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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 11, An Act Revising Chapter 30B

Dear Chair Pacheco and Chair Gregoire,

I write to support House 11, An Act Revising Chapter 30B, also known as the Uniform Procurement Act. As you may know, the Office of the Inspector General (“Office”) has a broad mandate to prevent and detect the fraud, waste and abuse of public funds and property. The Office seeks to prevent the misuse of public funds through outreach and trainings related to compliance with public procurement laws, including Chapter 30B. Chapter 30B governs procurement methods cities and towns (“local jurisdictions”) must use to procure supplies, services and real property. The law is designed to ensure that public procurements and dispositions are handled in a transparent and fair manner. The changes sought in this bill strengthen Chapter 30B’s provisions and provide local jurisdictions greater guidance and flexibility in selecting which procurement method to use without sacrificing the principles of good governance and accountability.

Section 1

Section 1 of House 11 would give local jurisdictions the option to use requests for proposals (“RFPs”) when procuring goods and services estimated to cost at least \$10,000 but less than \$50,000.

Under Chapter 30B, price thresholds govern which procurement procedure a jurisdiction must use. For example, Section 4(a) of Chapter 30B generally requires jurisdictions to solicit price quotations to procure a supply or service in the amount of \$10,000 or greater, but not more than

\$50,000. However, Chapter 30B also allows for the use of an invitation for bids (“IFB”) to procure supplies or services in this same price range.¹

When using an IFB, local jurisdictions must award the contract to the responsive and responsible bidder offering the lowest price. Unlike IFBs, when using an RFP, local jurisdictions are not required to award the contract to the vendor offering the lowest price; rather, other statutory safeguards are in place that promote open, fair competition for public funds, in particular the statutorily devised rating system. As a result, favoritism is thwarted and all vendors have greater confidence in the fairness of the process.

Many jurisdictions have asked the Office if they may use RFPs for procurements costing less than \$50,000, because they want to apply comparative evaluation criteria in addition to price when procuring supplies or services. As noted above, RFPs have safeguards in place that make them appropriate for procuring supplies in the \$10,000 to \$50,000 range. Section 1 of House 11 amends the statute, which would allow local jurisdictions to use RFPs for procurements between \$10,000 and \$50,000.

Section 2

Section 2 of the bill modifies the award language for the solicitation of price quotations and adds language to clarify that price quotations cannot be modified after submission. Currently, under Section 4 of Chapter 30B – which outlines the solicitation of price quotations –there is no explicit prohibition on modifying a quote. This leaves the process susceptible to fraud as a local official could allow a favored vendor who submitted a quote – not just the lowest offeror - to modify that quote to win the solicitation. Such a situation undermines fair and open competition and could discourage other vendors from replying to solicitations, thereby limiting the number of vendors available to a local jurisdiction. This clarification in the law ensures that public jurisdictions are following the intent of Chapter 30B, which is to maintain an open, fair and competitive process.

Section 3

Section 3 of House 11 clarifies the steps a local jurisdiction must take during an emergency procurement. Section 8 of Chapter 30B permits a jurisdiction to waive the requirements of the statute if the time to comply with the Chapter 30B procedure “would endanger the health or safety of the people or their property.” Currently, under the statute, when a local jurisdiction makes an emergency procurement they must make a record of the emergency as soon after the procurement as practicable. The procurement officer is required to submit the record at the earliest possible time to the state secretary for publication in the Goods and Services Bulletin.

In order to promote transparency, Section 3 of House 11 clarifies that notification of the emergency procurement must be submitted to the Secretary of the Commonwealth within 30 days,

¹ M.G.L. c. 30B, § 4(a).

unless the emergency prohibits submission. Although not meant to add hardship, a deadline instills transparency and accountability in government transactions, reflecting the intent of public procurement laws.

Section 4

In addition, Section 4 of House 11 amends Section 15 of Chapter 30B, which governs the disposal of surplus supplies valued at less than \$10,000. Currently, when a jurisdiction seeks to dispose of surplus supplies valued at less than \$10,000, it must follow the written procedures for disposal approved by the jurisdiction's governing body (*e.g.*, a city council). House 11 provides that if the jurisdiction's governing body has not adopted any such procedures, the jurisdiction must use sound business practices for the disposal. Under Section 2 of Chapter 30B, sound business practices are defined as "ensuring the receipt of favorable prices by periodically soliciting price lists or quotes." Requiring the use of sound business practices for the disposal of surplus supplies ensures transparency and protects taxpayer dollars.

Section 5

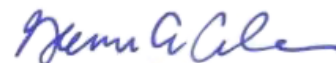
Further, Section 5 of the bill would require a contractor to provide the Office with written notification when it has credible evidence that the contractor or a principal, agent, employee or subcontractor has committed a crime, violated the Massachusetts False Claims Act, violated Chapter 30B, or received an overpayment in connection with a contract with a governmental body. This is important because it ensures that contractors perform their work in a transparent manner and in compliance with the law.

