

**COMMONWEALTH OF MASSACHUSETTS**

*Charles D. Baker, Governor  
Matthew Beaton, Secretary  
Judith Judson, Commission*



*Green Communities  
Webinar*

*November 9, 2015*

***Procurement of Energy  
Management Services***

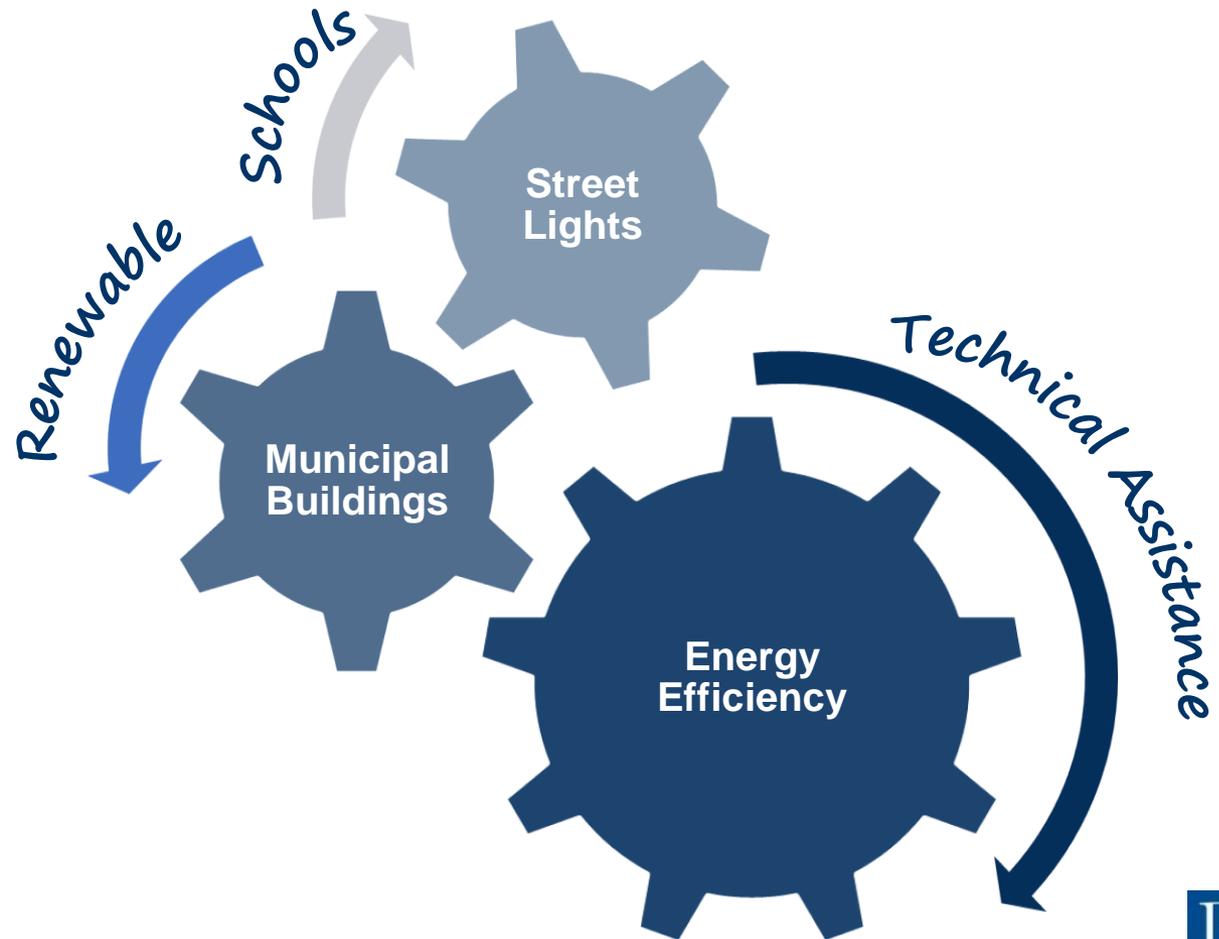
Eileen McHugh, Senior Program  
Coordinator, Department of Energy  
Resources

Drew Cahill, Assistant Attorney General,  
AGO Fair Labor Division

Natasha Bizanos, Associate General  
Counsel, Office of the Inspector General

# Green Communities Division

The energy hub for **all** Massachusetts cities and towns, not just designated “Green Communities.”



