

HOUSE No. 3660

By Mr. Cusack of Braintree, a petition (accompanied by bill, House, No. 3660) of Brian A. Joyce and Mark J. Cusack (with the approval of the mayor and town council) that the town of Braintree be authorized to enter into certain contracts for the construction and maintenance of a recreational facility in said town. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act authorizing a design and build contract for and lease of a recreational facility in the city known as the town of Braintree.

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 Town of Braintree (hereinafter, the “Town”) may, notwithstanding
2 any general or special law or regulation to the contrary, enter into a contract or contracts for the
3 design, construction, installation, operation, maintenance, repair, replacement, and lease of Town
4 land, or any of them, for a new recreational facility to consist of a pool and skating rink
5 (hereinafter, the “Recreational Facility”), necessary to ensure adequate services and ensure the
6 ability of such Recreational Facility to operate in full compliance with all applicable
7 requirements of federal, state and local law; provided, however, that such contracts shall not be
8 subject to the competitive bid requirements set forth in sections 38A1/2 to 38O, inclusive, of
9 chapter 7, section 39M of chapter 30 or sections 44A to 44M, inclusive, of chapter 149 of the
10 General Laws; provided, further, that each such contract shall be awarded pursuant to chapter
11 30B of the General Laws, except for clause (3) of paragraph (b) of section 5, clause (d) of section

5, clause (e) of section 5, clause (g) of section 5, clause (3) of paragraph (b) of section 6, paragraph (e) of section 6, paragraph (g) of section 6, paragraph (h) of section 6, paragraph (i) of section 6, and sections 12 and 13 of said chapter 30B. Any contract for the construction of the Recreational Facility shall be subject to sections 26 to 27H, inclusive, of chapter 149 of the General Laws. Further, the Town of Braintree shall be allowed to lease a parcel of land owned by the Town on which said Recreational Facility shall be located, provided, that the contract to lease Town-owned land for this purpose shall not be subject to the bidding requirements of section 16 of chapter 30B.

(b) The request for proposals for such contract or contracts shall specify the method for comparing proposals to determine the proposal offering the lowest overall cost to the Town and the highest overall benefit to the Town, including, but not limited to, all design costs, construction costs, capital equipment and capital improvement costs, operating and maintenance costs, and projected revenue stream for the Town. If a contract is awarded to an offeror who did not submit the proposal offering the lowest overall cost or the highest overall benefit to the Town, the Town shall explain the reason for the award in writing.

(c) The request for proposals shall set forth mandatory performance guarantees that the Recreational Facility will be required to meet, as constructed. The contract which is negotiated with the selected offeror based on the request for proposals shall obligate the selected offeror to meet such mandatory performance guarantees, and shall set forth the minimum design requirements for such construction and the acceptance tests to be conducted upon the completion of the construction in order to demonstrate that the Recreational Facility is capable of meeting such performance guarantees.

SECTION 2. (a) Notwithstanding any general or special law to the contrary, including section 3 of chapter 40 of the General Laws, a contract or contracts entered into pursuant to section 1 may provide for a term of at least fifty (50) years, and an option for renewal or extension of operation, maintenance, repair and replacement services for one additional term not exceeding five (5) years. Any renewal or extension shall be at the sole discretion of the Town in accordance with the original contract terms and conditions or contract terms and conditions more favorable to and acceptable to the Town.

(b) A contract entered into pursuant to this act may provide that the Town shall not be exempt from liability for payment of the costs to design, construct, install, lease, permit, operate, maintain, repair and replace such Recreational Facility as necessary to ensure the ability of such facility to operate in full compliance with all applicable requirements of federal, state and local law, provided that any costs relating to the design, construction, installation, permitting, and leasing shall be amortized over a period that is no longer than the useful life of said Recreational Facility. The Town's payment obligation for services described herein shall be conditioned on the contractor's performance of said services in accordance with all contractual terms.