Section 6

Finally, Section 6 of the proposal grants the Office permission to promulgate regulations for the enforcement and interpretation of Chapter 30B. My Office has the expertise needed to administer, interpret and enforce the statute. By promulgating regulations, my Office can develop mechanisms for enforcing Chapter 30B; this will help local jurisdictions by allowing the Office to clarify gaps that may currently exist in the law and also will deter activities that violate the statute.

Thank you for your consideration. I urge the committee to report House 11 out favorably. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,



Glenn A. Cunha
Inspector General

**Chapter 30B – Uniform Procurement Act
House 11, An Act revising Chapter 30B**

Bill Section	Subject Area	Summary of Section	Chapter / Section of the General Laws Amended
1	Request For Proposals	Allows RFPs to be used for procurements between \$10,000 and \$50,000	30B/4
2	Quotations	Prohibits modification of price quotations after submission	30B/4
3	Emergency procurements	Requires submission of copy of an emergency procurement record within 30 days of the emergency, unless the emergency prohibits that	30B/8
4	Disposition of supplies	Requires sound business practices to be followed in the disposition of supplies if the jurisdiction has no written procedures	30B/15
5	Notification to IG	Requires a contractor to provide notice to the Inspector General if the contractor discovers certain violations of law or overpayments	30B/17
6	Regulations	Allows the Inspector General to promulgate regulations for Chapter 30B	30B/24

a. Redline

House 11, Sections 1 and 2

Chapter 30B, Section 4 - Submission of quotations

(a) Except as permitted pursuant to this section and section 7, for the procurement of a supply or service in the amount of \$10,000 or greater, but not more than \$50,000, a procurement officer shall seek written quotations from no fewer than 3 persons customarily providing the supply or service. The procurement officer shall record: (1) the names and addresses of all person from whom quotations were sought, (2) the purchase description used for the procurement, (3) the names of the persons submitting quotations and (4) the date and amount of each quotation. Such information shall be retained in the file required pursuant to section 3. A governmental body may require that any procurement in an amount of not more than \$50,000 be subject to section 5 or section 6¹.

~~(b) The procurement officer shall award the contract to the responsible person offering the needed quality of supply or service at the lowest quotation.~~

(b) Quotations shall not be modified after submission; however the procurement officer shall waive minor informalities or allow the person submitting quotations to correct the minor informality.

¹ SECTION 1.

The procurement officer shall award the contract to the lowest responsible and responsive person submitting quotations. A contract requiring payment to the governmental body of a net monetary amount shall be awarded to the highest responsible and responsive person submitting quotations.²

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* * *

House 11, Section 3

Chapter 30B, Section 8 – Emergency Procurements

Whenever the time required to comply with a requirement of this chapter would endanger the health or safety of the people or their property a procurement officer may make an emergency procurement without following that requirement. An emergency procurement shall be limited to only supplies or services necessary to meet the emergency and shall conform to the requirements of this chapter to the extent practicable under the circumstances. The procurement officer shall make a record of each emergency as soon after the procurement as practicable, specifying each contractor's name, the amount and the type of each contract, a listing of the supply or service provided under each contract, and the basis for determining the need for an emergency procurement.

The procurement officer shall submit a copy of this record ~~at the earliest possible time~~ within 30 days, unless the emergency prohibits timely submission within that time, in which case the copy shall be submitted as soon as possible,³ to the state secretary for placement in any publication established by the state secretary for the advertisement of procurements.

* * *

House 11, Section 4

Chapter 30B, Section 15 - Tangible supply; disposition

(a) A governmental body shall dispose of a tangible supply, no longer useful to the governmental body but having resale or salvage value, in accordance with this section. This section does not apply to the disposal of real property.

...

(f) For a supply with an estimated net value of less than \$10,000, the procurement officer shall dispose of such supply using written procedures approved by the governmental body. If no written procedures exist the governmental body shall use sound business practices to dispose of such supply.⁴

² SECTION 2.

³ SECTION 3.

⁴ SECTION 4.

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House 11, Section 5

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

...

(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 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.

(e) A contractor shall provide written notification to the inspector general within 60 days whenever the contractor has credible evidence that the contractor, or a principal, employee, agent or subcontractor thereof has, in connection with the award, performance, or closeout of a contract or any subcontract thereunder:

(1) committed a violation of criminal law;

(2) committed a violation of sections 5A to 5O of chapter 12, the Massachusetts false claims act;

(3) committed a violation of this chapter; or

(4) received an overpayment equal to or greater than either 5 percent of the contract value or \$5,000 dollars.⁵

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House 11, Section 6

Chapter 30B, Section 24 (new)

Section 24 [New Section – Authority to Adopt Rules and Regulations].

The inspector general may adopt, promulgate, amend, and rescind rules and regulations for the interpretation, administration and enforcement of this chapter.⁶

⁵ SECTION 5.

⁶ SECTION 6.