



**GLENN A. CUNHA**  
INSPECTOR GENERAL

## The Commonwealth of Massachusetts

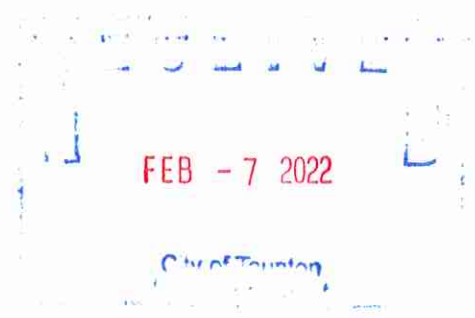
Office of the Inspector General

John W. McCormack  
State Office Building  
One Ashburton Place  
Room 1311  
Boston, MA 02108  
Tel: (617) 727-9140  
Fax: (617) 723-2334

February 3, 2022

*Via First Class Mail and Electronic Mail*

Matthew Costa, First Assistant City Solicitor  
City of Taunton Law Dept.  
15 Summer Street  
Taunton, MA 02780



**Re: Procurement of a Sludge Treatment Facility**

Dear Attorney Costa:

This letter follows our video conference meeting on Friday, January 28, 2022, in which we discussed various issues the City of Taunton may encounter during the negotiation, preparation, and execution of a contract to be entered into pursuant to a 2021 Request for Proposals for the Provision of Municipal Wastewater Residuals Disposal Services and Facilities.

For example, we discussed ensuring that the contract clearly outline vendor commitments and detail the monetary and other benefits offered by the vendor. The contract should also define the vendor's responsibilities to the City for maintaining the infrastructure that could revert to the City and for meeting projected service levels. We also suggested that the contract include detailed cost and revenue projections for the contract term.

Thank you for your time and attention to this matter. We hope that you found the meeting to be helpful. As discussed, while the Office of the Inspector General cannot assist in the preparation of specific documents, we are available should you have any questions. By being mindful of the issues we discussed you are likely to protect the City from issues that may arise during the contract administration phase of this complex, multi-year contract. Feel free to contact attorney Maya French at [maya.french@mass.gov](mailto:maya.french@mass.gov) or 617-722-8887 with any questions you may have.

Matthew Costa, First Assistant City Solicitor  
February 3, 2022  
Page 2 of 2

Sincerely,

A handwritten signature in black ink that reads "Neil Cohen". The signature is written in a cursive style with a large initial "N" and a distinct "C" for "Cohen".

**By electronic signature**

Neil Cohen, Director  
Regulatory and Compliance Division



# City of Taunton

## LAW DEPARTMENT

15 Summer Street

Taunton, Massachusetts 02780

Phone (508) 821-1036 Facsimile (508) 821-1397



Shaunna O'Connell  
MAYOR

David T. Gay, Esq.  
CITY SOLICITOR

Matthew J. Costa, Esq.  
FIRST ASST. CITY SOLICITOR

Peter F. Winters, Esq.  
ASST. CITY SOLICITOR

Thomas P. Gay, Jr., Esq.  
ASST. CITY SOLICITOR

October 5, 2021

Neil Cohen, Director  
Regulatory and Compliance Division  
Office of the Inspector General  
John W. McCormack State Office Building  
One Ashburton Place  
Room 1311  
Boston, Massachusetts 02108

Re: Procurement of a Sludge Treatment Facility by the City of Taunton

Dear Mr. Cohen:

With respect to the above referenced matter, I am writing to provide additional information regarding the procurement process followed by the City of Taunton. This is the same matter which was the subject of the Office of the Inspector General's prior letters of June 4, 2021 and July 30, 2021.

To update your office on the City's process, I can advise you of the following:

On July 28, 2021 the City issued Addendum #1, extending the timeframe for submission of proposals from Friday, July 30, 2021 to Tuesday, August 17, 2021. The purpose of this extension was to advertise the Request for Proposals in the Goods and Services Bulletin, in addition to the Central Register. The advertisement was placed in the Goods and Services Bulletin within the required timeframe in advance of the deadline for submittal of bids in compliance with Chapter 30B. On August 13, 2021 the City issued Addendum #2, clarifying the evaluation process for proposals. Addendum #2 describes the evaluation process the City would utilize and also included a rating sheet that would be employed by the City in evaluating the proposals.

Neil Cohen, Director

Regulatory and Compliance Division

Office of the Inspector General

Re: Procurement of a Sludge Treatment Facility by the City of Taunton

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In response to the RFP, the City received one proposal. The same was submitted by Aries Clean Technologies, LLC.

With respect to the bullet points contained on page 2 of your July 30, 2021 letter the City does have a response to the items that are listed therein.

