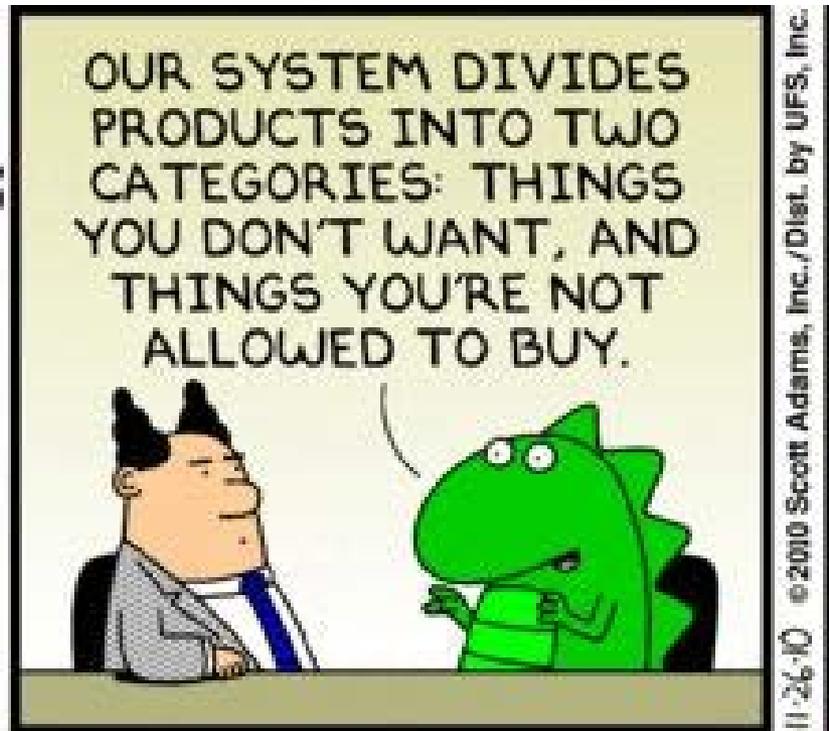


Procurement Basics

Presentation for:
MA Auditors and Town Accountants
June 12, 2018

Mary A. Delaney
Chief Procurement Officer, City of Fitchburg
Executive Board Chair, MA Association of Public Procurement Officials (MAPPO)

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



Where Procurement Laws Apply:

- ▶ Cities and Towns
- ▶ Regional School Districts
- ▶ Horace Mann Charter Schools
- ▶ Counties
- ▶ Councils of Government
- ▶ Agencies, Boards, Commissions, Authorities, Departments or Instrumentalities of any of the above

“GOVERNMENTAL BODY” DOES NOT INCLUDE

- Agencies of the Commonwealth
- State colleges and universities
- Commonwealth Charter Schools
- County Sheriffs

Records Retention

- ▶ All written records related to a contract must be maintained for a period of six years following the date of final payment under the contract.
- ▶ “Records” include the advertisement, invitation, actual quotation or bid submittals, list of vendors who received the documents, bid summary, contract, and insurance (if required).
- ▶ All records related to a contract are “public documents.” The only exception is for an RFP, where the records remain confidential until after evaluations.

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
- ▶ The only relief for payment on an invalid contract is through special legislation
- ▶ 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.

