will determine the best price. For example, in a multi-year lease, specify whether proposers may propose level monthly payments over the term, or if they may propose escalating rents for each year of the lease. If rent escalators may be proposed, you should state how you will calculate the present value of the rental payments and include the formula in the solicitation. To simplify lease price comparisons, it is helpful to provide a standard price form for all proposers to complete.

If you are interested in promoting a public purpose and price is less important, you will have to carefully think through what you want and how you will evaluate it. The box on the next page presents information on dispositions to promote public purposes.

Rule for award. Your solicitation should contain a clear rule for award stating how the winning offer will be selected. For example, if you plan to select the highest-priced offer meeting your evaluation criteria, your rule for award might be stated as follows:

> *The highest-priced proposal from a responsive and responsible proposer will be selected.*

If you plan to weigh offers from responsive and responsible proposers, your rule for award might be stated as follows:

> *The most advantageous proposal from a responsive and responsible proposer, taking into consideration price and all other evaluation criteria set forth in the solicitation, will be selected.*

If, when leasing surplus real property, your objective is to promote a public purpose, such as an affordable day care center, you may award a fixed-rent contract to the responsive and responsible proposer that meets your evaluation criteria. Thus, your rule for award would not include price as a selection factor; for example:

> *The most advantageous proposal from a responsive and responsible proposer, taking into consideration all evaluation criteria set forth in the solicitation, will be selected.*

The box below contains additional information about real property dispositions to promote public purposes.

Real Property Dispositions to Promote Public Purposes

Your local jurisdiction may want to offer property for lease or sale in order to promote a public purpose rather than to raise revenue. Based on long-standing interpretations of Massachusetts's constitution, if you intend to dispose of real property for less than its fair market value, you must define a valid public purpose to be achieved. Individuals or private organizations may realize incidental benefits from a disposition of public property, but the primary purpose must be to promote the public welfare. You must structure an open, fair and competitive disposition process to accomplish your public purpose.

If you dispose of the property for less than the fair market value, you must post a notice in the *Central Register* explaining the reasons for your decision and disclosing the difference between the property value and the price to be received. To be consistent with its purpose, this notice should be published prior to entering into a binding agreement to dispose of the property.

Example 1: Affordable day care. Your local jurisdiction has a shortage of affordable day care and you decide to lease available space to a day care provider. Since the primary objective of this disposition is not to obtain the maximum amount of rent, you set a fixed rent and specify the lease terms, such as those for insurance, utilities and maintenance. You require all proposers to meet requirements such as staff training and experience, staff-to-child ratio, number of children from low-income families to be served, parent participation on governing board, nutrition programs and hours of operation. You then develop evaluation criteria to choose the proposal that best meets your objective of providing high-quality, affordable day care. For example, you might require proposers to submit a sliding-fee scale based on

family income, and select the responsive and responsible proposal offering the lowest fees to the maximum number of families in need of affordable day care.

Example 2: Affordable housing. You decide to create affordable housing by dividing surplus land into lots for sale to low-income or moderate-income purchasers. You specify qualifications for purchasers, including maximum income and asset limitations, and determine the methods you will use to verify these qualifications. You restrict the use of the property and the profit that can be realized by the resale of the property to ensure that the plan meets its objective of creating and preserving affordable housing and does not result in a windfall profit to any individual. You create a fair and accountable method for proposal selection. You could, for example, establish a set price for each lot, advertise for proposals from eligible families and individuals, and use a public lottery to select winners from among the responsive and responsible proposals.

Proposal submission requirements. Your solicitation should state the rules for proposal submission. Specify when (date and time) and where sealed proposals must be delivered, how proposal packages should be marked, and how proposers may correct, modify, or withdraw proposals. If the disposition is a lease, include any options to renew or extend the lease. State that the selected proposer will be required to submit a disclosure of beneficial interests to DCAMM, as required by M.G.L. c. 7C, § 38, and include any standard forms proposers must submit.

Price and non-price proposals need not be submitted separately. Unlike Chapter 30B's RFP requirements for supplies and services, Chapter 30B does not require separate submissions of price and non-price proposals for real property transactions. Moreover, real property proposals, including price proposals, are not confidential after they are opened.

Contract terms and conditions. Any terms and conditions you will require in the agreement must be specified in the solicitation and in the contract, including use restrictions and the terms of any renewal, extension or purchase options. It is important to note that Chapter 30B does not limit the length of real property contracts. That is, the Chapter 30B majority vote requirement for supply and service contracts exceeding three years does not apply to Chapter 30B real property contracts.[133] However, there may be other statutory or local restrictions that apply to your real property contracts. For example, M.G.L. c. 40, § 3, limits towns to public building leases of 30 years and leases of schoolhouses in use as schools to 25 years. A Massachusetts Appeals Court decision affirmed a Superior Court ruling that held that an automatic renewal clause on the same terms that exceeded the limit violated M.G.L. c. 40, § 3.[134] Your

[133] M.G.L. c. 30B, § 12(b).

[134] *Comets Community Youth Center, Inc. v. Town of Natick*, 56 Mass. App. Ct. 1109 (2002).

legal counsel can advise you regarding restrictions that may apply to your local jurisdiction's real property transactions.

The box on below contains information about contract terms and conditions for real property dispositions.

Real Property Dispositions: Contract Terms and Conditions

Sales. If you are selling real property, have your attorney draft any terms that you require into the purchase and sale agreement. Include any use restrictions and any mandatory purchase terms in the solicitation. Require a certification of tax compliance from the purchaser (M.G.L. c. 62C, § 49A) and a disclosure of beneficial interests (M.G.L. c. 7C, § 38).

Leases. If you are disposing of property by lease, mandatory lease terms must be spelled out in the solicitation. A typical lease should:

- Name the parties to the lease and the responsible parties to receive any notices under the lease and any use restrictions.
- Include the proposal chosen, including a detailed description of the leased property.
- Specify the duration of the lease, including any renewal, extension, or other options. If the lease will include a renewal option, you must specify how the rent will be determined for the renewal period.
- Identify the payment terms, including when payments are due.
- Spell out all of the responsibilities and obligations of the parties for maintenance, cleaning, utilities, rubbish disposal, snow removal, liability and casualty insurance, and other requirements.
- Specify that lease amendments must be in writing and signed by individuals authorized to contract on behalf of your local government.
- Prohibit assignment or subletting without written approval.
- Specify what constitutes cause to terminate the lease, what notice must be provided prior to termination, and what opportunity must be granted to correct any problem.
- Prohibit any activity that would constitute a violation of the conflict-of-interest law (M.G.L. c. 268A).
- Specify that the lease constitutes the entire agreement and that there are no agreements other than those incorporated therein.
- Require a certification of tax compliance by the lessee (M.G.L. c. 62C, § 49A) and a disclosure of beneficial interests (M.G.L. c. 7C, § 38).

Step 4: Advertise for proposals

> **You can contract with a broker to help dispose of property.** The broker's job will be to show the property and encourage the submission of sealed proposals on the due date. Your contract with the broker is subject to Chapter 30B.

You must advertise for proposals in a newspaper with a circulation sufficient to inform the people of the affected locality.[135] The advertisement must be published at least once a week for two consecutive weeks before the day you select for opening the proposals. The last publication must occur at least eight days before the proposal opening. You may, of course, advertise in more newspapers, in newspapers outside your area, and more frequently.

The advertisement must specify the geographical area, the terms and conditions of the proposed transaction, and the time and place for the submission of proposals and awarding of the contract. It must also state where and when prospective proposers may obtain a copy of the solicitation.

> **Advertise where you will maximize exposure to potentially interested parties.** For example, if you are offering to lease office space, you will probably reach more potential lessees by advertising in the classified section under "office space" rather than advertising in the legal notices section.

If the proposed disposition involves more than 2,500 square feet, you must also publish an advertisement, at least 30 days before the opening of proposals, in the *Central Register*, which is published by the Secretary of the Commonwealth.[136]

You may inform potential proposers, including brokers and developers, of the availability of the solicitation. Be careful to avoid favoritism or the appearance of favoritism.

Step 5: Distribute the solicitation

The solicitation documents must be made available on an equal basis to all who request a copy. You may inform potential proposers, including brokers and developers, of the availability of the solicitation. Keep a record of the names, email addresses, telephone numbers and fax numbers of everyone who has

[135] M.G.L. c. 30B, § 16(d).

