

**HOUSE . . . . . No. 3518**

The Commonwealth of Massachusetts

PRESENTED BY:

***Daniel M. Donahue***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to local procurement.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>

<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>

**HOUSE . . . . . No. 3518**

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By Mr. Donahue of Worcester, a petition (accompanied by bill, House, No. 3518) of Daniel M. Donahue and others relative to the competitive bidding process. State Administration and Regulatory Oversight.

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The Commonwealth of Massachusetts

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
\_\_\_\_\_

An Act relative to local procurement.

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

1           SECTION 1. Section 5 of chapter 30B of the General Laws, as appearing in the 2012  
2 Official Edition, is hereby amended by striking out the word “and”, in line 11, and by inserting,  
3 in line 12, after the word “procurement” the following:- ; and (4) for cleaning, maintenance or  
4 security guard services, the invitation shall also include: (i) a statement of required hours (ii) a  
5 worksheet requiring a breakdown of the cost components of the hourly proposed rate as  
6 developed by the procurement officer; and (iii) a provision for annual adjustments to the contract  
7 price to reflect any increases to wage and benefits requirements that may be determined by the  
8 governmental body.

9           SECTION 2. Said section 5 of said chapter 30B, as so appearing, is hereby further  
10 amended by inserting, in line 72, after the word “purpose” the following words:- and shall  
11 include but not be limited to solicitation specific relevant experience requirements.

12 SECTION 3. Said chapter 30B, as so appearing, is hereby further amended by inserting  
13 after section 10 the following section:-

14 Section 10A. (a) A governmental body shall establish a process to certify, on a  
15 solicitation-by-solicitation basis, the responsibility of prospective contractors. The process shall  
16 ensure that the prospective contractor:

17 (1) has adequate financial resources to perform the contract or the ability to obtain those  
18 resources;

19 (2) is able to comply with the required or proposed delivery or performance schedule,  
20 based upon the bidder's or offeror's existing commercial and government contract commitments;

21 (3) has a satisfactory performance record;

22 (4) has a satisfactory record of integrity and business ethics;

23 (5) has a satisfactory record of compliance with the law, including labor and civil rights  
24 laws and rules;

25 (6) has, or has the ability to obtain, the necessary organization, experience, accounting,  
26 operational control, and technical skills;

27 (7) has, or has the ability to obtain, the necessary production, construction, technical  
28 equipment, and facilities;

29 (8) has not exhibited a pattern of overcharging the commonwealth or any other  
30 governmental body;

31 (9) does not have an outstanding debt with the commonwealth or any other governmental  
32 body in a delinquent status; and

33 (10) is otherwise qualified and is eligible to receive an award under applicable laws and  
34 rules.

35 (b) Prior to awarding a contract, the governmental entity shall make a determination that  
36 the prospective contractor has the necessary capacity to perform in accordance with the terms  
37 and conditions of the contract.

38 (c) For all contracts to exceed \$ 100,000, a potential contractor shall complete and submit  
39 with its bid or offer a certification developed by the procurement officer to provide information  
40 needed to determine if a prospective contractor is responsible. The certification shall be signed  
41 under the penalty of perjury.

42 (d) After the contract is awarded, if the governmental body learns that the contractor  
43 certified false information, the governmental body may terminate the contract. The contractor  
44 shall update its responses in the certification during the term of the contract within 60 days of a  
45 material change in a response to its prior questionnaire and prior to the exercise of an option year  
46 contract. The governmental body may consider failure of the contractor to update the  
47 certification with this information as material breach of the contract and invoke all applicable  
48 remedies. Information within the certification may be made available to the public, except to the  
49 extent that any information is exempt from disclosure.

50 (e) A determination by the governmental body that a prospective contractor is non-  
51 responsible shall be final. The determination of non-responsibility shall not be overturned unless  
52 arbitrary or capricious. Upon determining that a prospective contractor is non-responsible, the

53 governmental body shall consider whether the contractor should be suspended or debarred  
54 pursuant to the procedure and criteria of section 29F of chapter 29. Information about a  
55 prospective or current contractor relevant to a contractor's responsibility, or lack thereof, may be  
56 submitted for consideration to a governmental entity by a member of the general public.

57 SECTION 4. Subsection (a) of section 6 of said chapter 30B, as so appearing, is hereby  
58 amended by adding the following sentence:- Governmental bodies are encouraged to utilize  
59 competitive sealed proposals as the preferred method for entering into contracts for cleaning,  
60 maintenance, or security guard services.

61 SECTION 5. Section 6 of chapter 30B, as so appearing, is hereby amended by striking  
62 out the word “and”, in line 14, and by inserting, in line 18, the following:- and

63 (4) for cleaning, maintenance or security guard services, the request for proposals shall  
64 also include: (1) a statement of required hours and (2) a worksheet requiring a breakdown of the  
65 cost components of the hourly proposed rate as developed by the procurement officer.

66 SECTION 6. Section 6 of said chapter 30B, as so appearing, is hereby amended by  
67 inserting after the word “proposals”, in line 46, the following words:- and according to the  
68 weight specified for each criterion.

69 SECTION 7. Section 12 of said chapter 30B, as so appearing, is hereby amended by  
70 inserting after the word “adjustments”, in line 25, the following words:- and a governmental  
71 body may provide for annual adjustments to the contract price to reflect annual increases  
72 associated with any wage and benefit requirements the governmental body may establish.