

Massachusetts Office of the Inspector General

Procurement Bulletin

Collaborative Purchases with Out-Of-State Communities are Vulnerable to Challenge

This Office has received several inquiries about collaborative purchases with non-Massachusetts governmental entities. Neither M.G.L. c. 30B or M.G.L. c. 7 permit a purchase from a collaborative contract entered into by an out-of-state government entity. M.G.L. c. 30B, §1(c) permits purchases from collaborative contracts made under the provisions of M.G.L. c. 7, §22B when one political subdivision, as defined in M.G.L. c. 7, §22A, acting on behalf of other political subdivisions, complies with the provisions of M.G.L. c. 30B. The term “political subdivision” is defined in M.G.L. c. 7, §22A as the Commonwealth’s cities, towns, districts, counties or authorities. M.G.L. c. 7, §22B permits political subdivisions of the Commonwealth to “join together for the purpose of obtaining and accepting competitive bids on similar items of materials, supplies, equipment or services which they intend to purchase, provided that each political subdivision shall accept sole responsibility for any payment due the vendor for its share of such purchase.”

This issue has been raised because an out-of-state collaborative purchasing group has recently argued that Massachusetts municipalities may participate in collaborative purchases with out-of-state communities based on an exemption found in M.G.L. c. 30B, §1(b)(3), which exempts from the requirements of M.G.L. c. 30B an inter-

governmental agreement subject to the provisions of M.G.L. c. 40, §4A. As stated above, Massachusetts laws do not support this contention.

Although M.G.L. c. 40, §4A does not explicitly restrict contracts to provide services to Massachusetts governmental units only, it is the opinion of the Office that this law was not intended to apply to collaborative purchasing. M.G.L. c. 40A, §4A is generally used when government entities contract with each other for the performance of public services, such as fire-fighting services or water supply services.¹ M.G.L. c. 40, §4A applies to direct contractual relationships between governmental entities wherein the governmental bodies themselves are providing services. It does not encompass the establishment of a contractual relationship between one or more governmental bodies and an additional third party private contractor.

Since the Commonwealth already has a law pertaining to collaborative purchases, this Office does not recommend relying on M.G.L. c. 40, §4A to make collaborative purchases with out-of-state government entities. Furthermore, case law pertaining to M.G.L. c. 40, §4A generally involves governmental entities that have contracted with each other for the purpose of providing public services. See, *Town of East Longmeadow v. City of Springfield*, 5 Mass. App. Ct. 143 (1977), which involved an agreement between municipalities to supply water services.

1. M.G.L. c. 40, §4A provides that “the chief executive officer of a city, or a board, committee or officer otherwise authorized by law to execute a contract in the name of a governmental unit... may enter on behalf of such unit into an agreement with one or more other governmental units to perform jointly or for such other unit or units any services, activities or undertakings which any of the contracting units is authorized by law to perform, if such agreement is authorized by the parties thereto, in city by the city council with the approval of the mayor, and in a town or district by the town or district meetings...”

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General Recommendations for Municipal Real Estate Dispositions

Selling or leasing town-owned real estate has become a common solution for generating revenue and returning unused town-owned property to the tax rolls. Several questions arise during the real property disposition process, which are discussed below.

Do I need to conduct an appraisal before disposing of real property by sale or lease?

M.G.L. c. 30B, §16 requires that if a governmental body determines that it shall rent, convey, or otherwise dispose of real property, the governmental body shall declare the property available for disposition and shall specify the reuse restrictions on the property, if any. The law further requires that the governmental body determine the value of the property through procedures customarily accepted by the appraising profession as valid. This does not mean that you have to obtain a formal appraisal of the property before its disposition, although you may choose to obtain a formal appraisal. 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. For a lease, you may use market rent data or even advertised rental rates, if there are a sufficient number of similar properties on the market to determine the lease value.

However, you may want to consider whether the assessed values are typically significantly less than the current fair market value of properties in your area. If you know the fair market value to be higher than the assessed value, you should consider using a higher figure for purposes of establishing minimum acceptable bids and in evaluating the reasonableness of any proposals you receive.

