

By Mr. Torrisi of North Andover, petition of David M. Torrisi, Susan C. Tucker and Barry R. Finegold (with the approval of the mayor and city council) for legislation to authorize the city of Lawrence to enter into contracts for the sale or lease and operation and maintenance, financing, repair and replacement, design and construction, and modifications for the water works system and sewer works system. Local Affairs.

The Commonwealth of Massachusetts

In the Year Two Thousand.

AN ACT AUTHORIZING THE CITY OF LAWRENCE TO ENTER INTO CONTRACTS FOR THE SALE OR LEASE AND OPERATION AND MAINTENANCE, FINANCING, REPAIR AND REPLACEMENT, DESIGN AND CONSTRUCTION, AND MODIFICATIONS FOR THE WATER WORKS SYSTEM AND SEWER WORKS 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 SECTION 1. (a) The City of Lawrence, is hereby authorized,
2 notwithstanding the provisions of any general or special law or
3 regulation to the contrary, to enter into a contract or contracts for
4 the sale or lease, operation and maintenance, repair or replace-
5 ment, financing, design, construction and installation of new facil-
6 ities or systems and modifications to existing facilities, necessary
7 to ensure adequate services and to ensure the ability of said city's
8 water works system and the sewer works system, as such terms
9 are defined in section 10 herein, to operate, maintain, repair and
10 replace the water works system and sewer works system in full
11 compliance with all applicable requirements of federal, state and
12 local law; provided, however, that such contract or contracts shall
13 not be subject to the competitive bid requirements set forth in sec-
14 tions 38A2 to 38O, inclusive, of chapter 7, section 39M of chap-
15 ter 30, or sections 44A to 44M, inclusive, of chapter 149 of the
16 General Laws; provided, further, that each such contract shall be
17 awarded pursuant to the provisions of chapter 30B of the General

18 Laws, except for clause (3) of paragraph (b) of section 6, clause (3)
19 of paragraph (e) and paragraph (g) of said section 6 and sections 13
20 and 16 of said chapter 30B.

21 (b) The request for proposals for such contract or contracts
22 shall specify the method for comparing proposals to determine the
23 proposal offering the lowest overall cost to the city, including, but
24 not limited to, all capital equipment and capital improvement
25 costs, operating and maintenance costs and financing costs. If a
26 contract is awarded to an offeror who did not submit the proposal
27 offering the lowest overall cost, the city shall explain the reason
28 for the award in writing.

29 (c) The request for proposals shall set forth the performance
30 guarantees which the selected offeror will be required to meet in
31 operating the water works system or the sewer works system as
32 constructed or improved. The contract which is negotiated with
33 the selected offeror based on the request for proposals shall
34 obligate the selected offeror to meet such performance guarantees,
35 and shall set forth the minimum design requirements for such con-
36 struction or improvements and the acceptance tests to be con-
37 ducted upon the completion of the construction or improvements
38 in order to demonstrate that the system is capable of meeting the
39 performance guarantees.

1 SECTION 2. (a) Notwithstanding the provisions of any general
2 or special law to the contrary, a contract or contracts entered into
3 pursuant to section 1 may provide for a term, not exceeding 20
4 years, and an option for renewal or extension of operation, main-
5 tenance, repair and replacement services for one additional term
6 not exceeding five years. Any renewal or extension shall be at the
7 sole discretion of the city in accordance with the original contract
8 terms and conditions or contract terms and conditions more favor-
9 able to and acceptable to the city.

10 (b) A contract entered into pursuant to this act may provide
11 that the city shall not be exempt from liability for payment of the
12 costs to lease, finance, permit, design, construct and install modi-
13 fications, new equipment and systems for the water works system
14 and sewer works system and to operate, maintain, repair and
15 replace the water works system and sewer works system as neces-
16 sary to ensure the ability of the water works system and sewer

17 works system to operate in full compliance with all applicable
18 requirements of federal, state and local law, provided that any
19 costs relating to leasing, financing, permitting, design, construc-
20 tion and installation of modifications, new equipment and systems
21 shall be amortized over a period that is no longer than the useful
22 life of said modifications, equipment and systems. The city's pay-
23 ment obligation for services described herein shall be conditioned
24 on the contractor's performance of said services in accordance
25 with all contractual terms.

