

MA

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

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 39S. Contracts for construction; requirements

Section 39S. (a) As used in this section the word "person" shall mean any natural person, joint venture, partnership corporation or other business or legal entity. Any person submitting a bid for, or signing a contract to work on, the construction, reconstruction, alteration, remodeling or repair of any public work 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 \$10,000, and any person submitting a bid for, or signing a contract to work on, the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency, estimated to cost more than \$10,000, shall certify on the bid, or contract, under penalties of perjury, as follows:

(1) 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; (2) that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and (3) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

(b) Any employee found on a worksite subject to this section without documentation of successful completion of a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration shall be subject to immediate removal.

(c) The attorney general, or his designee, shall have the power to enforce this section including the power to institute and prosecute proceedings in the superior court to restrain the award of contracts and the performance of contracts in all cases where, after investigation of the facts, he has made a finding that the award or performance has resulted in violation, directly or indirectly, of subsection (b), and he shall not be required to pay to the clerk of the court an entry fee in connection with the institution of the proceeding.

The General Laws of Massachusetts

Search the Laws

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XXI. LABOR AND INDUSTRIES

CHAPTER 149. LABOR AND INDUSTRIES

FAIR COMPETITION FOR BIDDERS ON CONSTRUCTION, ETC., OF PUBLIC WORKS

Chapter 149: Section 44E. Filing of bids; forms; modular buildings

Section 44E. (1) Whenever general bids are invited for a contract subject to section 44A and whenever sub-bids are invited in connection with such a contract subject to subsection (1) of section 44F, the awarding authority shall prescribe 1 place for filing the general bids and 1 place for filing the sub-bids, which need not be the same place. Notwithstanding any general or special law, ordinance or by-law to the contrary, a bidder shall not be required to file a duplicate of his bid or sub-bid in any other place. For all projects where prequalification of general contractors is required, or where an awarding authority has elected to prequalify general contractors pursuant to subsection (a) of section 44D 1/2, an awarding authority shall request bids only from general contractors who have been so prequalified pursuant to subsections (a) to (j), inclusive, of section 44D 1/2. For all projects where prequalification of subcontractors is required, or where an awarding authority has elected to prequalify subcontractors pursuant to subsection (a) of section 44D 3/4, an awarding authority shall request bids only from subcontractors who have been so prequalified pursuant to subsections (a) to (j), inclusive, of section 44D 3/4.

(2) Every general bid submitted for a contract subject to section forty-four A shall be submitted on a form furnished by the awarding authority and containing the following provisions:

FORM FOR GENERAL BID

To the Awarding Authority:

A. The Undersigned proposes to furnish all labor and materials required for _____
 in _____,

(project)

Massachusetts, in accordance with the accompanying plans and specifications prepared by _____
 for _____

(name of architect or engineer)

the contract price specified below, subject to additions and deductions according to the terms of the specifications.

M.G.L. - Chapter 149, Section 44e

Page 2 of 6



B. This bid includes addenda numbered _____

C. The proposed contract price is _____ dollars (\$_____).

For alternate No. _____ Add \$ _____; Subtract _____

(Repeat preceding line for each alternate)

D. The subdivision of the proposed contract price is as follows:

Item 1. The work of the general contractor, being all work other than that covered by Item 2.
\$ _____

Item 2. Sub-bids as follows:—



The undersigned agrees that each of the above named sub-bidders will be used for the work indicated at the amount stated, unless a substitution is made. The undersigned further agrees to pay the premiums for the performance and payment bonds furnished by sub-bidders as requested herein and that all of the cost of all such premiums is included in the amount set forth in Item 1 of this bid.

The undersigned agrees that if he is selected as general contractor, he will promptly confer with the awarding authority on the question of sub-bidders; and that the awarding authority may substitute for any sub-bid listed above a sub-bid filed with the awarding authority by another sub-bidder for the sub-trade against whose standing and ability the undersigned makes no objection; and that the undersigned will use all such finally selected sub-bidders at the amounts named in their respective sub-bids and be in every way as responsible for them and their work as if they had been originally named in this general bid, the total contract price being adjusted to conform thereto.

