

By Mr. Kirby, a petition of Edward P. Kirby, Robert Emmet Hayes and Ann Nisberg for legislation to provide for the construction of a modular building in the town of Whitman as a senior citizen building. Local Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Eight.

AN ACT PROVIDING FOR THE CONSTRUCTION OF A MODULAR BUILDING IN THE TOWN OF WHITMAN FOR USE AS A SENIOR CITIZEN CENTER.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The Town of Whitman is hereby authorized to
2 procure, in accordance with the provisions of this act, not more
3 than one modular building of less than 2,500 square feet, for use
4 as a senior citizen center, to relieve the overcrowding in the
5 Whitman Public Schools.

6 As used in this act, the term "Modular building" means (a) a
7 pre-designed building or units of a pre-designed building
8 constructed and equipped with internal plumbing, electrical or
9 similar systems prior to movement to the site where such units
10 are attached to each other and such building is affixed to a
11 foundation and connected to external utilities; (b) any portable
12 structure with walls, a floor and a roof, designed or used for the
13 shelter of persons or property, transportable in one or more
14 sections and affixed to a foundation.

15 As used in this act, the term "Procurement" means buying,
16 purchasing, or otherwise acquiring and installing a modular
17 building, and all functions that pertain to the acquisition and
18 installation of a modular building including description of
19 requirements, selection and solicitation of sources, preparation
20 and award of the contract and all phases of contract
21 administration.

22 The provisions of sections forty-four A, forty-four B and forty-
23 four D to forty-four J, inclusive, of chapter one hundred and

24 forty-nine of the General Laws shall not apply to contracts
25 procured pursuant to this act. The provisions of Sections thirty-
26 eight A1/2 to thirty-eight O, inclusive of chapter seven of the
27 General Laws shall not apply to the design of a modular building
28 procured pursuant to this act.

29 Every proposal shall be accompanied by either (1) a copy of
30 a certificate of eligibility issued by the deputy commissioner
31 pursuant to section forty-four D of Chapter one hundred and
32 forty-nine for the fabrication of modular buildings, together with
33 an update statement or (2) a prequalification statement containing
34 such information as the purchasing agent for Whitman, in
35 consultation with the deputy commissioner, shall prescribe. If the
36 purchasing agent determines that any offeror is not responsible
37 or eligible, the purchasing agent shall reject such offer in writing.

38 A contract awarded pursuant to this act which is for an amount,
39 or estimated amount greater than \$60,000 shall be deemed a
40 contract subject to the provisions of Section thirty-nine R of
41 chapter thirty of the General Laws, and a contractor awarded such
42 contract shall be deemed a contractor subject to the provisions
43 of said section thirty-nine R.

44 The Town of Whitman shall procure modular buildings as
45 authorized by this act utilizing competitive sealed proposals.

46 The Town of Whitman shall solicit proposals through a request
47 for proposals. The request for proposals shall include:

48 (1) the time and date for receipt of proposals, the address of
49 the office to which the proposals are to be delivered, the maximum
50 time for proposal acceptance by the purchasing agent;

51 (2) the purchase description and all evaluation criteria that will
52 be utilized; and

53 (3) all contractual terms and conditions applicable to the
54 procurement, provided that the contract may incorporate by
55 reference a plan submitted by the selected offeror for providing
56 the modular buildings.

57 The request for proposals may incorporate documents by
58 reference, provided that the request for proposals specifies where
59 prospective offerors may obtain the documents. The request for
60 proposals shall provide for the separate submission of price, and
61 shall indicate when and how the offers shall submit the price. The
62 Town of Whitman shall make copies of the request for proposals
63 available to all persons on an equal basis.

64 Public notice of the request for proposals shall be published
65 at least once, not less than two weeks prior to the time specified
66 in such notice for the receipt of proposals, in the central register
67 published by the secretary of state, and in such other newspapers
68 and trade periodicals as the Town of Whitman customarily utilizes
69 for the advertisement of construction contracts.

70 The proposals shall not be opened publicly, but shall be opened
71 in the presence of one or more witnesses at the time specified in
72 the request for proposals. Notwithstanding the provisions of
73 section seven of chapter four, until the completion of the
74 evaluation, or until the time for acceptance specified in the request
75 for proposals, whichever occurs earlier, the contents of the
76 proposals shall remain confidential and shall not be disclosed to
77 competing offerors. At the opening of proposals the purchasing
78 agent for the Town of Whitman shall prepare a register of
79 proposals which shall include the name of each offeror and the
80 number of modifications, if any, received. The register of
81 proposals shall be open for public inspection. The purchasing
82 agent may open the price proposals at a later time, and shall open
83 the price proposals so as to avoid disclosure to the individuals
84 evaluating the proposals on the basis of criteria other than price.

85 The purchasing agent shall designate the individual or
86 individuals responsible for the evaluation of the proposals on the
87 basis of criteria other than price. The designated individuals shall
88 prepare their evaluations based solely on the criteria set forth in
89 the request for proposals. Such criteria shall include all standards
90 by which acceptability will be determined as to quality,
91 workmanship, results of inspections and tests, and suitability for
92 a particular purpose, and shall also include all other performance
93 measures that will be utilized. The evaluations shall specify in
94 writing:

95 (1) for each evaluation criterion, a rating of each proposal as
96 highly advantageous, advantageous, not advantageous, or unac-
97 ceptable and the reasons for the rating;

98 (2) a composite rating for each proposal, and the reasons for
99 the rating; and

100 (3) revisions, if any, to each proposed plan for providing the
101 modular buildings which should be obtained by negotiation prior
102 to awarding the contract to the offeror of the proposal.

103 The purchasing agent shall unconditionally accept a proposal

104 except as provided by this paragraph. An offeror may correct,
105 modify or withdraw a proposal by written notice received in the
106 office designated in the request for proposals prior to the time
107 and date set forth for the opening of proposals. After such
108 opening, an offeror may not change the price or any other
109 provisions of the proposal in a manner prejudicial to the interests
110 of the Town of Whitman for fair competition. The purchasing
111 agent shall waive minor informalities or allow the offeror to
112 correct them. If a mistake and the intended offer are clearly
113 evident on the face of the document, the purchasing agent shall
114 correct the mistake to reflect the intended correct offer and so
115 notify the offeror in writing, and the offeror may not withdraw
116 the offer. The purchasing agent may permit an offeror to withdraw
117 an offer if a mistake is clearly evident on the face of the document
118 but the intended correct offer is not similarly evident.

119 The purchasing agent shall determine the most advantageous
120 proposal from a responsible and responsive offeror taking into
121 consideration price and the evaluation criteria set forth in the
122 request for proposals. The purchasing agent shall award the
123 contract by written notice to the selected offeror within the time
124 for acceptance specified in the request for proposals. The parties
125 may extend the time for acceptance by mutual agreement. The
126 purchasing agent may condition an award on successful
127 negotiation of the revisions specified in the evaluation, and shall
128 explain in writing the reasons for omitting any such revision from
129 the contract.

130 If the purchasing agent awards the contract to an offeror who
131 did not submit the lowest price, the purchasing agent shall explain
132 the reasons for the award in writing, specifying in reasonable detail
133 the basis for determining that the quality of modular buildings
134 under the contract will not exceed the Town of Whitman's actual
135 needs or that the anticipated performance of the selected offeror
136 justifies the additional cost. Prior to execution of a contract
137 pursuant to this section, the selected offeror shall furnish to the
138 purchasing agent a performance bond satisfactory to the
139 purchasing agent in the sum of fifty percent of the contract price.

1 SECTION 2. This act shall take effect upon its passage.