26 (c) A contract entered into pursuant to this act may provide for
27 such activities deemed necessary to carry out the purposes autho-
28 rized herein, including, but not limited to, equipment purchases,
29 facility or land lease, equipment installation, repair and replace-
30 ment, performance testing and operation, studies, design and engi-
31 neering work, construction work, ordinary repairs and
32 maintenance, and the furnishing of all related material, supplies
33 and services required for the construction, management, mainte-
34 nance, operation, and repair and replacement of the city's water
35 works system and sewer works system and related facilities.

1 SECTION 3. The chief procurement officer shall solicit pro-
2 posals through a request for proposals which shall include those
3 items in clauses (1) and (2) of paragraph (b) of section 6 of
4 chapter 30B of the General Laws and the proposed key contractual
5 terms and conditions to be incorporated into the contract, some of
6 which may be deemed mandatory or non-negotiable; provided,
7 however, that such request for proposals may request proposals or
8 offer options for fulfillment of other contractual terms, and such
9 other matters as may be determined by the city. The request for
10 proposals shall provide for the separate submission of price and
11 shall indicate when and 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 the other evaluation criteria set
5 forth in the request for proposals. The chief procurement officer
6 may negotiate all terms of the contract not deemed mandatory or
7 non-negotiable with such offeror. If, after negotiation with such

8 offeror, the chief procurement officer determines that it is in the
9 city's best interests, said chief procurement officer may initiate
10 negotiations with the next most advantageous proposal from a
11 responsible and responsive offeror taking into consideration price,
12 estimated life-cycle costs and the other evaluation criteria set
13 forth in the request for proposals, and may negotiate all terms of
14 the contract not deemed mandatory or non-negotiable with such
15 offeror. Said chief procurement officer shall award the contract to
16 the most advantageous proposal from a responsible and respon-
17 sive offeror taking into consideration price, estimated lifecycle
18 costs, the evaluated criteria set forth in the request for proposals,
19 and the terms of the negotiated contract. Subject to the approval
20 of the Mayor, the chief procurement officer shall award the con-
21 tract by written notice to the selected offeror within the time for
22 acceptance specified in the request for proposals. The parties may
23 extend the time for acceptance 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 city and of any contract entered into by the city with any party
4 regarding the subject matter of this act that any party that has
5 entered into a contract pursuant to said terms with the city, shall
6 require, in order to maintain stable and productive labor relations
7 and to avoid interruption of the operation of the water works
8 system and sewer works system and to preserve the health, safety
9 and environmental conditions of residents of the City of Lawrence
10 and surrounding communities, that any and all employees, as
11 applicable, hereinafter referred to as system employees, working
12 on the operation and maintenance of the water works system and
13 sewer works system, be offered employment by any party entering
14 into a contract with the city for the operation and maintenance of
15 said water works system and sewer works system, and further, that
16 any party entering into said contract shall employ all system
17 employees employed at the water works system and sewer works
18 system as of the date of execution of said contract and continue
19 such employment throughout the term of said contract, unless any
20 such employee voluntarily leaves the employ of said party or is
21 terminated for just cause by said party. Furthermore, any party
22 entering into said contract with the city shall provide a salary and

23 benefits package to all system employees which is equivalent to
24 the salary and benefits package provided to such employees by the
25 City. Moreover, said party shall adopt all terms and conditions of
26 employment provided by the last applicable collective bargaining
27 agreement negotiated between the labor organization representing
28 such system employees, if any, and the City shall continue to rec-
29 ognize such terms and conditions of employment until a collective
30 bargaining agreement has been executed between the labor organi-
31 zation representing such system employees and said party. Said
32 party shall furthermore agree to meet its legal obligations,
33 including bargaining in good faith, with regard to any labor orga-
34 nization representing system employees engaged in the operation
35 and maintenance of the water works system and sewer works
36 system described herein. Notwithstanding any other provisions of
37 this act, any proposal or contract submitted to the city regarding
38 the subject matter of this act not complying with the above terms,
39 shall be disqualified from further consideration by the city.

1 SECTION 6. Any contract or contracts awarded pursuant to this
2 act shall be subject to such terms and conditions as the city shall
3 determine to be in the best interests of said city and shall be sub-
4 ject to the approval of the Mayor. Any such contract shall provide
5 that prior to the construction, modification or installation of new
6 equipment and systems, the city shall cause a qualified water or
7 wastewater engineer, as applicable, to independently review and
8 approve plans and specifications for said modifications, new
9 equipment and systems. Such contract shall further provide that
10 prior to acceptance of any modifications, new equipment or sys-
11 tems, including work undertaken pursuant to section seven of this
12 act and estimated to cost more than \$100,000, adjusted annually
13 per the Construction Cost Index published by the Engineering
14 News Report or if the Engineering News Report ceases to publish
15 said index, any published index determined by the city to be com-
16 parable to said index, the city shall cause a qualified water or
17 wastewater engineer, as applicable, to inspect said modifications,
18 new equipment and systems and certify that the construction or
19 installation has been completed in accordance with the approved
20 plans and specifications.