E. The undersigned agrees that, if he is selected as general contractor, he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the awarding authority, execute a contract in accordance with the terms of this bid and furnish a performance bond and also a labor and materials or payment bond, each of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority and each in the sum of the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price.

The undersigned hereby certifies 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; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that he will comply fully with all laws and regulations applicable to awards made subject to section 44A.

The undersigned further certifies under the penalties of perjury that this bid is in all respects bona fide,

M.G.L. - Chapter 149, Section 44e



fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Date _____

(Name of General Bidder)

By _____
(Name of Person Signing Bid and Title)

(Business Address)

(City and State)

(3) General bids shall be for the complete work as specified and shall include the names of sub-bidders and the amounts of their sub-bids; and the general contractor shall be selected on the basis of such general bids. Every general bid which is not accompanied by a bid deposit as prescribed by paragraph (2) of section forty-four B, or which otherwise does not conform with sections forty-four A to forty-four H, inclusive, or which is on a form not completely filled in, or which is incomplete, conditional or obscure, or which contains any addition not called for, shall be invalid; and the awarding authority shall reject every such bid. No such bid shall be rejected because of the failure to submit prices for, or information relating to, any item or items for which no specific space is provided in the bid form furnished by the awarding authority, but this sentence shall not be applicable to any failure to furnish prices or information required by this section.

General bids shall be publicly opened and read by the awarding authority forthwith after the time limit for filing thereof.

The bid price shall be the price set forth in a clearly designated place on the bid form for that purpose. No general bid shall be rejected (1) because the sum of the prices for all work of the general contractor and sub-bids does not equal the general bid price set forth on the bid form for that purpose or (2) because of error in setting forth the name, the sub-bid price of a sub-bidder, or the total sub-bids as long as the sub-bidder or sub-bidders designated are clearly identifiable, or (3) because the plans and specifications do not accompany the bid or are not submitted with the bid.

(4) A public agency may procure modular buildings in accordance with the provisions of this section.

The provisions of sections twenty-six to twenty-seven G, inclusive, shall not apply to the manufacture of modular buildings procured pursuant to this section, but shall apply to all work ordinarily and customarily performed on modular buildings at building sites, including, but not limited to, construction of foundations, attachment to external utilities, and installation and assembly of modular unit, including any assembly performed at any site in the commonwealth other than a place of manufacture. All applicable provisions of building codes and other laws shall apply thereto.

M.G.L. - Chapter 149, Section 44e

Page 4 of 6



The procurement of a modular building shall be deemed a building project for purposes of section thirty-nine A of chapter seven. The division of capital asset management and maintenance shall exercise control and supervision of the procurement of modular buildings by state agencies to the extent provided by sections forty A and forty B of chapter seven.

An awarding authority shall not procure a modular building to replace another modular building unless it has first certified that such replacement is necessary, cost-effective over the long term, and not detrimental to the public policy and interest and has set forth, in writing, a detailed explanation of its reasons for such certification.

When an awarding authority procures modular buildings as authorized by this section the awarding authority shall solicit competitive sealed proposals through a request for proposals which shall include:

- (1) the time and date for receipt of proposals, the address of the office to which the proposals are to be delivered, and the maximum time for proposal acceptance by the awarding authority;
- (2) the purchase description and all evaluation criteria that will be utilized;
- (3) all contractual terms and conditions applicable to the procurement; provided, however, that the contract may incorporate by reference a plan submitted by the selected offeror for providing the modular buildings;
- (4) a notice that every proposal shall be accompanied by a copy of an appropriate certificate of eligibility issued by the commissioner pursuant to section forty-four D, together with an update statement; and
- (5) except where the request for proposals calls for manufacture or delivery to the building site, a notice that every proposal shall be accompanied by a certification that the offeror is able to furnish labor that can work in concert with all other elements of labor employed or to be employed at the site of installation.

The request for proposals may incorporate documents by reference; provided, however, that the request for proposals specifies where prospective offerors may obtain such documents. The request for proposals shall provide for the separate submission of price, and shall indicate when and how the offerors shall submit the price. The awarding authority shall make copies of the request for proposals available to all persons on an equal basis.

Public notice of the request for proposals for modular buildings shall be published in accordance with the provisions of section forty-four J.