*Helping Massachusetts Municipalities Create A Cleaner Energy Future*



# Outreach - Regional Coordinators

- Regional Coordinators act as direct liaisons with cities and towns on energy efficiency and renewable energy activities
- Located at each of the DEP Regional Offices:



WERO – SPRINGFIELD: Jim Barry  
[Jim.Barry@state.ma.us](mailto:Jim.Barry@state.ma.us)



NERO – WILMINGTON: Joanne Bissetta  
[Joanne.Bissetta@state.ma.us](mailto:Joanne.Bissetta@state.ma.us)



CERO – WORCESTER: Kelly Brown  
[Kelly.Brown@state.ma.us](mailto:Kelly.Brown@state.ma.us)



SERO – LAKEVILLE: Seth Pickering  
[Seth.Pickering@state.ma.us](mailto:Seth.Pickering@state.ma.us)



# Green Communities Division - Programs & Resources for Municipalities

- Green Communities Designation and Grant Program
- MassEnergyInsight energy tracking and analysis tool
- Municipal Energy Efficiency Assistance
- Energy Management Services Technical Assistance
- Mass Municipal Energy Group (MMEG)
- Website filled with tools & resources:  
[www.mass.gov/energy/greencommunities](http://www.mass.gov/energy/greencommunities)

**Email updates via e-blasts – Sign up by sending an email to:**  
[join-ene-greencommunities@listserv.state.ma.us](mailto:join-ene-greencommunities@listserv.state.ma.us)



*Helping Massachusetts Municipalities Create A Cleaner Energy Future*



# Designation & Grant Program

## Qualification Criteria: Designation

1. Adopt as-of-right siting for RE/AE generation, R&D, or manufacturing
2. Adopt expedited permitting process
3. Create an Energy Reduction Plan to reduce energy use by 20% in 5 years
4. Purchase only fuel-efficient vehicles
5. Minimize life cycle cost in new construction → adopt the Stretch Code

## Grant Funding

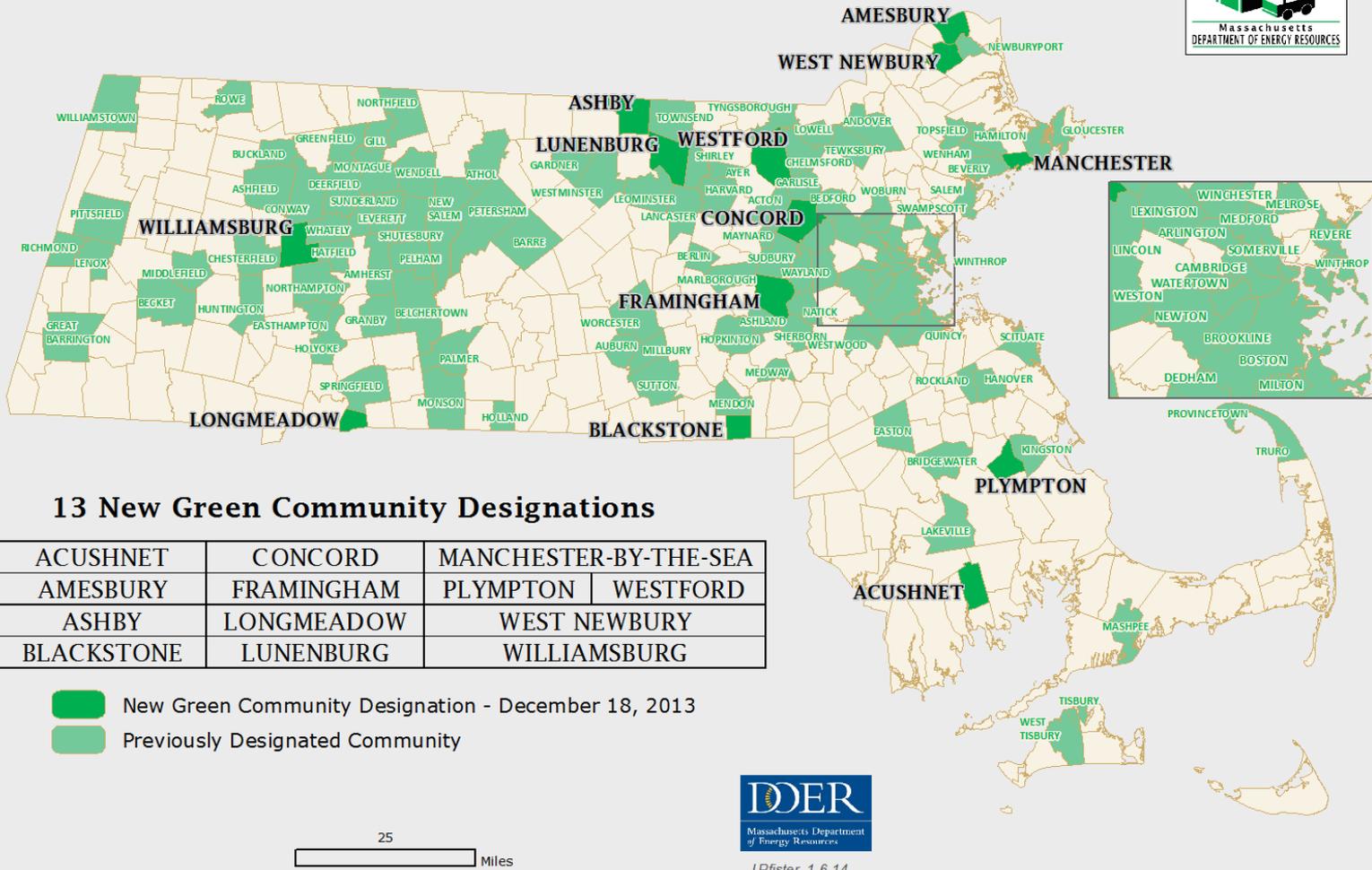
1. Energy Efficiency Projects
2. Renewable Energy Projects on municipal land



