

SENATE No. 2213

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to transportation.

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 29 of the General Laws is hereby amended by striking out section
2 8B, as appearing in the 2008 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 8B. The administrator for highways or the commissioner of the department of
5 conservation and recreation shall require that any person proposing to bid on any work, except
6 the construction, reconstruction, repair or alteration of buildings, to be awarded by the
7 Massachusetts department of transportation or by the department of conservation and recreation,
8 respectively, and the administrator for highways shall require that any person proposing to bid on
9 any such work to be awarded by a municipality under section 4 of chapter 6C, submit a statement
10 under the penalties of perjury setting forth his qualifications to perform such work. Such
11 statement shall be in such detail and form and shall be submitted at such times as such
12 administrator or commissioner may prescribe under rules adopted by the Massachusetts
13 department of transportation or the department of conservation and recreation, respectively,
14 subject to the requirements of chapter 30A. Such rules may require such information as may be

15 necessary to implement this section and may establish a basis for the classification and maximum
16 capacity rating of a bidder which shall determine the class and aggregate amount of work such
17 bidder is qualified to perform. The statement shall set forth, among other matters that may be
18 prescribed by the rules, the proposed bidder's financial resources, his current bonding capacity,
19 his experience, the number and kinds of equipment which he has for use on such work, and the
20 number, size and completion dates of other construction jobs, whether in the commonwealth or
21 another state, which he has under contract. The information contained within such statement,
22 together with other relevant available information and the proposed bidder's past performance on
23 work of a similar nature, may be considered by the Massachusetts department of transportation
24 or the department of conservation and recreation in determining whether or not the proposed
25 bidder is qualified to perform any specific work for which proposals to bid are invited. Based
26 on information received and available and on past performance of the prospective bidder on
27 work of a similar nature, the administrator or commissioner, acting through a prequalification
28 committee consisting of engineering personnel of the Massachusetts department of transportation
29 or the department of conservation and recreation, respectively, to be appointed by said
30 administrator or commissioner, shall determine the class and aggregate amount of work that a
31 prospective bidder is qualified to perform limit the proposed bidder to such class and aggregate
32 amount of work as he may be qualified to perform. Such aggregate amount of work shall not be
33 less than the amount of the bidder's current bonding capacity, as verified to the administrator's or
34 commissioner's satisfaction, by a surety company incorporated pursuant to section 105 of chapter
35 175, or authorized to do business in the commonwealth under section 106 of said chapter 175,
36 and satisfactory to the administrator or commissioner, respectively; provided, however, that if
37 there is more than 1 surety company, the surety companies shall be jointly and severally liable.

38 Said departments shall limit the bid proposals to be furnished to a prospective bidder to such
39 bidders as are determined by such department's administrator or commissioner to have the
40 classification and capacity rating to perform the work required. Any such statement filed
41 with either said administrator or commissioner by a prospective bidder shall be a public record;
42 provided, however, that financial information provided by the prospective bidder shall be
43 confidential and exempt from disclosure under clause Twenty-sixth of section 7 of chapter 4
44 except to other agencies of the commonwealth doing business with or considering doing business
45 with the prospective bidder. All other relevant exemptions of the public records law shall apply
46 to the statements of the prospective bidder filed pursuant to this chapter.

47 If any prospective bidder fails to file the statement required by this section or if, in the
48 judgment of said administrator or commissioner, respectively, the prospective bidder is not
49 qualified to carry out the work required under a contract which is proposed to be awarded, the
50 administrator or commissioner, respectively, shall refuse to furnish such prospective bidder with
51 any bid proposal for such work and shall reject any bid by such prospective bidder for such
52 work. Only persons filing the statement required herein shall be eligible to be authorized as
53 prime contractors and such authorization shall be limited to the class and aggregate amount of
54 work which such person's qualifications warrant. Said administrator and commissioner may
55 each, in his discretion, establish such rules, regulations and procedures for their respective
56 departments for the prequalification of subcontractors as necessary to ensure that subcontractors
57 are qualified to perform work to be awarded thereby. Any bidder qualified as authorized in
58 this section shall be promptly notified by the administrator or commissioner, respectively.

59 Any prospective bidder who is aggrieved by any decision or determination of the
60 prequalification committee or the administrator or commissioner which affects his right to bid

61 may file a new application for qualification at any time or, within 15 days after receiving notice
62 of such decision, the applicant may request in writing a hearing before an appeal board to
63 reconsider his application or qualifications. The appeal board in the Massachusetts department of
64 transportation shall consist of the administrator, the chief engineer of highways and such other
65 members as required by the administrator, or their designees. The appeal board in the
66 department of conservation and recreation shall consist of the commissioner, the associate
67 commissioners and the director or chief engineer of the division involved, or their designees.

68 Any bidder or prospective bidder who requests such reconsideration shall be granted a
69 hearing by the relevant appeal board at which he may submit any and all additional information
70 or evidence bearing upon his finances, current bonding capacity, experience or other
71 qualifications which may be relevant thereto. Such hearing shall be held without delay and the
72 board shall promptly render its decision after taking into consideration all relevant information or
73 evidence submitted relating to the bidder's qualifications. The appeal board may modify, amend
74 or reverse any previous decision of the prequalification committee or the administrator or
75 commissioner with respect to the qualifications of the applicant or it may sustain such previous
76 decision. Such hearing shall be deemed to be an adjudicatory proceeding and any bidder or
77 prospective bidder who is aggrieved by the decision of the appeal board shall have a right to
78 judicial review under the applicable provisions of said chapter 30A. The administrator for
79 highways or the commissioner of the department of conservation and recreation shall not
80 consider any bid filed with him by any person for any contract to be awarded by the
81 Massachusetts department of transportation or the department of conservation and recreation,
82 respectively, who has not been qualified as required by the rules adopted by the department for
83 which such bid has been filed, and any such bid of any unqualified bidder may be rejected

84 without being opened. No contract shall be awarded to any bidder not qualified to bid thereon at
85 the time fixed for receiving bids. Any person, firm or corporation that is convicted of
86 willfully making, or causing to be made, any false or fraudulent statement in any application for
87 qualification filed with either department as required herein, shall be disqualified from
88 submitting bids on contracts advertised by such departments for a period of 1 year following the
89 date of such finding of responsibility or of such conviction.

90 This section shall not apply to any prospective bidder for whom the aggregate amount of
91 work such bidder has under contract with the department for which a bid is proposed, including
92 the amount of the proposal, is less than \$100,000.

93 Notwithstanding any other general or special law to the contrary, any awarding
94 authority engaged in horizontal construction must complete performance evaluations of
95 contractors performing public works projects. Such evaluations shall be public records and shall
96 not be conditioned upon a promise and shall not be subject to negotiation by the contractor. A
97 contractor who refuses to complete work or to correct deficiencies as a means of obtaining a
98 successful evaluation may, in addition to other remedies provided by law, have his
99 prequalification suspended, revoked or canceled.