The awarding authority shall not open the proposals publicly, but shall open them in the presence of one or more witnesses at the time specified in the request for proposals. Notwithstanding the provisions of section seven of chapter four, until the completion of the evaluation, or until the time for acceptance specified in the request for proposals, whichever occurs earlier, the contents of the proposals shall remain confidential and shall not be disclosed to competing offerors. At the opening of proposals the awarding authority shall prepare a register of proposals. The register of proposals shall be open for public inspection. The awarding authority may open the price proposals at a later time, and shall open the price proposals so as to avoid disclosure to the individuals evaluating the proposals on the basis of criteria other than price.



The awarding authority shall designate the individual or individuals responsible for the evaluation of the proposals on the basis of criteria other than price. The designated individuals shall prepare their evaluations based solely on the criteria set forth in the request for proposals. Such criteria shall include all standards by which acceptability will be determined as to quality, workmanship, results of inspections and tests, and suitability for a particular purpose, and shall also include all other measures that will be utilized. The evaluations shall specify in writing:

- (1) for each evaluation criterion, a rating of each proposal as highly advantageous, advantageous, not advantageous, or unacceptable and the reasons for such rating;
- (2) a composite rating for each proposal and the reasons for such rating;
- (3) recommendations for revisions, if any, to each proposed plan for providing the modular buildings which should be obtained by negotiation prior to awarding the contract to the offeror of the proposal; and
- (4) whether the modular buildings were manufactured within the commonwealth and whether such modular buildings were manufactured within the United States but outside the commonwealth.

The awarding authority shall unconditionally accept a proposal except as provided by this paragraph. An offeror may correct, modify or withdraw a proposal by written notice received in the office designated in the request for proposals prior to the time and date set for the opening of proposals. After such opening, an offeror may not change the price or any other provisions of the proposal in a manner prejudicial to the interest of the awarding authority or fair competition. The awarding authority shall waive minor informalities or allow the offeror to correct them. If a mistake and the intended offer are clearly evident on the face of the document, the awarding authority shall correct the mistake to reflect the intended correct offer and so notify the offeror in writing, and the offeror may not withdraw the offer. The awarding authority may permit an offeror to withdraw an offer if a mistake is clearly evident on the face of the document but the intended correct offer is not similarly evident.

Taking into consideration price and the evaluation criteria set forth in the request for proposals, the awarding authority shall determine the most advantageous proposal from a responsible, responsive, and eligible offeror. In determining the most advantageous proposal, the awarding authority shall give preference, other considerations being equal, in the following order: (a) modular buildings manufactured within the commonwealth; and (b) modular buildings manufactured outside of the commonwealth but within the United States. The awarding authority may condition an award on successful negotiation of any revisions recommended in the evaluation and shall explain in writing the reasons for omitting any such revisions from the contract. The awarding authority shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The parties may extend the time for acceptance by mutual agreement.

If the awarding authority awards the contract to an offeror who did not submit the lowest price, the awarding authority shall explain the reasons for the award in writing, specifying in reasonable detail the basis for determining that the quality of modular buildings under the contract will not exceed the awarding authority's actual needs or that the anticipated performance of the selected offeror justifies the additional cost, and shall maintain such explanation in its files for at least six years from the date of final payment under the contract.

Prior to execution of a contract pursuant to this section, the selected offeror shall furnish to the awarding authority a payment bond and a performance bond of a surety company qualified to issue bonds in the

M.G.L. - Chapter 149, Section 44e



commonwealth and satisfactory to the awarding authority each in the sum of the contract price.

The General Laws of Massachusetts

Search the Laws

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XXI. LABOR AND INDUSTRIES

CHAPTER 149. LABOR AND INDUSTRIES

FAIR COMPETITION FOR BIDDERS ON CONSTRUCTION, ETC., OF PUBLIC WORKS

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 \$20,000: (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; (l) painting; (m) plumbing; (n) heating, ventilating and air-conditioning; (o) 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 subcontract made on the basis of sub-bids in accordance with the procedure set forth in sections forty-four F(1)—(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

Go To:
Next Section
Previous Section
Chapter Table of Contents
MGL Search Page
General Court Home
Mass.gov

M.G.L. - Chapter 149, Section 44f

Page 2 of 9



such specifications shall be established by the commissioner of planning and operations in the executive office for administration and finance.

