



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
MARTIN J. WALSH

February 23, 2017

TO THE CITY COUNCIL

Dear Councilors:

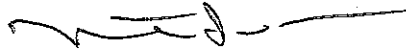
I transmit herewith for your approval a home rule petition to the General Court entitled “Petition for a Special Law Re: An Act Authorizing the Economic Development and Industrial Corporation of Boston (“EDIC”) to Qualify a Single Energy Services Company for the Design, Construction, Operation, Maintenance, and Financing of a District Energy/Microgrid Project and Related Energy Savings Performance Contract to Serve Public and Private Owners and Tenants in the Raymond L. Flynn Marine Park.”

For the past three years, City and EDIC d/b/a Boston Planning and Development Agency (“BPDA”) staff have been studying ways to implement a district energy/microgrid project within the Raymond L. Flynn Marine Park (“RLFMP”). A microgrid is an electrical distribution network that can serve multiple buildings in a local area and that can enter into “island mode” by separating from the larger electrical grid when there is a major outage. The RLFMP is a prime location for this microgrid project because of its location along the South Boston Waterfront and the EDIC’s commitment to serve its tenants, which include large industrial energy users. The EDIC seeks to procure an energy service company to provide energy project services to all public and private property owners and tenants within the RLFMP. The energy service company’s obligations will involve maintaining an energy savings performance contract for building energy improvements, financed with private equity or debt.

While current procurement laws (M.G.L. c. 25A, §§ 11C, 11I) allow the procurement and private financing of a municipal energy project like this one, they only permit energy improvements involving public facilities. As the RLFMP includes both public and private property owners, this home rule petition is necessary so that the EDIC can procure an energy service company that will provide energy project services to the entire RLFMP.

I urge your Honorable Body to support this special act so that we can make this innovative method of delivering energy services a reality for the property owners and tenants of Raymond L. Flynn Marine Park.

Sincerely,

A handwritten signature in black ink, appearing to read 'Martin J. Walsh', with a long horizontal line extending to the right.

Martin J. Walsh
Mayor of Boston

**CITY OF BOSTON
IN CITY COUNCIL**

**HOME RULE PETITION FOR
PROCUREMENT OF RAYMOND L. FLYNN MARINE PARK
DISTRICT ENERGY/MICROGRID SYSTEM.**

AN ACT AUTHORIZING THE ECONOMIC DEVELOPMENT AND INDUSTRIAL CORPORATION OF BOSTON TO QUALIFY A SINGLE ENERGY SERVICES COMPANY FOR THE DESIGN, CONSTRUCTION, OPERATION, MAINTENANCE, AND FINANCING OF A DISTRICT ENERGY/MICROGRID PROJECT AND RELATED ENERGY SAVINGS PERFORMANCE CONTRACT TO SERVE PUBLIC AND PRIVATE PROPERTY OWNERS AND TENANTS IN THE RAYMOND L. FLYNN MARINE PARK.

- WHEREAS,* The City of Boston (City) is committed to carbon neutrality by 2050, to developing resilient solutions to prepare Boston for climate change, and to expanding the use of community energy projects to help meet these commitments;
- WHEREAS,* District energy is a system that supplies thermal energy to multiple buildings via underground pipes carrying steam, hot water, and cold water;
- WHEREAS,* A microgrid is an electrical distribution network with underground wires that serves multiple buildings in a local area and that can enter into “island mode” by separating from the larger electrical grid when there is a major outage and self-supplying the microgrid network with locally generated electricity;
- WHEREAS,* Local generation is energy generated in close proximity to users and includes: (a) Combined Heat and Power (CHP) that uses natural gas to generate electricity on-site and captures the heat that would otherwise be wasted to provide useful thermal energy and (b) solar photovoltaic (PV) panels;
- WHEREAS,* District energy/microgrid projects provide added resiliency, reduce greenhouse gas emissions and lower energy costs for their customers;
- WHEREAS,* The Raymond L. Flynn Marine Park (RLFMP), a 191 acre former military base owned by the Economic Development and Industrial Corporation (EDIC) is a prime location for a district energy/microgrid project because of its location along the South Boston Waterfront and EDIC’s commitment to serve its tenants, which include large industrial

energy users, with world class infrastructure that reduces operating costs, provides district-scale backup power, meets power quality needs, and creates 'green' brand value;

