

Schacht & McElroy

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July 26, 2010

Luly Massaro
Clerk
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Providence Water Supply Board

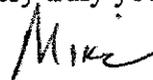
Dear Luly:

As you know, this office represents Providence Water Supply Board (Providence Water).

Enclosed for filing in this matter are an original and 9 copies of an appeal by Providence Water pursuant to R.I.G.L. § 39-1-30.

If you have any questions, please feel free to call.

Very truly yours,



Michael R. McElroy

MRMc:tmg

cc: Pamela Marchand, P.E.
Adrienne Southgate, Esq.
Providence City Clerk

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PROVIDENCE WATER SUPPLY BOARD : DOCKET No: _____

APPEAL BY PROVIDENCE WATER SUPPLY BOARD
PURSUANT TO R.I.G.L. § 39-1-30

1. Providence Water Supply Board (Providence Water) is a company under the supervision of this Commission.

2. Pursuant to R.I.G.L. § 39-1-30:

“Every ordinance enacted, or regulation promulgated by any town or city affecting the mode or manner of operation or the placing or maintenance of the plant and equipment of any company under the supervision of the commission, shall be subject to the right of appeal by any aggrieved party to the commission within ten (10) days from the enactment or promulgation. The commission, after a hearing, upon notice to all parties in interest, shall determine the matter giving consideration to its effect upon the public health, safety, welfare, comfort, and convenience.”

3. Section 1007 of the Providence City Charter entitled “Board of Contract and Supply” sets forth the responsibilities of the Board of Contract and Supply in pertinent part as follows:

“(c) It shall be the responsibility of the board of contract and supply:

- (1) To make all contracts for purchase of materials, supplies, services, equipment and property on behalf of the city, the price or consideration of which shall exceed five thousand dollars (\$5,000.00), on the basis of sealed bids solicited through public advertisement in a newspaper of general circulation in Providence, such bids to be submitted, opened and considered in accordance with rules and regulations approved by the board. The city council may increase the figure of five thousand dollars (\$5,000.00) by a two-thirds vote following a public hearing, but no more often than once every five (5) years;
- (2) To insure before a contract is entered into that there exists sufficient appropriation to pay the cost thereof;
- (3) To reject any or all bids submitted to it for a specific purpose if it considers that the public interest will be best served thereby.”

A copy is attached hereto as Exhibit 1.

4. Moreover, Section 1301 of the Providence City Charter provides in pertinent part as follows:

“1301. Charter amendments.

Amendments to this Charter shall be proposed by the city council and adopted by the people of the city in the manner provided by the Constitution of the State of Rhode Island.”

A copy is attached as Exhibit 2.

5. On or about July 1, 2010, the Providence City Council read and passed “An ordinance in amendment of Section 21, Article II, Section 21-26 by adding subsection (2) as amended.” This amended ordinance purports to add the following to the city ordinances:

“Section 21-26, is hereby amended by adding the following section:

- (2) Any and all contracts entered into by the City of Providence, including the Water Supply Board and School Department, must be first approved by the Providence City Council in any of the following circumstances:
 - a: Any and all contracts for more than \$500,000.00 including materials, or for a duration of more than 1 year, excluding contracts for accountancy and/or legal.
 - b: Any contract for which there is a purported “sole source” vendor award.
 - c: Any leases entered into by the City of Providence for an amount of more than \$200,000.00 or duration of more than 1 year.
 - d: Any change order constituting an increase of 20% or more over the original bid amount of \$100,000.00, whichever is the lesser.
 - e: Any extension of any contract beyond a year or \$100,000.00.

A copy is attached as Exhibit 3.

6. On or about July 12, 2010, Mayor David N. Cicilline vetoed the aforesaid proposed ordinance amendment, stating as follows:

“On July 1, 2010, the City Council passed an amendment to Section 21-26 to add a requirement that the Council approve a variety of contracts entered into by the City of Providence, including the Providence Water Supply Board and the Providence School Department. This amendment ignores both the balance of power reflected by the Providence Home Rule Charter, and existing protections (built in by the Charter and enhanced by various legislative actions incorporated in the Providence Code of Ordinances) that require various matters to be taken to the Board of Contract and Supply.

The Council is undoubtedly aware of Section 1007(c)(1) of the Home Rule Charter, which allots to the Board of Contract and Supply the responsibility:

“To make all contracts for purchase of materials, supplies, services, equipment and property on behalf of the city, the price or consideration of which shall exceed five thousand dollars (\$5,000.00), on the basis of sealed bids solicited through public advertisement in a newspaper of general circulation in Providence, such bids to be submitted, opened, and considered in accordance with rules and regulations approved by the board.”

Apparently, the Council now seeks to interject a second level of review for certain types of contracts or leases. In addition to making it extremely difficult to exercise appropriate and timely contracting by interposing a second referral (to Council, and then to City property Committee and thence back to council for approval), there is no principled basis for distinguishing which contracts are asserted to require this greater level of scrutiny. Indeed, some of the newly added items are redundant; already, the City Council is required to approve leases which have a duration of more than one year.

