

By Mr. Buglione of Methuen, petition of Nicholas J. Buglione and another for legislation relative to competitive bidding and public construction contracts. State Administration.

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**The Commonwealth of Massachusetts**

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

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AN ACT RELATIVE TO COMPETITIVE BIDDING AND PUBLIC CONSTRUCTION CONTRACTS.

*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. Chapter 30 of the General Laws is hereby amend-  
2 ed by striking out section 39J and inserting in place thereof the  
3 following section: —

4 *Section 39J.* Notwithstanding any contrary provision of any  
5 contract for the construction, reconstruction, alteration, remodel-  
6 ing, repair or demolition of any public building or public works by  
7 the commonwealth, or by any county, city, town, district, board,  
8 commission or other public body, when the amount of the contract  
9 is more than five thousand dollars, a decision, by the contracting  
10 body or by any administrative board, official or agency, or by any  
11 architect or engineer, on a dispute, whether of fact or of law, arising  
12 under said contract shall not be final or conclusive if such decision  
13 is made in bad faith, fraudulently, capriciously, or arbitrarily is  
14 unsupported by substantial evidence, or is based upon error of law.

1 SECTION 2. Section 39K of Chapter 30 of the General Laws,  
2 as most recently amended by chapter 887 of the acts of 1971, is  
3 hereby further amended by striking out the first paragraph and  
4 inserting in place thereof the following paragraph: —

5 Every contract for the construction, reconstruction, alteration,  
6 remodeling, repair or demolition of any public building by the  
7 commonwealth, or by any county, city, town, district, board,  
8 commission or other public body, when the amount is more than  
9 five thousand dollars, shall contain the following paragraph: —

10 Within fifteen days (twenty-four days in the case of the com-  
11 monwealth) after receipt from the contractor, at the place desig-  
12 nated by the awarding authority if such a place is so designated, of  
13 a periodic estimate requesting payment of the amount due for the  
14 preceding month, the awarding authority will make a periodic  
15 payment to the contractor for the work performed during the  
16 preceding month and for the materials not incorporated in the  
17 work but delivered and suitably stored at the site (or at some  
18 location agreed upon in writing) to which the contractor has title or  
19 to which a subcontractor has title and has authorized the contrac-  
20 tor to transfer title to the awarding authority, less (1) a retention  
21 based on its estimate of the fair value of its claims against the  
22 contractor and less (2) a retention for direct payments to subcon-  
23 tractors based on demands for same in accordance with the provi-  
24 sions of section thirty-nine F, and less (3) a retention not exceeding  
25 five per cent of the approved amount of the periodic payment.  
26 After the receipt of a periodic estimate requesting final payment  
27 and within sixty-five days after (a) the contractor fully completes  
28 the work or substantially completes the work so that the value of  
29 the work remaining to be done is, in the estimate of the awarding  
30 authority, less than one per cent of the original contract price, or  
31 (b) the contractor substantially completes the work and the award-  
32 ing authority takes possession for occupancy, whichever occurs  
33 first, the awarding authority shall pay the contractor the entire  
34 balance due on the contract less (1) a retention based on its estimate  
35 of the fair value of its claims against the contractor and of the cost  
36 of completing the incomplete and unsatisfactory items of work and  
37 less (2) a retention for direct payments to subcontractors based on  
38 demands for same in accordance with the provisions of section  
39 thirty-nine F, or based on the record of payments by the contractor  
40 to the subcontractors under this contract if such record of payment  
41 indicates that the contractor has not paid subcontractors as pro-  
42 vided in section thirty-nine F. If the awarding authority fails to  
43 make payment as herein provided, there shall be added to each  
44 such payment daily interest at the rate of three percentage points  
45 above the rediscount rate then charged by the Federal Reserve  
46 Bank of Boston commencing on the first day after said payment is  
47 due and continuing until the payment is delivered or mailed to the  
48 contractor; provided, that no interest shall be due, in any event, on

49 the amount due on a periodic estimate for final payment until  
50 fifteen days (twenty-four days in the case of the commonwealth)  
51 after receipt of such a periodic estimate from the contractor, at the  
52 place designated by the awarding authority if such a place is so  
53 designated. The contractor agrees to pay to each subcontractor a  
54 portion of any such interest paid in accordance with the amount  
55 due each subcontractor.

1 SECTION 3. (a) of subsection section 39M of chapter 30 of the  
2 General Laws, as most recently amended by chapter 970 of the acts  
3 of 1977, is hereby further amended by striking out the first sentence  
4 and inserting in place thereof the following sentence: —

5 Every contract for the construction, reconstruction, alteration,  
6 remodeling or repair of any public building or public work, or for  
7 the purchase of any material, as hereinafter defined, by the com-  
8 monwealth, or political subdivision thereof, or by any county, city,  
9 town, district, or housing authority, and estimated by the awarding  
10 authority to cost more than five thousand dollars, shall be awarded  
11 to the lowest responsible and eligible bidder on the basis of compet-  
12 itive bids publicly opened and read by such awarding authority  
13 forthwith upon expiration of the time for the filing thereof; pro-  
14 vided, however, that such awarding authority may reject any and  
15 all bids, if it is in the public interest to do so.

1 SECTION 4. Section 28 of chapter 43 of the General Laws, as  
2 most recently amended by Section 54 of chapter 579 of the acts of  
3 1980, is hereby further amended by striking out the first sentence of  
4 the first paragraph and inserting in place thereof the following  
5 sentence: —

6 No contract for construction work or for the purchase of equip-  
7 ment, supplies or materials, whether for repairs or original con-  
8 struction, the estimated cost of which amounts to five thousand  
9 dollars or more, except in cases of special emergency involving the  
10 health or safety of the people or their property, shall be awarded  
11 unless proposals for the same have been invited by advertisements  
12 in the central register published by the state secretary pursuant to  
13 section twenty of chapter nine and in at least one newspaper  
14 published in the city once a week for at least two consecutive weeks,  
15 the last publication to be at least one week before the time specified

16 for the opening of said proposals, provided, however, that no  
17 contract subject to the provisions of sections forty-four A through  
18 H, inclusive of chapter one hundred and forty-nine shall be  
19 awarded unless applications to bid have been solicited in accor-  
20 dance with the provisions of section forty-four D of said chapter.

1 SECTION 5. Subsection (2) of section 44A of chapter 149 of  
2 the General Laws, as most recently amended by section 55 of  
3 chapter 579 of the acts of 1980, is hereby further amended by  
4 striking out the first sentence and inserting in place thereof the  
5 following sentence: —

6 Every contract for the construction, reconstruction, installation,  
7 demolition, maintenance or repair of any building by a public  
8 agency estimated to cost more than one hundred thousand dollars  
9 shall be awarded to the lowest responsible and eligible general  
10 bidder on the basis of competitive bids in accordance with the  
11 procedure set forth in the provisions of section forty-four A  
12 through H, inclusive, of this chapter.