

By Mr. Durand, petition (accompanied by bill, Senate, No. 1230) of Robert A. Durand, Janet W. O'Brien, Jeffery J. Hayward, John C. Klimm, Douglas W. Petersen, David B. Cohen, Barbara Gardner, Joan M. Menard and the Massachusetts Municipal Association, by Michael P. Hogan, president, for legislation relative to procurement procedures in local government. State Administration.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Three.

AN ACT RELATIVE TO PROCEDURES IN LOCAL GOVERNMENT.

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. Section 1(a) of Chapter 30B of the General Laws
2 is hereby amended by striking out lines one through three,
3 inclusive, and inserting in place thereof the following new section:
4 (a) This chapter shall apply to every contract for the
5 procurement of supplies or services and for disposing of supplies
6 by a governmental body as defined herein.

1 SECTION 2. Section 1(b) of Chapter 30B of the General Laws
2 is hereby amended by amending subsection (12) to read as follows:
3 (12) a contract for the procurement of insurance or surety
4 bonds, including an agreement to the provision of sections one
5 to sixteen, inclusive, of chapter 40M or the provisions of sections
6 25E to 25U, inclusive, of chapter 152, including an agreement to
7 purchase a health insurance plan under chapter 32B or to
8 purchase any related benefit or service, whether procured as part
9 of such plan or separately;
10 and further amended by adding the following new subsection:
11 (29) a contract for the investment of interest rate management
12 of bonds, notes and other securities, the proceeds thereof or other
13 cash balances;.

1 SECTION 3. Section 2 of Chapter 30B of the General Laws
2 is hereby amended by inserting in the definition of “grant
3 agreement” after the word “the” the word “primary” and by
4 striking out in the definition “supplies;” the words “and
5 insurance.”

1 SECTION 4. Section 3 of Chapter 30B of the General Laws
2 is hereby amended by designating lines 1 through 6 as para-
3 graph (a), and by inserting at the end thereof the following:

4 “(b) a governmental body which awards or executes a contract
5 pursuant to this chapter shall act by and through those employees
6 or officials authorized by local charter, ordinance, or by-law to
7 so act.”

1 SECTION 5. Section 4 (a) of Chapter 30B of the General Laws
2 is hereby amended by striking out the words “one thousand” and
3 inserting in place thereof the words “five thousand”.

1 SECTION 6. Section 4 (c) of Chapter 30B of the General Laws
2 is hereby amending by striking out the words “one thousand” and
3 inserting in place thereof the words “five thousand”.

1 SECTION 7. Section 5 (a) of chapter 30B of the General Laws
2 is hereby amended by striking out the words “, other than
3 contracts for the procurement,” following the word “more.”

1 SECTION 8. Section 5 (f) of Chapter 30B of the General Laws,
2 is hereby amended by striking out the word “shall” as it appears
3 in both lines, and inserting in place thereof the word “may” in
4 both lines.

1 SECTION 9. Section 5(g) of Chapter 30B of the General Laws
2 is hereby amended by striking out the final sentence and inserting
3 in place thereof the following sentences: — “the time for
4 acceptance may be extended for up to forty-five days by mutual
5 agreement between the governmental body and the apparent
6 lowest responsible and responsive bidder, or for a contract
7 requiring payment to the governmental body, by mutual
8 agreement between the governmental body and the apparent
9 highest responsible and responsive bidder.”

1 SECTION 10. Section 6 (f) of chapter 30B of the General Laws
2 is hereby amended by inserting after the word “five” the following
3 words: — “, provided that in the event that no responsive
4 proposal is received from a responsible offeror and further
5 provided that prices have not been opened, the chief procurement
6 officer may so notify all offerors in writing and may without
7 further advertising solicit new proposals from all responsible
8 offerors who submitted proposals and return to them their initial
9 price proposals unopened. The written notice shall invite each
10 responsible offeror to submit a best and final offer by a specified
11 date and time. The notice to each offeror shall state the basis for
12 the determination that the proposal submitted by that offeror was
13 not responsive. The governmental body shall not by reason of its
14 failure to notify an offeror of any defect in that offeror’s non-
15 responsive proposal waive the right to reject that offerors best and
16 final offer on the basis of such defect.”

