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**Chap. 211**

a suitable marker on said bridge bearing said designation in compliance with the standards of said department.

Approved December 3, 1997.

**Chapter 212. AN ACT PROVIDING FOR THE APPOINTMENT OF THE TREASURER OF THE TOWN OF NEW SALEM.**

*Be it enacted, etc., as follows:*

Notwithstanding the provisions of any other general or special law to the contrary, the treasurer of the town of New Salem shall be appointed by the board of selectmen for a term not to exceed three years.

Approved December 3, 1997.

**Chapter 213. AN ACT AUTHORIZING THE GREATER LAWRENCE SANITARY DISTRICT TO ENTER INTO CONTRACTS FOR THE DESIGN, CONSTRUCTION, OPERATION, MAINTENANCE AND MODIFICATION OF A BIOSOLIDS PROCESSING FACILITY.**

*Be it enacted, etc., as follows:*

**SECTION 1.** The Greater Lawrence Sanitary District, hereinafter referred to as the district, established by chapter 750 of the acts of 1968, is hereby authorized, notwithstanding the provisions of any general or special law or rule or regulation to the contrary, to select and contract with a single general contractor or more than one general contractor to provide any combination of the following services, including design, build or operations services for the permitting, design, fabrication, supply, construction, installation, acceptance testing, performance guarantees, operation, repair and maintenance of an on site biosolids processing facility, at the district's wastewater treatment plant located in the town of North Andover, and the transportation, marketing, disposal and beneficial use of sludge related thereto, hereinafter collectively called the biosolids project, to ensure the ability of said district's wastewater treatment facilities to operate in an environmentally and economically sound manner and in full compliance with applicable requirements of federal, state and local law on an ongoing basis; provided, however, that any such contractor is selected by the district through a competitive process in conformance with the requirements of this act; and provided, further, that such design, build or operations services procured, or contracts entered into, shall not be subject to the requirements set forth in sections 38A½ to 38O, inclusive, of chapter 7, section 39M of chapter 30 and sections 44A to 44M, inclusive, of chapter 149 of the General Laws; provided, further, that said contract shall be awarded pursuant to the provisions of chapter 30B of the General Laws except for section 3; paragraph (a), clause (3) of paragraph (b), paragraph (c), paragraph (d), paragraph (f), paragraph (g), and paragraph (h) of section 6 and sections 12, 13 and 19 of said chapter 30B.

The request for proposals for such contract shall specify the method for comparing proposals to determine the proposal offering the lowest overall cost to the district, including, but not limited to, all capital equipment and capital improvement costs, operating and maintenance costs, financing costs, and the financial impact on the district's ratepayers. If the district awards the contract to an offeror which did not submit the proposal offering the lowest overall cost, the district shall explain the reasons for the award in writing.

**SECTION 2.** Notwithstanding the provisions of any general or special law to the contrary, a contract awarded pursuant to section 1 may provide for a term including any renewals, extensions, or options not exceeding 20 years. Any renewal or extension shall be at the sole discretion of the district in accordance with the original contract terms and conditions or contract terms and conditions more favorable to and acceptable to the district. The district's payment obligations under any contract for the biosolids project activities shall be conditioned on the contractor's performance of said services in accordance with all terms of its contract with the district.

**SECTION 3.** The district shall procure design, build or operations services relating to the biosolids project utilizing competitive sealed proposals. The district shall solicit proposals through a request for proposals, including amendments or addenda thereto, hereinafter the request for proposals, which shall include: the time and date for receipt of proposals; the address of the office to which the proposals are to be delivered; the maximum time for proposal acceptance by the district; the scope of the design, build or operations project; the quality and performance criteria for the project; the evaluation criteria that will be utilized; proposed major contractual terms and conditions to be incorporated into the contract, some of which may be deemed mandatory or non-negotiable; provided, however, that the request for proposals may request proposals or offer options for fulfillment of other contractual terms; and such other matters as may be determined by the district.