[136] Appendix B provides the website address for the online submission form for this advertisement, and Appendix D contains contact information for the Secretary of the Commonwealth.

received the documents. If you later issue an addendum to the solicitation, send the addendum to everyone who has received the solicitation. To avoid misunderstandings or protests, you may want to require proposers to acknowledge in writing their receipt of each addendum. Also, if proposers are likely to require additional time to respond to the addendum, extend the proposal due date and opening.

Step 6: Open and evaluate proposals

Proposals must be opened in public at the time and place specified in the solicitation. Chapter 30B affords no confidentiality to real property proposals. You should record the name of each proposer and the proposal price. The proposals become public information when they are opened.

You must evaluate the proposals using only the criteria you identified in the solicitation. If your solicitation states that you will make an award to the responsive and responsible proposer who offers the best price (in essence, a bid process), you may simply identify the highest-priced proposal, and then evaluate that proposal's responsiveness and responsibility against the quality requirements specified in the solicitation. If you determine that a proposal is not responsive or responsible, reject it and proceed to evaluate the next highest proposal.

If your solicitation states that you will evaluate proposals using comparative evaluation criteria, it will usually be most efficient to look first at the responsiveness and responsibility of the proposals and reject any you find to be not responsive or not responsible. Then evaluate all the remaining proposals on both your comparative criteria and price. Prepare written evaluations and then decide which proposal best meets the needs of your local jurisdiction, considering the comparative criteria and price.

If you determine that it is not in the best interest of your local jurisdiction to award the contract you may choose to cancel the proposal process.[137] You may do so before or after you open and evaluate proposals. However, once you have executed a contract, you will not be able to cancel the transaction.

Step 7: Submit disclosures

You must submit the name of the selected proposer and the amount of the transaction to the *Central Register*, which is published by the Secretary of the Commonwealth.[138] If you intend to dispose of the

[137] See *Mangano v. Town of Wilmington*, 51 Mass. App. Ct. 857 (2001).

[138] M.G.L. c. 30B, § 16(f). Appendix B provides the website address for the online submission form for this disclosure, and Appendix D contains contact information for the Secretary of the Commonwealth.

property for less than the value determined in Step 2, your *Central Register* notice must explain the reasons for your decision and disclose the difference between the value and the price to be received.[139] To be consistent with its purpose, this notice should be published prior to entering into a binding agreement to dispose of the property.

Also, M.G.L. c. 7C, § 38, requires disclosure of all beneficial interests in real property acquired or disposed of by a public agency. The selected proposer's disclosure of beneficial interests must be filed with DCAMM. No contract to lease or sell property, and no renewal or extension of such an agreement, is valid until the seller or lessor files this form with DCAMM.[140] An updated disclosure form must be filed within 30 days of any change in beneficial interests during a lease term.

Step 8: Execute the contract

If you are selling real property, have your legal counsel draft a purchase and sale agreement that incorporates all of the mandatory terms and conditions required by the solicitation. If you are disposing of the property by lease, execute a lease that incorporates all the terms and conditions stated in the solicitation.

Step 9: Retain records

You must maintain a file of all written documents required by Chapter 30B for six years from the date of the final payment under the contract. These documents include the following:

- the declaration that property is available for disposition;
- the solicitation documents and any amendments;
- the public advertisement;
- all *Central Register* notices;
- all proposals received;
- all evaluation materials;
- a copy of the disclosure of beneficial interests; and
- the signed purchase and sale agreement or lease.

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[139] M.G.L. c. 30C, § 16(g).

[140] Appendix B contains the website address for DCAMM's real estate transaction disclosure form for this purpose, and Appendix D provides contact information for DCAMM.

Emergencies

If an emergency arises and the time required to advertise for the disposition of real property would endanger the health or safety of people or their property, you may shorten the advertising period or waive it completely. Simple administrative inconvenience will not suffice as a justification for invoking the emergency provisions of Chapter 30B; a genuine emergency must exist. If you have reason to know in advance that a tenant will be vacating a facility, and you fail to advertise in advance, you will not be able to justify using the emergency provisions. Note that the right to waive or shorten the required procedures in an emergency applies only to the advertising requirement; even in an emergency, all other requirements continue to apply.

If you invoke this provision, you must publish a notice in the *Central Register* at the earliest opportunity stating the reason for declaring the emergency.[141]

M.G.L. c. 7C, § 38, requires disclosure of all beneficial interests in real property acquired or disposed of by a public agency. The selected proposer must file the disclosure of beneficial interests with DCAMM. No contract to lease or sell property, and no renewal or extension of such an agreement, is valid until the seller or lessor files this form with DCAMM.[142] An updated disclosure form must be filed within 30 days of any change in beneficial interests during a lease term.

Intragovernmental and Intergovernmental Dispositions

Intragovernmental real property transactions, such as the transfer of use of a property from one department to another department within a single city or town, are not subject to Chapter 30B. However, intergovernmental real property transactions, such as the sale of land by one local government to another local government, are subject to some Chapter 30B requirements.[143] If you intend to dispose of real property to the federal government, the Commonwealth, another state, a county or another local jurisdiction, you must first declare the property available for disposition, identify use restrictions and determine the property's value. If you are going to dispose of the property for less than the determined

[141] Appendix B provides the website address for the online submission form for this notice, and Appendix D provides contact information for the Secretary of the Commonwealth.

[142] Appendix B contains the website address for DCAMM's real estate transaction disclosure form for this purpose and Appendix D provides contact information for DCAMM.

[143] M.G.L. c. 30B, § 16(i).

value, you must publish a notice in the *Central Register* explaining the reasons for your decision and disclosing the difference between the value and the price to be received.[144]

[144] Appendix B provides the website address for the online submission form for this notice and Appendix D provides contact information for the Secretary of the Commonwealth.

IX. CONSTRUCTION-RELATED CONTRACTS

In general, Chapter 30B *does not apply* to contracts for construction and construction materials or to contracts with architects, engineers and related professionals. However, you may opt to use Chapter 30B's bid procedures when awarding small contracts (up to $50,000) for public works projects. You also may use Chapter 30B's bid procedures to purchase construction materials of any dollar amount if labor is not included. In some circumstances, you also may use an OSD contract or a blanket contract.

This chapter only briefly identifies the requirements applicable to various design and construction contracts. For more detailed information, you may obtain a copy of the Inspector General's manual, *Designing and Constructing Public Facilities*, from the Office of the Inspector General's website at www.mass.gov/ig, or from the State Bookstore.

Contracts with Architects, Engineers and Related Professionals

Contracts with architects, engineers or related professionals are exempt from Chapter 30B,[145] but may be subject to another law. For example, a local jurisdiction's contract for design services in connection with a specific public building project is exempt from Chapter 30B but is subject to the designer selection law, M.G.L. c. 7C, §§ 44-58, when the design fee is $30,000 or more and the estimated construction cost of the project is $300,000 or more. Design services include the preparation of master plans, feasibility studies, surveys, soils tests, cost estimates or programs; the preparation of drawings, plans and specifications, including schematics and preliminary plans; the supervision or administration of a construction contract; and construction management and scheduling.[146]

Design service contracts for a specific public works project, such as a road, bridge, sewer or landfill, generally are not subject to either the designer selection law or Chapter 30B.[147]

We recommend that you conduct an advertised, competitive process to award contracts with architects, engineers and related professionals. Chapter 30B's request for proposals (RFP) process outlined in

[145] M.G.L. c. 30B, § 1(b)(2), and M.G.L. c. 30B, § 1(b)(32A).

[146] M.G.L. c. 7C, § 44(b).

[147] Under Section 58 of Chapter 7C, the Massachusetts Department of Transportation, the Massachusetts Port Authority and the Massachusetts Bay Transportation Authority are required to use a qualifications-based selection process, with no fee competition, to award contracts for architectural, engineering or related professional services that are not subject to the designer selection law.

Chapter V is a good competitive model. Alternatively, you could use a qualifications-based selection process similar to that specified in M.G.L. c. 7C, §§ 44-58. Fostering competition among qualified engineering firms is the best way to ensure that you obtain the quality services you need at a favorable price.

