

By Mr. Businger of Brookline, petition of the Massachusetts State Association of Architects that provision be made for fair competition for bidders on construction of public works. State Administration.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Two.

AN ACT PROVIDING FOR FAIR COMPETITION FOR BIDDERS ON CONSTRUCTION OF PUBLIC WORKS.

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

1 Sections 44A through 44L of chapter 149 of the General
2 Laws are hereby amended by striking out said sections and
3 inserting in place thereof the following new sections: —
4 *Section 44A. Contracts awarded to lowest bidder; time for*
5 *award; failure to execute contract and furnish bonds; defini-*
6 *tions; information as to qualifications; emergency con-*
7 *tracts.* — Every contract for the construction, reconstruction,
8 alteration, remodeling, repair or demolition of any building by
9 the commonwealth or by any governmental unit thereof, esti-
10 mated to cost more than five thousand dollars in the case of
11 the commonwealth, and more than two thousand dollars in the
12 case of any governmental unit thereof, shall be awarded to the
13 lowest responsible and eligible general bidder on the basis of
14 competitive bids in accordance with the procedure set forth in
15 the provisions of sections forty-four B to forty-four G in-
16 clusive. The awarding authority shall prepare for bidding pur-
17 poses a sufficient number of sets of plans and specifications so
18 that there will be available without cost or charge, except for a
19 deposit for return of the same in good condition, two complete
20 sets of plans and specifications for each general bidder re-
21 questing same. The award of every such contract in connection
22 with which approval by an officer, board or agency of the

23 federal government is required shall be made within thirty
24 days, Saturdays, Sundays and legal holidays excluded, after
25 such approval; and the award of every contract subject to this
26 section in connection with which approval by an officer, board
27 or agency of the federal government is not required shall be
28 made within thirty days, Saturdays, Sundays and legal holidays
29 excluded, after the opening of the general bids therefor. If the
30 general bidder selected as the general contractor fails to per-
31 form his agreement to execute a contract in accordance with
32 the terms of his general bid and furnish a performance bond
33 and also a labor and materials or payment bond as stated in his
34 general bid in accordance with section forty-four F, an award
35 shall be made to the next lowest responsible and eligible
36 general bidder. The thirty-day time limit shall not be applicable
37 to a second or subsequent award made after the expiration of
38 the time limit with the consent of said next lowest responsible
39 and eligible general bidder and made because the original award
40 made within the time limit was invalid, or because the general
41 bidder failed to execute the general contract or to provide a
42 performance bond and labor and materials or payment bond.

43 As used herein and in sections forty-four B to forty-four G,
44 inclusive, the term "governmental unit thereof" shall include
45 every county, city, town, district, board, commission and other
46 public body and the words "lowest responsible and eligible
47 bidder" shall mean the bidder whose bid is the lowest of those
48 bidders possessing the skill, ability and integrity necessary to
49 the faithful performance of the work and who shall certify that
50 he is able to furnish labor that can work in harmony with all
51 other elements of labor employed or to be employed on the
52 work. Essential information in regard to such qualifications
53 shall be submitted in such form as the awarding authority may
54 require.

55 In cases of extreme emergency caused by explosion, fire,
56 flood, earthquake, hurricane, tornado or other catastrophe, an
57 awarding authority may, with the prior approval of the com-
58 missioner or his designee, award a contract for that portion of
59 the work necessary to preserve the health or safety of persons
60 or property on the basis of such competitive general bids as it
61 can obtain in time to care for the extreme emergency and
62 without public opening of the general bids.

63 In cases of extreme emergency caused by enemy attack,
64 sabotage or other such hostile actions or resulting from ex-
65 plosion, fire, flood, earthquake, hurricane, tornado or other
66 such catastrophe, an awarding authority may, without competi-
67 tive bids and notwithstanding any general or special law, award
68 contracts otherwise subject to this section to perform work and
69 to purchase or rent materials and equipment, all as may be
70 necessary for temporary repair and restoration of any and all
71 such buildings in order to preserve the health and safety of
72 persons or property; provided, that this exception shall not
73 apply to any permanent reconstruction, alteration, remodeling
74 or repair of any such building. This paragraph shall apply only
75 when the President of the United States or the governor of the
76 commonwealth declares that an emergency exists or when, in
77 the case of a localized catastrophe, an emergency is declared by
78 the mayor, or the city manager in cities having a Plan D or
79 Plan E charter, or the board of selectmen, as the case may be.

80 *Section 44B. Cash or checks accompanying bids; return and*
81 *bonds for return of deposits; failure to execute contracts.* (1)
82 Every general bid submitted for a contract subject to section
83 forty-four A, shall be accompanied by cash or a certified check
84 on, or a treasurer's or cashier's check issued by, a responsible
85 bank or trust company, payable to the commonwealth or
86 governmental unit thereof in the name of which the contract
87 for the work is to be executed. The amount of such cash or
88 check shall be not less than five per cent of the value of the
89 proposed work as estimated by the awarding authority, but in
90 no event less than one hundred dollars nor more than fifty
91 thousand dollars.

