

NCMA Boston
2016 March Workshop

Massachusetts State and Local Government Acquisition

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Disclaimer

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Overview

- 1.0 Brief overview of MA regulation (CMR), procurement law (MGL), and local ordinances / code considerations
- 2.0 Some particulars found within Massachusetts State & Local Government Contracting
- 3.0 Identify various contracting opportunities, current & future needs of government, and ideas to penetrate market
- 4.0 Q & A session and wrap up

Goals For This Session

1. For you to leave with a better understanding with how Massachusetts State and Local Governments conduct acquisitions
2. To see comparisons and contrasts between FAR, MA procurement law, and Code of Massachusetts Regulations
3. To provide some insight and helpful ideas in penetrating this market to diversify your customer and sales base.

HERE WE GO!



SECTION 1.0


Massachusetts Acquisition Law & Regulation

Code of Massachusetts Regulations (CMR)

Regulations which have been approved by an authorized State of Massachusetts agency according to a procedure established by the legislature have the force of law.

Allows the state legislature to delegate the details of certain types of lawmaking (through these regulations) to executive agencies.

Counterpart to the Code of Federal Regulations (CFR). Title 48 of CFR is FAR, supplements, and other agency regulation (GSA, etc.)



Code of Massachusetts Regulations (CMR) Cont...

801 CMR 21.00 (www.mass.gov/bb/regs/801021)

The State of Massachusetts provides a set of uniform rules and standards governing acquisition of: commodities, services, or both.

Also includes human and social services for clients

Applies to all executive agencies except: Legislative, Judicial, Constitution offices, elected offices, public institutions of higher ed, the military division, local government, and independent authorities (ex. MBTA, MassPort).

Code of Massachusetts Regulations (CMR) Cont...

801 CMR 21.00

Code provides brief overview of: RFI usage, exemptions to competitive procurement, method of acquisition (RFR), bridge / interim contracts, contract duration, administrative requirements, funding contingencies, public notification, debriefing, negotiations



Operational Services Division (State's version of GSA), requires that executive departments must use their "statewide contract vehicles" 100% of the time! If item or service not available, department can conduct their own acquisition but must justify and obtain approval first.

Code of Massachusetts Regulations (CMR) Cont...

All contracting opportunities with executive agencies subject to 801 CMR 21.00 are found on COMMBUYS (State's version of FedBizOps)



www.commbuys.com

- Contractor must be registered in the system to submit proposal or bid
- Request for Response are all about “best value” that balances 9 principles of procurement (see OSD’s Procurement Overview)
- Principles suggest a lot of encouragement but no real hard rules

Code of Massachusetts Regulations (CMR) Cont...

One hard and fast rule is procurement dollar thresholds

	Incidental Purchase (Up to \$10,000)	Small Procurement (up to \$150,000)*	Large Procurement (\$150,000 or more)
Distribution	COMMBUYS posting or getting 3 quotes is recommended best practice.	Exclusively distributed via posting on COMMBUYS	
Notification	OSD encourages use of Minority- (MBE), Women- (WBE) and Service-Disabled Veteran-Owned Business Enterprises and Small Business Purchasing Program* (SBPP) participants for incidental purchases.	While notification can be made to all businesses (small and large) that subscribe to a specific COMMBUYS commodity code(s), the Department should give notice of its intent to award a contract to an SBPP* eligible bidder.	Departments are required to notify all businesses that subscribe to a specific COMMBUYS commodity code(s). This notification is issued manually and must include, at a minimum, businesses whose commodity codes match the Items used in the Bid.
Supplier Diversity Program Plan	Encouraged	Encouraged	Required
Written Response	Not Required	Online via COMMBUYS. Sealed Responses collected via Formal Bids in COMMBUYS resulting in Open Enrollment contracts. Unsealed Responses collected via Informal Bids in COMMBUYS resulting in Rolling Enrollment contracts. *See the COMMBUYS Policy for Purchasing Organizations for additional guidance.	
Evaluation	If multiple quotes are received, then evaluate all quotes using best value criteria. As noted above, awards to MBE, WBE and SBPP* participants are encouraged.	Evaluate all submissions using best value criteria. However, if no SBPP bidder bids or there are none that meet the Department's best value criteria, then may award to non-SBPP* bidder.	Evaluate all submissions using best value criteria.
Resources	See the Incidental Purchases section of Exceptions to Competitive Procurements, available via a link at the end of this document.	*See the Small Business Purchasing Program (SBPP) Policy requirements below and see also the Small Business Purchasing Program webpage at www.mass.gov/sbpp.	See How to Draft a Request for Response, available via a link at the end of this document.

Code of Massachusetts Regulations (CMR) Cont...