1 SECTION 7. The provisions of any general or special law or
2 regulation relating to the advertising, bidding or award of con-
3 tracts, to the procurement of services or to the design and con-
4 struction 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 construc-
8 tion of any new capital improvement or any renovation,
9 modernization, installation, repair or replacement work estimated
10 to cost more than \$100,000, adjusted annually per the Construc-
11 tion Cost Index published by the Engineering News Report or if
12 the Engineering News Report ceases to publish said index, any
13 published index determined by the city to be comparable to said
14 index, not specifically included in the initial contract or contracts
15 for the sale or lease, operation or maintenance, financing, design,
16 construction, repair or replacement, and installation of modifica-
17 tions, new equipment and systems necessary for any particular
18 part of the water works system and the sewer works system, shall
19 be procured on the basis of advertised sealed bids; provided, how-
20 ever, that bids need not be solicited if the contractor causes such
21 construction, renovation, modernization, installation, repair or
22 replacement work to be completed without direct or indirect reim-
23 bursement from the city, or other adjustment to the fees paid by
24 the city, including, but not limited to, any adjustment to water or
25 sewer rates paid by the city users. Bids shall be based on detailed
26 plans and specifications and the contract shall be awarded to the
27 lowest responsible and eligible bidder. The contractor may act as
28 an agent of the city in solicitation of bids for the construction of
29 any new capital improvement or for any renovation, moderniza-
30 tion, installation, repair or replacement work pursuant to this
31 section; provided that the city shall cause a qualified water or
32 wastewater engineer, as applicable, to independently assess the
33 need for such capital improvement, renovation, modernization,
34 installation, repair or replacement work and to review and approve
35 the contractor's proposed plans and specifications prior to adver-
36 tising for bids. Based on the recommendation of the qualified
37 water or wastewater engineer, as applicable, the city may approve,
38 modify, or reject the contractor's proposed plans and specifica-
39 tion. Any contract or contracts awarded pursuant to this act shall

40 provide that in the event that the city does not approve the con-
41 tractor's proposed plans and specifications pursuant to this
42 section, the city may terminate said contract or contracts under the
43 terms and conditions of said contract or contracts.

1 SECTION 8. Notwithstanding the provisions of any general or
2 special law or regulation to the contrary, the department of envi-
3 ronmental protection may issue project approval certificates with
4 respect to the design/build contract or contracts procured by the
5 city under this act for improvements to the water works system
6 and sewer system works, and any such design/build services
7 included in such contract or contracts shall be eligible for assis-
8 tance under the Massachusetts Water Pollution Abatement Trust
9 established by section 2 of chapter 29C of the General Laws, as
10 amended from time to time, and any future revolving loan fund
11 programs established by the commonwealth or the department of
12 environmental protection.

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

1 SECTION 10. The following words as used in this act shall, unless
2 the context requires otherwise, have the following meanings:—

3 "Sewer works system", the existing sewer works system in the
4 possession of and under the jurisdiction, ownership, control and
5 regulation of the city and its department of public works,
6 including, without limiting the generality of the foregoing, all
7 works, instrumentalities or parts thereof, all main, trunk, inter-
8 cepting, connecting, lateral, outlet and other sewers, outfalls,
9 storm water sewers including catch basins and surface drains,
10 pumping and ventilating stations, structures, and other adjuncts
11 thereto, and any other property or interests in property, real or per-
12 sonal, incidental to and included in such sewer works system, and
13 all facilities, betterments, extensions, improvements and enlarge-
14 ments thereto.

15 "Water works system", the existing water supply and distribu-
16 tion system in the possession of and under the jurisdiction, owner-
17 ship, control and regulation of the city and the department of

18 public works thereof, including, without limiting the generality
19 of the foregoing, all plants, works, instrumentalities or parts
20 thereof, reservoirs, water mains and pipe lines, and other adjuncts
21 thereto, purification, filtration and treatment works and other
22 adjuncts thereto, and any other property or interests in property,
23 real or personal, incidental to and included in such water supply
24 and distribution system, and all facilities, betterments, extensions,
25 improvements and enlargements thereto and to or for the water
26 supply therefor.

1 SECTION 11. This act shall take effect upon its passage.