Letter from the Inspector General

Dear Public Officials,

This office recently issued a report that chronicles the pitfalls that plagued a school system in its endeavors to obtain computer services and equipment. We found that the school system's stewards and administrators did not availing themselves of basic knowledge relevant to ensuring defensible expenditures undertaken in accordance with legal requirements and in the public interest. The harm was already done by the time this office was contacted.

The report is about the regional school known as Ralph C. Mahar Regional School District (Mahar Regional School District) in Orange, Massachusetts, which hired a new school Superintendent in 2005. This was the district's first new Superintendent in approximately 40 years and it was this individual's first experience as a school Superintendent. He assumed the position as Superintendent in October 2005. The Superintendent had no training in or understanding of Massachusetts procurement practice. The Mahar Regional School District did not have a business manager or procurement officer. In sum, no one at the school had an understanding of Massachusetts procurement law.

One of the first purchase recommendations made by the new Superintendent was for approximately $70,000 of no-bid technology, equipment and services from a technology vendor with which he had done prior business while employed elsewhere. The vendor had no experience performing the type of work sought by the Superintendent. Instead of two weeks, the job took approximately eight weeks to complete and was not completed in the quality manner expected.

The vendor completed the project. The law in the Commonwealth states that, due to the contracting irregularities, this vendor cannot be paid. The complete report, *Procurement Deficiencies at the Mahar Regional School*, may be viewed at [http://www.mass.gov/ig/publ/maharrpt.pdf](http://www.mass.gov/ig/publ/maharrpt.pdf).

As always, I encourage you to visit our website periodically to obtain the most up-to-date information on the public bidding laws, the MCPPO program, and to access our reports, advisories and other publications. If you have questions regarding M.G.L. c.30B, please call 617.722.8838. Lastly, I would like to congratulate the most recent recipients of the MCPPO certification.

Sincerely,

Gregory W. Sullivan
Inspector General

The July –December, 2007 MCPPO Schedule is now Available

The new schedule for the Massachusetts Certified Public Purchasing Official (MCPPO) program is now available, and the new registration form can be found on page 5 of this issue of the *Procurement Bulletin*.

If you need more information regarding the MCPPO program, the seminars that are offered, or how to become designated as a Massachusetts Certified Public Purchasing Official, please visit our website at [www.mass.gov/ig/mcppo/igmpo.htm](http://www.mass.gov/ig/mcppo/igmpo.htm).
OIG Articles

Updated Addresses for Energy Contracts

Please update your address books! M.G.L. c. 30B, §1(b)(33) exempts contracts for energy and energy related services and requires that jurisdictions send a copy of contracts for electricity and for natural gas supply contracts to three state agencies, along with a report of the process which led to each award.

One of the three agencies – the Department of Telecommunications (DTE) – no longer exists, due to a recent restructuring of state agencies. The newly created Department of Public Utilities (DPU) is one of two new regulatory agencies that will assume DTE’s functions. Among other matters, DPU will handle electricity and natural gas issues, and so is an agency with which a report must be filed.

Please note that the term “energy” is not defined in any applicable statute, but is interpreted by this office to mean contracts for electricity and for the supply of natural gas. Fuel sources other than natural gas, such as gasoline, fuel oil and propane, are all supply contracts and must be competitively procured.

The updated address list for energy contracts, which reflects the change noted above, is as follows:

Mary Cottrell, Secretary
Department of Public Utilities
One South Station, 2nd Floor
Boston, MA 02110

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

Barbara J. Hansberry, General Counsel
Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108

Chapter 30B Questions and Answers

Q.1. I am the superintendent of a high school and I have been approached by a company that is offering to create an alumni directory at no cost to the school. After the directory is completed, the company will sell the directory for $100 per copy. Is this contract subject to Chapter 30B?

A.1. Yes. Who pays is irrelevant to whether a contract is subject to Chapter 30B. The law applies because there is a contract between the local government and the vendor. The value of the contract, and the process to be used, will depend on how much money the vendor will potentially earn from the sale of the directory.

If the agreement will require that the school provide student information to a private party, some of which may be confidential, it is recommended that you contact your legal counsel to ascertain whether the school is authorized to release this information for private business purposes.

Q.2. I am the business manager for a regional school district which receives federal McKinney-Vento funds, which are used to pay for the transportation of homeless students. I cannot estimate in advance how many students will need such transportation throughout the year, so I currently conduct a separate quote process for the transportation services for each student. Is such a process considered to be bid-splitting?

A.2. No. Bid splitting is the intentional division of a procurement with the intent of evading a requirement of Chapter 30B. Because you cannot know how many students will need such transportation throughout the year, nor do you know for how long such transportation will be required, this office predicts that a court would not consider the practice of conducting a separate quote process for each student as bid-splitting, as you have a legitimate basis to solicit separate quotes. If, however, more than one child from the same family requires such transportation, it is recommended that you conduct one process for those children, as the duration of the services needed would most likely be the same for the children.