With respect to Section 1.5.1 of the RFP we respectfully submit that the RFP does not ask respondents to provide alternative disposal options for two markedly different methods to solve wastewater treatment. Said section does not ask respondents to provide alternative disposal options; it states that the successful respondent will be responsible for the design, financing, construction, operation and maintenance of its biosolids disposal facility. The sentence regarding the "alternative disposal option" relates to the City's time table where it states: "The City will need an alternative disposal option for its biosolids in the third quarter of CY 2023 our target date. A project proposed must present a detailed schedule and discuss where in development process it will be on the target date." Clearly, Section 1.5.1 does not ask for alternative disposal options; it asks for the proposers to present a detailed schedule of the timeframe for completion in light of the City's time table to have a new biosolids disposal program in place by the third quarter of CY 2023.

As to Section 3.2 of the RFP, we do not agree that the RFP lacks comparative criteria to evaluate the features Taunton seeks in its proposals. Items 1 through 5 of the evaluation criteria stated in Section 3.2 relate back to other sections of the RFP which contain details about the City's requirements and/or specifications. See Sections 2.2.3, 2.2.4, 2.2.5, 2.2.6, and 2.2.7. The RFP also provides details as to the City's priorities including the desired financial/business relationship with the proposer (see Section 2.2.8), environmental standards (see Section 2.2.4), and the preferred use of the City's former landfill site (see Sections 1.1, 1.2 and 1.5). Additionally, Addendum #2, including the rating sheet provided therewith, provided an additional rubric for rating the criteria contained in Section 3.2 of the RFP.

As to your concern that Section 3.3 does not adequately describe the Chief Financial Officer's role in the evaluation process regarding how price and non-price aspects will be evaluated, Addendum #2 explains that the Mayor will oversee the



Neil Cohen, Director

Regulatory and Compliance Division

Office of the Inspector General

Re: Procurement of a Sludge Treatment Facility by the City of Taunton

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process as the Chief Procurement Officer and describes the two step process for reviewing technical and other non-cost criteria utilizing the ratings form, and the top three proposals would then move on to step 2 for further evaluation of cost and benefits to the City. Here it is worth noting that the City received one proposal in response to the RFP.

We do not agree that the RFP failed to describe the technology and objective measurements required. The RFP is clear that the City is seeking a facility for disposal of its biosolids residuals; that the City's wastewater treatment plant does not have a space onsite but a four acre area is available at the landfill for a proposer who would locate a facility on City property; the City generates 8 tons of residuals daily; that a City goal is to achieve the reuse of the landfill site but that the City would entertain proposals from companies who would use their own sites within or outside of Taunton. The RFP is rather specific as to what the obligations would be for the successful proposer and the type of financial arrangement the City would prefer to have with the successful proposer.

We do not agree that it is a fair characterization that the RFP asks vendors for a variety of options to solve its wastewater treatment problem as stated in your July 30 letter. The RFP issued by Taunton is not a wide open "problem oriented bid specification" like the one at issue in Datatrol, Inc. v State Purchasing Agent, 379 Mass 679 (1979). Unlike the State Lottery's lack of direction as to what it was seeking in the Datatrol case, the Taunton RFP is specific – it is seeking a facility to dispose of its 8 ton per day output of sludge. It identifies a preference for a facility in Taunton, hopefully at the Taunton landfill site, as the location for the facility. It suggests the type of financial arrangement that is preferred. It identifies environmental criteria that the proposer must comply with. These requirements are very different from the open specifications identified in the Datatrol case. See 379 Mass at 684. We submit that the RFP in this case meets the standard cited favorably in Datatrol, that "the...specifications must state the quantity and quality of the [items] required with as much certainty and definiteness as may be practicable." Datatrol 379 Mass at 699, quoting Sweezy v Mayor of Malden, 273 Mass 536, 540 (1931). The Datatrol case does not require the City of Taunton to specify the exact process utilized within the sludge disposal facility as that is

October 5, 2021

Neil Cohen, Director

Regulatory and Compliance Division

Office of the Inspector General

Re: Procurement of a Sludge Treatment Facility by the City of Taunton

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beyond the scope of the City's requirements for sludge disposal (e.g. plants that internally use a composting, gasification, or other internal process could each potentially meet the City's requirements and needs). The City has a responsibility to avoid drafting its RFP in an unnecessarily narrow manner, and intentionally avoided drafting this RFP so narrowly so as to limit the field in this industry which has a limited number of potential bidders. See M.G.L. Chapter 30B Section 14 (with limited exceptions, "[a]ll specifications shall be written in a manner which describes the requirements to be met without exclusively requiring a proprietary supply or service, or a procurement from a sole source.")

