

Chapter 362 of the Acts of 1996:

Chapter 362. AN ACT AUTHORIZING THE CITY OF TAUNTON TO ENTER INTO CONTRACTS FOR THE OPERATION AND MAINTENANCE, LEASE OR SALE AND MODIFICATION OF THE WASTEWATER TREATMENT PLANT, SEWERS AND PUMP STATIONS.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding the provisions of any general or special law to the contrary, the city of Taunton may enter into a contract for the lease or sale, operation and maintenance, financing, design and construction of modifications, and installation of new equipment and systems necessary at the wastewater treatment plant, sewers and pump stations to ensure adequate services and to ensure the ability of said city's wastewater treatment plant, sewers and pump stations to operate in full compliance with all applicable requirements of federal, state and local law; provided, however, that such contract or contracts shall not be subject to the competitive bid requirements set forth in sections thirty-eight A'A to thirty-eight O, inclusive, of chapter seven of the General Laws, section thirty-nine M of chapter thirty of the General Laws, or sections forty-four A to forty-four M, inclusive, of chapter one hundred and forty-nine of the General Laws; provided, further, that said contract shall be awarded pursuant to the provisions of chapter thirty B of the General Laws except for paragraph (3) of subsection (b), paragraph (3) of subsection (e), subsection (g) of section six and sections thirteen and sixteen. The request for proposals for such contract shall specify the method for comparing proposals to determine the proposal offering the lowest overall cost to the city, including, but not limited to, all capital financing, operating and maintenance costs. If the city awards the contract to an offeror who did not submit the proposal offering the lowest overall cost, the city shall explain the reason for the award in writing.

SECTION 2. (a) Notwithstanding the provisions of any general or special law to the contrary, a contract or contracts awarded pursuant to section one may provide for a term not exceeding twenty years, and an option for renewal or extension of operations and maintenance services for one additional term not exceeding five years. The renewal or extension shall be at the sole discretion of the city in accordance with the original contract terms and conditions or contract terms and conditions more favorable to and acceptable to the city. A contract entered into pursuant to this act may provide that, subject to a majority vote of the municipal council, the city shall not be exempt from liability for payment of the costs to finance, permit, design and construct modifications or install new equipment and systems at the wastewater treatment plant, sewers and pump stations necessary to ensure the ability of said wastewater treatment plant, sewers and pump stations to operate in full compliance with all applicable requirements of federal, state and local law, provided that such costs shall be amortized over a period that is no longer than the useful life of said modifications, equipment and systems. The city's payment obligations for all operations and maintenance services shall be

conditioned on the contractor's performance of said services in accordance with all contractual terms.

(b) Any contract entered into pursuant to this act may provide for such activities deemed necessary to carry out the purposes authorized herein, including, but not limited to, equipment, facility or land sale or lease, equipment installation and replacement, performance testing and operation, studies, design and engineering work, construction work, ordinary repairs and maintenance, and the furnishing of all related material, supplies and services required for the wastewater treatment plant, sewers, and pump stations and the management, operation, maintenance and repair of said city's wastewater treatment plant, sewers and related pump stations.

SECTION 3. The chief procurement officer shall solicit proposals through a request for proposals which shall include those items in paragraphs (1) and (2) of subsection (b) of section six of chapter thirty B of the General Laws and proposed key contractual terms and conditions to be incorporated into the contract, some of which may be deemed mandatory or non-negotiable; provided, however, that the request for proposals may request proposals or offer options for fulfillment of other contractual terms, and such other matters as may be determined by the city.

SECTION 4. The chief procurement officer shall make a preliminary determination of the most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs and the other evaluation criteria set forth in the request for proposal. The chief procurement officer may negotiate all terms of the contract not deemed mandatory or nonnegotiable with such offeror. If after negotiation with such offeror, the chief procurement officer determines that it is in the city's best interests, the chief procurement officer may determine the next most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs and the other evaluation criteria set forth in the request for proposals, and may negotiate all terms of the contract not deemed mandatory or nonnegotiable with such offeror. The chief procurement officer shall award the contract to the most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs, the evaluated criteria set forth in the request for proposals, and the terms of the negotiated contract. Subject to the approval of the mayor and the municipal council, the chief procurement officer shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. Such award shall be subject to sections five and six. The parties may extend the time for acceptance by mutual agreement.

