

HOUSE No. 1249

By Mr. Rushing of Boston, petition of Byron Rushing and other members of the General Court relative to regulating state contracts with companies doing business with or in the Republic of South Africa or Northern Ireland. State Administration.

The Commonwealth of Massachusetts

Petition signed by:

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The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT REGULATING STATE CONTRACTS WITH COMPANIES DOING BUSINESS WITH OR IN THE REPUBLIC OF SOUTH AFRICA OR NORTHERN IRELAND.

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 1 of chapter 7 of the General Laws as
2 appearing in the 1986 Official Edition is hereby amended by
3 adding at the end thereof the following: —

4 For the purposes of sections twenty-two C through twenty-
5 two G, inclusive, unless a contrary intention clearly appears, the
6 following words shall have the following meanings:

7 “Comparable low bid or offer” means a responsive and
8 responsible bid or offer which is no more than 10% greater than
9 the lowest bid or offer submitted for goods or a service;

10 “Distribution agreement”, an agreement to guarantee a contract
11 for the supply of goods or a service;

12 “Doing business with South Africa” means:

13 (a) having any operations, leases franchises, majority-owned
14 subsidiaries, distribution agreements, or any other similar
15 agreements in South Africa, or being the majority owned sub-
16 sidiary, licensee or franchise of such a person;

17 (b) providing financial services to the government of South
18 Africa, including providing direct loans, underwriting govern-
19 ment securities, providing any consulting advice or assistance,
20 providing brokerage services, acting as a trustee or escrow agent

21 or otherwise acting as an agent pursuant to a contractual
22 agreement;

23 (c) promoting the importation or sale of gold or gold products
24 from South Africa;

25 (d) providing any goods or services to the government of South
26 Africa.

27 “Essential”, necessary in order that an agency or authority may
28 perform its mission, there being no substitute, to avoid irreparable
29 harm to agency or authority programs;

30 “Franchise”, authorization by a person to sell his or her
31 products;

32 “Government of South Africa”, any public or quasi-public
33 entity operating within the Republic of South Africa, including,
34 but not limited to, municipal, provincial, national or other
35 governmental bodies, including all departments and agencies of
36 such bodies, public utilities, public facilities, or any national
37 corporation in which the Republic of South Africa has a financial
38 interest or operational responsibilities, and including Bantustans
39 or so-called “independent” Homelands;

40 “License”, permission granted by a person to another, or to the
41 government of South Africa, to exercise a certain privilege or to
42 carry on a particular business;

43 “Majority-owned subsidiary”, a company that is at least 51%
44 owned by another company;

45 “Person”, any individual and any partnership, firm, association,
46 corporation, or other entity, or their subsidiaries;

47 “Secretary”, the secretary of administration and finance;

48 “State agency”, all awarding authorities of the commonwealth,
49 including, but not limited to, all executive offices, agencies,
50 departments, commissions, and public institutions of higher
51 education, and any office, department or division of the judiciary;

52 “State authority”, shall include, but not be limited to the: bay
53 state skills corporation, centers of excellence, community
54 economic development assistance corporation, community
55 development finance corporation, government land bank,
56 Massachusetts bay transportation authority, Massachusetts
57 business development corporation, Massachusetts capital
58 resource company, Massachusetts convention center authority,
59 Massachusetts corporation for educational telecommunications,
60 Massachusetts educational loan authority, Massachusetts health

61 and educational facilities authority, Massachusetts higher
62 education assistance corporation, Massachusetts housing finance
63 agency, Massachusetts horse racing authority, Massachusetts
64 industrial finance agency, Massachusetts industrial service
65 program, Massachusetts legal assistance corporation, Massachu-
66 setts port authority, Massachusetts product development
67 corporation, Massachusetts technology development corpora-
68 tion, Massachusetts technology park corporation, Massachusetts
69 turnpike authority, Massachusetts water resources authority,
70 Nantucket land bank, New England loan marketing corporation,
71 pension reserves investment management board, state college
72 building authority, southeastern Massachusetts university
73 building authority, thift institutions fund for economic
74 development, university of Lowell building authority, university
75 of Massachusetts building authority, victim and witness board,
76 and the Woods Hole, Martha's Vineyard, and Nantucket
77 steamship authority.

1 SECTION 2. Chapter 7 of the General Laws, as appearing in
2 the 1986 Official Edition, is hereby amended by inserting after
3 section 22B the following sections: —

4 Section 22C. (a) Except as otherwise provided in this section,
5 a state agency, state authority, or the house of representatives or
6 the state senate shall not procure goods or services from:

7 (1) a person having its principal place of business, its place
8 of incorporation, or its corporate headquarters in South Africa,
9 or

10 (2) a person functioning as an operation, licensee, franchise,
11 or majority owned subsidiary of any person described in clause (1),
12 or functioning as an agent of the government of South Africa.

13 (b) A state agency or state authority or the house of represen-
14 tatives or the state senate may procure goods or services from a
15 person described in paragraph (a) if the agency certifies in writing
16 to the secretary, or in the case of an authority, to the chief
17 operating officer thereof, that the procurement is essential and
18 that there is no other known capable supplier, occasioned by the
19 unique nature of the requirement, supplier or market conditions.
20 Any person from whom a procurement would be restricted under
21 this section shall not supply goods or services to any state agency,
22 state authority or the house of representatives or senate under any

23 other provision of this chapter, or of any other general or special
24 law.

