



GLENN A. CUNHA
INSPECTOR GENERAL

The Commonwealth of Massachusetts

Office of the Inspector General

JOHN W. McCORMACK
STATE OFFICE BUILDING
ONE ASHBURTON PLACE
ROOM 1311
BOSTON, MA 02108
TEL: (617) 727-9140
FAX: (617) 723-2334

January 12, 2022

Via Email

The Honorable Michael J. Rodrigues, Chair
Senate Committee on Ways and Means
State House, Room 212
Boston, MA 02133
Michael.Rodrigues@masenate.gov

Re: House 596, An Act Relative to School Operational Efficiency

Dear Chair Rodrigues:

I write in respectful opposition to House 596, *An Act Relative to School Operational Efficiency*. The bill would decrease accountability and transparency in government while also increasing vulnerability to fraud and abuse. Moreover, this bill is unnecessary. House 596 amends Chapter 30B of the Massachusetts General Laws (Chapter 30B), which governs the procurement methods cities, towns and other local jurisdictions must use to obtain supplies, services and real property. Chapter 30B, also known as the Uniform Procurement Act, ensures that jurisdictions get the supplies and services they need at a reasonable price and in a fair and transparent manner.

House 596 would create separate procurement standards for municipal and regional school districts (school districts). Stated differently, a school district would be subject to alternative procurement standards than the city or town where the school district is located. Additionally, the bill raises dramatically the price thresholds in Chapter 30B that govern which procurement method a jurisdiction must use for a purchase.

Specifically, House 596 doubles the price threshold – from \$50,000 to \$100,000 – for using written solicitations. Therefore, passage of this bill would allow only school districts to use very limited competition for any purchases under \$100,000. Without advertising or public disclosure, school districts could simply contact any three vendors of their choosing to seek but not necessarily obtain price quotes from these chosen vendors. Moreover, school districts could award a \$100,000 contract after receiving just one quote as obtaining quotes from all three vendors is not required. This level of expenditure without any accountability controls or transparency increases vulnerability to fraud and abuse.

I have had multiple meetings with the bill's sponsor, and recently I met with the sponsor and a group of school superintendents who support this legislation. The proponents claim that adhering to Chapter 30B is a waste of public funds because the procedures are onerous, time-consuming and inflexible. I respectfully disagree.

First, increasing the price thresholds dramatically without considering any accountability and transparency protections is contrary to the tenets of Chapter 30B. One of the central principles of Chapter 30B is that fair, robust competition for larger procurements saves money and promotes integrity and public confidence in government.

Chapter 30B gives local jurisdictions the tools to procure supplies and services using fair, open and competitive processes. Moreover, high-dollar procurements are usually specialized purchases that demand time, effort, attention, accountability and market competition to ensure the public receives the best value available. A local jurisdiction is expected to use sound judgment and thoughtful due diligence before spending public funds to ensure that the purchase meets the needs of the local jurisdiction. Therefore, Chapter 30B requires a local jurisdiction use an invitation for bids (IFB) or a request for proposals (RFP) for the purchase of supplies or services above \$50,000.

These methods ensure that large purchases are conducted in a thoughtful, competitive, transparent and accountable manner. Unlike a basic price quotation process, which procurement offices can conduct behind closed doors, IFBs and RFPs require local jurisdictions to advertise the procurement. Advertising informs the public how the jurisdiction is spending public money. Advertising also opens the procurement to all interested vendors and not just a select few. The larger vendor pool that would have access to these contracts includes minority-owned and women-owned businesses.

Furthermore, when using IFBs and RFPs, local jurisdictions must provide more details about the supplies or services they seek and how they will choose the winning vendor. This higher degree of specificity reduces vendor confusion and helps jurisdictions obtain the supplies or services they need the first time they conduct a procurement. It would be myopic to allow school districts to avoid meaningful competition under the guise that doing so is too difficult and time consuming.