WHEREAS, The City and the EDIC d/b/a Boston Planning and Development Agency (BPDA) have worked for three years to identify potential end users, technology options, and to conduct a feasibility study for and preliminary scoping of a district energy/microgrid project within the RLFMP;

WHEREAS, On July 14, 2016, the EDIC Board of Directors authorized the EDIC to “publicly advertise, under applicable law, a Request for Qualifications (“RFQ”) from Energy Service Companies for energy management services to assess the feasibility of a microgrid pilot project for the [RLFMP] properties,” a project that would include “building-scale improvements (retrofitting buildings to be more energy efficiency) and district-scale improvements (adding centrally managed energy generation equipment), and developing a robust network of heating, cooling and electrical infrastructure that is utilized among [RLFMP] properties;”

WHEREAS, The EDIC seeks to qualify a single energy service company (ESCO) to provide energy management services to all public and private property owners and tenants within the RLFMP including the development of district energy/microgrid using a design-build-operate-transfer delivery structure and a related energy savings performance contract for building energy improvements, both financed with private equity or debt;

WHEREAS, The EDIC seeks a special act, via Home Rule Petition, to authorize what Massachusetts law currently does not authorize, that is, the qualification of single ESCO to provide energy management services for public and private property owners and tenants that voluntarily participate in a district energy/microgrid project and a related energy savings performance contract, both financed with private equity or debt;

WHEREAS, Massachusetts General Laws (MGL), Chapter 25A, §11C, authorizes private equity or debt financing of a municipal energy project by providing for the procurement of an energy management services contract that “may include terms of not more than 20 years,” with implementing regulations requiring the contract to include, at 225 Code of Massachusetts Regulations (CMR) §10:05(3), the “fixed Guaranteed Maximum Price;” at §10:05(4), the “fixed minimum Guarantee of [energy and water] Savings or in the case of On-site Energy Generation, Guarantee of Generation;” and, at §10:05(5), the “method to make the Local Government Body whole in the case of Guaranteed Savings or Generation shortfall;”

WHEREAS, MGL c. 25A, §11I, is limited to energy improvements involving public “facilities” but in all other respects provides for the qualification of ESCOs to provide energy management services anticipated for the RLFMP district energy/microgrid project and for a related energy savings performance contract financed by private equity or debt with implementing regulations at 225 CMR §19:02 and §19:04 requiring an “Investment Grade Audit (IGA)” that “includes a detailed evaluation of the Energy Conservation Project cost, including but not limited to the investment opportunities for Energy Conservation Measures [ECMs], operations and maintenance,” and that “shall provide a return on investment that represents an optimized bundle of short-term payback [ECMs] combined with long-term payback [ECMs] to meet the Local Government Body Energy Savings and financial goals;” at §19:06(4), the “fixed Guaranteed Maximum Price;” at §19:06(5), the “fixed minimum Guarantee of [energy and water] Savings or in the case of On-site Energy Generation, Guarantee of Generation;” and, at §19:06(6), the “method to make the Local Government Body whole in the case of Guaranteed Savings or Generation shortfall;”

WHEREAS, MGL c. 149A, §1, authorizes political subdivisions to use “the construction management at risk delivery method” for public building projects over \$5,000,000 but MGL c. 149A does not include provisions permitting the use of private equity or debt financing to fund such projects;

THEREFORE BE IT ORDERED,

That a petition to the General Court, accompanied by a bill for a special law relating to the City of Boston to be filed with an attested copy of this order be, and hereby is, approved under Clause 1 of Section 8 of Article II, as amended, of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

PETITION FOR A SPECIAL LAW RE: AN ACT AUTHORIZING THE ECONOMIC DEVELOPMENT AND INDUSTRIAL CORPORATION OF BOSTON TO QUALIFY A SINGLE ENERGY SERVICES COMPANY FOR THE DESIGN, CONSTRUCTION, OPERATION, MAINTENANCE, AND FINANCING OF A DISTRICT ENERGY/MICROGRID PROJECT AND RELATED ENERGY SAVINGS PERFORMANCE CONTRACT TO SERVE PUBLIC AND PRIVATE PROPERTY OWNERS AND TENANTS IN THE RAYMOND L. FLYNN MARINE PARK.