25 Section 22D. (a) Except as otherwise provided in this section
26 and in section twenty-two C a state agency, a state authority, the
27 house of representatives or the state senate may not procure goods
28 or services from any person listed on the restricted purchase list
29 maintained by the secretary, or who is determined through
30 affidavit or through other reliable methods to meet the criteria
31 for being so listed.

32 (b) A state agency, a state authority, or the house of represen-
33 tatives or the senate may procure goods or services from a person
34 who is on or who is so determined to meet the criteria of the
35 restricted purchase list only after certifying in writing to the
36 secretary or, in the case of a state authority, to the chief operating
37 officer that:

38 1) the procurement is essential; and
39 2) compliance with paragraph (d) of this section would
40 eliminate the only bid or offer, or would result in inadequate
41 competition.

42 (c) In any solicitation, a state agency, a state authority, the
43 house of representatives or the senate shall provide ample notice
44 of the requirements of this section. Prior to reviewing responses
45 to bid documents for any procurements, or, if there are none, prior
46 to entering into any contractual arrangement, the awarding
47 authority shall obtain from such person seeking a contract a
48 statement under pains and penalties of perjury from an authorized
49 representative, on a form to be provided by the awarding
50 authority, declaring the nature and extent to which said person
51 is engaging in activities which would subject said person to
52 inclusion on the restricted purchase list.

53 (d) In any procurement that includes bidders or offerors who
54 are on or meet the criteria of the restricted purchase list, the
55 awarding authority may award the contract to a person who is
56 on or who meets the criteria of the restricted purchase list only
57 if there is no comparable low bid or offer by a person who is not
58 on the restricted purchase list.

59 (e) A person with operations in South Africa or Namibia for
60 the sole purpose of reporting the news, or solely for the purpose
61 of providing goods or services for the provision of international

62 telecommunications shall not be subject to the provisions of
63 sections 22C through 22G inclusive.

64 Section 22D½. Notwithstanding the provisions of sec-
65 tions 22C and 22D a state agency may purchase medical supplies
66 intended to preserve or prolong life or to cure, prevent, or
67 ameliorate diseases, including hospital, nutritional, diagnostic,
68 pharmaceutical and non-prescription products specifically
69 manufactured to satisfy identified health care needs, for which
70 there is no medical substitute. The determination of whether no
71 medical substitute exists shall be made by the state agency
72 requiring the supply, pursuant to general standards of good
73 medical and professional practice. The state agency shall give
74 notice to the State Purchasing Agent in writing, certifying
75 compliance with this exemption, said notice and certification
76 being sufficient to allow the purchase of medical supplies under
77 this exemption.

78 To the extent that a person doing business in South Africa or
79 Namibia is providing only medical supplies, as described in the
80 above paragraph, to persons in South Africa or Namibia, then
81 the supply of goods or equipment to the Commonwealth by said
82 person shall also be exempt from the preference requirements of
83 these regulations. This exemption from the preference require-
84 ments shall not apply in any case in which the nature of any
85 person's business dealings in South Africa or Namibia include
86 both medical and non-medical supplies.

87 Section 22E. (a) The secretary shall establish and maintain a
88 restricted purchase list. The restricted purchase list shall contain
89 the names of all persons currently doing business with South
90 Africa. It shall also contain the names of all persons functioning
91 as operations, licensee, franchises, or majority-owned subsidiaries
92 of all persons currently doing business in South Africa. It shall
93 also contain the names of any other individual, or any partnership,
94 firm, association, corporation, or other entity, employing persons
95 in Northern Ireland, or having majority-owned subsidiaries,
96 franchises, or licensees employing persons in Northern Ireland,
97 and not assuring the following:

98 (1) equal access to employment, promotion, and job-
99 preservation in Northern Ireland without regard to religious
100 affiliation or other minority status;

101 (2) the promotion in Northern Ireland of religious tolerance

102 within the workplace, and the eradication of any manifestations
103 of religious and other illegal discrimination;

104 (3) adherence to the other legal and regulatory guidelines for
105 nondiscrimination and equality of opportunity existing in North
106 Ireland;

107 (4) adherence to the criteria contained in the MacBride
108 Principles for Northern Ireland, so-called.

109 It shall also contain the names of any individual or any
110 partnership, firm, association, corporation, or other entity
111 engaged in the manufacture, distribution or sale of firearms,
112 munitions (including rubber or plastic bullets), tear gas, armored
113 vehicles or military aircraft for use or deployment in any activity
114 in Northern Ireland.

115 (b) In establishing the restricted purchase list, the secretary
116 shall consult United Nations reports, resources of the Investor
117 Responsibility Research Center, and other reliable sources. The
118 secretary shall also place the name of any person who, in the
119 statement described in section 22D, declared that he meets the
120 criteria for being so listed.

121 (c) The restricted purchase list shall be updated at least once
122 every three months.

123 (d) The secretary shall provide the list to all state agencies and
124 state authorities and to the house of representatives and to the
125 senate.

126 Section 22F. The secretary is hereby authorized and directed
127 to promulgate regulations to assure the timely and effective
128 implementation of sections twenty-two C through twenty-two G,
129 inclusive, of this chapter.

130 Section 22G. Any contract entered into in violation of Sec-
131 tions 22C through 22G, inclusive, shall be void.

132 Section 22H. Annually on or before January first, the secretary
133 shall file a report with the clerks of the senate and the house of
134 representatives detailing compliance with sections 22
135 through 22G, inclusive.

1 SECTION 3. The provisions of this act shall apply to contacts
2 entered into after the effective date of this act. Any existing
3 contract shall remain in full force and effect and not be subject
4 to the provisions of this act until such time as the renewal of the
5 contractual agreement.

