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Office of the Inspector General

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April 1, 2019

The Honorable Marc R. Pacheco, Chair
Committee on State Administration and Regulatory Oversight
State House, Room 312-B
Boston, MA 02133

The Honorable Danielle W. Gregoire, Chair
Committee on State Administration and Regulatory Oversight
State House, Room 22
Boston, MA 02133

Re: House 10, An Act Relative to Chapter 30B

Dear Chair Pacheco and Chair Gregoire:

I write in support of House 10, An Act Relative to Chapter 30B. The bill primarily makes technical corrections to Chapter 30B, the Uniform Procurement Act. Additionally, the bill increases the civil fine imposed by Chapter 30B on individuals who violate its procedures. The Office continues to file this bill each session because an updated Chapter 30B will help to eliminate potential confusion caused by inaccurate citations to other laws.

The technical changes update Chapter 30B to include correct references to recently enacted amendments to other statutes. Sections 1, 5 and 7 of the bill make changes to reflect the creation of Chapter 7C, relating to capital asset management and maintenance. Previously, Chapter 7 covered capital asset management and maintenance. Section 2 of the bill updates Chapter 30B to recognize the reorganization of the Massachusetts Department of Transportation under Transportation Reform in 2009. Section 3 of the bill corrects an inaccurate citation to a sub-clause in another statute. Section 4 updates Chapter 30B to correctly reference the Open Meeting Law contained in Chapter 30A.

Section 6 of the bill amends Chapter 30B to increase the fine for each violation. Currently, "a person who causes or conspires with another to cause a contract to be solicited or awarded in violation of" Chapter 30B can be fined not more than \$2,000 for each violation. This has been in place since enactment of Chapter 30B in 1989. My proposal is to increase this fine to \$10,000 for each violation. As it stands, the \$2,000 fine is a minor deterrent that does little to prevent a contractor or vendor from averting compliance with Chapter 30B by conspiring or

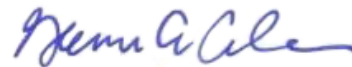
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colluding to gain an unfair advantage in securing a contract with a local jurisdiction; thereby undermining the careful procedures that support open, fair competition among vendors seeking to conduct business with local jurisdictions. The increased fine aims to deter individuals who circumvent open, fair competition and commit fraud against the taxpayers.

Currently, due to a previous drafting error, sections 22 and 23 of Chapter 30B are identical. Section 8 of this bill strikes section 23 since it is duplicative.

I strongly urge the committee to report this bill out favorably. For your reference, I have attached a redline version of the changes the bill makes. As always, if you have questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Glenn A. Cunha".

Glenn A. Cunha
Inspector General

Enclosure: House 10 redline

**Chapter 30B – Uniform Procurement Act
House 10, An Act relative to Chapter 30B**

| Bill Section | Subject Area | Summary of Section | Chapter / Section of the General Laws Amended |
|---------------------|---------------------|--|--|
| 1 | Corrective Change | Makes a corrective change by updating Section 1 to reference the new location of the Design Selection Board within the General Laws | 30B/1 |
| 2 | Style Change | Makes style changes to the language in subsection (b)(5) to refer to MassDOT and substitutes numerals when referencing chapters. | 30B/1 |
| 3 | Corrective Change | Makes a corrective change to the 30B exemption for energy contracts by substituting the correct reference to a public records exception | 30B/1 |
| 4 | Corrective Change | Makes a corrective change to the competitive sealed bidding procedures to reference the new location of the Open Meeting Law within the General Laws | 30B/5 |
| 5 | Corrective Change | Makes a corrective change updating the chapter and section reference for financial disclosure statements | 30B/16 |
| 6 | Fine Increase | Increases the fine for causing or conspiring to enter into a Contract in violation of Chapter 30B to \$10,000 from \$2,000 | 30B/17 |
| 7 | Corrective Change | Makes style changes to the definition of “disadvantaged vendor” and updates the referenced definitions sections. | 30B/18 |
| 8 | Repeal | Repeals Section 23 of Chapter 30B. Section 23 is identical to Section 22 | 30B/23 |

a. Redline

House 10, Sections 1, 2 and 3

Chapter 30B, Section 1 – Application of chapter

(a) This chapter shall apply to every contract for the procurement of supplies, services or real property and for disposing of supplies or real property by a governmental body as defined herein.

(b) This chapter shall not apply to:

(1) a contract subject to the provisions of section thirty-nine M of chapter thirty, section 11C or section 11I of chapter 25A or sections forty-four A to forty-four J, inclusive, of chapter one hundred and forty-nine;

(2) a contract subject to the provisions of sections ~~thirty-eight A1/2 to thirty-eight O, inclusive, of chapter seven;~~44 to 57, inclusive, of chapter 7C;¹

(3) an intergovernmental agreement subject to the provisions of section four A of chapter forty;

(4) a transaction with the commonwealth, except as pertains to subsection (i) of section 16;

~~(5) a contract for the purchase of materials, under specifications of the state department of highways, and at prices established by the department, pursuant to advertising and bidding for such purpose, in connection with work to be performed under the provisions of chapter eighty-one or chapter ninety;~~

(5) a contract for the purchase of materials under specifications of the division of highways in the Massachusetts Department of Transportation and at prices established by the division, pursuant to advertising and bidding for such purpose, in connection with work to be performed under chapter 81 or chapter 90;²

...

