

By Mr. Mofenson of Newton, petition of David J. Mofenson that public authorities be required to award construction contracts to the lowest responsible and eligible bidder after competitive bidding under the laws of the Commonwealth. State Administration.

The Commonwealth of Massachusetts

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

AN ACT REQUIRING PUBLIC AUTHORITIES TO AWARD CONSTRUCTION CONTRACTS TO THE LOWEST RESPONSIBLE AND ELIGIBLE BIDDER AFTER COMPETITIVE BIDDING IN ACCORDANCE WITH THE LAWS APPLICABLE TO 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 SECTION 1. Section 5 of chapter 161A of the General
2 Laws is hereby amended by adding after subsection (k) the
3 following two subsections: —

4 (L) Sections twenty-six to twenty-nine, inclusive, and
5 sections forty-four A to forty-four L, inclusive, of chapter one
6 hundred forty-nine and sections thirty-nine F to thirty-nine M,
7 inclusive, of chapter thirty shall apply to contracts of the
8 Authority to the same extent and in the same manner as they
9 are applicable to the commonwealth.

10 (m) The general manager of the Authority shall require that
11 any person proposing to bid on any work, excepting the
12 construction, reconstruction, repair or alteration of buildings,
13 to be awarded by the Authority submit a statement under the
14 penalties of perjury setting forth his qualifications to perform
15 such work. Such statement shall be in such detail and form and
16 shall be submitted at such times as the general manager may
17 prescribe under rules promulgated by the Authority subject to
18 the requirements of chapter thirty A. Such rules may require
19 such information as may be necessary to implement this

20 section and may establish a basis for the classification and
21 maximum capacity rating of bidders which shall determine the
22 class and aggregate amount of work such bidders are qualified
23 to perform. The statement shall set forth, among other matters
24 that may be prescribed by the rules, the proposed bidder's
25 financial resources, his experience, the number and kinds of
26 equipment which he has for use on such work, and the
27 number, size and completion dates of other construction jobs,
28 whether in this state or another state, which he has under
29 contract. The information contained within such statement,
30 together with other relevant available information and the
31 proposed bidder's past performance on work of a similar
32 nature, may be considered by the Authority in determining
33 whether or not the proposed bidder is qualified to perform any
34 specific work for which proposals to bid are invited.

35 Based on information received and available and on past
36 performance of the prospective bidder on work of a similar
37 nature, the general manager acting through a prequalification
38 committee consisting of engineering personnel of the Au-
39 thority, to be appointed by him, shall determine the class and
40 aggregate amount of work that a prospective bidder is qualified
41 to perform, and shall limit a proposed bidder to such class and
42 aggregate amount of work as he may be qualified to perform.
43 The Authority shall limit the bid proposals to be furnished to a
44 prospective bidder to such bidders as are determined by its
45 general manager to have the classification and capacity rating
46 to perform the work required.

47 Any such statement filed with such general manager by a
48 prospective bidder shall be confidential, and shall be used only
49 by the Authority in determining the qualifications of such
50 prospective bidder to perform work for the Authority. No
51 information contained in such statement shall be imparted to
52 any other person without the written consent of said bidder.
53 Any prospective bidder fails to file the statement required by
54 this section, or if, in the judgment of the general manager the
55 prospective bidder is not qualified to carry out the work
56 required under a contract which is proposed to be awarded, the
57 general manager shall refuse to furnish such prospective bidder
58 with bid proposals for such work and shall reject any bid by
59 such prospective bidder for such work.

60 Only persons filing the statement required herein shall be
61 authorized as prime contractors and then only as to the class
62 and aggregate amount of work which their qualifications
63 warrant.

64 Any bidder qualified as authorized herein shall be promptly
65 notified by the general manager.

66 Any prospective bidder who is aggrieved by any decision or
67 determination of the prequalification committee or the general
68 manager which affects his right to bid may file a new
69 application for qualification at any time, or within fifteen days
70 after receiving notice of such decision the applicant may
71 request in writing a hearing before an appeal board to
72 reconsider his application or qualifications. Said appeal board
73 in the Authority shall consist of the board of directors, the
74 general manager and the director of planning and construction
75 or their designees.

76 Any bidder or prospective bidder who so requests shall be
77 granted a hearing by said appeal board at which he may submit
78 any and all additional information or evidence bearing upon his
79 finances, experience or other qualifications which may be
80 relevant thereto. Each hearing shall be held without delay and
81 the board shall promptly render its decision after taking into
82 consideration all relevant information or evidence submitted
83 relating to the bidder's qualifications. Said appeal board may
84 modify, amend or reverse any previous decision of the prequali-
85 fication committee or the general manager with respect to the
86 qualification of the applicant or may sustain such previous
87 decision. Such hearing shall be deemed to be an adjudicatory
88 proceeding, and any bidder or prospective bidder who is ag-
89 grieved by the decision of said board shall have a right to
90 judicial review under the applicable provisions of said chapter
91 thirty A.

92 The general manager of the Authority shall not consider any
93 bid filed with him by any person for any contract to be
94 awarded by the Authority who has not been qualified as
95 required by the rules promulgated by the Authority and any
96 such bid of an unqualified bidder may be rejected without
97 being opened. No contract shall be awarded to any bidder not
98 qualified to bid thereon at the time fixed for receiving bids.

99 Any persons, firm or corporation who knowingly and wil-
100 fully makes, or causes to be made, any false or fraudulent
101 statement with respect to his financial condition or other assets
102 in any application for qualification filed with the Authority as
103 required herein shall, upon final conviction, be disqualified
104 from submitting bids on contracts advertised by the Authority
105 for a period of one year following the date of said conviction.
106 This section shall not apply to any prospective bidder the
107 aggregate amount of whose work with the Authority including
108 the amount of his proposal, is less than fifty thousand dollars.

1 SECTION 2. Section 19 of said chapter 161A is hereby
2 amended by striking out the last sentence and inserting in place
3 thereof the following sentence: –

4 The provisions of general or special laws relative to rates of
5 wages, hours of employment and working conditions of public
6 employees shall not apply to the authority nor to the em-
7 ployees thereof but the authority and its employees shall be
8 governed with respect to hours of employment, rates of wages,
9 salaries, hours, working conditions, health benefits, pensions
10 and retirement allowances of its employees by the law relating
11 to street railway employees.