



City of Cambridge

O-3.

IN CITY COUNCIL

December 4, 2000

COUNCILLOR SULLIVAN
COUNCILLOR DECKER
COUNCILLOR TOOMEY
COUNCILLOR BORN
COUNCILLOR BRAUDE
COUNCILLOR DAVIS
MAYOR GALLUCCIO
VICE MAYOR MAHER
COUNCILLOR REEVES

WHEREAS: It has come to the attention of the City Council that the current Cambridge Responsible Employer Ordinance does not cover public construction projects such as the ongoing service and storm drain work; now therefore be it

ORDERED: That the City Manager be and hereby is requested to refer the attached proposed amendment to the Responsible Employer section in the Cambridge Employer Plan to the Ordinance Committee for hearing and report and to the City Solicitor for review at the hearing of the Ordinance Committee of the content and conformity of the proposed amendments to the current ordinance.

In City Council December 4, 2000.

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:- *D. Margaret Drury*

D. Margaret Drury
City Clerk

REFERRED TO THE ORDINANCE COMMITTEE ON MOTION OF COUNCILLOR SULLIVAN

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Proposed Responsible Contractor Language

For

City of Cambridge

A. All bidders and all subcontractors, including subcontractors that are not subject to M.G.L. c. 149, Sec. 44F, under the bidder for projects subject to M.G.L. c.149, Sec. 44A (2) and M.G.L. c.30, Sec. 39M, shall, as a condition for bidding or for an award of a subcontract on non filed sub-bid work, verify under oath and in writing at the time of bidding that they comply with the following conditions for bidding or subcontracting and, for the duration of the project, shall comply with the following obligations:

- 1. The bidder and all subcontractors under the bidder shall comply with City of Cambridge Responsible Employer Ordinance as it currently exists and as it may, from time to time, be amended.**
- 2. The bidder and all subcontractors under the bidder must comply with the obligations established under M.G.L. c. 149 to pay the appropriate lawful prevailing wage rates to their employees.**
- 3. The bidder and all subcontractors under the bidder must at the time of bidding maintain or participate in a bona fide apprentice training program as defined by C.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 and must abide by the apprentice to journeymen ratio for each trade prescribed therein in the performance of any work on the project.**
- 4. The bidder and all subcontractors under the bidder must at the time of bidding furnish at their expense, hospitalization and medical benefits and/or coverage for all their mechanics and apprentices, teamsters, chauffeurs and laborers (as those employee classification are used in M.G.L. c. 149, Sec. 26) at least comparable in value and coverage to the hospitalization and medical benefits provided by the health and welfare plans in the applicable craft recognized by M.G.L. c.149, Sec. 26 in establishing minimum wage rates.**

B. A bid submitted by any general bidder or by any subcontractor under the general bidder that does not comply with any of the foregoing conditions for bidding shall be rejected, and no subcontract for work outside the scope of M.G.L. c. 149, Sec. 44F shall be awarded to a subcontractor that does not comply with the foregoing conditions.

C. All bidders and subcontractors under the bidder who are awarded or who otherwise obtain contracts on projects subject to M.G.L. c. 149, Sec. 44A (2) or c. 30, 39M shall comply with the obligations numbered 1 through 6 as set forth in paragraph A above for the entire duration of their work on the project, and an officer of each bidder or subcontractor under the bidder shall certify under oath and in writing on a weekly basis that they are in compliance with such obligations.

D. Any bidder or subcontractor under the bidder who fails to comply with any one of obligations 1 through 6 as set forth in Paragraph A above for any period of time shall be, at the sole discretion of the City of Cambridge subject to one or more of the following sanctions: (1) cessation of work on the project until compliance is obtained; (2) withholding of payment due under any contract or subcontract until compliance is obtained; (3) permanent removal from any further work on the project; (4) liquidated damages payable to the City of Cambridge in the amount of 5% of the dollar value of the contract.

E. In addition to the sanctions outlined in Paragraph D Above, a general bidder or contractor shall be equally liable for the violations of its subcontractor with the exception of violations arising from work performed pursuant to subcontracts that are subject to M.G.L. c. 149, Sec. 44F. Any contractor or subcontractor that has been determined by the New Bedford Harbor Commission

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or by any court or agency to have violated any of the obligations set forth in Paragraphs A and C above shall be barred from performing any work on any future projects for six months for a first violation, for three years for a second violation and permanently for a third violation.

F. If any provision of this ordinance, or the application of such provision to any person or circumstances, shall be enjoined or held to be invalid, the remaining provisions of this ordinance, or the application of such provisions to persons or circumstance, other than that which is enjoined or held invalid shall be not affected thereby.

Remove highlighting.

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Chapter 2.66 CAMBRIDGE EMPLOYMENT PLAN

Section 2.66.080 Contractor qualifications and sanctions.

