



Office of the Inspector General

PROCUREMENT BULLETIN

Dear Public Officials:

Congratulations to those public officials who recently earned their Massachusetts Certified Public Purchasing Official (MCPPO) designation. Page 11 of this publication includes a listing of those designees. I commend them for their dedication and commitment to their jurisdictions.

As many of you know, my Office conducts a wide range of investigations and reviews in order to detect and prevent the misuse of public funds. Recently, the Office reviewed a municipal light plant's policies and practices on the accrual of leave time after learning that the long-time manager claimed he was entitled to nearly \$500,000 for accrued but unused vacation and sick leave. Based on its review to date, the Office found that the manager's claim relied on a faulty reading of his contract and violated the terms of the light plant's personnel policies. The Office calculated that under the light plant's policies and his contract, the manager was owed a maximum of \$15,149 for vacation time and was currently not entitled to any payout for sick time.

Following the Office's review, the light board paid the manager \$15,149 for vacation time, and did not pay him for any unused sick time. The light plant also changed its procedures for paying departing employees for unused leave time, saving thousands of dollars more for the ratepayers. I urge all board members and oversight bodies to review all outstanding leave balances and ensure there are clear accrual policies in employee handbooks. The Office's letter to the light plant can be found at www.mass.gov/ig. More information about this review will be available in a future issue of the *Procurement Bulletin*.

In other news, on June 15, the Office participated in the Department of Higher Education's (DHE) Multi-Agency Trustee Workshop at MassBay Community College's Framingham campus. DHE organized the half-day workshop to train new trustees on the fundamentals of trusteeship, fraud awareness and detection, ethics, and fiduciary duty. In their reviews of the program, attendees noted the importance and relevance of this training for all trustees. Thank you to the Department of Higher Education for including our Office in this valuable training. Please check future issues of this *Bulletin* for information on future classes for trustees. Please also note that MCPPO's fall schedule of courses will be available on our website later this summer.

Thank you for your time and consideration in reviewing the Office's publications. I wish you all a safe and relaxing summer.

Sincerely,

Glenn A. Cunha
Inspector General

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IMPORTANT NOTICE



To report fraud, waste or abuse, please see the following contact information:

By 24-Hour Hotline:
(800) 322-1323

By Email:
IGO-FightFraud@state.ma.us

By U.S. Mail:
Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108



Student Purchases

This article intends to clear up a common misunderstanding about the application of Chapter 30B to school-based or school-sanctioned purchases made by students and their parents or guardians (“parents”). For example, school districts (“schools”) often require students to purchase or rent musical instruments, athletic equipment, uniforms and other items that school districts do not provide. Moreover, school districts often recommend or approve certain vendors for students and parents to use for these purchases. School officials sometimes mistakenly assume that since public funds are not used to make these purchases, Chapter 30B’s procurement rules do not apply. In certain cases, regardless of the source of funds, Chapter 30B applies.

When a school requires a student to obtain an item (*e.g.*, a musical instrument) and recommends that students and parents use certain vendors to obtain the item, the school is creating a market for a particular vendor or vendors. This market has an intrinsic value; there is a value attached to this opportunity. For example, in the case of musical instruments, many schools hold vendor fairs. Through these fairs, schools are giving one or more vendors access to their students and parents, and are providing free advertising for the vendors’ products. Vendor fairs also give the appearance that the school is endorsing or has approved these vendors. The vendors participating in such fairs therefore have a clear competitive advantage over other vendors who provide the same supply or service. The notion that students and parents are free to acquire musical instruments from any source and that the vendor fair is simply offered as a convenience does not nullify the advantage that the school is giving to the participating vendors.



Because the school is offering something of value to private parties, Chapter 30B applies even though the students or parents pay the vendor directly.¹ Before holding a vendor fair or requiring students to purchase specific supplies, school districts should consider the following options:

- 1) Invite any interested vendors to a vendor fair: When holding a vendor fair for a specific commodity (*e.g.*, for musical instruments), invite all vendors in your area to participate. In this scenario, students choose to purchase or rent from whichever vendor they would like who can provide the required commodity. This option works well for musical instruments or items that need to be looked at or tried out. As a further option, charge the vendors for the access; each vendor could pay a set fee to participate, for instance.
- 2) Identify multiple vendors willing to provide the item or supply: Issue a Request for Interest (RFI) or Request for Qualifications (RFQ) to create a vendor market where the students can make their own purchasing decisions and buy from any of the approved vendors. This creates a formal process that could alleviate the appearance that the school is favoring certain vendors. This process would work well for items that have straight-forward and clear specifications, such as school or practice uniforms.

