

# SENATE . . . . . No. 02145

Senate, February 21, 2012 – New draft of Senate, No. 1598 reported from the committee on State Administration and Regulatory Oversight.

## The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to publicly opened 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. Section 39M of Chapter 30 is hereby amended by striking subsection (a) in  
2 its entirety and adding in place thereof the following new language:-

3 (a) Every contract for the construction, reconstruction, alteration, remodeling or repair of  
4 any public work, or for the purchase of any material, as hereinafter defined, by the  
5 commonwealth, or political subdivision thereof, or by any county, city, town, district, or housing  
6 authority, and estimated by the awarding authority to cost more than ten thousand dollars, and  
7 every contract for the construction, reconstruction, installation, demolition, maintenance or repair  
8 of any building by a public agency, as defined by subsection one of section forty-four A of  
9 chapter one hundred and forty-nine, estimated to cost more than \$25,000 but not more than  
10 \$100,000, shall be awarded to the lowest responsible and eligible bidder on the basis of  
11 competitive bids publicly opened, read, reviewed and properly awarded after said review by such  
12 awarding authority forthwith upon expiration of the time for the filing thereof; provided,

13 however, that such awarding authority may reject any and all bids, if it is in the public interest to  
14 do so. Every bid for such contract shall be accompanied by a bid deposit in the form of a bid  
15 bond, or cash, or a certified check on, or a treasurer's or cashier's check issued by, a responsible  
16 bank or trust company, payable to the awarding authority. The amount of such bid deposit shall  
17 be five per cent of the value of the bid. Any person submitting a bid under this section shall, on  
18 such bid, certify as follows:

19           The undersigned certifies under penalties of perjury that this bid is in all respects bona  
20 fide, fair and made without collusion or fraud with any other person. As used in this paragraph  
21 the word "person" shall mean any natural person, joint venture, partnership, corporation or other  
22 business or legal entity.

23 \_\_\_\_\_

24 (Name of person signing bid)

25 \_\_\_\_\_

26 (Company)

27           This paragraph shall not apply to the award of any contract subject to the provisions of  
28 sections forty-four A to forty-four J, inclusive, of chapter one hundred and forty-nine and every  
29 such contract shall continue to be awarded as provided therein. In cases of extreme emergency  
30 caused by enemy attack, sabotage or other such hostile actions or resulting from an imminent  
31 security threat explosion, fire, flood, earthquake, hurricane, tornado or other such catastrophe, an  
32 awarding authority may, without competitive bids and notwithstanding any general or specific  
33 law, award contracts otherwise subject to this paragraph to perform work and to purchase or rent

34 materials and equipment, all as may be necessary for temporary repair and restoration to service  
35 of any and all public work in order to preserve the health and safety of persons or property;  
36 provided, that this exception shall not apply to any permanent reconstruction, alteration,  
37 remodeling or repair of any public work.

38           Fraud shall be defined as a statement, act or omission relating to be a material fact that  
39 has the natural tendency to be relied upon in influence the average person, and that is knowingly  
40 false or misleading, or is in reckless disregard of its truth or falsity, and that is intended to  
41 mislead, regardless of whether the statement, act or omission is actually relied upon.