The dollar threshold that triggers the request for proposals (RFP) requirement in M.G.L. c. 30B, §16 is a value of \$25,000. It is vital that cities and towns do not artificially underestimate the value of real estate to be sold or leased, even relatively small tracts of land, with the intention or effect of keeping the valuation below the \$25,000 threshold. This Office has received many complaints regarding dispositions of "low dollar

value" parcels which were disposed of without an open proposal process. In some instances, awarding authorities have placed an unduly low estimate on the value of property which has then been the subject of a private negotiated sale. In one instance a community assessed a parcel as being worth less than \$25,000 and yet ultimately negotiated a sale for \$28,000. At a minimum this type of transaction creates an appearance of favoritism and may represent a violation of the bidding laws. Even if a parcel of property is relatively small, is occupied by a dilapidated building, or is located in a somewhat blighted area, caution should be used in determining that it is of such limited value that no RFP is required for its disposition. The rapid escalation of real estate prices has arguably left relatively few parcels of property which should not be considered for disposition through an RFP process.

When must I follow an RFP process to dispose of real estate by sale or lease?

You must issue a request for proposals (RFP) to dispose of real property with a **value** of more than \$25,000. The procedures are triggered by the value of the property, not the price your local government will receive for the disposition.

If you are leasing space, you determine the value of the disposition by calculating the lease price over the entire contract term. For example, if you are leasing out a portion of a municipal building for three years with a monthly rent of \$1,000, the entire contract costs \$36,000 and therefore it must be disposed of using an advertised RFP.

What information needs to go in my advertisement?

M.G.L. c. 30B, §16 requires that your advertisement specify the geographical area, terms and requirements of the proposed transaction, and the time and place for the submission of proposals.

What are the advertising requirements?

You must advertise in a newspaper of general

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General Recommendations for Real Estate Dispositions, continued

circulation at least once per week for two consecutive weeks. The last publication must occur at least eight days preceding the day for opening proposals. If the property you are disposing is more than 2500 square feet, you must also place an advertisement in the *Central Register*, published by the Secretary of the Commonwealth, at least 30 days before your proposal opening date. See www.state.ma.us/sec/spr/sprinf/infocent.htm for the *Central Register* advertising form.

What information needs to go in my RFP?

This Office recommends that your RFP include material terms and conditions of the proposed sale or lease. For example, if you are leasing town-owned property, you should state the desired length of the lease.

Your RFP should provide interested parties with the information they need to decide whether they want the property you are selling or leasing and to submit a responsive proposal. The major components of a disposition RFP are:

- description of the property and interest in the property you plan to sell or lease (the “property description”) and any reuse restrictions,
- selection criteria,
- 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. If the property is being offered for sale, include a reference to a deed or survey. Also identify any included building and structures in the property description and any restrictions on their use, such as deed restrictions. Drawings, plot plans, or other relevant documents should either be appended to the specifications or incorporated by reference.

The RFP 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 must be paid separately by the

lessee.

Selection Criteria

You should indicate how you will select a proposal from among the competing proposals. The process is similar to developing evaluation criteria for supplies or services. 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 look at the relative merits of the property proposals rather than just 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.

Although Chapter 30B requires proposals, you have the discretion to structure your RFP so that it is, in effect, an invitation for bids. If your objective is simply to dispose of property you do not need, you should sell the property to the proposer offering the highest price. In this instance, your RFP 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 who fails to close on the deal would

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General Recommendations for Real Estate Dispositions, continued

forfeit the deposit), and

- evidence of the proposer's ability to obtain financing.

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 RFP. To simplify lease price comparisons it is helpful to provide a standard price form for all proposers to complete.

Proposal submission requirements.

Your RFP 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 as required by M.G.L. c. 7, §40J. Also include any standard forms proposers must submit.

Your local counsel can advise you regarding other laws applicable to your jurisdiction's real property transactions.