Construction Contracts

The state's primary construction bid laws – M.G.L. c. 149 and M.G.L. c. 30, § 39M – govern the construction, reconstruction, installation, demolition, maintenance or repair of a building; the construction, reconstruction, alteration, remodeling or repair of any public work; and the purchase of construction materials. Specifically, most building construction contracts are subject to the competitive requirements of M.G.L. c. 149 and have specific procedures to be followed; Chapter 30B does not apply to most such Chapter 149 contracts, except for the procurement of materials on certain projects. Further, most public works contracts and contracts for construction materials are subject to the competitive requirements of M.G.L. c. 30, § 39M; as discussed below, however, you may use Chapter 30B, an Operational Services Division (OSD) contract or a blanket contract in certain instances.

It should be noted that M.G.L. c. 149, § 44E(4), contains provisions for procuring contracts for modular buildings; M.G.L. c. 149A contains provisions for using alternative project delivery methods for certain public works construction contracts and public building construction contracts; and M.G.L c. 25A contains provisions for procuring contracts for energy management services. The following discussion does not apply to contracts that are subject to these provisions.

Procuring Public Works Construction and Construction Materials: M.G.L. c. 30, § 39M

Section 39M of Chapter 30 (M.G.L. c. 30, § 39M), applies to state agencies and all political subdivisions of the state, including cities, towns, counties, regional school districts, housing authorities and charter schools. M.G.L. c. 30, § 39M, governs the procurement of public works construction contracts, which are those that involve work on a road, bridge, traffic signal, water main, sewer main, or any other improvement to land that is not a building. M.G.L. c. 30, § 39M, also governs the purchase of construction materials for either public buildings or public works. For example, M.G.L. c. 30, § 39M, applies to a purchase of carpeting, wall partitions or pipes without installation services. The specific requirements that apply to each M.G.L. c. 30, § 39M, contract depend on the estimated contract cost.

Public Works Construction and Construction Materials Contracts Estimated to Cost Less than $10,000

If the estimated contract cost is less than $10,000, you are required to use sound business practices in selecting the contractor and to keep a record of the procurement. Sound business practices are defined as the periodic solicitation of price lists or quotes to ensure the receipt of favorable prices. At a minimum, the record of the procurement must include the contractor's name and address. We recommend that your sound business practices include ensuring that the selected contractor possesses the necessary qualifications, experience and capacity to perform the work and that the contract price reflects the fair market value of the work. We also recommend that your procurement record include the date, price and scope of the work in addition to the contractor's name and address. If your jurisdiction selects a vendor on a statewide contract procured through OSD or a blanket contract, the procurement will be deemed to have complied with the requirement to use sound business practices.[148]

Public Works Construction and Construction Materials Contracts Estimated to Cost at Least $10,000 But Not More Than $50,000

If the estimated cost of the public works construction contract or the construction materials contract is at least $10,000 but not more than $50,000, you must prepare a solicitation that includes a scope-of-work statement defining the work to be performed and providing potential responders with sufficient information regarding your jurisdiction's objectives and requirements, as well as the time period within which the work will be completed. We recommend that the scope-of-work statement contain requirements for project-related experience and references, if appropriate. Your solicitation should include the labor harmony and OSHA training certification requirements and the prevailing wage rate sheet for the project.

The law provides for two options for soliciting written responses from contractors who customarily perform the work required by the contract:

[148] Section 39M of Chapter 30, as amended by Section 2 of Chapter 218 of the Acts of 2016.

Option 1: At least two weeks before the deadline for responses, you are required to advertise the solicitation in the *Central Register* and on COMMBUYS,[149] and to post the solicitation on your jurisdiction's website and in a conspicuous place in or near your jurisdiction's primary office. You are also required to solicit at least three written responses from contractors who customarily perform the work required by the contract. You should not solicit these responses until the solicitation is advertised.

Option 2: You are not required to advertise and post the solicitation in the manner described above if you solicit at least three written responses from contractors who customarily perform the work required by the contract and obtain at least two written responses from contractors on a vendor list established from a statewide contract procured through the Operational Services Division (OSD) or on a blanket contract procured by your jurisdiction, provided that the lowest of these written responses is acceptable to your jurisdiction. Blanket contracts must be bid in accordance with the procedures in M.G.L. c. 149, §§ 44A-44J or M.G.L. c. 30, § 39M, for procuring projects estimated to cost more than $50,000.

You must award the contract to the responsible contractor offering to perform the contract at the lowest price. In general, a "responsible" contractor possesses the skill, ability and integrity necessary for the faithful performance of the work.

If the contract price exceeds $25,000, the selected contractor must furnish your jurisdiction with a payment bond in the amount of at least 50 percent of the contract price.[150] The contractor obtains a payment bond from a surety company to guarantee payment to subcontractors and materials suppliers if the contractor fails to pay the subcontractors and/or materials suppliers. The contractor has ten days from the date of notification of the contract award to obtain the payment bond.

The final steps are to execute the contract and, if you followed the first option above, publish a notice of the contract award in the *Central Register*. An online submission form for this purpose may be accessed at the Secretary of the Commonwealth's website, www.mass.gov/sec.

[149] COMMBUYS is the Commonwealth's electronic procurement system. Any public agency in Massachusetts can post solicitations on COMMBUYS free of charge. For additional information, visit www.commbuys.com.

[150] M.G.L. c. 149, § 29.

Public Works Construction and Construction Materials Contracts Estimated to Cost More Than $50,000

For public works projects estimated to cost more than $50,000, you must prepare an IFB; advertise the IFB in the *Central Register*, in a newspaper of general circulation in the locality of the project, and on the COMMBUYS system at least two weeks before the bid deadline; and post the IFB notice (advertisement) in your jurisdiction's office for at least one week before the bid deadline. Bidders must submit a five-percent bid deposit with their bids. You must open the construction bids publicly at the time they are due and read them aloud. You are required to award the contract to the lowest responsible and eligible bidder.

You will first determine whether the low bidder is responsible and eligible. In general, a "responsible and eligible" contractor possesses the skill, ability and integrity necessary to faithfully perform the work and has met the other statutory requirements contained in M.G.L. c. 30, § 39M. If the low bidder is responsible and eligible, you will award the contract to that bidder. If not, you reject that bidder and proceed to evaluate the next lowest bidder. The selected contractor must furnish your jurisdiction with a payment bond in the amount of at least 50 percent of the contract price. The payment bond must be obtained within ten days of the contract award date. The final steps are to execute the contract, return the bid deposits, and publish a notice of the contract award in the *Central Register*. An online submission form for this purpose may be accessed at the Secretary of the Commonwealth's website, www.sec.state.ma.us.

Additional Options

In limited circumstances, a jurisdiction may use Chapter 30B's solicitation process instead of the bidding requirements in M.G.L. c. 30, § 39M. Specifically, for a public works construction contract estimated to cost no more than $50,000 and for a contract for construction materials in any amount, jurisdictions that are subject to Chapter 30B may solicit bids (not written quotes or proposals) in accordance with Section 5 of Chapter 30B.[151] There are several differences between these two sets of procedures.

[151] You should treat the purchase of materials or equipment to be stored or stockpiled as inventory, which may be used for various projects to be completed over time by your employees or contractors, as a Chapter 30B supply contract. You do not need to (but you might want to) advertise those contracts in the *Central Register*. Under Chapter 30B, if the supplies will cost more than $100,000, you must advertise in the *Goods and Services Bulletin*. See Chapter IV of this manual for more information.

Public Works Construction or Construction Materials Contracts Estimated to Cost No More Than $50,000[152]	
M.G.L. c. 30B, § 5	**M.G.L. c. 30, § 39M**
Sealed bids	Written responses[153]
Newspaper advertising required	Newspaper advertising not required
COMMBUYS advertising required	Same[154]
Posting a notice on your jurisdiction's website not required	Posting a notice on your jurisdiction's website at least two weeks before written responses are due required[155]
Posting a notice in your jurisdiction's office two weeks before bids are due required	Posting a notice in your jurisdiction's office two weeks before written responses are due required
Central Register notice[156]	Same

To summarize, you may not use M.G.L. c. 30B, § 5, for public works contracts estimated to cost more than $50,000, but you may use M.G.L. c. 30B, § 5, for public works contracts estimated to cost no more than $50,000 and to procure construction materials of any amount to be used for a specific project.

