



GLENN A. CUNHA  
INSPECTOR GENERAL

## The Commonwealth of Massachusetts

### Office of the Inspector General

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Dear Local Official:

The following charts were created by the Office of the Inspector General for local officials to use as a quick reference guide on public procurement procedures that must be followed pursuant to the Massachusetts General Laws. Your local rules may establish stricter or additional requirements that you must follow. Contact your chief procurement officer (CPO) or legal counsel for advice on your local rules and procurement procedures.

The charts highlight particular compliance requirements depending on the cost or the nature of your procurement. For example, the charts highlight, where applicable, the requirement for a ten-hour course in construction safety and health approved by the United States Occupational Safety and Health Administration (OSHA). Pursuant to M.G.L. c.30, §39S, any person submitting a bid for, or signing a contract to work on, a public building or public works project estimated to cost more than \$10,000, must certify under the pains and penalties of perjury that he or she is able to furnish labor in harmony with all other elements of labor employed in the work and that all employees employed on the worksite, or in work subject to the bid, have successfully completed at least ten hours of OSHA approved training. The charts are meant to provide a general overview of the principal public procurement statutes, and are not a substitute for consultation of the statute or the advice of legal counsel.

The charts include:

- 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.30, §39M or M.G.L. c.30B -- CONSTRUCTION MATERIALS PROCUREMENTS (WITHOUT LABOR) [NEW – June 2012]
- M.G.L. c.7, §§38A½-O -- PUBLIC BUILDING PROJECTS DESIGN SERVICES -- Cities, Towns, Regional School Districts, and Horace Mann Charter Schools
- M.G.L. c.30B PROCUREMENT OF SUPPLIES AND SERVICES

Any suggestions for the charts or questions concerning M.G.L. c.30B may be directed to this Office by calling 617.722.8838. Questions concerning M.G.L. c.149, M.G.L. c.30, §39M, and M.G.L. c.7 may be directed to the Office of the Attorney General by calling 617.727.2200 or your legal counsel.

Prevailing wage rate sheets may be requested online at <http://www.mass.gov/lwd/labor-standards/prevailing-wage-program/> or by calling the Department of Labor Standards at 617.626.6975.

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*Central Register* advertisements may be submitted online at <http://www.sec.state.ma.us/spr/sprcentral/infosubmit.htm> to the Secretary of the Commonwealth. The submission deadline is 4:00 pm on Tuesday.

*Goods and Services Bulletin* advertisements may be submitted online at <http://www.sec.state.ma.us/sprpublicforms/GSSubmissionform.aspx> to the Secretary of the Commonwealth. The submission deadline is 4:00 pm on Wednesday.

Sincerely,

A handwritten signature in blue ink, appearing to read "Glenn A. Cunha".

Glenn A. Cunha  
Inspector General

# M.G.L. c.149 -- BUILDING CONSTRUCTION CONTRACTS

Estimated Contract Amount	Under \$10,000 <sup>1</sup>	\$10,000 to \$24,999	\$25,000 to \$100,000	Over \$100,000	Over \$10,000,000
<b>Procurement Procedure</b>	Sound business practices	Solicit written responses.	Sealed bids (using M.G.L. c.30, §39M procedure).	Sealed bids.	Solicit statements of qualifications prior to soliciting sealed bids.
<b>Advertising Requirements</b>	No.	Advertise once in the <i>Central Register</i> <sup>2</sup> and post a notice on your jurisdiction's website and bulletin board for at least two weeks before responses are due. Posting on Comm-PASS is optional.	Advertise once in the <i>Central Register</i> <sup>2</sup> and a newspaper at least two weeks before bids are due, and post on your jurisdiction's bulletin board for at least one week before bids are due. Posting on Comm-PASS or your website is optional.	Advertise once in the <i>Central Register</i> <sup>2</sup> and a newspaper at least two weeks before bids are due, and post on your jurisdiction's bulletin board for at least one week before bids are due. Posting on Comm-PASS or your website is optional.	Advertise the request for qualifications once in the <i>Central Register</i> <sup>2</sup> , newspaper, and Comm-PASS at least two weeks before responses are due. <sup>3</sup>
<b>DCAM Certification</b>	No.	No.	No.	Required for general bidders and filed sub-bidders.	Required for general bidders and filed sub-bidders.
<b>OSHA Training</b>	No.	Yes.	Yes.	Yes.	Yes.
<b>City/Town Prequalification</b>	No.	No.	No.	Optional. <sup>4</sup>	Yes.
<b>Filed Sub-bids</b>	No.	No.	No.	Yes (\$20,000 and over).	Yes (\$20,000 and over).
<b>Bid Deposit</b>	No.	No.	5% of the value of the total bid.	5% of the value of the total bid, or sub-bid.	5% of the value of the total bid, or sub-bid.
<b>Payment Bond</b>	No.	No.	50% payment bond.	100% payment bond.	100% payment bond.
<b>Performance Bond</b>	No.	No.	No.	100% performance bond.	100% performance bond.
<b>Prevailing Wage</b>	Yes.	Yes.	Yes.	Yes.	Yes.
<b>Contractor Evaluation</b>	No.	No.	No.	Yes.	Yes.

