



**Ch. 40B and  
Zoning Law  
Round-Up**  
August 28, 2008

**INSPECTOR GENERAL OFFERS NEW  
GUIDANCE ON HIRING  
PEER REVIEW CONSULTANTS**

The Massachusetts Inspector General has issued a new guidance document advising municipal boards and officials on the proper procedures for hiring independent peer review consultants in connection with land use development applications. The guidance document can be found on the Web at: [http://www.mass.gov/ig/publ/c44\\_s53g\\_consultants.pdf](http://www.mass.gov/ig/publ/c44_s53g_consultants.pdf)

In its guidelines, the IG reminds local officials that General Laws Chapter 44, Section 53G allows communities to set up revolving funds for the collection and expenditure of technical review fees. These fees are typically paid by the developer, and are deposited into a special account set by the Town Treasurer. Boards may only collect fees in this manner, however, if they have promulgated rules for the hiring of outside consultants.

The IG's office, which is responsible for enforcing the Uniform Procurement Act (Chapter 30B) takes the position that the Chapter 30B procurement requirements apply to the retention of peer review consultants. For a consulting contract that exceed \$25,000 in value, this means that the board must issue a Request for Proposals or an Invitation for Bids. For smaller contacts (between \$5,000 and \$25,000), the board need only solicit three oral or written quotes. The procurement of contracts valued at less than \$5,000 must only be based on "sound business practices."

Under Chapter 40B, most zoning boards hire one or more technical review consultants during the course of the public hearing. Most of these contracts don't exceed \$25,000 in value, and the contract need not be awarded to the lowest cost bidder. Under G.L. c. 30B, s. 4, "[t]he procurement officer shall award the contract to the responsible person offering the needed quality of supply or service at the lowest quotation." (emphasis added).

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