

SENATE . . . . . No. 1108

By Mr. Buell, a petition (accompanied by bill, Senate, No. 1108) of Robert C. Buell and John J. Curtin for legislation to clarify the law relating to bonding. State Administration.

*The Commonwealth of Massachusetts*

In the Year One Thousand Nine Hundred and Eighty-two.

AN ACT CLARIFYING THE LAW RELATING TO BONDING.

*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. Section forty-four A of Chapter one hundred  
2 forty-nine of the General Laws as most recently amended by  
3 Chapter five hundred seventy-nine of the Acts of nineteen  
4 hundred and eighty is hereby further amended by striking out  
5 sub-section (3) and inserting in place thereof the following: —  
6 (3) The award of every such contract in connection with  
7 which approval by an officer, board or agency of the federal  
8 government is required shall be made within thirty days,  
9 Saturdays, Sundays and legal holidays excluded, after such  
10 approval; and the award of every contract subject to this sec-  
11 tion in connection with which approval by an officer, board or  
12 agency of the federal government is not required shall be made  
13 within thirty days, Saturdays, Sundays and legal holidays ex-  
14 cluded, after the opening of the bids therefor. If the bidder  
15 selected as the general contractor fails to perform his/her  
16 agreement to execute a contract in accordance with the terms  
17 of his/her bid and furnish a performance bond, and also a  
18 labor and materials or payment bond as stated in his/her bid  
19 in accordance with section forty-four E, an award shall be  
20 made to the next lowest responsible and eligible bidder, sub-  
21 ject to the provisions of sections forty-four A through H of  
22 this chapter. The thirty-day time limit shall not be applicable  
23 to a second or subsequent award made after expiration of the  
24 time limit with the consent of said next lowest responsible and

25 eligible bidder, and made because the original award made  
26 within the time limit was invalid, or because the bidder failed  
27 to execute the contract or to provide a performance bond and  
28 labor and materials or payment bond.

1 SECTION 2. Section 44F of Chapter 149 as most recently  
2 amended by Chapter 579 of the Acts of 1980 is hereby further  
3 amended by striking out sub-section 2 and inserting in place  
4 thereof a new section: —

5 (2) Every sub-bid submitted in connection with a contract  
6 subject to section forty-four A for a sub-trade listed pursuant  
7 to this section shall be submitted on a form furnished by the  
8 awarding authority to every qualified person or entity apply-  
9 ing, therefor requiring the bidder to agree and certify: (a)  
10 that s/he will furnish all labor and materials required for  
11 completing all work specified in accordance with the plans and  
12 specifications made available by the awarding authority, for  
13 a specified contract price, subject to whatever additions and  
14 deductions are contained in the terms of the specification;  
15 (b) which addenda, if any, shall be included in the bid; (c)  
16 that s/he will comply fully with all laws and regulations appli-  
17 cable to awards made subject to section forty-four F; (d) that  
18 s/he, if selected as a sub-bidder, will within five days, Satur-  
19 days, Sundays and legal holidays excluded, after presentation  
20 of a subcontract in accordance with the terms of this bid, and  
21 contingent upon the execution of the general contract, and if  
22 requested so to do in the general bid by such general bidder,  
23 who shall pay the premiums therefor, furnish a performance  
24 bond, and payment bond of a surety company qualified to do  
25 business under the laws of the commonwealth and satisfactory  
26 to the awarding authority, in the full sum of the sub-contract  
27 price; (e) the names of all persons, firms and corporations  
28 furnishing to the sub-bidder labor or labor and materials for  
29 the class or classes or part thereof of work for which the  
30 provisions of the section of the specifications for this sub-  
31 trade require a listing (including the sub-bidder if customarily  
32 furnished by persons on his/her/its own payroll and in the  
33 absence of a contrary provision in the specifications), the name  
34 of each such class of work or part thereof and the bid price

35 for each such class of work or part thereof; (f) that the listed  
36 bids to her/him represents bona fide bids based on the de-  
37 scribed plans, specifications and addenda and that, if the sub-  
38 bidder is awarded the contract, the sub-bidders so listed will  
39 be used for the work indicated at the amounts stated, if satis-  
40 factory to the awarding authority; (g) that s/he is bound to  
41 the general contractor by the terms of the described plans,  
42 specifications (including all general conditions stated therein)  
43 and addenda and to assume toward him all the obligations and  
44 responsibilities that he, by those documents assumes toward  
45 the owner; (h) that s/he is able to furnish labor that can work  
46 in harmony with all other elements of labor employed or to  
47 be employed on the work.

48 Prior to or at the time of submission of a sub-bid, the award-  
49 ing authority may require the subcontractor to furnish such  
50 information as is necessary to determine his/her requirements  
51 of the plans and specifications.

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