

HOUSE No. 1468

By Mr. Towse of Stoneham, petition of Daniel C. Towse for legislation to expedite public housing construction for the elderly and for low income families of the Commonwealth. Urban Affairs.

The Commonwealth of Massachusetts

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

AN ACT EXPEDITING PUBLIC HOUSING CONSTRUCTION IN THE COMMONWEALTH.

1 *Whereas*, The deferred operation of this act would tend to
2 defeat its purpose, which is to remedy the crisis forthwith in
3 housing engendered by the rising costs of providing a sufficient
4 supply of decent, safe and sanitary housing and a suitable living
5 environment for the elderly and for low income families in the
6 commonwealth, therefore it is hereby declared to be an emer-
7 gency law, necessary for the immediate preservation of the
8 public convenience and welfare.

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. The General Laws are hereby amended by
2 inserting after chapter 23B the following chapter: —

CHAPTER 23C.

PUBLIC HOUSING CONSTRUCTION.

5 *Section 1.* As used in this chapter the following words and
6 phrases shall have the following meanings unless a contrary
7 intent is clearly indicated:

8 “Awarding authority”, the department of community affairs;
9 “Commissioner”, the commissioner of the department of
10 community affairs.

11 *Section 2.* Notwithstanding the provisions of chapters
12 twenty-three B and one hundred and twenty-one B, where one

13 or more local housing authorities have agreed to participate
14 with the awarding authority in the aggregation of a market of
15 sufficient size to effect economies of scale, the awarding au-
16 thority shall have the power:

17 (a) to make a finding that new building materials, methods
18 or technologies are available which are likely to stabilize or
19 reduce construction costs of quality housing, effect substantial
20 time savings in said construction and preserve competition; the
21 finding referred to in this section shall be made after reason-
22 able investigation and shall be stated in writing in the public
23 records of the awarding authority or promptly given in writing
24 by the awarding authority to anyone making a written request
25 therefor;

26 (b) to enter into a contract or contracts with persons for
27 the construction, reconstruction, alteration or repair of housing
28 units for and on behalf of participating local housing author-
29 ities, in accordance with the provisions of this chapter; the
30 provisions of sections forty-four A to forty-four L of chapter
31 one hundred and forty-nine and the provisions of section
32 thirty-nine M of chapter thirty shall not apply to the award of
33 such contracts. However, sections twenty-six, twenty-seven,
34 twenty-seven B, twenty-seven C, twenty-seven D, twenty-eight
35 and twenty-nine of chapter one hundred and forty-nine relating
36 to public employment and the payment of the prevailing wage
37 shall specifically apply to this chapter, and the commissioner of
38 labor and industries shall be responsible for the enforcement
39 thereof. Contracts for the construction, reconstruction, al-
40 teration or repair of housing units shall include, without limita-
41 tion, contracts involving one or more developments, buildings
42 or component parts of one or more buildings on one or more
43 locations or sites, and contracts for the performance of work
44 or services or for the placing or furnishing of materials upon or
45 in respect of such construction.

46 (c) to supervise implementation of all construction contracts
47 and all construction provided for under this section, and by
48 regulations, promulgated by the commissioner from time to
49 time, require, to perform and carry out all things necessary to
50 implement this chapter.

51 *Section 3.* To advise the department in the discharge of its
52 duties as set out in this chapter, there shall be a committee to
53 expedite public housing construction which shall consist of the
54 commissioner who shall be the chairman and eight members to
55 be appointed by the commissioner of whom one shall be a
56 tenant in a state-aided public housing project, one shall be a
57 member of a local housing authority, one shall be a representa-
58 tive of labor from the building and construction trades, one
59 shall be a representative of the general contractors, one shall be
60 an architect registered in the commonwealth, one shall be a
61 representative of the subcontractors, one shall be a mayor and
62 one shall be a member of the advisory committee on com-
63 munity affairs.

64 The members of the committee to expedite public housing
65 construction established by this section shall serve at the plea-
66 sure of the commissioner and shall not be subject to the
67 provisions of chapter thirty-one or section nine A of chapter
68 thirty. The members of the committee to expedite public
69 housing construction shall receive reasonable compensation for
70 their services, and may be reimbursed for their expenses. The
71 department shall provide information and such services, in-
72 cluding but not limited to secretarial and clerical services, as
73 the said committee may reasonably require.

