
Accompanying the third recommendation of the Division of Capital Planning and Operations (House, No. 17). State Administration.

The Commonwealth of Massachusetts

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

AN ACT TO PROVIDE AN EFFECTIVE CONTRACTOR QUALIFICATION SYSTEM FOR PUBLIC BUILDING 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 forty-four D of Chapter one hundred forty-nine, as most
2 recently amended by Chapter five hundred seventy-nine of the acts
3 of nineteen hundred and eighty is hereby further amended by
4 striking out section forty-four D and inserting in place thereof the
5 following section: —

6 *Section 44D.* Within five days, Saturdays, Sundays and legal
7 holidays excluded, the awarding authority shall require from the
8 lowest bidder a qualification statement.

9 The qualification statement shall be in such form as the deputy
10 commissioner shall prescribe, shall be signed by the applicant
11 under penalties of perjury, and shall supply information concern-
12 ing the applicant's form of organization, its principals and key
13 personnel; the applicant's experience on public and private con-
14 struction projects over the past five years; all legal or administra-
15 tive proceedings currently pending against the applicant or con-
16 cluded adversely to the applicant within the past five years which
17 relate to the procurement or performance of any public or private
18 construction contract; and such other information as the deputy
19 commissioner shall deem relevant to the determination of the
20 applicant's qualifications and responsibility. The qualification
21 statement shall include a statement of financial condition prepared
22 by a certified public accountant which shall contain information
23 concerning the applicant's current assets and liabilities, plant and

24 equipment, bank and credit references, bonding company and
25 maximum bonding capacity; and such other information as the
26 deputy commissioner shall deem relevant to an evaluation of the
27 applicant's financial capacity and responsibility. The information
28 contained in the statement of financial condition shall pertain to
29 the applicant's most recent, completed fiscal year and shall have
30 been prepared by a certified public accountant no more than twelve
31 months prior to the date of filing. A qualification statement shall
32 be valid for twelve months from the date of its preparation by a
33 bidder, provided that an awarding authority shall require that a
34 qualification statement update be submitted, on a form prescribed
35 by the deputy commissioner, to provide the awarding authority
36 with information that is current at the time of the receipt of bids.
37 Such statements are not public records as defined in section seven
38 of chapter four of the General Laws, and shall not be open to public
39 inspection.

40 Any materially false statement in the applicant's qualification
41 statement or qualification statement update may, in the discretion
42 of the awarding authority, result in termination of any contract
43 awarded the applicant by the awarding authority.

44 The awarding authority shall evaluate the lowest bidder's quali-
45 fication statement and qualification statement update and any
46 other available information regarding the bidder that may be
47 relevant, according to procedures and criteria which the deputy
48 commissioner shall prescribe by regulations or guidelines. Such
49 criteria shall include the following: the record of the applicant's
50 performance including, where available, written evaluations of the
51 applicant's performance on public and private jobs over the past
52 five years; the applicant's prior experience on projects of similar
53 size and type; the experience and qualifications of the supervisory
54 personnel who will have major responsibility for performance of
55 the contract; the maximum amount of work the applicant is capa-
56 ble of undertaking as demonstrated by the applicant's financial
57 condition, bonding capacity, size of previous projects, and present
58 and anticipated work commitments; and any other relevant criteria
59 which the deputy commissioner or awarding authority may pres-

60 cribe. The regulations and guidelines governing qualification of
61 bidders shall provide that, to the extent possible, the criteria con-
62 sidered shall be assigned separate designated numerical values and
63 weights, and the applicant shall be assigned an overall numerical
64 rating on the basis of all criteria. An overall rating below a min-
65 imum prescribed by regulation shall require the awarding authori-
66 ty to determine that the applicant is not a responsible or eligible
67 bidder. If the awarding authority determines that the lowest bidder
68 is not responsible or not eligible, the awarding authority shall
69 review the qualifications of the other bidders in accordance with
70 the procedures described in this section.