1 SECTION 11. Section 6 (g) of Chapter 30B of the General
2 Laws is hereby amended by striking out the third sentence and
3 inserting in place thereof the following sentence: — “the time for
4 acceptance may be extended by the mutual agreement of the chief
5 procurement officer and the offeror of the apparent most
6 advantageous proposal.”

1 SECTION 12. The first sentence of section 7 (a) of Chapter
2 30B of the General Laws is hereby amended by striking out the
3 first sentence and inserting in place thereof the following
4 sentence: — “A procurement officer may award a contract in an
5 amount of less than two hundred thousand dollars or any contract
6 for the procurement of library books, school textbooks,
7 educational programs, courses or curriculum, newspapers, serials,
8 periodicals, audiovisual materials or software maintenance
9 without competition when, after reasonable investigation, the
10 procurement officer determines in writing that only one
11 practicable source for the required supply or service exists.”

1 SECTION 13. Section 8 of Chapter 30B of the General Laws
2 is hereby amended by designating lines 1 through 9 as
3 subsection (a), and by inserting at the end thereof the
4 following: —

5 “(b) Whenever the requirements of this chapter would prevent
6 a governmental body from taking advantage of a business
7 opportunity which is in the best interests of the governmental
8 body, a procurement officer may request an exemption from the
9 requirements of this chapter from the inspector general. A request
10 for an exemption must 1) be submitted to the inspector general
11 in writing, 2) describe the business opportunity and how that
12 opportunity furthers the interests of the governmental body, and
13 3) state how the requirements of this chapter prevent the govern-
14 mental body from taking advantage of the business opportunity
15 presented. The inspector general may waive all or any portion of
16 this chapter and authorize the governmental body to take
17 advantage of the business opportunity presented. The inspector
18 general shall make a written response to the petitioning govern-
19 mental body within ten days from receipt of the request. The
20 business opportunity procurement or disposal shall be limited to
21 the terms authorized by the inspector general and shall conform
22 to the requirement of this chapter to the extent practicable. The
23 procurement officer shall make a record of each business
24 opportunity procurement or disposal, specifying each contractor’s
25 name, the amount and type of each contract, a listing of the supply
26 or service provided under each contract, and shall maintain such
27 recommendations together with the written request for the
28 exemption and the inspector general’s authorization.

29 The procurement officer shall submit a copy of this record at
30 the earliest possible time to the state secretary for placement in
31 any publication established by the state secretary for the
32 advertisement of procurements.”

1 SECTION 14. The first sentence of Section 12(a) of chapter
2 30B of the General Laws is hereby amended by striking out the
3 word “services” and inserting in place thereof the word “serves.”

1 SECTION 15. Section 12 (b) of Chapter 30B of the General
2 Laws is hereby amended by striking out the words “solicit or”.

1 SECTION 16. Section 12 of Chapter 30B of the General Laws
2 is hereby amended by striking out in their entirety Subsec-
3 tion (c) (3) and (d) and by renumbering Subsection (c)(4) to

4 (c)(3), Subsection (c) (5) to (c) (4), Subsection (e) to (d), and
5 Subsection (f) to (e).

1 SECTION 17. Section 12 of Chapter 30B of the General Laws
2 is hereby amended by adding the following Subsection:

3 “(f) In the case of multi-year contracts, the appropriate
4 solicitation method shall be determined by the annual contract
5 price, and not the aggregate price for the full term of the contract.
6 If a multi-year contract is to provide for annual price adjustments
7 during the term of the contract, the appropriate solicitation
8 method shall be determined by the average annual contract price
9 during the full term of the contract.”