(2) Every sub-bid submitted in connection with a contract subject to section forty-four A for a sub-trade designated in item 2 of the general bid form pursuant to section forty-four E shall be submitted on a form furnished by the awarding authority and containing the following provisions:

FORM FOR SUB-BID

To all General Bidders Except those Excluded:

A. The undersigned proposes to furnish all labor and materials required for completing, in accordance with the hereinafter described plans, specifications and addenda, all the work specified in Section No. _____ of the specifications and in any plans specified in such section, prepared by

_____ for _____ in

(name of architect or engineer) _____ (project) _____, Massachusetts, for the contract

(city or town)

sum of _____ dollars (\$ _____).

For Alternate No. _____; Add \$ _____ Subtract \$ _____

[Repeat preceding line for each alternate]

B. This sub-bid includes addenda numbered _____

C. This sub-bid may be used by any general bidder except:

may only be used by the following general bidders:

[To exclude general bidders, insert "X" in one box only and fill in blank following that box. Do not answer C if no general bidders are excluded.]

D. The undersigned agrees that, if he is selected as a sub-bidder, he will, within 5 days, Saturdays, Sundays and legal holidays excluded, after presentation of a subcontract by the general bidder selected as the general contractor, execute with such general bidder a subcontract in accordance with the terms of this sub-bid, and contingent upon the execution of the general contract, and, if requested so to do in the general bid by the general bidder, who shall pay the premiums therefor, or if prequalification is required pursuant to section 44D 3/4, furnish a performance and payment bond of a surety company qualified to

M.G.L. - Chapter 149, Section 44f

(NA)

do business under the laws of the commonwealth and satisfactory to the awarding authority, in the full sum of the subcontract price.

E. The names of all persons, firms and corporations furnishing to the undersigned labor or labor and materials for the class or classes or part thereof of work for which the provisions of the section of the specifications for this sub-trade require a listing in this paragraph, including the undersigned if customarily furnished by persons on his own payroll and in the absence of a contrary provision in the specifications, the name of each such class of work or part thereto and the bid price for such class of work or part thereof are:



[Do not give bid price for any class or part thereof furnished by undersigned.]

F. The undersigned agrees that the above list of bids to the undersigned represents bona fide bids based on the hereinbefore described plans, specifications and addenda and that, if the undersigned is awarded the contract, they will be used for the work indicated at the amounts stated, if satisfactory to the awarding authority.

G. The undersigned further agrees to be bound to the general contractor by the terms of the hereinbefore described plans, specifications, including all general conditions stated therein, and addenda, and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the owner.

H. The undersigned offers the following information as evidence of his qualifications to perform the work as bid upon according to all the requirements of the plans and specifications:—

- 1. Have been in business under present business name _____ years.
- 2. Ever failed to complete any work awarded? _____
- 3. List one or more recent buildings with names of the general contractor and architect on which you served as a sub-contractor for work of similar character as required for the above-named building.



4. Bank reference _____

I. The undersigned hereby certifies 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; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that he will comply fully with all laws and regulations applicable to awards of subcontracts subject to section 44F.

The undersigned further certifies under penalties of perjury that this sub-bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal

M.G.L. - Chapter 149, Section 44f

Page 4 of 9



entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Date _____

(Name of Sub-bidder)

By _____
(Title and Name of Person Signing Bid)

(Business Address)

(City and State)

