

2020 -- H 7378

LC003607

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO TOWNS AND CITIES --PRIVATIZATION OF MUNICIPAL SERVICES

Introduced By: Representatives Jackson, Noret, Azzinaro, Casimiro, and Bennett

Date Introduced: January 30, 2020

Referred To: House Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 45 of the General Laws entitled "TOWNS AND CITIES" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 55.1

4 PRIVATIZATION OF MUNICIPAL SERVICES

5 **45-55.1-1. Statement of intent.**

6 If it is determined that privatization of certain municipal governmental functions may be
7 appropriate, the privatization inquiry process should be well defined with appropriate non-
8 partisan, institutional oversight. The principles that guide a privatization inquiry shall include the
9 following:

10 (1) To ensure the potential savings are realized and maximized -- build cost controls and
11 containment incentives into contracts to eliminate excessive and unreasonable overhead costs and
12 profits at the expense of citizens of each municipality;

13 (2) To preserve and promote competition -- permit in-house program managers and
14 municipal public employees to bid for the contract on a level playing field;

15 (3) To ensure quality and responsiveness -- develop reliable measures of service quality,
16 strengthen in-house monitoring capacity and expertise, and write contracts with periodic
17 performance reporting;

18 (4) To ensure accountability, control, and avoidance of conflicts of interest with
19 departmental managers -- write detailed contract specifications, and require record-keeping and

1 periodic reports:

2 (5) To address legal and political barriers -- involve affected groups in the decision
3 making process; and

4 (6) To recognize the impact on service recipients, employees, and their families -- enable
5 municipal public employees to have an opportunity to bid for their work.

6 **45-55.1-2. Definitions.**

7 When used in this chapter:

8 (1) "Conversion differential" means transition costs and costs associated with starting up
9 or closing down during conversion to purchased services or in the event of the need to bring
10 services back in-house.

11 (2) "Cost comparison" means an analysis of the comparative costs of providing the
12 service in-house or by privatization.

13 (3) "In-house bid" means the cost of the proposal proffered by in-house municipal
14 programs and employees and their representatives pursuant to § 45-55.1-3(b).

15 (4) "In-house costs" means a detailed budget breakdown of the current costs of providing
16 the service or program proposed for privatization.

17 (5) "Privatization" or "privatization contract" means an agreement or combination or
18 series of agreements by which a non-governmental person or entity agrees with a municipality to
19 provide services expected to result in a fiscal year expenditure of at least one hundred fifty
20 thousand dollars (\$150,000) (as of July 1 of each year, the amount shall increase to reflect
21 increases in the consumer price index calculated by the United States Bureau of Labor Statistics
22 for all urban consumers nationally during the most recent twelve (12) month period for which
23 data are available or more), which would contract services which are substantially similar to and
24 in replacement of work normally performed by an employee of an agency as of June 30, 2020:

25 (i) "Privatization" or "privatization contract" excludes:

26 (A) Contracts resulting from an emergency procurement;

27 (B) Contracts with a term of one hundred eighty (180) days or less on a non-recurring
28 basis;

29 (C) Contracts to provide highly specialized or technical services not normally provided
30 by municipal employees;

31 (D) Any subsequent contract which:

32 (I) Renews or rebids a prior privatization contract which existed before June 30, 2020; or

33 (II) Renews or rebids a privatization contract that was subject to the provisions of this
34 statute after its enactment; and

1 (E) An agreement to provide legal services or management consulting services.

2 (6) "Statement of work and performance standards" means a clear statement of the nature
3 and extent of the work to be performed with measurable performance standards as set forth in §
4 45-55.1-3(b).

5 (7) "Transition costs" means the cost of contracting including monitoring vendors for
6 accountability, costs associated with unemployment compensation, payment of accrued leave
7 credits, bumping, and retention factors for those with statutory status. Transition costs shall not
8 include department overhead or other costs that would continue even if the services were
9 privatized.

10 **45-55.1-3. Preclosure analysis.**

11 (a) Prior to the closure, consolidation or privatization of any municipal facility, function
12 or program, the chief municipal administrative officer or their designee, shall conduct a thorough
13 cost comparison analysis and evaluate quality performance concerns before deciding to purchase
14 services from private vendors rather than provide services directly.

15 (b) The chief municipal administrative officer shall notify the bargaining representatives
16 of municipal employees who will be directly impacted by a potential privatization in writing at
17 least six (6) months in advance of its consideration of privatizing a municipal service and
18 complete the following process:

19 (1) Document the current in-house costs of providing the services with a detailed budget
20 breakdown. The in-house cost shall include any department overhead and other costs that would
21 continue even if the service was contracted out;

22 (2) Prepare a statement of work and performance standards which shall form the basis for
23 the requests for proposals (RFP) and which shall include the following:

24 (i) A clear statement of work with measurable performance standards including
25 qualitative as well as quantitative standards that bidders must meet or exceed;

26 (ii) Requirements that contractors meet affirmative action, disability and other
27 nondiscriminatory and service standards currently required of municipal agencies;

28 (iii) A clear format that will enable comparison of competitive bids and in-house bids.
29 The format must require detailed budget breakdowns.