Contract terms and conditions Any terms and conditions you will require in the agreement must be specified in the RFP and in the contract. Chapter 30B places no limitations on the duration of real property contracts, but other laws may apply in your jurisdiction.

Must I require the separation of price and non-price proposals?

No, unlike Chapter 30B RFPs for supplies and services, you need not require separate submissions of price and non-price proposals. Remember that real property proposals are not confidential after they are opened.

Does the M.G.L. c. 30B, §12 majority vote requirement for

contracts over 3 years apply to real estate leases that will exceed 3 years?

No. The majority vote requirement only applies to contracts for supplies and services. However, there may be other local or statutory restrictions on the length of leases, such as M.G.L. c. 40, §3, which limits the length that public buildings may be leased by municipalities to ten years.

May a municipality dispose of real estate to promote a public purpose, such as affordable housing?

Yes. If your municipality is 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. See page 85 of *Municipal, County, District, and Local Authority PROCUREMENT of Supplies, Services, and Real Property*, which may be downloaded from www.mass.gov, for more information about real property dispositions to promote public purposes.

May I require proposers to perform rehabilitation of or construction on public land/buildings as part of a lease agreement, where the construction improvements will eventually be owned by the municipality?

Before undergoing such a project through a lease agreement, be sure to contact the Attorney General's Fair Labor and Business Practices Division at 617-727-2200, x. 3266, for consultation on whether the construction project will fall under the construction bid laws. The lessor may be required to comply with M.G.L. c. 149, M.G.L. c. 30, §39M and/or the prevailing wage law.

What procedures apply to dispose of real estate taken through the tax-title process?

M.G.L. c. 60 §§37 through 60 sets forth procedures for redemption or auction of tax title property. However, any sale of tax title property by other than an auction,

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Congratulations to New MCPPOs!

The Office of the Inspector General extends congratulations to the most recent recipients of MCPPO designations based on applications reviewed between August 15, 2003 and December 1, 2003.

MCPPO

Mary A. Delaney, City of Gardner

Stephen Dockray, Blue Hills Regional School District

John F. Flynn, Boston Water and Sewer Commission

Michael Gray, MWRA

Monique Hicks, Northeast Metropolitan RSVD

Raymond Houle, Jr., Town of Millbury

Jennifer P. Petit, Town of Chatham

Associate MCPPO for Supplies and Services

Theresa M. Hill, Town of Agawam

Procurement Bulletin **Subscription Information**

The *Procurement Bulletin* is published on a quarterly basis by the Massachusetts Office of the Inspector General. There is no charge to subscribe. To receive the *Procurement Bulletin* via e-mail, please send an e-mail containing your first and last name, along with your e-mail address, to Beth Hayward at oigleg@gis.net. If you do not have an e-mail address and would like to receive a paper copy via mail, please fax your mailing address to Beth Hayward at 617-723-2334.

If you previously subscribed to the *Procurement Bulletin* and have not received a copy, please contact Beth Hayward by phone at 617-727-9140.

Real Estate Dispositions, continued

including sale after foreclosure, is subject to Chapter 30B.

Where can I get information on the required procedures for real property dispositions?

You can find the procedures in the OIG manual, *Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property*, which may be downloaded for free from www.state.ma.us/ig/igpubl.htm#dcmanual.

You may also want to peruse the recent OIG report, *Disposition of Hale Hospital and Glynn Memorial Nursing Home Under M.G.L. c. 30B, §16*, which may be downloaded from www.mass.gov/ig.

This is my first time conducting an RFP for a real property transaction. Is there someone who can review my RFP before I advertise?

Yes. You may send your RFP to Beth Hayward at the Inspector General's Office, One Ashburton Place, Room 1311, Boston, MA 02108 for a review for compliance with M.G.L. c. 30B. It is also a good idea to have your town counsel or city solicitor review your RFP.