In sum, the City's position is that this was an open, fair and competitive process established by the RFP at issue as intended by the procurement laws, including Chapter 30B. The City intends to accept the proposal made by the only company that submitted a proposal in response to the RFP. We appreciate the Inspector General's review of the Request for Proposals in this matter, but upon review of the governing legal standards and careful consideration of the Request for Proposals our conclusion is that the same meets legal requirements.

Very truly yours,



David T. Gay, City Solicitor

DTG:tmg

CC: Mayor Shaunna O'Connell



**GLENN A. CUNHA**  
INSPECTOR GENERAL

## The Commonwealth of Massachusetts

Office of the Inspector General

John W. McCormack  
State Office Building  
One Ashburton Place  
Room 1311  
Boston, MA 02108  
Tel: (617) 727-9140  
Fax: (617) 723-2334

*By First Class Mail and Electronic Mail*

July 30, 2021

David T. Gay, City Solicitor  
City of Taunton  
Taunton City Hall  
15 Summer Street  
Taunton, MA 02780

### **Re: Procurement of a Sludge Treatment Facility**

Dear City Solicitor Gay:

This letter will follow a previous letter of June 4, 2021, from the Inspector General, Glenn Cunha, regarding the procurement process for the proposed sludge gasification facility in the city of Taunton (Taunton). That letter outlined a determination that Taunton was required to solicit proposals and award any contract in conformance with Chapter 30B of the Massachusetts General Laws, save for those provisions explicitly exempted by a 1996 special legislation.<sup>1</sup> Taunton has sought to engage in an RFP as required.

On July 2, 2021, your office forwarded an already issued request for proposals (RFP) and stated that you “would be interested in any additional input the Office of the Inspector General (OIG) may have” regarding the RFP. While generally our Office does not assist municipalities with the preparation of specific documents, given our previous communication Inspector General Cunha determined it was appropriate to provide further guidance to you on Chapter 30B compliance. The Office takes no position on the merits of the facility, environmental impact, or compliance with any other provision of Massachusetts or federal law.

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<sup>1</sup> St. 1996, c. 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.*

Based on our review of the materials forwarded, it is the Office's determination that the RFP issued by Taunton does not meet the requirements of Chapter 30B, and Taunton must withdraw the current RFP and issue a new one which conforms with the statute.<sup>2</sup>

Specifically, I note the following violations of Chapter 30B in the RFP:

- Section 1.5.1 (Scope of Work / Anticipated Respondent Undertakings and Requirements) asks respondents to provide alternative disposal options for two markedly different methods to solve wastewater treatment. This undermines the objective proposal evaluation process needed to ensure Chapter 30B compliance and ensure a fair and competitive procurement.
- Section 3.2 (Evaluation Criteria) fails to include comparative criteria related to evaluating the features Taunton seeks in proposals.<sup>3</sup> For example, Taunton must explain the types of credentials and experience a respondent must have based on objective measures, such as years of experience.
- Section 3.2 correctly lists the Chapter 30B required ratings (highly advantageous, advantageous, not advantageous, and unacceptable), but fails to include the criteria by which they will be judged.
- Section 3.3 fails to describe the Chief Procurement Officer's (CPO) role in the evaluation process regarding how the price and non-price aspects of the proposal will be evaluated.
- The RFP generally fails to describe with specificity the technology or objective measurements required. This undermines the objective proposal evaluation process needed to ensure Chapter 30B compliance and a fair and competitive procurement.
- The RFP generally asks vendors for a variety of options to solve its wastewater treatment problem.<sup>4</sup> This undermines the objective proposal evaluation process needed to ensure Chapter 30B compliance and a fair and competitive procurement.

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<sup>2</sup> I am aware that while the 1996 special legislation requires Taunton to follow Chapter 30B, it exempts Taunton from the following specific provisions: M.G.L. c. 30B, §§ 6(b)(3), 6(e)(3), 6(g), 13, and 16.

<sup>3</sup> M.G.L. c. 30B, § 6(e)(1).

<sup>4</sup> *Datatrol, Inc. v. State Purch. Agent*, 379 Mass. 679, 697 (1980) (under statewide procurement statute, where each bidder "is invited to bid upon his own specifications, it is plain that there can be no real competition between such bidders. Such an advertisement not only destroys competition but gives city officials an opportunity to exercise favoritism in awarding contracts.").



David T. Gay, Taunton City Solicitor  
July 30, 2021  
Page 3 of 3

Please note that Taunton's evaluation committee cannot consider price in its technical evaluations, even though vendors may submit non-price and price proposals together. Taunton's CPO must keep the information related to price and the technical aspects of the services separate.<sup>5</sup>

Should Taunton award a contract based on an RFP which does not comply with Chapter 30B, it is invalid, and no payment can be made to the vendor.<sup>6</sup>

I strongly encourage your team to avail itself of the various resources on the OIG's website. I am happy to arrange for my Office to provide a personalized training session for your team as well.

