

The Uniform Procurement Act MGL chapter 30b

Presentation for:
MA Collectors and Treasurers
► Association
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Public Procurement Officials (MAPPO)

Board of Directors MHEC



Welcome to the wonderful, exciting, and sometimes confusing world of procurement!

What words
would you use
to describe
purchasing?





Procurement laws



- ▶ **M.G.L. c. 30B ~ SUPPLIES AND SERVICES, DISPOSAL OF SURPLUS SUPPLIES, and MUNICIPAL REAL PROPERTY TRANSACTIONS**



- ▶ **M.G.L. c. 149 ~ BUILDING CONSTRUCTION CONTRACTS**



- ▶ **M.G.L. c. 30, §39M ~ PUBLIC WORKS (NON-BUILDING) CONSTRUCTION CONTRACTS (WITH LABOR)**



- ▶ **M.G.L. c. 7C, §§44-57 ~ PUBLIC BUILDING PROJECTS DESIGN SERVICES**

BOB WORKS IN PROCUREMENT

YOUR DUTIES ARE SIMPLE.
PEOPLE WILL COME TO YOU
AND ASK FOR THINGS.



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ASSUME ALL EMPLOYEES
ARE LYING, TREASURE-
HUNTING THIEVES. GIVE
THEM LOW-COST SUB-
STITUTES AND CLAIM THE
SAVINGS ON YOUR
ACCOMPLISHMENTS.



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I ASKED FOR A MULTIMEDIA
LAPTOP PC.
THIS IS A
"DYMO"
LABELER.



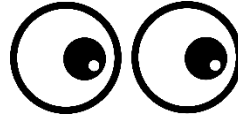
NICE TRY, PAUL,
IF THAT'S YOUR
REAL NAME.



Invalid Contracts

- ▶ If a contract is awarded in violation of MA procurement laws, it is not valid
- ▶ No payment may be made on an invalid contract, regardless if the supplies or services have been received, or work has been performed
- ▶ Cities and towns each have their own local statutes with regards to the authority to bind the municipality to a contract - this is found in bylaws or ordinances. Contract is not valid if not signed according to local requirements.

WHO'S LOOKING?



The oversight agency for c.30B procurement in MA is the Office of the Inspector General (OIG). No matter what type of purchasing structure exists in a municipality, the OIG maintains oversight and the right to investigate, but also offers assistance to the public purchaser.



The oversight agency for c.149 or c.30 \$39M procurement in MA is the Attorney General's Office (AG). The AG maintains oversight and handles bid protests, but also offers assistance to the public purchaser.



The oversight agency for c.7C \$44-57 is the Department of Capital Asset Management and Maintenance (DCAMM).

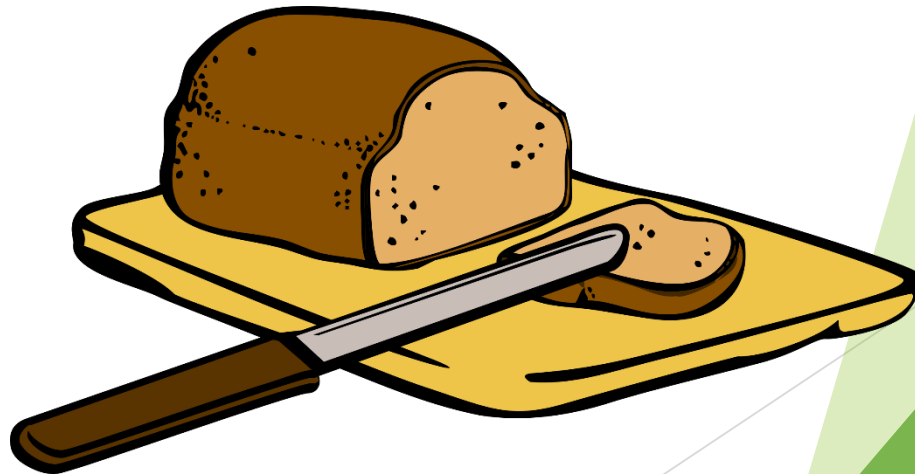
It shouldn't be this difficult!



CAUTION!

NO Bid Splitting Allowed!

