

## New Procurement Law May Make Solar/Wind Projects Faster

### *Prepared for the 2015 Massachusetts Municipal Association Annual Meeting*

Until recently, a municipality seeking to lease municipal property for the development of a third-party owned and operated energy facility was required to conduct a competitive procurement under G.L. c. 30B (for energy facilities installed on land), or G.L. c. 25A (for energy facilities installed on land or buildings). Whereas the former requires the issuance of a Request for Proposals, requiring submission and consideration of price proposals, G.L. c.25A allows the use of either a Request for Proposals or a Request for Qualifications pursuant to which price is negotiated after award of a contract.

As a result of a recent amendment to G.L. c.164, §137, a municipality may lease its property for the development of a renewable energy facility without having to conduct any competitive procurement. As amended, the relevant portion of that law states that a municipality may:

participate in and become a member of any competitively procured program organized and administered, under this chapter, by or on behalf of any public instrumentality of the commonwealth or of any subsidiary organization thereof for the purpose of group purchasing of electricity, natural gas . . . or similar products . . . [and] the disposition of municipal or state real property by lease, easement or license for renewable energy shall not require competitive bidding when part of a power purchase agreement or a net metering agreement. . . .

Thus, while G.L. c.164, § 137 permits the leasing of municipal property without having to conduct a competitive procurement, it does so only upon satisfaction of the criteria set forth in that section, including the requirement that such leasing be done in connection with a “competitively procured program organized and administered . . . by or on behalf of any public instrumentality of the commonwealth or of any subsidiary organization thereof.” If a program is not so organized and administered, the exemption from competitive procurement would not apply.

Of course, a municipality is still required to obtain appropriate legislative approval for the disposition of an interest in land, and, in connection therewith, must comply with any other applicable non-procurement laws.

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