*Helping Massachusetts Municipalities Create A Cleaner Energy Future*



# GREEN COMMUNITY DESIGNATIONS REACH ONE HUNDRED TWENTY-THREE



Helping Massachusetts Municipalities Create A Cleaner Energy Future



# Poll Question #1

Who is listening to today's webinar?

- A. Municipal procurement officers
- B. Municipal energy managers
- C. Energy services contractors
- D. Other



*Helping Massachusetts Municipalities Create A Cleaner Energy Future*



Presenters:

Eileen McHugh, Senior Program Coordinator, Department of Energy Resources

Ms. McHugh provides support and procurement assistance for performance contracting (ESPC) in the public sector. Eileen is responsible for supporting local units of government and school districts in the development, implementation, and on-going measurement & verification of projects.

Drew Cahill, Assistant Attorney General, AGO Fair Labor Division

Mr. Cahill enforces the Commonwealth's wage and hour laws, including non-payment of wage, overtime, minimum wage, prevailing wage, independent contractor misclassification, child labor, hindering, and retaliation laws. Prior to starting in the division, Drew served as Director of the task force on the Underground Economy and Employee Misclassification, a cross-agency vehicle for enforcement of employer-related laws, such as wage and hour, tax, unemployment, and workers' compensation insurance requirements.

Natasha Bizanos, Associate General Counsel, Office of the Inspector General

Ms. Bizanos serves as Senior Counsel/30B Coordinator focusing on Chapter 30B matters. She coordinates the 30B team, instructs for the MCPPO Program, and handles calls from cities, towns, and their counsel on the 30B hotline. Previously, she worked as the Contractor Certification Manager at the Division of Capital Asset Management Maintenance, and as a Policy Analyst at the Massachusetts State Auditor's office.