Bid splitting is defined as dividing or splitting a procurement in order to evade a procurement requirement.



overview - c.30b

Chief Procurement Officer

- ▶ The Chief Procurement Officer (CPO) is responsible for all activities related to procurement of supplies and services.
- ▶ CPO may delegate functions to others, by written notification to the Office of the Inspector General.
- ▶ A CPO must be appointed if the jurisdiction wishes to utilize the Request for Proposal process under Chapter 30B.

overview - c.30b

(MAY BE SUBJECT TO PREVAILING WAGE REQUIREMENTS)

- ▶ **Under \$10k - Sound business practices**
Ensuring favorable prices by employing knowledge of the market, soliciting comparison pricing, “shopping it out.”
- ▶ **\$10k to \$50k - Written quotations**
Use a written purchase description to solicit at least 3 written quotations from entities that customarily provide that supply or service. Contract awarded to lowest price quotation.
- ▶ **Over \$50k - Sealed bid process or proposal process**
Formal process. Advertising is required at least two weeks prior to bid due date in newspaper, on COMMBUYS, and on the jurisdiction’s bulletin board. Contract must be awarded to responsive and responsible bidder. In the case of proposals, to the one offering the most advantageous proposal taking into consideration both non-price and price submittals.

*Over \$100k, advertising in the Goods and Services bulletin is also required.

*Please note in 2023 State Law changed to allow for written quotes for Schools to increase from \$50,000 to \$100,000 and sealed bids to start at \$100,000.

Other c.30b Options

► Statewide contract purchases

The Operational Services Division (OSD) awards a variety of statewide contracts that local jurisdictions may use without conducting a procurement under Chapter 30B.

These contracts have specific rules that must be followed. It is recommended that you solicit quotes from a number of vendors on the statewide contract and award the contract to the responsible vendor offering the quality of supplies or services at the lowest price.

If you purchase supplies or services from a statewide contract, you must comply with contract terms and conditions and you must verify that the vendor is authorized to sell the item(s) or offer the service(s). The Statewide Contract Guides found on COMMBUYS will be your best source of info!

Other c.30b Options

► Collective or Collaborative Contracts

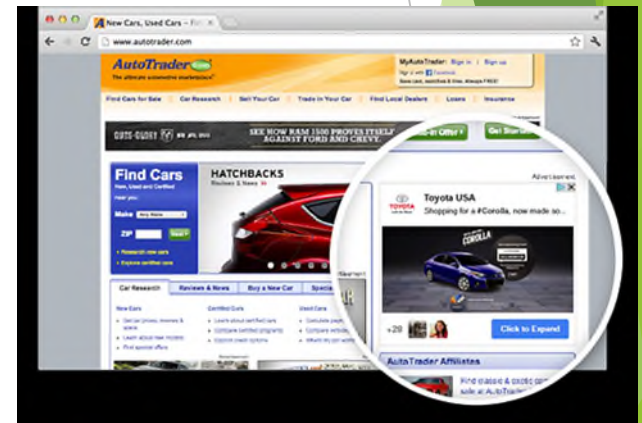
Chapter 30B authorizes two or more jurisdictions to solicit bids for supplies or services as a group. This procurement method authorizes one jurisdiction, called “the lead jurisdiction,” to procure supplies and services and award a contract for the benefit of a designated group.

The lead jurisdiction performs the bid process in full compliance with Chapter 30B, and each participating jurisdiction accepts responsibility to pay for any purchases made under the contract, and also agrees to comply with all legal requirements regarding administration of the contract.

Examples of Collective or Collaborative Contracts are those procured by Massachusetts Higher Education Consortium (MHEC) based in Amherst, Franklin Regional Council of Governments (FRCOG) in Western MA, and the Metropolitan Area Planning Council (MAPC) in the Boston area.

Under \$10k - Sound business practices - SUPPLIES

- ▶ Check up-to-date catalogs and flyers.
- ▶ Call around, talk to sales reps, do your research.
- ▶ Use online comparisons from shopping sites.



Under \$10k - Sound business practices - SERVICES

- ▶ Discuss with sales reps to identify what you need and what it will cost. *caution do not be convinced to use their scope of work for your bid.
- ▶ Talk to other jurisdictions who may use the same service, and do your research.
- ▶ Use the “contact us” forms online to get pricing.



Need a price

REQUEST A G

***or \$10K to \$100K if school**

- Provide the description, in writing, to at least 3 vendors who customarily provide the supply or service.

- ▶ Award a contract to the vendor or company who meets the purchase description and offers the best price.

[illegible]

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BY SCOTT ADAMS



Twitter: @scottadamssays



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Over \$50k -Invitation for Bid (IFB)

*or over \$100K if schools

1. Prepare your IFB.
2. Advertising is required at least two weeks prior to bid due date in newspaper, on COMMBUYS, and on the jurisdiction's bulletin board.
3. Receive, open, and record bids after due date and time has been reached.
4. Evaluate bids.
5. Perform reference checks and due diligence to be sure the bidder meets your criteria.
6. Prepare a bid summary for your file.
7. Award contract to the responsible and responsive bidder who offers the best price.
8. Retain your records.