<sup>1</sup> M.G.L. c.149, §44A(2)(A) as amended by Chapter 188 of the Acts of 2010.

<sup>2</sup> M.G.L. c.149, §44J(a) and M.G.L. c.9, §20A and accompanying regulations require all contracts for construction services and all contracts for construction materials costing \$10,000 or more to be advertised in the *Central Register*.

<sup>3</sup> The advertising procedures listed pertain only to the request for qualifications. Within 14 days of the completion of the prequalification evaluation process, you are required to post a notice in your jurisdiction and on Comm-PASS listing those general and subcontractors who have been prequalified. A copy of the notice must be sent via first class mail, postage pre-paid to all prequalified general and subcontractors along with an invitation to bid. The invitation to bid must have a deadline of at least two weeks. Although you may only consider bids from those general and subcontractors who have been prequalified, the advertising requirements for building construction contracts over \$100,000 apply.

<sup>4</sup> If you decide to use the optional prequalification process for projects over \$100,000, follow the procedures listed in the "Over \$10,000,000" column.

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

Estimated Contract Amount	\$10,000 and under	Over \$10,000 to \$25,000		Over \$25,000
		M.G.L. c.30, §39M	<b>M.G.L. c.30B, §5 Option<sup>1</sup></b>	M.G.L. c.30, §39M
<b>Procurement Procedure</b>	No.	Sealed bids.	Sealed bids.	Sealed bids.
<b>Advertising Required</b>	No.	Advertise once in the <i>Central Register</i> <sup>2</sup> and your local newspaper at least two weeks before bids are due, <b>and</b> post a notice on your jurisdiction's bulletin board for one week before bids are due.	Advertise once in the <i>Central Register</i> <sup>2</sup> and your local newspaper at least two weeks before bids are due, <b>and</b> post a notice on your jurisdiction's bulletin board for one week before bids are due.	Advertise once in the <i>Central Register</i> <sup>2</sup> and your local newspaper at least two weeks before bids are due, <b>and</b> post a notice on your jurisdiction's bulletin board for one week before bids are due.
<b>DCAM Certification</b>	No.	No.	No.	No.
<b>OSHA Training</b>	No.	Yes.	Yes.	Yes.
<b>City/Town Prequalification</b>	No.	No. <sup>3</sup>	No.	No.
<b>Filed Sub-bids</b>	No.	No.	No.	No.
<b>Bid Deposit</b>	No.	5% of the value of the total bid.	No.	5% of the value of the total bid.
<b>Payment Bond</b>	No.	No.	No.	50% payment bond.
<b>Performance Bond</b>	No.	No.	No.	No.
<b>Prevailing Wage</b>	Yes.	Yes.	Yes.	Yes.

<sup>1</sup> Authorized by M.G.L. c.30, §39M(d).

<sup>2</sup> M.G.L. c.149, §44J(a) and M.G.L. c.9, §20A and accompanying regulations require all contracts for construction services and all contracts for construction materials costing \$10,000 or more to be advertised in the *Central Register*.

<sup>3</sup> Although M.G.L. c.30, §39M does not mandate a contractor prequalification process, prequalification of bidders by the Massachusetts Department of Transportation is required for contracts of \$50,000 or more where the awarding authority receives State Aid funds under M.G.L. c.90, §34, or the work is on a state road, regardless of whether the awarding authority receives State Aid funds under M.G.L. c.90, §34.

**M.G.L. c.30, §39M or M.G.L. c.30B, §5  
CONSTRUCTION MATERIALS PROCUREMENTS (WITHOUT  
LABOR)**

<b>Estimated Contract Amount</b>	<b>\$10,000 and under</b>	<b>Over \$10,000</b>	
		<b>M.G.L. c.30, §39M</b>	<b>M.G.L. c.30B, §5<sup>1</sup> Option</b>
<b>Procurement Procedure</b>	No.	Sealed bids.	Sealed bids.
<b>Advertising Required</b>	No.	Advertise once in the <i>Central Register</i> <sup>2</sup> and your local newspaper at least two weeks before bids are due, <b>and</b> post a notice on your jurisdiction's bulletin board for one week before bids are due.	Advertise once in the <i>Central Register</i> <sup>2</sup> and your local newspaper at least two weeks before bids are due, <b>and</b> post a notice on your jurisdiction's bulletin board for one week before bids are due.
<b>DCAM Certification</b>	No.	No.	No.
<b>OSHA Training</b>	No.	No.	No.
<b>City/Town Prequalification</b>	No.	No.	No.
<b>Filed Sub-bids</b>	No.	No.	No.
<b>Bid Deposit</b>	No.	5% of the value of the total bid.	No.
<b>Payment Bond</b>	No.	No.	No.
<b>Performance Bond</b>	No.	No.	No.
<b>Prevailing Wage</b>	No.	No.	No.
<b>Award contract to:</b>	No.	Lowest responsible and eligible bidder.	Lowest responsive and responsible bidder.

