

HOUSE No. 4430

By Mr. Aguiar of Fall River, a joint petition (accompanied by bill, House, No. 4430) of Kevin Aguiar and Michael J. Rodrigues (with the approval of the mayor and city council) relative to authorizing the city of Fall River to enter into certain contracts for the operation, maintenance and modification of the wastewater treatment plant, sewers, pump stations, collection system and appurtenances in said city. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An act relative to wastewater treatment in the City of Fall River.

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 or special law to the
2 contrary, the city of Fall River may enter into a contract or contracts for the operation and
3 maintenance, financing, design and construction of modifications and installation of new
4 equipment and systems necessary at the wastewater treatment facility, sewers, pump stations,
5 collection system and any and all appurtenances relating thereto, hereinafter referred to as the
6 “sewer works system” to ensure adequate services and to ensure the ability of the city's sewer
7 works system to operate in full compliance with all applicable requirements of federal, state and
8 local law; provided, however, that any such contract shall not be subject to sections 14 to 21,
9 inclusive, of chapter 149A of the General Laws and the competitive bid requirements set forth in
10 sections 38A1/2 to 38O, inclusive, of chapter 7, section 39M of chapter 30 or sections 44A to
11 44J, inclusive, of chapter 149 of the General Laws; and provided, further, that each such contract

shall be awarded pursuant to the provisions of chapter 30B of the General Laws, except for clause (3) of paragraph (b) of section 6, clause (3) of paragraph (e) and paragraph (g) of said section 6 and sections 13 and 16 of said chapter 30B.

(b) The request for proposals for such contract shall specify the method for comparing proposals to determine the proposal offering the lowest overall cost to the city, including, but not limited to, all capital financing, operating and maintenance and life cycle costs. If the city awards the contract to an offeror who did not submit the proposal offering the lowest overall cost, the city shall explain the reason for the award in writing.

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

SECTION 2. (a) Notwithstanding any general or special law to the contrary, a contract or contracts awarded pursuant to section 1 may provide for a term not exceeding 20 years, and an option for renewal or extension of operations and maintenance services for 1 additional term not exceeding 5 years. The renewal or extension shall be at the sole discretion of the city of Fall River in accordance with the original contract terms and conditions or contract terms and conditions more favorable to and acceptable to the city. A contract entered into pursuant to this

act may provide that, subject to a majority vote of the city council and approval by the mayor, the city shall not be exempt from liability for payment of the costs to finance, permit, design and construct modifications or install new equipment and systems at the sewer works system necessary to ensure the ability of said sewer works system to operate in full compliance with all applicable requirements of federal, state and local law; provided, that such costs shall be amortized over a period that is no longer than the useful life of said modifications, equipment and systems. The city's payment obligations for all operations and maintenance services shall be conditioned on the contractor's performance of said services in accordance with all contractual terms.

(b) A contract entered into pursuant to this act may provide for such activities as may be deemed necessary to carry out the purposes authorized herein including, but not limited to, financing, equipment installation 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 sewer works system and the management, operation, maintenance and repair of said city's sewer works system.

SECTION 3. The chief procurement officer of the city of Fall River 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 offer options for fulfillment of other contractual terms and such other matters as may be determined by the city. The request for proposals shall provide for the separate submission of price and shall indicate when and how the offerors shall submit the price.

SECTION 4. The chief procurement officer of the city of Fall River shall make a preliminary determination of the most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs and the other evaluation criteria set forth in the request for proposals. Said chief procurement officer may negotiate all terms of the contract not deemed mandatory or nonnegotiable with such offeror. If, after negotiation with such offeror, said chief procurement officer determines that it is in the city's best interests, said chief procurement officer may initiate negotiations with the next most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs 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. Said chief procurement officer shall award the contract to the most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs and the evaluated criteria set forth in the request for proposals and the terms of the negotiated contract. Subject to the approval of the city, said chief procurement officer shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The parties may extend the time for acceptance by mutual agreement.

SECTION 5. Any contract awarded pursuant to this act shall be subject to such terms and conditions as the city shall determine to be in the best interests of said city and shall be subject to a majority vote of the city council and approval of the mayor. Any such contract shall provide that prior to the construction, modification or installation of equipment and systems the city shall cause a qualified wastewater engineer to independently review and approve plans and specifications for said modifications, equipment and systems. Such contract shall further provide that prior to the city's acceptance of any modifications, equipment or systems, including work

undertaken pursuant to section 6 of this act and estimated to cost. more than \$100,000.00
adjusted annually, upon the anniversary date of the contract, per the Construction Cost Index
published by the Engineering News Report or if the Engineering News Report ceases to publish
the index, any published index determined by the city to be comparable to the index, the city
shall cause a qualified wastewater engineer to inspect said modifications, equipment and systems
and certify that the construction or installation has been completed in accordance with the
approved plans and specifications.

SECTION 6. (a) 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 construction
and design 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 pursuant to this act, except as provided in this section. The construction of any new
capital improvement or any renovation, modernization, installation, or replacement work
estimated to cost more than \$100,000.00, adjusted annually, upon the anniversary date of the
contract, per the Construction Cost Index published by the Engineering News Report or if the
Engineering News Report ceases to publish the index, any published index determined by the
city to be comparable to the index, not specifically included in the initial contract for the
operation and maintenance, design and construction of the sewer works system shall be procured
on the basis of advertised sealed bids; provided, however, that bids need not be solicited if the
contractor causes such construction, renovation, modernization, installation or replacement work
to be completed without direct or indirect reimbursement from the city or other adjustment to the
fees or costs paid by the city. 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 city in the solicitation of bids for the construction of any new capital improvement or for any renovation, modernization, installation or replacement work pursuant to this section, provided that the city shall cause a qualified wastewater engineer to independently assess the need for such capital improvement, renovation, modernization, installation or replacement work and to review and approve the contractor's proposed plans and specifications prior to advertising for bids. Based on the recommendation of the qualified wastewater engineer, the city may approve, modify, or reject the contractor's proposed plans and specifications including the contractor's determination of need for such capital improvement, renovation, modernization, installation or replacement work.

(b) Notwithstanding the above, the city reserves the right to effectuate the construction of any capital improvement or any renovation, modernization, installation, or replacement work estimated to cost more than \$100,000.00, adjusted annually, upon the anniversary date of the contract, per the Construction Cost Index published by the Engineering News Report or if the Engineering News Report ceases to publish the index, any published index determined by the city to be comparable to the index, not specifically included in the initial contract for the operations and maintenance, design and construction of the sewer works system in conformity with section 39M of chapter 30 or sections 44A to 44J, inclusive of chapter 149 of the General Laws.

SECTION 7. Notwithstanding the provision of any general or special law or to the contrary, the department of environmental protection may issue project approval certificates with respect to the design/build contract with improvements being made to the sewer works system in such design and construction services included in such contract shall be eligible for assistance

126 under the Water Pollution Abatement Trust, established by section 2 of chapter 29C of the
127 General Laws and any future revolving loan fund programs established by the commonwealth, as
128 applicable.

129 SECTION 8. Prior to the execution of a contract or contracts pursuant to this act, the
130 selected offeror shall furnish to the city of Fall River performance bonds, payment bonds and
131 insurance satisfactory to the city.

132 SECTION 9. Nothing in this act or any action taken or contract or agreement entered into
133 under the provisions of this act shall change or alter any contract or agreement between the city
134 of Fall River and any city, town or public entity which is in force and effect on the effective date
135 of this act.

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