(continued on page 3)

¹ Please note that purchases using trust funds, grants and student activity fees may require different considerations. Before using such funds, you should consult Chapter 30B, this Office, your legal counsel or the Department of Elementary and Secondary Education to ensure you proceed appropriately.



(Student Purchases, continued from page 2)

3. Give students the specifications and do not identify any vendors: Provide students with specifications required for the equipment, uniforms or instruments, ensuring the specifications are not proprietary or sole-source (*e.g.*, white shirt and blue shorts for practice uniforms), and place the responsibility on the students to obtain the items on their own. With this option, the school has no involvement with any vendors.

4) Purchase the item and have students reimburse the school: Conduct an Invitation for Bid or Request for Proposal for the item, purchase the product directly and then have students reimburse the school.

Finally, bear in mind that Chapter 268A, the state ethics law, may prohibit your jurisdiction from granting a vendor access to your student community without the use of a formal process that ensures equal access for all vendors. Granting access without a process could constitute an “unwarranted privilege” under Chapter 268A. You should consult with the State Ethics Commission for further information and review the law at www.mass.gov/ethics before deciding how to proceed on required student purchases.





Use of Proprietary Specifications in Procurements for Police Equipment

A recent newspaper article reported that a well-known national vendor of police equipment provided improper guidance to several procurement officials on how to avoid their respective states' bidding requirements in order to purchase the vendor's equipment. The article also noted that, in some instances, the vendor paid for public procurement officials' travel and lodging expenses to attend a trade show hosted by the vendor.

In Massachusetts, Chapter 30B governs the procurement of police equipment by local jurisdictions. Section 14 of Chapter 30B limits the use of proprietary specifications for the procurement of supplies or services. In general, proprietary specifications are descriptions of materials that either cite a specific brand or are written so restrictively that only one vendor or manufacturer can supply the desired item. Chapter 30B requires local jurisdictions to use purchase descriptions that promote open and fair competition. Purchase descriptions that unnecessarily contain proprietary specifications are improper. Purchase descriptions may, at times, reference a proprietary specification when no other manner of description suffices, and a procurement officer has made this determination in writing after a reasonable investigation. Each jurisdiction is responsible for conducting a reasonable investigation before referencing proprietary specifications for the purchase of police equipment or any other supplies.

In short, a jurisdiction must evaluate its needs and draft specifications that are suitable to those needs, yet generic enough to result in robust competition among different vendors that offer police equipment. Jurisdictions also should be wary of vendors that try to convince procurement officials to use specifications tailored to only their brand-name products.

If your jurisdiction needs assistance drafting specifications, please refer to the *Practical Guide to Drafting Effective Bids and Request for Proposals*, available on the Office's website at www.mass.gov/ig.

Finally, the Office always recommends that public employees, including procurement officials, consult with the State Ethics Commission before attending any events or activities (such as golfing trips, summits or destination conferences) sponsored by a vendor.



