

Purchasing Guidelines Supplies, Services, and Construction M.G.L. ch. 30B, 30 39M, 149

Prepared for
Town of Wayland

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Purchasing Guidelines

PURCHASE ORDERS

SUPPLIES AND SERVICES

REAL ESTATE

PUBLIC WORKS

PUBLIC BUILDINGS

EMERGENCY PROCUREMENTS

SOLE SOURCE

PREVAILING WAGES

OSHA, CORI, SORI, DEBARMENT

Purchase Orders

PURCHASE ORDERS

REQUIRED FOR ALL PURCHASES \$500 OR MORE

BLANKET PURCHASE ORDERS UP TO \$9,500 WITHOUT A CONTRACT

CONTRACTS

Full Amount of Contract Must Be Encumbered

Exceptions:

Supplies and Services - 30B - Encumber 1st Fiscal Year

Public Works - 30 39M As Needed - Encumber 1st Fiscal Year

Public Works and Public Buildings -30 39M Blanket - Encumber by Task

Public Buildings - 149 On Call - Encumber 1st Fiscal Year

Contract and File Requirements

WRITTEN CONTRACTS ARE REQUIRED FOR ALL PROCUREMENTS \$10,000 OR MORE

NO PAYMENTS MAY BE MADE UNDER STATE LAW UNTIL THE CONTRACT IS SIGNED

Massachusetts General Laws require that

A procurement officer

shall

maintain a file on each procurement

and shall

include in such file a copy of all written documents required by the applicable law

There is a \$0 threshold for maintaining the written record under 30 39M and 149 (a PO can serve that purpose)

Written documents required to be held shall be retained by the governmental body for at least six years from the date of final payment under the contract

Unless delegated, the Board of Selectmen have sole authority to sign contracts

Length of Contract

UP TO THREE YEARS

SUPPLIES AND SERVICES

PUBLIC WORKS AS NEEDED

PUBLIC BUILDINGS ON CALL

DESIGNER SERVICES ON CALL

ENERGY PROCUREMENTS

LENGTH OF PROJECT

SUPPLIES AND SERVICES

DESIGNER SERVICES

PUBLIC WORKS

PUBLIC BUILDINGS

ENERGY PROJECTS

TOWN MEETING APPROVAL FOR GREATER THAN THREE YEAR CONTRACTS

Chapter 30B - Under \$10,000

SUPPLIES AND SERVICES

PURCHASES LESS THAN \$10,000

Aggregate amount per fiscal year

Bid splitting to avoid procurement laws violates the laws

Sound Business Practices

“ensuring the receipt of favorable prices by periodically soliciting price lists or quotes.”

Chapter 30B - \$10,000 to \$50,000

SUPPLIES AND SERVICES (EVERYTHING THAT IS NOT AN EXCEPTION OR COVERED BY ANOTHER LAW)

PURCHASES BETWEEN \$10,000 AND \$50,000

Solicit at least 3 written price quotes

Vendors must be in the business of providing the goods or services sought

Must award to the vendor with the lowest price quotes

The procurement officer shall record:

- (1) the names and addresses of all person from whom quotations were sought,
- (2) the purchase description used for the procurement,
- (3) the names of the persons submitting quotations and (4) the date and amount of each quotation.

All information shall be retained in the written file

Park, Highway, and Water Department vehicles require specifications filed with Town Clerk within specific deadlines prior to Town Meeting and Special Town Meeting

Chapter 30B - more than \$50,000

SUPPLIES AND SERVICES

PURCHASES MORE THAN \$50,000

INVITATION FOR BIDS

Specifications

Quantity

Advertising at least 2 weeks prior to bid opening

Reserve right to cancel bid and/or reject all bids

Must state that subject to BoS approval

Award to lowest responsible and responsive bidder (defined in 30B)

Must give notice in writing of award within time period specified in bid or up to 45 days by agreement of the parties