▶ Advertising your IFB

▶ Advertisement must include:

- ▶ Where, when, and for how long the IFB may be obtained.
- ▶ The supply or service required.
- ▶ A notice that the jurisdiction reserves the right to reject any and all bids.
- ▶ An indication of any body that must approve the contract, if it is a Board or Commission.

Receive, Open, Record Bids

- Open all bids at the time specified in the IFB.
- Open bids in front of at least one witness and allow bidders to attend if they are interested.
- Always reject late bids!
- Keep a record of bidders and bid amounts.
- Immediately after opening, bids become public record.



► Evaluate and Award

- Determine if the lowest bidder is “responsible,” meaning they have the reliability, experience, and professional integrity to perform.

- Be consistent and fair in your evaluation.

- Award in accordance with your rule for award.

- Execute a contract

- Retain records

- Monitor vendor performance.

Items to include in your bid

► Purchase Description

Remember to describe your needs in sufficient detail to be sure you receive what you want, when you want it, in the manner you'd like it to be delivered.

...AND, most importantly, to receive the highest quality at the best price.

THE most important part of the procurement process. Is it the terms and conditions? The contract? The advertising? The time you allow for responses? Nope.

How good is your product or service description?

Also known as “It’s just what I asked for, but not what I needed.”

PROJECT PURCHASING



Hello Procurement? It's about
the new Blackberry I ordered...

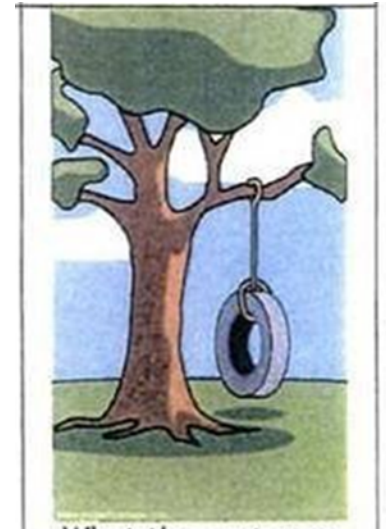
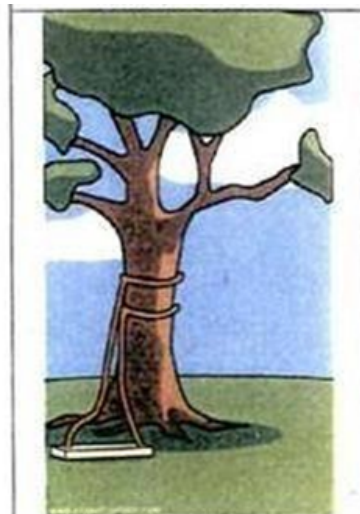


This is what was described:
Rope and seats hanging from a tree.

The vendor at first pictured ropes holding a comfy chair, but realized they'd have to bid high.

So, they delivered exactly what was asked for... rope and seats hanging from a tree.

Be careful with your description,
so you receive what you really want.



Items to include in your bid



Quality Requirements



Specify the standards for the item or service.



Specify the qualifications that a vendor or company must possess in order to fulfill the contract.

Items to include in your bid

► Rule for Award

You must include a rule for award in your bid in order for everyone to understand how to win the contract.

For example

“The contract will be awarded to the responsible vendor offering 500 reams of 20 lb. weight, bright white 8 ½ x 11 copy paper, delivered to City Hall, at the lowest price”

Once the rule for award is published, you cannot award in any other manner.

Items to include in your bid

► Best Price

Tell bidders how you will determine the best price.

For multi-bid items, you must structure the award so that it is clear how you will determine the best price, especially if you have the option to award multiple years.

“The contract will be awarded to the responsive and responsible bidder offering the lowest price for all three years for the supplies/services specified in this IFB”

Items to include in your bid

Standard Forms,
Terms, and
Conditions

Non-collusion form is required. It must be included with the bid or you must reject the bid.

Bid price form is required. It must be completed and included with the bid.

All contract terms should be spelled out in the bid to avoid any conflict with the contract later on.



Items to include in your bid

► Bid Submission Requirements

You must state the date and time the bids are due.

You must state where the bids should be addressed to or delivered to.

You must include any specific instructions on how to mark the outside envelope, if you have such requirements.