Regardless of which law you use, you must comply with certain statutory requirements applicable to *all* contracts for construction-related work. Your contracts for such work must comply with the following requirements:

1. *Central Register advertising*. The *Central Register*'s statute and regulations require all contracts of $10,000 or more for construction services or materials to be advertised in the *Central Register*. As a result, you will need to advertise in the *Central Register* even when you use the M.G.L. c. 30B, § 5, bid process to procure public works construction or construction materials. M.G.L. c. 9, § 20A; 950 CMR 21.00.
2. *Wages and employment conditions*. Your construction contract must contain various provisions relating to wages and employment conditions, including the payment of prevailing wages as set by the Department of Labor Standards (DLS), hiring preferences for veterans and residents of Massachusetts, and workers' compensation coverage. You must obtain the prevailing wage

[152] See the Office's *Designing and Constructing Public Facilities* manual or the Procurement Charts at www.mass.gov/oig-bulletins-guides-advisories-and-forms for additional information on procuring public works construction or construction materials of more than $50,000.

[153] Under M.G.L. c. 30, § 39M, this requirement only applies to projects estimated to cost at least $10,000. For contracts more than $50,000, sealed bids are required.

[154] Under M.G.L. c. 30, § 39M, this requirement only applies to projects estimated to cost at least $10,000.

[155] Under M.G.L. c. 30, § 39M, this requirement only applies to projects estimated to cost at least $10,000.

[156] Under M.G.L. c. 30B, § 5, and M.G.L. c. 30, § 39M, this requirement applies to projects estimated to cost at least $10,000. M.G.L. c. 9, § 20A; 950 CMR 21.00.

rates applicable to the project in advance of the bidding process, and you should include the wage rates in the IFB. Appendix D includes contact information for the DLS.

3. *Payment bond*. M.G.L. c. 149, § 29, requires you to obtain a payment bond in the amount of at least 50 percent of the contract price from the contractor for every construction contract costing more than $25,000.

4. *Labor harmony and OSHA training certifications*. Any person submitting a bid for, or signing a contract to work on, the construction, reconstruction, alteration, remodeling or repair of any public works project, or the construction, reconstruction, installation, demolition, maintenance or repair of any public building project, (1) undertaken by a public awarding authority in Massachusetts and (2) estimated to cost more than $10,000, must provide specific certifications in the bid or contract regarding labor harmony and training approved by the U.S. Occupational Safety and Health Administration to be completed by all employees to be employed at the worksite.[157]

In addition, all jurisdictions have the option to procure small public works construction contracts or construction materials of any amount, through an OSD statewide contract, if available.

For additional information on these contracts see the Office's *Designing and Constructing Public Facilities* manual.

[157] M.G.L. c. 30, § 39S.

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X. RESOLVING AND AVOIDING BID PROTESTS

Under Massachusetts law, any bidder or proposer competing for a public contract can challenge the award of that contract in court on the grounds that the awarding authority did not comply with public bid laws.[158] It is our experience that most bid protests stem from a good-faith belief that the procurement process was illegal, unfair, or both. Regardless of whether a protest has merit, it is in your interest to resolve it quickly and fairly, to avoid litigation, and to award a contract with confidence that it will be legally valid. This chapter is dedicated to helping you resolve – or, better yet, avoid – bid protests.[159]

Vendors may bring Chapter 30B bid protests to the local jurisdiction, or directly to Superior Court. In general, you should take a protest seriously, consider its merits and work to resolve it quickly.

We expect vendors to bring their questions to you, when time reasonably permits, before bids or proposals are due. If vendors have many questions, you should consider issuing an addendum. At this stage, you can correct the solicitation or clarify vague or ambiguous terms by sending a written addendum to every vendor that has obtained specifications from your local jurisdiction. If you are not sure whether an addendum is called for, you may seek advice from your CPO or your legal counsel. By taking this action before bids or proposals are due, you may preserve your process and avoid a disputed award.

If you receive a protest after bids or proposals are opened and you are not sure whether the protest is valid, we recommend that you consult your CPO or your legal counsel for an opinion *before* you sign a contract. By seeking assistance before executing a contract, you keep your options open and may avoid costly litigation. At this stage, you still have the discretion to reject all quotes, bids or proposals if it is in the best interest of your local jurisdiction to do so or to reject an offer that did not meet your requirements.

If a vendor protests after you have executed a final contract, you will need to decide as quickly as possible whether the protest has merit and, if so, whether to take steps to halt the contract. If there were major deficiencies in the procurement process, the contract will be invalid and the contractor cannot legally be

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[158] See *Quincy Ornamental Iron Works, Inc. v. Findlen*, 353 Mass. 85 (1967).

[159] The term "bid protest" is used in this chapter to refer to a complaint raised by a vendor or a concerned member of the public regarding the process used to award a contract under Chapter 30B, including an informal quote process for a small contract, a sealed bid or proposal process to procure supplies or services, a process to dispose of surplus supplies or a real property solicitation.

paid.[160] A decision either to halt the contract or to direct the contractor to proceed under the contract may have financial consequences, so it is important to establish solid legal ground for your decision. We recommend that you involve your legal counsel if you have not already done so.

Ten Tips for Avoiding Bid Protests

We have learned that many protests can be avoided by paying attention to some straightforward rules. We offer the following ten tips, all of which are based on rules and recommended practices covered in this manual.

1. Be sure to follow the advertising rules. If you are all set to award a Chapter 30B contract that will cost more than $100,000, and you then discover that you have forgotten to advertise on the COMMBUYS system administered by the Operational Services Division or in the *Goods and Services Bulletin*, you will have to reject all bids or proposals and start over. Be sure that you know the advertising requirements before you undertake any procurement because a failure to comply with these requirements cannot be waived.

2. Reject any sealed bid or proposal delivered after the deadline. If you need to make a change to the specifications or if you learn that vendors need additional time to prepare responses, you may issue an addendum *before the deadline* and extend the due date. However, you may not accept a bid or proposal that is delivered late by a bidder or proposer, even if it is only a few minutes late. Such bids or proposals are nonresponsive to your submission requirements and must be rejected on that basis.

3. Avoid unnecessary proprietary specifications. Proprietary specifications require a particular brand-name product or have the effect of restricting competition to a supply or service that can be provided by only one particular manufacturer or supplier. Under Chapter 30B, you may use proprietary specifications only when there is no other way to describe the supply or service you need.

There are a few procurements for which you can justify the use of proprietary specifications, such as software licenses. For most supplies and services, however, it is possible to write specifications that allow for competition among vendors. If you use a brand name as a standard for performance or quality, you may state in your specifications that other brand names meeting this standard are acceptable.

[160] See M.G.L. c. 30B, § 17(b).

You should be wary of specifications that describe equipment to an unusually high level of detail. Fire truck and ambulance specifications, for example, are sometimes so specific that they require bolts and screws to be a particular diameter. Often such details were inserted, not by the local jurisdiction, but by a vendor who drafted "model" specifications to exclude competing companies.

If you believe that you are justified in using proprietary specifications, you must document your reasons in writing and be prepared to defend your decision if vendors protest. Remember to keep this document in your procurement file.

4. Provide vendors with a sufficiently detailed description of the supplies or services you need. Your specifications must provide vendors with enough information to give you competitive quotes, bids, or proposals. Consider the example of a town that solicited hourly rates for insurance consulting services but did not provide a description of the tasks to be performed or an estimated number of hours for each task. One consultant submitted a price range of $50 to $150 per hour, while another bid a flat rate of $125 per hour. The town had no basis for determining which consultant was offering the lowest price. In order to solicit genuine competition for this contract, the town should have included a description of the tasks to be performed and an estimated number of hours required for each task.

5. Use clear, objective evaluation criteria. Regardless of whether you are seeking quotes, bids or proposals, you must let vendors know what standards you will use to judge their qualifications and their responses. Consider using a vendor's experience as a quality requirement. For example, a school district seeking bids for school bus transportation wants to be sure that the selected vendor has sufficient experience; accordingly, the school district specifies as a quality requirement that the vendor possess five years of experience. The low bidder has five years of experience, but its experience consists of only one small contract that does not approximate the size of the district's transportation contract. The district is reluctant to contract with this vendor but may be faced with a bid protest for rejecting a bidder that met the required qualifications. To avoid this dilemma, the district should reject all bids and re-advertise the contract with a stricter and clearer experience requirement: for example, that the vendor's firm and all of its key personnel must have a minimum of five years of experience in satisfactorily performing school transportation for at least one municipality or school district with a contract similar in size and scope to the district's contract.