Q.3. I am the CPO of a town and have a general question regarding the procurement of consulting services. The town has limited funds available for such procurements, and I am often concerned that the bid submissions will exceed the appropriated amount. May I include the appropriated amount in the specifications?
Chapter 30B Questions and Answers
- continued from previous page -

A.3. Yes. Chapter 30B does not prohibit you from including the amount appropriated for a procurement as a maximum bid price in your bid specifications. This may make sense if you are concerned that prices will exceed the appropriation, and time would not permit you to conduct another bid process if such occurs. Be forewarned however, that vendors may bid prices no lower than, or only slightly lower than your maximum bid price.

Q.4. I am the purchasing agent for a town. I am putting together a bid for a one-year cleaning services contract, with two one-year options to renew. Must the bidders bid the same price for the option years as they bid for the first year of the contract?

A.4. No. When drafting your specifications for a multi-year contract, including a contract with option years, you have the discretion to determine how prices are to be submitted. You may require that bidders provide a price for the first year of the contract that does not increase in the option years, or you may allow bidders to provide different prices for each year of the contract. However, after the bids are opened, vendors cannot increase the prices they bid. This means that, prior to entering into an option year, the vendor will not be able to increase the prices that it bid for that option year.

Further, when determining the winning bidder for a contract with option years, you will consider only the initial term of the contract. In this example, that would only be the first year of the contract, as you cannot know when awarding the contract whether you will exercise the option years.

Q.5. I am the CPO of a fire district. I am currently trying to determine whether it is more advantageous to exercise an option to renew a contract for ambulance billing services than it is to conduct a new procurement. May I conduct a separate bid process to make this determination?

A.5. Yes. Chapter 30B states that before exercising an option to renew or extend that was stated in the solicitation and resulting contract, you are required to make a reasonable determination that it is more advantageous to renew your existing contract than to conduct a new procurement process. Some jurisdictions solicit quotes, while others conduct a separate bid process to make this determination.

When conducting a reasonable investigation through an advertised bid or proposal process, this office recommends that you solicit prices for the same term as the option, extension or renewal, to allow for a meaningful comparison. If you decide to conduct a bid process, the current vendor should be made aware that, while it may bid on this separate bid process, its current rate for the option years will remain legally enforceable if the current vendor bids a higher amount than that originally bid.

Q.6. An educational collaborative has asked if the town would be willing to lease its surplus property to the collaborative. Is a lease of real property to an educational collaborative subject to M.G.L. c.30B?

A.6. Yes. However, if the collaborative was formed pursuant to M.G.L. c.40, §4E, you will not be required to solicit proposals for the disposition. Such an educational collaborative is considered to be a governmental body. When disposing of property to a governmental body, including the federal government, the commonwealth, or any of its political subdivisions, you must follow the requirements of M.G.L. c.30B, §16(i).

When disposing of property through sale or lease, M.G.L. c.30B, §16(i) requires that you follow M.G.L. c.30B, §16(a),(b) and (g). M.G.L. c.30B, §16(a) requires that you declare the property available for disposition and set any reuse restrictions for the property. M.G.L. c.30B, §16(b) requires that you determine the value of the property through procedures customarily accepted by the appraising profession as valid. And if you dispose of the property for less than the determined value, M.G.L. c.30B, §16(g) requires that you post a notice in the Central Register explaining the reason for the decision and the difference between the value as determined in paragraph (b) and the price to be received.

If the educational collaborative was not formed pursuant to M.G.L. c.40, §4E, you will be required to solicit proposals for the disposition if the value of the property that you are disposing exceeds $25,000.
Congratulations

The following is a list of the MCPPO Program’s new designees on applications reviewed between August 2006 and June 2007.