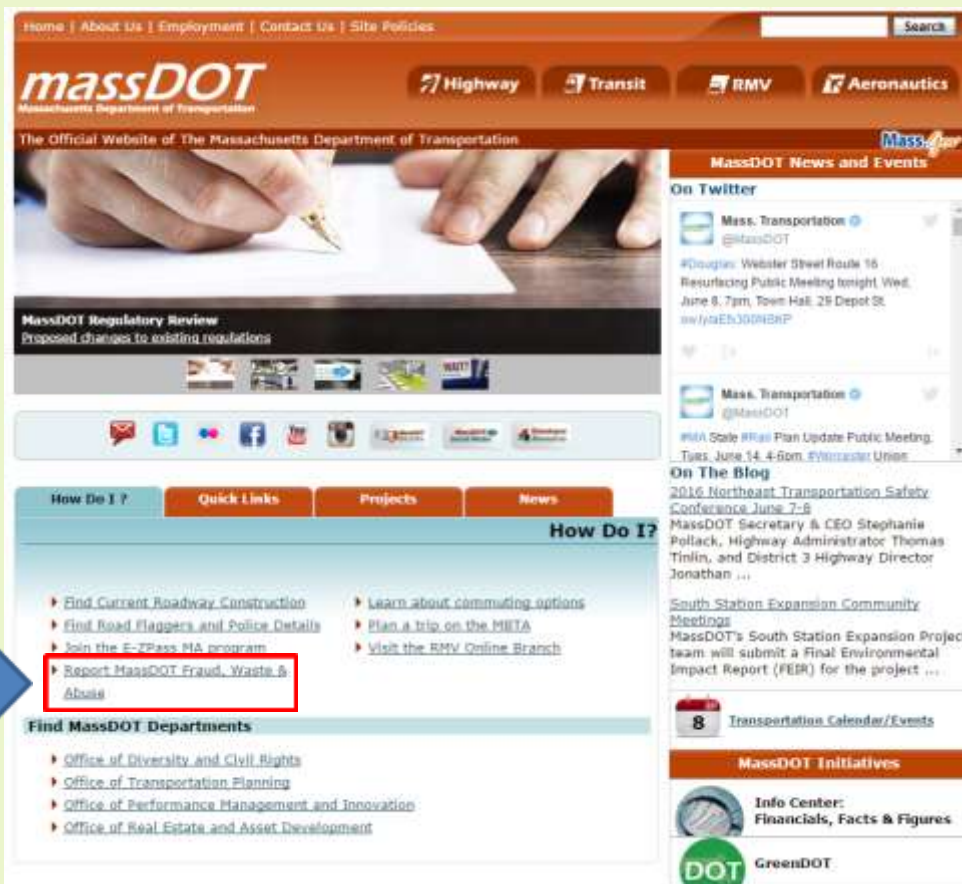


Report Fraud, Waste and Abuse of Public Transportation Funds

The Office’s Internal Special Audit Unit (ISAU) monitors the quality, efficiency and integrity of the Massachusetts Department of Transportation’s (MassDOT) operating and capital programs. As part of its statutory mandate, the ISAU prevents, detects and corrects fraud, waste and abuse in the expenditure of public and private transportation funds administered by MassDOT and all of its divisions, including the MBTA and RMV. The ISAU’s jurisdiction is broad, extending to state-run airports, state roads and tolls, bridges and tunnels, and regional transit authorities, among other areas.

The ISAU urges individuals to report suspected fraud, waste and abuse via its confidential hotline, as well as by U.S. mail, email or in person. Complaints and tips from the public are important, and can help uncover potential waste or wrongdoing. Since its inception in November 2015, the ISAU’s confidential hotline has received reports related to suspected procurement fraud, timesheet misrepresentation, equipment misuse, roadway issues, materials mismanagement, and contractors misusing MassDOT resources. Reports and tips, including a complainant’s identity, are confidential. Additionally, by law, the ISAU’s records are not subject to public records requests.

Moreover, MassDOT’s website now includes a link to the ISAU’s hotline. The link can be found at www.massdot.state.ma.us under the “How Do I” tab. Please see the illustration below for navigation to the link.



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(Report Fraud, Waste and Abuse of Public Transportation Funds, continued from page 5)

You may also provide confidential reports or tips regarding fraud, waste and abuse of MassDOT resources to the ISAU in the following ways:

Phone: (855) 963-2580

Email: MassDOTFraudHotline@state.ma.us

U.S. Mail:

Internal Special Audit Unit
10 Park Plaza, Suite 3510
Boston, MA 02116

Clarification on Contracts for Deputy Tax Collectors

In the January 2016 issue of the *Procurement Bulletin*, the Office published an article entitled “An Exemption Under Chapter 30B Is Not Always the End of the Bid Process.” The article prompted interesting questions from jurisdictions that we would like to answer. Although a contract for the collection of delinquent taxes or for the services of a deputy tax collector is exempt from Chapter 30B, the “deputy tax collector” exemption is extremely narrow. Section 1(b)(26) only exempts contracts to collect delinquent taxes or the services of a deputy tax collector. Billing and any mailing services related to such tax collections must nevertheless comply with Chapter 30B.

Further, Section 2B of Chapter 60 requires jurisdictions to conduct a competitive process in order to hire a company to perform the duties of a deputy tax collector. Some communities are contracting with tax collection companies without following Section 2B of Chapter 60. Even if a company asserts that it has one or more employees suitable for appointment as a “deputy tax collector,” your jurisdiction cannot contract with the company or appoint its employee as a “deputy” without conducting a procurement under Section 2B of Chapter 60. To reiterate, communities that want to contract with a company to perform the duties of a deputy tax collector must conduct a competitive process under Section 2B of Chapter 60.

We hope this information is helpful. As always, please call the Chapter 30B Hotline with your procurement questions.

Chapter 30B Hotline: (617) 722-8838



FREQUENTLY ASKED QUESTIONS RELATING TO PROCUREMENT

Q1: I am the CPO of a small town in Massachusetts. The town plans to hire a vendor to hold a three-day carnival on the town square. The town would like to generate revenue from this event. The town will not spend public funds. Is this contract subject to Chapter 30B?

