

[CHAPTER 151 OF THE ACTS OF 2011]

AN ACT AUTHORIZING A DESIGN AND BUILD CONTRACT FOR AND LEASE OF A RECREATIONAL FACILITY IN THE CITY KNOWN AS THE TOWN OF BRAINTREE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. (a) Notwithstanding any general or special law or any regulation to the contrary, the city known as the town of Braintree may enter into contracts for the design, construction, installation, operation, maintenance, repair, replacement and lease of town land for a new recreational facility to consist of a pool and skating rink as such contract may be necessary to ensure adequate services and to ensure the ability of the recreational facility to operate in full compliance with all applicable requirements of federal, state and local law; provided, however, that such contracts shall not be subject to the competitive bid requirements of sections 38A½ to 38O, inclusive, of chapter 7 of the General Laws, section 39M of chapter 30 and sections 44A to 44M, inclusive, of chapter 149 of the General Laws; provided further, that each such contract shall be awarded pursuant to chapter 30B of the General Laws, except for clause (3) of paragraph (b) of section 5, paragraphs (d), (e) and (g) of said section 5, clause (3) of paragraph (b) of section 6, paragraphs (e), (g), (h) and (i) of said section 6 and sections 12 and 13. Any contract for the construction of the recreational facility shall be subject to sections 26 to 27H, inclusive, of chapter 149 of the General Laws. The town of Braintree may lease a parcel of land owned by the town on which the recreational facility shall be located, provided, however, that the contract to lease town-owned land for this purpose shall not be subject to the bidding requirements of section 16 of said chapter 30B.

(b) The request for proposals for any such contract shall specify the method for comparing proposals to determine the proposal offering the lowest overall cost to the town and the highest overall benefit to the town including, but not limited to, all design costs, construction costs, capital equipment and capital improvement costs, operating and maintenance costs and projected revenue stream for the town. If a contract is awarded to an offeror who did not submit the proposal offering the lowest overall cost or the highest overall benefit to the town, the town shall explain the reason for the award in writing.

(c) The request for proposals shall set forth mandatory performance guarantees that the recreational facility shall be required to meet, as constructed. The contract which is negotiated with the selected offeror based on the request for proposals shall obligate the selected offeror to meet such mandatory performance guarantees and shall set forth the minimum design requirements for construction and the acceptance tests to be conducted upon the completion of the construction to assure that the recreational facility is capable of meeting such performance guarantees.

SECTION 2. (a) Notwithstanding section 3 of chapter 40 of the General Laws or any other general or special law to the contrary, a contract entered into pursuant to section 1 may provide for a term of at least 50 years and an option for renewal or extension of operation, maintenance, repair and replacement services for 1 additional term not exceeding 5 years. The renewal or extension shall be

at the sole discretion of the town in accordance with the original contract terms and conditions or with contract terms and conditions more favorable to and acceptable to the town.

(b) A contract entered into pursuant to this act may provide that the town shall not be exempt from liability for payment of the costs to design, construct, install, lease, permit, operate, maintain, repair and replace the recreational facility as necessary to ensure the ability of such facility to operate in full compliance with all applicable requirements of federal, state and local law; provided, however, that any costs relating to the design, construction, installation, permitting and leasing shall be amortized over a period that is no longer than the useful life of the recreational facility. The town's payment obligation for services described herein shall be conditioned on the contractor's performance of such services in accordance with all contractual terms.

(c) A contract entered into pursuant to this act may provide for such activities as may be deemed necessary to carry out the purposes authorized herein including, but not limited to, permitting services, equipment purchases, facility or land lease, equipment installation, repair 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 construction, management, maintenance, operation, repair and replacement of the recreational facility.

SECTION 3. (a) The chief procurement officer shall solicit proposals through a request for proposals which shall include those items in clauses (1) and (2) of paragraph (b) of section 6 of chapter 30B of the General Laws and the proposed key contractual terms and conditions to be incorporated into the contract, some of which may be deemed mandatory or nonnegotiable; provided, however, that such request for proposals may request proposals or invite nonmonetary options for the fulfillment of some contractual terms, as may be determined by the town. The request for proposals shall provide for the separate submission of price and shall indicate when and how the offerors shall submit their price proposals. The request for proposals shall require each offeror to submit with its proposal a plan of services detailing the plan for the design, construction, operation and maintenance of the recreational facility, any monetary payments to the town and any nonmonetary benefits to the town. The director of finance of the town of Braintree shall serve as the chief procurement officer.

(b) Notwithstanding any other provision of this act, the chief procurement officer may use a request for qualifications prior to the request for proposals which shall serve as a basis for which the town creates a short list of offerors to receive such request for proposals. Statements of qualifications received in response to such request for qualifications shall be solicited and evaluated in a manner similar to that required for a request for proposals as set forth in this section. Only those offerors whose requests for qualifications are deemed highly advantageous shall be invited to submit proposals in response to the request for proposals.

