

HOUSE No. 3685

By Mr. Walsh of Boston, petition of Martin J. Walsh for legislation pertaining to fair and responsible contracting practices at the Massachusetts Bay Transportation Authority. Transportation.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT PERTAINING TO FAIR AND RESPONSIBLE CONTRACTING PRACTICES AT THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY.

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. General Laws, c. 149, s. 44(A)(1), as last amended
2 by St. 1998, c. 194, s. 182 shall be amended as follows:—
3 The definition of “Public Agency” shall be amended by placing a
4 period after the word “thereof” in the third line and deleting the
5 words “but not including the Massachusetts Bay Transportation
6 Authority”.

1 SECTION 2. General Laws, c. 161A, as last amended by St. 199,
2 c. 127, s. 151, shall be amended as follows:—
3 Add new Section 48. “A.) Notwithstanding any other provisions
4 of Ch. 161A, all bidders and all subcontractors under the bidders for
5 work performed for the Authority shall be subject to Mass. Gen.
6 Laws Ch. 149, §44A and Mass. Gen. Laws Ch. 30, §39M and all
7 said bidders and all subcontractors referenced above shall, as a con-
8 dition for being awarded a bid, agree in writing that they affirma-
9 tively comply with all of the following obligations, and shall, in fact,
10 comply with the following obligations:—
11 1.) The bidder and all subcontractors under the bidder must
12 comply with the obligations established under MGL Ch. 149, to pay
13 the appropriate lawful prevailing wage rates to their employees.
14 2.) The bidder and all subcontractors under the bidder must main-
15 tain or participate in a bona fide apprentice training program as
16 defined by Chapter 23, s. 11H and 11I for each apprenticeable trade
17 or occupation represented in their workforce that is approved by the

18 Division of Apprentice Training of the Department of Labor and
19 Workforce Development and must abide by the apprentice to jour-
20 neymen ratio for each trade prescribed therein in the performance of
21 the contract.

22 3.) The bidder and all subcontractors under the bidder must fur-
23 nish, at their expense, hospitalization and medical benefits for all
24 their employees employed on the project and/or coverage at least
25 comparable in value to the hospitalization and medical benefits pro-
26 vided by the health and welfare plans in the applicable recognized
27 by MGL Ch. 149, s. 26 in establishing minimum wage rates.

28 4.) The bidder and all subcontractors under the bidder must main-
29 tain appropriate industrial accident insurance coverage for all the
30 employees employed on the project in accordance with MGL Ch.
31 152.

32 5.) The bidder and all subcontractors under the bidder must prop-
33 erly classify all individuals as employees rather than independent
34 contractors and treat them accordingly for purposes of workers'
35 compensation insurance coverage, unemployment taxes, social secu-
36 rity taxes and income tax withholding.

37 B.) The bidder and all subcontractors under the bidder who are
38 awarded or who otherwise obtain contracts on projects subject to
39 MGL Ch. 149, s. 44A (2) shall comply with the obligations num-
40 bered 1 through 5 as set forth in paragraph A above for the entire
41 duration of their work on the project, and an officer of each such
42 bidder or subcontractor under the bidder shall certify under oath and
43 in writing on a weekly basis that they are in compliance with such
44 obligations.

45 C.) Any bidder or subcontractor under the bidder who fails to
46 comply with any one of obligations 1 through 5 as set forth in Para-
47 graph A above for any period of time shall be subject to one or more
48 of the following sanctions:— (1) cessation of work on the project
49 until compliance is obtained; (2) withholding of payment due under
50 any contract or subcontract until compliance is obtained; (3) perma-
51 nent removal from any further work on the project; (4) liquidated
52 damages payable to the Commonwealth of Massachusetts, the City
53 or Town or the Authority for whom the bid or subcontract is being
54 performed, in the amount of 5% of the dollar value of the contract.

55 D.) In addition to the sanctions outlined in Paragraph C above, a
56 general bidder or contractor shall be equally liable for the violations

57 of its subcontractor with the exception of violation arising from
58 work pursuant to subcontracts that are subject to MGL Ch. 149, s.
59 44F. Any contractor or subcontractor who has been determined to
60 have violated any of the obligations set forth in Paragraphs A and B
61 above shall be barred from performing any work on any future pro-
62 jects for six months for a first violation, for three years for a second
63 violation, and permanently for a third violation.

