

Municipal Modernization Act - Public Procurement and Contracting

On August 9, 2016, Governor Baker signed into law, An Act Modernizing Municipal Finance and Government, Chapter 218 of the Acts of 2016. Among many other changes, the Act revises various procurement and contracting statutes, including: G.L. c.30B, the Uniform Procurement Act, procurement of municipal supplies and services and real property transactions; G.L. c.30, 39M, procurement for public works construction projects and materials; and G.L. c.149, §44, procurement for public building projects.

Below please find a summary of these important changes.

1. Uniform Procurement Act (“UPA”), G.L. c.30B

General Laws c.30B, §§4-7 have been amended to increase from \$35,000 to \$50,000 the threshold at which municipalities must use the sealed bids process, or issue a request for proposals, for supplies or services. The threshold for reverse auctions and sole source procurements has also increased to \$50,000.

Additionally, G.L. c.30B, §4 now requires the chief procurement officer to maintain a record of the purchase description and post notice of procurement opportunities on the COMMBUYS system operated by the state’s Operational Services Division (“OSD”).

The Act also eliminates the exemption previously found in G.L. c.30B, §1(b)(23) for contracts for compensating balance banking services.

2. Public Works Construction and Materials Contracts under G.L. c.30, §39M

General Laws c.30, §39M now provides that contracts estimated to cost less than \$10,000 “may be obtained through the exercise of sound business practices,” as defined in G.L. c. 30B, §2 (“ensuring the receipt of favorable prices by periodically soliciting price lists or quotes”). For contracts estimated to cost at least \$10,000, but not more than \$50,000, G.L. c.30, §39M states that awarding authorities may use a simplified process of seeking “written responses” from at least three persons who customarily perform the work. Awarding authorities must, however, provide “public notification” for these contracts, to include posting: (1) on the awarding authority’s website; (2) on the COMMBUYS system; (3) in the Central Register; and (4) in a conspicuous place near the primary office of the awarding authority.

Awarding authorities may also procure a “blanket contract” in order to establish a list of vendors for certain categories of work who will be “under contract to provide services for multiple individual tasks of not more than \$50,000 each, and from whom written responses will be sought” for such individual tasks. The procurement method for such blanket contracts is that described above or as set forth in G.L. c.149, §§44A-44J.

Additionally, G.L. c.30, §39M was amended to allow municipalities to use the G.L. c.30B, §5 procurement procedure for public works construction or materials contracts with an estimated cost of up to \$50,000.

3. Public Building Construction Contracts, G.L. c.149

The Act modifies the thresholds for the procurement of public building construction work in a manner similar to the changes for public works contracts. Now, pursuant to G.L. c.149, §44A, contracts with an estimated value of between \$10,000 to \$50,000 (up from \$10,000 to \$25,000), require “public notification” and written responses from at least three persons customarily performing the work. Further, the thresholds for public building contracts subject to the procurement provisions of G.L. c.30, §39M have increased from an estimated cost range of \$25,000 to \$100,000 to over \$50,000 to \$150,000.

The Act further amends G.L. c.149, §44A to clarify that for contracts estimated to cost less than \$10,000, the procurement requirement is “sound business practices,” as defined in G.L. c.30B, §2 (see above). Use of a vendor on a statewide contract procured by OSD, or a “blanket contract” procured by the public agency (as described below) also qualifies as sound business practices.

The threshold requirement for the use of filed sub-bids pursuant to G.L. c.149, §44F has increased from \$20,000 to \$25,000.

General Laws c.149, §44A has also been amended to include the “blanket contract” provisions added to G.L. c.30, §39M, described above. Therefore, for public building construction, maintenance or repair contracts, an awarding authority may procure a “blanket contract” in order to establish a list of vendors for certain categories of work who will be “under contract to provide services for multiple individual tasks of not more than \$50,000 each, and from whom written responses will be sought” for such individual tasks.

Finally, the public notice requirements in G.L. c.149, §44J relative to building projects subject to competitive bidding have been expanded to include posting on the COMMBUYS system.

Please contact Attorney Thomas W. McEnaney (tmcenaney@k-plaw.com) or Attorney David J. Doneski (ddoneski@k-plaw.com) at 617.556.0007 with any questions regarding these changes or any public bidding or contracting issues.

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