SECTION 4. The mayor shall appoint an evaluation committee, which shall consist of 1 representative from the town council, 1 representative from the school committee, representatives from the town with knowledge of design, construction, engineering or operation of facilities similar to the recreational facility and other professionals with relevant experience. The evaluation committee shall not open any qualifications or proposals publicly. At the opening of the proposals, the evaluation committee shall prepare a register of proposals which shall include the name of each offeror and the number of modifications to the proposals, if any, received from each offeror. The register of proposals shall be open for public inspection. Notwithstanding section 7 of chapter 4 of the General Laws, until the time the contract is awarded, the contents of the proposals and any notes, minutes, evaluations or communications of the evaluation committee shall remain confidential and shall not be disclosed to competing offerors.

SECTION 5. (a) Evaluations of the proposals and, if applicable, the statements of qualifications, shall be conducted by the evaluation committee. The evaluation committee shall prepare its evaluations of the nonprice proposals based solely on the criteria set forth in the request for

proposals or statement of qualifications, as may be applicable. The evaluation committee shall specify in writing for each nonprice evaluation criterion included within the request for proposals or for each evaluation criterion set forth in the requests for qualifications a rating of highly advantageous, advantageous, not advantageous or unacceptable and the reasons for the rating. After completion of the preliminary evaluation of the nonprice proposals and the ratings set forth above, the price proposals shall be evaluated by the evaluation committee based solely on the price criteria set forth in the request for proposals. After the evaluation committee completes its evaluation of the proposals, the evaluation committee shall confer with the chief procurement officer and the evaluation committee and chief procurement officer shall jointly recommend the most advantageous proposals to the mayor.

(b) The town shall make a preliminary determination of the most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs, nonmonetary benefits to the town, revenue stream to the town and the other evaluation criteria as set forth in the request for proposals. Thereafter, the chief of staff and town solicitor shall negotiate all terms of the contract not deemed mandatory or nonnegotiable with such offeror. If after negotiation with such offeror, the mayor determines that it is in the town's best interests, the mayor may direct the chief of staff and town solicitor to initiate negotiations with the next most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs, nonmonetary benefits to the town, revenue stream to the town, 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 mayor shall award the contract to the most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs, nonmonetary benefits to the town, revenue stream to the town, the evaluation criteria set forth in the request for proposals and the terms of the negotiated contract. The mayor shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The mayor and offeror may extend the time for acceptance by mutual agreement. The award of the contract shall be conditioned upon successful negotiation of all terms of the contract.

SECTION 6. Any contract awarded pursuant to this act shall be subject to such terms and conditions as the chief of staff and town solicitor shall determine to be in the best interests of the town. Any such contract shall provide that prior to the construction of the recreational facility or modification or installation of new equipment thereto, the town shall cause an owner's project manager to independently review and approve plans and specifications for such construction or installation. Such contract shall further provide that prior to acceptance of the recreational facility or modification or new equipment thereto, including work undertaken pursuant to section 7 and estimated to cost more than \$100,000, the town shall cause an owner's project manager to inspect the recreational facility or modification or new equipment thereto and certify that such construction, modification or installation has been completed in accordance with the approved plans and specifications.

SECTION 7. The provisions of any general or special law or regulation relating to the advertising, bidding or awarding of contracts, to the procurement of services or to the design and construction of improvements, except sections 26 to 27H, inclusive, of chapter 149 of the General Laws, shall not be applicable to any selected offeror which is awarded a contract under this act. The construction of any new capital improvement or any renovation, modernization, installation, repair or replacement work estimated to cost more than \$100,000 and not specifically included in the initial contract for the design, construction, installation, operation, maintenance, repair, replacement and lease of the recreational facility and modifications of any existing facilities relating thereto, shall be procured on the basis of advertised sealed bids; provided, however, that bids need not be solicited if the contractor causes any such construction, renovation, modernization, installation, repair or replacement work to be completed without direct or indirect reimbursement from the town or other adjustment to the fees paid by the town related to the recreational facility. 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 town in the solicitation of bids for the construction of any new capital improvement or for any renovation, modernization, installation, repair or replacement work pursuant to this section; provided, however, that the town shall cause an owner's project manager or a qualified engineer to independently assess the need for such capital improvement, renovation, modernization, installation, repair 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 owner's project manager or the qualified engineer, the town may approve, modify or reject the contractor's proposed plans and specifications.

SECTION 8. Notwithstanding section 16 of chapter 30B of General Laws or any other general or special law, or rule or regulation to the contrary, the town may lease a parcel of town-owned land to the successful offeror selected pursuant to this act on which the recreational facility is to be located for a term of at least 50 years and an option for renewal or extension for 1 additional term not exceeding 5 years. A lease entered into under this act shall include a provision that the parcel to be leased shall only be used for a recreational facility to consist of a pool and a skating rink.

SECTION 9. The selected offeror shall furnish to the town performance bonds, payment bonds, or other forms of security for the selected offeror's obligations, and insurance, satisfactory to the town.

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

Approved, November 3, 2011.