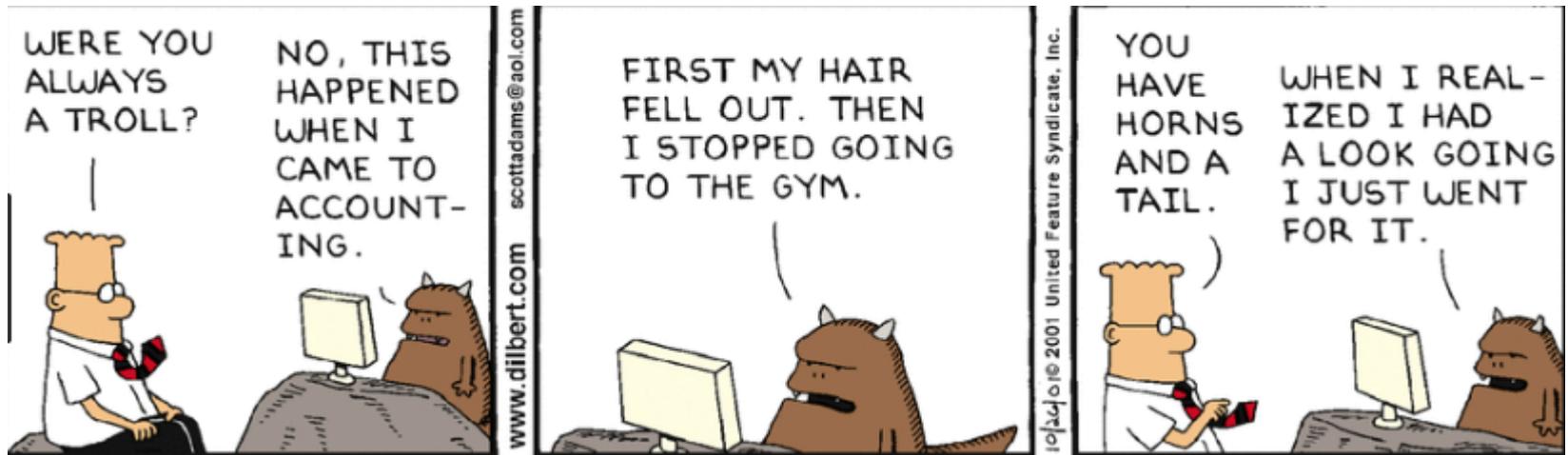
Procurement and Finance

- ▶ The relationship between the two departments is critical in providing oversight regarding spending, contract constraints, and vendor maintenance
 - ▶ There should be a clear separation of functions between finance and procurement in order to maintain the proper checks and balances
 - ▶ As watchdogs of the public dollar, finance and procurement working together is a dynamic partnership that benefits the municipality and the taxpayer.
- 

Purchasing, according to Dilbert:



Finance, in the world of Dilbert:



And everyday, THIS happens with staff...



Overview of Specific Public Procurement Laws

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)

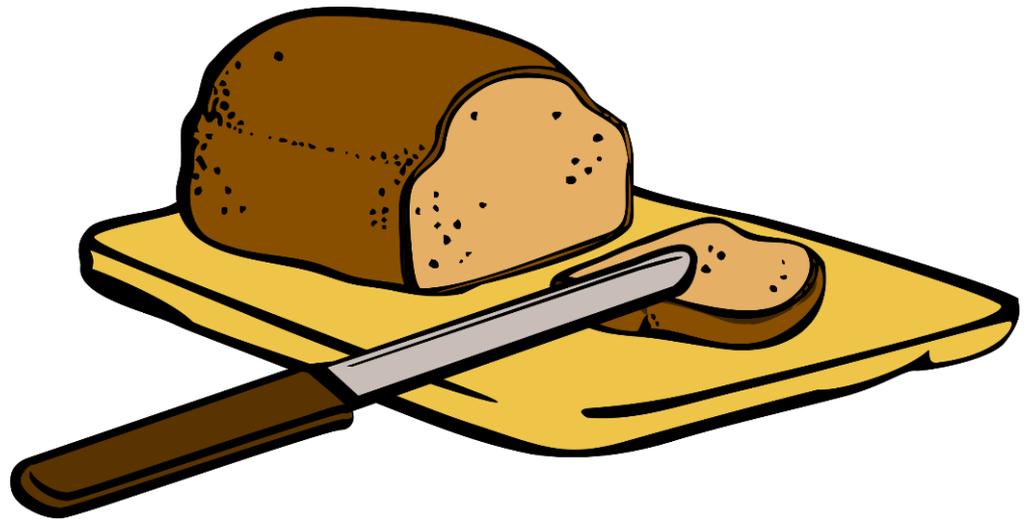


- ▶ **M.G.L. c. 7C, §§44-57** ~ PUBLIC BUILDING PROJECTS DESIGN SERVICES

Warning – ALL PROCUREMENTS!

NO Bid Splitting Allowed!

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



Quick Overview - Prevailing Wage Law

- ▶ The Massachusetts Prevailing Wage Law, G.L. c. 149, §§ 26 – 27, establishes minimum wage rates for workers on public construction projects, workers engaged in school bus transportation, operators of vehicles and equipment for engaged by public entities for public works purposes (including solid waste and recycling), and office moving services.
- ▶ No threshold applies.
- ▶ Only exception to the law is when a contract is paid for with insurance proceeds.
- ▶ The Massachusetts Executive Office of Labor and Workforce Development, Division of Occupational Safety (DOS) is the agency responsible for issuing prevailing wage rate sheets and administering the Prevailing Wage Law. The Massachusetts Attorney General's Fair Labor Practices Division is responsible for enforcing the law.

A word about State Contracts and other Collaborative Contracts

- ▶ With changes in the law, State Contracts can now be used for more than supplies and services, as trades were included in new legislation from 2016. There are strict guidelines to using State Contracts, and finance should be provided with evidence the State Contract was properly used.
- ▶ Unlike State Contracts, other collaborative contracts can **ONLY** be used for **SUPPLIES**. Again, the purchase must be conducted properly and can contain no labor provisions. The collaborative must have obtained the vendor through a competitive process that meets MGL.