It is also important to point out that many of the concerns that school superintendents have raised about the perceived burdens of Chapter 30B are invalidated by using the provisions of the statute itself. The superintendents claim that following Chapter 30B is time consuming and locks them into contracts even if they later find lower prices. The statute includes numerous options that school districts may use to reduce their level of effort in conducting procurements as claimed by the superintendents. For example, Chapter 30B allows jurisdictions to engage in collaborative purchasing with other jurisdictions in the Commonwealth. Chapter 30B also permits jurisdictions to purchase supplies from cooperative purchase agreements that have already been procured competitively by an in-state or out-of-state public procurement unit. This means any school district can use any existing public contract in the United States at the federal, state or local level if the contract is open to them and if the contract was competitively procured. Many school districts

already take advantage of existing Operational Service Division (OSD) and Massachusetts Higher Education Consortium (MHEC) contracts. It is important to note that OSD, MHEC and other cooperative buying organizations will develop contracts that respond to the needs of school districts based on market demand.

Arguably, school districts that pool their purchasing power through collaborative or cooperative purchases can achieve greater savings than by simply doing the independent, quote-based purchases House 596 would allow. Using existing contracts issued by others can also help individual school districts save money by reducing the burdensome level of effort that the school superintendents attribute to following Chapter 30B.

As an example of the perceived restrictions in Chapter 30B, one superintendent told me that he found paper clips that were cheaper than those available from the office-supply vendor under contract with the school district. He said, however, that he could not buy the cheaper paper clips because he was stuck with the existing contract. If a superintendent can find paper clips for the school district at a dramatically lower price from another vendor, he could purchase those paper clips using existing Chapter 30B provisions despite an existing office-supply contract. We have advised public entities that vendor contracts should be honored, but that should not prevent entities from purchasing items from other vendors if it is in the public interest to do so and the entity follows a Chapter 30B process.

Again, Chapter 30B has built-in flexibility; however, the tenets of Chapter 30B go beyond pricing and timing. Yes, procuring goods and services would be easier if we could purchase anything we wanted from whomever we wanted whenever we wanted it. But when we spend public dollars, we must be fair, accountable and transparent to the public; we also must ensure that we purchase the product that our jurisdiction needs at the best price possible.

In addition, many purchases made by school districts may not be subject to Chapter 30B regardless of the price thresholds. For example, Chapter 30B exempts contracts for the provision of special education. Chapter 30B also allows sole source procurements of any dollar value for many education-related items, such as library books, textbooks, educational programs and software.

I must reiterate that House 596 creates new procurement standards for school districts, while all other local jurisdictions would be subject to the current requirements. Many local jurisdictions share school and non-school related procurement functions to improve efficiency and reduce costs. Procurement staff would be burdened by having to use different procurement rules for schools even when purchasing the same commodity. This will likely lead to greater inefficiency and defeat the purpose of House 596.

Finally, the upper thresholds for using written solicitations have increased twice in the last eight years. In 2014, the threshold was increased from \$25,000 to \$35,000. And in 2016, the threshold was increased to its current limit of \$50,000. As a result, the threshold has more than quadrupled since Chapter 30B's enactment in 1990, when it was set at \$10,000. For context, the

Chair Rodrigues
Senate Committee on Ways and Means
January 12, 2022
Page 4 of 4

buying power of \$10,000 in 1990, based on a basic inflation calculation, has doubled to only about \$21,000. The statute, therefore, already allows local jurisdictions to use solicitations for more than double the buying power than it did when the Legislature first enacted it.

Thank you for your consideration. My Office is deeply committed to its mission of preventing and detecting fraud, waste and abuse in public spending. Therefore, I strongly endorse Chapter 30B's existence to protect the public's investment in our government. If you have any questions, please do not hesitate to reach out to me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Glenn A. Cunha". The signature is fluid and cursive, with a long horizontal stroke at the end.

Glenn A. Cunha
Inspector General