Letter from the Inspector General

Dear Public Officials:

Happy Holidays!

I would like to congratulate those public officials that have recently been designated as Massachusetts Certified Public Purchasing Officials. A listing of the designees can be found on page 6 of this publication. Also, January marks the start of a new MCPPO semester. Please see page 7 for the January - June, 2009 Massachusetts Certified Public Purchasing Official (MCPPO) program schedule.

I would like to bring your attention to some recent publications regarding M.G.L. c.30B which you may find of interest, summaries of which can be found on page 5 of this bulletin. Recently, the office published an advisory on the applicability of M.G.L. c.30B when procuring outside consultants with fees from applicants; a letter to the Plymouth County Commissioners regarding improper contract monitoring of a public service vehicle contract; and a letter to the City of Fitchburg regarding the procurement of energy management services for the public schools.

Just a reminder, as a charter school official, you may already know that Section 11 of Chapter 46 of the Acts of 1997 requires that charter school administrators earn a MCPPO certificate. To meet this requirement, charter school officials may take either Public Contracting Overview, offered several times throughout the year, or Charter School Procurement, offered once annually. Due to the changing nature of the procurement laws, this office strongly recommends that charter school officials stay abreast of the procurement laws by updating your attendance at seminars every three years, as is required with all MCPPO designees. Information on these and other seminars in the MCPPO program can be found at http://www.mass.gov/ig/mcppo/igmpo.htm.

In an effort to assist municipalities in taking advantage of efficient procurement methods, this office recently filed legislation which would make certain amendments to M.G.L. c.30B. Not only does the legislation seek to clarify certain irregularities in the statute, it would also exempt purchases made from the General Services Administration’s supply schedules, and permit municipalities to advertise for supplies and services on a website instead of a newspaper of general circulation. More information on the legislation, including the bill number, will be provided in the next issue of the Procurement Bulletin, when the legislation has been assigned a bill number.

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

Sincerely,

Gregory W. Sullivan
Inspector General
Purchasing From Contracts Entered into by Out-Of-State Public Entities

Increasingly, this Office is learning that Commonwealth cities and towns are being solicited by purchasing intermediaries (such as U.S. Communities, and the National Joint Power Alliance) to purchase from vendors’ contracts that have been procured by an out-of-state public entity. As you know, M.G.L. c.30B limits such purchases. When can you purchase off of an out-of-state public entity’s contract?

Sound Business Practices

You can purchase from an out-of-state public entity’s contract when the procurement value is less than $5,000 and you have determined that the price is favorable. M.G.L. c.30B requires that you use sound business practices. (See M.G.L. c.30B, §4(c).) This means ensuring the receipt of favorable pricing by periodically soliciting price quotes or verifying prices in another manner.

Quotes

You can purchase from an out-of-state public entity’s contract for procurements of $5,000 or more, but less than $25,000 when the vendor’s price is the lowest quote received from a responsible vendor that meets your purchase description. M.G.L. c.30B requires that you solicit at least three oral or written price quotes from vendors customarily providing the supply or service needed. (See M.G.L. c.30B, §4(a).) You may use an out-of-state governmental entity’s contract price as one quote. The contract is awarded to the responsible vendor offering the needed quality of supplies or services at the best price.

Competitive Sealed Bids or Proposals

Generally, you may not make a purchase from an out-of-state entity’s contract for procurements valued at $25,000 or more. Unless otherwise exempt, contracts valued at $25,000 or more require a competitive sealed invitation for bids or request for proposals process.

Practical Considerations

Prior to purchasing from these contracts, please remember the following:

- There is no exemption from the competitive procurement procedures when a Massachusetts governmental body purchases from contracts procured by out-of-state public entities. Unless exempt under a provision of Massachusetts law, all purchases from such contracts must fully comply with M.G.L. c.30B.

- Ensure that the contract from which you seek to purchase is open to your governmental body. That is, determine whether your governmental body is considered “eligible” by the terms of the out-of-state contract.

- Bid-splitting, or the division of a procurement with the intent of evading a requirement of M.G.L. c.30B, is illegal.