64 E.) All bidders shall comply with the provisions of Executive
65 Order 390 of 1996. In meeting the requirements of this paragraph the
66 Authority, Board or Agency shall consult with the executive director
67 of minority business enterprise in the executive office for adminis-
68 tration and finance.

69 (1) The Authority, Board or Agency shall prepare quarterly
70 reports which shall include, but not be limited to:— (i) the total dol-
71 lars expended on the project to date, (ii) the number of contracts
72 entered into to date; (iii) the number of contracts entered into with
73 minority businesses; (iv) the number of contracts entered into with
74 women-owned businesses; (v) the dollar value of contracts entered
75 into with minority businesses; (vi) the dollar value of contracts
76 entered into with women-owned businesses; (vii) the total number of
77 employees working on the project; (viii) the total number of
78 employees working on the project, broken down by race, ethnicity
79 and gender; and (ix) the total number of Massachusetts residents
80 working on the project. Said quarterly reports shall be submitted to
81 the secretary of the executive office for administration and finance,
82 the house ways and means committee, the senate ways and means
83 committee, the clerk of the house, the clerk of the senate, and the
84 house committee on long-term debt and capital expenditures.

85 F.) The provisions of this section shall not apply to construction
86 projects for which the low general bid was less than \$10,000 or to
87 work performed pursuant to subcontracts that are subject to MGL
88 Ch. 149, s. 44F and that were bid for less than \$5,000.

89 G.) If any provision of this law, or the application of such provi-
90 sion to any person or circumstances, shall be enjoined or held to be
91 invalid, the remaining provisions of this law, or the application of
92 such provisions to persons or circumstances, other than that which is
93 enjoined or held invalid shall not be affected thereby.

94 H.) Notwithstanding any provisions to the contrary in Massachu-
95 setts General Laws, and in addition to all of the foregoing require-

96 ments, any contractor seeking to perform construction or mainte-
97 nance services of any kind under a contract awarded by the
98 Authority shall be required to affirmatively prove that it qualifies as
99 a “responsible” contractor and possess the necessary technical quali-
100 fications, financial resources, business integrity and past perfor-
101 mance record to successfully perform the contract work.

102 I.) To ensure the effective administration of this responsible con-
103 tractor policy, the following rules shall apply:—

104 1.) Contractor Submissions. Each contractor shall submit, with
105 each contract bid or proposal, the documents listed below and desig-
106 nated “Required Documentation” and a completed copy of the
107 “Questionnaire” set forth below. No contract shall be awarded until
108 at least twenty-one (21) days following the deadline for bids or pro-
109 posals.

110 2.) Subcontractor Submissions. Where a contractor intends to sub-
111 contract any of the contract work, it shall provide the documents
112 listed below and designated “Required Documentation” and the
113 “Questionnaire” set forth below for its subcontractors. Subcontractor
114 information shall be submitted by the contractor at least twenty-one
115 days prior to the commencement of any work by the subcontractor.

116 3.) Non-Responsibility Finding. Information provided in the sub-
117 missions may constitute grounds for the issuance of a written non-
118 responsible contractor determination where it shows the
119 contractor/subcontractor lacks the requisite qualifications, past per-
120 formance record or business integrity to perform the contract work.

121 4.) False/Inaccurate Submissions. The submission of any false or
122 misleading information shall result in immediate disqualification.
123 Likewise, the failure to submit complete or accurate information
124 shall result in immediate disqualification.

125 5.) Full Public Disclosure. With the exception of financial state-
126 ments, contractor/subcontractor submissions (documents and ques-
127 tionnaires) shall be made available for immediate public inspection
128 by either the placement of same in a public documents room, or by
129 disclosures made within ten (10) days upon the submission of a
130 written request.

131 6.) Updating Submissions. Contractor/subcontractor submissions
132 shall be deemed valid for a period of three months from their date of
133 filing and need not be updated for new projects bid by the con-

134 tractor/subcontractor, provided there are no material or relevant
135 changes to the information provided therein.