If reject or cancel bids, procurement officer must state in writing the reasons that cancellation is in the best interest of the municipality

Chapter 30B - more than \$50,000

SUPPLIES AND SERVICES

PURCHASES MORE THAN \$50,000

REQUEST FOR PROPOSALS

Requires CPO to make a determination in writing that award of a favorable contract requires evaluation of comparative judgement of factors other than price

Specifications

Comparative factors - may incorporate plan supplied by proposers

Evaluation Committee - looks at comparative factors only

CPO determines most advantageous proposal

If not awarded to lowest bidder, then CPO must put reasons for award in writing and explain how the higher priced bidder's proposal does not exceed the needs of the municipality

Terms may not change from RFP except for energy supply contracts

Chapter 30B - Land

ANY LEASE, PURCHASE, SALE OR OTHER REAL ESTATE TRANSACTION

MUNICIPALITY MUST DETERMINE THE VALUE OF THE PROPERTY THROUGH ACCEPTED APPRAISAL STANDARDS

TRANSACTIONS MORE THAN \$35,000

File a disclosure of beneficial interest with DCAMM

Request for Proposals

At least 2 consecutive advertisements

Last advertisement at least 8 days prior to deadline for proposals

If greater than 2,500 sq.ft., at least 30 days prior in Central Register

Advertisement may be waived if

emergency

unique characteristics of property

requires publication of reasons for waiving advertisement

Award of real estate bid must be published in Central Register

If disposing of property at less than fair value, the reasons for doing so must be disclosed and published in the Central Register as well as the value of the property and the value received

TRANSACTIONS BETWEEN GOVERNMENTAL ENTITIES

Determination of value of property is required

If transaction is less than fair value, then governmental entity disposing of property must state reasons

Chapter 30B - Sole Source

SUPPLIES AND SERVICES - SOLE SOURCE ALLOWED WHEN

PURCHASES LESS THAN \$50,000

Library books, school textbooks, educational programs, educational courses, educational curricula in any media including educational software, newspapers, serials, periodicals, audiovisual materials or software maintenance

After reasonable investigation, the procurement officer determines in writing that only one practicable source for the required supply or service exists

The procurement officer shall procure a proprietary item by competition if more than one potential bidder or offeror for that item exists

PURCHASES MORE THAN \$50,000

Invitation for Bids

Specification must be written so that requirements to be met are described, without requiring a proprietary supply or service, unless procurement officer determines in writing that no other manner of description exists

Chapter 30B Emergency Procurement

SUPPLIES AND SERVICES

When the time required to comply with procurement
would endanger
the health and safety
of the people or their property

The procurement officer may make an emergency procurement
limited to only the supplies or services necessary to meet the emergency

The procurement officer must create a written record
name of contractor, amount and type of each contract, and supplies or
services provided
the basis for the need for the emergency procurement

The written record must be submitted to the Secretary of State and is
published by the Secretary of State

Chapter 30B Cooperative Contracts

COOPERATIVE PROCUREMENT

Must enter into an agreement for the cooperative procurement

Must have full and fair competition

STATE CONTRACTS

Must comply with State Contract User Guides - must use Commbuys and report use of contract to State

FEDERAL CONTRACTS

May use GSA but must sign GSA agreement and provide all GSA forms to Federal Government

Contract Amendments - 30B

IN WRITING FOR ALL CONTRACTS

SUPPLIES AND SERVICES

Increase quantities

Same price or less than contract (may agree to lower prices at any time during performance of a contract)

Procurement officer determines in writing that amending the contract is necessary to meet the actual needs of the municipality and is more practical and economical than awarding into a new contract

May not increase total contract price more than 25% except for fuel and snow and ice supplies and services

SOLID WASTE, RECYCLING, COMPOSTING, SEPTAGE

For contract of 2 or more years of duration

May negotiate adding or deleting items in the contract

If based on changed market conditions only

After procurement officer determines in writing that amendment is in best interests of municipality after reasonable investigation of cost-benefits of amendment