A. All bidders and all subcontractors under the bidder for projects subject to G.L. c. 149, §44A(2) shall, as a condition for bidding, agree in writing that they shall comply with the following obligations:

1. The bidder and all subcontractors under the bidder shall comply with the Cambridge Employment Plan as it currently exists and as it may, from time to time, be amended, and specifically shall comply with the worker hours requirements of Section 2.66.060(A).

2. The bidder and all subcontractors under the bidder must comply with the obligations established under G.L. c. 149 to pay the appropriate lawful prevailing wage rates to their employees.

3. The bidder and all subcontractors under the bidder must maintain or participate in a bona fide apprentice training program as defined by c. 23, §§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 Industries and must abide by the apprentice to journeymen ratio for each trade prescribed therein in the performance of the contract.

4. The bidder and all subcontractors under the bidder must furnish, at their expense, hospitalization and medical benefits for all their employees employed on the project and/or coverage at least comparable in value to the hospitalization and medical benefits provided by the health and welfare plans in the applicable craft recognized by G.L. c. 149, §26, in establishing minimum wage rates.

5. The bidder and all subcontractors under the bidder must maintain appropriate industrial accident insurance coverage for all the employees employed on the project in accordance with G.L. c. 152.

6. The bidder and all subcontractors under the bidder must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes and income tax withholding. G.L. c. 149, §148B.

B. All bidders and subcontractors under the bidder who are awarded or who otherwise obtain contracts on projects subject to G.L. c. 149, §44A(2) shall comply with the obligations numbered 1 through 6 as set forth in subsection A of this section for the entire duration of their work on the project, and an officer of each such bidder or subcontractor under the bidder shall certify under oath and in writing on a weekly basis that they are in compliance with such obligations.

C. Any bidder or subcontractor under the bidder who fails to comply with any one of obligations 1 through 6 as set forth in subsection A of this section for any period of time shall be, at the sole discretion of the City Manager, subject to one or more of the following sanctions: (1) cessation of work on the project until compliance is obtained; (2) withholding of payment due under any contract or subcontract until compliance is obtained; (3) permanent removal from any further work on the project; (4) liquidated damages payable to the City in the amount of five percent of the dollar value of the contract.

D. In addition to the sanctions outlined in subsection C of this section, a general bidder or contractor shall be equally liable for the violations of its subcontractor with the exception of violations arising from work performed pursuant to subcontracts that are subject to G.L. c. 149, §44F. Any contractor or subcontractor who has been determined to have violated any of the obligations set forth in subsections A and B of this section shall be barred from performing any work on any future projects for six months for a first violation, for three years for a second violation, and permanently for a third violation.

E. The provisions of this section shall not apply to construction projects for which the low general bid was less than one hundred thousand dollars or to work performed pursuant to subcontracts that are subject to G.L. c. 149, §44F and that were bid for less than twenty-five thousand dollars, or to re-bids for construction projects for which the City receives fewer than three qualified general contract bidders in the original bid. (Ord. 1162, 1995)

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PART I. ADMINISTRATION OF THE GOVERNMENT.

TITLE III. LAWS RELATING TO STATE OFFICERS.

CHAPTER 30. GENERAL PROVISIONS RELATIVE TO STATE DEPARTMENTS, COMMISSIONS, OFFICERS AND EMPLOYEES.

Chapter 30: Section 39M. Contracts for construction and materials; manner of awarding.

Section 39M. (a) Every contract for the construction, reconstruction, alteration, remodeling or repair of any public work, or for the purchase of any material, as hereinafter defined, by the commonwealth, or political subdivision thereof, or by any county, city, town, district, or housing authority, and estimated by the awarding authority to cost more than ten thousand dollars, and every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency, as defined by subsection one of section forty-four A of chapter one hundred and forty-nine, estimated to cost more than ten thousand dollars but not more than twenty-five thousand dollars, shall be awarded to the lowest responsible and eligible bidder on the basis of competitive bids publicly opened and read by such awarding authority forthwith upon expiration of the time for the filing thereof; provided, however, that such awarding authority may reject any and all bids, if it is in the public interest to do so. Every bid for such contract 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 five per cent of the value of the bid. Any person submitting a bid under this section shall, on such bid, certify as follows:

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. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

This paragraph shall not apply to the award of any contract subject to the provisions of sections forty-four A to forty-four J, inclusive, of chapter one hundred and forty-nine and every such contract shall continue to be awarded as provided therein. In cases of extreme emergency caused by enemy attack, sabotage or other such hostile actions or resulting from explosion, fire, flood, earthquake, hurricane, tornado or other such catastrophe, an awarding authority may, without competitive bids and notwithstanding any general or special law, award contracts otherwise subject to this paragraph to perform work and to purchase or rent materials and equipment, all as may be necessary for temporary repair and restoration to service of any and all public work in order to preserve the health and safety of persons or property; provided, that this exception shall not apply to any permanent reconstruction, alteration, remodeling or repair of any public work.