Public notice of the request for proposals shall be published, at least three weeks prior to the time specified in such notice for the receipt of proposals, in the central register published by the state secretary, in a local newspaper circulated in the district, and in at least one trade journal of national distribution.

The request for proposals may incorporate documents by reference; provided, however, that the request for proposals specifies where prospective offerors may obtain such documents. The request for proposals shall provide for the separate submission of price, and shall indicate when and how offerors shall submit the price. The request for proposals shall also specify that bid security be in a form and amount satisfactory to the district. The district shall make copies of the request for proposals available to all offerors on an equal basis. The district may conduct one or more proposal conferences, which may be mandatory, with interested parties prior to receiving proposals; provided, however, that no contract for the biosolids project is awarded prior to the effective date of this act, the district's procurement process, including without limitation, the issuance of any requests for proposals for the design, build or operation of the biosolids project and any other action taken with respect to such procurement process conforming to the requirements of this act, whether carried out prior to or after the effective date of this act, is hereby authorized and ratified by this act.

**SECTION 4.** The district's chief procurement officer shall appoint a design, build, or operations evaluation committee, hereinafter the evaluation committee, which may be composed of design, construction, engineering, and other professionals, district staff, or representative from one or more of the district's voting member communities. The district shall not open the proposals publicly, but shall open them in the presence of the chief procurement officer and one or more witnesses at the time specified in the request for proposals. Notwithstanding the provisions of section 7 of chapter 4 of the General Laws, until the time of the completion of the evaluations by the evaluation committee, or, at the election of the chief procurement officer, the earlier of the time of completion of negotiations of any contract pursuant to section 6 or the time of acceptance specified in the request for proposals, the contents of the proposals shall remain confidential and shall not be disclosed to competing offerors. At the opening of the proposals, the chief procurement officer shall prepare a register of proposals which shall include the name of each offeror and the number of modifications to such proposals, if any, received from each offeror. The register of proposals shall be open for public inspection. The chief procurement officer or his designee may open the price proposals at a later time and shall open the price proposals so as to avoid disclosure of the evaluation committee until the evaluation of the nonprice criteria is complete.

An offeror's proposal shall be unconditional except as provided in this paragraph. An offeror may correct, modify or withdraw a proposal by written notice received in the office designated in the request for proposals prior to the time and date for the opening of proposals.

After the time of the opening of the proposals has passed, an offeror may not correct, modify or withdraw the price or any other provisions of its proposal in a manner prejudicial to the interests of the district or fair competition, or unless this act differs materially, as determined by the district in its sole discretion, from the draft of the legislation provided as part of the request for proposals. The district may waive minor informalities or allow the offeror to correct them. If a mistake and intended offer are clearly evident on the face of the offeror's proposal, the chief procurement officer shall correct the mistake to reflect the intended correct proposal and so notify the offeror in writing, and the offeror may not withdraw the proposal. An offeror may withdraw a proposal if a mistake is clearly evident on the face of the offeror's proposal, but the intended correct proposal is similarly not evident.

Subject to a majority vote of the district's voting members, the chief procurement officer may delegate his powers and duties to one or more employees of the district. A delegation shall be in writing, be signed by the chief procurement officer, and state the activity or function authorized and the duration of the delegation. A delegation may be in specific or general terms and may be conditioned upon compliance with specified procedures. A delegation may be revoked or amended whenever the chief procurement officer determines that revocation or amendment is in the best interests of the district. A delegation of powers or duties by a chief procurement officer and any revocation or amendment thereof shall not take effect until a copy of the same is filed with the office of inspector general.