74 The committee to expedite public housing construction shall
75 hold meetings at least once every month and shall, on or
76 before August first, make an annual report to the secretary for
77 communities and development, and may make such special
78 reports as it or the commissioner may deem desirable.

79 The committee to expedite public housing construction shall
80 advise the department on all aspects of any building program
81 instituted under this chapter, and provide a liaison between the
82 department, the public housing community, and the building
83 industry in the commonwealth.

84 *Section 4.* The awarding authority shall invite all bids under
85 this chapter in the following manner: —

86 (A) Step One (technical proposal).

87 (1) The awarding authority shall prepare a sufficient num-
88 ber of step one technical proposal documents and make avail-
89 able two sets of such documents to any prospective bidder

90 requesting the same.

91 The step one technical proposal documents shall include,
92 without limitation:

93 (a) The volume of work expected to be required in the
94 building program; this quantity shall not be guaranteed except
95 at the discretion of the awarding authority and shall be ex-
96 pressed in a manner best suited to the bidding technique
97 adopted;

98 (b) Performance requirements and evaluative criteria
99 which may include, without limitation, applicable design,
100 manufacturing, testing, maintenance and interface requirements
101 and any other requirements or criteria the awarding authority
102 deems appropriate, which the technical proposal must meet;

103 (c) A list of the detailed plans, drawings, specifications,
104 and other supporting documentation and data, without limita-
105 tion required to be submitted with the technical proposal;

106 (d) The submission date by which the step one techni-
107 cal proposal must be received by the awarding authority and
108 the place of submission;

109 (e) A provision outlining the manner in which prospec-
110 tive bidders may individually discuss the technical aspects of
111 their proposals with the awarding authority prior to the sub-
112 mission date; provided, however, that there shall be no discus-
113 sion of any cost or prices; and provided, further, that the
114 awarding authority shall make available to all other prospective
115 bidders any clarification or amendments of the technical
116 proposal documents determined by said discussions;

117 (f) A qualification form required to be submitted with
118 the technical proposal eliciting information concerning the pro-
119 spective bidder's organizational, production and installation
120 capacity, experience, integrity and any other information con-
121 cerning the prospective bidder's ability to perform the required
122 work.

123 (2) The awarding authority shall make a technical evalu-
124 ation of the technical proposals based upon the evaluative
125 criteria set forth in the step one technical proposal documents.
126 Any price or cost reference inadvertently included in such
127 proposals shall be removed by the awarding authority prior to
128 evaluation. After the submission date the awarding authority

129 may, in its discretion, provide for a review session with each of
130 the bidders who have submitted step one proposals. The
131 awarding authority shall also evaluate the qualifications of the
132 prospective bidders based on their skill, ability and integrity
133 necessary to the faithful performance of the work.

134 (3) If a prospective bidder fails to submit all of the
135 necessary supporting documentation concerning his technical
136 proposal by the submission date, or the technical proposal
137 submitted is unacceptable, the awarding authority may allow
138 such prospective bidder a period of two consecutive weeks,
139 Saturdays, Sundays and legal holidays excluded, from the date
140 of written notification by the awarding authority of the techni-
141 cal unacceptability of his original proposal, to submit addi-
142 tional data or a modification of his original submission. The
143 prospective bidder will not be permitted to change the basic
144 technical concept of his submission during said two week
145 review period extension. Said extension may be allowed only
146 if, in the opinion of the awarding authority, award of the
147 contract would not be unduly delayed and if greater competi-
148 tion would thereby be achieved. Every precaution shall be
149 taken by the awarding authority to safeguard technical pro-
150 posals or qualification information against unauthorized dis-
151 closure of any said information.

152 (4) All prospective bidders shall be notified upon the
153 completion of the evaluation whether their technical proposal
154 was acceptable or unacceptable.

155 All prospective bidders whose technical proposals are
156 acceptable and who are found qualified by the awarding au-
157 thority shall be invited to bid under step two.

158 (B) Step Two (bidding).

159 (1) The awarding authority shall prepare for bidding pur-
160 poses and make available to (and only to) each qualified person
161 submitting an acceptable technical proposal two sets of step
162 two bidding documents. The step two bidding documents shall
163 include, without limitation:

174 (a) The time and place for filing bids;

165 (b) A bid form;

166 (i) The minimum volume of work expected to be
167 required in the building program; this quantity shall not be

168 guaranteed except at the discretion of the awarding authority
169 and shall be expressed in a manner best suited to the bidding
170 technique adopted;

171 (ii) Providing appropriate space for the bidder to
172 insert his unit or itemized prices as may be required by the
173 awarding authority, which prices shall be deemed to be his
174 contract price.

