

MEMO TO: Grant Applicants
FROM: Marjorie Weinberger, General Counsel, MAPC
Date: April 30, 2020
RE: Procurement Method Recommendation for Disbursement of
MassDevelopment Funds

The question has been posed as to what procurement method complies with MGL c. 30B, to facilitate disbursement of MassDevelopment funds to provide transportation and delivery services to vulnerable populations during the Commonwealth State of Emergency, due to the COVID-19 crises.

The Massachusetts Uniform Procurement Act, MGL c. 30B, §8, provides that in an emergency, goods and services can be sourced without traditional procurement requirements. This has been verified by the Massachusetts Office of the Inspector General in its communications provided to members of the Massachusetts Association of Public Procurement Officers on April 5, 2020.

MGL c. 30B §8: – Emergency procurements

Whenever the time required to comply with a requirement of this chapter would endanger the health or safety of the people or their property a procurement officer may make an emergency procurement without following that requirement. An emergency procurement shall be limited to only supplies or services necessary to meet the emergency and shall conform to the requirements of this chapter to the extent practicable under the circumstances. The procurement officer shall make a record of each emergency as soon after the procurement as practicable, specifying each contractor's name, the amount and the type of each contract, a listing of the supply or service provided under each contract, and the basis for determining the need for an emergency procurement.

The procurement officer shall submit a copy of this record at the earliest possible time to the state secretary for placement in any publication established by the state secretary for the advertisement of procurements. (Emphasis added)

As the procuring entity, Grantees would be responsible for required record keeping obligations, as well as posting requirements after the end of the emergency.

While the end of the emergency could be interpreted as the date of expiration of the Governor's State of Emergency, it could reasonably be argued that the need to provide ongoing transportation requirements would extend beyond the State of Emergency, until at least December 31, 2020, as the termination date expressed in the Grant Program Application. The impact of the State of Emergency, as well as the likelihood of COVID-19 resurgence in the fall, necessitates that the uncertain termination date for the end of the State of Emergency is too vague.

Please contact Marjorie Weinberger, General Counsel, MAPC at: mweinberger@mapc.org with any questions regarding this guidance.