

By Mr. Doran of Lexington, petition of Stephen W. Doran, John F. MacGovern and Mary Jane McKenna relative to prompt payment for contractors doing business with the Commonwealth. State Administration.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO PROMPT PAYMENT FOR CONTRACTORS DOING BUSINESS WITH THE COMMONWEALTH.

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

1 Chapter 30 of the General Laws is hereby amended by adding
2 after Section 39K of said chapter the following section 39K ½: —

3 (A) A party that engages in an adjudicatory proceeding with an
4 awarding authority arising out of or relating to any contract for
5 the construction, reconstruction, alteration, remodeling, repair,
6 renovation or demolition of any public building or other public
7 works awarded pursuant to and in accordance with the provisions
8 of G.L. c. 149 §44A or G.L. c. 30 §39m, shall be awarded fees and
9 expenses incurred by said party in connection with said proceeding
10 against the awarding authority, unless the Court finds that the
11 position taken by the awarding authority was substantially
12 justified.

13 (B) A party seeking said fees and expenses shall file a motion in
14 the Superior Court within thirty days from the entry of final
15 judgement. Said motion shall be supported by an affidavit which
16 shall specify the fees and expenses incurred and shall be supported
17 by invoices and documentation.

18 If the Court finds that the position taken by the awarding
19 authority was not substantially justified, it shall determine and
20 award expenses and fees based upon the complexity of the issues,
21 the time spent and the results accomplished. An award of expenses
22 and fees shall be paid within thirty days from the date of said
23 award.

24 Any party aggrieved by the decision of the Court may appeal
25 said decision to the Appeals Court. If an awarding authority
26 appeals a decision by the Superior Court, and the decision of the
27 Superior Court is upheld in whole or in part, the Appeals Court
28 shall award all expenses and costs of the appeal to the party.

29 (C) For the purposes of this section: —

30 (1) “Awarding Authority”, shall mean any department, agency,
31 board, commission, authority, department, institutionality of the
32 Commonwealth, or two or more subdivisions thereof, or the
33 governmental entity including the Commonwealth, that adver-
34 tises, bids, awards or enters into a contract for the construction,
35 repair, alteration or demolition of any public building or public
36 work, pursuant to or in accordance with the provisions of G.L. c.
37 149 §44A or G.L. c. 30 §39m.

38 (2) “Fees and expenses”, shall mean the reasonable expenses of
39 expert witnesses, the reasonable costs of any study, analysis, engi-
40 neering report, test or project which is found by the Court to be
41 necessary for the preparation of the party’s case, and reasonable
42 attorney’s fees.

43 (3) “Adjudicatory proceeding”, shall include any proceeding in a
44 trial or appellate court of competent jurisdiction, arbitration or
45 other proceeding where the rights of the parties are determined.