136 J.) REQUIRED DOCUMENTATION:—

137 1. Financial Statements. Audited/certified annual financial state-
138 ments for the past five years, including balance sheets and income/
139 expense statements.

140 2.) Bonding. Proof of adequate payment and performance
141 bonding and bonding capacity for the type(s) and amount(s) deter-
142 mined by applicable law.

143 3. Licensing. Proof of all contractor/subcontractor licenses as
144 required by applicable law; proof of a licenses and/or certifications
145 for all craft personnel required by applicable law or industry code.

146 4. Management Personnel. Resumes of all management personnel
147 responsible for the contract work, including project managers, super-
148 intendents and forepersons.

149 5. Staffing Capabilities. Proof of adequate staffing capabilities to
150 perform the contract work, including a list of names and classifica-
151 tions of all craft employees currently employed and other available
152 sources of craft personnel.

153 6. Apprenticeship Training. Proof of participation in bona fide
154 registered apprenticeship programs for all craft employees employed
155 by the contractor/subcontractor used to perform the contract work.

156 7. Health Insurance. Proof of participation in a bona fide health
157 insurance plan which covers all craft employees employed by the
158 contractor/subcontractor.

159 8. Pension Plan. Proof of participation in a bona fide pension
160 plan, which covers all craft employees employed by the
161 contractor/subcontractor.

162 9. Insurance Coverage. Proof of adequate comprehensive bodily
163 injury, property damage and workers compensation insurance.

164 10. Experience Modification Rating. Experience Modification
165 Ratings provided by the contractor/subcontractor in the past five (5)
166 years with names, addresses and telephone numbers for two owner
167 representatives for each project.

168 11. Project Listing. A complete list of all current and past projects
169 performed by the contractor/subcontractor in the past five (5) years
170 with names, addresses and telephone numbers for two owner repre-
171 sentatives for each project.

172 12. Performance Evaluations. All performance evaluation reports
173 prepared on work performed by the contractor/subcontractor at any
174 time during the five (5) year period immediately preceding the date
175 of the contract solicitation.

176 K. REQUIRED CONTRACTOR/SUBCONTRACTOR QUES-
177 TIONNAIRE:—

178 A. Instructions.

179 1. Applicable Time Period. Answers to the following questions
180 should include any incidents or actions occurring within five (5)
181 years preceding the date of submission, unless otherwise specified.

182 2. Affirmative Answers. If the contractor/subcontractor provides
183 an affirmative answer to any of the questions in this questionnaire, it
184 should submit a detailed statement for any such answer explaining
185 the incident or action at issue.

186 3. Related Firms/Persons. For purposes of these questions, the
187 term “contractor/subcontractor” shall mean:—

188 (a) the contractor or subcontractor submitting the bid/proposal;

189 (b) any firms related to the contractor/subcontractor through
190 common ownership, common management or common officers or
191 directors; and

192 (c) any firms in which any of the owners, officers or directors of
193 the submitting contractor/subcontractor previously participated in as
194 an owner, officer or director.

195 B. Questions.

196 1. Debarment/Suspension. Has the contractor/subcontractor been
197 debarred or suspended by any jurisdiction or contracting authority
198 (federal, state or local)? Yes ___ No ___

199 2. Non-Responsibility Findings. Has the contractor/subcontractor
200 been determined to be non-responsible or otherwise ineligible to
201 submit bids/proposals on any project? Yes ___ No ___

202 3. Contract Defaults. Has the contractor/subcontractor been
203 declared in default in any manner for any project? Yes ___ No ___

204 4. Contract Terminations. Has the contractor/subcontractor been
205 terminated or otherwise removed from any project? Yes ___ No ___

206 5. Liquidated Damages. Has the contractor/subcontractor been
207 subject to any liquidated damage claims in connection with any pro-
208 ject? Yes ___ No ___

209 6. Legal Claims. Has the contractor/subcontractor had any liens,
210 lawsuits, arbitration claims, or other legal claims filed against it in
211 connection with any project? Yes ___ No ___