SECTION 5. Notwithstanding any other provisions of this act, it shall be a mandatory term of any request for proposal issued by the city of Taunton and of any contract entered into by said city with any party regarding the subject matter of this act, that any party that has entered into a contract pursuant to the terms of this act with said city, shall require, in order to maintain stable and productive labor

relations and to avoid interruption of the operation of the plant and to preserve the health, safety and environmental conditions of residents of said city and surrounding communities, that any and all employees working on the operation and maintenance of the wastewater treatment plant, sewers and pumping stations be offered employment by any party entering into a contract with said city for the operation and maintenance of said facilities, and furthermore, said party entering into a contract with said city, shall adopt all terms and conditions of employment provided by the applicable labor agreement negotiated between the labor organization representing said employees and the applicable employer who has most recently employed said employees prior to entering into any contract pursuant to this act, and provided that any party entering into said contract with said city pursuant to this act will pay all said employees no less than the sum of the applicable wages paid to said employees by their previous employer and by said city, if applicable. Moreover, said parties shall furthermore agree to meet its legal obligations with regard to any labor organization representing employees engaged in the operation and maintenance of the wastewater treatment plant, sewers and pumping stations described herein. Notwithstanding any other provisions of this act, any proposal or contract for this purpose and not complying with the above terms, shall be disqualified from consideration.

SECTION 6. Subject to the provisions of this act, any contract awarded pursuant to this act shall be subject to such terms and conditions as the mayor and the municipal council shall determine to be in the best interests of the city of Taunton and shall be subject to a majority vote of the municipal council. Any such contract shall provide that prior to the construction of modifications or installation of equipment and systems the city shall cause a qualified wastewater engineer to independently review and approve plans and specifications for said modifications, equipment and systems. Such contract shall further provide that prior to the city's acceptance of any modifications, equipment or systems, including work undertaken pursuant to section eight of this act and estimated to cost more than one hundred thousand dollars, the city shall cause a qualified wastewater engineer to inspect said modifications, equipment and systems and certify that the construction or installation has been completed in accordance with the approved plans and specifications.

SECTION 7. Notwithstanding the provisions of any general or special law or regulation to the contrary, the department of environmental protection may issue project approval certificates with respect to the contract procured by said city for wastewater treatment facility improvements, and any design and construction services included in such contract shall be eligible for assistance under the Water Pollution Abatement Trust established by section two of chapter twenty-nine C of the General Laws.

SECTION 8. The provisions of any general or special law or regulation relating to the advertising, bidding or award of contracts, to the procurement of services or to the construction and design of

improvements, shall not be applicable to any selected offeror which is awarded a contract pursuant to this act, except as provided in this section. The construction of any new capital improvement or any renovation, modernization, installation, or replacement work estimated to cost more than one hundred thousand dollars, not specifically included in the initial contract for the lease or sale, operation and maintenance, design and construction of the wastewater plant, sewers and pump stations, shall be procured on the basis of advertised sealed bids; provided, however, that bids need not be solicited if the contractor causes such construction, renovation, modernization, installation or replacement work to be completed without direct or indirect reimbursement from the city or other adjustment to the fees or costs paid by the city, including, but not limited to, any adjustment to water or sewer rates paid by the city's residents or businesses. Bids shall be based on detailed plans and specifications and the contract shall be awarded to the lowest responsible and eligible bidder. The contractor may act as an agent of the city in the solicitation of bids for the construction of any new capital improvement or for any renovation modernization, installation or replacement work pursuant to this section, provided that the city shall cause a qualified wastewater engineer to independently assess the need for such capital improvement, renovation, modernization, installation or replacement work and to review and approve the contractor's proposed plans and specifications prior to advertising for bids. Based on the recommendation of the qualified wastewater engineer, the city may approve, modify, or reject the contractor's proposed plans and specifications. Any contract or contracts awarded pursuant to this act shall provide that in the event that the city does not approve the contractor's proposed plans and specifications pursuant to this section, the city or the contractor may terminate said contract or contracts under the terms and conditions of said contract or contracts.

All contracts for such work shall be subject to the requirements of Chapter 2, Article 11, of the city ordinances relating to the employment of residents of the city in municipal construction projects.

SECTION 9. All contracts or subcontracts for new construction, renovation, modernization, improvement or capital improvements to the Taunton wastewater treatment plant, including, but not limited to, all treatment facilities and pump stations shall be awarded only to persons or entities whose bids or proposals are subject to said persons or entities being signatory to a project labor agreement with the appropriate labor organizations which includes an obligation for said labor organizations and its constituent members not to strike with respect to the work on said construction project and which also establishes uniform work rules and schedules for the project. Said project agreement shall be entered into in order to facilitate the timely and efficient completion of the construction of said improvements and make available a ready and adequate supply of highly trained skilled craft workers which shall provide a negotiated

commitment which is a legally enforceable means of assuring labor stability and labor peace over the life of this project. The applicable entity responsible for any construction, renovation, modernization, improvement, or capital improvement to the Taunton wastewater plant and pumping stations shall designate a general contractor, project manager, or similar construction firm which is familiar in the negotiation and administration of project labor agreements to manage and oversee the construction of the project, including the development and implementation of labor relation policies for the project, and to instruct such general contractor, project manager, or other construction firm to negotiate a mutually agreeable project labor agreement covering the above described work. All contracts for such work shall be subject to the requirements of Chapter 2, Article 11, of the city ordinances relating to the employment of residents of the city in municipal construction projects.

SECTION 10. This act shall take effect upon its passage.

Approved August 9, 1996.