- Do your market research. There may be multiple contracts from which you can procure the supply or service that you are looking for (including out-of-state contracts which are open to Massachusetts governmental bodies, Massachusetts statewide contracts, and in-state collective contracts of which you are already a member). You should first verify what is included under the contract and at what price. Be sure to verify whether shipping, warranty or other costs are included in the price. Once you have determined the complete cost of the purchase, you should determine which contract offers what you need at the best price.

- Always check your local rules before making a purchase from an out-of-state public entity’s collective purchase contract. The dollar thresholds of M.G.L. c.30B may be higher than the thresholds in your local rules. If your local rules require advertised bids at a lower dollar threshold you must follow your local rules.

- M.G.L. c.30B requires that agreements of $5,000 or more be in writing, and you may not make payment for goods received prior to the execution of a written contract. For documentation on purchases of less than $5,000, consider using the invoice signed by the vendor. Always consult your legal counsel to ensure that your contract adequately protects your jurisdiction.

If you have any questions on purchasing from contracts entered into by out-of-state public entities, please feel free to contact our Chapter 30B line at 617-722-8838.
OIG Articles, cont.

COMMONWEALTH CITIES, TOWNS, DISTRICTS, COUNTIES, AND AUTHORITIES CAN NOW USE CERTAIN COMMONWEALTH DEPARTMENT CONTRACTS

You may have recently received an email from the Operational Services Division (OSD) issuing policy guidance to state agencies regarding the inclusion of cities and towns as “eligible entities” on contracts that the state agency procures. That is, if OSD authorizes a state agency to do its own procurement for goods or services, the agency may consider adding cities and towns to the list of eligible entities who may make purchases from the contract. For purposes of OSD’s policy guidance, state agencies are the “Commonwealth Departments” that issue procurements subject to the Commonwealth’s procurement regulations, 801 CMR 21.00.

Like OSD’s Statewide contracts, the legal authority for a city or town to use a Commonwealth Department’s (Department) contract is M.G.L. c.30B, §1(c) and M.G.L. c. 7, §22A. Cities and towns may use these contracts without conducting a separate M.G.L. c. 30B procurement process. The availability of Department contracts allows cities and towns another procurement option for meeting their procurement needs.

It is our opinion that when using a Statewide or a Department contract, you must execute your own contract with the vendor. This Office recommends that, at a minimum, a city or town use a purchase order, and ensure that it contains warranty information, a space for the vendor’s signature and reference to the Statewide or Department contract number. We encourage you to include any additional standard legal terms with the awarded vendor.

And please remember, Statewide and Department contracts do not cover every item that a vendor may sell. As such, you may not add additional items beyond what was bid by OSD or the Department without reviewing whether the purchase fully complies with M.G.L. c.30B. You will still need to monitor vendor performance and will be responsible for performance or payment issues relative to this vendor’s contract.

If you have any questions regarding this policy, please contact the Chapter 30B line at 617.722.8838.

UPDATES ON FUEL CONTRACTS

In a recent article in the Operational Services Division Procurement e-News, entitled Leaving a Local Buying Group to Join State Contracts,¹ OSD addressed purchasing from statewide contracts for fuel. While OSD advised that its fuel contracts are open to participation by cities and towns, OSD requires a commitment by purchasers from the contracts. For example, those wishing to establish a new account under the No. 2 heating oil contract must join, by committing to the purchase, prior to October each year.

OSD further discussed an issue that this office has been increasingly receiving questions on: municipalities deciding whether to opt-out of an M.G.L. c.30B collective contract for fuel. This office fully agrees with the advice OSD has provided: before leaving a collective agreement for fuel (or any other fixed price agreement), you must determine that you have no legal obligations under the terms of the collective procurement.

Many of the vendors on fuel contracts purchase the fuel at the beginning of the contract to ensure that it can meet the contract requirements for the year. Vendors may be left in a difficult position if members of collective purchasing groups determine that they no longer wish to purchase through the collective. If vendors’ expectations on the collective contract are adversely affected, they may not bid in the future. If you are a member of a collective procurement and are considering opting out of that procurement, this Office strongly recommends that you discuss your options with your legal counsel. Your legal counsel can help you determine whether opting out of that contract would constitute a breach of contract, which could potentially result in legal action.