After procurement officer determines in writing that amendment is more advantageous than alternate means of procurement

Chapter 30 39M - Under \$10,000

CONSTRUCTION, RECONSTRUCTION, ALTERATION, REMODELING OR REPAIR OF ANY PUBLIC WORK, OR FOR THE PURCHASE OF ANY MATERIAL FOR THOSE PURPOSES

PURCHASES UNDER \$10,000

Sound Business Practices

“ensuring the receipt of favorable prices by periodically soliciting price lists or quotes.”

A record of each procurement is required that, at a minimum, shall include the name and address of the contractor from whom the services were procured (a PO will serve that purpose - please note that there is \$0 threshold for the written record requirement - so either a PO is required or another written record)

Purchases from State Contracts and Town solicited blanket contracts meet sound business practices requirement

Chapter 30 39M -\$10,000 to \$50,000

CONSTRUCTION, RECONSTRUCTION, ALTERATION, REMODELING OR REPAIR OF ANY PUBLIC WORK, OR FOR THE PURCHASE OF ANY MATERIAL FOR THOSE PURPOSES

PURCHASES BETWEEN \$10,000 AND \$50,000

Responsible bidder offering the services at the lowest price (responsible as defined in 30 39M)

Written scope of services must include a sufficient description of the work and the time frame for completion

Option 1:

Public notification of the contract

posting at least 2 weeks

on the Town's website

on Commbuys

in the Central Register

in the Town Building

Seek a written responses to quotes by at least 3 persons who customarily perform the type of work

Option 2:

Obtain a minimum of 2 written responses through a blanket contract or a state contract

A written record at a minimum must include the name and address of the person from whom written responses were sought, the name and address of the person submitting a written response and the amount of the contract

Chapter 30 39M -\$10,000 to \$50,000

CONSTRUCTION, RECONSTRUCTION, ALTERATION, REMODELING OR REPAIR OF ANY PUBLIC WORK, OR FOR THE PURCHASE OF ANY MATERIAL FOR THOSE PURPOSES

BLANKET CONTRACTS

May obtain blanket contracts and keep the names of persons from whom the municipality will solicit quotes for multiple individual tasks of not more than \$50,000

Must follow competitive bid process

Must solicit quotes from at least 2 persons in any category of services and award to lowest price

Chapter 30 39M - more than \$50,000

CONSTRUCTION, RECONSTRUCTION, ALTERATION, REMODELING OR REPAIR OF ANY PUBLIC WORK, OR FOR THE PURCHASE OF ANY MATERIAL FOR THOSE PURPOSES

PURCHASES MORE THAN \$50,000

Invitation for Bids

Award to lowest eligible responsible bidder (defined by statute)

5% bid deposit required

Specifications shall provide for competition of each item in bid

Estimating quantities are permitted but prices will apply to actual quantities

Must have written justification for naming of a specific item

Must provide for determination of an equal to the item named

Or must provide at least 3 named brands

50% payment bond required for contract

Selected contractor must be published in the Central Register

Chapter 30 39M - Sole Source

CONSTRUCTION, RECONSTRUCTION, ALTERATION, REMODELING OR REPAIR OF ANY PUBLIC WORK, OR FOR THE PURCHASE OF ANY MATERIAL FOR THOSE PURPOSES

SOLE SOURCE - NOT ALLOWED

Specifications shall provide for competition of each item in bid

Must have written justification to name a specific item

Must provide written determination by the awarding authority of need for specific item

Must provide for at least 3 named brands for the specific item or a description that allows for at least 3 vendors to respond

Of bids must allow for a determination of an equal to the item named

Contract Amendments - 30 39M

MUST BE IN WRITING FOR ALL CONTRACTS

Required to adjust the price if field conditions differ substantially or materially from the plans or if the Town suspends or delays the work for 15 days or more

Terms for adoption and price of change orders should be included

The Town is not obligated to pay for change orders that are not approved in writing

Chapter 30 39M - Alternative Bid

CONSTRUCTION, RECONSTRUCTION, ALTERATION, REMODELING OR REPAIR OF ANY PUBLIC WORK UP TO \$50,000

OR FOR THE PURCHASE OF ANY MATERIAL FOR THOSE PURPOSES IN ANY AMOUNT

May follow 30B bidding procedures instead

Must contain other 30 39M requirements

OSHA, prevailing wages, etc.