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.

Over \$50k – Invitation for Bid (IFB)

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.
- 

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)

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 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.



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.
 - ▶ 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.

Overview – c.30, 39M AND 149

Chief Procurement Officer

- ▶ There is no requirement for a Chief Procurement Officer. There is also no provision to delegate authority. Rules of your municipality apply.
- ▶ In the absence of centralization, it is important that a set of rules and procedures be established to guarantee the municipality is meeting the requirements of MGL and conducting proper procurements.

Overview – c.30, 39M AND 149

MGL c. 30, 39m is for procurement of public works projects such as roads, bridges, water and sewer repair and replacement. This chapter applies to anything considered horizontal construction.

MGL c. 149 is for procurement of building projects, facilities repairs and replacements, and any project where a change is made to the physical structure of a building. Under this chapter, a building is considered to be anything that has walls and a roof.

Overview – c.30,39M AND 149

(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**

Formal process. Advertising is required at least two weeks prior to bid due date in newspaper, on COMMBUYS, on the city/town website, and on the jurisdiction’s bulletin board. Contract must be awarded to responsive and responsible bidder. There is no option to do proposals under this law.

Over \$50k – Invitation for Bid (IFB)

1. Prepare your IFB.
2. Advertising is required at least two weeks prior to bid due date in newspaper, in Central Register, 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.

Overview – c. 7C, §§44-57

(DESIGNER SELECTION)

- ▶ **Under \$10k with project less than \$100k – Sound business practices**
Ensuring favorable prices by employing knowledge of the market, soliciting comparison pricing, “shopping it out.”
- ▶ **Over \$10k with project more than \$100k – Qualifications Based process based upon local approved procedure**
Formal process. Advertising is required at least two weeks prior to bid due date in newspaper in Central Register. Firms are ranked and winner chosen using the approved procedure for the municipality. Fee negotiations occur with the highest ranking firm first, and proceeding with the next ranking firms until an agreement can be reached.

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.
- 

Contract management

- ▶ 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.
 - ▶ Establish and maintain a contract file, and retain any and all items that relate to performance and payment.
 - ▶ Keep notes on poorly performing contractors in order to disqualify them if you need to in the future.
 - ▶ Maintain any certified payroll, insurance, bonds or warranties in the contract file as well.
- 

Contract management

For supplies – inspect and evaluate what you receive.



Contract management

For services, public works, and construction – use direct observation to be sure the work is being performed to your satisfaction.



Contract management

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

Verify work was completed.

Be sure that charges billed are allowable expenses.

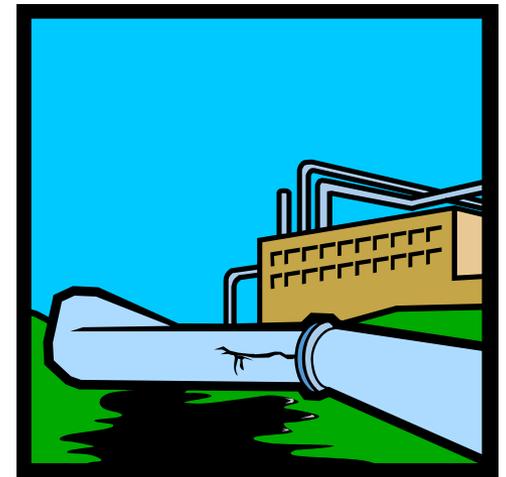
Look for any discounts or adjustments you are promised.

It is critical for finance to confirm the spending has stayed within the constraints of the contract and purchase order. Purchasing should be consulted if an expense appears to go beyond the agreed upon contract limit or purchase order limit.

Emergencies



- ▶ In qualifying emergency situations, certain procurement laws may be waived. For c.30B, the Chief Procurement Officer can approve an emergency procurement. Under c.149 and c. 30, 39m, 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).



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).

Questions?

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

Office of the Inspector General: <http://www.mass.gov/ig/>

DCAMM: <http://www.mass.gov/anf/property-mgmt-and-construction/oversight-agencies/dcam/>

Office of the Attorney General:

<http://www.mass.gov/ago/doing-business-in-massachusetts/workplace-rights/public-construction/>

My contact info:

Mary Delaney, Chief Procurement Officer

City of Fitchburg

mdelaney@fitchburgma.gov



Always leave them laughing...

Disclaimer: The information contained herein is based upon my own experience as a practitioner. To comply with the many and varied applications of MGL regarding procurement, you should always consult with your jurisdiction's legal team, and seek guidance from the available oversight agencies of the Commonwealth, and not rely solely on the information provided herein.