Creating this additional bureaucratic process will make it unnecessarily difficult for vendors and service providers to do business with the City of Providence and will cause substantial delays in the awarding of necessary contracts. This will result in a serious reduction in competitive bidding and in the number of companies and businesses likely to participate in the bid process ultimately resulting in increased costs to the Providence taxpayers. Such a result in unacceptable.

Finally, this ordinance reflects a fundamental misunderstanding about executive functioning. A careful reading of the Home Rule Charter, Section 301, shows that the executive and administrative powers of the city are vested in the office of the mayor. These responsibilities are clearly set forth in the City Charter. It is critical that the incoming administration be given the latitude necessary to operate our city, with the prudence oversight of the Board of Contract and Supply. If the Council feels such oversight is inadequate, a more appropriate remedy would be to exercise the rights currently available to the Council under Section 1007(b).”

A copy is attached hereto as Exhibit 4.

7. On or about July 15, 2010 the City Council overrode the Mayor's veto.

8. Providence Water believes that this ordinance is illegal and in violation of the City Charter, and for the reasons set forth in Mayor Cicilline's veto, among others, this ordinance will seriously and adversely affect the mode or manner of operation of Providence Water, and its effects will be detrimental to the public health, safety, welfare, comfort, and convenience, including, but not limited to, the approximate 600,000 persons in the State of Rhode Island who receive water directly or indirectly from Providence Water. Most of Providence Water's contracts are over \$500,000 and/or for more than one year, and if this ordinance is allowed to stand, it would present major difficulties for Providence Water in carrying out its statutory obligations to provide safe drinking water, including, but not limited to, Providence Water's obligation to carry out its approved infrastructure replacement plan.

WHEREFORE, Providence Water respectfully requests that the Commission, after hearing, upon notice to all parties in interest, determine the matter in question, giving consideration to the effect of this proposed ordinance upon the public health, safety, welfare, and convenience, and revoke the foregoing ordinance.

Respectfully submitted,
PROVIDENCE WATER SUPPLY BOARD

By its attorney



Michael R. McElroy, Esq. #2627

Schacht & McElroy

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P.O. Box 6721

Providence, RI 02940-6721

Tel: (401) 351-4100

Fax: (401) 421-5696

Michael@McElroyLawOffice.com

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July, 2010, I mailed a true copy of the foregoing to the following:

Adrienne Southgate, Esq.
Senior Assistant City Solicitor
City of Providence
Department of Law
275 Westminster Street, Suite 200
Providence, RI 02903

City Clerk
City Hall, 3rd Floor
25 Dorrance Street
Providence, RI 02903



Theresa Gallo

1007. Board of contract and supply.

There shall be a board of contract and supply whose members shall consist of the mayor, the president of the city council, the finance director, the city controller, the chairperson of the committee of the city council with jurisdiction over city property, the chairperson of the committee of the city council with jurisdiction over budgetary and financial matters, the director of public works, the commissioner of public safety, the city treasurer, the director of public property, the chairperson of the water supply board and the president of the school committee, all ex officio. In the absence of any of the above-named members, a deputy shall serve in the place of said member. On the first Monday of January, 1983, or as soon thereafter as may be practical, the members of the city council who are members of a political party or parties other than that of the mayor, or are independents, shall elect from their total number one member to serve on said board for a term of four (4) years. Any vacancy that may occur in the office of an elective member shall be filled for the unexpired term by those members of the city council eligible to vote for that elective member under the terms of this subsection. Failure to elect such elective member shall in no case prevent said board from acting. The city assessor shall likewise be, ex officio, a member of the board for such purposes as may be declared by ordinance.

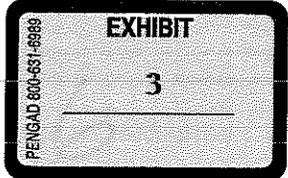
- (a) The mayor, or in the absence of the mayor, the president of the city council, shall be the chairperson of said board. The city clerk, or in the absence of the city clerk, one of his or her deputies, shall act as clerk of said board.
- (b) In addition to the membership established herein, the city council, by ordinance, may appoint the heads of other city departments or agencies to the membership of the board of contract and supply, but may not deny membership to any member so named in this subsection unless the department or agency of which said member is the head shall have been abolished.
- (c) It shall be the responsibility of the board of contract and supply:
 - (1) To make all contracts for purchase of materials, supplies, services, equipment and property on behalf of the city, the price or consideration of which shall exceed five thousand dollars (\$5,000.00), on the basis of sealed bids solicited through public advertisement in a newspaper of general circulation in Providence, such bids to be submitted, opened and considered in accordance with rules and regulations approved by the board. The city council may increase the figure of five thousand dollars (\$5,000.00) by a two-thirds vote following a public hearing, but no more often than once every five (5) years;
 - (2) To insure before a contract is entered into that there exists sufficient appropriation to pay the cost thereof;
 - (3) To reject any or all bids submitted to it for a specific purpose if it considers that the public interest will be best served thereby.
- (d) The board of contract and supply shall have the authority to enter into agreements with the state, or the United States, or any public body having authority to condemn property of the city, with respect to the value of any such property so taken; and shall have the authority to employ such experts as it shall deem necessary to assist it in the purchase of real estate, or in connection with the condemnation thereof, under such terms and conditions as the city council may set.