The use of clear standards – including clear comparative criteria in an RFP process – helps ensure that you receive the quality of supplies and services you need and that you avoid protests from vendors.

6. Include a rule for award in your specifications that clearly states how you will select the winning vendor. Although this is a simple rule, we regularly receive telephone calls about solicitations that do not contain a rule for award or contain an unclear rule for award. For example, if you solicit prices for a two-year contract, a three-year contract, and a four-year contract, you could get a different low bidder for each of these options. If your fuel oil solicitation allows bidders to submit either a fixed price or a price that fluctuates according to an index, it may well be impossible to determine which bid is the lowest if you have not specified a rule for award.

7. If you are purchasing multiple items in one solicitation, tell vendors how many contracts you will award. You may be able to save time and money by advertising for prices on an array of related items such as office supplies, cleaning supplies, or automotive parts in one bid. If you do, you must tell vendors in the solicitation whether you will award a separate contract to the lowest responsive and responsible bidder for each supply or whether you will award one contract to the responsive and responsible bidder with the lowest overall price for all supplies.

8. Avoid the appearance of bid-splitting. Bid-splitting is intentionally dividing a purchase into two or more smaller purchases for the purpose of evading the requirements of a bidding law. This practice is illegal under Chapter 30B.[161] In some circumstances, it makes good business sense to make small, frequent purchases and you should not hesitate to do so. Fresh produce, for example, is typically purchased this way because availability and price fluctuate widely. However, a local jurisdiction that makes six separate purchases of $11,000 each from one vendor in a short period of time by soliciting written quotes is likely to create the impression that it is bid-splitting to avoid the $50,000 threshold for bids or proposals. If your local jurisdiction makes small, frequent purchases from one vendor, be sure that you can justify the practice with a good business reason.

9. Play by your own rules. Sometimes vendors claim that a local jurisdiction unfairly changed its rules for the competition by, for example, waiving a requirement or failing to follow its own rule for award after the bids or proposals were opened. For example, a city issues a computer system RFP that specifies that the system must process a certain number of transactions per minute. None of the proposals received meet this criterion, so the city decides after the fact to ignore the requirement because it seems impossible to meet. Chapter 30B does not allow a requirement to be waived after the fact when the effect undermines fair competition. In the above-cited example, there may have been five proposers that

[161] M.G.L. c. 30B, § 11.

submitted proposals despite the impossible standard, but there could well have been a dozen others that did not respond because they knew that their systems would not meet the standard.

10. Treat all vendors fairly. This rule almost seems too obvious to mention, but occasionally we receive protests from vendors who appear to have been subjected to different treatment than their competitors. For example, a local jurisdiction requires bidders to submit at least three references to verify experience. The lowest bidder submits five references. The local jurisdiction checks all five and gets satisfactory reports from four; the fifth reference indicates that the vendor did not perform satisfactorily. The local jurisdiction wants to reject the low bidder and award the contract to the second lowest bidder, after checking three references. The low bidder protests this unequal treatment. To avoid this situation, the local jurisdiction could require vendors to submit references for all similar contracts within a set number of years, and state in the specifications that the local jurisdiction will select three references to evaluate the low bidder's ability to perform. This rule makes it clear that the local jurisdiction will check the same number of references for each competitor and avoid the appearance of favoritism.

APPENDIX A: CONTRACTS EXEMPT FROM CHAPTER 30B

The following contracts are exempt from the requirements of Chapter 30B.

1. Public construction contracts subject to the provisions of M.G.L. c. 30, § 39M; M.G.L. c. 25A, §§ 11C and 11I; or M.G.L. c. 149, §§ 44A-44J, inclusive. See M.G.L. c. 30B, § 1 (b)(1). See Chapter IX for information on design and construction projects.
2. Public building design contracts subject to the provisions of M.G.L. c. 7C, §§ 44-58, inclusive. See M.G.L., c. 30B, § 1(b)(2). See Chapter IX for information on design and construction projects.
3. Intergovernmental service agreements under the provisions of M.G.L. c. 40, § 4A. See M.G.L. c. 30B, § 1(b)(3).
4. Agreements with the Commonwealth, except subsection (i) of Section 16. See M.G.L. c. 30B, § 1(b)(4).
5. Contracts for the purchase of materials, under specifications of the Massachusetts Highway Department (now known as Massachusetts Department of Transportation Highway Division), and at prices established by the Department, pursuant to advertising and bidding for such purpose, in connection with work to be performed under the provisions of M.G.L. c. 81 or M.G.L. c. 90. See M.G.L. c. 30B, § 1(b)(5).
6. Contracts for the advertising of required notices. See M.G.L. c. 30B, § 1(b)(6).
7. An agreement between agencies, boards, commissions, authorities, departments or public instrumentalities of one city or town. See M.G.L. c. 30B, § 1(b)(7).
8. An agreement for the provision of special education pursuant to M.G.L. c. 71B and regulations promulgated pursuant thereto. See M.G.L. c. 30B, § 1(b)(8).

   This exemption applies to direct services delivered to children with special needs, such as transportation, counseling or education under an individual education program, as well as to any supplies used by children with special needs as part of an individual educational program. Other supplies and services, however, are not exempt simply because they are procured by the special education department. For example, office supplies or computers to be used for office administration would not fall under this exemption.
9. A contract to purchase supplies or services from, or to dispose of supplies to, any agency or instrumentality of the federal government, the Commonwealth or any of its political subdivisions, or to another state or its political subdivision. See M.G.L. c. 30B, § 1(b)(9).
10. The issuance of bonds, notes or securities in accordance with procedures established by law. See M.G.L. c. 30B, § 1(b)(10).
11. Contracts and investments made in connection with deferred compensation programs for employees in accordance with M.G.L. c. 35, §§ 57-57A or M.G.L. c. 44, §§ 67-67A. See M.G.L. c. 30B, § 1(b)(11).
12. A contract for the procurement of insurance or surety bonds, including an agreement subject to the provisions of M.G.L. c. 40M, § 1-16 or M.G.L. c. 152, §§ 25E-25U. See M.G.L. c. 30B, § 1(b)(12).

    The procurement of an insurance contract is exempt from Chapter 30B. Contracts for insurance-related services, however, are not exempt. You must follow Chapter 30B to procure insurance consulting, claims administration or third-party billing services.

13. Contracts for the services of expert witnesses for use in an adjudicatory proceeding, litigation, or in anticipation of litigation. See M.G.L. c. 30B, § 1(b)(13).

14. Contracts or agreements entered into by a municipal gas or electric department governed by a municipal light board, as defined by M.G.L. c. 164 or by a municipal light commission, as defined by M.G.L. c. 164; provided, however, that any such board or commission may accept the provisions of this chapter by a majority vote of its members. See M.G.L. c. 30B, § 1(b)(14).

15. Contracts with labor relations representatives, lawyers or certified public accountants. See M.G.L. c. 30B, § 1(b)(15).

    This exemption applies only to services that could reasonably be restricted exclusively to labor relations representatives, lawyers or certified public accountants. Service contracts are not exempt from Chapter 30B simply because you select a labor relations representative, lawyer or certified public accountant to perform the service. For example, a contract to computerize your accounting system is subject to Chapter 30B even if you contract with a CPA firm for the work.

16. Contracts with physicians, dentists and other health care individuals or persons (including nurses, nurses' assistants, medical and laboratory technicians); health care providers (including diagnosticians); social workers; psychiatric workers; and veterinarians. See M.G.L. c. 30B, § 1(b)(16).

    This exemption applies only to services that could reasonably be restricted exclusively to physicians, dentists and other health care individuals or entities. Other health care-related service contracts are not exempt from Chapter 30B simply because you select a physician, dentist or other health care individual to perform the service.

17. A contract for snow plowing services. See M.G.L. c. 30B, § 1(b)(17).

18. A contract or lease by a governmental body of its boat slips, berths or moorings. See M.G.L. c. 30B, § 1(b)(18).

19. A contract for retirement board services. See M.G.L. c. 30B, § 1(b)(19).

20. A contract that is funded by proceeds derived from a gift to a governmental body or a trust established for the benefit of a governmental body. See M.G.L. c. 30B, § 1(b)(20).