**SECTION 5.** Evaluations of the proposals shall be conducted by the evaluation committee. The evaluation committee shall prepare its evaluations of the nonprice technical proposals based solely on the criteria set forth in the request for proposals. Such criteria may include, without limitation, technical feasibility, environmental effectiveness, effectiveness of sludge processing systems, relevant technical and management experience of the members of the offeror's proposed design, build or operations team, including subcontractors, and financial stability and resources of the offeror. The evaluation committee shall specify in writing for each nonprice evaluation criterion included within the request for proposals a rating of highly advantageous, advantageous, not advantageous, or unacceptable and the reasons for the rating, and shall specify in writing a composite rating for each proposal, and the reasons for such composite rating. The evaluation committee shall also specify in writing revisions, if any, to each proposed plan for providing the required supplies or services which should be obtained by negotiation prior to awarding the contract to the offeror of the proposal. After completion of the preliminary evaluation of the nonprice proposals and the ratings set forth above, the price proposals shall be evaluated by the evaluation committee based solely on the price criteria set forth in the request for proposals. Such criteria may include an evaluation of: costs for design and construction activities; annual operation and maintenance costs; present worth of capital costs and operating costs; financial impact on district rate payers; and such other criteria which may be deemed reasonable by the district and included in the request for proposals.

**SECTION 6.** After the evaluation committee completes its evaluation of the proposals, the chief procurement officer shall make a preliminary determination in writing of the most advantageous proposal from a responsible and responsive offeror taking into consideration the price and all other evaluation criteria set forth in the request for proposals. Thereafter the chief procurement officer may negotiate all terms of the contract not deemed mandatory or non-negotiable with such offeror. If after negotiation with such offeror, the chief procurement officer determines that it is in the district's best interests, the chief procurement officer may determine the proposal which is the next most advantageous proposal from a responsible and responsive offeror taking into consideration price and all other evaluation criteria set forth in the request for proposals, and the chief procurement officer may negotiate all terms of the contract with such offeror.

After completion of such negotiations, the chief procurement officer shall recommend the award, and the district shall award the contract to the then most advantageous proposal from a responsible and responsive offeror taking into consideration price, the other evaluation criteria set forth in the request for proposals, and the terms of the contract negotiated by the chief procurement officer. Such award may be conditioned on successful negotiation of revisions to the plan of services identified by the evaluation committee during the proposal evaluation phase of the process and shall explain the reasons for omitting any such revision from a plan incorporated by reference in the contract. The district shall award the contract in conformance with the requirements of the district's enabling legislation, by written notice to the offeror selected by the district within the time

for acceptance specified in the request for proposals. Upon the district's determination that it is in the district's best interest to do so, the district and offeror may extend the time for acceptance by mutual agreement. Written notice of contract award shall be issued at least two weeks prior to the execution of the contract. The district also reserves the right to cancel a request for proposals, or other solicitation, or it may reject in whole or in part any and all the proposals if the district determines that cancellation or rejection serves the best interests of the district.

**SECTION 7.** If the district awards any design, build or operations contract to an offeror which did not submit the lowest price based upon the price evaluation method established in the request for proposals, the district shall explain the reasons for the award in writing, which shall be available for public inspection.

Prior to execution of a design, build or operations contract pursuant to this section, the selected offeror shall furnish to the district a performance bond and a payment bond in a form and amount specified in the request for proposals, and issued by a surety company qualified to issue bonds in the commonwealth and satisfactory to the district.

If the selected proposer either fails to execute a contract upon terms acceptable to the district or fails to furnish the necessary bonds within the time period specified in the request for proposals, as the same may be extended by written agreement of the district and offeror, the district may award the design, build or operations contract to the offeror of the next most advantageous proposal in accordance with the procedures set forth in section 6. The district shall return bid security to all offerors who are not selected unless any such offeror has defaulted pursuant to the terms of the request for proposals. The district shall keep all documentation prepared, created or received by it under the provisions of this act for at least six years from the date of final payment under the contract. Except as otherwise provided in section 4, such documentation shall be open to public inspection.

