SENATE DOCKET, NO. 107 FILED ON: 1/9/2019

SENATE . . . . . No. 1885

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

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 the definition of fraud in public construction bid laws.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Michael O. Moore	*Second Worcester*	
Angelo J. Puppolo, Jr.	*12th Hampden*	*1/23/2019*
Mike Connolly	*26th Middlesex*	*1/29/2019*
James B. Eldridge	*Middlesex and Worcester*	*1/29/2019*
Rebecca L. Rausch	*Norfolk, Bristol and Middlesex*	*1/30/2019*
Mathew J. Muratore	*1st Plymouth*	*1/30/2019*
Viriato M. deMacedo	*Plymouth and Barnstable*	*1/31/2019*
Bruce E. Tarr	*First Essex and Middlesex*	*1/31/2019*
Mary S. Keefe	*15th Worcester*	*1/31/2019*
Marc R. Pacheco	*First Plymouth and Bristol*	*1/31/2019*
Brendan P. Crighton	*Third Essex*	*1/31/2019*
Patrick M. O'Connor	*Plymouth and Norfolk*	*1/31/2019*
Jack Patrick Lewis	*7th Middlesex*	*2/1/2019*
Julian Cyr	*Cape and Islands*	*2/1/2019*
Sal N. DiDomenico	*Middlesex and Suffolk*	*2/1/2019*
John Barrett, III	*1st Berkshire*	*2/25/2019*

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SENATE . . . . . No. 1885

By Mr. Moore, a petition (accompanied by bill, Senate, No. 1885) of Michael O. Moore, Angelo J. Puppolo, Jr., Mike Connolly, James B. Eldridge and other members of the General Court for legislation to define fraud in public construction bid laws. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to the definition of fraud in public construction bid laws.

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

SECTION 1. Subsection (a) of section 39M of chapter 30 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out, in lines 21 to 23, the words “The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person” and inserting in place thereof the following words:-

The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion with any person and contains no intentional misrepresentations, omissions or false statements. As used in this paragraph the word “person” shall mean any natural person, joint venture, partnership, corporation or any other business or legal entity.

SECTION 2. Section 44A of chapter 149 of the General Laws, as so appearing, is hereby amended by inserting after the definition of " Eligible" the following definition:-

"Fraud", a statement, act or omission relating to a material fact that (i) has the natural tendency to be relied upon by or to influence the average person, (ii) is knowingly false or misleading or is in reckless disregard of its truth or falsity and (iii) is intended to mislead, regardless of whether the statement, act or omission is actually relied upon;

And further, by striking the definition of "responsible and inserting in place thereof the following new definition:-

""Responsible" means demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work called for by a particular contract, based upon a determination of competent workmanship and financial soundness in accordance with the provisions of section forty-four D of this chapter and shall certify that his bid contains now misrepresentations, omissions, or false statements."

SECTION 3. Section 2 of chapter 149A of the General Laws, as so appearing, is hereby amended by inserting after the definition of "Designer" the following definition:-

"Fraud", a statement, act or omission relating to a material fact that (i) has the natural tendency to be relied upon by or to influence the average person, (ii) is knowingly false or misleading or is in reckless disregard of its truth or falsity and (iii) is intended to mislead, regardless of whether the statement, act or omission is actually relied upon.

SECTION 4. Section 19 of said chapter 149A of the General Laws, as so appearing, is hereby amended by striking out the clause six in its entirety, and replacing it with the following:-

"(6) The RFP shall require that every response shall be accompanied by a bid deposit in the form of a bid bond, or cash, or a certified check on, or a treasurer's or cashier's check issued by a responsible bank or trust company, payable to the awarding authority. The amount of such bid deposit shall be 5 per cent of the value of the bid. Any person submitting a bid under this sections hall, on such a bid, certify as follows:

The undersigned certifies under penalty of perjury that this bid is in all respects bona fide, fair, made without collusion with any other person and contains no intentional material misrepresentations, omissions or false statements. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity."

SECTION 5. Subsection (f) of section 8 of chapter 149A, as so appearing, is hereby amended by striking the fourth sentence and replacing it with the following new language:-

"The decision of the prequalification committee shall be final and not subject to appeal except on the grounds that a submission contains intentional, material misrepresentations, omissions, or false statements, or of collusion."