Massachusetts Certified Public Purchasing Official Program
Massachusetts Office of the Inspector General
 One Ashbuton Place, Room 1311
 Boston, MA 02108
 (617) 727-9140

Who Should Attend

Local government officials and others interested in local government contracts for supplies, services, real property, and construction.

Earn Professional Certification

For an in-depth description of courses offered, please visit our website at www.mass.gov/ig and download a course catalog, or you may call 617-727-9140 to request a catalog, or fax a request to 617-723-2334.

Seminars Offered for 2004

For full course descriptions, please download a catalog from <http://www.mass.gov/ig/mcppo/catal02.pdf>

Public Contracting Overview 3-day seminar

**Tuition: \$300 for government/non-profit employees
 \$500 for all others**

An overview of legal requirements and best practices for public contracting by local governmental bodies, with hands on workshops that apply contracting knowledge and skills to practical problems faced by the procurement official. A prerequisite for *Supplies and Services Contracting* and *Design and Construction Contracting*, this three-day seminar is invaluable both for experienced public officials and those who have recently entered the field or are working in a support capacity. This seminar concludes with a written examination. You may earn 20 CPE and 20 PDP credits.

January 21-23, 2004 8:30-4:30 Boston

Design and Construction Contracting 3-day seminar

**Tuition: \$400 for government/non-profit employees
 \$600 for all others**

Prerequisite: *Public Contracting Overview* or *State Contracting Overview*

This in-depth, three-day seminar is tailored to professionals facing the complex issues of today's design, public building construction, and public works construction projects. Participants will learn practical applications and effective strategies to guide them through procurement and administration of design and construction contracts. This seminar concludes with a written examination. You may earn 20 CPE and 20 PDP credits.

May 11-13, 2004 8:30-4:30 Boston

State Contracting Outline 1-day seminar

**Tuition: \$100 for government/non-profit employees
 \$175 for all others**

An overview of legal requirements and best practices for public contracting by state agencies, this course covers legal requirements for public contracts, consumer protection laws, the designer selection and public construction bid laws, state ethics law, and the prevailing wage law. This course fulfills the prerequisite requirement for DCAM delegated authority for construction projects. You may earn 7 CPE and 7 PDP credits.

April 29, 2004 8:30-4:30 Boston

Supplies and Services Contracting 3-day seminar

**Tuition: \$300 for government/non-profit employees
 \$500 for all others**

Prerequisite: *Public Contracting Overview*

Comprehensive and challenging, this seminar focuses on procurements under the Uniform Procurement Act, M.G.L. c. 30B. Presented in an easy-to-follow, hands-on workshop format, participants are guided through practical applications of this law. Participants will learn about writing effective specifications, obtaining best value using an invitation for bids, making the request for proposals process work, common bidding problems and how to resolve them, effective contract administration, and more. This seminar concludes with a written examination. You may earn 20 CPE and 20 PDP credits.

March 10-12, 2004 8:30-4:30 Boston



MASSACHUSETTS CERTIFIED PUBLIC PURCHASING OFFICIAL PROGRAM REGISTRATION

Office of the Inspector General

Phone: (617) 727-9140 Fax: (617) 723-2334

REGISTRATION INFORMATION:

All seminars will be confirmed based on a minimum of 20 participants.

GOVERNMENT/NON-PROFIT COURSE PRICE:

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

RESERVE SEATING:

To reserve seating, fax registration and purchase order to (617-723-2334).

MAIL ORIGINAL TO:

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

ATTN: MCPPO

MAKE CHECK PAYABLE TO: OIG

SUBSTITUTIONS/CANCELLATIONS:

Each seminar is limited and filled on a space available basis. No refunds for cancellations. Registration transfer to someone in your organization is possible with prior notice. The OIG reserves the right to cancel/reschedule any seminar and is not responsible for any costs incurred by registrants. Terms and conditions may change without notice. Alternate course dates may be substituted in the event of an emergency, upon notification. Change in seminar date and/or cancellations received (BY FAX) less than 2 business days prior to the seminar date are subject to a \$25 transfer fee - NO-SHOWS WILL BE INVOICED A \$50 SERVICE CHARGE.