No need to go through all thresholds, but you should know the following

- OSD has socio-economic goals like the Feds.
 - ≤ \$150,000 must be awarded to small businesses participating in State's program if they in fact respond, and if it meets the department's "best value criteria".
 - Construction contracts have subcontract set-aside goals to MBE/WBE/SDVOSB
- MassDOT has oversight on public works (horizontal construction)
- DCAMM has oversight on public building construction (vertical)
- State Comptroller oversees grants and subsidies

Massachusetts General Laws (MGL)

M.G.L. c. 30B (www.malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter30B)

- Uniform Procurement Act of 1990 established this
- Heavily influenced by FAR (Hanscom AFB Story – D. Carter)
- Applicable to approx. 1500 local government bodies in MA
- Law includes: definitions, exemptions, methods of acquisition, term, real property acquisition / disposition, standard disposition, cooperative purchasing, and more

Massachusetts General Laws (MGL) Cont...

- Methods of acquisition & dollar thresholds are:
 - ≤ \$10,000 sound business practice
 - \$10,000 - \$35,000 quote process (attempt to go to 3 sources)
 - \$35,000 → sealed Bid or RFP
- Debriefs aren't mandatory, no protest forum (except for court) exists
- Socio-economic goals aren't required
- No version of Service Contract Act in MA for services contracts under c. 30B. Some Cities & Towns have their own version (living wage ordinance) which has been battled out in court. Cities lost

Massachusetts General Laws (MGL) Cont...

M.G.L. c. 149 (www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter149)

- Governs State and Local Building Construction (Vertical)
- Had big reform in 2004. Special Commission on Public Construction Reform (co-chaired by Mayor Walsh when a rep)
- Extensive law that covers everything from: employee safety, appeals, damages, payment process, procurement, labor, bonding, to many technical areas of construction. Very comprehensive
- Contractors have protest forum (AG's office). Most litigation in MA govt contracts comes from construction
- Prevailing wages (Like Davis Bacon). Union agreements create rates

HANGING IN THERE SO FAR?



Massachusetts General Laws (MGL) Cont...



M.G.L. c. 149 (www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter149)

- Sealed Bid Process
- Design, Bid, Build (Filed sub-bids **16 categories**, general bids)
- Bonding requirement (performance & payment)
- Project manager (OPM) required for projects \$1.5mm and up
- c. 149A is an alternative method of procurement (Design, Build) in which the government contracts with contract management at risk firm. (Four step process)
- Design is subject to M.G.L. c. 7 (Designer selection process)

Massachusetts General Laws (MGL) Cont...

M.G.L. c. 30, §39 (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter30>)

- Governs State and Local Public Works Construction
- Law is comprehensive, but not as much as M.G.L. c. 149
- Sealed Bid Process
- Bonding requirements
- Prevailing wages (Like Davis Bacon). Union agreements create rates
- Design and Engineering services for projects like this technically have no procurement law. However, IG & AG recommends following certain procedures



Massachusetts General Laws (MGL) Cont...

M.G.L. c. 7C, §§ 44-57 (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter7C>)

- Governs Design Contracts on Buildings
- Qualifications based selection
- NTE contract ceiling with fixed fee negotiated
- Contracts typically allow for reimbursables
- Usually these contracts amend into construction management / oversight tasks



Local Ordinances, Code, & Charter

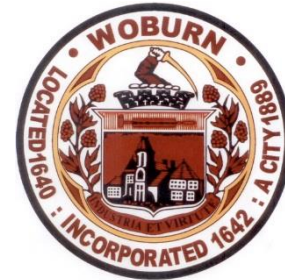
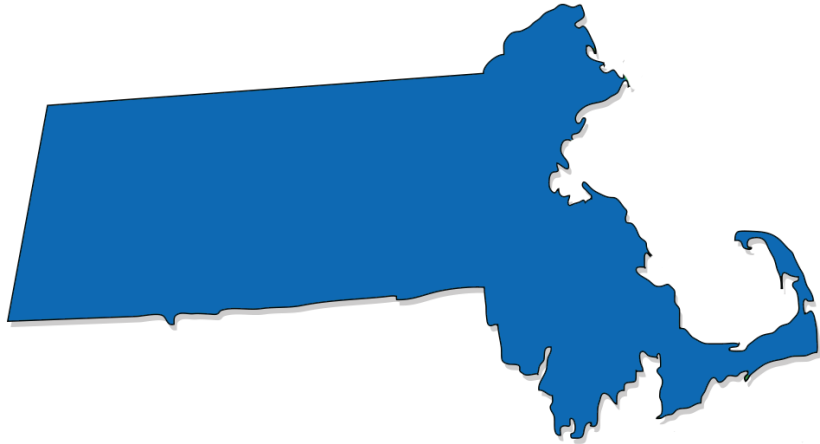
Local Ordinances, Code, & Charter

- Cannot deviate from state procurement law, but can make requirements more dense.
 - Ex. \$ Threshold where formal written contract is required.
 - Local living wage ordinance for services
 - Permitting requirements
 - Contract structure
 - Approvals process
- All Cities and Towns different. Court considers local ordinances & code legally binding and enforceable. Government statute.
City of Boston (Case Handout – Road Salt)

SECTION 2.0

Massachusetts State and Local Government Particulars

2.0 MA State & Local Government Particulars



MA State & Local Government Particulars

STATE

- Operational Services Division (State's GSA) creates numerous IDIQ / Blanket contracts for agencies to order off of. Not guaranteed an order if awarded an IDIQ. Awarded companies still have to market and sell to state & local govt, or face another round of competition. OSD gets a percentage fee for every transaction. Incentive for transactions
- OSD posts a forecasted list of opportunities on their website
- Regarding authorities, universities, constitutional, judicial, military division.... Research their acquisition procedures before going after them as a client. May be difficult to find out.
- Supplier Diversity Office (kind of like SBA) is a step in the right direction for socio-economic goals.