1 SECTION 18. Section 12 of said chapter 30B of the General
2 Laws is hereby further amended by inserting after paragraph (f)
3 the following subsection:

4 “(g) In a contract including any renewal, extension or option,
5 the governmental body may exercise an option to renew or extend
6 the contract for the time specified in the solicitation on a deter-
7 mination that the contractor has performed satisfactorily,
8 provided that the price for the renewal or extension shall be a fixed
9 price or a fixed percentage of the price for the initial period of
10 the contract, and, provided further, that the price for the renewal
11 or extension had been called for in the solicitation.”

1 SECTION 19. Section 13 of Chapter 30B of the General Laws
2 is hereby amended by striking out lines 8 and 9 and inserting in
3 place thereof the following:

4 “(4) the increase in the total contract price in any contract,
5 except a contract for the purchase of gasoline, fuel oil, road salt,
6 sand, or ice and snow control supplies, does not exceed twenty
7 percent.”

1 SECTION 20. Section 16 of Chapter 30B of the General Laws
2 is hereby amended by striking out said Section 16 in its entirety.

1 SECTION 21. Section 13 of chapter 30B of the General Laws
2 is hereby further amended by inserting after paragraph (4) the
3 following subsection:

4 (5) The governmental body, with the agreement of the
5 contractor, may reduce the unit price for supplies or services or
6 both specified in a contract to be paid by the governmental body
7 at any time during the term of the contract or when an option
8 to renew, extend or purchase is exercised.

1 SECTION 22. Section 17 of Chapter 30B of the General Laws
2 is hereby amended by renumbering Subsection (c) to (d), and
3 Subsection (d) to (e), and further by inserting Subsection (c) as
4 follows:

5 “(c) Nothing in this chapter shall be construed to bar a govern-
6 mental body from entering into an agreement for settlement of
7 any action pending in a court of the commonwealth.”

1 SECTION 23. Said chapter 30B of the General Laws is hereby
2 amended by inserting after section nineteen the following section:

3 Section 20. The inspector general is hereby authorized and
4 directed to review the dollar thresholds established by this chapter,
5 and every five years, commencing from January 1, 1993,
6 recommend the legislature appropriate amendments to adjust the
7 dollar thresholds to reflect inflation.

1 SECTION 24. Section 23 of Chapter 687 of the Acts of 1989,
2 is hereby amended by striking out the second sentence thereof.

1 SECTION 25. Paragraph (d) clause (4) of Section 39M of
2 Chapter 30 of the General Laws is hereby amended by striking
3 out the words “twenty-five” and inserting in place thereof the
4 words “one hundred”, and line 6 is hereby amended by striking
5 out the words “section five of”.

1 SECTION 26. Section 44A of Chapter 149 of the General
2 Laws, as appearing in the 1988 Official Edition, is hereby amended
3 by adding the following new subsection:

4 “(5) The provisions of this section shall not apply to any
5 contract of less than one hundred thousand dollars awarded by
6 a governmental body, as defined by section two of chapter
7 thirty B, in accordance with the provisions of chapter thirty B of
8 the General Laws.”

1 SECTION 27. Section 29 of chapter 149 of the General Laws,
2 as appearing in the 1990 Official Edition, is hereby amended by
3 striking, in line 7, the word “two” and inserting in place thereof
4 the following word: “one hundred”.

1 SECTION 28. Section 4 of Chapter 40, as appearing in
2 Section 7, lines 3 to 8, of Chapter 687 of the Acts of 1989 is hereby
3 amended by striking out the first sentence and inserting in place
4 thereof the following sentence:

5 “Unless otherwise provided by ordinance, by-law or charter, a
6 city, acting by and through the mayor, or a town, acting by and
7 through the selectmen, if any, otherwise, acting by and through
8 the chief executive officer, may make contracts for the exercise
9 of its corporate powers.”

1 SECTION 29. Section 17 of said chapter thirty B is hereby
2 amended by inserting after paragraph (d) the following
3 paragraph: —

4 (e) All contracts subject to this chapter made by any city or
5 town shall be made in accordance with all charter and by-law or
6 ordinance provisions consistent with this chapter, and no such
7 contract shall be deemed to have been made or executed until all
8 written approvals required by charter or by-law or ordinance are
9 affixed thereto.

