

HOUSE No. 4324

The Commonwealth of Massachusetts

PRESENTED BY:

Nick Collins

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act authorizing the Economic Development and Industrial Corporation of Boston to qualify a single energy service company for the design, construction, operation, maintenance, and financing of a district energy/microgrid project and related energy savings performance contract to serve the public and private property owners and tenants in the Raymond L. Flynn Marine Park.

PETITION OF:

NAME:

Nick Collins

DISTRICT/ADDRESS:

4th Suffolk

HOUSE No. 4324

By Mr. Collins of Boston, a petition (subject to Joint Rule 12) of Nick Collins (with the approval of the mayor and city council) that the Economic Development and Industrial Corporation of the city of Boston be authorized to enter into a single energy management services contract to provide energy management services to all public and private properties, either owned or leased, within the Raymond L. Flynn Marine Park in said city. Telecommunications, Utilities and Energy. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act authorizing the Economic Development and Industrial Corporation of Boston to qualify a single energy service company for the design, construction, operation, maintenance, and financing of a district energy/microgrid project and related energy savings performance contract to serve the public and private property owners and tenants in the Raymond L. Flynn Marine Park.

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 Economic Development and Industrial Corporation of Boston
2 (EDIC), may, notwithstanding the provisions of any general or special law or regulation to the
3 contrary, enter into a single energy management services contract to provide energy management
4 services to all public and private properties, either owned or leased, within the Raymond L.
5 Flynn Marine Park (RLFMP), which services shall include the development of a district
6 energy/microgrid using a design-build-operate- transfer delivery structure and a related energy
7 savings performance contract for building energy improvements. For the purposes of this special
8 act, “energy management services” shall mean a program of services, including energy audits,
9 energy conservation measures, energy conservation projects or a combination thereof, and

10 building maintenance and financing services, primarily intended to reduce the cost of energy and
11 water in operating buildings, which may be paid for, in whole or in part, by cost savings
12 attributable to a reduction in energy and water consumption which result from such services. All
13 energy generation installed and all savings measures under the contract shall comply with current
14 local, state and federal construction and environmental codes and regulations.

15 (b) Notwithstanding any general or special law to the contrary, energy management
16 services contracts awarded under subsection (a) may provide for a term, not exceeding twenty
17 years, and an option for renewal or extension of services for one additional term, not exceeding
18 five years. The renewal or extension shall be at the sole discretion of the EDIC in accordance
19 with the original contract terms and conditions or with contract terms and conditions which are
20 more favorable to and acceptable to the EDIC.

21 (c) Before entering into an energy management services contract, the EDIC shall
22 issue a request for qualifications. Public notice of the request for qualifications shall conform to
23 the procedures set forth in subsection (I) of section 44J of chapter 149. At least 1 week before
24 soliciting a request for qualifications for an energy management services contract, the EDIC shall
25 notify the commissioner of the Department of Energy Resources (“commissioner”) in writing of
26 the EDIC’s intent to solicit qualifications. The notification, at a minimum, shall include a copy of
27 the request for qualifications. An acknowledgment of receipt shall be issued by the commissioner
28 to the EDIC upon compliance with the requirements of this subsection.

29 The request for qualifications published by the EDIC shall include the following: (1) the
30 EDIC’s full name and address; (2) The name, address, title and phone number of a contact
31 person; (3) the date, time and place where qualifications shall be received; (4) stated objectives

32 for the RFLMP district energy/microgrid program and the eligibility of all public and private
33 properties whose owners may choose to voluntarily participate, a description of the services to be
34 procured, including a facility profile with a detailed description of each building involved and
35 accurate energy consumption data for the most recent 2-year period, a list of building or energy
36 improvements to be considered or required and a statement as to whether the proposed
37 improvements will generate sufficient energy generation revenues or energy savings to fund the
38 full cost of the program; (5) the evaluation criteria for assessing the qualifications; (6) a
39 statement that the EDIC may cancel the request for qualifications, or may reject in whole or in
40 part any and all energy generation and savings measures, when it determines that cancellation or
41 rejection serves the best interests of the public; and (7) any other stipulations and clarifications
42 the EDIC may require, which shall be clearly identified in the request for qualifications.

43 Qualifications shall be opened publicly, in the presence of 2 or more witnesses, at the
44 time specified in the request for qualifications, and shall be available for public inspection. The
45 provisions of sections 44A, 44B and 44E to 44H, inclusive, of chapter 149, section 39M of
46 chapter 30, and chapter 30B, shall not apply to contracts procured under this section. Section
47 44D of said chapter 149 shall apply as appropriate to qualifications submitted for contracts under
48 this section, and every such qualification shall be accompanied by (1) a copy of a certificate of
49 eligibility issued by the commissioner of capital asset management and maintenance, and (2) by
50 an update statement.