*Helping Massachusetts Municipalities Create A Cleaner Energy Future*



# Energy Management Services (EMS)

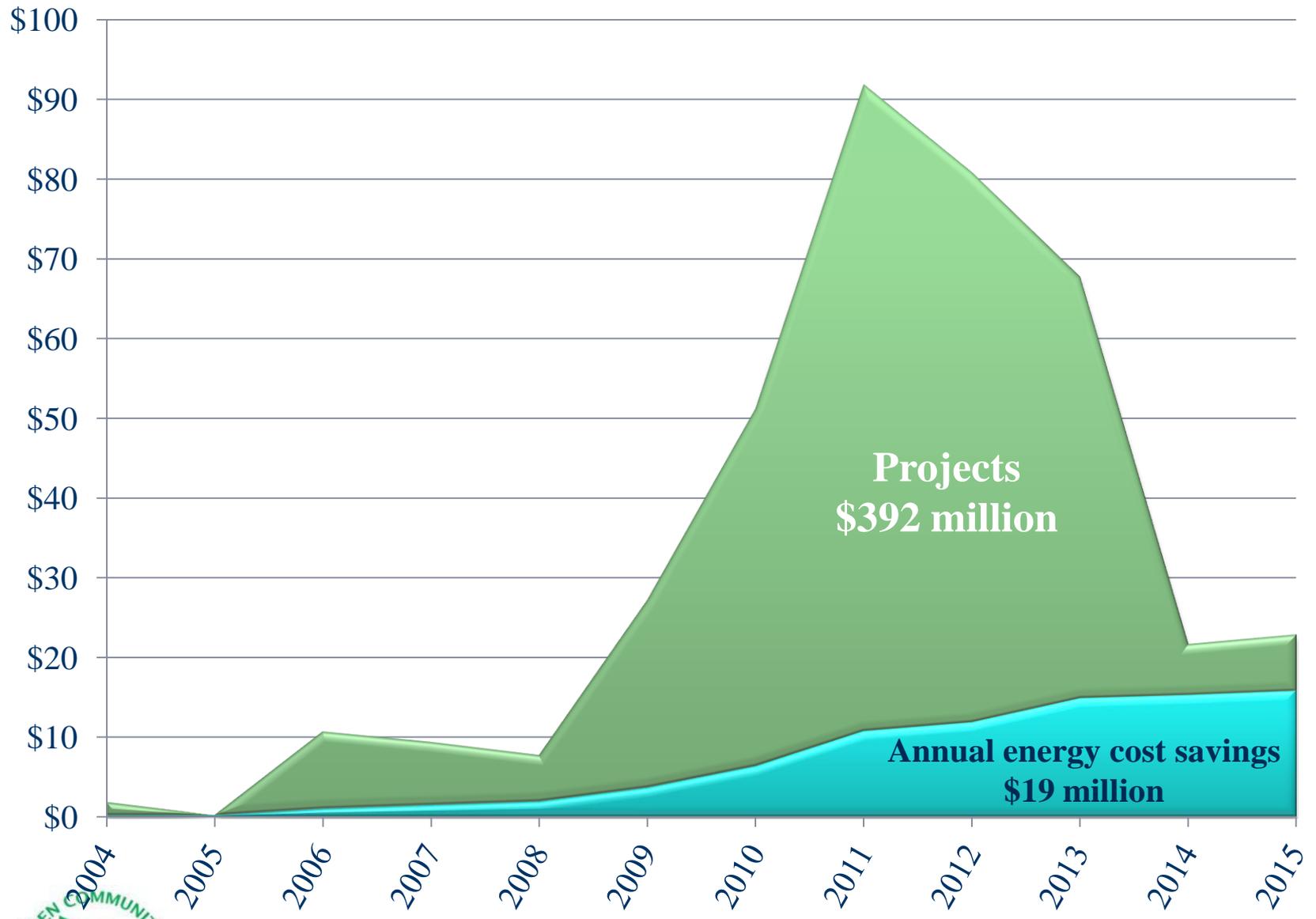
## Energy Saving Performance Contracting (ESPC)

- Energy & Water Conservation Measures
- Operations & Maintenance
- Onsite Energy Generation