Advertise in Central Register

What is the difference?

Bid Deposit and Payment Bond

Chapter 30 39M Emergency Procurement

CONSTRUCTION, RECONSTRUCTION, ALTERATION, REMODELING OR REPAIR OF ANY PUBLIC WORK, OR FOR THE PURCHASE OF ANY MATERIAL FOR THOSE PURPOSES

May dispense with bid process only in cases of

extreme emergency caused by enemy attack, sabotage, other such hostile actions or resulting from an imminent security threat, explosion, fire, flood, earthquake, hurricane, tornado or other such catastrophe.

May only contract for work necessary for

temporary repair and restoration to service of any and all public work in order to preserve the health and safety of persons or property

Waiver of public notice must be obtained from DCAMM - by CPO

DCAMM will not allow emergency procurement if the emergency results from putting off normal maintenance and repair work

Chapter 149 - Under \$10,000

CONSTRUCTION, RECONSTRUCTION, INSTALLATION, DEMOLITION, MAINTENANCE OR REPAIR OF PUBLIC BUILDINGS

A BUILDING IS A STRUCTURE THAT HAS WALLS AND A ROOF AND ENCLOSES SPACE THAT IS TO BE USED FOR ANY PURPOSE

THE ONLY EXCEPTION IS A SEWER OR WATER PUMP STATION WHOSE SOLE FUNCTION IS TO HOUSE PUMPS AND RELATED EQUIPMENT. IF THE WORK IS DONE AS PART OF A 30 39M SEWER OR WATER MAIN PROJECT

PROJECTS LESS THAN \$10,000

Sound Business Practices

“ensuring the receipt of favorable prices by periodically soliciting price lists or quotes.”

A record of each procurement is required that, at a minimum, shall include the name and address of the contractor from whom the services were procured (a PO will serve that purpose - please note that there is \$0 threshold for the written record requirement - so either a PO is required or another written record)

Purchases from State Contracts and Town solicited blanket contracts meet sound business practices requirement

Chapter 149 - \$10,000 to \$50,000

CONSTRUCTION, RECONSTRUCTION, INSTALLATION, DEMOLITION, MAINTENANCE OR REPAIR OF PUBLIC BUILDINGS
PROJECTS BETWEEN \$10,000 AND \$50,000

Responsible bidder offering the services at the lowest price (responsible as defined in 149)

Scope of work statement must include a sufficient description of the work and the time frame for completion

Option 1:

Public notification of the contract

posting at least 2 weeks

on the Town's website

on Commbuys

in the Central Register

in the Town Building

Seek a written responses to quotes by at least 3 persons who customarily perform the type of work

May not solicit responses until after advertisement

50% payment bond over \$25,000

Option 2:

Obtain a minimum of 2 written responses through a blanket contract or a state contract

A written record at a minimum must include the name and address of the person from whom written responses were sought, the name and address of the person submitting a written response and the amount of the contract

Chapter 149- \$50,000 to \$150,000

CONSTRUCTION, RECONSTRUCTION, INSTALLATION, DEMOLITION, MAINTENANCE OR REPAIR OF PUBLIC BUILDINGS

PROJECTS BETWEEN \$50,000 AND \$150,000

Invitation for Bids

Award to lowest eligible responsible bidder (defined by 30 39M)

