

By Mr. Nuciforo, a petition (accompanied by bill, Senate, No. 1934) of Andrea F. Nuciforo, Jr., and William Smitty Pignatelli (by vote of the town) for legislation to authorize the town of Lee to enter into contracts for construction, operation and maintenance, lease and modification of its water and wastewater treatment facilities. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

AN ACT AUTHORIZING THE TOWN OF LEE TO ENTER INTO CONTRACTS FOR CONSTRUCTION, OPERATION AND MAINTENANCE, LEASE AND MODIFICATION OF ITS WATER AND WASTEWATER TREATMENT FACILITIES.

*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. (a) Notwithstanding the provisions of any general  
2 or special law to the contrary, the town of Lee may enter into con-  
3 tracts for the lease, operation and maintenance, financing, design  
4 and construction of new facilities and/or modifications and instal-  
5 lation of new equipment and systems at its water and wastewater  
6 treatment facilities, its collection, distribution, and disposal sys-  
7 tems, sources of water supply, and pump stations (hereinafter  
8 referred to as "facilities") to ensure adequate services and to  
9 ensure the ability of said town's facilities to operate in full com-  
10 pliance with all applicable requirements of federal, state and local  
11 laws; provided, however, that such contracts shall not be subject  
12 to the competitive bid requirements set forth in sections thirty-  
13 eight A and 1/2 to thirty-eight O, inclusive, of chapter seven,  
14 section thirty-nine M of chapter thirty or sections forty-four A to  
15 forty-four M, inclusive, of chapter one hundred and forty-nine of  
16 the general laws; provided further, that each such contract shall be  
17 awarded pursuant to the provisions of chapter thirty B of the  
18 general laws except for clause (three) of subsection (b), clause  
19 (three) of subsection (e) and subsection (g) of section six, and sec-  
20 tions thirteen and sixteen.

21 (b) The requests for proposals for such contracts shall specify  
22 the method for comparing proposals to determine the proposal  
23 offering the lowest overall cost to said town. If said town awards  
24 a contract to an offeror who did not submit the proposal offering  
25 the lowest overall cost, said town shall explain the reason for the  
26 award in writing.

27 (c) The request for proposals shall set forth mandatory perfor-  
28 mance guarantees that the selected offeror will be required to  
29 meet in designing, constructing and/or operating the facilities.  
30 The contract which is negotiated with the selected offeror based  
31 on the request for proposals shall obligate the selected offeror to  
32 meet such mandatory performance guarantees, and shall set forth  
33 the minimum design requirements for such construction or  
34 improvements and the acceptance tests to be conducted upon the  
35 completion of the construction or improvements in order to  
36 demonstrate that the facilities are capable of meeting the perfor-  
37 mance guarantees.

1 SECTION 2. (a) Notwithstanding the provisions of any general  
2 or special law to the contrary, contracts awarded pursuant to  
3 section one may provide for a term not exceeding twenty years  
4 and an option for renewal or extension of operations and mainte-  
5 nance services for one additional term not exceeding five years.  
6 The renewal or extension shall be at the sole discretion of the  
7 town of Lee in accordance with the original contract terms and  
8 conditions or contract terms and conditions more favorable to and  
9 acceptable to said town. Contracts entered into pursuant to this  
10 act may provide that, subject to a majority vote of town meeting,  
11 said town shall not be exempt from liability for payment of the  
12 costs to finance, permit, design and construct new facilities, mod-  
13 ifications or installation of new equipment and systems at the  
14 facilities necessary to ensure the ability of said facilities to  
15 operate in full compliance with all applicable requirements of fed-  
16 eral, state and local laws; provided, however, that such costs shall  
17 be amortized over a period that is no longer than the useful life of  
18 such facilities. Said town's payment obligations for all operations  
19 and maintenance services shall be conditioned on the contractor's  
20 performance of such services in accordance with all contractual  
21 terms.