(c) A contract entered into pursuant to this act may provide for such activities deemed necessary to carry out the purposes authorized herein, including, but not limited to, permitting services, equipment purchases, facility or land lease, equipment installation, repair and replacement, performance testing and operation, studies, design and engineering work, construction work, ordinary repairs and maintenance, and the furnishing of all related material, supplies and services required for the construction, management, maintenance, operation, and repair and replacement of said Recreational Facility.

SECTION 3. (a) The chief procurement officer shall solicit proposals through a request for proposals which shall include those items in clauses (1) and (2) of paragraph (b) of section 6 of chapter 30B of the General Laws and the proposed key contractual terms and conditions to be incorporated into the contract, some of which may be deemed mandatory or nonnegotiable; provided, however, that such request for proposals may request proposals or invite non-monetary options for the fulfillment of some contractual terms, as may be determined by the Town. The request for proposals shall provide for the separate submission of price and shall indicate when and how the offerors shall submit their price proposal. The request for proposals shall require each offeror to submit with their proposal a Plan of Services detailing the plan for the design, construction, operation and maintenance of the Recreational Facility, any monetary payments to the Town, and any non-monetary benefits to the Town. The Director of Finance of the Town of Braintree shall serve as the chief procurement officer.

(b) Notwithstanding any other provisions of this act, the chief procurement officer may use a request for qualifications prior to the request for proposals which shall serve as a basis for which the Town creates a short list of offerors to receive such request for proposals. Statements of qualifications received in response to such request for qualifications shall be solicited and evaluated in a manner similar to that required for request for proposals as set forth in this section. Only those offerors whose requests for qualifications are deemed highly advantageous shall be invited to submit a proposal in response to the request for proposals.

SECTION 4. The Mayor shall appoint an evaluation committee, which shall consist of one representative from the Town Council, one representative from the School Committee, representatives from the Town with knowledge of design, construction, engineering, and/or operation of facilities similar to this Recreation Facility, and other professionals with relevant

79 experience. The evaluation committee shall not open any qualifications or proposals publicly.
80 At the opening of the proposals, the evaluation committee shall prepare a register of proposals
81 which shall include the name of each offeror and the number of modifications to such proposals,
82 if any, received from each offeror. The register of proposals shall be open for public inspection.
83 Notwithstanding the provisions of section 7 of chapter 4 of the General Laws, until the time the
84 contract is awarded, the contents of the proposals and any notes, minutes, evaluations or
85 communications of the evaluation committee shall remain confidential and shall not be disclosed
86 to competing offerors.

87 SECTION 5. (a) Evaluations of the proposals and, if applicable, the statements of
88 qualifications, shall be conducted by the evaluation committee. The evaluation committee shall
89 prepare its evaluations of the non-price proposals based solely on the criteria set forth in the
90 request for proposals or statement of qualifications, as may be applicable. The evaluation
91 committee shall specify in writing for each non-price evaluation criterion included within the
92 request for proposals or for each evaluation criterion set forth in the requests for qualifications a
93 rating of highly advantageous, advantageous, not advantageous, or unacceptable and the reasons
94 for the rating. After completion of the preliminary evaluation of the non-price proposals and the
95 ratings set forth above, the price proposals shall be evaluated by the evaluation committee based
96 solely on the price criteria set forth in the request for proposals. After the evaluation committee
97 completes its evaluation of the proposals, the evaluation committee shall confer with the chief
98 procurement officer, and the evaluation committee and chief procurement officer shall jointly
99 recommend the most advantageous proposals to the Mayor.