(3) Every sub-bid in connection with a contract subject to section forty-four A for a sub-trade designated on the general bid form pursuant to section forty-four F(2) shall be for the complete work of the sub-trade as specified, and shall be filed with the awarding authority, in a sealed envelope, before twelve o'clock noon at least four days, Saturdays, Sundays and legal holidays excluded, before the day fixed by the awarding authority for the opening of general bids, and forthwith after the time limit for the filing thereof shall be publicly opened and read by the awarding authority, which, within two days thereafter, Saturdays, Sundays and legal holidays excluded, shall reject every sub-bid which is not accompanied by a bid deposit as prescribed in sub-section (2) of section forty-four B, or which otherwise does not conform with sections forty-four A to forty-four H, inclusive, or which is on a form not completely filled in, or which is incomplete, conditional or obscure, or which contains any addition not called for; provided, however, that the failure of the awarding authority to reject such a sub-bid within such period shall not validate such a sub-bid nor preclude the awarding authority from subsequently rejecting it. Not later than the second day, Saturdays, Sundays and legal holidays excluded, before the day fixed by the awarding authority for the opening of general bids, the awarding authority shall mail to every person on record as having taken a set of plans and specifications list of sub-bidders arranged by sub-trades and listing for each sub-trade the name, address and sub-bid price of every sub-bidder submitting a sub-bid thereon not rejected by the awarding authority and the general bidders excluded from using such sub-bid. A person shall not be named by a general bidder as a sub-bidder for a sub-trade on the general bid form unless such person is included for such sub-trade in said list. If a general bidder not excluded in said list from doing so names as a sub-bidder for a sub-trade on the general bid form a person included for such sub-trade in said list at the sub-bid price stated in said list, neither the general bid of such general bidder nor the general contract executed on the basis of such general bid shall be invalid or rejected because of the invalidity of such sub-bid, or because of error in said list, nor shall such general bid be rejected nor shall such general contract be invalid because of any invalid action taken by the awarding authority in connection with any sub-bid or sub-bids; but there shall be substitution of sub-bidders and adjustment of contract price as if paragraph (c) of section forty-four F(4) were applicable. No sub-bid shall be rejected because of the failure to submit prices for or information relating to, any item or items for which no space is provided in the sub-bid form furnished by the awarding authority; but this sentence shall not be applicable to any failure to furnish prices or information required by section forty-four F to be furnished in the Form for Sub-Bid.



Every sub-bidder duly filing a sub-bid with the awarding authority as aforesaid shall be bound thereby to every general bidder not excluded therein from the use thereof; and any variance from such sub-bid communicated to a general bidder shall be of no effect.

A performance and payment bond furnished by the subcontractor, either pursuant to the requirements of the prequalification process as established in section 44D 3/4 or at the request of a general contractor set forth in the general bid form, shall be for the benefit of the general contractor; shall secure the performance of the subcontract by the subcontractor; and shall indemnify and hold harmless the general contractor and the surety or sureties under the labor and materials or payment bond furnished by the general contractor to the awarding authority against (i) any and all loss and expense arising out of any and all claims in connection with the performance of the subcontract which would be required to be paid under the labor and materials or payment bond furnished by the general contractor to the awarding authority and (ii) attorneys' fees in the event that the subcontractor, after notice, fails to assume the defense of and defend such claims.

Each sub-bidder shall list in the sub-bid form the name and bid price of each person, firm or corporation performing each class of work or part thereof for which the section of the specifications for that sub-trade requires such listing; provided that, in the absence of a contrary provision in the specifications, any sub-bidder may, without listing any bid price, list his own name for any such class of work or part thereof and perform that work with persons on his own payroll, if such sub-bidder, after sub-bid opening, shows to the satisfaction of the awarding authority that he does customarily perform such class of work or the part thereof with employees on his own payroll who are mechanics or laborers as referred to in section twenty-six, and is qualified so to do.

If a sub-trade for which the awarding authority is required to take filed sub-bids constitutes the predominant work of the contract, the awarding authority may include that sub-trade work as part of the general bidder's work. The awarding authority shall award the general contract to the lowest responsible and eligible bidder who customarily performs that sub-trade with employees on his own payroll who are mechanics or laborers as referred to in said section twenty-six, except for any part of that sub-trade customarily performed by sub-contractors.

(4)(a)(1) If no sub-bid is filed for a sub-trade designated in the general bid form or if the only sub-bids which are filed are restricted to the use of one or more general bidders, the awarding authority may state, in an addendum issued with the list of sub-bidders required by subsection (3), that the general bidder shall include in the cost of his own work an amount to cover all the work required for any such sub-trade. The general contractor shall cause the work covered by such sub-trade to be done by a qualified and responsible sub-contractor, subject to the written approval of the awarding authority. If the awarding authority determines that any sub-contractor chosen by the general contractor under this section is not qualified or responsible, the general contractor shall obtain another sub-contractor who is satisfactory to the awarding authority with no adjustment in the general contractor's price.