22 (b) Contracts entered into pursuant to this act may provide for  
23 such activities as may be deemed necessary to carry out the pur-  
24 poses authorized herein including, but not limited to, equipment,  
25 facility or land lease, equipment installation and replacement, per-  
26 formance testing and operation, studies, design and engineering  
27 work, construction work, ordinary repairs and maintenance and  
28 the furnishing of all related material, supplies and services  
29 required for the facilities, and the management, operation, mainte-  
30 nance, and repair thereof.

1 SECTION 3. The chief procurement officer of the town of Lee,  
2 appointed pursuant to section two of chapter thirty B of the  
3 general laws, shall solicit proposals through requests for proposals  
4 which shall include those items in paragraphs (one) and (two) of  
5 subsection (b) of section six of chapter thirty B of the general  
6 laws and proposed key contractual terms and conditions to be  
7 incorporated into the contract, some of which may be deemed  
8 mandatory or nonnegotiable; provided, however, that the requests  
9 for proposals may request proposals or offer options for fulfill-  
10 ment of other contractual terms and such other matters as may be  
11 determined by said town. The request for proposals shall provide  
12 for the separate submission of price and shall indicate when and  
13 how the offerors shall submit price.

1 SECTION 4. The chief procurement officer shall make a pre-  
2 liminary determination of the most advantageous proposal from a  
3 responsible and responsive offeror taking into consideration price,  
4 estimated life-cycle costs and other evaluation criteria set forth in  
5 the request for proposals. Said chief procurement officer may  
6 negotiate all terms of the contract not deemed mandatory or non-  
7 negotiable with such offeror. If, after negotiation with such  
8 offeror, said chief procurement officer determines that it is in said  
9 town's best interests, said chief procurement officer may deter-  
10 mine the next most advantageous proposal from a responsible and  
11 responsive offeror taking into consideration price, estimated life-  
12 cycle costs and other evaluation criteria set forth in the request for  
13 proposals and may negotiate all terms of the contract not deemed  
14 mandatory or nonnegotiable with such offeror. Said chief procure-  
15 ment officer shall recommend to the board of selectmen the award

16 of the contract to the most advantageous proposal from a respon-  
17 sible and responsive offeror taking into consideration price, esti-  
18 mated life-cycle costs, the evaluation criteria set forth in the  
19 request for proposals and the terms of the negotiated contract. If  
20 the board of selectmen approves the recommendation of the chief  
21 procurement officer, the board of selectmen shall award the con-  
22 tract by written notice to the selected offeror within the time for  
23 acceptance specified in the request for proposals. With respect to  
24 any contract in excess of five years, such award shall be subject to  
25 authorization by town meeting. Such award shall be subject to  
26 section five and six. The parties may extend the time for accep-  
27 tance by mutual agreement.

1 SECTION 5. Notwithstanding any other provisions of this act,  
2 it shall be a mandatory term of any request for proposals issued by  
3 the town regarding the subject matter of this act, in order to main-  
4 tain stable and productive labor relations and to avoid interruption  
5 of the operation of the facilities and to preserve the health, safety  
6 and environmental conditions of residents of the town of Lee and  
7 surrounding communities, that any and all employees, as applic-  
8 able, hereinafter referred to as facility employees, working on the  
9 operation and maintenance of the facilities, be offered employ-  
10 ment by any party entering into a contract with the town for the  
11 operation and maintenance of the facilities, and it shall be a  
12 mandatory term of any request for proposals, that any party  
13 entering into a contract shall employ all facility employees  
14 employed at the facilities as of the date of execution of the con-  
15 tract and continue such employment throughout the term of the  
16 contract, unless any such employee voluntarily leaves the employ-  
17 of the party or is terminated for just cause by the party. Further-  
18 more, it shall be a mandatory term of any such request for pro-  
19 posals that any party entering into such contract with the town  
20 shall provide a salary and benefits package to all facility  
21 employees, which is equivalent to the combined value of the  
22 salary and benefits package provided to such employees by the  
23 town and that the party shall accept assignment and assume  
24 existing collective bargaining agreements and adopt all terms and  
25 conditions of employment provided by said collective bargaining  
26 agreements. It shall also be a mandatory term of any request for

27 proposals that during the unexpired term of any existing collective  
28 bargaining agreement and upon the termination of such collective  
29 bargaining agreements that the party shall meet its legal obliga-  
30 tions, including bargaining in good faith, with regard to any labor  
31 organization representing facility employees engaged in the opera-  
32 tion and maintenance of the sewer works system. Notwithstanding  
33 any other provisions of this act, any proposal submitted to the  
34 town regarding the subject matter of this act not complying with  
35 the above terms, shall be disqualified from further consideration  
36 by the town.