51 The EDIC shall evaluate the qualified providers to determine which best meets the
52 EDIC's needs by reviewing the following:

53 (1) references of other energy savings contracts performed by the qualified providers;

- 54 (2) the certificate of eligibility and update statement provided by the qualified
55 providers;
- 56 (3) quality of the products proposed;
- 57 (4) methodology of determining energy generation and savings;
- 58 (5) general reputation and performance capabilities of the qualified providers;
- 59 (6) substantial conformity with the specifications and other conditions set forth in the
60 request for qualifications;
- 61 (7) time specified in the qualifications for the performance of the contract; and
- 62 (8) any other factors the agency, body, or authority considers reasonable and
63 appropriate, which factors shall be made a matter of record.

64 Respondents shall be evaluated only on the criteria set forth in the request for
65 qualifications.

66 The EDIC shall conduct discussions with, and may require public presentations by, each
67 person who submitted qualifications in response to the request for qualifications regarding his
68 qualifications, approach to the project and ability to furnish the required services. The EDIC
69 shall select in order of preference 3 such persons, unless fewer persons respond, it considers to
70 be the most highly qualified to perform the required services. The EDIC may request, accept and
71 consider proposals for the compensation to be paid under the contract only during competitive
72 negotiations conducted under subsection (e).

73 (d) The EDIC may cancel a request for qualifications, or may reject in whole or in
74 part any and all proposals when it determines that cancellation or rejection serves its best
75 interests. The EDIC shall state in writing the reason for a cancellation or rejection.

76 (e) The EDIC shall negotiate a contract with the most qualified person at
77 compensation which it determines is fair, competitive and reasonable. If the EDIC is unable to
78 negotiate a satisfactory contract with the person considered to be the most qualified at a price the
79 EDIC determines to be fair, competitive and reasonable, negotiations with that person shall be
80 formally terminated. The EDIC shall then undertake negotiations with the second most qualified
81 person. Failing accord with the second most qualified person, the EDIC shall terminate those
82 negotiations and then undertake negotiations with the third most qualified person. Should the
83 EDIC be unable to negotiate a satisfactory contract with any of the selected persons, it may
84 select additional qualified providers who responded to the request for qualifications, in the order
85 of their competence and qualification, and continue negotiations in accordance with this
86 subsection until either an agreement is reached or the EDIC cancels the request for
87 qualifications.

88 (f) The EDIC's decision regarding the selection of a qualified provider shall be final and
89 not subject to appeal except on the grounds of fraud or collusion.

90 (g) The EDIC shall provide public notice of the meeting at which it proposes to
91 award the energy management services contract, of the name of the parties to the proposed
92 contract and of the purpose of the contract. The public notice shall be made at least 10 days
93 before the meeting. The EDIC shall promptly publish in the central register notice of the award

94 and shall notify the commissioner of the award and provide a copy of the energy management
95 services contract.

96 (h) The energy management services contract shall include a written guarantee of the
97 qualified provider that either the amount of energy generation and savings guaranteed shall be
98 achieved or the qualified provider shall reimburse the EDIC for the shortfall amount. Methods
99 for measurement and verification of energy savings shall conform to the most recent standards
100 established by the Federal Energy Management Program of the United States Department of
101 Energy.

102 (i) The EDIC shall comply with the regulations for the procurement of energy
103 management services under this section for local government bodies adopted pursuant to MGL c.
104 25A, §11I by the commissioner and codified at 225 Code of Massachusetts Regulations 19:00 et
105 seq. An order of the commissioner under this subsection shall be effective and may be enforced
106 according to its terms, and enforcement shall not be suspended or stayed by the entry of an
107 appeal. The superior court for Suffolk

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109 county shall have jurisdiction over appeals of orders of the commissioner under this
110 subsection, and shall also have jurisdiction upon application of the commissioner to enforce all
111 orders of the commissioner under this subsection. The burden of proof shall be upon the
112 appealing party to show that an order of the commissioner is invalid. An aggrieved person shall
113 not be required to seek an order from the commission as a condition precedent to seeking any
114 other remedy.

115 (j) Payments under a contract for energy management services may be based in
116 whole or in part on any cost savings attributable to a reduction in energy and water consumption
117 due to the contractor's performance or revenues gained due to the contractor's services which are
118 aimed at energy and water cost savings.

119 (k) Unless no other manner of description suffices, and the EDIC so determines in
120 writing, setting forth the basis for the determination, all requirements shall be written in a
121 manner which describes the requirements to be met without having the effect of exclusively
122 requiring a proprietary supply or service, or a procurement from a sole source.

123 (1) Before entering into an energy management services contract, the EDIC shall
124 require the qualified provider to file with the EDIC a performance bond relating to the
125 installation of energy savings measures in an amount equal to 100 per cent of the estimated
126 contract value from a surety company licensed to do business in the commonwealth and whose
127 name appears on United States Treasury Department Circular 570.

128 (m) An energy management services contact may extend beyond the fiscal year in which
129 it became effective.