

HOUSE No. 01752

The Commonwealth of Massachusetts

PRESENTED BY:

Martin J. Walsh

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>Martin J. Walsh</i>	<i>13th Suffolk</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Brian Ashe</i>	<i>2nd Hampden</i>
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol, and Plymouth</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Edward Coppinger</i>	<i>10th Suffolk</i>
<i>Carlo Basile</i>	<i>1st Suffolk</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>David B. Sullivan</i>	<i>6th Bristol</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>

Sean Curran

9th Hampden

Christopher N. Speranzo

3rd Berkshire

HOUSE No. 01752

By Mr. Martin J. Walsh of Boston, petition (accompanied by bill, House, No. 01752) of Denise Provost and others relative to promoting responsible contracting on state construction projects . Joint Committee on State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 following
2 sections:

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

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

12 a. The bidder and all subcontractors under the bidder shall comply with the responsible
13 employer requirements set forth below.

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

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

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

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

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

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

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

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

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

51

52 III. Job Site "Harmony" Certification. The bidder and all subcontractors shall certify in
53 writing that their employees shall be able to work in harmony with employees of all other

54 subcontractors on the job site. “Harmony” means that the presence of any subcontractor’s
55 employees shall not result in any picket line, work stoppage or any other form of labor
56 demonstrated on the job site of labor organizations representing the trades and/or crafts of the
57 employees on the job sites.

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

73

74 V. Penalties and Enforcement.

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

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

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

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

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

86 b. In addition to the sanctions outlined in subsection a. above, a general bidder or contractor
87 shall be equally liable for the violations of its subcontractor, with the exception of the violations
88 arising from work performed pursuant to the subcontracts that are subject to M.G.L. Ch. 149,
89 Sec. 44F. Any contractor or subcontractor who has been determined to have violated any of the
90 obligations set forth in these Responsible Employer Requirements shall be barred from
91 performing any work on any future projects for six months for a first violation, for three (3) years
92 for a second violation, and permanently for a third violation, to the extent permissible by law.

93 c. In addition to the sanctions outlined in subsection a. and b. above, any bidder or
94 subcontractor under the bidder who is awarded a contract or who otherwise obtains a contract on

95 this project, and who fails to comply with the harmony requirement outlined above in section IV,
96 may at the sole discretion of the Commonwealth be subject to the following penalties:

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

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

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

107

108 QUESTIONNAIRE AND CERTIFICATION RELATIVE TO COMPLIANCE WITH
109 RESPONSIBLE EMPLOYER REQUIREMENTS

110 ALL BIDDERS ARE REQUIRED TO COMPLETE THE FOLLOWING:

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

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

114 o Name of program _____

115 o Address of program _____

116 o Contact person _____

117 o Telephone number _____

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

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

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

121 2007 _____

122 2008 _____

123 2009 _____

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

125 yes ____ no

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

128 o Name of health insurance carrier and applicable policy

129 _____

130 o Name of industrial accident insurance carrier: _____

131 o Name of applicable pension plan _____

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

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

134 Signature: _____

135 Name: _____

136 Title: _____

137 Company: _____