



PROCUREMENT BULLETIN

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A Publication of the Office of the Inspector General

IG GREETINGS

*Omnibus ad quos praesentes
litterae pervenerint, salutem*

I am pleased to announce that the Office of the Inspector General will be offering a certification program for public purchasing officials.

Planning for the program is in the preliminary stages right now. This Office recently met with representatives from the Massachusetts Association of Public Purchasing Officials, the Massachusetts Association of School Business Officials and the City Solicitors and Town Counsels Association for input from the purchasing community.

More information about the program will become available in future issues of this publication.

Sincerely,

Robert A. Cerasoli
Inspector General

Public Purchasing Official Certification Program Approved

As many of you know, the Office of the Inspector General is charged with preventing and detecting fraud, waste and abuse in the expenditure of public funds. The Inspector General places great emphasis on the prevention mandate in the belief that the public is best served when fraud, waste, or abuse is avoided. Consistent with this belief, this Office devotes considerable resources to assisting local and district officials in avoiding problems with procurements and resolving bid protests when they do arise.

In light of this mandate, the Inspector General sought funding from the legislature to train public purchasing officials. The legislature approved a public purchasing certification program, which requires the Office of the Inspector General to train and certify local purchasing officials in Massachusetts purchasing practices and re-

quirements.

The objectives of the certification program are to promote:

- stewardship of resources in the public interest;
- cost-effective, ethical and modern purchasing practices;
- compliance with Massachusetts contracting laws; and
- dialogue and exchange of ideas among local purchasing officials.

This program will offer four types of certification:

- **General** certification will be granted to those who attend a seminar that includes (a) an overview of purchasing principles and statutes, (b) fair labor standards requirements and practices, and (c) eth-

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Certification Program, Cont.

ics laws and considerations.

- **Supplies and services** certification will be granted to officials who complete a seminar focusing on M.G.L. c.30B requirements, practices, and issues.

- **Design and construction** certification will be granted to officials who complete a seminar focusing on contracts awarded for design services, public works construction and public building construction.

- **Energy savings contracting** certification will be granted to officials who complete a seminar reviewing issues and opportunities in energy savings contracting.

The Office of the Inspector General requested \$100,000 in funding for this program. The House budget included the funding as requested. However, the Senate subsequently amended the language to require that the Office charge fees to fund the program.

This Office expects that the program will be under way by January 1997. We will keep you informed through this publication of the status of the program.

Collective Purchasing Agreements

Under Massachusetts General Law Chapter 30B (M.G.L. c.30B), your jurisdiction may purchase supplies or services from Statewide Contracts (formerly known as state blanket contracts) procured by the Operational Services Division (formerly known as the Department of Procurement and General Services). M.G.L. c.30B (1)(c) allows your jurisdiction to make these purchases from vendors under the Statewide Contracts without seeking bids.

M.G.L. c.30B also allows your jurisdiction to participate in collective purchasing agreements with other jurisdictions. Entering into collective purchasing agreements with other jurisdictions can save time and make it possible to take advantage of volume purchasing discounts.

The statute that authorizes collective purchasing agreements, Massachusetts General Law Chapter 7, section 22B, permits two or more jurisdictions to join together for the purpose of soliciting bids for materials, supplies, equipment, or services that they intend to purchase. Typically, one of the jurisdic-

tions will assume the lead role in advertising and awarding the contract, and acting as the purchasing agent for the group. The lead jurisdiction must follow the requirements of M.G.L. c.30B in awarding the contract. Each jurisdiction participating in the collective agreement must accept sole responsibility for payment for any purchases it elects to make under the contract.

While the collective purchasing statute permits local jurisdictions to join together to contract for supplies and services, it does not empower one city or town to award a statewide contract. This Office recently learned that one Massachusetts town, acting entirely on its own, solicited bids for the purchase of ambulances using an invitation for bids which stated that the contract would be open to all cities and towns in Massachusetts. This procurement did not result in a valid collective purchasing contract because the town exceeded its authority under the collective purchasing statute.

QUESTIONS ABOUT CHAPTER 30B

My town is buying paving materials for road repairs to be carried out by town employees. The contract covers only the purchase of the paving material, and no labor is involved. The value of the contract is \$100,000. Is the contract a "supply" contract subject to Massachusetts General Law Chapter 30B (M.G.L. c.30B), or is it a contract for "construction materials" subject to the public works construction bid law, M.G.L. c.30, §39M?

This contract should be procured using the public works construction bid law, M.G.L. c.30, §39M, which applies to contracts for the purchase of materials to be used in construction as well as to contracts for construction work. The term "material" is defined in M.G.L. c.30, §39M as "any article, assembly, system, or any component part thereof." There are no Massachusetts court decisions that provide guidance as to whether the purchase of paving materials should be considered a contract for construction material under M.G.L. c.30, §39M or a contract for the procurement of a supply under M.G.L. c.30B.

This Office and the Office of the Attorney General agree that the

recommended course of action is to bid the contract described in this example using M.G.L. c.30, §39M procedures, which are very similar to M.G.L. c.30B bid procedures. The main differences between the two statutes in this example are: (1) M.G.L. c.30, §39M requires a bid deposit, and (2) M.G.L. c.30, §39M calls for advertising in the *Central Register* rather than in the *Goods and Services Bulletin*.