Thank you for your attention to this matter and your efforts to engage in an open, fair and competitive procurement process in compliance with Massachusetts law. Feel free to contact attorney Maya French at [maya.french@mass.gov](mailto:maya.french@mass.gov) or at 617-722-8887 with any questions you may have.

Sincerely,



**By electronic signature**

Neil Cohen, Director  
Regulatory and Compliance Division

cc: Matthew Costa, Deputy City Solicitor

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<sup>5</sup> M.G.L. c. 30B, § 6(d). Under Section 6(d) of Chapter 30B the CPO is the individual responsible for ensuring compliance with this aspect of the statute.

<sup>6</sup> M.G.L. c. 30B, § 17(c).

## RE: Procurement of a Sludge Treatment Facility

Matthew J Costa <mcosta@taunton-ma.gov>

Fri 7/2/2021 11:46 AM

To: Craig, James S (IGO) <james.s.craig@state.ma.us>

Cc: David Gay <dgay@taunton-ma.gov>

📎 3 attachments (444 KB)

RFP - FINAL CLEAN 6-30-21.docx; Attachment A - Plan and Legal Description - Potential Lease Area.pdf; Attachment B - Non Collusion Statement.doc;

Good Morning James,

The City of Taunton has put out an RFP for sludge disposal as per the advice we received from your office. I am attaching a copy of the RFP document. We would be interested in any additional input the Office of the Inspector General may have regarding the attached RFP. In the event we receive any comments, etc. we would put out an addendum to the RFP if necessary to address them. Thank you for your assistance and guidance regarding this matter. As it appears on the City's bid portal it is one continuous document, but it is attached here in three attachments.

Respectfully,

Matthew J. Costa  
First Assistant City Solicitor  
City of Taunton Law Dept.  
15 Summer Street  
Taunton, MA 02780  
(508) 821-1036

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**From:** Craig, James S (IGO) [mailto:james.s.craig@state.ma.us]

**Sent:** Monday, June 7, 2021 9:56 AM

**To:** mcosta@taunton-ma.gov

**Subject:** Procurement of a Sludge Treatment Facility

Good morning Matt,

As discussed, please find attached a copy of the letter mailed to your office on Friday. Feel free to reach out should you have any questions.

Thank you,

**James S. Craig**  
Associate General Counsel  
Office of the Inspector General  
One Ashburton Place, Room 1311  
Boston, MA 02108  
Direct Line: 617-722-8833  
[James.S.Craig@mass.gov](mailto:James.S.Craig@mass.gov)  
[www.mass.gov/ig](http://www.mass.gov/ig)



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The Commonwealth of Massachusetts  
Office of the Inspector General

GLENN A. CUNHA  
INSPECTOR GENERAL

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FAX: (617) 723-2334

June 4, 2021

*Via First Class Mail*

David T. Gay, City Solicitor  
City of Taunton  
Taunton City Hall  
15 Summer Street  
Taunton, MA 02780



**Re: Procurement of a Sludge Treatment Facility**

Dear City Solicitor Gay:

I write regarding the procurement process for the proposed sludge gasification facility in the city of Taunton (Taunton). At the outset, I would like to express my thanks to you and your team for their assistance in this matter. As discussed, based on my review of the subject matter of this procurement, and the procurement process so far, it is my determination that Taunton must engage in a competitive procurement process prior to entering into a contract, including a lease agreement, for the proposed facility. Specifically, Taunton must solicit proposals and award the contract through a request for proposals (RFP) issued in conformance with Chapter 30B of the Massachusetts General Laws.

I. Applicable Law

As you know, the Uniform Procurement Act, Chapter 30B of the General Laws (Chapter 30B), generally “appl[ies] to every contract for the procurement of supplies, services or real property and for disposing of supplies or real property . . .” by a municipal body.<sup>1</sup> In addition, Chapter 30B specifically addresses the type of project Taunton is contemplating. Chapter 30B provides that a municipal body

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<sup>1</sup> M.G.L. c. 30B, § 1(a).



may enter into a contract, in conformance with this chapter, for the construction and for services at a facility owned by a private party or parties, whether such facility will be located on public or private land for the disposal, recycling, composting or treatment of solid waste, sewage, septage or sludge . . . .<sup>2</sup>