5% bid deposit required

Specifications shall provide for competition of each item in bid

Estimating quantities are permitted but prices will apply to actual quantities

Must have written justification for naming of a specific item

Must provide for determination of an equal to the item named

Or must provide at least 3 named brands

50% payment bond required for contract

Selected contractor must be published in the Central Register

Chapter 149 - over \$150,000

CONSTRUCTION, RECONSTRUCTION, INSTALLATION, DEMOLITION, MAINTENANCE OR REPAIR OF PUBLIC BUILDINGS
PROJECTS over \$150,000

Filed Sub-Bids required if sub-bid work is estimated at \$25,000 or more

Category E Sub-Sub-Bid work if sub to sub-bidder work is estimated at \$25,000 or more

DCAMM certification required for categories of work as designated by municipality

May choose to prequalify bidders and sub-bidders

Invitation for Bids (advertisement requirements are the same for 149 regardless of dollar amount of project)

Plans and specifications required

Sole source not permitted - Must have written justification for naming of a specific item

Must provide for determination of an equal to the item named

Or must provide at least 3 named brands

Receive sub-bids

Advertise and distribute sub-bids

Receive bids

Award to lowest eligible responsible bidder (defined by 149)

5% bid deposit required

100% payment bond and 100% performance bond required for contract

Selected contractor must be published in the Central Register

Chapter 149 - \$1.5 million

CONSTRUCTION, RECONSTRUCTION, INSTALLATION, DEMOLITION, MAINTENANCE OR REPAIR OF PUBLIC BUILDINGS
PROJECTS over \$1.5 million

OPM is required

OPM may be in-house project manager

Invitation for Bids

Award to lowest eligible responsible bidder (defined by 30 39M)

5% bid deposit required

Specifications shall provide for competition of each item in bid

Estimating quantities are permitted but prices will apply to actual quantities

Must have written justification for naming of a specific item

Must provide for determination of an equal to the item named

Or must provide at least 3 named brands

100% payment and performance bonds required for contract

Selected contractor must be published in the Central Register

Chapter 149 - over \$10 million

CONSTRUCTION, RECONSTRUCTION, INSTALLATION, DEMOLITION, MAINTENANCE OR REPAIR OF PUBLIC BUILDINGS

PROJECTS over \$10 million

Request for Qualifications

PreQualification of Bidders and Sub-Bidders is required

OPM must participate in prequalification

Prequalified list of bidders and sub-bidders must be published and posted

Invitation for Bids

Only prequalified bidders and sub-bidders may bid

Contract Amendments - 149

MUST BE IN WRITING FOR ALL CONTRACTS

Required to adjust the price if field conditions differ substantially or materially from the plans or if the Town suspends or delays the work for 15 days or more

Terms for adoption and price of change orders should be included

The Town is not obligated to pay for change orders that are not approved in writing

Chapter 149 Emergency Procurement

CONSTRUCTION, RECONSTRUCTION, INSTALLATION, DEMOLITION, MAINTENANCE OR REPAIR OF PUBLIC BUILDINGS

May dispense with bid process only in cases of
extreme emergency

with prior approval of Commissioner of DCAMM - by CPO

May only award a contract for that portion of the work necessary to preserve the health or safety of persons or property or to alleviate an imminent security threat, on the basis of such competitive bids or proposals as it can obtain in time to care for the extreme emergency and without public opening of the bids or proposals

If prior approval of Commissioner of DCAMM cannot be obtained in time, must still seek the approval. If the approval is denied, all work must cease. The contractor is entitled to payment for work performed only

DCAMM will not allow emergency procurement if the emergency results from putting off normal maintenance and repair work

Cost Estimate Requirement

No request for proposals or invitation for bids issued under M.G.L. c. 7C, §§ 44-57, M.G.L. c. 149, §§ 44A-44H, M.G.L. c. 30, § 39M, or M.G.L. c. 25A, § 11C, may be advertised if the awarding authority's cost estimate is greater than one year old.