21. A contract for the towing and storage for motor vehicles. See M.G.L. c. 30B, § 1(b)(21).

22. A contract to provide job-related training, educational or career development services to the employees of a governmental body. See M.G.L. c. 30B, § 1(b)(22).

23. *This exemption was repealed in 2016. Compensating balance account agreements now are subject to the provisions of Chapter 30B, M.G.L. c. 44, § 53F, and rules established by the state Department of Revenue. Treasurers or collectors of local jurisdictions must submit to the Office annual reports on any compensating balance account agreements with banking institutions. See www.mass.gov/service-details/oig-forms for additional guidance and to obtain the reporting form.*

24. A contract for ambulance service by a governmental body. See M.G.L. c. 30B, § 1(b)(24).

    The procurement of ambulances is subject to Chapter 30B.

25. A contract to sell, lease or acquire residential, institutional, industrial or commercial real property by a public or quasi-public economic development agency or urban renewal agency engaged in the

development and disposition of said real property in accordance with a plan approved by the appropriate authorizing authority. See M.G.L. c. 30B, § 1(b)(25).

26. A contract for the collection of delinquent taxes or for the services of a deputy tax collector. See M.G.L. c. 30B, § 1(b)(26).

27. Contracts or agreements entered into by a municipal hospital or a municipal department of health. See M.G.L. c. 30B, § 1(b)(27).

28. Contracts entered into by a governmental body on behalf of a hospital owned by such governmental body where such contract is funded by expenditures from an operations account, so-called, or a special account, established pursuant to a special act that is maintained for the benefit of and designated with the name of such hospital. See M.G.L. c. 30B, § 1(b)(28).

29. Contracts, agreements or leases entered into by a municipal airport commission established under the provisions of M.G.L. c. 90, § 51E, provided, however, that such contracts, agreements or leases apply to aviation uses or the sale of aviation fuel. See M.G.L. c. 30B, § 1(b)(29).

30. A contract for the collection, transportation, receipt, processing or disposal of solid waste, recyclable materials or compostable materials. See M.G.L. c. 30B, § 1(b)(30).

    Hazardous waste contracts and sludge disposal contracts are not exempt.

31. An agreement for photography services entered into by a public school. See M.G.L. c. 30B, § 1(b)(31).

32. Energy aggregation contracts entered into by a political subdivision of the Commonwealth for energy or energy-related services arranged or negotiated by such subdivision on behalf of its residents. See M.G.L. c. 30B, § 1(b)(32).

32A. Contracts with architects, engineers and related professionals. See M.G.L. c. 30B, § 1(b)(32A).

33. Energy contracts entered into by a city or town or group of cities or towns or political subdivisions of the Commonwealth, for energy or energy-related services; provided, however, that within 15 days of the signing of a contract for energy or energy related services by a city, town, political subdivision, or group of cities, towns or political subdivisions said city, town, political subdivision or group of cities, towns or political subdivisions shall submit to the department of public utilities, the department of energy resources, and the office of the inspector general a copy of the contract and a report of the process used to execute the contract; provided, further, that for any such contract determined to contain confidential information under subclause (s) of Section 7 of chapter 4, the governmental body shall instead maintain a record of the procurement processes and awards for 6 years after the date of the final payment. The governmental body shall make such records available to the inspector general upon request; provided, however, that the inspector general shall not disclose said information. See M.G.L. c. 30B, § 1(b)(33).

    To assist in complying with the reporting requirement, the Office has prepared guidance, which is available on our website or in Appendix B of this manual. The Office requests electronic submissions from governmental bodies.

34. Contracts entered into between the Department of Public Health and regional emergency medical services councils pursuant to M.G.L. c. 111C, § 5. See M.G.L. c. 30B, §1(b)(34).

35. Acquisitions by a city or town of real property or interests in real property for the purpose of community preservation and upon the recommendation of the community preservation committee are not subject to M.G.L. c. 30B, § 16. See M.G.L. c. 44B, § 5(f).

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APPENDIX B: STANDARD FORMS AND LINKS

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Chief Procurement Officer's
Delegation of Procurement Powers and Duties Form

M.G.L. c. 30B, § 19, of the General Laws authorizes the Chief Procurement Officer (CPO) of a governmental body to delegate procurement powers and duties to other employees of the governmental body. The CPO makes the delegation to the position (e.g., library director or school business manager) and not the individual employee. The CPO has great discretion in making a delegation — it can be very specific and limited, or very broad. Also, a CPO may issue more than one delegation at a time. Therefore, multiple positions may have delegated authority.

Keep in mind that you may only delegate powers you legally have under M.G.L. c. 30B and other applicable statutes, rules, regulations, charters, ordinances or bylaws. For example, where statutes or other rules require that a contract be approved by the mayor, city council, board of selectmen or school committee, such final approval is not the CPO's to delegate.

Please complete and sign a separate delegation form for each individual employee designated with CPO powers and duties. The CPO delegation is specific to job title/position NOT the employee. Alternatively, you may complete an online delegation form available on our website at: www.mass.gov/forms/chief-procurement-officer-cpo-delegation-form.

No delegation or subsequent amendment or revocation of an original delegation shall take effect until a copy of this form has been received by the Office of the Inspector General. A delegation will remain in effect until amended or revoked by the CPO unless the delegation includes an expiration date. A copy will be retained in the Office's file.

Delegation of Procurement Powers and Duties

Section 19 of Chapter 30B authorizes a local governmental body's Chief Procurement Officer (CPO) to delegate their procurement powers and duties. **CPO delegations should be made to a position(s)/title(s) (*e.g.*, library director or school business manager) and not to an individual employee.** This CPO delegation may be specific, limited, or broad. **Note**: The CPO may delegate powers related to M.G.L. c. 30B using this form only. Please complete and sign a separate delegation form for each position receiving CPO delegation.

No delegation, amendment or revocation of a delegation shall take effect until the Massachusetts Office of the Inspector General receives this form.

Authorization: I attest to the truth and accuracy of the information provided on this form.

Name of CPO: _____

CPO Job Title: _____

CPO Email Address: _____

Jurisdiction: _____

CPO Authority: Bylaws Ordinance Charter Contract Board Vote M.G.L. c. 41, § 103 Other

Date: _____

CPO's Signature: _____

Please email completed delegation forms to the Chapter 30B Assistance Hotline:
30BHotline@mass.gov

Please continue to the next page

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Chief Procurement Officer's Delegation of Procurement Powers and Duties Form

(Type or print legibly)

Please Check/Circle One Option

☐ New Delegation ☐ Amendment ☐ Revocation

1. Position receiving a CPO delegation:

Job Title/Position: _____

Department: _____

Employee Name: _____

Employee Email: _____

Date of delegation: _____

2. Delegated CPO powers and duties as follows:

☐ **For the following department(s):** _____

☐ **For the following type of contracts or purchases:** _____

☐ **Other** (Please specify. Attach additional pages if needed.): _____

For the following Chapter 30B processes: (Check all that apply.)

☐ All types of procurements
☐ Sound business practices
☐ Written Price Quotations
☐ Invitation for Bids (IFB)
☐ Request for Proposals (RFP)
☐ Emergencies
☐ Other (Please cite Chapter 30B section):

_____

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CERTIFICATION OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

_____

(Signature of individual submitting bid or proposal)

_____

(Name of business)

Where to Find Online Submission Forms

COMMBUYS, *Goods and Services Bulletin* and *Central Register*

COMMBUYS

Required notice of Chapter 30B procurements estimated to exceed $50,000 and all surplus property sales estimated to exceed $10,000 must be posted to COMMBUYS:

www.commbuys.com

Goods and Services Bulletin

Required notice of Chapter 30B procurements and surplus property sales estimated to cost more than $100,000 must be submitted to the Secretary of the Commonwealth for publication in the *Goods and Services Bulletin*:

www.sec.state.ma.us/sprpublicforms/GSSubmissionForm.aspx

Central Register

Required notice of Chapter 30B real property transactions must be submitted to the Secretary of the Commonwealth for publication in the *Central Register*:

www.sec.state.ma.us/sprpublicforms/RPSubmissionForm.aspx.