(33) energy contracts entered into by a city or town or group of cities or towns or political subdivisions of the commonwealth, for energy or energy related services; provided, however, that within 15 days of the signing of a contract for energy or energy related services by a city, town, political subdivision, or group of cities, towns or political subdivisions said city, town, political subdivision, or group of cities, towns or political subdivisions shall submit to the department of public utilities, the department of energy resources, and the office of the inspector general a copy of the contract and a report of the process used to execute the contract; provided, further, that for any such contract determined to contain confidential information under ~~subclause (r)~~subclause (s)³ of section 7 of chapter 4, the governmental body shall instead maintain a record of the procurement processes and awards for 6 years after the date of the final payment. The governmental body shall make such records available to the inspector general upon request; provided, however, that the inspector general shall not disclose said information; or

...

(e) Notwithstanding the provisions of any general or special law to the contrary, a governmental body may enter into a contract, in conformance with this chapter, for the construction and for services at a facility owned by a private party or parties, whether such facility will be located on public or private land for the disposal, recycling, composting or treatment of solid waste, sewage, septage or sludge without said contract being subject to the competitive bid process as set forth

¹ SECTION 1.

² SECTION 2.

³ SECTION 3.

in sections ~~thirty-eight A1/2 to thirty-eight O, inclusive, of chapter seven~~44 to 57, inclusive, of chapter 7C;⁴, section thirty-nine M of chapter thirty, or sections forty-four A to forty-four J, inclusive, of chapter one hundred and forty-nine; provided, however, that this subsection shall not apply to a procurement of proprietary environmental technology in accordance with subsection (5) of section forty-four A of chapter one hundred and forty-nine.

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House 10, Section 4

Chapter 30B, Section 5 – Competitive sealed bidding procedures

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(d) The procurement officer shall open bids publicly either (1) at a meeting subject to ~~the provisions of section eleven A1/2 of chapter thirty A, section nine G of chapter thirty-four or section twenty-three B of chapter thirty-nine~~sections 18 to 25, inclusive, of chapter 30A⁵, in the presence of a quorum, and the names of all bidders and the amounts of their bids shall be entered in the minutes, or (2) in the presence of one or more witnesses, and the procurement officer and said witnesses shall sign a statement under penalties of perjury listing the names of all bidders and the amounts of their bids and declaring that said list is a complete and accurate list of bids opened in the presence of said witnesses. Such minutes or statement, or a certified copy thereof, shall be filed with the contract.

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House 10, Section 5

Section 16 – Real property; disposition or acquisition

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(e) The governmental body may shorten or waive the advertising requirement if:

(1) the governmental body determines that an emergency exists and the time required to comply with the requirements would endanger the health or safety of the people or their property; provided, however, that the governmental body shall state the reasons for declaring the emergency in the central register at the earliest opportunity; or

⁴ SECTION 1.

⁵ SECTION 4.

(2) in the case of a proposed acquisition, the governmental body determines in writing that advertising will not benefit the governmental body's interest because of the unique qualities or location of the property needed. The determination shall specify the manner in which the property proposed for acquisition satisfies the unique requirements. The governmental body shall publish the determination and the reasons for the determination, along with the names of the parties having a beneficial interest in the property pursuant to section ~~forty J of chapter seven~~³⁸ of chapter 7C⁶, the location and size of the property, and the proposed purchase price or rental terms, in the central register not less than thirty days before the governmental body executes a binding agreement to acquire the property.

(f) Proposals shall be opened publicly at the time and place designated in the advertisement. The governmental body shall submit the name of the person selected as party to a real property transaction, and the amount of the transaction, to the state secretary for publication in the central register.

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House 10, Section 6

Chapter 30B, Section 17 – Writing requirement; invalidation of contracts; forfeiture; civil actions

(a) All contracts in the amount of five thousand dollars or more shall be in writing, and the governmental body shall make no payment for a supply or service rendered prior to the execution of such contract.

(b) Subject to the provisions of section three A of chapter forty, a contract made in violation of this chapter shall not be valid, and the governmental body shall make no payment under such contract. Minor informalities shall not require invalidation of a contract.

(c) A person who causes or conspires with another to cause a contract to be solicited or awarded in violation of a provision of this chapter shall forfeit and pay to the appropriate governmental body a sum of not more than ~~two thousand dollars~~ \$10,000⁷ for each violation. In addition, the person shall pay double the amount of damages sustained by the governmental body by reason of the violation, together with the costs of any action. If more than one person participates in the violation, the damages and costs may be apportioned among them.

(d) The inspector general shall have authority to institute a civil action to enforce paragraph (c) if authorized by the attorney general.

* * *

⁶ SECTION 5.

⁷ SECTION 6.

House 10, Section 7

Chapter 30B, Section 18 – Sheltered market programs

(a) For purposes of this section the following phrases shall have the following meanings:

~~"Disadvantaged vendor", any business beneficially owned by one or more minority persons in conformity with clauses (1) to (4), inclusive, of the definition of "Minority business" set forth in section forty N of chapter seven, and any business beneficially owned by one or more women as provided in the definition of "Women-owned business" set forth in said section 40N and any business beneficially owned by 1 or more veterans as provided in the definition of "veteran-owned business" as set forth in section 40N.~~

"Disadvantaged vendor", a business beneficially owned by at least 1 minority person as provided in the definition of "Minority-owned business" in subsection (b) of section 6 of chapter 7C and any business beneficially owned by at least 1 woman as provided in the definition of "Women-owned business" in said subsection (b) of said section 6 of said chapter 7C.⁸

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House 10, Section 8.

Chapter 30B, Section 23

[Duplicate of Section 22 – Cooperative purchasing agreements between public procurement units or public procurement unit and external procurement activity]

~~Section 23. A public procurement unit may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of supplies with public procurement units or external procurement activities in accordance with an agreement entered into between the participants. The public procurement unit conducting the procurement of supplies shall do so in a manner that constitutes a full and open competition.~~⁹

⁸ SECTION 7.

⁹ SECTION 8.