SENATE . . . . . No. 2126

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act authorizing governmental bodies to enter into contracts for the inspection, maintenance, repair or modification of water storage facilities.

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

SECTION 1. Chapter 40 of the General Laws is hereby amended by adding the following 10 sections:

Section 61. As used in this section and sections 62 to 70, inclusive, the following words shall have the following meanings unless the context clearly requires otherwise:

"Governmental body", a city, town, county, water district or wastewater district, municipal water and sewer commission or regional water and sewer district commission established under chapter 40N or by special act or an independent water and sewer commission.

“Governmental body” shall not include the Massachusetts Water Resources Authority, (“MWRA”).

“Local Legislative Body” in a city, the city council, in a town, the town meeting or as otherwise more specifically defined by the municipal charter, municipal water and sewer commission or regional water and sewer district commission established under chapter 40N or by special act, in a district, the district meeting, in an independent water and sewer commission, the commissioners.

“Water storage facility”, an above or below-ground facility or tank, standpipe, water tower or other building or structure used to store water for, without limitation, public drinking water supply and fire protection.

Section 62. Notwithstanding any other general or special law to the contrary, pursuant to sections 61 to 70, inclusive, a governmental body may enter into contracts for the inspection, maintenance, repair or modification of a water storage facility to ensure adequate services and to ensure the ability of the water storage facility to comply with the requirements of federal, state

22 and local laws. Contracts shall be awarded in accordance with section 6 of chapter 30B. A
23 contract pursuant to sections 61-70 may provide that a local governmental body with a 2/3s vote
24 of approval of the local legislative body may make annual payments to fund capital
25 modifications, repairs or installation of equipment and systems at a water storage facility that
26 have been completed or are to be completed pursuant to the terms of the request for proposals.
27 Costs shall be amortized over a period that shall not be longer than the useful life of the
28 modifications or repairs or the equipment and systems installed. A contract may provide that a
29 local governmental body with a 2/3s vote of approval of the local legislative body may make
30 payments for future capital modifications, repairs or installation of equipment and systems or a
31 second interior or exterior coating at a water storage facility pursuant to the terms of the request
32 for proposals based on estimated costs of such capital modifications, repairs or installation of
33 equipment and systems at a water storage facility, only if the payments for the full accumulated
34 amount are guaranteed by a bond, letter of guaranty, or other form of guaranty to be submitted
35 on an annual basis and approved by the governmental body for the 100 percent accumulated
36 amount.

37 Section 63. (a) A contract awarded under section 62 may provide for a term, not
38 exceeding 15 years, and an option for renewal or extension of inspection, maintenance repair or
39 modification services for 1 additional term not exceeding 5 years. When a contract is to contain
40 an option for renewal or extension, the solicitation shall include notice of that provision. A
41 renewal or extension shall be at the sole discretion of the governmental body under the terms and
42 conditions of the original contract Subject to the provisions of paragraph (b), a contract awarded
43 under section 62 shall contain a provision stating that the governmental body may terminate the
44 contract upon 90 days written notice.

45 (b) Notwithstanding any general or special law to the contrary, a contract entered into
46 under section 62 may provide that the governmental body's obligation under the contract for
47 payment of the annual costs to inspect, maintain, repair, or modify a water storage facility shall
48 be subject to appropriation, but a governmental body shall not be exempt from liability for the
49 payment of the amounts amortized for completed capital modifications, repairs or installation of
50 equipment and systems at a water storage facility. Costs shall be amortized over a period that
51 shall not be longer than the useful life of the modifications or repairs or the equipment and
52 systems installed. A governmental body's payment obligation for any inspection, maintenance,
53 repair or modification services shall be contingent upon the contractor's performance of the
54 services under the terms of the contract. A contract entered into pursuant to this section shall
55 include the independent professional engineer's report that was used as the basis of the
56 solicitation and include a breakdown of the portion of the annual fee that is allocated to
57 inspection, maintenance, operation, testing and ordinary repair which shall be subject to the
58 provisions concerning annual appropriation in this section, and the portion of the annual fee that
59 is attributable to capital modification, capital repairs or installation of equipment and systems at
60 a water storage facility for which the amount of the lump sum cost of such capital modification,