30 (c) Prior to the issuance of the RFP current public municipal employees must be notified
31 of the intent to solicit bid proposals and of the decision timeline. Additionally, at least sixty (60)
32 calendar days prior to the issuing of an RFP, the cost analysis and statement of work shall be sent
33 to the bargaining representatives of state employees who will be directly impacted by a potential
34 privatization.

1 (d) Prior to, or up until the time when a prospective offeror is required to submit to the
2 municipality a proposal for a privatization contract, directly impacted municipal employees and
3 their bargaining representatives shall be afforded an opportunity to present a new cost estimate,
4 reflecting any innovations that they could incorporate into the work performance standards. This
5 new cost estimate shall be deemed an in-house bid, which shall form the basis for the eventual
6 cost comparison. The chief municipal administrative officer shall provide technical and
7 informational assistance to the in-house state work group in its preparation of an in-house bid.

8 (e) Prior to or at any time before or after the normal procurement process, the director
9 may elect to accept the in-house bid or proceed with the normal procurement process which must:

10 (1) Incorporate the statement of work and performance standards; and

11 (2) Require bidders to meet the same statement of work performance standards as would
12 be expected by an in-house cost estimate; and

13 (3) Include bid forms requiring a sufficiently detailed breakdown of cost categories to
14 allow accurate and meaningful comparisons, if applicable.

15 (f) The in-house bid developed pursuant to subsection (d) of this section shall be kept
16 confidential from bidders.

17 **45-55.1-4. Cost comparison.**

18 The chief municipal administrative officer shall analyze all vendor bids as compared to
19 current delivery of service costs or an in-house bid, whichever is lower, according to the
20 following:

21 (1) Any cost comparison must include an analysis of:

22 (i) Comparative benefits for employees to meet the requirements of the statement of work
23 and performance standards;

24 (ii) All transition costs as defined in § 45-55.1-2(f);

25 (iii) Any conversion costs as defined in § 45-55.1-2(e); and

26 (iv) Areas where the bidder's costs appear artificially low, thereby putting the
27 municipality at risk for further cost overruns.

28 (2) In the event that the municipality will incur new program costs related to the
29 statement of work and performance standards, such costs shall be included in the cost
30 comparison.

31 (3) All cost comparisons must include an analysis of whether the cost savings will result
32 in meeting the performance and qualitative measures set out in the statement of work and
33 performance standards.

34 **45-55.1-5. Award of contract.**

1 After conducting a cost comparison pursuant to § 45-55.1-4, the chief municipal
2 administrative officer may award the bid to an outside vendor only if the savings to the
3 municipality is substantial and the quality of performance of service required and specified in
4 statement of work and performance standards will be met or exceeded by the outside vendor.

5 **45-55.1-6. Appeal.**

6 Before any award is final, municipal employees or their bargaining representatives shall
7 have a right to protest the award decision within thirty (30) days to the chief municipal
8 administrative officer. The chief municipal administrative officer shall have no more than fifteen
9 (15) days to render a decision. Any state employees or their bargaining representative that files a
10 protest shall have thirty (30) days from the director's decision to file an appeal to the superior
11 court, Providence County. The superior court shall determine within thirty (30) days of filing
12 whether to stay the award or allow the procurement to proceed. Until such time as the superior
13 court makes this determination, no final award by the municipality may be made.

14 **45-55.1-7. Report of general assembly.**

15 (a) The chief municipal administrative officer shall notify the chairpersons of the house
16 and senate finance committees of their intent to request bids or proposals to privatize municipal
17 services. The notice to the committees shall be provided thirty (30) days prior to issuing the
18 request.

19 (b) Upon the final decision of an award, the chief municipal administrative officer shall
20 provide a report to the chairpersons of the house and senate finance committees outlining the bid
21 process and analysis conducted in issuing an award.

22 **45-55.1-8. Applicability.**

23 (a) The process set forth in this chapter shall apply to privatization contracts as defined in
24 § 45-55.1-2.

25 (b) Notwithstanding any general law or special law to the contrary, no award shall be
26 made or privatization contract entered into by a municipality unless and until the processes and
27 procedures outlined in §§ 45-55.1-3, 45-55.1-4 and 45-55.1-5 have been fully complied with in
28 their entirety. All of the aforementioned sections shall apply to all pending awards and pending
29 privatization contracts.

30 **45-55.1-9. Severability.**

31 If any provision of this chapter, or the application of this chapter to any person or
32 circumstances is held invalid by a court of competent jurisdiction, the remainder of the chapter
33 and the application of that provision to other persons or circumstances shall not be affected.

1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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1 This act would create a review process like the existing state service privatization
2 process, which municipalities must follow whenever they seek to privatize the yearly furnishing
3 of municipal services in excess of one hundred fifty thousand dollars (\$150,000).

4 This act would take effect upon passage.

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