212 7. Bankruptcy Actions. Has the contractor/subcontractor declared
213 bankruptcy or been in receivership? Yes ___ No ___

214 8. Law Violations. Has the contractor/subcontractor been found in
215 violation of any statute, regulation or other law by any local, state or
216 federal administrative agency or court of law? Yes ___ No ___

217 9. Charges/Investigations. Has the contractor/subcontractor been
218 accused of, investigated for or charged with alleged violations of any
219 statute, regulation or other law? Yes ___ No ___

220 10. Revocation. Has the contractor/subcontractor had any license,
221 permit or certification revoked? Yes ___ No ___

222 11. Bonding Denials. Has the contractor/subcontractor been
223 denied bonding or increases in bonding capacity? Yes ___ No ___

224 12. Conflicts of Interest. Does any individual serving in a man-
225 agerial or advisory capacity of the contractor/subcontractor have any
226 relationship with any individual employed by the entity soliciting
227 bids/proposals for the contract work? Yes ___ No ___

228 13. Sanctions. Has the contractor/subcontractor had any sanctions
229 imposed on it with respect to its permits or licenses? Yes ___ No ___

230 14. Bonding. Has the contractor/subcontractor had any instances
231 where it has been unable to obtain bonding? Yes ___ No ___

232 15. Government Judgment. Has the contractor/subcontractor been
233 subject to any government judgment or lien? Yes ___ No ___

234 16. Taxes. Has the contractor/subcontractor failed at any time to
235 pay any federal, state or city taxes? Yes ___ No ___

236 17. Charges. Does the contractor/subcontractor have any pending
237 administrative, misdemeanor or felony charges against it? Yes ___
238 No ___

239 If the answer to any of the above questions is yes the contractor/
240 subcontractor must provide any and all documentation documenting
241 the contractor/subcontractor's affirmative answer.

242 I declare under the penalty of perjury that the foregoing informa-
243 tion is true and correct to the best of my knowledge, information and
244 belief and that the failure to provide complete, truthful and accurate
245 information shall provide grounds for immediate disqualification of
246 any bid or proposal submitted.

247 By: _____

248 _____
 249 Print Name & Position of Person Signing
 250 _____
 251 _____
 252 _____
 253 Print Full Name & Address of Company
 254 Executed this _____ day of _____
 255 Notary Information
 256 _____
 257 _____

258 L. Contractors and their subcontractors and their representatives
 259 have a responsibility to deal ethically with the Authority and there-
 260 fore all information provided by vendors to the Authority must be
 261 complete and accurate. Accordingly, failure of a contractor or sub-
 262 contractor to provide relevant information required by this statute or
 263 specifically requested by agents of the Authority may be grounds for
 264 a determination of nonresponsibility. Failure to meet any of the fore-
 265 going criteria shall be grounds for disqualification of a prospective
 266 contractor or subcontractor. The Authority shall make all informa-
 267 tion submitted pursuant to the provisions of this statute available to
 268 the public by making it available in written form and on a computer
 269 database or website. The Authority shall not enter into a contract
 270 with a contractor or subcontractor that is a nonresponsible bidder
 271 under the provisions of this statute.

272 M. Contracts shall be awarded by the Authority to responsible,
 273 prospective contractors only. A responsible contractor is one which
 274 is capable in all respects to perform fully the contract requirements
 275 and has the business integrity to justify the award of public tax dol-
 276 lars. The factors that shall be considered in determining a contrac-
 277 tor’s responsibility shall be:—

- 278 (a) a satisfactory record of business integrity;
- 279 (b) compliance with all applicable legal requirements for utiliza-
 280 tion of small, minority-owned and women-owned businesses as sub-
 281 contractors;
- 282 (c) a satisfactory record of performance;
- 283 (d) financial resources;
- 284 (e) technical qualifications;
- 285 (f) experience;

286 (g) organization, material, equipment, facilities and personnel
287 resources and expertise necessary to carry out the work and to
288 comply with required delivery or performance schedules;
289 (h) accounting and auditing procedures adequate to control prop-
290 erty, funds or other assets.