92 (2) All bid deposits of general bidders, except those of the
93 three lowest responsible and eligible general bidders, shall be
94 returned within five days, Saturdays, Sundays and legal holi-
95 days excluded, after the opening of the general bids. The bid
96 deposits of the three lowest responsible and eligible general
97 bidders shall be returned upon the execution and delivery of
98 the general contract or, if no award is made, upon the expira-
99 tion of the time prescribed in section forty-four A for making
100 an award; except that, if any general bidder fails to perform his
101 agreement to execute a contract and furnish a performance
102 bond and also a labor and materials or payment bond as stated

103 in his general bid in accordance with section forty-four F, his
104 bid deposit shall become and be the property of the common-
105 wealth or the governmental unit thereof to which it is payable,
106 as liquidated damages; provided that, the amount of the bid
107 deposit which becomes the property of the commonwealth or
108 the governmental unit thereof shall not, in any event, exceed
109 the difference between his bid price and the bid price of the
110 next lowest responsible and eligible bidder; and provided fur-
111 ther that, in case of death, disability, bona fide clerical or
112 mechanical error of a substantial nature, or other unforeseen
113 circumstances affecting the general bidder, his bid deposit shall
114 be returned to him.

115 (3) Every general bidder whose bid deposit is not returned
116 pursuant to the provisions of the first sentence of subsection
117 (2) may as of right, file with the awarding authority at any
118 time after five days, Saturdays, Sundays and legal holidays
119 excluded, from the opening of the general bids, a bond in an
120 amount not less than the amount of his bid deposit and in a
121 form satisfactory to the awarding authority, with a surety
122 company qualified to do business in the commonwealth and
123 satisfactory to the awarding authority as surety, and condi-
124 tioned upon the faithful performance by the principal of his
125 agreements as contained in his bid. Upon the filing of a bond
126 as aforesaid, the bid deposit of the general bidder filing such
127 bond shall forthwith be returned to him.

128 *Section 44C. Specifications and plans; weather protection*
129 *devices.* – Every contract subject to section forty-four A shall
130 include specifications and, if deemed necessary or convenient
131 by the awarding authority, plans, detailing all labor and mate-
132 rials to be furnished thereunder.

133 Every contract subject to section forty-four A shall include
134 specifications for the installation of weather protection and
135 shall require that the general contractor shall install the same
136 and that he shall furnish adequate heat in the area so protected
137 during the months of November through March. Standards for
138 such specifications shall be established by the director of build-
139 ing construction in the executive office for administration and
140 finance.

141 *Section 44D. Filing of bids; reservation of right to reject*
 142 *bids.* – Whenever general bids are invited for a contract subject
 143 to section forty-four A, the awarding authority shall prescribe
 144 the place for filing such general bids; and notwithstanding any
 145 provision of general or special law, ordinance or bylaw to the
 146 contrary, a general bidder shall not be required to file a
 147 duplicate of his bid in any other place.

148 In inviting bids, the awarding authority shall reserve the right
 149 to reject any or all such general bids, if it be in the public
 150 interest so to do.

151 *Section 44E. Forms for bids furnished on request.* – The
 152 awarding authority shall furnish to every person applying there-
 153 for a form for general bid.

154 *Section 44F. General bids; form; contents; work included;*
 155 *defective bids.* – Every general bid submitted for a contract
 156 subject to section forty-four A shall be submitted on a form
 157 furnished by the awarding authority and containing the follow-
 158 ing provisions: –

FORM FOR GENERAL BID

To the Awarding Authority.

A. The undersigned proposes to furnish all labor and materials
 required for

(project)

in (city or town), Massachusetts, in accordance with the ac-
 companying plans and specifications prepared by

(name of architect
 or engineer)

for the contract price specified below, subject to additions and
 deductions according to the terms of the specifications.

B. This bid includes addenda numbered

C. The proposed contract price is dollars

(\$).

For Alternate No. : Add \$; Subtract \$

[Repeat preceding line for each alternate]

D. The undersigned agrees that, if he is selected as general contractor, he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the awarding authority, execute a contract in accordance with the terms of this general bid and furnish a performance bond and also a labor and materials or payment bond, each of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority and each in the sum of at least fifty per cent of the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.

Date

(Name of General Bidder)

By

(Title)

(Business Address)

(City and State)

159 Every general bid which is not accompanied by a bid deposit
160 as prescribed by paragraph (1) of section forty-four B, or
161 which otherwise does not conform with sections forty-four A
162 to forty-four G inclusive, or which is on a form not completely
163 filled in, or which is incomplete, conditional or obscure, or
164 which contains any addition not called for, shall be invalid; and
165 the awarding authority shall reject every such general bid. No
166 such general bid shall be rejected because of the failure to
167 submit prices for, or information relating to, any item or items
168 for which no specific space is provided in the general bid form
169 furnished by the awarding authority, but this sentence shall not
170 be applicable to any failure to furnish prices or information
171 required by this section to be furnished in the above "Form
172 For General Bid". General bids shall be publicly opened and
173 read by the awarding authority forthwith after the time limit
174 for the filling thereof.

175 The general bid price shall be the price set forth in para-
176 graph C of the "Form For General Bid". No general bid shall
177 be rejected because the plans and specifications do not ac-
178 company the bid or are not submitted with the bid.

179 *Section 44G. Enforcement of Statutes; powers and duties of*
180 *department; restraint of performance of contract.* —The com-
181 missioner of labor and industries or his designee shall enforce
182 sections forty-four A to forty-four G, inclusive, of this chapter
183 and section thirty-nine M of chapter thirty, except for the
184 consideration and determination after contract award as to
185 whether an item is equal to an item named or described in
186 these specifications for a contract. He shall have all necessary
187 powers to require compliance therewith, including the power to
188 institute and prosecute proceedings in the superior court to
189 restrain the award of contracts and the performance of con-
190 tracts in all cases where, after investigation of the facts, he has
191 made a finding that such award or performance has resulted in
192 a violation, directly or indirectly, of the provisions of said
193 sections forty-four A to forty-four G, inclusive, or of said
194 section thirty-nine M and he shall not be required to pay the
195 clerk of the court any entry fee in connection with the insti-
196 tution of any such proceeding.