61 capital repairs or installation of equipment and systems at a water storage facility has been
62 amortized over the life of the contract. In addition, if a governmental body votes to make
63 payments for future capital modifications, repairs, installation of equipment and systems or a
64 second interior or exterior coating, a contract entered into pursuant to this section shall include a
65 schedule of the payments to be made based on the estimated costs of such future capital
66 modifications, repairs, installation of equipment and systems or a second interior or exterior
67 coating as submitted by the selected offeror in response to the request for proposals, which shall
68 be used to determine the full accumulated amount to be guaranteed. In the event of a
69 termination, the amounts held for future capital modifications, capital repairs or installation of
70 equipment and systems or a second interior or exterior coating, shall be refunded to
71 governmental body in accordance with the terms and conditions of the request for proposals

72 (c) A contract entered into under section 62 may provide for any activities deemed
73 necessary to carry out the purposes authorized in sections 61 to 70, inclusive, which may include,
74 but shall not be limited to, equipment installation and replacement, studies, permitting, design
75 and engineering, capital modification, capital repairs, painting, ordinary repairs and
76 maintenance, and the furnishing of all related material, supplies and services required for a water
77 storage facility and the management, maintenance and repair of and improvements to the
78 facility. In the event that the contract and any lawfully executed extension of the initial term
79 includes payments for future capital modifications, repairs, installation of equipment and systems
80 or a second interior or exterior coating, prior to proceeding the governmental body shall seek the
81 consultation of a professional engineer or independent certified tank consultant to complete an
82 independent review of the proposed scope in relation to the condition of the water storage
83 facility. The engineer or tank consultant shall prepare a written report to advise the
84 governmental body on proceeding with the contractor's proposal.

85 Section 64. (a) The chief procurement officer of a governmental body shall solicit
86 proposals in conformance with M.G.L. c. 30B, section 6. Information from the governmental
87 body shall contain a full and complete description of the condition of the water storage tank as
88 written by an independent professional engineer. The scope of services shall contain a detailed
89 description of the services to be provided by the selected proposer.

90 (b) All subcontractorsunder the offeror with more than ten, (10), employees shall
91 maintain and participate in a bona fide apprentice training program as prescribed in sections 11H
92 and 11I of chapter 23 for each trade or occupation with an apprentice training program and
93 approved by the division of apprentice training in the department of labor and workforce
94 development and shall abide by the apprentice-to-journeyman ratio for each such trade as
95 prescribed in said chapter 23 while in the performance of the contract.

96 (c) A contract pursuant to sections 61-70 shall specifically state that the offeror and any
97 subcontractor under the offeror shall comply with all federal and state occupational health and
98 safety requirements applicable to the activities provided for in the contract.

99 Section 65. The chief procurement officer of a governmental body shall award the
100 contract, subject to a two-thirds vote of the local legislative body, to the most advantageous
101 proposal from a responsible and responsive offeror taking into consideration price and the
102 evaluation criteria set forth in the request for proposals. A contract awarded under this section
103 must be approved by a two-thirds vote of the local legislative body. The governmental body shall
104 provide written notice to the selected offeror within the time for acceptance specified in the
105 request for proposals. The governmental body and the offeror may extend the time for
106 acceptance by mutual agreement. If the contract award is made to an offeror who did not have
107 the lowest overall price proposal, then the chief procurement officer shall publish a timely
108 written statement of reasons for its selection in the Central Register.

109 Section 66. A contract awarded under sections 61 to 70, inclusive, shall be subject to such
110 terms and conditions as the governmental body shall determine to be in its best interest. The
111 selected offeror shall furnish to the governmental body performance bonds, payment bonds, or
112 other forms of security for the selected offeror's obligations, and insurance, satisfactory to the
113 governmental body.

114 Section 67. The department of environmental protection may issue project approval
115 certificates with respect to capital project costs identified with a contract procured by a
116 governmental body under sections 61 to 70, inclusive, for facilities improvements.

117 Section 68. No general or special law or rule or regulation relating to the advertising,
118 bidding or awarding of contracts, for the procurement of services or for the construction and
119 design of improvements shall apply to a selected offeror which is awarded a contract under
120 sections 61 to 70, inclusive, except for sections 26 to 27F, inclusive, and section 29 of chapter
121 149.

122 Section 69. A contract made in violation of any provision of sections 61 to 70, inclusive,
123 shall be void and the governmental body shall make no payment under any such contract. Minor
124 informalities shall not render a contract void.

125 Section 70. Public notice of the request for proposals shall be published in the central
126 register pursuant to section 20A of chapter 9 at least 30 days before the time specified for receipt
127 of proposals in the request for proposals.