MA State & Local Government Particulars

STATE CONT...

- OSD has a tradeshow every year called MassBuys. Good exposure
- Mass School Building Authority (MSBA) funds a large percentage of dollars to local government to build new schools. Holds weight
- Previous administration very interested in alternative energy projects (solar, etc.). New administration may be different (pending legislation).
- Inspector General's Office provides a training program to state and local government personnel in MA procurement, called MCPPO program. Created as a tool to prevent fraud, waste, and abuse of tax dollars. Also to formalize procurement in MA a little bit better than in the past.
- Construction contracts are a big opportunity, but can be contentious

MA State & Local Government Particulars

LOCAL

- Contracts usually bid on by regional companies. Few national companies compete on local govt contract opportunities.
- Mix of centralized and de-centralized acquisition offices
- Not every city, town or housing authority has a contracts / procurement person. Could be the town administrator not familiar with government contracts conducting procurements
- Usually political, sensitive environments
- School systems, police, fire and DPW usually have the largest budgets to buy.
- Schools have fiscal autonomy to obligate tax dollars how they see fit. Do not need vote from council, etc. to transfer funds, etc.

MA State & Local Government Particulars

LOCAL CONT...

- Housing Authorities are not managed by the City or Town. They have their own fiscal autonomy as well. Still subject to M.G.L. procurement
- Minimal sources of aggregated data exist for contract research purposes. If you have data company, they may not have much research analysis for you to use. Business opportunity for someone!
- Local government can buy off of GSA Schedules (84, 70) and 1122 program. Also can use GSA for emergency situations like disasters

SECTION 3.0

Contracting Opportunities in Massachusetts

3.0 Contracting Opportunities in MA

- Sign up for State's Central Register, Goods and Services Bulletin, and COMMBUYS system to receive alerts under your registered commodity code. This gives you many of the state & local government opportunities.
- Cooperative Contract Opportunities:
 - National Joint Powers Alliance
 - Metropolitan Area Planning Council
 - Southeastern Regional Services Group
 - Plymouth County Commissioners
 - Massachusetts Higher Education Consortium
 - Hampshire Council of Governments



3.0 Contracting Opportunities in MA

- Collective contract opportunities
 - Central / Northeastern Massachusetts Law Enforcement Council
 - Barnstable County
 - Northeast Merrimack Valley Chemical Consortium
 - Many cities, towns, schools and Housing authorities unofficially put together collective groups to purchase commodities (fuel, road salt, electricity, natural gas, services, and more)
- Subcontracts with utility companies (Eversource, National Grid, etc)
M.G.L. c. 25A, sec 14. \$100k and under can be directly awarded w/no competition!

3.0 Future Trends & Needs in MA

- Energy efficiency projects (Solar, lightening upgrades, building systems)
- Transportation infrastructure (road paving, MBTA, c. 90 projects w/DOT)
- Data analysis and consulting (budgeting, spending, cost control)
- Government transparency (open checkbook software)
- Affordable Care Act assistance
- Health insurance benefits (medication esp!)
- Ammunition



3.0 Ideas to Penetrate Market and Useful Info

- Essentially same principles apply from Fed contract biz development
- Contractors get the most bang for their investment dollar on cooperatives and collective contracts (must still market though).
- Local governments operate very autonomous from one another. Each will have different stakeholders. Choose your potential customers wisely. Some places still have “good old boys” network.
- Business development, and relationship development to the internal operational champion is huge. For example, gaining trust and buy-in from a police chief could wield serious clout on a police acquisition (RFP).
- Military bases essentially operate the same as a DPW. Same services needed (Snow plowing, building cleaning, landscaping, etc.)

3.0 Ideas to Penetrate Market and Useful Info

- Consider starting a small new division (or acquiring company) focusing on state and local government. For example Textron and EZ Go, Jacobsen mowers
- Get DCAMM approval if a building construction or trades company
- If new company, build private sector past performance and convince procurement officer to allow this experience to be positively weighed for their evaluation criteria.
- Word of mouth still means something
- Engineering and architectural contracts are exempt from acquisition law.
- Protests only lead to rebidding (if contractor successful that is which is very rare). Most contracts aren't valuable enough to litigate.
- Patience

QUESTIONS?

Some Helpful Links

MA GOVERNMENT (AND QUASI)

www.malegislature.gov

www.commbuys.com

<http://www.sec.state.ma.us/spr/spridx.htm>

www.mapc.org

www.plymouthcounty-ma.gov

<http://www.mass.gov/anf/budget-taxes-and-procurement/oversight-agencies/osd/>

COOPERATIVES

www.njpacoop.com

www.sersg.org

www.mhec.net

www.hampshirecog.org

COLLECTIVES

<http://www.nemvcc.com/>

www.cemlec.com

www.nemlec.com