Lastly, municipalities are motivated to opt-out of these fixed-price fuel contracts because of high prices. Many vendors obtained set pricing for fuel over the summer months, when prices were continuously rising. When the market is volatile, municipalities should consider soliciting variable rates based on an index. Variable rate pricing allows municipalities to take advantage of situations in which prices drop considerably over the course of a contract. However, municipalities would be required to pay more if the prices increase. For more information on soliciting prices based on an index, please see our June 2008 Procurement Bulletin article, entitled Chapter 30B and the Use of Price Adjustment Clauses, (v14, n2, pg 2, June 2008) which can be accessed at http://www.mass.gov/ig/publ/nljun08.pdf.

Chapter 30B Questions and Answers

Q.1. I am the food services director for the town’s school department and will be procuring lunch time pizza delivery for the schools. It is important for the selected vendor to offer pizza that the students like so we would like to include taste as a quality requirement in our invitation for bid (IFB). Can we establish a quality requirement for taste?

A.1. Yes. Requiring that a product meet minimum stated taste criteria is a good way for a governmental body to fairly evaluate quality when procuring food. In order to do this, you must state in your specifications what is considered acceptable. For example, you could specify that at least seven out of ten taste testers find the product acceptable. Like any other quality requirement, only those pizzas that meet your requirements will be considered. You will then award the contract to the lowest, responsive and responsible bidder.

Q.2. I am the chief procurement officer of a city and am charged with disposing of a city-owned building. I would like to hire a real estate broker to find potential buyers and assist with the sale. If I hire a broker, must I solicit proposals for both the broker and the sale of the property?

A.2. Yes. Section 16 requires that you advertise for the solicitation of proposals if the value of the property you are disposing of exceeds $25,000, regardless of whether you hire a real estate broker to assist in the transaction. Additionally, the hiring of a broker is a service contract subject to Chapter 30B, regardless of how the broker is paid. If the broker’s commission is estimated to cost $5,000 or more but less than $25,000, you will solicit at least three oral or written price quotations. If the estimated commission will cost $25,000 or more, you must use a bid or proposal process. For more information on disposing of real property, please see “General Recommendation for Municipal Real Estate Dispositions,” in the December 2003 issue of the Procurement Bulletin (v9 n4 p2).

Q.3. I am the fire chief of a town. I have been advised by the Town Accountant that I must have a written contract for all Chapter 30B procurements of $5,000 or more, or the vendor cannot be paid. Does a purchase order constitute a written contract?

A.3. Yes. For lower dollar contracts. It is this Office’s opinion that the use of a purchase order may satisfy the Chapter 30B requirement that all contracts in the amount of $5,000 or more be in writing. Your purchase order should include any contract terms and conditions that you determine are necessary for the procurement and should always include a place for the vendor’s signature. However, this Office recommends that you discuss the use of a purchase order with your legal counsel to ensure that you have met all state and local laws and that your jurisdiction will be adequately protected in case of a legal action.

Q.4. I am a town administrator and work on issues that involve the public bidding laws. When is it appropriate to call the Inspector General’s office with questions and when should I call the Attorney General’s office?

A.4. The Office of the Inspector General answers questions about M.G.L. c. 30B, the Uniform Procurement Act. M.G.L. c. 30B establishes procurement procedures for most agreements for supplies and services, dispositions of surplus supplies, and real property acquisitions and dispositions by local governmental bodies. Under M.G.L. c. 30B, §2, a governmental body is defined 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.

The Office of the Attorney General has been responsible since September 1993 for ensuring that procurements of public design and construction contracts comply with Massachusetts public bid laws. Massachusetts awarding authorities are responsible for a variety of construction projects, including schools, police and fire stations, roads, bridges, and wastewater treatment plants. Staff of the Division of Fair Labor and Business Practices within the Office of the Attorney General, which handles construction bid protests, are also available to answer your questions about public design and construction laws.

Q.5. Why do you recommend cities and towns use a written purchase description when soliciting price quotations?