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) The Economic Development and Industrial Corporation of Boston (EDIC), may, notwithstanding the provisions of any general or special law or regulation to the contrary, enter into a single energy management services contract to provide energy management services to all public and private properties, either owned or leased, within the Raymond L. Flynn Marine Park (RLFMP), which services shall include the development of a district energy/microgrid using a design-build-operate-transfer delivery structure and a related energy savings performance contract for building energy improvements. For the purposes of this special act, “energy management services” shall mean a program of services, including energy audits, energy conservation measures, energy conservation projects or a combination thereof, and building maintenance and financing services, primarily intended to reduce the cost of energy and water in operating buildings, which may be paid for, in whole or in part, by cost savings attributable to a reduction in energy and water consumption which result from such services. All energy generation installed and all savings measures under the contract shall comply with current local, state and federal construction and environmental codes and regulations.

(b) Notwithstanding any general or special law to the contrary, energy management services contracts awarded under subsection (a) may provide for a term, not exceeding twenty years, and an option for renewal or extension of services for one additional term, not exceeding five years. The renewal or extension shall be at the sole discretion of the EDIC in accordance with the original contract terms and conditions or with contract terms and conditions which are more favorable to and acceptable to the EDIC.

(c) Before entering into an energy management services contract, the EDIC shall issue a request for qualifications. Public notice of the request for qualifications shall conform to the procedures set forth in subsection (1) of section 44J of chapter 149. At least 1 week before soliciting a request for qualifications for an energy management services contract, the EDIC shall notify the commissioner of the Department of Energy Resources (“commissioner”) in writing of the EDIC’s intent to solicit qualifications. The notification, at a minimum, shall include a copy of the request for qualifications. An acknowledgment of receipt shall be issued by the commissioner to the EDIC upon compliance with the requirements of this subsection.

The request for qualifications published by the EDIC shall include the following: (1) the EDIC’s full name and address; (2) The name, address, title and phone number of a contact person; (3) the date, time and place where qualifications shall be received; (4) stated objectives for the RFLMP district energy/microgrid program and the eligibility of all public and private properties whose owners may choose to voluntarily participate, a description of the services to be procured, including a facility profile with a detailed description of each building involved and accurate energy consumption data for the most recent 2-year period, a list of building or energy improvements to be considered or required and a statement as to whether the proposed improvements will generate sufficient energy generation revenues or energy savings to fund the full cost of the program; (5) the evaluation criteria for assessing the

qualifications; (6) a statement that the EDIC may cancel the request for qualifications, or may reject in whole or in part any and all energy generation and savings measures, when it determines that cancellation or rejection serves the best interests of the public; and (7) any other stipulations and clarifications the EDIC may require, which shall be clearly identified in the request for qualifications.

Qualifications shall be opened publicly, in the presence of 2 or more witnesses, at the time specified in the request for qualifications, and shall be available for public inspection. The provisions of sections 44A, 44B and 44E to 44H, inclusive, of chapter 149, section 39M of chapter 30, and chapter 30B, shall not apply to contracts procured under this section. Section 44D of said chapter 149 shall apply as appropriate to qualifications submitted for contracts under this section, and every such qualification shall be accompanied by (1) a copy of a certificate of eligibility issued by the commissioner of capital asset management and maintenance, and (2) by an update statement.

The EDIC shall evaluate the qualified providers to determine which best meets the EDIC's needs by reviewing the following:

- (1) references of other energy savings contracts performed by the qualified providers;
- (2) the certificate of eligibility and update statement provided by the qualified providers;
- (3) quality of the products proposed;
- (4) methodology of determining energy generation and savings;
- (5) general reputation and performance capabilities of the qualified providers;
- (6) substantial conformity with the specifications and other conditions set forth in the request for qualifications;
- (7) time specified in the qualifications for the performance of the contract; and
- (8) any other factors the agency, body, or authority considers reasonable and appropriate, which factors shall be made a matter of record.