The provision expressly requires that a municipal body enter into a contract for sludge treatment “in conformance” with Chapter 30B.<sup>3</sup> As discussed below, Chapter 30B also contains several other provisions specific to this type of project. Because Taunton must follow Chapter 30B for this project, Section 1(e) of Chapter 30B also applies. Accordingly, under Section 1(e), the sludge treatment plant project is not subject to “the competitive bid process” laid out in other public procurement statutes.<sup>4</sup>

I understand that Taunton has special legislation from 1996 related to Taunton’s wastewater treatment plant, sewers and pumps.<sup>5</sup> However, that legislation does not apply to this project because the proposed facility is a sludge treatment plant.<sup>6</sup> Therefore, Section 1(e) of Chapter 30B, which specifically applies to such facilities, controls.<sup>7</sup>

## II. The Process To Date

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<sup>2</sup> *Id.* at § 1(e). Section 1(e) of Chapter 30B contains a limited exception to a procurement of proprietary environmental technology in accordance with subsection (5) of section forty-four A of chapter one hundred and forty-nine.” The Legislature expressly provided that this exception only applies to the town of Nantucket. M.G.L. c. 149, § 44A(1).

<sup>3</sup> *Id.*

<sup>4</sup> Specifically, a governmental body entering into a contract pursuant to Section 1(e) is not required to comply with M.G.L. c. 7, §§ 38A1/2 – 38O, M.G.L. c. 30, § 39M or M.G.L. c. 149, §§ 44A – 44J.

<sup>5</sup> St. 1996, c. 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.*

<sup>6</sup> The 1996 special legislation also requires that Taunton comply with Chapter 30B, including by issuing a request for proposals. Specifically, Section 1 of the act states the “contract shall be awarded pursuant to the provisions of chapter thirty B of the General Laws . . . .” While the act exempts Taunton from complying with certain specified provisions of Chapter 30B, it does not exempt Taunton from compliance with Section 6 regarding RFPs. Section 3 of the special legislation expressly states “The chief procurement officer shall solicit proposals through a request for proposals . . . .” Furthermore, while the 1996 special legislation exempts Taunton from following Section 16 of Chapter 30B, which concerns real property transactions, the proposed construction and operation of a sludge treatment facility by a private party on public or private land falls under Section 6 of Chapter 30B, not Section 16. M.G.L. c. 30B, § 6(j). Therefore, despite the 1996 special legislation, Taunton must comply with the requirements of Section 6(j) of Chapter 30B.

<sup>7</sup> Section 1 of the 1996 special legislation only exempts Taunton from the following provisions under Chapter 30B: M.G.L. c. 30B, §§ 6(b)(3), 6(e)(3), 6(g), 13, and 16.

In 2019, Taunton issued a “Request for Information and Qualifications” (RFIQ). In addition, Taunton subsequently issued an amendment to the RFIQ explaining that the city would consider “a standalone proposal for a sludge project . . . .” The amendment directed that bidders should prepare a “sludge only proposal” in the same manner as other “comprehensive projects offering proposed solutions to handle the City’s residential [municipal solid waste] and process its recyclables.”

For several reasons, this RFIQ does not satisfy the requirement for a competitive procurement under Chapter 30B. First, an RFIQ is not a process recognized under Chapter 30B. Indeed, the RFIQ Taunton issued indicates that it is a potential precursor to an RFP, which is an established Chapter 30B procurement process under Chapter 30B.

Second, Taunton issued the RFIQ to solicit solutions to address Taunton’s solid waste, stating as follows:

The City’s permitted landfill is scheduled to close in the first quarter of 2020 and the City is seeking to host a new disposal and/or processing facility – waste conversion, transfer station, or other – as a regional management solution for solid waste. The purpose of this [RFIQ] is to identify companies (the Offerors) that desire to design, build, finance, own and operate the solid waste management facility, or any combination thereof, within the City of Taunton (“Project”) and to explore the potential arrangements under which Offeror would provide such a facility.<sup>8</sup>

By its express language, the RFIQ cannot be read as an RFP because, as a solicitation for problem-oriented specifications, it is too broad. The solicitation does not provide an effective or fair method for either Taunton or respondents to evaluate competing proposals.<sup>9</sup>

Third, Taunton states in the RFIQ that the proposed project is exempt from the requirements of Chapter 30B, and as a result claimed certain rights regarding the award of a contract that are not available under Chapter 30B.<sup>10</sup> Finally, even if this RFIQ qualified as an

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<sup>8</sup> Section 1.1, Purpose of Request, Request for Information and Qualifications for the Provision of Regional Municipal Solid Waste and Recyclables Management Project.

<sup>9</sup> See, e.g. *Datatrol Inc. v. State Purch. Agent*, 379 Mass. 679, 697 (1980) (under statewide procurement statute, where each bidder “is invited to bid upon his own specifications, it is plain that there can be no real competition between such bidders. Such an advertisement not only destroys competition, but gives city officials an opportunity to exercise favoritism in awarding contracts.”).