A.5. While Chapter 30B does not require a written purchase description for soliciting price quotations for purchases that cost $5,000 or more but less than $25,000, this office recommends having a written purchase description as a best practice. It is the best way to make sure that all vendors get the same product description. This makes it easier to make a meaningful comparison of prices. A “best practice” goes beyond the requirements of Chapter 30B in a way that enhances the procurement process.
Recent Publications


This office recently advised the Plymouth County Commissioners in a letter that their contract for public service vehicles was not being properly monitored, leading to potential vendor abuse. In addition, it opened the door to illegal purchasing by members of the Plymouth County collective Bid Contract #09-10-11 (Ford public service vehicles) with MHQ Municipal Vehicles. The office reviewed option items for the vehicles which were purchased pursuant to the contract yet were not included in the bid (“off-contract” items). The office also reviewed MHQ’s sales activity reports submitted to the Plymouth County Sheriff’s Department for Ford public service vehicles. Based on the review, the office found that the vendor was substantially increasing its revenue by supplying “off-contract” items. We advised that it is the dollar value of the “off-contract” item that determines which M.G.L. c. 30B procedures are applicable. This office has previously warned Plymouth County about the need for greater contract oversight.

By a separate letter dated January 18, 2007, this office informed the purchasing agent of the Plymouth County Sheriff’s Department and the purchasing agent for the city of Boston about a prior review of this same issue as pertained to certain “off-contract” purchases by the city and MHQ.

A complete copy of the letter to the Plymouth County Commissioners can be obtained by visiting http://www.mass.gov/ig/publ/plymouth_county_letter.pdf.


This Office recently published an advisory regarding the applicability of M.G.L. c.30B to the hiring of outside consultants who are paid for by applicants. Section 53G of M.G.L. c.44 authorizes Zoning Boards of Appeal, Planning Boards, Boards of Health, and Conservation Commissions to establish special revolving funds in which to hold fees from applicants, where such fees are permitted by law. The fees are then used to pay consultants without municipal appropriation. These consultant services are subject to M.G.L. c.30B despite the fact that the fees are paid by applicants for permits and approvals. The advisory provides an overview on M.G.L. c.44, §53G and provides guidance on how to procure the services while complying with M.G.L. c.30B.

The advisory can be accessed at http://www.mass.gov/ig/publ/c44_s53g_consultants.pdf.


This office recently sent a letter to the CPO of the City of Fitchburg after the City attempted on two occasions, without success, to procure energy management services which would have been paid for by energy cost savings. Each time the City properly rejected the only proposer, as the proposals were non-responsive to the request for proposals. During the City’s third attempt, the only proposer indicated that it would neither provide a performance bond nor sign the City’s contract, as required by the City. This Office recommended that the City revise the scope of services to open up the procurement to a wider range of competition and to consider conducting the procurement under M.G.L. c.25A, §11I, which contains certain safeguards when entering into energy management services contracts. Additionally, this office advised that regardless of which procurement procedure the City decided to follow, the City should continue to require a performance bond to guarantee the savings and require the winning vendor to sign the City’s own contract.

The letter can be accessed at http://www.mass.gov/ig/publ/fitchburg_eei_ltr.pdf.

Save The Date!

The Office of the Inspector General will be presenting its “Bidding Basics” seminar at this year’s Statewide Training And Resources conference, better known as STAR, on May 21, 2009.

This 2 hour seminar will be available at no extra cost, and is open to all STAR Participants. More information will be available in the next issue of the Procurement Bulletin.

The letter can be accessed at http://www.mass.gov/ig/publ/fitchburg_eei_ltr.pdf.
Congratulations!

The following is a list of the MCPPO Program’s new designees on applications reviewed (not received) between September 1, 2008 and December 31, 2008:

**MCPPO**
- David A. Berry, Town of Arlington
- Deborah J. Boyd, Tantasqua RSD
- Clayton R. Carlisle, City of Everett
- Allan R. Chiocca, Town of Bridgewater BOS
- Karen M. Connery, Revere Housing Authority
- Gino Cresta, Jr., Town of Swampscott
- Adele M. Cullinane, Town of Weymouth
- Jennifer A. Dymek, City of Gardner
- Marilyn L. Gallardo, Groton Dunstable RSD
- Peter Graczykowski, City of Springfield DPW
- Stephen G. Keane, Lexington Housing Authority
- John R. Livsey, Town of Westford
- John O. Martin, UMASS Amherst
- Daniel J. Morgado, Town of Shrewsbury
- Jane M. Murphy, Bridgewater State College
- Doric C. Scarpelli, Rockland Public Schools
- Christine F. Sordillo, Town of Framingham DPW
- John F. Stone, Abington Sewer Dept.
- Pamela Themelis, City of Lowell

