



## WHEN DOES 30B APPLY: GIFTS, TRUSTS AND GRANTS

### *IT DOESN'T MATTER WHO PAYS*

Chapter 30B of the Massachusetts General Laws (“Chapter 30B”) governs the procurement of supplies, services, and real property by local governments. Specifically, the statute applies “to every **contract** for the procurement of supplies, services or real property and for disposing of supplies or real property by a governmental body as defined herein.” M.G.L. c. 30B, § 1 (emphasis added). Because the statute applies to every contract, the source of the money that will fund the contract – or if a contract will cost the town any money at all, for that matter – is irrelevant in determining whether or not Chapter 30B applies. If there is a contract between a local government and a vendor for supplies, services, or real property, then Chapter 30B applies, unless the contract falls within a statutory exemption or exception.



For example, a source of frequent confusion arises when a local government procures services for which it will not be responsible for paying (e.g., a contract for classes at a town Senior Center for which the seniors are responsible for paying). Since the contract is between the town Senior Center and the vendor, however, the

Senior Center must follow Chapter 30B to procure the contract regardless of where the original funds derived.

Another question this Office frequently receives is whether Chapter 30B applies to local government contracts funded by money from federal grants. The answer is yes. If a local government receives grant funds, and it uses those funds to obtain supplies, services or real property, the local government must follow the provisions of Chapter 30B.

### *ARE THERE ANY EXCEPTIONS?*

There is an exception to the general rule that the origin of money is irrelevant in the decision of whether to use Chapter 30B. When the source of funds is from a gift or a trust, Chapter 30B does not apply. M.G.L. c. 30B, § 1(b)(20). For example, if a beneficent individual or private group wants to pay directly for a contract for art classes at the town Senior Center, then the procurement need not comply with Chapter 30B. In addition, if the town Senior Center has a trust whose funds pay for contracts for extra-curricular classes, then the town’s Senior Center is free to procure these contracts without following Chapter 30B.

In short, all municipal contracts for supplies or services must be procured using Chapter 30B. If the awarding authority is paying for its contract with monies received from grants or if the beneficiaries of the contract are paying themselves, Chapter 30B nonetheless applies. However, if contracts for supplies or services are being paid from “proceeds derived from a gift to a governmental body or a trust established for the benefit of a governmental body,” then Chapter 30B does not apply. Be aware that a jurisdiction cannot circumvent Chapter 30B by creating a trust fund with its own public money.

### *I THOUGHT GRANTS WERE EXEMPT FROM 30B.*

Money that a local government receives from a grant, federal or otherwise, should not be confused with Chapter 30B’s exception for what it calls a “grant agreement.” Pursuant to Chapter 30B, a “grant agreement” is not a contract for supplies or services and is therefore not subject to Chapter 30B. Instead, a grant agreement is “an agreement between a governmental body and an individual or nonprofit entity, the purpose of which is to carry out a public purpose of support or stimulation instead of procuring supplies or services for the benefit or use of the governmental body.” M.G.L., c. 30B, § 2. In this relationship, the local government would be the grantor and the vendor would be the recipient of grant funds. Therefore, to determine whether a “grant agreement” that is exempt from Chapter 30B exists, a local government must determine whether the entity with whom it will contract is a non-profit or an individual and whether the service that the non-profit or individual will provide is one that will “carry out a public purpose of support or stimulation.” If the agreement meets these criteria, then the relationship between the local government and the vendor is a “grant agreement,” and the local government need not follow Chapter 30B procurement procedures to award its contract. For example, a town that contracts with a non-profit university to provide job training to the unemployed would have a grant agreement with that non-profit university.



Keep in mind, however, that this “grant agreement” exception has no effect on how a local government can use funds it has received through federal or other grants. A local government procuring supplies or services with money it has received from a grant must do so in accordance with Chapter 30B.