Over \$50k - Request for Proposal Process (RFP)

The RFP process is an alternative to the IFB process and should be used when the merits of a proposal outweigh the need for the lowest price.

In order to use an RFP process, a jurisdiction must have an appointed Chief Procurement Officer.

The RFP process must have written justification that establishes the reasoning why price is not the driving force behind the decision to award.

Over \$50k - Request for Proposal Process (RFP)

*over \$100K for schools

1. Prepare your RFP.
2. Advertising is required at least two weeks prior to bid due date in newspaper, on COMMBUYS, and on the jurisdiction's bulletin board.
3. Receive and record names of proposers only after due date and time has been reached. Only record of proposers is public until the process is complete.
4. Evaluate technical proposals and rank the proposals.
5. Open and evaluate price proposals.
6. Perform reference checks and due diligence to be sure the vendor or company meets your criteria.
7. Award contract to the responsible and responsive bidder who offers the most advantageous proposal taking into consideration both non-price and price submittals.
8. Retain your records.

RFP comparison to IFB

The RFP shares many of the same requirements as an IFB. However, there are distinct differences:

1. Requires submittal of two separate envelopes containing a technical and price proposal.
2. Requires documented reasoning for using the process.
3. Requires comparative criteria for features you may be willing to pay more for, which you evaluate during the process.
4. You *MAY NOT* open the prices until the evaluation/ranking process is complete.

RFP Comparative Criteria

You will evaluate your technical proposals using Comparative Criteria. Typically used are:

Highly Advantageous

Advantageous

Not Advantageous

Unacceptable

RFP Comparative Criteria

You will rank your proposals based on the Comparative Criteria you put into the RFP, and using the assigned ratings. This should result in an order of preference.



A Service RFP Example:



- ▶ The RFP Process is the perfect avenue to comply with the law

- ▶ Banking Services require a procurement process per MGL c44 § 53F



How to compare

Highly Advantageous

The Bank's operating procedures and policies meet or exceed all requirements

Primary contact has 10 or more years' experience providing similar services to municipal clients.

Eight or more municipal clients.

Proposer offers a positive pay type system at the teller line with email notification to City.

Proposer currently provides operation account banking services to 3 or more clients with budgets at least \$100,000,000.

Advantageous

The Bank's operating procedures and policies meet most of the requirements.

Primary contact has at least 7 years' experience providing similar services to municipal clients.

Four to seven municipal clients.

Proposer offers a positive pay type system at the teller line with no email notification to City.

Proposer currently provides operation account banking services to at least 2 clients with budgets at least \$100,000,000.

Unacceptable

The Bank's operating procedures and policies do not meet any of the requirements.

Primary contact person has less than two years' experience providing similar services to municipal clients.

No current, active municipal clients.

Bank does not offer a Positive Pay type system.

Proposer currently provides operation account banking services to at least 1 clients with budgets at least \$100,000,000.

► RFP Ranking and Award of Contract

► Once you complete the evaluation process, you may open the price proposals.

► If the price proposal is fair and within your budget, you may award the contract to the highest ranked proposer at the contracted price.

► If the price proposal is higher than you are willing to pay, you may go to the next highest ranked proposer, and so on.

SOLE SOURCE PROCUREMENTS

- ▶ A sole source procurement is one done without performing a competitive process.
- ▶ Sole source procurements are very rare, and apply to some educational materials, and regulated utilities.
- ▶ Sole source is only allowed for purchases below \$50k where a reasonable investigation determines no competition exists. *schools were raised to \$100K
- ▶ Sole source purchases must be documented in writing, and documentation must include the basis of determination.

DISPOSAL OF SURPLUS SUPPLIES

- ▶ Disposal of surplus supplies fall under the same thresholds as purchases.
- ▶ A jurisdiction should have a written procedure for disposal of surplus supplies valued at less than \$10k.
- ▶ For surplus supplies valued at more than \$10k, jurisdictions must use a public auction or a sealed bid process.
- ▶ Auction or bid process requires advertising as described for the IFB process.
- ▶ A contract, or bill-of-sale, must be executed and records must be retained.



Real property transactions

Real property transactions conducted by a jurisdiction (not tax-title property) must be done in accordance with Chapter 30B.

- ▶ For low value (see thresholds below) property sales, “best practices” apply.
- ▶ If acquiring real property at a **cost** in excess of \$35k, the jurisdiction must conduct a sealed bid process.
- ▶ If disposing of real property at a **value** in excess of \$35k, the jurisdiction must conduct a sealed bid process.

