

By Mr. Boverini, a petition of Walter J. Boverini, Vincent J. Lozzi, Thomas W. McGee and Steven Angelo (with the approval of the mayor and city council) for legislation to authorize the Lynn purchasing agent to procure modular buildings to serve the Lynn public school system. Local Affairs.

The Commonwealth of Massachusetts

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

AN ACT AUTHORIZING THE LYNN PURCHASING AGENT TO PROCURE IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION MODULAR BUILDING TO SERVE THE LYNN PUBLIC SCHOOL SYSTEM.

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

1 The Lynn Purchasing Agent is hereby authorized to procure
2 in accordance with the provisions of this section, modular
3 buildings to serve the Lynn Public School System.

4 As used in this section, the following words and terms shall have
5 the following meanings, unless the context shall clearly indicate
6 a different meaning or intent:

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

15 (B) "Procurement" means buying, purchasing, leasing or
16 otherwise acquiring and installing a modular building, and all
17 functions that pertain to the acquisition and installation of a
18 modular building, including description of requirements, selection
19 and solicitation of sources, preparation and award of contract and
20 all phases of contract administration.

21 The provisions of sections forty-four A, through forty-four J,
22 inclusive of chapter one hundred and forty-nine of the General
23 Laws shall not apply to contract procured pursuant to this section.
24 The provisions of sections thirty-eight A to thirty-eight O,
25 inclusive, of chapter seven of the General Laws shall not apply
26 to the design of the modular building procured pursuant to this
27 section.

28 Every proposal shall be accompanied by a copy of a certificate
29 of eligibility issued by the Commonwealth pursuant to Section
30 forty-four D of Chapter one hundred and forty-nine for the
31 fabrication of modular buildings, together with an updated
32 statement.

33 A contract awarded pursuant to this section which is for an
34 amount or estimated amount greater than one hundred thousand
35 dollars shall be deemed a contract subject to the provisions of
36 Section thirty-nine R of Chapter thirty of the General Laws, and
37 a contractor awarded such contract shall be deemed a contractor
38 subject to the provisions of said Section thirty-nine R.

39 The purchasing agent shall procure modular buildings as
40 authorized by this section utilizing competitive sealed proposals.

41 The purchasing agent shall solicit proposals. The request for
42 the proposals shall include:

43 (1) The time and date for receipt of proposals, the address of
44 the office to which the proposals are to be delivered, the maximum
45 time for proposal acceptance by the City of Lynn.

46 (2) The purchase description and all evaluation criteria that will
47 be utilized; and

48 (3) All contractual terms and conditions applicable to the
49 procurement, provided that the contract may incorporate by
50 reference a plan submitted by the selected offeror for providing
51 the modular buildings.

52 The request for proposal may incorporate documents by
53 reference, provided that the request for proposals specifies where
54 prospective offerors may obtain the documents. The request for
55 proposals shall provide for the separate submission of price, and
56 shall indicate when and how the offerors shall submit the price.
57 The purchasing agent shall make copies of the request for
58 proposals available to all persons on an equal basis.

59 Public notice of the request for the proposals shall be published
60 at least once, not less than two weeks prior to the time specified
61 in such notice for the receipt of proposals, in the Lynn City Clerk's
62 Office and in such other newspapers and trade periodicals as the
63 Purchasing Agent customarily utilizes for the advertisement of
64 construction contracts.

65 The Purchasing Agent shall not open the proposals publicly,
66 but shall open them in the presence of one or more witnesses at
67 the time specified in the request for proposals. Notwithstanding
68 the provision of Section Seven of Chapter Four, until the
69 completion of the evaluation, or until the time for acceptance
70 specified in the request for proposals, whichever occurs earlier,
71 the contents of the proposals shall remain confidential and shall
72 not be disclosed to competing offerors. At the opening of
73 proposals the Purchasing Agent shall prepare a Register of
74 Proposals which shall include the name of each offeror and the
75 number of modifications, if any, received. The register of
76 proposals shall be open for public inspection. The Purchasing
77 Agent may open the price proposals at a later time, and shall open
78 the price proposals so as to avoid disclosure to the individuals
79 evaluating the proposals on the basis of criteria other than price.

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

91 (1) For each evaluation criterion, a rating of each proposal as
92 highly advantageous, advantageous, not advantageous, or
93 unacceptable and the reasons for the ratings:

94 (2) A composite rating for each proposal, and the reasons for
95 the rating: and

96 (3) Revisions, if any, to each proposed plan for providing the
97 modular buildings which should be obtained by negotiation prior
98 to awarding the contract to the offeror of the proposal.

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

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

125 If the Purchasing Agent awards the contract to an offeror who
126 did not submit the lowest price, the Purchasing Agent shall
127 explain the reasons for the award in writing, specifying in
128 reasonable detail the basis for determining that the quality of
129 modular buildings under the contract will not exceed the City's
130 actual needs or that the anticipated performance of the selected
131 offeror justifies the additional cost.

132 Prior to execution of a contract pursuant to this Section, the
133 selected offeror shall furnish to the Purchasing Agent a
134 performance bond satisfactory to the Purchasing Agent in the sum
135 of fifty per cent of the contract price.