<sup>10</sup> In the RFIQ, Taunton claims broad exemption from the “public bid laws of the Commonwealth of Massachusetts” while reserving several rights regarding how Taunton may act under the RFIQ. The RFIQ language regarding the effect of the purported Chapter 30B exemption, and scope of the rights reserved to Taunton, is too broad. For



RFP, my understanding from the public record is that Aries Clean Energy LLC, the entity with which Taunton is currently engaged in discussions, did not respond to the RFIQ.<sup>11</sup>

### III. The Required Process

For the reasons stated, Taunton must issue an RFP for this procurement in conformance with Chapter 30B. Section 6 of Chapter 30B governs the RFP process and subsection (j) sets out special provisions for the type of procurement at issue – a sludge treatment plant. Specifically, Section 6(j) covers the contents of the RFP, method of evaluation, negotiation, award of the contract and timing for:

contracts for the recycling or composting of solid waste or the treatment, composting or disposal of sewage, septage or sludge at a facility to be owned and constructed by a private party or parties whether such facility will be, located on public or private land . . . .<sup>12</sup>

Section 12(f) of Chapter 30B addresses liability, contract duration and majority vote requirements for a sludge treatment plant contract. It also requires that “disposal shall be in a sanitary manner approved by the department of environmental protection[.]” Following the execution of a contract, Section 13A of Chapter 30B governs the modification and amendment of contracts for a sludge treatment plant.

As Taunton engages in the process to develop an RFP compliant with Chapter 30B, Taunton should avoid specifications that unnecessarily have “the effect of exclusively requiring a proprietary supply or service, or a procurement from a sole source.”<sup>13</sup>

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instance, although M.G.L. c. 30B, § 1(b)(30) (“exemption 30”) exempts contracts for the “collection, transportation, receipt, processing or disposal of solid waste, recyclable or compostable materials,” from Chapter 30B requirements, it does not exempt the procurement of such a contract from all “public bid laws of the Commonwealth of Massachusetts.” In fact, exemption 30 is expressly limited to “contracts,” which under Chapter 30B’s definition of “contract” applies only to “the procurement or disposal of supplies or services.” M.G.L. c. 30B, § 2. Exemption 30 therefore does not apply to real property transactions, so a procurement within the subject matter of exemption 30 – solid waste, recyclable or compostable materials – that also includes an interest in real property would not be exempt from Chapter 30B procurement requirements.

<sup>11</sup> Taunton City Council Meeting, March 16, 2021, Timestamp 01:13:40-1:28:00, available at <https://taunton.vod.castus.tv/vod/?video=15ca51e1-c1ef-4229-93b7-0ed26917bc84> (last viewed June 3, 2021).

<sup>12</sup> M.G.L. c. 30B, § 6(j).

<sup>13</sup> *Id.* at § 14.

David T. Gay, Taunton City Solicitor  
June 4, 2021  
Page 5 of 5

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Glenn A. Cunha".

Glenn A. Cunha  
Inspector General



# City of Taunton

## LAW DEPARTMENT

15 Summer Street  
Taunton, Massachusetts 02780  
Phone (508) 821-1036 Facsimile (508) 821-1397



Shaunna O'Connell  
MAYOR

David T. Gay, Esq.  
CITY SOLICITOR

Matthew J. Costa, Esq.  
FIRST ASST. CITY SOLICITOR

Mark S. Gould, Jr., Esq.  
SECOND ASST. CITY SOLICITOR

Thomas P. Gay, Jr., Esq.  
SPECIAL ASST. CITY SOLICITOR

April 1, 2021

VIA E-MAIL [Mark.Zglobicki@state.ma.us](mailto:Mark.Zglobicki@state.ma.us)

Mark Zglobicki, Associate General Counsel  
Massachusetts Office of the Inspector General

Re: Proposed Gasification Facility – Taunton

Dear Attorney Zglobicki:

Per our video conference, herewith please find:

- (1) Request for Information & Qualifications ("RFI&Q") for the Provision of a Regional Municipal Solid Waste and Recyclables Management Project - 2019;
- (2) Five (5) Addendums to RFI&Q 2019;
- (3) Option Agreement between Aries Taunton, LLC and the City of Taunton dated December 30, 2020;
- (4) Host Community Benefits and Pilot Agreement dated February 11, 2021;
- (5) Internal memorandum entitled Chronology of Biosolids Processing Review;
- (6) Internal memorandum entitled Rebuttal to Misleading Statements Made at the March 18, 2021 Coalition for Social Justice Online Forum Regarding the Aries Taunton Gasification Process.