Thus, within one year of advertising contracts for design services subject to the designer selection law, construction services subject to M.G.L. c. 149 or M.G.L. c. 30, § 39M, or energy management services subject to M.G.L. c. 25A, the Town must obtain or prepare a project cost estimate.

Disposing of Surplus

ITEM OR ITEMS MUST FIRST BE DECLARED SURPLUS

Reasonable value of the item or items must be determined

If item or items have value

May dispose of by bid, public auction, or an established market

Trade-in of items is allowed

Town Code provides for procedure for trade-ins and values at which Town Meeting approval is required

Items may be donated to charitable organizations by majority vote of Town Meeting

Prevailing Wages

THERE IS A \$0 THRESHOLD

CONTRACTORS MUST BE PROVIDED WITH THE PREVAILING WAGES AT THE TIME THE QUOTES OR BIDS ARE SOLICITED

CONTRACTORS MUST SUBMIT CERTIFIED PAYROLLS WITH INVOICES

THE TOWN SHOULD NOT PAY ANY INVOICE IF THERE ARE NO CERTIFIED PAYROLLS. IT IS THE TOWN'S OBLIGATION TO OBTAIN AND KEEP THE CERTIFIED PAYROLLS

DEPENDING UPON SOURCE OF FUNDING, TOWN IS REQUIRED TO AUDIT THE EMPLOYEES OF THE CONTRACTOR

PREVAILING WAGES FOR MULTI-YEAR CONTRACTS MUST BE UPDATED BY THE TOWN AND PROVIDED TO THE CONTRACTOR

THE ONLY EXCEPTION TO PREVAILING WAGES IS WHERE A SOLE PROPRIETOR DOES THE WORK HIMSELF

OSHA, CORI, SORI, DEBARMENT

OSHA

TRAINING REQUIRED FOR ALL CONTRACTS EXCEPT 30B SUPPLIES, 30 39M SUPPLIES AND CERTAIN 30B SERVICES. THE TOWN SHOULD OBTAIN COPIES OF ALL OSHA CARDS FOR CONTRACTORS' EMPLOYEES WHO WILL BE DOING WORK ON TOWN PROPERTY

CORI

REQUIRED FOR ALL WORK WHERE A CONTRACTOR MAY HAVE UNSUPERVISED CONTACT WITH CHILDREN, DISABLED, OR ELDERLY

SORI

REQUIRED FOR ALL WORK WHERE A CONTRACTOR MAY HAVE UNSUPERVISED CONTACT WITH CHILDREN OR DISABLED

DEBARMENT

OSD, ATTORNEY GENERAL, INSPECTOR GENERAL, OSHA, FEDERAL GOVERNMENT MAINTAIN DEBARMENT LISTS. THEY MUST BE CHECKED BEFORE PROCURING FROM A PARTICULAR VENDOR OR CONTRACTOR.

PENALTIES FOR VIOLATING LAWS

VIOLATIONS INCLUDE

BID SPLITTING

FAILURE TO ADVERTISE

COLLUSION

FAILURE TO FOLLOW SPECIFIC REQUIREMENTS OF STATUTES

A DESIGNER'S GOOD FAITH IS NOT A DEFENSE

PENALTIES

CIVIL FINES

IMPRISONMENT

LOSS OF EMPLOYMENT

DEBARMENT FROM GOVERNMENT EMPLOYMENT

Topics Not Covered

PROCUREMENT

DESIGNER SELECTION

TRADES

ENERGY SUPPLY

ENERGY SERVICES

MODULAR BUILDING

DESIGN/BUILD

CONSTRUCTION MANAGEMENT AT RISK

BID ISSUANCE AND AWARD PROCESS

CORPORATE AUTHORITY

MBE/WBE/DBE REQUIREMENTS

CONTRACT MANAGEMENT

CONTRACT CLOSEOUTS