**SECTION 8.** A contract entered into pursuant to this act shall provide for such activities as may be deemed necessary or desirable for the biosolids project to carry out the purposes authorized herein, including, but not limited to, the specific performance tests and the terms of the performance guarantee that the contractor must meet before the district accepts the biosolids processing facility portion of the biosolids project. Any contract awarded pursuant to this act shall be subject to such terms and conditions as the district shall determine to be in the best interests of the district, and may include acceptance and processing of sludge other than sludge from the district's operations; provided, that such action shall have been authorized by an affirmative vote of two-thirds of the voting members of the district commission, which two-thirds vote shall include at least one affirmative vote from each of the four voting municipalities which comprise the district. Any such contract shall provide that prior to the initial construction of the biosolids processing facility, the installation or modification of structures, equipment or systems, the district shall cause a qualified wastewater engineer to independently review and approve plans and specifications for said construction, installation or modifications of structures, equipment or systems. Any such contract shall further provide that prior to the district's acceptance of the initial construction

of the biosolids processing facility, including its structures, equipment, or systems, or any additional capital improvements described in section 11 which are estimated to cost more than \$100,000, the district shall cause a qualified wastewater engineer to inspect said structures, equipment and systems and certify that the construction, installation or modification has been completed in accordance with the approved plans and specifications and have met the requirements of all performance tests. The district shall not enter into any contract unless funds are available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding years shall depend on the availability and appropriation of funds. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the procurement officer shall cancel the contract.

**SECTION 9.** The district may, in carrying out the purposes of this act, subject to the approval by the district commissioners in accordance with the district's enabling legislation incur debt to fund capital equipment or improvements; provided, however, that the repayment of such debt shall be amortized over a period that is no longer than the useful life of said capital equipment or improvements and the maturities of bonds issued shall be arranged so that for each issue the annual combined payments of principal and interest payable each year, commencing with the first year in which principal is required, shall be as nearly equal as practical in the opinion of the district treasurer, or shall be arranged in accordance with a schedule providing for a more rapid amortization of principal. The first payment of principal of each issue of bonds shall be not later than one year from the estimated date of commencement of regular operation of the capital improvements, as determined by the district treasurer and project costs to be financed by the issue of the bonds may include interest incurred on the bonds and any bond anticipation notes for a period of up to two years after the date of the original borrowing. Indebtedness incurred under this act for such capita equipment or improvements shall not be included in determining the limit of indebtedness of said district under section 10 of chapter 44 of the General Laws but, except as provided herein, shall otherwise be subject to the provisions of said chapter 44.

**SECTION 10.** All contracts or subcontracts for the initial construction of the on-site biosolids processing facility, and other renovation, modernization, or improvements related to the initial construction of that on-site biosolids processing facility shall be awarded only to persons or entities whose bids or proposals are subject to said persons or entities being signatory to a project labor agreement with the appropriate labor organization which includes an obligation for said labor organizations and its constituent members not to strike with respect to the work on said biosolids processing facility and which also establishes uniform work rules and schedules for the initial construction of the biosolids processing facility. Said project agreement shall be entered into in order to facilitate the timely and efficient completion of the construction of said improvements and make available a ready and adequate supply of highly trained skilled craft workers which shall provide a negotiated commitment which is a legally enforceable means of assuring labor stability and labor peace

with regard to the initial construction of the on-site biosolids processing facility. The offeror which is awarded a contract by the district pursuant to section 6 herein shall designate a general contractor, project manager, or similar construction firm which is familiar in the negotiation and administration of project labor agreements to manage and oversee the initial construction of the biosolids processing facility, including the development and implementation of labor relation policies for the initial construction of the on-site biosolids processing facility, and to instruct such general contractor, project manager, or other construction firm to negotiate a mutually agreeable project labor agreement covering the initial construction of the on-site biosolids processing facility.