<sup>1</sup> Authorized by M.G.L. c.30, §39M(d).

<sup>2</sup> M.G.L. c.149, §44J(a) and M.G.L. c.9, §20A and accompanying regulations require all contracts for construction services and all contracts for construction materials costing \$10,000 or more to be advertised in the *Central Register*.

# M.G.L. c.7, §§38A½-O PUBLIC BUILDING PROJECTS DESIGN SERVICES -- Cities, Towns, Regional School Districts, and Horace Mann Charter Schools<sup>1</sup>

Estimated Construction Cost (ECC)/Estimated Design Fee (EDF)	ECC \$100,000 or less or EDF less than \$10,000	ECC more than \$100,000 and EDF \$10,000 or more (both ECC <u>and</u> EDF thresholds must be met before the designer selection procedure is required.)*
<b>Procurement Procedure</b>	No. Recommend soliciting qualifications and prices from at least three designers.	Qualifications-based selection process. Jurisdiction must either set the design fee or set a not-to-exceed fee limit and negotiate the fee with the top-ranked designer within the fee limit.
<b>Advertising Required</b>	No.	Advertise once in the <i>Central Register</i> and your local newspaper at least two weeks before the deadline for filing applications.
<b>Designer Selection Board<sup>1</sup></b>	No.	No – adopt selection procedure in writing. <sup>2,3</sup> Use “DSB Application for Municipalities.”
<b>Designer Evaluation (Submit to DCAM and Designer Selection Board)</b>	No.	Yes.
<b>Registration</b>	Yes.	Yes.
<b>Insurance</b>	No.	10% of the total cost of the project or \$1 million, whichever is less.
<b>Prevailing Wage</b>	No.	No.

\*In December 2008, the Designer Selection Board revised its “Guidelines for City and Town Building Projects” to clarify that both thresholds must be met.

<sup>1</sup> Executive Departments of the Commonwealth and Commonwealth Charter Schools are subject to the jurisdiction of the Designer Selection Board when the design fee is \$10,000 or more and the construction project is estimated to cost \$100,000 or more.

<sup>2</sup> Cities, Towns, School Districts, and Horace Mann Charter Schools are required to adopt their own procedures for selecting designers for building projects. These procedures must conform to the purposes and intent of the designer selection process as outlined in M.G.L. c.7, §§38A½-O and noted herein. See the *Model Designer Selection Procedures for Municipalities and Other Local Public Agencies* developed by this office at <http://www.mass.gov/ig/publications/guides-advisories-other-publications/model-designer-selection-procedures-municipalities-and-other-local-public-agencies-nov-2009.html>.

<sup>3</sup> Housing Authorities must follow the procedures established by the Department of Housing and Community Development for design of state-funded housing. Projects requesting funding from the Massachusetts School Building Authority (MSBA) are subject to MSBA rules.

# M.G.L. c.30B PROCUREMENT OF SUPPLIES AND SERVICES

Estimated Contract Amount	Under \$5,000	\$5,000 to \$24,999	\$25,000 and over
<b>Procurement Procedure</b>	Sound business practices. <sup>1</sup>	Solicit three written or oral quotes.	Sealed bids or proposals. (M.G.L. c.30B, §§5 or 6).
<b>Advertising Required</b>	No.	No.	Advertise once in a newspaper of general circulation at least two weeks before bids or proposals are due, <b>and</b> post a notice on your jurisdiction's bulletin board or website for two weeks before bids or proposals are due. If \$100,000 or more, advertise once in the <i>Goods and Services Bulletin</i> at least two weeks before bids or proposals are due.
<b>Award contract to:</b>	Person offering the best price.	Responsible <sup>2</sup> and responsive <sup>3</sup> person offering the best price.	Under §5, the responsible and responsive bidder offering the best price. Under §6, the most advantageous proposal from a responsible and responsive proposer taking into consideration price and non-price proposals.
<b>Written Contract Required<sup>4</sup></b>	No.	Yes.	Yes.
<b>Maximum Contract Term<sup>5</sup></b>	Three years, unless majority vote authorizes longer.		

<sup>1</sup> M.G.L. c.30B, §2 defines sound business practices as “ensuring the receipt of favorable prices by periodically soliciting price lists or quotes.”

<sup>2</sup> M.G.L. c.30B, §2 defines a responsible bidder or offeror as “a person who has the capability to perform fully the contract requirements, and the integrity and reliability which assures good faith performance.”

<sup>3</sup> M.G.L. c.30B, §2 defines a responsive bidder or offeror as “a person who has submitted a bid or proposal which conforms in all respects to the invitation for bids or request for proposals.”

<sup>4</sup> M.G.L. c.30B, §17(a) states “All contracts in the amount of [\$5,000] or more shall be in writing, and the governmental body shall make no payment for a supply or service rendered prior to the execution of such contract.”

<sup>5</sup> M.G.L. c.30B, §12(b) states “Unless authorized by majority vote, a procurement officer shall not award a contract for a term exceeding three years, including any renewal, extension, or option.”