(2) If a rejection of all sub-bids, other than as set forth above, for such a sub-trade occurs pursuant to subsection (1) of section forty-four E or subsection (3) of this section, the awarding authority shall state, in an addendum issued with the list of sub-bidders required by said subsection (3), the amount to be included by a general bidder on the general bid form for such sub-trade; and without in any way affecting other sub-bidders who have conformed to the prescribed bidding procedure, new sub-bids for such sub-trade shall be requested forthwith by written invitation to three or more qualified sub-bidders and shall be publicly opened and read by the awarding authority at a time and place to be specified in such invitation. The general contractor shall cause the work covered by such sub-trade to be done by the lowest responsible and eligible sub-bidder against whose standing and ability the general contractor makes no objection or, if there is no such sub-bidder, by such sub-contractor against whose standing and



ability the general contractor makes no objection and for such sum as the general contractor and the awarding authority may agree upon; and the contract price shall be adjusted by the difference between the sub-contract sum and the amount stated in the addendum. The general bidder shall include in the cost of his own work on the general bid form all expenses and profits on account of such adjustments.

(b) If, after the selection of the lowest responsible and eligible general bidder, it be decided to consider sub-bidders other than the ones named by such general bidder in his general bid, the awarding authority and such general bidder shall jointly consider all filed sub-bids not rejected under section forty-four F (3). Any agreement to substitute a sub-bid for the one named in the selected general bid shall result in an adjustment of the general bid price by the difference between the amount of the sub-bid originally named and the amount of the sub-bid substituted therefor. If by such substitutions the total adjusted general bid price of the general bidder first selected becomes greater than the original general bid price of the second lowest responsible and eligible general bidder, then the latter shall be selected and his sub-bidders similarly considered. If, by substitutions as hereinbefore provided, the total adjusted general bid price of the second selected general bidder becomes greater than the total adjusted general bid price of the general bidder first selected or greater than the original general bid price of the third lowest responsible and eligible general bidder, then the bidder having the lower of these two general bid prices shall be selected; provided, that if the third lowest responsible and eligible general bidder is selected, his sub-bidders shall be similarly considered. The general bidder finally selected by the aforementioned process of substitutions shall be the general bidder to whom the contract shall be awarded.

(c) If a selected sub-bidder fails, within 5 days, Saturdays, Sundays and legal holidays excluded, after presentation of a subcontract by the general bidder selected as the general contractor, to perform his agreement to execute a subcontract in the form hereinafter set forth with such general bidder, contingent upon the execution of the general contract, and, if required to do so pursuant to the prequalification process under section 44D 3/4 or if requested to do so by such general bidder in the general bid, to furnish a performance and payment bond as stated in his sub-bid such general bidder and the awarding authority shall select, from the other sub-bids duly filed with the awarding authority for such sub-trade and not rejected under section 44H the lowest responsible and eligible sub-bidder at the amount named in his sub-bid as so filed against whose standing and ability the general contractor makes no objection, and the contract price shall be adjusted by the difference between the amount of the sub-bid and the amount of the sub-bid of the delinquent sub-bidder.

The subcontract shall be in the following form:

SUBCONTRACT

THIS AGREEMENT MADE THIS _____ DAY OF _____, (insert year) by and between _____ a corporation organized and existing under the laws of _____ an individual doing business as _____ hereinafter called the "Contractor" and _____ a corporation organized and existing under the laws of _____ an individual doing business as _____ hereinafter called the "Subcontractor".

WITNESSETH that the Contractor and the Subcontractor for the considerations hereafter named, agree as follows:

1. The Subcontractor agrees to furnish all labor and materials required for the completion of all work specified in Section No. _____ of the specifications for _____ (Name of Sub-Trade) and the plans referred to therein and addenda No. _____, _____, and _____ for the _____

M.G.L. - Chapter 149, Section 44f



(complete title of the project and the project number taken from the title page of the specifications)
all as prepared by _____

(Name of Architect or Engineer)

for the sum of _____ (\$ _____) and the Contractor agrees to pay the Subcontractor said
sum for said work. This price includes the following alternates (and other items set forth in the sub-bid):
Alternate No(s). _____, _____, _____, _____, _____,
_____, _____, _____, _____, _____, _____,

(a) The Subcontractor agrees to be bound to the Contractor by the terms of the hereinbefore described
plans; specifications (including all general conditions stated therein) and addenda No. ____, and ____, and
____, and to assume to the Contractor all the obligations and responsibilities that the Contractor by those
documents assumes to the

(Awarding Authority)

hereinafter called the "Awarding Authority", except to the extent that provisions contained therein are
by their terms or by law applicable only to the Contractor.