(b) Specifications for such contracts, and specifications for contracts awarded pursuant to the provisions of said sections forty-four A to forty-four L of said chapter one hundred and forty-nine, shall be written to provide for full competition for each item of material to be furnished under the contract; except, however, that said specifications may be otherwise written for sound reasons in the

public interest stated in writing in the public records of the awarding authority or promptly given in writing by the awarding authority to anyone making a written request therefor, in either instance such writing to be prepared after reasonable investigation. Every such contract shall provide that an item equal to that named or described in the said specifications may be furnished; and an item shall be considered equal to the item so named or described if (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased, and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the said specifications. For each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said named or described materials.

(c) The term "lowest responsible and eligible bidder" shall mean the bidder (1) whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work; (2) who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (3) who, where the provisions of section eight B of chapter twenty-nine apply, shall have been determined to be qualified thereunder; and (4) who obtains within ten days of the notification of contract award the security by bond required under section twenty-nine of chapter one hundred and forty-nine; provided that for the purposes of this section the term "security by bond" shall mean the bond of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority.

(d) The provisions of this section shall not apply (1) to the extent that they prevent the approval of such specifications by any contributing federal agency, (2) to materials purchased under specifications of the state department of highways at prices established by the said department pursuant to advertisement and bidding in connection with work to be performed under the provisions of chapter eighty-one or chapter ninety, (3) to any transaction between the commonwealth and any of its political subdivisions or between the commonwealth and any public service corporation, and (4) to any contract of not more than twenty-five thousand dollars awarded by a governmental body, as defined by section two of chapter thirty B, in accordance with the provisions of section five of said chapter thirty B.

(e) The word "material" as used in this section shall mean and include any article, assembly, system, or any component part thereof.

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TITLE XXI. LABOR AND INDUSTRIES.

CHAPTER 149. LABOR AND INDUSTRIES.

Chapter 149: Section 44A. Definitions; competitive bids; award; bonds; extreme emergency situations; records contracts not subjected to competitive bid process.

Section 44A. (1) The words defined in this section shall have the meaning set forth below whenever they appear in sections forty-four A through forty-four H, inclusive, of this chapter unless indicated otherwise or unless the context in which they are used clearly requires a different meaning.

"Commissioner", means the commissioner of the division of capital asset management and maintenance or his designee.

"Public Agency" means a department, agency, board, commission, authority, or other instrumentality of the commonwealth or political subdivision of the commonwealth, or two or more subdivisions thereof but not including the Massachusetts Bay Transportation Authority;

"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;

"Eligible" means able to meet all requirements for bidders or offerors set forth in sections forty-four A through forty-four H of this chapter and not debarred from bidding under section forty-four C of this chapter or any other applicable law, and who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.

"Modular Building", a pre-designed building or units of a pre-designed building assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such units are attached to each other and such building is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a roof, designed or used for the shelter of persons or property, transportable in one or more sections and affixed to a foundation and connected to external utilities.

"Procurement", buying, purchasing, or otherwise acquiring and installing a modular building, and all functions that pertain to the acquisition and installation of a modular building, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Proprietary environmental technology systems", systems, in the town of Nantucket, including solid waste related equipment, supporting structures, and buildings, designed, manufactured, and produced under exclusive individual right to sell such product, pertaining to solid waste related environmental protection or remediation. Such systems shall include, but not be limited to, sequential, turnkey,

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construction management, design/build procurement, and the phasing of such procurement, including approval of design and construction stages as separate or combined phases.

(2) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost more than twenty-five thousand dollars except for a pumping station to be constructed as an integral part of a sewer construction or water construction project bid under the provisions of section thirty-nine M of chapter thirty shall be awarded to the lowest responsible and eligible general bidder on the basis of competitive bids in accordance with the procedure set forth in the provisions of section forty-four A to forty-four H, inclusive. When the general court has approved the use of an alternative mode of procurement of construction for a project pursuant to section seven E of chapter twenty-nine, the awarding authority responsible for procuring construction services for such project shall follow the policies and procedures of this section and of section forty-four B to forty-four H, inclusive, to the extent compatible with the mode of construction procurement selected. The term "pumping station" as used in this section shall mean a building or other structure which houses solely pumps and appurtenant electrical and plumbing fixtures.

Notwithstanding the provisions of the preceding paragraph, a public agency may undertake the procurement of modular buildings, in accordance with the provisions of section forty-four E. A public agency may procure site work for modular buildings, including but not limited to, construction of foundations, installations, and attachment to external utilities, or any portion of site work, either in combination with the procurement of modular buildings pursuant to section forty-four E or on the basis of competitive bids pursuant to the foregoing paragraph. Notwithstanding the provisions of the preceding paragraph, a public agency may procure energy management services in accordance with section eleven C of chapter twenty-five A and regulations promulgated thereunder.