A1: Yes, this contract would likely be subject to Chapter 30B. If the vendor will pay the jurisdiction to hold the carnival – whether through a fee or a percentage of the revenue from the event – then Chapter 30B applies. The contract would be a “revenue-generating contract.” The town must estimate the total value of the revenue-generating contract and then follow the requirements in Chapter 30B applicable to that estimated value. If the jurisdiction estimates the total value of the contract to be between \$10,000 and \$34,999, then the jurisdiction must solicit written or oral quotes from no less than three vendors customarily in the business of providing such services. If the jurisdiction estimates the total value to be \$35,000 or more, then the jurisdiction must use either an Invitation for Bids (IFB) or a Request for Proposals (RFP) to procure the contract.



Q2: I am the CPO of a small town in Massachusetts. A carnival vendor approached the town asking to hold a three-day carnival on town land and is seeking a license only. Is this transaction subject to Chapter 30B?

A2: No. A license is a permit to use real property and is not subject to Chapter 30B because it is not an interest in real property. A license is revocable at the will of the licensor and is generally non-assignable. A license often grants permission to enter the public property only for a certain well-defined purpose and usually for a short duration. A jurisdiction should have procedures in place relative to requests to obtain a license to use public property, including a set fee schedule.

Q3: My town was awarded grant money to invest in after-school programs that benefit working families. Are the services I procure for the after-school programs exempt under the “grant agreement” provision in Chapter 30B?

A3: It depends. If your jurisdiction uses the money secured through the grant agreement to purchase services from a *for-profit* after-school program or to purchase supplies for the after-school programs, then these purchases are subject to Chapter 30B, even if the jurisdiction pays for those services or goods with grant money.

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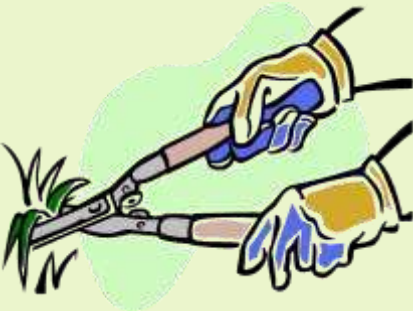


(Frequently Asked Questions Relating to Procurement, continued from page 7)

If the grant funds are used to secure services from a *nonprofit* or an *individual* and are for public support or stimulation, then the after-school services are not subject to Chapter 30B (although the supplies for the program still fall under Chapter 30B). Under Section 2 of Chapter 30B, a “grant agreement” is defined as “an agreement or contract between a governmental body and an individual or a 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.”

Q4: I am the chief procurement officer for a small town. I recently issued an Invitation for Bids for landscaping services. A vendor who, in the past, consistently performed in a poor manner and was unresponsive to my telephone calls and emails submitted the lowest bid for the landscaping services contract. Can I use the vendor’s past poor performance as a basis to reject this bid?

A4: Yes. Poor performance may be grounds for determining that a bidder is not responsible. Your obligation is to award the contract to the lowest “responsible bidder or offeror,” which is defined in Section 2 of Chapter 30B as “a person who has the capability to perform fully the contract requirements, and the integrity and reliability which assures good faith performance.” If the vendor is not deemed to be responsible because of poor past performance, you may reject that bidder. You then award the contract to the next lowest responsible bidder.



As a best practice, jurisdictions should regularly evaluate the performance of vendors as a part of their contract administration. These evaluations should be in writing, shared with the vendor and maintained in the vendor’s contract file. These written evaluations may serve as documentation of poor performance and may be the basis for rejection in the event that a bidder submits a bid or proposal to the jurisdiction in the future.

For more general information, see Chapter 4 of the Office’s *Chapter 30B Manual*, which is available at www.mass.gov/ig.



MCPPO COURSE INFORMATION

The MCPPO class schedule for the fall semester will be available in the near future. Information regarding all upcoming classes will be posted on our website at www.mass.gov/ig/mcppe.



REMINDER:

MCPPO PROGRAM REGISTRATION POLICY

All registration forms must be mailed in and accompanied by your payment. Registration forms received via fax can no longer be accepted. Purchase orders are not considered to be sufficient forms of payment. We thank you for your cooperation and continued support.

