

HOUSE No. 2792

The Commonwealth of Massachusetts

PRESENTED BY:

Nick Collins

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to promote responsible contracting on state construction projects.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>John V. Fernandes</i>	<i>10th Worcester</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>

HOUSE No. 2792

By Mr. Collins of Boston, a petition (accompanied by bill, House, No. 2792) of Nick Collins and others relative to promoting responsible contracting on state construction projects. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION

SEE

HOUSE
 , NO. 1752 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to promote responsible contracting on state construction projects.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapters 149, 149a and Chapter 30 Section 39m are hereby amended by adding the
2 following sections:

3
4 Section 1 . Because of the expenditure of substantial public funds for public construction
5 projects and in to ensure trained work force for the future; it is in the public’s interest, as well as
6 public health, welfare and safety, to ensure that the employees on such projects are paid at the
7 lawfully required prevailing wage rates; have been trained in bona fide state-registered
8 apprenticeship programs; have health insurance coverage; are provided industrial accident
9 coverage; and are properly classified as employees and not as independent contractors.

10
11
12 Section 2 .Compliance of Bidders and Subcontractors. All bidders and all subcontractors on
13 all state contracts for construction under Chapters 149, 149a and Chapter 30 section 39m. shall,
14 at the time of bid, agree in writing that they shall comply with the following:

15
16 a. The bidder and all subcontractors under the bidder shall comply with the responsible

17 employer requirements set forth below.

18 b. The bidder and all subcontractors under the bidder shall comply with provisions of
19 M.G.L. Ch. 149 and shall pay the appropriate lawful prevailing wage rates to their employees.

20 c. The bidder and all subcontractors under the bidder awarded a contract shall, to the extent
21 consistent with applicable law, give special consideration to recruit and hire qualified workers
22 who are residents of the Commonwealth for each apprenticeable trade or occupation represented
23 in their workforce.

24 d. The bidder and all subcontractors under the bidder shall maintain or participate in a bona
25 fide and active apprentice training program as defined by M.G.L. Ch. 23, Sec. 11H and 11I for
26 each apprenticeable trade or occupation represented in their workforce that is approved by the
27 Division of Apprentice Training of the Department of Labor and Workforce Development of the
28 Commonwealth of Massachusetts and shall abide by the apprentice to journeymen ratio for each
29 trade prescribed therein in the performance of the contract. For the purposes of this paragraph,
30 the word “active” shall mean an apprentice training program which is registered with the
31 division for recruitment, selection, employment, training, and qualification of apprentices and
32 which has successfully completed one (1) year of initial approval and registration with the
33 division and achieved permanent status.

34 e. The bidder and all subcontractors shall have hospitalization and medical benefits that
35 meet the minimum requirements of the Connector Board established by Chapter 58 of the Acts
36 of 2006.

37 f. The bidder and all subcontractors under the bidder shall maintain appropriate industrial
38 accident insurance coverage for all the employees employed on the project in accordance with
39 M.G.L. Ch. 152.

40 g. The bidder and all subcontractors under the bidder shall properly classify employees
41 employed on the project as employees rather than independent contractors and shall properly
42 classify said employees accordingly for purposes of workers’ compensation insurance coverage,
43 employment taxes, Social Security taxes and income tax withholding pursuant to M.G.L. Ch.
44 149, Sec. 148B.

45 h. The bidder and all subcontractors shall ensure that all employees have the appropriate
46 and required licenses for their position.

47 i. All bidders and all subcontractors under the bidders who are awarded contracts pursuant
48 to these bid documents shall comply with these Responsible Employer Requirements for the
49 duration of their work on the project, and an officer of each such contractor or subcontractor
50 shall certify under oath and in writing on a weekly basis that they are in compliance with the
51 Requirements.

52

53 II. Requirements Before Bid Opening. All bidders and all subcontractors under the bidders
54 shall provide documentation and shall certify in writing that they are in compliance with these
55 Responsible Employer Requirements before the bid opening.

56

57 III. Job Site “Harmony” Certification. The bidder and all subcontractors shall certify in
58 writing that their employees shall be able to work in harmony with employees of all other
59 subcontractors on the job site. “Harmony” means that the presence of any subcontractor’s
60 employees shall not result in any picket line, work stoppage or any other form of labor
61 demonstrated on the job site of labor organizations representing the trades and/or crafts of the
62 employees on the job sites.