Note: The above example deals with a contract for paving materials valued at \$100,000. If the facts were changed, and the contract was estimated to cost less than \$10,000, M.G.L. c.30, §39M would not apply. In this case, you would procure the material using oral or written quotes, in accordance with M.G.L. c.30B. For contracts costing between \$10,000 and \$25,000, M.G.L. c.30, §39M gives you the option of using M.G.L. c.30B bid procedures.

My jurisdiction's Employee Assistance and Training Program provides training grants of up to \$5,000 to residents who meet income eligibility guidelines. Are these grants subject to M.G.L. c.30B?

No. M.G.L. c.30B applies to the

procurement of services; however, "services" is defined to exclude "grant agreements." M.G.L. c.30B, §2 defines "grant agreement" as "an agreement between a governmental body and an individual or nonprofit entity the purpose of which is to carry out a public purpose of support or stimulation instead of procuring supplies or services for the benefit or use of the governmental body." Because Employee Assistance and Training Program grants are aimed at a public purpose of support and are not a procurement of goods or services for the use of your jurisdiction, these grants are exempt from M.G.L. c.30B.

If I do not know the exact amount of material I will need when I am preparing an invitation for bid (IFB), how can I avoid having to rebid because I need to buy more than I originally anticipated?

M.G.L. c.30B allows an increase in the quantity of supplies or services specified in a contract by up to 10 percent provided the following conditions are met: 1) the unit prices don't increase; 2) the procurement officer specifies in writing that there is a need for

Continued on the next page

QUESTIONS ABOUT CHAPTER 30B, CONT.

the increase and that amending the existing contract is more economical and practical than awarding another contract; and 3) the vendor and awarding authority agree to the change. (Increases to contracts for the purchase of gasoline, fuel oil, or road salt are not subject to a 10 percent limit.)

When a contract is for a fixed amount of supplies or services, the calculation of a 10 percent increase is a simple one. However, for some contracts, an awarding authority can only provide vendors with estimated quantities, which raises the question of how to apply the 10 percent rule. A good example of this situation is a road sand contract. Obviously, a municipality cannot know in advance how much sand will be needed during the winter, and can only provide vendors with estimates based on previous years. In a particularly stormy winter, a municipality will likely use well over the estimated quantity plus 10 percent, and will be faced with having to bid a second contract for the additional sand, solicit quotes, or determine that an emergency situation exists. None of these options is desirable as they all leave the municipality in the po-

sition of buying at the time of year when prices are highest.

To avoid this problem, your IFB (or request for proposals) can and should specify a maximum quantity large enough to meet your needs even under the most extreme circumstances. The IFB or RFP and resulting contract should state that you will purchase only the quantity that you actually need, but that you may purchase up to a specified maximum amount under the contract. In the example of the road sand contract, your maximum amount could be the amount of sand needed in your worst case scenario -- last winter, for example! In this manner, you can be assured that you will have the benefit of a competitive price. Increases beyond the maximum amount specified in the contract are subject to the 10 percent rule.

What Massachusetts laws apply to construction contracts costing less than \$10,000?

M.G.L. c.149, §29 requires a payment bond from the contractor in the amount of one-half of the cost of the contract for all construction contracts costing more than \$2,000.

Contractors must also comply with the prevailing wage law for all construction contracts, regardless of the cost. To obtain prevailing wage rates for different types of construction labor, contact the Division of Occupational Safety at (617) 727-3492.

Does M.G.L. c.30B require majority approval for real property leases having a duration longer than three years, as it does for supply and service contracts?

No. M.G.L. c.30B does not limit the duration of real property contracts. However, other laws may restrict your ability to enter into such contracts. Your town counsel or city solicitor can provide further advice on this area of the law.

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Notice

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Because of a change in the U.S. mail bulk rate requirements, the Office of the Inspector General was unable to deliver a June/July 1996 issue of this bulletin. We apologize for any inconvenience this may have caused.

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QUESTIONS, CONT.

Are educational collaboratives "governmental bodies" for the purpose of M.G.L. c.30B?

Yes. An educational collaborative falls under the definition of "governmental body" in M.G.L. c.30B. This means that educational collaboratives must follow the procedures set out in M.G.L. c.30B for procuring or disposing of supplies, services, and real property. However, agreements between municipalities or school districts and educational collaboratives are exempt from M.G.L. c.30B as intergovernmental agreements.

Procurement Manual

For a copy of the Inspector General's guide to Chapter 30B procedures, entitled *Municipal, County, District, and Local Authority Procurement of Supplies, Services and Real Property*, please contact the State Bookstore by phone at (617) 727-2834, or by mail at the following address:

State Bookstore
State House, Room 116
Boston, MA 02133

New Hours for Chapter 30B Telephone Assistance

The Inspector General's Office accepts questions and requests for technical assistance over the telephone on Mondays, Wednesdays and Fridays. On July 1, 1996, the Inspector General's Office changed its hours for phone assistance to 9:00 a.m. until 5:00 p.m., instead of 8:00 a.m. until 4:00 p.m., on those days.

These phone-in times were modified to better meet your needs.

If you need technical assistance, you may either telephone this Office or submit questions or requests by mailing them to:

Office of the Inspector General
One Ashburton Place
Room 1311
Boston, MA 02108
Attn: Chapter 30B Team

or fax to:

(617) 723-3540.

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