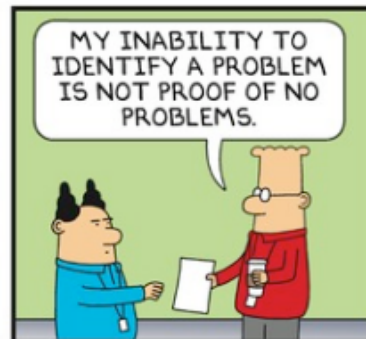
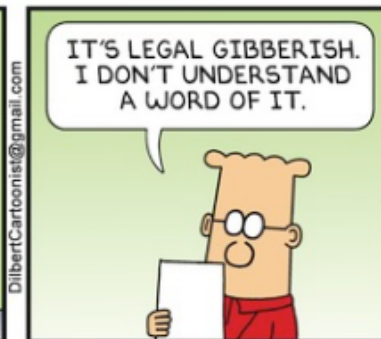
Contract pointers

- ▶ It is important for any and all procurements, that your contract be sound and defensible.
- ▶ Standard contracts are the best way to be sure you are consistent and cover all possibilities. Your Town Counsel or City Solicitor or legal team should work with you to develop standard contracts.
- ▶ It is a “best practice” to include the standard contract itself with the procurement. It will make execution of the contract much faster, because the bidder will already have seen the terms and conditions.

Contract management

- ▶ Good contract management ensures that your jurisdiction does not pay more than the contract requires.
- ▶ It also ensures that you receive the quality or performance you were seeking.
- ▶ Contract management helps you document both good and bad experiences, which may be used in determining “responsible” bidders in the future.
- ▶ It is important that you do not rely on the vendors giving you their contracts as they will always benefit them over you.
- ▶ Any and all terms should be reviewed by your procurement personnel to make sure the terms do not jeopardize your position.

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Contract management

Authority

Be sure to apply the authority you have to monitor the contract. Communicate problems or concerns with the vendor or company to keep things from escalating.

Contract File

Establish and maintain a contract file and retain any and all items that relate to performance and payment.

Reviews

Keep notes on poorly performing contractors in order to disqualify them if you need to in the future.

Required Docs

Maintain any certified payroll, insurance, bonds or warranties in the contract file as well.

Contract management

For supplies - inspect and evaluate what you receive, are all there are they damaged.





Contract management

For services - use direct observation to be sure the work is being performed to your satisfaction

Contract management

Be sure to compare your invoices to your contract or purchase order.

Verify work was completed.

Be sure that charges you're billed for are allowed.

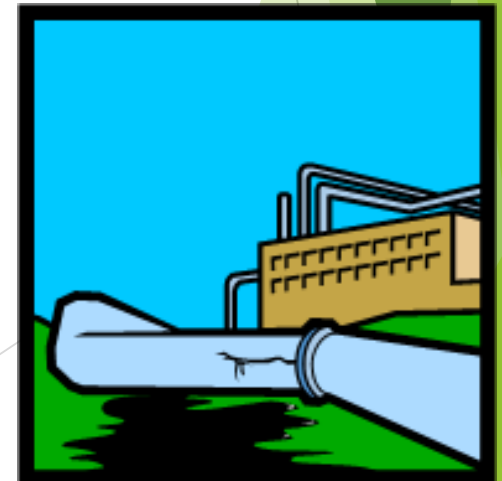
Look for any discounts or adjustments you are promised.



Emergencies



- ▶ In qualifying emergency situations, certain procurement laws may be waived. For c.30B and c.30, §39M, the Chief Procurement Officer can approve an emergency procurement. Under c.149, some aspects such as advertising requirements may be waived when the awarding authority receives written approval from The Division of Capital Asset Management and Maintenance (DCAMM).



How can procurement people help you, day to day?



- ▶ Always involve your procurement team in the beginning. Most times they will get you what you need, when you need it, within the confines of the law.
- ▶ Your procurement team should provide you with all the information you need to make a good procurement.
- ▶ If you provide good specifications, the procurement process will be much smoother. Help the purchasing folks help you by being prepared!
- ▶ When in doubt, there are many resources available to obtain assistance. Some of these resources are listed at the conclusion of this presentation.

Questions?

Should you need additional information on the material provided, please visit the following:

Office of the Inspector General: <https://www.mass.gov/orgs/office-of-the-inspector-general>

DCAMM: <https://www.mass.gov/orgs/division-of-capital-asset-management-and-maintenance>

Office of the Attorney General: <https://www.mass.gov/public-construction>

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Now how
would you
describe
Purchasing?



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Always leave them laughing...