175 (iii) In the case of bids on subsystems or com-
176 ponents of one or more buildings, providing appropriate space
177 for the bidder to insert any additional charges or penalties
178 which he will add to his unit or itemized price in order to
179 make his technical proposal submitted under step one compati-
180 ble with the technical proposals of any other bidder or bidders
181 on other subsystems or components of the building or build-
182 ings;

183 (iv) Requiring a listing of all sub-bidders, if any, and
184 the amount of their sub-bids;

185 (v) Providing that the bidder will enter into a sub-
186 contract with the sub-bidders listed, if any, in the amount of
187 their sub-bids if the bidder is selected;

188 (vi) Providing that the bidder will within five days
189 after presentation thereof by the awarding authority, Satur-
190 days, Sundays, and legal holidays excluded, execute a contract
191 with the awarding authority which shall contain the following
192 provisions in their entirety: the bidder is aware that upon the
193 award of a contract to the selected general bidder, the award-
194 ing authority may assign its rights and delegate its obligations
195 under this contract to such general contractor. Upon the
196 making of such assignment, the assignee will stand in the
197 position of the awarding authority under this contract and the
198 bidder will assume toward such assignee all of the obligations
199 which he has by this contract assumed toward the awarding
200 authority, and

201 (vii) Providing that the bidder will, at the time of
202 execution of the contract referred to in (vi) also execute
203 performance and payment bonds in the full sum of the con-
204 tract price, the premium cost of such bonds as well as of
205 performance and payments bonds required of sub-bidders, if
206 any, to be included in the contract price and paid by the

207 bidder if he is selected. Such bonds shall contain the following
208 provisions in their entirety: The principal and surety agree that
209 the obligee will without further consent of the principal or
210 surety assign its rights hereunder to the elected general bidder
211 for the project and that such assignment will transfer to the
212 assignee all rights of the obligee hereunder.

213 (c) A certification to be executed by every bidder that
214 he is able to furnish labor that can work in harmony with all
215 other elements of labor employed or to be employed on the
216 work;

217 (d) The requirement that every bid submitted be ac-
218 companied by cash or a certified check on, or a treasurer's or
219 cashier's check issued by a responsible bank or trust company,
220 payable to the awarding authority, provided, however, that the
221 awarding authority may require in lieu of the foregoing a bid
222 bond in a form satisfactory to the awarding authority, with a
223 surety company qualified to do business in the commonwealth
224 and satisfactory to the awarding authority as surety, and condi-
225 tioned upon the faithful performance by the principal of his
226 agreements as contained in his bid. The amount of such cash,
227 check or bid bond shall be not less than five percent of the
228 value of the proposed work as estimated by the awarding
229 authority, but in no event shall such amount be less than one
230 hundred dollars or more than fifty thousand dollars.

231 (2) Only formal bids by qualified bidders based on their
232 technical proposal accepted in step one of the bidding process
233 may be considered by the awarding authority.

234 (3) Bids shall be publicly opened, read and evaluated by
235 computer if necessary by the awarding authority forthwith
236 after the time limit for the filing thereof. The selections may
237 be made on the basis of a bidder's evaluation price, at the
238 discretion of the awarding authority, which price shall be the
239 total cost of applying the bidder's unit or itemized prices to a
240 building design(s) prepared by the awarding authority for pur-
241 poses of bid evaluation. Said selection, based on a bidder's
242 evaluation price shall be made after a detailed review of all bids
243 by the awarding authority to establish arithmetic accuracy, and
244 to ensure that no changes have been made to the approved

245 technical proposals between steps one and two; provided, how-
246 ever, that in the case of bids on subsystems or components of
247 one or more buildings where additional penalties or charges
248 have been stated in bids in accordance with item (iii) of
249 paragraph B (1) (b) of this section, then the awarding authority
250 shall accept as the lowest contract price bid, the lowest aggre-
251 gate cost of the total system taking into consideration the
252 applicable penalties or charges each subsystem bidder has im-
253 posed upon each other subsystem bidder.

254 (4) Every bid shall be for the complete work as specified
255 in the form of bid. Any bid which is not accompanied by a bid
256 deposit as prescribed or which is incomplete, conditional or
257 obscure or submitted by an unqualified bidder shall be invalid;
258 and the awarding authority shall reject every such bid.