100 (b) The Town shall make a preliminary determination of the most advantageous proposal
101 from a responsible and responsive offeror taking into consideration price, estimated life-cycle

costs, non-monetary benefits to the Town, revenue stream to the Town, and the other evaluation criteria set forth in the request for proposals. Thereafter, the Chief of Staff and Town Solicitor shall negotiate all terms of the contract not deemed mandatory or nonnegotiable with such offeror. If after negotiation with such offeror, the Mayor determines that it is in the Town's best interests, the Mayor may direct the Chief of Staff and Town Solicitor to initiate negotiations with the next most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs, non-monetary benefits to the Town, revenue stream to the Town, and the other evaluation criteria set forth in the request for proposals, and may negotiate all terms of the contract not deemed mandatory or nonnegotiable with such offeror. The Mayor shall award the contract to the most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs, non-monetary benefits to the Town, revenue stream to the Town, the evaluation criteria set forth in the request for proposals, and the terms of the negotiated contract. The Mayor shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The Mayor and offeror may extend the time for acceptance by mutual agreement. The award of the contract shall be conditioned upon successful negotiation of all terms of the contract.

SECTION 6. Any contract or contracts awarded pursuant to this act shall be subject to such terms and conditions as the Chief of Staff and Town Solicitor shall determine to be in the best interests of the Town. Any such contract shall provide that prior to the construction of the Recreational Facility or modification or installation of new equipment thereto, the Town shall cause an Owner's Project Manager to independently review and approve plans and specifications for such construction or installation. Such contract shall further provide that prior to acceptance

of the Recreational Facility or modification or new equipment thereto, including work undertaken pursuant to section 7 of this act and estimated to cost more than \$100,000, the Town shall cause an Owner's Project Manager to inspect said Recreational Facility or modification or new equipment thereto, and certify that such construction, modification or installation has been completed in accordance with the approved plans and specifications.

SECTION 7. The provisions of any general or special law or regulation relating to the advertising, bidding or award of contracts, to the procurement of services or to the design and construction of improvements, except the provisions of sections 26 to 27H, inclusive, of chapter 149 of the General Laws, shall not be applicable to any selected offeror which is awarded a contract as provided in this section. The construction of any new capital improvement or any renovation, modernization, installation, repair or replacement work estimated to cost more than \$100,000, not specifically included in the initial contract or contracts for the design, construction, installation operation, maintenance, repair, replacement, and lease of the Recreational Facility and modifications of any existing facilities relating thereto, shall be procured on the basis of advertised sealed bids; provided, however, that bids need not be solicited if the contractor causes any such construction, renovation, modernization, installation, repair or replacement work to be completed without direct or indirect reimbursement from the Town or other adjustment to any fees paid by the Town related to said Recreational Facility. Bids shall be based on detailed plans and specifications, and the contract shall be awarded to the lowest responsible and eligible bidder. The contractor may act as an agent of the Town in the solicitation of bids for the construction of any new capital improvement or for any renovation, modernization, installation, repair or replacement work pursuant to this section; provided that the Town shall cause an Owner's Project Manager or a qualified engineer to independently assess

148 the need for such capital improvement, renovation, modernization, installation, repair or
149 replacement work and to review and approve the contractor's proposed plans and specifications
150 prior to advertising for bids. Based on the recommendation of the qualified engineer, the Town
151 may approve, modify, or reject the contractor's proposed plans and specification.

152 SECTION 8. Notwithstanding any general or special law or regulation to the contrary or
153 section 16 of chapter 30B of the General Laws, the Town may enter into a contract to lease a
154 parcel of Town-owned land to the successful offeror selected pursuant to this act on which the
155 Recreational Facility is to be located for a term of at least fifty (50) years, and an option for
156 renewal or extension for one additional term not exceeding five (5) years.

157 SECTION 9. The selected offeror shall furnish to the Town performance bonds, payment
158 bonds, or other forms of security for the selected offeror's obligations, and insurance, satisfactory
159 to the Town.

160 SECTION 10. The General Court may make clerical or editorial changes of form only to
161 the bill, unless the Mayor approves amendments to the bill before enactment by the General
162 Court, and further, that the Mayor be authorized to approve amendments to the bill which shall
163 be within the scope of the general public objectives of this petition.

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