*Helping Massachusetts Municipalities Create A Cleaner Energy Future*

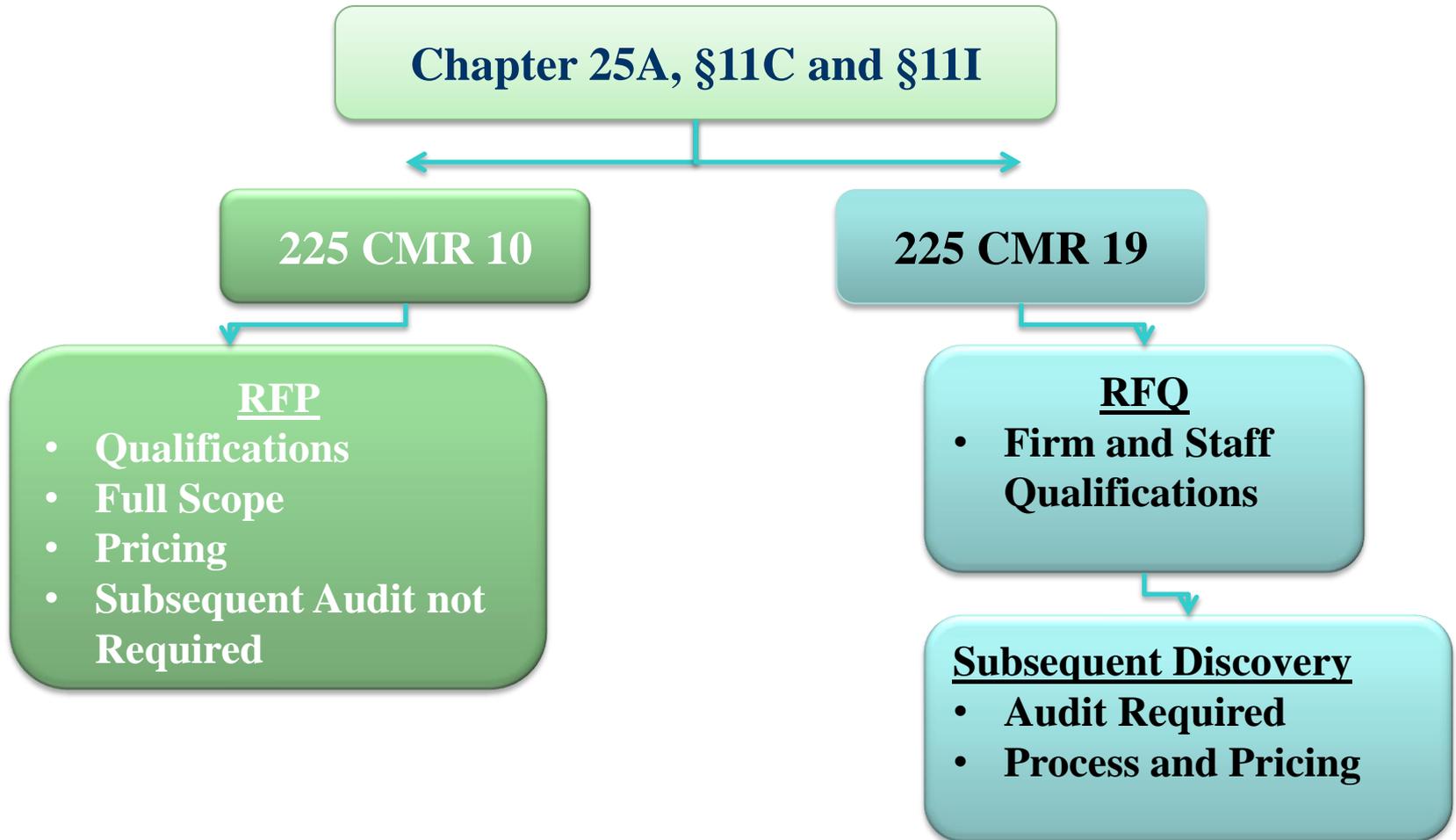




*Helping Massachusetts Municipalities Create A Cleaner Energy Future*



# Procurement Process



# Procurement Guidance

- ✚ EMS web page
- ✚ Guidelines, instructions, FAQs, and forms
- ✚ Model documents, developed and issued by DOER
- ✚ Links to other resources such as DCAM contractor certification and the Central Register



# General Requirements

|                           |  |  |
|---------------------------|--|--|
| Procurement Procedure     | Request for Proposal (RFP) 225 CMR 10.00   | Request for Qualifications (RFQ) 225 CMR 19.00   |
| Notice of EMS Procurement | <u>RFP Compliance Certificate</u>  | <u>RFQ Compliance Certificate</u>  |
| Bid and Addenda           | File bids with DOER <u>at least 15 Business Days</u> prior to filing the bid with the Secretary of the Commonwealth for publication in the Central Register. | File bids with DOER <u>at least 15 Business Days</u> prior to filing the bid with the Secretary of the Commonwealth for publication in the Central Register. |
| DOER Acknowledgment       | DOER will confirm receipt; verify that all documents have been submitted.  | DOER will confirm receipt; verify that all documents have been submitted.  |



Helping Massachusetts Municipalities Create A Cleaner Energy Future



# General Requirements

| Procurement Procedure      | Request for Proposal (RFP) 225 CMR 10.00   | Request for Qualifications (RFQ) 225 CMR 19.00   |
|----------------------------|--|--|
| DOER Acknowledgment [cont] | <p>Within 15 business days, DOER shall determine whether a bid is complete or notify the local governmental body that further review is needed.</p> <p>A local governmental body shall not issue or publish an RFP until it receives an acknowledgment of receipt from DOER.</p> | <p>Within 15 business days, DOER shall determine whether a bid is complete or notify the local governmental body that further review is needed.</p> <p>A local governmental body shall not issue or publish an RFQ until it receives an acknowledgment of receipt from DOER.</p> |



# General Requirements

| Procurement Procedure    | Request for Proposal (RFP) 225 CMR 10.00  | Request for Qualifications (RFQ) 225 CMR 19.00  |
|--------------------------|---|---|
| Advertising Requirements | Once the acknowledgment is received, advertise in the <i>Central Register</i> under general contracts. Publication of an RFP prior to receipt of an acknowledgment is a violation of the procurement process under 225 CMR 10.00. | Once the acknowledgment is received, advertise in the <i>Central Register</i> under general contracts. Publication of an RFQ prior to receipt of an acknowledgment is a violation of the procurement process under 225 CMR 19.00. |
| DCAMM Certification      | Required under prime contractor for energy management.  | Required under prime contractor for energy management.  |



# General Requirements

| Procurement Procedure | Request for Proposal (RFP) 225 CMR 10.00  | Request for Qualifications (RFQ) 225 CMR 19.00  |
|-----------------------|---|---|
| Filed sub-bids        | No  | No  |
| Bid Deposit           | No  | No  |
| Payment Bond          | Required during construction period. Contractor must provide proof of bonding capacity before signing contract. | Required during construction period. Contractor must provide proof of bonding capacity before signing contract. |
| Performance Bond      | Yes, 100%   | Yes, 100 %  |