259 (5) The awarding authority may require selected bidders
260 to perform tests, submit test data or to construct a prototype
261 structure to demonstrate feasibility of construction.

262 *Section 5.* (a) The awarding authority may prepare and make
263 available qualification forms to elicit information concerning
264 the construction management capability, organizational capac-
265 ity, experience, integrity and any other information concerning
266 the ability of prospective general contractors to perform the
267 required work. The awarding authority shall review and evalu-
268 ate the qualifications of prospective general contractors.

269 (b) After the determination of the selected subsystems
270 bidders the awarding authority may take bids from prequalified
271 general bidders on forms furnished by the awarding authority.
272 The awarding authority shall furnish such general bidders
273 drawings and specifications which adequately represent the re-
274 quirements of the work to be performed and shall be responsi-
275 ble for the adequacy of the design and sufficiency of the
276 drawings and specifications, and shall also furnish such general
277 bidders in writing a listing of the selected subsystems bidders,
278 listing for each subsystems bidder its name, address, and bid
279 price. Such drawings and specifications shall be furnished to
280 bidders without cost or charge except for a deposit for return
281 of same in good condition. The general contractor(s) shall agree
282 if selected to use only the subsystem bidders selected by the
283 awarding authority for the work indicated in accordance with

284 section four; provided, however, that nothing in this chapter
285 shall preclude a general contractor from also bidding on one or
286 more of the subsystems in accordance with section four, but
287 provided further that any general contractor selected by the
288 department as a member of the committee to expedite public
289 housing construction, or hired by the department to act as a
290 consultant to the department on the development of the over-
291 all program shall be thereby precluded from bidding on any
292 aspect of the program.

293 (c) The general contractor(s) shall agree that, if he is
294 selected as a general contractor(s), he will within five days,
295 Saturdays, Sundays and legal holidays excluded, after presenta-
296 tion thereof by the awarding authority, execute a contract in
297 accordance with the terms of the general bid and furnish a
298 performance bond and also a labor and materials or payment
299 bond, each of a surety company qualified to do business under
300 the laws of the commonwealth and satisfactory to the awarding
301 authority and each in the sum of at least fifty percent of the
302 contract price, the premiums for which are to be paid by the
303 general contractor and are included in the contract.

304 (d) The general contractor shall agree and certify that, if he
305 is called upon to furnish labor, that said labor shall be able to
306 work in harmony with all other elements of labor employed or
307 to be employed on the work. Further, the general contractor
308 shall be responsible, financially and otherwise, for the coordina-
309 tion and scheduling of the selected subsystems bidders on each
310 of the construction sites. The general contractor shall advise
311 the awarding authority as to any problems arising on the
312 construction site(s) and recommend appropriate solutions to
313 said problems. The awarding authority may include, as apart of
314 the bidding documents, penalties for failure of subsystem
315 bidders to comply with the construction schedule or to other-
316 wise breach the contract documents. The general contractor
317 shall notify the awarding authority of any said breach, and on
318 the recommendation of the said general contractor, the award-
319 ing authority may levy a penalty in accordance with the
320 bidding documents, or withhold payments until the breach is
321 corrected, as to any subsystems bidder who fails to so fulfill
322 his contractual obligations.

323 (e) Each general bid shall be accompanied by cash or a
324 certified check on, or a treasurer's or cashier's check issued by
325 a responsible bank or trust company, payable to the awarding
326 authority, provided, however, that the awarding authority may
327 require in lieu of the foregoing a bid bond in a form satis-
328 factory to the awarding authority, with a surety company
329 qualified to do business in the commonwealth and satisfactory
330 to the awarding authority as surety, and conditioned upon the
331 faithful performance by the principal of his agreements as
332 contained in his bid. The amount of such cash, check or bid
333 bond shall be not less than five percent of the value of the
334 proposed work as estimated by the awarding authority, but in
335 no event shall such amount be less than one hundred dollars or
336 more than fifty thousand dollars.