1 SECTION 6. Subject to the provisions of this act, any contract  
2 awarded hereunder shall be subject to such terms and conditions  
3 as the board of selectmen of the town of Lee shall determine to be  
4 in the best interests of said town. Any such contract shall provide  
5 that, prior to the construction of modifications or installation of  
6 equipment and systems, said town shall cause a qualified engineer  
7 to independently review and approve plans and specifications for  
8 such modifications, equipment and systems. Such contract shall  
9 further provide that prior to said town's acceptance of any modifi-  
10 cations, equipment or systems, including work undertaken pur-  
11 suant to section eight and estimated to cost more than one hundred  
12 thousand dollars, adjusted in accordance with adjustment factors  
13 as determined by the town, said town shall cause a qualified engi-  
14 neer to inspect such modifications, equipment and systems and  
15 certify that the construction or installation has been completed in  
16 accordance with the approved plans and specifications.

1 SECTION 7. Notwithstanding the provisions of any general or  
2 special law or rule or regulations to the contrary, the department  
3 of environmental protection may issue project approval certifi-  
4 cates with respect to the contract procured by the town of Lee for  
5 facility improvements and any design and construction services  
6 included in such contract shall be eligible for assistance under the  
7 water pollution abatement trust established by section two of  
8 chapter twenty-nine C of the general laws, and any future  
9 revolving loan fund programs established by the commonwealth  
10 or the department of environmental protection.

1 SECTION 8. The provisions of any general or special law or rule  
2 or regulation relating to the advertising, bidding or award of con-  
3 tracts, to the procurement of services or to the construction and  
4 design of improvements, except the provisions of sections 26  
5 to 27H, inclusive, of chapter 149 of the General Laws, shall not be  
6 applicable to any selected offeror which is awarded a contract pur-  
7 suant to this act, except as provided in this section. The construction  
8 of any new capital improvement or any renovation, modernization,  
9 installation or replacement work estimated to cost more than one  
10 hundred thousand dollars, adjusted in accordance with adjustment  
11 factors as determined by the town, not specifically included in the  
12 initial contract for the lease, operation and maintenance and/or  
13 design and construction of the facilities shall be procured on the  
14 basis of advertised sealed bids; provided, however, that bids need  
15 not be solicited if the contractor causes such construction, renova-  
16 tion, modernization, installation or replacement work to be com-  
17 pleted without direct or indirect reimbursement from the town of Lee  
18 or other adjustment to the fees or costs paid by said town including,  
19 but not limited to, any adjustment to rates paid by said town's resi-  
20 dents or businesses. Bids shall be based on detailed plans and speci-  
21 fications and the contract shall be awarded to the lowest responsible  
22 and eligible bidder. The contractor may act as an agent of said town  
23 in the solicitation of bids for the construction of any new capital  
24 improvement or for any renovation, modernization, installation or  
25 replacement work pursuant to this section, provided, however, that  
26 said town shall cause a qualified engineer to independently assess  
27 the need for such capital improvement, renovation, modernization,  
28 installation or replacement work and to review and approve the con-  
29 tractor's proposed plans and specifications prior to advertising for  
30 bids. Based on the recommendations of the qualified engineer, said  
31 town may approve, modify or reject the contractor's proposed plans  
32 and specifications.

1 SECTION 9. The selected offeror shall furnish to the town per-  
2 formance bonds, payment bonds, or other forms of security for the  
3 selected offeror's obligations, and insurance, satisfactory to  
4 the town.

1 SECTION 10. This act shall take effect upon its passage.