# General Requirements

| Procurement Procedure                         | Request for Proposal (RFP) 225 CMR 10.00  | Request for Qualifications (RFQ) 225 CMR 19.00  |
|---|---|---|
| Prevailing Wage                               | Yes. Please confirm prevailing wage with the Department of Labor Standards at 617-626-6975. | Yes. Please confirm prevailing wage with the Department of Labor Standards at 617-626-6975. |
| Contractor Evaluation                         | Yes.  | Yes.  |
| Investment Grade Energy Audit Agreement (IGA) | No.   | Required before one may negotiate a contract.   |



# General Requirements

|   |   |
|---|---|
| <p><b>EMS Contract Submission Guideline</b></p> | <p>The guidelines for filing a contract are the same under 225 CMR 10.00 and 225 CMR 19.00.</p>   |
| <p>Contract Award</p>                           | <p>Required to provide public notice of the meeting at which it proposes to award the EMS contract at least ten days before the meeting; promptly publish notice of the award in the Central Register; provide such notice to DOER.</p>   |
| <p>Prior to executing a contract</p>            | <p>Required to file a <b><u>final version</u></b> of the contract, a <u>EMS Contract Certification</u> form and DOER's EMS Annual Report with projected energy and water cost savings estimates at least 15 business days prior to signing a contract.</p>  |
| <p>DOER acknowledgment of receipt</p>           | <p>DOER will notify the local governmental body confirming receipt of all documents that are under review. Within 15 business days, DOER will determine if it is complete and meets all requirements or if further action is needed. If incomplete, DOER will identify the deficiencies.</p> <p>A local governmental body shall only award a contract for EMS if all the requirements of the regulations have been met.</p> |



# General Requirements

|                                    |   |
|------------------------------------|---|
| EMS Contract Submission Guideline  | The guidelines for filing a contract are the same under 225 CMR 10.00 and 225 CMR 19.00.  |
| Term                               | Contract term shall not exceed 20 years.  |
| Measurement and Verification (M&V) | M&V must comply with the most recent version of the Federal Energy Management Program M&V Guidelines including all outside sections. EMS Annual Report must be submitted annually.      |
| Performance Guarantee              | The contractor will provide a written guarantee, warranting that the owner will achieve a specific level of performance in each year. Excess savings inure to the benefit of the owner. |



# Fair Labor Division



Disclaimer: While the Attorney General's Office enforces the laws that we are going to talk about today, any opinions expressed are those of the speaker and may not reflect the opinion of the Attorney General.



# The Massachusetts Prevailing Wage Law



# Poll Question #2

Have you been a part of a prevailing wage project in the past?

A. Yes

B. No

C. Not sure



# What is Prevailing Wage?

- Prevailing wage is the minimum hourly wage to be paid to all employees performing actual work on public construction projects
- The Department of Labor Standards (DLS) sets the prevailing wage
- The Office of the Attorney General enforces the prevailing wage law



# Wage Determinations

- DLS determines whether or not a project is subject to the prevailing wage law
- DLS determines the appropriate hourly wage for each classification of worker on the project
- DLS handles questions regarding applicability or worker classification



# Prevailing Wage Requirements

- Rates only apply for all time worked on project
  - **Exception:** drivers hauling gravel & fill
- Rates change for each project
- Apprenticeship



# Prevailing Wage Records

- Contractors must post prevailing wage rates in a conspicuous location on the job site for all to view
- Awarding authorities must obtain annual updated wage rates from DLS
- All contractors with employees on site must submit certified payroll records to the awarding authority on a weekly basis



# Types of Violations

## Wage Violations

- Failure to Pay the Rate
- Misclassification of the Work

## Records Violations

- Failure to Submit
- Failure to Submit/Maintain True and Accurate



# Investigations

## Origins

- Employee Complaints
- Referrals
- Site Visits

## Process

- Records demands, audits, interviews



# Enforcement Options

- Civil citation
- Settlements
- Criminal prosecution
- Debarment



# Considerations

- Knowledge of violation?
- Deception or fraud?
- Previous violations or convictions?
- Violation of other laws? E.g. unemployment, workers' compensation



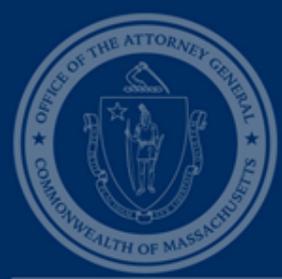
# Civil Citations

- Restitution
- Penalties
- Right to Appeal
- Failure to Pay Citation or Appeal



# Criminal Prosecutions

- Show-cause hearing/District Court
- Grand Jury/Superior Court



# Contact AGO

<http://www.mass.gov/ago/doing-business-in-massachusetts/labor-laws-and-public-construction/>