**SECTION 11.** In the event that any construction of any new capital improvement or any renovation, repair, modernization, installation, maintenance or replacement work estimated to cost more than \$100,000, is required for the efficient operation of the biosolids project during the term of any contract or extension thereof carried out or authorized pursuant to this act, which was not specifically included in the initial contract for the operation and maintenance, design and construction of the biosolids project, then the provisions of any general or special law or regulation relating to the advertising, bidding or award of contracts, to the procurement of services or to the construction and design of improvements, shall not be applicable to the procurement of any such work, and, except as otherwise provided in this section, such work shall be procured on the basis of competitive bids as described in this section; provided, however, that such bids need not be solicited if the contractor causes such construction, renovation, modernization, installation or replacement work to be completed without direct or indirect reimbursement from the district or other adjustment to the fees or costs paid by the district, including, but not limited to, any adjustment to sewer rates paid by the district's residents or businesses. The contractor may act as an agent of the district in the solicitation of bids for the construction of any such new capital improvement or for any renovation, modernization, installation or replacement work pursuant to this section; provided, that the district shall cause a qualified wastewater engineer to independently assess the need for such capital improvement, renovation, modernization, installation or replacement work and to review and approve the contractor's proposed plans and specifications prior to advertising for bids. Based on the recommendation of the qualified wastewater engineer, the district may approve, modify, or reject the contractor's proposed plans and specifications. Bids shall be based on such approved detailed plans and specifications and the contract shall be awarded to the lowest responsible and eligible bidder. Any contract awarded pursuant to this act shall provide that in the event that the district does not approve the contractor's proposed plans and specifications pursuant to this section, the district or the contractor may terminate said contracts under the terms and conditions of said contract.

**SECTION 12.** Notwithstanding the provision of any general or special law or regulation to the contrary, the department of environmental protection may issue project approval certificates with respect to the design, construction or operations contract procured by the district under this act for wastewater treatment facility improvements, and such design, build or operations contract shall be eligible for assistance under the Water Pollution

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Abatement Trust established by chapter 29C of the General Laws and future state revolving loan fund programs established by the commonwealth or the department of environmental protection which may approve the project as eligible to receive a supplemental grant for the construction of pollution abatement facilities as authorized under 314 CMR 14.00.

**SECTION 13.** This act shall take effect upon its passage.

Approved December 4, 1997.

## Chapter 214. AN ACT AUTHORIZING THE TOWN OF WESTMINSTER TO ESTABLISH A PUBLIC WORKS COMMISSION.

*Be it enacted, etc., as follows:*

**SECTION 1.** Chapter 186 of the acts of 1984 is hereby repealed.

**SECTION 2.** The town of Westminster is hereby authorized to establish by by-law a public works commission, hereinafter referred to as the commission, consisting of three members. The initial members of the commission shall be the duly elected members of the former water and sewer commission, whose terms as members of the commission shall be coterminous with their appointed terms as members of the former water and sewer commission. Thereafter, commission members shall be appointed by the board of selectmen for staggered terms of three years each, and shall serve until the expiration of their respective terms and thereafter until a new appointment shall be made by said board of selectmen. Said board of selectmen shall fill any vacancy on the commission by appointment for the balance of the vacated three year term.

**SECTION 3.** The commission shall have and may exercise the powers and duties of: (a) water commissioners and sewer commissioners pursuant to sections 65 and 66 of chapter 41 of the General Laws; (b) the board of selectmen as to all matters relating to public works and highways, and said board's authority as the road commissioners of the town; (c) surveyors of highways; and (d) superintendents of streets. Said commission shall have the powers and duties heretofore held by said water and sewer commission, and as to the matters relating to the powers and duties conferred hereby, by said board of selectmen, arising under any general or special law. A majority of the commissioners shall constitute a quorum for the transaction of commission business. In addition to the foregoing, said commission shall have the power to provide engineering services to maintain and repair public buildings and property.

**SECTION 4.** The commission shall appoint a director of public works who shall be responsible to the commissioners, and whose appointment shall be not less than three nor more than five years, subject to removal as may be otherwise provided in the charter and by-laws of the town. The authority and duties of the director shall be as established by the commission. The director shall appoint and hire all personnel under his direction and control subject to the approval of the commission.