**MCPPO**

Paul G. Barden, Town of Framingham  
Joanne M. Blier, Greenfield Public Schools  
Brenda Bussey, Framingham State College  
Sandra J. Cashen, Dennis-Yarmouth RSD  
J. Michael Cassidy, Lowell Public Schools  
Gregory C. Chapdelaine, City of Leominster  
Diane I. Clark, Narragansett RSD  
Donna M. Compton, City of Gloucester  
David P. Connor, Winchendon Housing Authority  
Darlene F. Costa-Brown, Bridgewater State College  
Joanne M. Cuff, Ipswich Public Schools  
Fred J. Davies, Town of Framingham  
Jennifer L. DeCarvalho, Barnstable Sheriff’s Office  
Joan E. Dillon, City of Cambridge  
Rositha Durham, City of Somerville  
Grace Earle, Plymouth County Sheriff’s Dept.  
Warren Fairbanks, Framingham State College  
Nancy A. Fitzgerald, Fitchburg State College  
John F. Flaherty, Concord/Concord-Carlisle Public Schools  
Joseph C. Foti, Chelsea DPW  
Marilyn Gordon, Easton Public Schools  
Jonathan A. Harris, Town of Concord  
Mary Ann Harris, Town of Millbury  
Lisa A. Higgins, Town of North Attleboro  
Kelvin Jeremiah, Springfield Housing Authority  
David S. Keniston, Marblehead Public Schools  
William F. Ketcham, Town of Adams  
Michael La Francesca, Blue Hills Reg. Voc. Tech. School  
John A. Lafleche, Bay Path Voc. Reg. School  
Cyndee Lafreniere, Winchendon Housing Authority  
Lorraine A. Leonard, Town of Harvard  
Connie Linscott, City of Beverly  
Karen Mancini, City of Somerville  
Bonnie-Anne Mathias, UMASS Medical School  
Andrew W. Maylor, Town of Swampscott  
Shelly Maynard-DeWolf, City of Springfield  
Eleanor A. McCarter, Town of Mansfield  
John J. McGarry, Town of Raynham  
Gerry Missal, Town of Belmont  
Linda Nesta, Framingham State College  
Diane A. O’Neil, Town of Natick  
Craig L. Owen, Reading Municipal Light Dept.  
Carol H. Pratt, Town of Medway  
John F. Quinn, Tewksbury Public Schools  
David W. Ramsay, Town of Dover  
Judith Ann Rebell, City of New Bedford  
John Retchless, Middleboro Public Schools  
Nancy R. Rockwell, County of Norfolk  
Jenna Rostek, UMASS Amherst  
Joseph A. Salvo, Methuen Public Schools

**MCPPO cont.**

Anita M. Scheipers, Town of Lincoln  
Deborah A. Seymour, Worcester Public Schools  
Kristine M. Shipps, South Shore Charter Public School  
Joseph Slominski, Barnstable School Dept.  
Daniel G. Smith, City of Gloucester  
James A. Smith, City of Fall River  
Lori Tanner, Pioneer Valley Planning Commission  
Tammy Bazin Tefft, City of Westfield  
Thomas E. Wilson, Town of Chilmark

**MCPPO for Supplies & Services**

Anne Marie Cella, Revere Housing Authority  
Maureen DeChristofofo, The Education Cooperative  
Cindy Mahr, Weston Public Schools  
Mary M. Martin, Cambridge Public Schools  
Nanci S. Schwartz, Hampshire Council of Governments

**MCPPO for Design & Construction**

Eddie Corbin, City of Springfield  
Basilio Diaz, Town of Southborough  
David Gallogly, City of Boston Capital Construction  
James A. Kiely, Somerset Public Schools  
John J. Moynihan, Canton Public Schools  
Steven H. Popper, Town of Needham

**Associate MCPPO**

James S. Albrecht, Sturgis Charter Schools  
Mary Bator, Lowell Public Schools  
Eileen Comeau, Concord Public Schools  
Brian F. Curley, Lowell Public Schools  
Alesia H. Days, City of Springfield  
Kristin N. Harrington, City of Pittsfield  
Robert Kachinski, Chicopee Housing Authority  
Martha B. Kelly, UMASS Boston  
Nooshi S. Robertson, Town of Watertown  
Linda K. Stevens, MassBay Community College  
Chad G. Thompson, Town of Longmeadow  
Lawrence M. Travers, Town of Barnstable

**Associate MCPPO for Supplies & Services**

Jennifer Jaillet, City of Gardner  
Darlene R. McGrath, Town of Milton Public Works  
Susan H. Sullivan, Wachusett RSD  
Linda A. Sweet, Shrewsbury School Dept.

**Associate MCPPO for Design & Construction**

Richard A. Brouillard, DHCD  
Coleman G. Flaherty, City of Boston
PUBLIC CONTRACTING OVERVIEW

No Prerequisite

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SUPPLIES & SERVICES CONTRACTING

Prerequisite: Public Contracting Overview or Charter School Procurement

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DESIGN & CONSTRUCTION CONTRACTING

Prerequisite: Public Contracting Overview or Charter School Procurement

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ADVANCED TOPICS UPDATE

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CERTIFICATION for School Project Designers & Owner’s Project Managers

4-Day Training

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CONSTRUCTION MANAGEMENT AT RISK

Under M.G.L. c. 149A: Legal Requirements & Practical Issues

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CHARTER SCHOOL PROCUREMENT

No Prerequisite

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Drafting A Model IFB

Disk program requiring Microsoft Word 7.0 or higher

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*Registration for this course must be accompanied by a check

PAYMENT OPTIONS:

- CHECK/M.O. 
- PURCHASE ORDER 
- Visa 
- MasterCard

NAME: ____________________________ TITLE: ____________________________
PHONE: ___________________________ FAX: _____________________________
E-MAIL: __________________________
ORGANIZATION/JURISDICTION: __________________________
ADDRESS: __________________________ CITY: __________________________ STATE: __________ ZIP CODE: __________

Do you need special accommodations? ________________
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If you previously subscribed to the *Procurement Bulletin* and have not received a copy, please contact Eva Benoit by phone at 617-727-9140.

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