Contracts for Energy and Energy-Related Services Reporting Requirements

Provided that certain reporting requirements are met, M.G.L. c. 30B, § 1(b)(33) exempts contracts for energy and energy-related services entered into by jurisdictions that are subject to M.G.L. c. 30B (governmental bodies). The Inspector General's office interprets the term "energy," which is not defined in any applicable statute, to apply only to electricity and natural gas commodity contracts. Contracts for fuel sources other than natural gas, such as gasoline, fuel oil and propane, are all supply contracts that must be competitively procured. Electricity and natural gas contracts with local distribution companies that your jurisdiction is assigned to, based on geography, are subject to M.G.L. c. 30B but may fall within a sole source exception. M.G.L. c. 30B does not define "energy-related services," however, based on a court decision, energy broker contracts are considered energy-related services and must be reported.

According to M.G.L. c. 30B, within 15 days of contract execution, a governmental body must forward a copy of any electricity or natural gas contract to which it is a party and a report of the process used to execute the contract to 1) the Department of Public Utilities, 2) the Department of Energy Resources, and 3) the Office of the Inspector General.

To comply with the requirements of the law, please send a copy of a contract and a report of the process used to execute the contract to each of the three required entities. Email submissions are preferred. We recommend keeping a copy of the submission in your procurement file, along with copies of all relevant documents, to demonstrate compliance with the law.

Please send an email with attachments to the following email addresses:

Mark.Marini@mass.gov; doer.energy@mass.gov; IGO-EnergyContracts@mass.gov;

Subject line: **Chapter 30B Energy Contract Report**

Sample email language:

> By email dated _____, I am providing a copy of a contract and a report of the process used to execute the contract to 1) the Department of Public Utilities, 2) the Department of Energy Resources, and 3) the Office of the Inspector General in compliance with M.G.L. c. 30B, § 1(b)(33).

_____
Name

_____
Title

_____
Name of Contract

_____
Date of Contract Execution

If you choose to mail in the report and copy of the contract, please use the following addresses:

Mark Marini, Secretary
Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110

Office of the General Counsel
Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108

For more information, see:

https://www.mass.gov/how-to/file-a-municipality-energy-contract-to-the-dpu

https://www.mass.gov/orgs/massachusetts-department-of-energy-resources

https://www.mass.gov/service-details/oig-forms

Disclosure Statement for Transaction with a Public Agency Concerning Real Property

Required disclosures of beneficial interests in real property transactions required by M.G.L. c. 7C, § 38, should be made using the DCAMM form available at the following website address:

www.mass.gov/lists/dcamm-forms-guidelines-manuals-standards-and-templates#real-estate-and-leasing-forms-

Sample Record and Evaluation of Written Quotations Form

Record and Evaluation of Written Quotations					
Department:		Requisition No.:			
		P.O. No.:			
Purchase Description and Contract Terms:					
Quantities (check one): Estimated ☐ Actual ☐					
Quality Requirements:					
Vendors Contacted		Quantity	Unit Price	Total Price	Met Quality Requirements
Company 1:					Yes ☐
Contact Name					
Address					
Email					No ☐
Telephone					
Solicited by:	Date:				
Notes					
Company 2:					Yes ☐
Contact Name					
Address					
Email					No ☐
Telephone					
Solicited by:	Date:				
Notes					
Company 3:					Yes ☐
Contact Name					
Address					
Email					No ☐
Telephone					
Solicited by:	Date:				
Notes					
Recommendation:					
Name:	Signature:				
Department:	Date:				

Sample
RFP EVALUATION FORM

PROPOSER: _____ EVALUATOR: _____

Please assign a rating to each criterion and give a detailed reason for that rating. Please provide as much qualitative information as possible to assist the CPO in making an award decision.

Ratings

HA: Highly Advantageous A: Advantageous
NA: Not Advantageous U: Unacceptable

A. Experience **Rating:_____**
Reason:
_____
_____
_____
_____
_____

B. Ability to complete the scope of work **Rating:_____**
Reason:
_____
_____
_____
_____
_____

C. Operational plan **Rating:_____**
Reason:
_____
_____
_____
_____
_____

D. Professional qualifications **Rating:_____**

Reason:

_____
_____
_____
_____
_____

E. Other comments

_____
_____
_____
_____
_____

COMPOSITE RATING

After assigning a rating to each comparative criterion, you must assign a composite rating to each proposal and state in writing the reason for the rating. Please provide as much qualitative information as possible to assist the CPO in making an award decision.

Composite Rating: _____

Reason:

_____
_____
_____

APPENDIX C: CODE OF CONDUCT FOR PUBLIC EMPLOYEES

The Office of the Inspector General has developed the following Code of Conduct, which sets standards of conduct for public employees engaged in official business relationships. We recommend that public jurisdictions adopt the Code to preserve the integrity of business relationships and to maintain the highest level of public confidence in the impartial operation of government. You can obtain information and advice regarding the requirements of the Massachusetts conflict of interest law, M.G.L. c. 268A, at the website of the State Ethics Commission, www.mass.gov/ethics.

CODE OF CONDUCT FOR PUBLIC EMPLOYEES

INTRODUCTION

The Massachusetts Office of the Inspector General has developed this Code for use by public agencies throughout the Commonwealth. Five major areas are addressed by this Code: gifts and gratuities, reimbursement of travel expenses, honoraria, testimonial and retirement functions, and groundbreaking and dedication ceremonies. This Code is not all-inclusive. It does not regulate every conceivable situation in which a public employee may be offered gifts or other items of monetary value. It does not address other activities prohibited by the conflict-of-interest law, such as bribery, participation in official matters affecting one's financial interests or those of one's family or business and misuse of one's official position. (Applicants for employment by the Commonwealth must disclose all persons who are related to the applicant who are also state employees.) Information and advice on the Massachusetts conflict of interest law, M.G.L. c. 268A, may be obtained from the State Ethics Commission at www.mass.gov/ethics. As used in this Code, "we" and "our" refer to the agency adopting this Code; "you" refers to the agency's employees or members.

CODE OF CONDUCT FOR PUBLIC EMPLOYEES

I. GIFTS AND GRATUITIES

A. General Restrictions

You may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or other item of monetary value from a person, public agency or private entity you know or have reason to know:

1. Has had, has, or is seeking to obtain contractual or other business or financial relations with us;
2. Conducts or is seeking to conduct business or other activities that are regulated or monitored by us; or
3. Has interests that may be or may give the reasonable impression of being substantially affected by the performance or nonperformance of your official duties.

Example: *You may not accept a restaurant lunch from a consultant employed by a firm under contract to us.*

Example: *You may not accept a Christmas gift from a vendor seeking business with us.*

Example: *You may not accept a ticket to a sporting event from an individual whose business we regulate.*

B. Exceptions

1. You may accept gifts in cases involving a family or personal relationship when the circumstances make clear that the relationship is the motivation for the gift.
2. You may accept nonalcoholic beverages, such as coffee or tea, from public or private entities.
3. You may attend and accept food and beverages at seasonal or celebratory functions, such as Christmas, birthday or retirement parties, hosted by public entities.
4. You may accept food and beverages in connection with attendance at working meetings held in the office of a public entity.
5. You may accept food and beverages in connection with attendance at widely attended meetings or gatherings held by a private trade or professional association in an office or other business setting when you are attending the meeting or gathering in your official capacity for informational, educational or other similar purposes.

Example: *You may accept a modest meal served in a restaurant function room in conjunction with an informational, widely attended meeting hosted by a professional association.*

Example: *You may not accept food and beverages at a hospitality suite hosted by one or more private firms.*

6. You may accept loans from banks or other financial institutions to finance proper and usual customer activities, such as home mortgage loans and automobile loans. If the bank or financial institution is an entity with which you have or might reasonably expect to have dealings in your official capacity, you must be able to demonstrate that the loan has been granted on current customary terms. You must also provide written disclosure of the loan to your supervisor. The

previous sentence does not apply if your duties or anticipated duties with respect to the bank are limited to obtaining third-party records.

7. You may accept unsolicited advertising or promotional materials of nominal value.

Example: *You may accept an unsolicited, inexpensive promotional pen or calendar.*
Example: *You may not accept a leather portfolio.*

II. REIMBURSEMENT OF TRAVEL EXPENSES

A. General Restrictions

You may not accept reimbursement for travel expenses from a person or entity who falls within the scope of Section IA, above.