There are also documents and presentations on the City's website which include:

[Aries Thermal Oxidizer Performance Test Report Chemours – 3/23/2021](#)

[Aries MLS-ASR Nov19 - 03/23/2021](#)

[Aries SGS PFAS Analysis 10 30 2019 -03/23/2021](#)

## Terry Garcia

---

**From:** Terry Garcia <tgarcia@taunton-ma.gov>  
**Sent:** Monday, April 5, 2021 2:55 PM  
**To:** 'mark.zglobicki@state.ma.us'  
**Cc:** 'Shaunna O'Connell'; 'Fred Cornaglia'; 'ecorreira@taunton-ma.gov'; 'Matthew J Costa'; David T. Gay  
**Subject:** Proposed Gasification Facility - Taunton  
**Attachments:** OPINION DTG - APPLICABILITY OF MA SPECIAL ACT OF THE LEGISLATURE CHAPTER 362 OF THE ACTS OF 1996 - 2-8-21.pdf

Dear Attorney Zglobicki:

Attached please find opinion letter of City Solicitor David T. Gay as to the applicability of Massachusetts Special Act of the Legislature Chapter 362 of the Acts of 1996 dated February 8, 2021. This letter was inadvertently not included with City Solicitor David T. Gay's e-mail to you of April 1, 2021.

Thank you.

*Theresa M. Garcia*

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February 8, 2021

Aries Taunton, LLC  
c/o Mark Lyons, Director, Business Development – New England  
Aries Clean Technologies  
4037 Rural Plains Circle, Suite 290  
Franklin, TN 37064

Re: Applicability of Massachusetts Special Act of the Legislature Chapter 362 of the Acts of 1996

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Gentlemen:

You have requested an opinion from the City of Taunton Law Department with respect to the City's ability to act pursuant to the specific terms set forth in the above referenced statute and thereby utilize that process for the potential construction by your company of a biosolids processing and gasification facility on property to be leased by the City of Taunton (the property location is 330 East Britannia Street – the location of the recently closed Taunton Landfill).

In this letter I will review the sections of the Special Act that could be utilized, in our opinion, for this Act to be applicable to the proposed Lease Agreement.

Prior to completing this opinion letter, the staff here at the Law Department discussed the specific provisions of the Special Act and came to a conclusion that is very similar to discussions we have had with Attorney Jonathan Klavens of Klavens Law Group who has been representing Aries.

I would confirm, however, that this is our opinion based on our discussions and review of the applicable sections of the Special Act.

Let me detail the following:



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- **Could the provisions of this Act apply to equipment that is located on a site different than the location of the Waste Water Treatment Plant:**

Section 1 of St. 1996, c. 362 (the "Act") provides a special procurement regime under which the City may enter into "a contract for the . . . installation of new equipment and systems necessary at the wastewater treatment plant ["WWTP"], sewers and pump stations to ensure adequate services and to ensure the ability of [the] wastewater treatment plant . . . to operate in full compliance with all applicable requirements of federal, state and local law."

Section 1 does not require that such new equipment or systems be installed "at" the WWTP, sewers or pump stations but rather that the installation of such equipment or systems be "necessary at" such locations.

It is our understanding that, in order to continue to operate the WWTP efficiently and in compliance with applicable legal requirements, there is a need "at" the WWTP for a means of disposing of sludge generated by the WWTP but also that, to meet the need that exists at the WWTP, a facility available for sludge disposal could be sited in a location other than the site of the WWTP itself.

The present process that has been ongoing at the WWTP includes the transportation of the sludge to be disposed (biosolids) to a disposition facility which, in the past, was the same location on East Britannia Street, but it was a landfill operation. Therefore, the proposal to transport the sludge for processing at this location in the City of Taunton is similar to the ongoing process for many years. In addition, there is not sufficient space to locate a facility strictly "at" the WWTP.

- **May the Act apply to the lease of land that furthers the purposes of the WWTP.**

Section 1 of the Act also provides that a contract entered into under the Act "may provide for such activities deemed necessary to carry out the purposes authorized herein, including, but not limited to, . . . land sale or lease."

The Act therefore allows the City to carry out the purposes of the Act and ensure the installation of necessary equipment through a transaction structured as a lease of municipal land and not as a contract for the construction of equipment to be owned by the City. Likewise, the Act would appear to allow the City to lease municipal land to achieve the

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Act's purposes even where the equipment at issue will merely be available to meet the City WWTP's needs and not exclusively contracted to provide services to the City.

It is our understanding that the City has determined that lease of the proposed project site on municipal land to Aries for Aries' construction, ownership and operation of a proposed biosolids gasification facility that is available for the City to use for sludge disposal would in fact meet the needs of the City's WWTP.

