



TOWN OF BROOKLINE

Massachusetts

DEPARTMENT OF FINANCE

PURCHASING DIVISION

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To: Mel Kleckner, Patty Correa, Lloyd Gellineau, Kara Brewton
From: David Geanakakis, Chief Procurement Officer
Date: October 1, 2020
Re: Warrant Article 15

The majority of Town procurements fall under 3 separate procurement laws: MGL C30B for goods and services, MGL C149 for building construction and MGL C30 39M for horizontal, public works, construction. All have similar requirements, but this proposed bylaw does not comply with the sections listed on the following 2 pages of each law.

To a certain extent, the Town's contracts do participate in existing State and federal DBE programs as follows (although currently, there is incomplete information compiled regarding the Town contract breakdowns):

State contracts

Under Ch30B and Ch149, the Town does make significant purchases from MA State Contracts issued and awarded by the State Operational Service Division. These are for office supplies, technology, building materials, and a wide variety of goods and services. Each State Contract company is required have DBE vendor participation program and report to OSD that information on an annual basis. The Town's purchases from these contracts automatically include that DBE spend.

Highway contracts

Under Ch 30 39M, when using transportation funding either from State or Federal programs, DPW Engineering is required to comply with DBE requirements as set out under those programs.

Building projects

Under Ch 149, the Building Department is required to follow MSBA DBE guidelines for school building projects funded by the State, the Ridley School and Pierce School projects are examples. In addition, those DBE guidelines are currently being followed for the High School and Driscoll School projects.

Note on CH30B sheltered market programs:

A somewhat recent addition to Ch30B is Section 18 Sheltered market programs, included below for reference. It is my understanding it would require a Disparity Study to separately comply with constitutional requirements and no other municipalities have implemented a program under this section currently.

There is no corresponding sheltered market program provision in Ch149 or Ch30 39M.

Ch30B

Section 5: Competitive sealed bidding procedures

(g) The procurement officer shall award the contract to the lowest responsible and responsive bidder.

Section 18: Sheltered market programs

Section 18. (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.

"Sheltered market program", a program under which certain contracts are designated by the chief procurement officer for procurement from one or more classes of disadvantaged vendors.

(b) When authorized by majority vote, a chief procurement officer may establish a sheltered market program in conformity with the requirements of this section. Such authorization may apply to a single contract or to any number or types of contracts, shall specify the class or classes of disadvantaged vendors to be included in the sheltered market program, and shall to the extent constitutionally required be based on findings that such program is a remedy for the present effects of past discrimination.

(c) A procurement officer shall not solicit or award a contract pursuant to a sheltered market program until the chief procurement officer, after notice and a public hearing, has approved written procedures for the operation of such program, has filed such procedures with the state office of minority and women business assistance and the secretary of state, and has published such procedures or a summary thereof in a newspaper of general circulation within the area served by the governmental body and in any publication established by the secretary of state for the advertisement of such notices.

Such written procedures shall, at a minimum, include:

(1) procedures for the certification of disadvantaged vendors, which procedures shall require the use of standardized application forms, the submission of applications sworn to under the penalties of perjury, the maintenance of certification records by the chief procurement officer or his designee, an opportunity for a business denied certification to be heard on such denial, the issuance of certificates valid for a period not longer than two years, notice and an opportunity to be heard prior to revocation of certificates, and a public information campaign to encourage certification; provided, however, that a governmental body's certification procedures may authorize participation in its sheltered market program by any eligible disadvantaged vendor duly certified under the sheltered market program of another governmental body or by the state office of minority and women business assistance;

(2) in the event the authorization required by paragraph (b) does not designate the specific contracts to which the sheltered market program applies, procedures for designating such contracts, which procedures shall (i) set forth criteria for designating contracts, (ii) require that each designation be in writing and based on written findings that the contract meets such criteria, and (iii) provide for an administrative review of the appropriateness of including the contract in the sheltered market program;

(3) procedures for ensuring effective competition among disadvantaged vendors for contracts within the sheltered market program, including procedures requiring (i) supplemental advertising in media serving disadvantaged communities, (ii) for the procurement of a supply or service in the amount of one thousand dollars but less than ten thousand dollars, the receipt of written or oral quotations from no fewer than three certified disadvantaged vendors

customarily providing such supply or service; provided, however, that a quotation shall not be considered until the vendor has submitted to the procurement officer a copy of a valid certificate, and (iii) for the procurement of a supply or service in the amount of ten thousand dollars or more, the receipt of responsive bids or proposals from no fewer than three certified disadvantaged vendors; provided, however, that a bid or proposal shall not be considered unless accompanied by a copy of a valid certificate; and

(4) procedures for review and assessment of the sheltered market program, at least annually, based upon a detailed written report by the chief procurement officer or his designee, which report shall at a minimum set forth for the twelve months then ending (i) the number and dollar value of contracts awarded to disadvantaged vendors under the sheltered market program, (ii) the total number, the percentage, the total dollar value, and the percentage dollar value of contracts awarded by the governmental body to disadvantaged vendors eligible for participation in the sheltered market program, (iii) a description of other efforts undertaken by the governmental body to increase its contracting with disadvantaged vendors, and (iv) recommendations for continuing, modifying, or terminating the program.

A violation of any valid procedure adopted pursuant to this section shall constitute a violation of this chapter.

(d) Advertisements for a contract within the sheltered market program shall state that the contract will be awarded under a sheltered market program and shall specify the class or classes of disadvantaged vendors to which competition for the contract is limited.

(e) In no event shall a contract designated for inclusion in a sheltered market program be awarded on a sole source basis. If fewer than three responsive bids, proposals, or quotations are received, or if all bids, proposals, or quotations are rejected pursuant to section nine, the contract shall not be awarded under the sheltered market program.

(f) No contract shall be awarded under a sheltered market program for a term exceeding three years, including any renewal, extension, or option. No disadvantaged vendor shall be awarded a sheltered market program contract if at the time of award such vendor is a party to any other sheltered market program contract the term of which, including any renewal, extension, or option, has not expired. No disadvantaged vendor shall be awarded more than three sheltered market program contracts by one or more governmental bodies within any one-year period.

(g) Except as otherwise provided in this section, all procurements under a sheltered market program shall be undertaken in accordance with the provisions of this chapter.

Ch149

(C) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost more than \$50,000 ... shall be awarded to the lowest responsible and eligible bidder on the basis of competitive bids

Ch30 39M

Every contract for the construction, reconstruction, alteration, remodeling or repair of any public work, or for the purchase of any material, as hereinafter defined, by the commonwealth, or political subdivision thereof, or by any county, city, town, district or housing authority that is estimated by the awarding authority to cost more than \$50,000, and every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency, as defined by subsection (1) of section 44A of chapter 149, estimated to cost more than \$50,000 ... shall be awarded to the lowest eligible responsible bidder on the basis of competitive bids