(Ord. No. 107, § 2, 3-13-97)

Cross references: Boards and commissions, Art. XI; general provisions for boards, authorities and commissions, § 1202.

1301. Charter amendments.

Amendments to this Charter shall be proposed by the city council and adopted by the people of the city in the manner provided by the Constitution of the State of Rhode Island.



City of Providence
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER

No. AN ORDINANCE IN AMENDMENT OF SECTION 21,
ARTICLE II, SECTION 21-26, BY ADDING
SUBSECTION (2), AS AMENDED

Approved

Be it ordained by the City of Providence:

Section 21-26, is hereby amended by adding the following section:

- 2) Any and all contracts entered into by the City of Providence, including the Water Supply Board and School Department, must be first approved by the Providence City Council in any of the following circumstances:
 - a: Any and all contracts for more than \$500,000.00 including materials, or for a duration of more than 1 year, excluding contracts for accountancy and/or legal.
 - b: Any contract for which there is a purported "sole source" vendor award.
 - c: Any leases entered into by the City of Providence for an amount of more than \$200,000.00 or duration of more than 1 year.
 - d: Any change order constituting an increase of 20% or more over the original bid amount or \$100,000.00, whichever is the lesser.
 - e: Any extension of any contract beyond a year or \$100,000.00.

IN CITY COUNCIL
JUN 17 2010

FIRST READING
READ AND PASSED

[Signature]
CLERK

IN CITY COUNCIL
JUL 1 - 2010
READ AND PASSED

[Signature]
PRES.

[Signature]
CLERK

VEHO
I HEREBY DISAPPROVE
AND VETO

[Signature]
MAYOR
7/12/2010



Mayor of Providence

David N. Cicilline

July 12, 2010

The Honorable Providence City Council
City Hall
25 Dorrance Street
Providence, Rhode Island 02903

Re: Veto of Amendment to Section 21-26

To The Honorable City Council:

On July 1, 2010, the City Council passed an amendment to Section 21-26 to add a requirement that the Council approve a variety of contracts entered into by the City of Providence, including the Providence Water Supply Board and the Providence School Department. This amendment ignores both the balance of power reflected by the Providence Home Rule Charter, and existing protections (built in by the Charter and enhanced by various legislative actions incorporated in the Providence Code of Ordinances) that require various matters to be taken to the Board of Contract and Supply.

The Council is undoubtedly aware of Section 1007(c)(1) of the Home Rule Charter, which allots to the Board of Contract and Supply the responsibility:

"To make all contracts for purchase of materials, supplies, services, equipment and property on behalf of the city, the price or consideration of which shall exceed five thousand dollars (\$5,000.00), on the basis of sealed bids solicited through public advertisement in a newspaper of general circulation in Providence, such bids to be submitted, opened, and considered in accordance with rules and regulations approved by the board."

Apparently, the Council now seeks to interject a second level of review for certain types of contracts or leases. In addition to making it extremely difficult to exercise appropriate and timely contracting by interposing a second referral (to Council, and then to City Property Committee and thence back to Council for approval), there is no principled basis for distinguishing which contracts are asserted to require this greater level of scrutiny. Indeed, some of the newly added items are redundant; already, the City Council is required to approve leases which have a duration of more than one year.

City of Providence, Rhode Island 02903
Phone (401) 421-7740 Fax (401) 274-8240

Creating this additional bureaucratic process will make it unnecessarily difficult for vendors and service providers to do business with the City of Providence and will cause substantial delays in the awarding of necessary contracts. This will result in a serious reduction in competitive bidding and in the number of companies and businesses likely to participate in the bid process ultimately resulting in increased costs to the Providence taxpayers. Such a result is unacceptable.

Finally, this ordinance reflects a fundamental misunderstanding about executive functioning. A careful reading of the Home Rule Charter, Section 301, shows that the executive and administrative powers of the city are vested in the office of the mayor. These responsibilities are clearly set forth in the City Charter. It is critical that the incoming administration be given the latitude necessary to operate our city, with the prudent oversight of the Board of Contract and Supply. If the Council feels such oversight is inadequate, a more appropriate remedy would be to exercise the rights currently available to the Council under Section 1007(b).

Very truly yours,

A handwritten signature in black ink, appearing to read "David N. Cicilline", written over a horizontal line.

David N. Cicilline
Mayor