

HOUSE No. 2267

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, March 27, 1952.

The committee on State Administration, to whom were referred the petition (accompanied by bill, House, No. 1593) of Lillian K. Drischer and John G. Curley for legislation to regulate competitive bidding on public building projects, and the petition (accompanied by bill, House, No. 1902) of Timothy J. McInerney and another relative to the construction, reconstruction, alteration, remodelling or repair of certain public works by the Commonwealth or political subdivisions thereof, report the accompanying bill (House, No. 2267).

For the committee,

JOHN J. O'ROURKE.

Senator DONAHUE, and Representatives CAPLES of Boston, McCARTHY of East Bridgewater, ERNEST A. JOHNSON of Worcester and CHADWICK of Winchester, dissenting.

The Commonwealth of Massachusetts

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

AN ACT TO REGULATE COMPETITIVE BIDDING ON PUBLIC BUILDING PROJECTS.

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. Chapter 149 of the General Laws, as
2 amended by chapter 699 of the acts of 1941, is hereby
3 further amended by striking out section 44C (A),
4 section 44C (D) and the first paragraph of section 44C
5 (E) and inserting in place thereof the following sec-
6 tions:—

7 *Section 44C.* (A) With respect to each proposal
8 subject to section forty-four B, the following pro-
9 cedure shall be followed and all bidders shall be
10 notified to that effect:—

11 1. Bids from general contractors shall be for the
12 complete project as specified, and shall include the
13 names of all principal and such minor subcontractors
14 as are designated in Item 2 of the proposal form.

15 2. Each bid shall be divided into two items:—

16 Item 1, covering all the work of the general con-
17 tractor, being all work not covered in Item 2.

18 Item 2, covering the work and the bid prices therefor
19 of the subcontractors for (a) electrical work; (b)
20 plumbing, gas fitting and utilities (but excluding such
21 utilities as are installed by municipal departments);

22 (c) heating, ventilating and air-conditioning; (d)
23 lathing and plastering; (e) painting; (f) roofing and
24 sheet metal and water-proofing work; (g) marble,
25 tile and terrazzo work; and (h) the work of any other
26 principal or minor subcontractors for which the award-
27 ing authority deems it necessary to receive sub-bids;
28 and each of these classes of work shall be designated
29 in Item 2 of the proposal form for general contractors
30 as classes of work for which bid prices from subcon-
31 tractors must be given.

32 (D) The awarding authority shall make the award
33 to the lowest, responsible and eligible bidder of the
34 general contractors on the basis of the bids submitted
35 for the work in Item 1. The awarding authority
36 shall make the awards to the lowest, responsible and
37 eligible bidders of the subcontractors for each of the
38 classes of work listed under Item 2, and such sub-
39 contractors shall be the subcontractors included in
40 the general contract. In each instance such awards
41 shall be made to the lowest, responsible and eligible
42 bidder able to furnish labor and able to work in
43 harmony with all elements of labor employed on the
44 work or to be employed on the work by other con-
45 tractors or subcontractors. The awarding authority
46 shall promptly send notification of such awards to
47 the general contractor receiving the award under
48 Item 1 and to the subcontractors receiving the awards
49 under Item 2.

50 (E) Each subcontractor awarded a contract under
51 Item 2 shall, within ten days after notice of such
52 award, sign a contract with the general contractor
53 awarded a contract under Item 1, and, if required,
54 furnish a performance and payment bond to said
55 general contractor in the amount of one hundred per

56 cent of the contract sum, which bond shall be paid
57 for by said general contractor and the cost of which
58 shall be added to the contract price; provided, that
59 such cost shall not be considered in determining the
60 lowest, responsible and eligible sub-bidder for any
61 such subcontract; and provided, further, that, upon
62 failure of any such subcontractor to sign such sub-
63 contract or to furnish such performance and payment
64 bond as required, the awarding authority shall award
65 said work to the next lowest, responsible and eligible
66 sub-bidder for that work. Each such subcontract and
67 all other subcontracts executed in connection with a
68 particular construction contract (1) shall require pay-
69 ment to the subcontractor not later than three days
70 after the general contractor has received payment for
71 the work of the subcontractor from the awarding au-
72 thority; (2) shall require payment to the subcon-
73 tractor for work performed during the payment period
74 set out in the construction contract in the event that
75 the general contractor does not request payment for
76 the work performed during a particular payment
77 period; (3) shall expressly prohibit the withholding
78 of any retention from any subcontractor beyond the
79 amount set out in the construction contract, and
80 beyond the time that the awarding authority advises
81 that no sums are being withheld for the work of the
82 particular subcontractor; and (4) shall provide that
83 the awarding authority may make direct payments to
84 subcontractors after one or more violations of these
85 payment provisions by the general contractor, and
86 where deemed necessary by the awarding authority
87 to enforce these payment provisions for any subcon-
88 tractor; provided, that these provisions shall not
89 prevent a general contractor from retaining amounts

90 to cover specific claims against any subcontractor
91 which must be set forth in detail in writing and a copy
92 furnished to the awarding authority.

1 SECTION 2. The "Draft of Proposal Form" for
2 general contractors and the "Proposal Form" for
3 sub-bidders appearing after section 44C (*F*) in chapter
4 one hundred and forty-nine of the General Laws, as
5 amended by chapter six hundred and ninety-nine of
6 the acts of nineteen hundred and forty-one, shall be
7 modified to conform to the provisions of section one
8 hereof.