FOR MORE INFORMATION:

Please contact Joyce McEntee Emmett, MCPPO Program Director at (617) 727-9140.

PUBLIC CONTRACTING OVERVIEW 3-day seminar Tuition: \$300 for government/non-profit employees
\$500 for all others

JANUARY 21-23, 2004 BOSTON

STATE CONTRACTING OUTLINE 1-day seminar Tuition: \$100 for government/non-profit employees
\$175 for all others

APRIL 29, 2004 BOSTON

SUPPLIES & SERVICES CONTRACTING 3-day seminar Tuition: \$300 for government/non-profit employees
\$500 for all others

Prerequisite: Public Contracting Overview or Outline

MARCH 10-12, 2004 BOSTON

DESIGN & CONSTRUCTION CONTRACTING 3-day seminar Tuition: \$400 for government/non-profit employees
\$600 for all others

Prerequisite: Public or State Contracting Overview

MAY 11-13, 2004 BOSTON

POLICY OF NON-DISCRIMINATION:

The Office of the Inspector General does not discriminate on the basis of race, color, national origin, ancestry, religion, sex, age, disability, sexual orientation, political affiliation, or Vietnamera or disabled veteran status in its employment, admission policies, or in the administration or operation of, or access to its programs and policies. The Office of the Inspector General does not discriminate on the basis of disability in violation of Section 504 of the Rehabilitation Act of 1973. Inquiries pertaining to the Office's nondiscrimination policy for MCPPO programs may be addressed to Joyce McEntee Emmett, Program Director, at 617-727-9140.



The 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 acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be addressed to NASBA, 150 Fourth Avenue North, Suite 700, Nashville, TN 37219-2417, (615) 880-4200.



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

PAYMENT:

CHECK/M.O. PURCHASE ORDER # I E/IV

NAME: _____

PHONE: _____ FAX _____

E-MAIL: _____

ORGANIZATION/JURISDICTION: _____

TITLE: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

HOW LONG HAVE YOU BEEN EMPLOYED AS A PURCHASING OFFICIAL? _____

Do you need special accommodations? _____

Revised MCPPO Re-certification Requirements

The Inspector General has revised the requirements for MCPPO/MCSPO recertification (including Associate level designations). Beginning on January 1, 2004, every certified MCPPO/MCSPO will be required to earn at least 25 qualifying continuing education credits during the three year period following the certification date, and every three years thereafter, in order to maintain his or her MCPPO/MCSPO designation. This requirement replaces the previous 60-credit recertification requirement.

Beginning on January 1, 2004, every certified MCPPO/MCSPO will be required to attend one of the following three seminars during the recertification period: *Supplies and Services Contracting* (17 continuing education credits), *Design and Construction Contracting* (17 continuing education credits) or *MCPPO Advanced Topics Update* (13 continuing education credits). The remaining continuing education credits required to fulfill the 25-credit requirement may be obtained through other professional affiliations and training or by attendance at more than one of the above mentioned seminars. The schedule for the two-day *MCPPO Advanced*

Topics Update seminar will be published in the next Procurement Bulletin. MCPPOs/MCSPOs attending or re-attending an MCPPO seminar for recertification are not required to take seminar examinations.

Certified MCPPOs/MCSPOs who have been recertified, or who have applied for recertification prior to January 1, 2004 will be granted an extension of their certification periods of one additional year. These MCPPOs/MCSPOs will be required to apply for recertification four years, rather than three years, from their recertification dates, and then every three years thereafter, in order to maintain their MCPPO/MCSPO designations.

As before, an MCPPO/MCSPO applying for recertification must submit an application form, a CORI check release form signed by the applicant, and a check for \$75 payable to the Office of the Inspector General. Applicants will be required to certify that they have earned the required number of continuing education credits beyond those awarded for MCPPO seminars.

Massachusetts Office of the Inspector General
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(617)727-9140
www.mass.gov/ig