63

64 IV. Health Insurance. With the submission of bids, the bidder shall submit a written
65 statement detailing for each trade that it will employ in the performance of the contract, the
66 health insurance that it will furnish to its employees. The statement shall include, but not be
67 limited to, the name of the insurance carrier, if any, a copy of the insurance binder, a description
68 of the benefits provided to the employees, including all co-payments and deductibles, the cost of
69 the insurance to the bidder and to the employee, the minimum qualifications for the coverage,
70 and a statement as to whether or not the coverage meets the standards for minimum creditable
71 coverage under Massachusetts law. If the bidder is awarded a contract, such health insurance
72 policy will become part of the contract documents. Receipt of the policy by the awarding
73 authority and inclusion in the contract document shall not be deemed to be approval by the
74 awarding authority of the insurance or of its sufficiency and shall in no event relieve the bidder
75 of its responsibility to furnish comprehensive health insurance to its employees. Any bidder who
76 contributes to a multi-employer health and welfare trust fund pursuant to a collective bargaining
77 agreement may satisfy the reporting requirements of this subsection by identifying said health
78 and welfare fund.

79

80 V. Penalties and Enforcement.

81 a. Any bidder or subcontractor under the bidder who is awarded a contract on this project
82 and who fails to comply with any of the obligations set forth herein shall, by decision of the
83 Commonwealth be subject to one or more of the following:

84 i. Assessment of a fine of three hundred dollars (\$300) per day of the violation. Any fine
85 imposed which is not paid in full by the violator shall be offset by the Commonwealth against
86 any payment due to the contractor under the contract for the project, to the extent allowed by
87 law.

88 ii. Cessation of work on the project until compliance is obtained.

89 iii. Withholding by the Commonwealth of payment due under any contract of subcontract
90 until compliance is obtained.

91 iv. Permanent removal from any further work on the project.

92 b. In addition to the sanctions outlined in subsection a. above, a general bidder or contractor
93 shall be equally liable for the violations of its subcontractor, with the exception of the violations
94 arising from work performed pursuant to the subcontracts that are subject to M.G.L. Ch. 149,
95 Sec. 44F. Any contractor or subcontractor who has been determined to have violated any of the
96 obligations set forth in these Responsible Employer Requirements shall be barred from

97 performing any work on any future projects for six months for a first violation, for three (3) years
98 for a second violation, and permanently for a third violation, to the extent permissible by law.

99 c. In addition to the sanctions outlined in subsection a. and b. above, any bidder or
100 subcontractor under the bidder who is awarded a contract or who otherwise obtains a contract on
101 this project, and who fails to comply with the harmony requirement outlined above in section IV,
102 may at the sole discretion of the Commonwealth be subject to the following penalties:

103 i. Assessment of the costs incurred by the Commonwealth for the contractor or the
104 subcontractors to provide security (such as in the form of police details, security fences,
105 establishment of separate gates, etc.), lost work days for every employee who is prevented from
106 working on the job site by the establishment of picket lines, work stoppage or other labor
107 demonstrations;

108 ii. Liquidated damages payable to the Commonwealth in the amount of five percent (5%) of
109 the dollar value of the contract entered into by the contractor or subcontractor who cannot
110 comply with the harmony clause.

111 d. A violation of these Responsible Employer Requirements shall be a material breach of
112 the contract.

113
114 QUESTIONNAIRE AND CERTIFICATION RELATIVE TO COMPLIANCE WITH
115 RESPONSIBLE EMPLOYER REQUIREMENTS

116
117
118 ALL BIDDERS ARE REQUIRED TO COMPLETE THE FOLLOWING:

119
120 1. I hereby agree and certify by signing below that my company complies with all of the
121 above Responsible Employer Requirements.

122
123 2. My company maintains or participates in a certified apprenticeship training program:

124 o Name of program _____

125 o Address of program _____

126 o Contact person _____

127 o Telephone number _____

128 o Is the program an employer-sponsored/paid program? ____ yes ____ no

129 § If no, who pays for the program? _____

130 o How many apprentices have graduated from your program during the last three years?

131 2007 _____

132 2008 _____

133 2009 _____

134 o Has your apprenticeship training program been suspended since January 1, 2007? ____

135 yes ____ no

136

137 3. My company provides health insurance, industrial accident insurance and pension
138 benefits as described in the Responsible Employer Requirements.

139 o Name of health insurance carrier and applicable policy

140 _____

141 o Name of industrial accident insurance carrier: _____

142 o Name of applicable pension plan _____

143

144

145 I hereby certify that the information and responses provided above are true and accurate.

146

147 Signed under the pains and penalties of perjury this _____ day of _____, 2010.

148

149

150 Signature: _____

151

152 Name: _____

153

154 Title: _____

155

156 Company: _____

157