337 *Section 6.* The award of every contract under this chapter
338 shall be made, in the case of subsystems bidders, within a
339 reasonable time after the awarding authority has reviewed and
340 evaluated the subsystems bids and all bidding requirements
341 have been fulfilled, and in the case of general bidders, to the
342 lowest responsible and eligible bidder within thirty days, Satur-
343 days, Sundays and legal holidays excluded, after the opening of
344 the general bids therefor, provided all bidding requirements
345 have been fulfilled. The awarding authority may always reject
346 any and all bids if it determines that the public interest so
347 requires. If the bidder selected fails to perform his agreement
348 to execute a contract in accordance with the terms of his bid
349 and furnish a performance bond and a labor and materials or
350 payment bonds the award shall be made to the next lowest
351 bidder.

352 *Section 7.* All bid deposits of bidders, except those of the
353 three lowest bidders, shall be returned within five days, Satur-
354 days, Sundays, and legal holidays excluded, after the selection
355 of the subsystems bidders or, in the case of general bidders,
356 within five days after the opening of the general bids. The bid
357 deposits of the three lowest bidders shall be returned upon the
358 execution and delivery of the contract. If no award is made
359 upon the expiration of the time prescribed in the preceding
360 paragraph for making an award, the bid deposits of the three
361 lowest bidders shall be returned; provided, however, that, if

362 any bidder fails to perform his agreement to execute a contract
363 and furnish a performance bond and a labor and materials or
364 payment bond as stated in his bid, his bid deposit shall become
365 and be the property of the awarding authority to which it is
366 payable, as liquidated damages; provided, further that the
367 amount of the bid deposit which becomes the property of the
368 awarding authority shall not, in any event, exceed the differ-
369 ence between bid prices of such bidder who fails to perform
370 his agreement and the bid price of the next lowest bidder, and
371 provided further that, in case of death, disability, bona fide
372 clerical or mechanical error of a substantial nature, or other
373 unforeseen circumstances affecting the bidder, his bid deposit
374 shall be returned to him. Every bidder whose bid deposit is not
375 returned pursuant to the provisions of this paragraph may as of
376 right file with the awarding authority at any time after five
377 days, Saturdays, Sundays and legal holidays excluded, from the
378 opening of the bids, a bond in an amount not less than the
379 amount of his bid deposit and in a form satisfactory to the
380 awarding authority, with a surety company qualified to do
381 business in the commonwealth and satisfactory to the awarding
382 authority, as a surety, and conditioned upon the faithful per-
383 formance by the principal of his agreements as contained in his
384 bid. Upon the filing of a bond as aforesaid, the bid deposit of
385 any such bidder shall forthwith be returned to him.

386 *Section 8.* If any provision of the foregoing sections one to
387 seven inclusive, or the application of such provisions to any
388 person or circumstance shall be held invalid or unconstitution-
389 al, the other provisions of said sections or the application of
390 such provision to any person or circumstance other than that
391 as to which it is held invalid or unconstitutional, shall not be
392 affected thereby.

1 SECTION 2. Section 3 of chapter 23B of the General Laws,
2 as appearing in section 1 of chapter 761 of the acts of 1968, is
3 hereby amended by inserting after clause (t) the following two
4 clauses: —

5 (u) Engage and/or participate in innovative and experimental
6 methods, techniques and technologies of housing construction,
7 including, without limitation, contracts for such construction

8 awarded pursuant to chapter twenty-three C, and, in connection therewith, do, perform and carry out all aggregations of
9 market demand necessary to expedite the use of such methods,
10 techniques and technologies.

12 (v) For purposes of chapter twenty-three C the department
13 may act as an awarding authority on behalf of one or more
14 housing authorities established by the provisions of chapter one
15 hundred twenty-one B and may enter into appropriate agree-
16 ments with such housing authorities by the terms of which the
17 department may, on their behalf, exercise the powers granted
18 awarding authorities by the provisions of chapter twenty-three
19 C.

1 SECTION 3. Section 11 of chapter 121B of the General
2 Laws, inserted by section 2 of chapter 851 of the acts of 1970,
3 hereby amended by inserting after clause (n) the following
4 clause: —

5 (o) Subject to the approval of the department, to develop,
6 test and report methods and techniques and carry out demon-
7 strations for the economical and expeditious construction of
8 public or publicly subsidized housing.

1 SECTION 4. Section 26 of said chapter 121B, is hereby
2 amended by inserting after clause (j), inserted by section 2 of
3 chapter 694 of the acts of 1970, the following clause: —

4 (k) To enter into agreements with the department in order
5 to permit the department to act as an awarding authority on
6 its behalf as provided in clause (v) of section three of chapter
7 twenty-three B.