

SENATE No. 1558

The Commonwealth of Massachusetts

PRESENTED BY:

James E. Timilty

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 adoption of the accompanying bill:

An Act relative to public construction reform.

PETITION OF:

NAME:

James E. Timilty

DISTRICT/ADDRESS:

Bristol and Norfolk

SENATE No. 1558

By Mr. Timilty, a petition (accompanied by bill, Senate, No. 1558) of James E. Timilty for legislation relative to public construction reform. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to public construction reform.

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 of the General Laws is hereby amended by
2 striking out section (c) and inserting in place thereof the following:

3 (c) The term “lowest responsible and eligible bidder” shall mean the bidder: (1) whose
4 bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the
5 faithful performance of the work; (2) who shall certify, that he is able to furnish labor that can
6 work in harmony with all other elements of labor employed or to be employed in the work; (3)
7 who shall certify that all employees to be employed at the worksite will have successfully
8 completed a course in construction safety and health approved by the United States Occupational
9 Safety and Health Administration that is at least 10 hours in duration at the time the employee
10 begins work and who shall furnish documentation of successful completion of said course with
11 the first certified payroll report for each employee; (4) who, where the provisions of section 8B
12 of chapter 29 apply, shall have been determined to be qualified thereunder; (5) who obtains
13 within 10 days of the notification of contract award the security by bond required under section
14 29 of chapter 149; provided that for the purposes of this section the term “security by bond” shall
15 mean the bond of a surety company qualified to do business under the laws of the
16 commonwealth and satisfactory to the awarding authority; provided further, that if there is more
17 than 1 surety company, the surety companies shall be jointly and severally liable; and (6) whose
18 bid shall be verified by the awarding authority, where the provisions of Section 39N 1/2 apply.

19 SECTION 2. Chapter 30 of the General Laws is hereby amended by inserting after
20 Section 39N the following new section:

21 Section 39N ½. (a) The award of every contract subject to section 39M of chapter 30 and
22 sections 44A to 44 J, inclusive, of chapter 149 shall be subject to the following:

23 (1) In the event that a bid is lower than the next lowest bid by ten percent or more and
24 lower than the awarding authority's estimate by ten percent or more, after the opening of the bid
25 and before the award, an awarding authority shall immediately undertake a process of
26 verification of the bid. Any action taken to verify such bid must be sufficient to reasonably
27 assure the awarding authority that the bid as certified by the bidder is not unreasonably low and
28 that the cost of the work is reasonably calculated and there are adequate allocations to cover
29 general, administrative, and overhead costs, and a fair and reasonable profit. A mere statement
30 by the awarding authority that it is satisfied that the bid is not unreasonably low is insufficient.
31 The bidder shall be advised within two business days of the bid opening that his bid is lower than
32 the next lowest bid by ten percent or more and lower than the awarding authority's estimate by
33 ten percent or more and that the awarding authority must verify the bid.

34 (2) Upon the commencement of the bid verification process, the awarding authority shall
35 immediately request all relevant bid documents, including, but not limited to bid work papers,
36 subcontractor quotes, and profit calculations, from the bidder whose bid is subject to verification
37 for the purposes of assisting the awarding authority in verifying the bid and to protect the overall
38 integrity of the bid process. The documents received by the awarding authority from the subject
39 bidder shall be treated as confidential by the awarding authority and shall not be public records
40 as defined in section 7 of chapter 4, with the exception of the bid itself.

41 (3) After being notified by the awarding authority of the commencement of the bid
42 verification process, the subject bidder shall immediately furnish evidence to the awarding
43 authority supporting his bid within two business days, and provide a copy of such evidence to the
44 surety company supplying his security by bond as required by section 29 of chapter 149. At the
45 conclusion of the bid verification process, the awarding authority shall make available to the
46 public the following: (i) a certification that either the bid be verified and considered for award in
47 the form submitted, or the bid be disqualified; (ii) a summary of the grounds upon which the
48 awarding authority has relied upon in its verification or disqualification of the subject bid; and
49 (iii) any additional pertinent documents.

50 (4) Where a bidder whose bid is subject to the verification process has submitted 2 or
51 more bids that have undergone the verification process within the 12 month period preceding his
52 bid submission, the bidder shall be required to submit to the awarding authority as part of the
53 verification process a certification from the surety company supplying his security by bond as
54 required by section 29 of chapter 149 that the surety company has conducted a bid verification
55 process substantially similar to that described in this Section 39N 1/2, including an advisory
56 opinion from the surety company to the awarding authority as to whether or not the bid should be
57 verified or disqualified, and the awarding authority shall take such advisory opinion into
58 consideration in its decision as to whether to verify or disqualify the subject bid.

(5) Where any contractor has submitted 2 or more bids that have undergone the verification process within the 12 month period preceding the submission of a bid and said bid is deemed disqualified by the awarding authority as a result of the verification process, the bid deposit shall become and be the property of the commonwealth or the public agency to which it is payable, as liquidated damages. Otherwise, where any bid is deemed disqualified by the awarding authority as a result of the verification process, the bid deposit shall be returned to the bidder.

(6) After the verification process, the decision of the awarding authority as to whether to verify or disqualify a bid shall be final and shall not be subject to appeal except on grounds of arbitrariness, capriciousness, fraud or collusion.

(7) Once a bid is verified, the awarding authority shall consider the bid as originally submitted. If the time for acceptance of bids is likely to expire before the bid is verified, the awarding authority shall request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids.

(i) When time is of the essence due to the expiration of bids or otherwise, the awarding authority may undertake the verification process by electronic or telephonic communication.

(ii) Where the bidder fails or refuses to furnish evidence in support of his bid, the bid shall be considered withdrawn by the bidder and his bid deposit shall become and be the property of the commonwealth or the public agency to which it is payable, as liquidated damages.

(b) An awarding authority shall adopt reasonable rules or regulations in conformity with paragraph (a) necessary or expedient to effectuate the purposes of the paragraph.

SECTION 3. At least annually, awarding authorities subject to section 39N 1/2 of chapter 30 shall submit bid verification data to the Division of Insurance. The division shall review said data to determine patterns of underbidding of public construction projects or fraud by contractors. Where any contractor has submitted 3 or more bids that have undergone the verification process under said section 39 1/2 of chapter 30 within the 12 month period preceding the submission of said bid verification data, the division shall conduct an investigation, including, but not limited to, a review of the records of the contractor's surety company or companies providing security by bond to the contractor as required by section 29 of chapter 149 to determine whether the contractor has properly bid in accordance with his audited financial statement, and whether the surety company or companies are in violation of the provisions of this chapter through or by way of its bonding practices with regard to the contractor or contractors at issue.