(3) The award of every such contract in connection with which approval by an officer, board or agency of the federal government is required shall be made within thirty days, Saturdays, Sundays and legal holidays excluded, after such approval; and the award of every contract subject to this section in connection with which approval by an officer, board or agency of the federal government is not required shall be made within thirty days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids therefor. If the bidder selected as the general contractor fails to perform his agreement to execute a contract in accordance with the terms of his bid and furnish a performance bond and also a labor and materials or payment bond as stated in his bid in accordance with section forty-four E, an award shall be made to the next lowest responsible and eligible bidder, subject to the provisions of sections forty-four A to forty-four H, inclusive, of this chapter. The thirty-day time limit shall not be applicable to a second or subsequent award made after expiration of the time limit with the consent of said next lowest responsible and eligible bidder, and made because the original award made within the time limit was invalid, or because the bidder failed to execute the contract or to provide a performance bond and labor and materials or payment bond.

(4) In cases of extreme emergency, the awarding authority may, with the prior approval of the commissioner, award a contract for that portion of the work necessary to preserve the health or safety of persons or property on the basis of such competitive bids or proposals as it can obtain in time to care for the extreme emergency and without public opening of the bids or proposals.

Where the nature of the emergency prevents the awarding authority from obtaining the prior approval of the commissioner, the awarding authority may contract for the necessary work without said prior approval; provided, however, that the approval of the commissioner shall still be sought at the earliest

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TITLE XXI. LABOR AND INDUSTRIES.

CHAPTER 149. LABOR AND INDUSTRIES.

Chapter 149: Section 44F. Plans and specifications; sub-bids; form; contents.

Section 44F. (1) (a) Every contract subject to section forty-four A shall include specifications and, if deemed necessary or convenient by the awarding authority, plans, detailing all labor and materials to be furnished thereunder. Such specifications shall have a separate section for each of the following classes of work if in the estimate of the awarding authority such class of work will exceed ten thousand dollars: (a) roofing and flashing; (b) metal windows; (c) waterproofing, damp-proofing and caulking; (d) miscellaneous and ornamental iron; (e) lathing and plastering; (f) acoustical tile; (g) marble; (h) tile; (i) terrazzo; (j) resilient floors; (k) glass and glazing; (%93) painting; (m) plumbing; (n) heating, ventilating and air-conditioning; (%96) electrical work, including direct electrical radiation for heating; (p) elevators; (q) masonry work; and (r) any other class of work for which the awarding authority deems it necessary or convenient to receive sub-bids, provided that the awarding authority may, in addition, receive a combined sub-bid on the marble, tile and terrazzo work, but in that event, the marble, tile and terrazzo work shall each be a class of work for which the sub-bidder must list the information in a clearly designated place on the bid form for that purpose. Each separate section in the specifications prescribed or provided for by this paragraph shall state the time limit for filing sub-bids with the awarding authority, shall specify by number each sheet of plans showing work to be done by the subcontractor under such section, and shall require the subcontractor to install all materials to be furnished by him under such section other than materials which in the opinion of the awarding authority it is not customary under then current trade practices for such subcontractor to install and the installation of which is expressly required by another section of the specifications. Each class of work set forth in a separate section of the specifications pursuant to this section shall be a sub-trade designated in the appropriate category of the general bid form and shall be the matter of sub-contract made on the basis of sub-bids in accordance with the procedure set forth in sections forty-four F(1)^a (5).

Each separate section of the specifications required by the provisions of this section shall contain a paragraph describing by class of work and by reference to paragraph numbers in that section, each class of work, if any, requiring labor and materials which, in the opinion of the awarding authority based upon an investigation of the work involved, is customarily performed in that sub-trade under subcontract with a sub-bidder for that sub-trade, and which is estimated by the awarding authority to cost in excess of ten thousand dollars, and only each class of work so described shall be a class of work for which sub-bidder for that sub-trade must list the information required in the appropriate place designated on the bid form for that purpose.

Every contract subject to section forty-four A shall include specifications for the installation of weather protection and shall require that the general contractor shall install the same and that he shall furnish adequate heat in the area so protected during the months of November through March. Standards for such specifications shall be established by the commissioner of planning and operations in the executive office for administration and finance.

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Order #3

**Proposed amendment to the
Responsible Employer section of
the Cambridge Employment Plan.**

**Councillors Sullivan, Decker and
Toomey**

In City Council December 4, 2000

ORDER ADOPTED

*Referred to
Ordinance Committee
on motion of Councillor
Sullivan.*

*Copies sent to V.M. Maher +
Councillor Born.*