HOUSE DOCKET, NO. 3270 FILED ON: 1/18/2013

HOUSE . . . . . No. 2792

The Commonwealth of Massachusetts

PRESENTED BY:

Nick Collins

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:

An Act to promote responsible contracting on state construction projects.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Nick Collins	*4th Suffolk*
John V. Fernandes	*10th Worcester*
Peter V. Kocot	*1st Hampshire*
James M. Murphy	*4th Norfolk*
Michael O. Moore	*Second Worcester*
Carl M. Sciortino, Jr.	*34th Middlesex*
Patricia A. Haddad	*5th Bristol*
Diana DiZoglio	*14th Essex*
Thomas M. Stanley	*9th Middlesex*

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HOUSE . . . . . No. 2792

By Mr. Collins of Boston, a petition (accompanied by bill, House, No. 2792) of Nick Collins and others relative to promoting responsible contracting on state construction projects. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1752* OF 2011-2012.]

The Commonwealth of Massachusetts

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:

Chapters 149, 149a and Chapter 30 Section 39m are hereby amended by adding the following sections:

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

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

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

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

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

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

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

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

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

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

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

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

III. Job Site "Harmony" Certification. The bidder and all subcontractors shall certify in writing that their employees shall be able to work in harmony with employees of all other subcontractors on the job site. "Harmony" means that the presence of any subcontractor's

employees shall not result in any picket line, work stoppage or any other form of labor demonstrated on the job site of labor organizations representing the trades and/or crafts of the employees on the job sites.

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

V. Penalties and Enforcement.

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

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

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

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

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

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

c. In addition to the sanctions outlined in subsection a. and b. above, any bidder or

subcontractor under the bidder who is awarded a contract or who otherwise obtains a contract on this project, and who fails to comply with the harmony requirement outlined above in section IV, may at the sole discretion of the Commonwealth be subject to the following penalties:

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

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

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

QUESTIONNAIRE AND CERTIFICATION RELATIVE TO COMPLIANCE WITH RESPONSIBLE EMPLOYER REQUIREMENTS

ALL BIDDERS ARE REQUIRED TO COMPLETE THE FOLLOWING:

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

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

o Name of program _____

o Address of program _____

o Contact person _____

o Telephone number _____

o Is the program an employer-sponsored/paid program? ____ yes ____no

§ If no, who pays for the program? _____

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

2007_____

2008_____

2009_____

o Has your apprenticeship training program been suspended since January 1, 2007? ____ yes ____ no

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

o Name of health insurance carrier and applicable policy

140 _____

141 o Name of industrial accident insurance carrier:_____

142 o Name of applicable pension plan _____

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144

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

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

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149

150 Signature: _____

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152 Name: _____

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154 Title: _____

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156 Company: _____

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