

Calculation of Construction Costs for G.L. c. 149 and OSD Contracts (Prepared for 2025 MMA Connect 351 Conference)

On September 6, 2024, the Bid Unit of the Office of the Attorney General (“AGO”) issued a bid protest decision reversing guidance issued in 2016 concerning the method of calculating labor and project costs for G.L. c. 149 public building construction projects and blanket contracts procured through the Commonwealth’s Operational Services Division (“OSD”). By way of background, OSD offers statewide contracts for various goods and services, including certain trade work, which can be used by municipalities, enabling them to take advantage of potential costs savings realized through bulk bidding and to save time in the procurement process. Certain OSD contracts include a labor component for the installation of procured construction materials. Previously, the determination of whether the project cost was not more than \$50,000, so that the awarding authority could use the three written quotes procurement method pursuant to G.L. c. 149, was based only on construction labor costs. However, in *In re: Service Agreement for Fire Alarm & Fire Protection Inspection/Testing/Programming* (North Shore Community College), the AGO has now determined that awarding authorities must consider all costs, including labor and materials, when estimating the cost of a public building project for this purpose. This decision directly impacts the ability of municipal awarding authorities to utilize state blanket contracts, as municipalities may no longer use an OSD contract if the aggregate value of the construction contract exceeds \$50,000, taking into account both labor and materials.

In the North Shore Community College (“NSCC”) matter, the Foundation for Fair Contracting of Massachusetts (“FFCM”) filed a bid protest contending that NSCC violated the public bidding laws when it utilized OSD’s statewide contract TRD03, Tradesperson Installation, Repair and Maintenance Services, to procure fire alarm and fire protection inspection, maintenance and programming services (“Project”). FFCM argued that since the estimated value of the Project exceeded \$1,000,000, the use of the OSD statewide contract was prohibited. OSD participated in the protest on NSCC’s behalf, arguing that NSCC acted consistently with the then-current guidance in that the labor for each associated task was valued at under \$50,000.

In its analysis, the AGO determined that OSD’s interpretation of the statute was incorrect and that NSCC erred in its reliance on the three quotes process specified in G.L. c. 149, § 44A(2)(B). The AGO ruled that the Project should have been bid under G.L. c. 149, §44A(2)(D), which requires sealed bids. It rejected the computation of cost on a per “task” basis for OSD contracts, and determined that awarding authorities, for purposes of obtaining quotes in the G.L. c. 149 context and for OSD statewide contracts, are required to consider both labor and materials when estimating the cost of the project. The AGO also issued a formal notice on September 9, 2024, restating this determination. OSD has since revised its guidance on all state contracts available to municipalities to account for this decision.

As a result, as of September 6, 2024, municipalities can no longer use OSD blanket contracts that involve construction work if the aggregate value of the project exceeds \$50,000, even if the construction labor component falls short of that threshold.

For further information, please contact Attorneys [Thomas McEnaney](#), [Matthew Feher](#) or your KP Law attorney at 617.556.0007.

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