(b) The Contractor agrees to be bound to the Subcontractor by the terms of the hereinbefore described
documents and to assume to the Subcontractor all the obligations and responsibilities that the Awarding
Authority by the terms of the hereinbefore described documents assumes to the Contractor, except to the
extent that provisions contained therein are by their terms or by law applicable only to the Awarding
Authority.

2. The Contractor agrees to begin, prosecute and complete the entire work specified by the Awarding
Authority in an orderly manner so that the Subcontractor will be able to begin, prosecute and complete
the work described in this subcontract; and, in consideration thereof, upon notice from the Contractor,
either oral or in writing, the Subcontractor agrees to begin, prosecute and complete the work described
in this Subcontract in an orderly manner and with due consideration to the date or time specified by the
Awarding Authority for the completion of the entire work.

3. The Subcontractor agrees to furnish to the Contractor within a reasonable time after the execution of
this subcontract, evidence of workers' compensation insurance as required by law and evidence of
public liability and property damage insurance of the type and in limits required to be furnished to the
Awarding Authority by the Contractor.

4. The Contractor agrees that no claim for services rendered or materials furnished by the Contractor to
the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the
Subcontractor during the first ten (10) days of the calendar month following that in which the claim
originated.

5. This agreement is contingent upon the execution of a general contract between the Contractor and the
Awarding Authority for the complete work.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the date and year first

M.G.L. - Chapter 149, Section 44f

Page 8 of 9



above-written.

SEAL

ATTEST _____

(Name of Subcontractor)

By _____

SEAL

ATTEST _____

(Name of Contractor)

By _____

In the event that the contract between the general contractor and the awarding authority does not contain provisions granting to the awarding authority the right to terminate the general contract when the general contractor encounters financial difficulties or fails to make satisfactory progress, the general contractor may insert the following paragraph:

If the Subcontractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Contractor, or otherwise be guilty of a substantial violation of any provision of the contract, then the Contractor may, without prejudice to any other right or remedy and after giving the Subcontractor and his surety, if any, seven days' written notice, terminate the employment of the Subcontractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Subcontractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work including compensation for additional architectural, managerial and administrative services, such excess shall be paid to the Subcontractor. If such expense shall exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

The contractor and subcontractor shall have the right to seek damages for breach of a subcontract without terminating the subcontract or ceasing performance thereunder.

All sub-bidders when finally selected shall be notified in writing of their selection within forty-eight hours thereafter by the general bidder.

In each case of substitution of a sub-bidder for a sub-bidder listed in the general bid of the selected general contractor, the selected general contractor may require the substituted sub-bidder to furnish a performance and payment bond, and the premiums for same shall be added to the general bidder's price for work to be performed by him except where the selected general contractor had indicated in his general bid that the original sub-bidder designated for that sub-trade, in which substitution was made, would be required to furnish such bond.

In the instances enumerated in paragraphs (1), (2) and (3) of this section, the general bidder's price for work to be performed by him shall also be adjusted by the amount of the change in the premium for the general contractor's performance bond and his labor and materials or payment bond caused by the



substitution.

(5) If a general bidder customarily performs, with employees on his own payroll who are mechanics or laborers as referred to in section twenty-six, a sub-trade for which the awarding authority invites sub-bids, he may submit a sub-bid for such sub-trade which shall be considered on a par with other sub-bids, and he shall also list under the appropriate sub-bid category in his general bid his own name and sub-bid price for such sub-trade. No such sub-bid shall be considered unless the general bidder can show (a) he does so customarily perform such sub-trade, and (b) he is qualified to do the sub-trade work.

In lieu of listing his name and sub-bid price in his general bid, such general bidder may list the name and amount of the lowest responsible and eligible sub-bidder for that sub-trade if (a) such sub-bidder's price is lower than his, (b) such sub-bid is available for his use; and (c) such sub-bid is not restricted to his use alone or to his use and that of another general bidder, or bidders.