MCPPO DESIGNATIONS:

APPLICATION POLICY AND CORI FORM SUBMISSIONS

As a reminder, the Office has received approval to accept CORI forms by mail. If you submit the CORI form by mail, you must first notarize the form and also include a copy of your valid government-issued photo identification. You may also submit CORI forms and MCPPO designation applications in person to the Office of the Inspector General. CORI forms and designation applications can be found on our website at the following link: www.mass.gov/ig/publications/forms/mcpdesig.pdf.





On the Road with MCPPO

This spring, the MCPPO Program went on the road as part of its commitment to provide procurement education throughout Massachusetts. On May 17th, MCPPO instructors traveled to the 50th Annual Institute of the Massachusetts Association of School Business Officials (MASBO) to present *Spotlight on Schools: Procurement Challenges, Issues and Trends*, an all-day procurement training that addressed school-related procurements, including revenue-generating agreements, technology purchases, and issues related to sole-source and proprietary specifications. In addition, instruction focused on fostering competition for school transportation services and problems associated with using vendor-supplied specifications. The class was one of MASBO's "break-out" sessions, with over 50 MASBO members attending and participating in discussions regarding school department procurements.



Pictured above: Liz Unger, instructor for MCPPO, presents at MASBO.



Pictured above (from left to right): Liz Unger, MCPPO instructor; Maureen Doherty, Procurement Officer, Town of Stoughton; and Mark Till, MCPPO instructor.

MCPPO then traveled to Stoughton on May 25th to present a full-day *Contract Administration* class. More than 40 procurement officials from Stoughton and surrounding jurisdictions attended the class, which was hosted by the Town of Stoughton and Procurement Officer Maureen Doherty. The course addressed best practices and principles of contract administration, the elements of successful communication when administering a contract, the importance of well-drafted specifications and achieving procurement goals. The program also included segments on risk mitigation and the application of the federal and state false claims acts to contract administration.



CONGRATULATIONS TO OUR NEW DESIGNEES!

The following is a list of the MCPPO Program’s new Designees based on applications reviewed (not received) between April 1, 2016 and June 30, 2016:

MCPPO

- Elizabeth Barnett, Town of Carlisle*
- Linda Brandon, City of Boston*
- Richard Brown, Town of Somerset*
- Brian Carlson, Town of Wellfleet*
- Ida Cody, City of Somerville*
- Beth Gilbert, Wrentham Public Schools*
- Anthony Marino, Town of Hanover*
- Barbara Mello, Town of Braintree*
- David Menard, Town of Wareham*
- Jarred Norsworthy, Town of Framingham Dept. of Public Works*
- Stephen Poelaert, Bristol-Plymouth Regional Voc. Tech. Sch. Dist.*
- Charles Richter, Town of Lynnfield*
- Nadine Rose, Bristol-Plymouth Regional Voc. Tech. Sch. Dist.*
- Kristin Shaver, CREST Collaborative*
- Alan Twarog, Town of Greenfield*
- Lara Wehbe, City of Everett*

MCPPO for Design & Construction

- Jason Mammone, Town of Dedham*

MCPPO for Supplies & Services

- John Budron, Framingham State University*
- Heather Fair, Truro School District*
- Kathleen Perry, Milford Public Schools*

Associate MCPPO

- Marsha Armando, Town of Foxborough*
- Karen Bradford, Town of Nantucket*
- Mary Day, Town of Lincoln*
- Matthew Dovell, City of Springfield*
- Peter Garvey, City of Springfield*
- Cathy Hoog, North Andover Housing Authority*
- Tracey Hutton, Town of Dunstable*
- Debra Jordan, Bourne Housing Authority*
- John Kelley, Wareham Fire Department*
- Michael MacMillan, Town of Wareham*
- Evan Melillo, Town of Middleborough*
- Paula Mountain, Wenham Housing Authority*
- Sean O’Brien, Town of Concord*
- Cindy Papa, Town of Belmont*
- Stanley Pitchko Jr., Worcester Housing Authority*
- Connor Read, Town of Easton*
- Gordon Richardson, Westborough Public Schools*
- Michael Rivers, Ashburnham Municipal Light Plant*
- Christopher Senior, Town of Cohasset*
- Kristine Wheeler, Town of Framingham Dept. of Public Works*

Associate MCPPO for Design & Construction

None

Associate MCPPO for Supplies & Services

- Judith Doran, City of Cambridge*





SUBSCRIPTION INFORMATION

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If you prefer to receive a printed copy via first-class mail, please indicate this in the email and provide your mailing address.

If you previously subscribed to the Procurement Bulletin and have not received a copy or have any other related questions, you may contact Alexandra Spangler at (617) 722-8889.

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