Fair Labor Hotline: (617) 727-3465



# Contact DLS

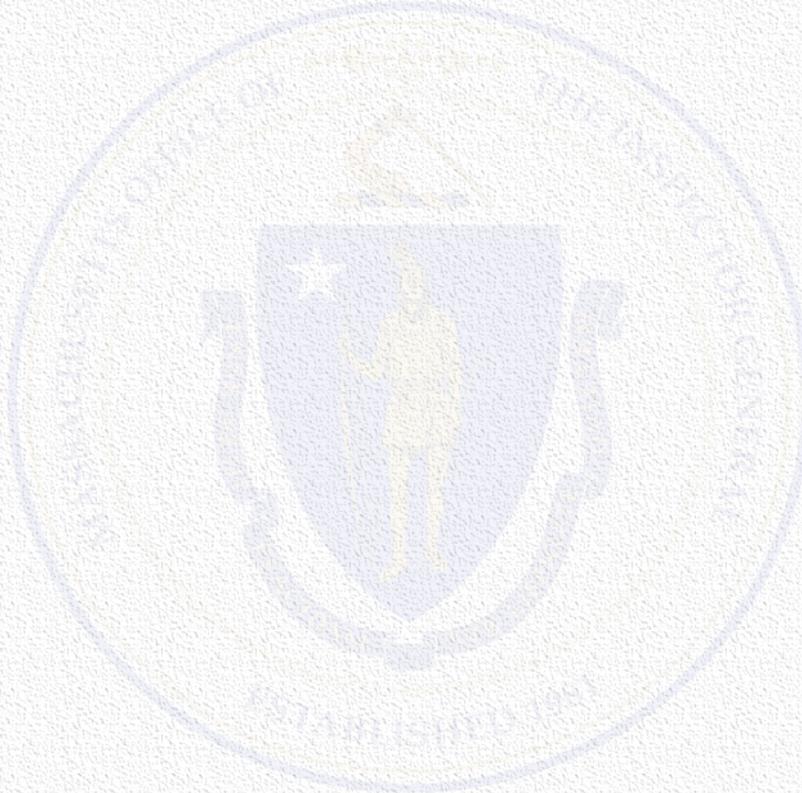
<http://www.mass.gov/lwd/labor-standards/prevaling-wage-program/>

617-626-6975

## Poll Question # 3

Have you completed a 30B procurement?

- A. Yes
- B. No
- C. Not sure



# Overview of M.G.L. c. 30B with regard to M.G.L. c. 25A

D.O.E.R.  
Webinar



# Chapter 30B Applicability

- Chapter 30B applies to:
  - Procurement of supplies and services
  - Disposal of surplus supplies
  - Acquisitions and dispositions of real property and interests in real property...by a governmental body
- The Office of the Inspector General has an extensive Chapter 30B program to assist local governments, including a Chapter 30B Hotline for questions, 617-722-8838, available daily 8:30 a.m. to 4:30 p.m.

# Chapter 30B

## GOVERNMENTAL BODIES

### Applies to:

- Cities
- Towns
- Regional school districts
- Horace Mann charter schools
- Counties
- Agencies, boards, commissions, authorities, departments, or instrumentalities of above