- **Procurement process under the terms of the Special Act**

The procurement process for contracts procured under the Act depends on the interaction of the Act and Chapter 30B and the nature of the contract procured.

Regardless of the nature of the contract procured, Section 1 of the Act makes clear that contracts procured under the Act are not subject to MGL c. 7, ss. 38A½ to 38O (statutory provisions that have since been repealed), MGL c. 30, s. 39M (the public works statute), MGL c. 149, ss. 44A to 44M (the public buildings statute), or MGL c. 30B, ss. 6(b)(3), 6(e)(3), 6(g), 13 and 16.

In order to determine the procurement process applicable to a particular contract, it is necessary to determine the applicability of (1) the provisions of Chapter 30B other than the provisions of Chapter 30B made expressly inapplicable by Section 1 of the Act and (2) any procurement process requirements expressly set forth in the Act itself.

In the case of a lease of land, Chapter 30B, s. 16 would ordinarily apply but is made inapplicable by the Act.

The provision of Chapter 30B applicable to the lease of municipal land would be Section 16 but Section 1 of the Act expressly provides that MGL c. 30B, s. 16 is not applicable to the procurement of a contract under the Act. Accordingly, where a contract under the Act involves a lease of municipal land and not a separate contract for the provisions of goods or services, no other provision of Chapter 30B should apply to the procurement of that lease.

Even if the proposed lease makes clear that the lease is for the specific purpose of hosting a biosolids gasification facility that will be available for the City to use, the lease would still be a lease of municipal land that, if MGL c. 30B, s. 16 applied, could be procured solely under Section 16 and not under (or also under) other provisions of Chapter 30B.

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We also note that, to the extent that the City enters into a biosolids supply agreement the dominant purpose of which is for the City to commit to providing a certain volume of biosolids to the facility, such an agreement would be one that is not about the procurement of goods and services by the City but rather about the supply of biosolids from the City to Aries.

- **Terms of procurement process.**

In terms of procurement process requirements expressly set forth in the Act, while Sections 1 and 3 of the Act refer to an RFP, the references to an RFP arguably only make sense to the extent that an RFP would be required under the applicable provisions of Chapter 30B. Note that, the first reference in the Act is to “[t]he request for proposals” (emphasis added) and that reference comes immediately after the language indicating which Chapter 30B provisions apply. As a result, it seems reasonable to read the phrase “[t]he request for proposals” as a reference to any RFP that might be required under the provisions of Chapter 30B that Section 1 of the Act says are applicable to contracts procured under the Act. In other words, if the contract is not the type of contract that would require an RFP under the applicable provisions of Chapter 30B, references to an RFP in the Act should likewise not be applicable.

While Section 3 of the Act at first appears to be a bit more specific, stating that “[t]he chief procurement officer shall solicit proposals through a request for proposals,” this provision could be read, consistently with the reading of the RFP reference in Section 1, as meaning that, if proposals are to be solicited or are required to be solicited under the applicable provisions of Chapter 30B, it should be done via an RFP. This could also be in contrast to proposals solicited through some other means, such as an RFI or RFQ.

Section 4 of the Act again is premised on the existence of an RFP. If there is no RFP because none is required under the application provisions of Chapter 30B, Section 4 of the Act would have no application.

Section 5 of the Act is likewise premised on the existence of an RFP. If there is no RFP because none is required under the application provisions of Chapter 30B, Section 5 of the Act would have no application.

Obviously, in the vast majority of instances in which the Act might be used, likely involving purchase and installation of equipment at the WWTP or contracts for operation and maintenance of the WWTP, an RFP would be required under the applicable provisions of Chapter 30B. In the somewhat unusual circumstances of procurement of a contract under

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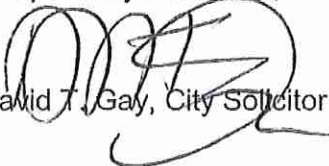
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the Act involving only a lease of municipal land, however, it seems as if an RFP would not be required under the Act.

Given the above, specifically the issues concerning an RFP, we may suggest that in the long run an RFP could be a safe step to take in order to avoid any potential argument that our reading of the section of the Special Act is too broad.

We will discuss that further. It seems that an RFP specifically for this type of facility at this location would be unlikely to generate any submissions other than one from Aries, which may make the whole process unnecessary.

Respectfully submitted,



David T. Gay, City Solicitor

DTG:tmg

CC: Mayor Shaunna O'Connell  
Chief of Staff Ed Correira  
Fred Cornaglia, DPW Commissioner  
Jack Hamm, Consultant  
Joseph Federico, BETA Group, Inc.  
Jonathan Klavens, Esquire

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**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 A½ 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

last 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

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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.