Respondents shall be evaluated only on the criteria set forth in the request for qualifications.

The EDIC shall conduct discussions with, and may require public presentations by, each person who submitted qualifications in response to the request for qualifications regarding his qualifications, approach to the project and ability to furnish the required services. The EDIC shall select in order of preference 3 such persons, unless fewer persons respond, it considers to be the most highly qualified to

perform the required services. The EDIC may request, accept and consider proposals for the compensation to be paid under the contract only during competitive negotiations conducted under subsection (e).

(d) The EDIC may cancel a request for qualifications, or may reject in whole or in part any and all proposals when it determines that cancellation or rejection serves its best interests. The EDIC shall state in writing the reason for a cancellation or rejection.

(e) The EDIC shall negotiate a contract with the most qualified person at compensation which it determines is fair, competitive and reasonable. If the EDIC is unable to negotiate a satisfactory contract with the person considered to be the most qualified at a price the EDIC determines to be fair, competitive and reasonable, negotiations with that person shall be formally terminated. The EDIC shall then undertake negotiations with the second most qualified person. Failing accord with the second most qualified person, the EDIC shall terminate those negotiations and then undertake negotiations with the third most qualified person. Should the EDIC be unable to negotiate a satisfactory contract with any of the selected persons, it may select additional qualified providers who responded to the request for qualifications, in the order of their competence and qualification, and continue negotiations in accordance with this subsection until either an agreement is reached or the EDIC cancels the request for qualifications.

(f) The EDIC's decision regarding the selection of a qualified provider shall be final and not subject to appeal except on the grounds of fraud or collusion.

(g) The EDIC shall provide public notice of the meeting at which it proposes to award the energy management services contract, of the name of the parties to the proposed contract and of the purpose of the contract. The public notice shall be made at least 10 days before the meeting. The EDIC shall promptly publish in the central register notice of the award and shall notify the commissioner of the award and provide a copy of the energy management services contract.

(h) The energy management services contract shall include a written guarantee of the qualified provider that either the amount of energy generation and savings guaranteed shall be achieved or the qualified provider shall reimburse the EDIC for the shortfall amount. Methods for measurement and verification of energy savings shall conform to the most recent standards established by the Federal Energy Management Program of the United States Department of Energy.

(i) The EDIC shall comply with the regulations for the procurement of energy management services under this section for local government bodies adopted pursuant to MGL c. 25A, §11I by the commissioner and codified at 225 Code of Massachusetts Regulations 19:00 et seq. An order of the commissioner under this subsection shall be effective and may be enforced according to its terms, and enforcement shall not be suspended or stayed by the entry of an appeal. The superior court for Suffolk

county shall have jurisdiction over appeals of orders of the commissioner under this subsection, and shall also have jurisdiction upon application of the commissioner to enforce all orders of the commissioner under this subsection. The burden of proof shall be upon the appealing party to show that an order of the commissioner is invalid. An aggrieved person shall not be required to seek an order from the commission as a condition precedent to seeking any other remedy.

(j) Payments under a contract for energy management services may be based in whole or in part on any cost savings attributable to a reduction in energy and water consumption due to the contractor's performance or revenues gained due to the contractor's services which are aimed at energy and water cost savings.

(k) Unless no other manner of description suffices, and the EDIC so determines in writing, setting forth the basis for the determination, all requirements shall be written in a manner which describes the requirements to be met without having the effect of exclusively requiring a proprietary supply or service, or a procurement from a sole source.

(l) Before entering into an energy management services contract, the EDIC shall require the qualified provider to file with the EDIC a performance bond relating to the installation of energy savings measures in an amount equal to 100 per cent of the estimated contract value from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570.

(m) An energy management services contract may extend beyond the fiscal year in which it became effective.

I HEREBY CERTIFY THAT
THE FOREGOING, IF PASSED IN
THE ABOVE FORM, WILL BE IN
ACCORDANCE WITH LAW.
BY Eugene L. O'Flaherty
EUGENE L. O'FLAHERTY
CORPORATION COUNSEL DZ