### Does not apply to:

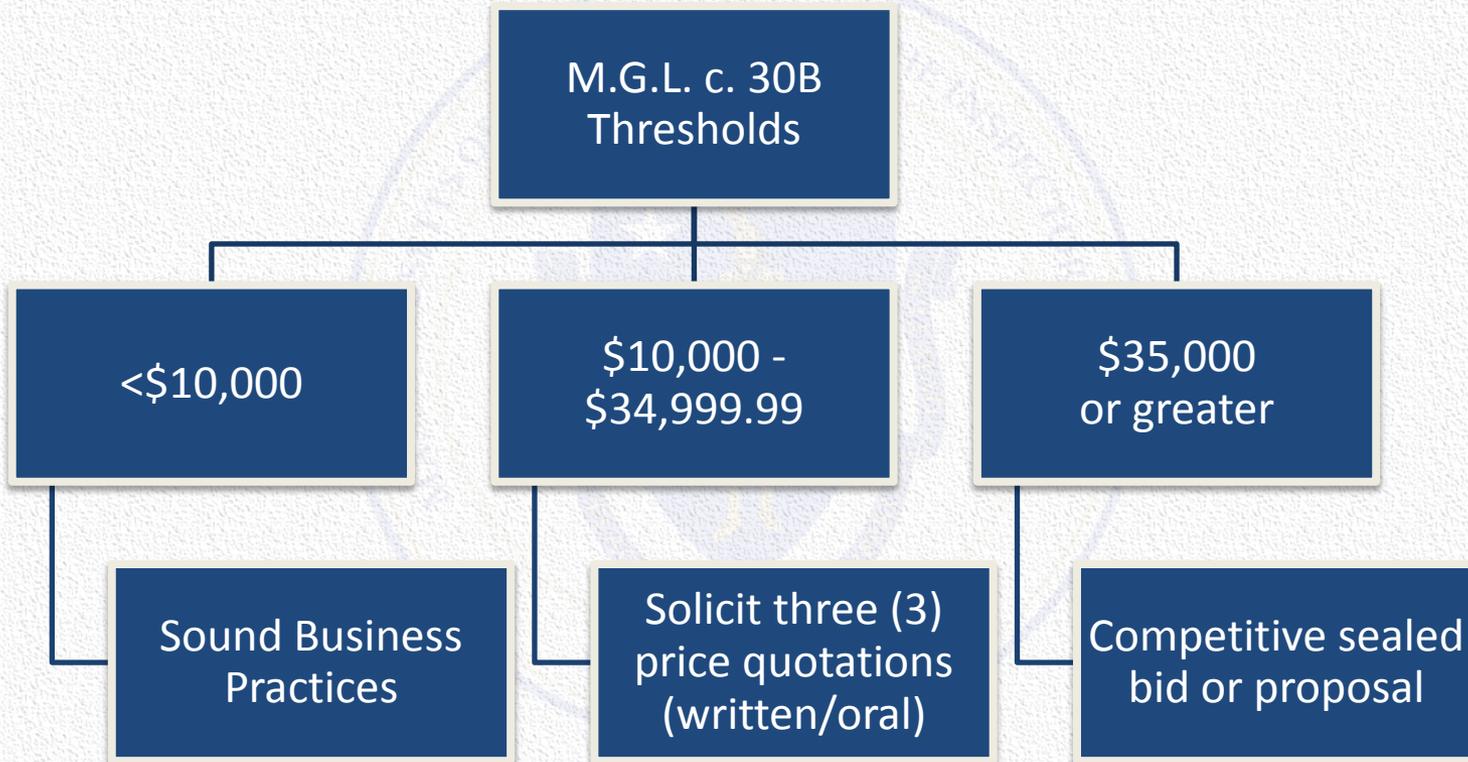
- Executive agencies of the Commonwealth
- State colleges and universities
- County sheriffs
- Commonwealth charter schools



# Chapter 30B and Chapter 25A

- Those responsible for procuring EMS contracts need to know other laws that may be applicable to projects and to assess options
- For example:
  - Chapter 30B might apply to:
    - Procurement of a consultant or an owner's agent to help with the implementation of the project
    - Note: an OSD statewide contract might be an option to procure energy consultant services
  - Municipal finance laws might impact EMS project funding

# Procurement Thresholds



# MCPPO Classes

- The OIG administers the Massachusetts Certified Public Purchasing Official Program to promote:
  - cost-effective, ethical, and modern purchasing practices,
  - dialogue and exchange of ideas and best practices among procurement officials,
  - stewardship of resources in the public's interest, and
  - compliance with Massachusetts contracting laws

# MCPPO Classes

- Public Contracting Overview
- Supplies & Services Contracting
- Design & Construction Contracting
- Advanced Topics Update
- Other



# MCPPO Classes

- Various seminars incorporate presenters from the AGO, DOER, Department of Labor Standards, Ethics Commission, Office on Disability, Operational Services Department, Secretary of State, Supplier Diversity Office and Local Governments

# MCPPO Contacts

- Joyce McEntee Emmett, Director (MCPPO)
  - (617)722-8835
- Chapter 30B Hotline
  - 617-722-8838
  - Daily from 8:30 am to 4:30 pm
- Judi A. Cimildoro, Program Coordinator (MCPPO)
  - (617)-722-8862
- MCPPO Program
  - Fax: (617)523-6266
  - EMAIL: [ma-igo-training@massmail.state.ma.us](mailto:ma-igo-training@massmail.state.ma.us)



# Contact Information

**Eileen McHugh**

**Massachusetts Department of Energy Resources**

**[eileen.mchugh@state.ma.us](mailto:eileen.mchugh@state.ma.us)**

**(617) 626-7305**

**Web page: [www.mass.gov/eea/energy-utilities-clean-tech/green-communities/ems.html](http://www.mass.gov/eea/energy-utilities-clean-tech/green-communities/ems.html)**

**To file documents: [EMS.DOER@state.ma.us](mailto:EMS.DOER@state.ma.us)**



*Helping Massachusetts Municipalities Create A Cleaner Energy Future*