**MCPPO, cont.**
- Wendi M. Warger, UMASS Facilities Planning
- Sandra E. Wrona, Town of West Springfield

**MCPPO for Supplies & Services**
- David J. Pulsifer, Chelmsford Water District

**Associate MCPPO**
- Justin L. Cole, Town of Uxbridge
- Gregory Farkas, Revere Housing Authority
- Jeffrey R. Gomes, City of Lowell DPD
- Dana M. O’Brien, City of Medford
- Lynn Omasta, UMASS Facilities & Campus Plan.
- Jonathan F. Sherman, Boston Public Health Commission
- Lauri A. Valcourt, Methuen Public Schools

**Associate MCPPO for Supplies & Services**
- David R. Williams, Town of Weston

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**MCPPO Certification and Recertification Information**

Just a reminder—the various Massachusetts Certified Public Purchasing Official (MCPPO) designations are valid for three years from the date of issuance. For purposes of certification, this office strongly recommends that you apply for your designation as soon as you have met the requirements. In addition to the seminar requirements, applicants must meet educational and experience requirements. For more information, see the application for designation at [http://www.mass.gov/ig/mcppo/mcpdesig.pdf](http://www.mass.gov/ig/mcppo/mcpdesig.pdf). Please note that it may take up to 90 days to process the application. Additionally, please keep in mind that the seminars are valid for three years.

In order to recertify as an MCPPO, designee’s must earn at least 25 continuing education credits during the three year period following the designation, some of which must be earned through taking one of the following three seminars; Supplies and Services Contracting (17 credits), Design and Construction Contracting (17 credits) or MCPPO Advanced Topics Update (14 credits). Again, this office strongly recommends that you apply for recertification as soon as possible as it may take up to 90 days to process the application.

Additionally, this office strongly recommends that charter school officials stay abreast of the procurement laws by updating their attendance at either the Charter School Procurement or Public Contracting Overview seminars every three years, as is required with all MCPPO designees.

For more information on the MCPPO program, please visit our website at [http://www.mass.gov/ig/mcppo/igmcppo.htm](http://www.mass.gov/ig/mcppo/igmcppo.htm).
REGISTRATION INFORMATION:
All seminars will be confirmed based on a minimum of 20 participants.

GOVERNMENT/NON-PROFIT COURSE PRICE:
Government employees shall include all employees of the commonwealth, employees of the commonwealth’s political subdivisions, employees of other state governments, employees of the federal government and employees of any other municipality, county, or local district. Non-Profit employees include any employee of a 501(c)(3) corporation. Proof of non-profit status must be provided with registration.

RESERVE SEATING:
To reserve seating, fax registration and purchase order to (617-723-2334).
MAIL ORIGINAL TO: Commonwealth of Massachusetts Office of the Inspector General One Ashburton Place, Rm. 1311 Boston, MA 02108
ATTN: MCPPO Program

S U B S T I T U T I O N S / C A N C E L L A T I O N S: Each seminar is limited and filled on a space available basis. No refunds for cancellations. Registration transfer to someone in your organization is possible with prior notice. The OIG reserves the right to cancel, reschedule any seminar and is not responsible for any costs incurred by registrants. Terms and conditions may change without notice. Alternate course dates may be substituted in the event of an emergency, upon notification. NO-SHOWS WILL BE INVOICED A $100.00 SERVICE CHARGE.

P R O V I D E N T I A L D E V E L O P M E N T P O I N T S:
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The Commonwealth of Massachusetts Office of the Inspector General is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE sponsors. State Boards of Accountancy have final authority on the acceptability of individual courses for CPE credit. Complaints regarding registered sponsors may be addressed to the National Registry of CPE Sponsors, 150 Fourth Avenue North, Suite 700, Nashville, TN 37219-2417, www.nasba.org.

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

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 Patty Callahan by phone at 617-727-9140.