B. Exceptions

1. If you deliver a speech or participate in a conference, we may elect to accept reimbursement from the sponsor of the speech or conference for your actual and necessary travel expenses. In this case, we – not the sponsor – will pay or reimburse you in accordance with our travel policy, and bill the sponsor for the appropriate amount.
2. If we determine that employee travel is a necessary component of a vendor evaluation process, we may elect to require competing vendors to reimburse us for actual and necessary travel expenses incurred in connection with the evaluation. In this case, we – not the vendors – will pay or reimburse you in accordance with our travel policy. The publicly advertised request for proposals or bids must set forth our procedures for calculating and billing all competing vendors for the appropriate amounts.

III. HONORARIA

A. General Restrictions

You may not accept honoraria or other monetary compensation from an outside source in return for a public appearance, speech, lecture, publication or discussion unless all of the following conditions are met:

1. Preparation or delivery of the public appearance, speech, lecture, publication or discussion is not part of your official duties;
2. Neither the sponsor nor the source, if different, of the honorarium is a person or entity who falls within the scope of Section IA, above;
3. You do not use office supplies or facilities not available to the general public in the preparation or delivery of the public appearance, speech, lecture, publication or discussion; and
4. You do not take office time for the preparation or delivery of the public appearance, speech, lecture, publication or discussion.

Example: *You may accept an honorarium for a magazine article prepared outside working hours.*
Example: *You may not accept an honorarium for delivering a speech in your official capacity.*

B. Exceptions

1. You may accept awards, certificates or other items of nominal value given for a speech, participation in a conference, or a public contribution or achievement.

Example: *You may accept a framed certificate of appreciation.*
Example: *You may not accept an engraved pewter bowl.*

IV. TESTIMONIAL AND RETIREMENT FUNCTIONS

A. General Restrictions

1. You may not solicit contributions, sell tickets or otherwise seek or accept payment for a testimonial or retirement function, or any function having a similar purpose, held for yourself or any other employee, if the contributor is a person or entity who falls within the scope of Section IA, above, and the admission price or payment exceeds the actual per-person cost of food and beverages served at the function.

Example: *You may not offer or sell tickets to a testimonial dinner to contractors doing business with us if the ticket price includes a contribution toward a gift.*

2. You may not accept food, beverages or gifts at any testimonial or retirement function, or any function having a similar purpose, if such food, beverages or gifts are paid for or subsidized by a person or entity who falls within the scope of Section IA, above.

Example: *You may not accept a free admission to a retirement luncheon if the cost of your admission is paid, directly or indirectly, by one or more contractors doing business with us.*
Example: *You may not accept a retirement gift if the gift was paid for with the proceeds of tickets purchased by contractors doing business with us.*

B. Exceptions

None.

V. GROUNDBREAKING AND DEDICATION CEREMONIES

A. General Restrictions

1. You may not request or require any person or entity who falls within the scope of Section IA, above, to sponsor or contribute to any groundbreaking ceremony, dedication ceremony, or similar occasion involving a public works project. If we determine that a groundbreaking or dedication ceremony for a public works project serves a legitimate public purpose, we may elect to fund such a ceremony. We may plan and pay for the ceremony. Alternatively, we may include the ceremony-related services in the construction bid specifications for the public works project.
2. You may not accept food, beverages or gifts at any groundbreaking ceremony, dedication

ceremony, or similar occasion involving a public works project if the food, beverages, or gifts are paid for or subsidized by a person or entity who falls within the scope of Section IA, above.

B. Exceptions

None.

APPENDIX D: SOURCES OF ADVICE AND ASSISTANCE

When you have a question about a particular procurement, it is often best to check first with your jurisdiction's Chief Procurement Officer or legal counsel. In addition, there are numerous associations of public officials that assist their members in a variety of ways, including exchanging information on procurements. Participation in such associations will provide you an opportunity to exchange ideas and information with other practitioners in your field. Three associations have been active in developing and implementing Chapter 30B: the Massachusetts Association of Public Purchasing Officials, the Massachusetts Association of School Business Officials and the Massachusetts Municipal Lawyers Association. Some additional sources of procurement assistance are listed below.

Department of Energy Resources (DOER) The DOER enforces and interprets M.G.L. c. 25A, which governs the procurement of energy management services contracts. The DOER also provides technical assistance on energy-saving improvements.	Department of Energy Resources 100 Cambridge Street, 9th Floor Boston, MA 02114 Telephone: 617-626-7300 Website: www.mass.gov/orgs/massachusetts-department-of-energy-resources
Department of Labor Standards (DLS) The DLS administers the prevailing wage law; registered apprenticeship training programs; and other programs to protect workers' safety, health, wages and working conditions.	Department of Labor Standards 100 Cambridge Street, Suite 500 Boston, MA 02114 Telephone: 617-626-6975 Website: www.mass.gov/orgs/department-of-labor-standards
Designer Selection Board (DSB) The DSB issues standard application forms and guidelines for design contracts for building projects. The DSB also selects designers for state, county, and Commonwealth charter school building projects.	Designer Selection Board One Ashburton Place Boston, MA 02108 Website: www.mass.gov/orgs/designer-selection-board

Division of Capital Asset Management and Maintenance (DCAMM) Disclosures of beneficial interests in real property transactions must be filed with DCAMM.	Division of Capital Asset Management and Maintenance One Ashburton Place, 15th floor Boston, MA 02108 Telephone: 617-727-4050 Website: www.mass.gov/orgs/division-of-capital-asset-management-and-maintenance
Division of Local Services, Department of Revenue The Division of Local Services in the Department of Revenue will answer questions regarding municipal finance law.	Division of Local Services Department of Revenue 100 Cambridge Street Boston, MA 02114 Telephone: (617) 626-2300 Email: DLSlaw@dor.state.ma.us Website: www.mass.gov/orgs/division-of-local-services
Office of the Attorney General The Office of the Attorney General interprets and enforces the public construction bid laws, the designer selection law, and the prevailing wage law.	Office of the Attorney General Fair Labor Division One Ashburton Place Boston, MA 02108 Telephone: 617-727-2200 Website: www.mass.gov/orgs/the-attorney-generals-fair-labor-division
Office of the Inspector General (OIG) The OIG interprets Chapter 30B. The OIG accepts telephone requests for assistance with Chapter 30B Monday through Friday between 9:00 a.m. and 4:30 p.m. You may mail or fax written requests or use the technical assistance form. The OIG trains and certifies public purchasing officials through the Massachusetts Certified Public Purchasing Official (MCPPO) program. In addition, the OIG publishes a manual, *Designing and Constructing Public Facilities,* summarizing the requirements of the state's construction-related laws. The manual and other	Office of the Inspector General One Ashburton Place, Room 1311 Boston, MA 02108 Main Office (617) 727-9140 Chapter 30B Hotline (617) 722-8838 Chapter 30B Technical Assistance Form MCPPO Program (617) 722-8884 24-Hour Fraud Hotline (800) 322-1323 Fax (617) 723-2334 Website: www.mass.gov/orgs/office-of-the-inspector-general

OIG publications can be downloaded from the OIG's website.	
Operational Services Division (OSD) The OSD awards a variety of statewide contracts that local jurisdictions may use without conducting a separate Chapter 30B procurement process.	Operational Services Division One Ashburton Place, Room 1017 Boston, MA 02108 Telephone: 617-720-3300 Website: www.mass.gov/orgs/operational-services-division
Secretary of the Commonwealth The Secretary of the Commonwealth administers the Public Records Law and publishes the *Central Register* and the *Goods and Services Bulletin*.	Secretary of the Commonwealth Public Records Division One Ashburton Place, Room 1719 Boston, MA 02108 Telephone: 800-392-6090 Email: cis@sec.state.ma.us Website: www.sec.state.ma.us/records management *Central Register* *Goods and Services Bulletin* State Publications and Regulations Division One Ashburton Place Boston, MA 02108 Website: www.sec.state.ma.us/publications
State Ethics Commission The State Ethics Commission administers and enforces financial disclosure and conflict of interest laws. It also renders written advisory opinions upon request.	State Ethics Commission One Ashburton Place, Room 619 Boston, MA 02108 Telephone: (617) 371-9500 Website: www.mass.gov/orgs/state-ethics-commission

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