



# *Steel Fabricators of New England*

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## LEGISLATIVE FACT SHEET

### Senate Bill 1721 | An Act Relative to Structural Steel

#### **Sponsor**

Senator Bruce Tarr (R-Gloucester)

Section 1. Section 44F of chapter 149 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out, in line 13, the words "and (s)" and inserting in place thereof the following words: (s) structural steel including when applicable structural steel framing, shear connectors, steel or metal joists, steel or metal decking, and/or hot dipped metal galvanizing; and (t).

#### **Summary:**

The legislation would add structural steel as a filed-sub trade.

#### **SFNE Position:**

SFNE is in favor of passage of SB 1721 because it will provide a level playing field for New England based steel fabricators who face an unfair competitive disadvantage from Canadian fabricators.

#### **What is the File Sub Bid System?**

General Contractors on major construction projects typically use subcontractors to perform specialized aspects of the work. Massachusetts General Laws require what is known as the "filed sub-bid" system for selecting certain subcontractors on most public building construction projects.

Prior to the New Public Construction Reform Law and still in use for some projects today, contractors submit construction bids in two phases. First, subcontractors must submit their bids to the Awarding Authority, which will compile a list of all sub-bids received. The Awarding Authority will send the list to all interested general contractors. Interested contractors will then need to submit their bid including any filed sub-bidders that will be used on the work.

A subcontractor must be selected from the Authority's list of filed sub-bidders when the following three conditions are met:

- (1) The project is being bid under the C149 bid laws.
- (2) The subcontractor's work falls under one of the categories listed on page III-1.
- (3) The estimated cost of the subcontract is greater than \$10,000.

The following paragraphs describe the filed sub-bid system procedure that contractors should follow when they wish to file a bid {G.L.C149, 44F}:

1. The categories for which filed sub-bids are required must be included in the public notice.
2. Subcontractors must submit sub-bids for the work in each filed sub-bid category directly to the Awarding Authority, using the standard bid form. Filed sub-bids are subject to the same requirement for bid deposits as are general bids.
3. Subcontractors may submit unrestricted or restricted sub-bids. Unrestricted sub-bids allow any general contractor to use the subcontractor's sub-bids; restricted sub-bids only allow certain contractors to use them.
4. The sub-bids are publicly opened and read. Within 2 working days, the awarding authority must reject any sub-bids that do not have a bid deposit or that do not otherwise conform to the bidding requirements. A list of the sub-bidders, and their sub-bid amounts, is then mailed to all those who have received the bidding documents for the general bids. This list must be sent out at least two (2) working days before the general bids are due.
5. Each General Contractor must select, in each sub-bid category, the subcontractor it wishes to use (provided he/she is not restricted by the subcontractor). The General Contractor must list in its general bid the names of the selected subcontractors and the respective subbid amounts. General Contractors are not required to take the lowest sub-bid in each category.

#### **What changed with the New Public Reform Law of 2004?**

On July 19, 2004, Massachusetts signed into law revisions for public construction work that changed public construction statutes, thresholds and procedures to be followed for public construction projects. Chapter 193 of the Acts of 2004, which was entitled "An Act Further Regulating Public Construction in the Commonwealth," made revisions to procurement of public building construction contracts directly impacting the way public awarding authorities may contract for public construction work. The new law took effect immediately with the exception of Sections 18 and 27, pertaining to the new requirements for sub-bidder certification and alternative procurement delivery methods. Those sections went into effect on January 1, 2005.

The purpose of this reform was to promote increased accountability and flexibility and increase competition on public construction projects in Massachusetts. There were numerous changes enacted by this legislation; some of the major highlights follow:

- Increased the threshold requiring individual filed sub-bids for designated trade work from \$10,000 to \$20,000;
- Increased the threshold for projects requiring filed sub-bids and DCAMM contractor certification from \$25,000 to \$100,000;
- Required an owner's project manager for projects valued at \$1.5 million or more;
- Required DCAMM certification of subcontractors submitting filed sub-bids after January 1, 2006;

- Required “prequalification” of general contractors and filed sub-bid subcontractors by awarding authorities (on a project-by-project basis) for all projects with total estimated construction costs of \$10 million or more; Prequalification is a “two phase” procurement process:
  - In the first phase, the awarding authority issues by public notice a Request for Qualifications (“RFQ”) seeking statements of qualification from prospective general bidders and filed sub-bidders. Upon receipt of applications for qualification, the awarding authority reviews the submissions and qualifications of prospective contractors in accordance with the legal criteria and makes a determination as to which firms meet the prequalification standard. Only firms deemed prequalified may then participate in the second phase of the procurement.
  - In the second phase, the awarding authority invites bids from only those general bidders and filed sub-bidders identified by the awarding authority as “qualified” to bid. The remainder of the bidding process and the award of the contract will then be conducted in accordance with the existing procedures set forth in Chapter 149.
  - Provided awarding authorities with the option to utilize an owner initiated “prequalification” process for either or both general bidders and filed sub-bidders where estimated construction costs are \$100,000 or more, but less than \$10 million (prequalification is mandatory for \$10 million or more);
  - Required filed sub-bid subcontractors to furnish payment and performance bonds on projects where prequalification is required or utilized by the awarding authority;
  - Required municipal awarding authorities to incorporate an Affirmative Marketing Program with design and construction participation goals for minority business enterprises and women business enterprises (MBE/WBE) on state assisted building projects;
  - Provided awarding authorities with the option to use Construction Manager (CM) at Risk on building projects over \$5 million (with the prior approval from the Office of the Inspector General) effective January 1, 2005;

### **Why Structural Steel As A Filed Sub-Bid? Direct Benefits To Subcontractors**

- DCAMM Certification Requirement
- Prequalification Requirement
- Sealed Bid Procurement
- Fairness and Equality in Bidding is Created; Competition is Equalized
- Guaranteed Prompt Pay
- Guaranteed 5% Retainage
- Standard MGL Form of Subcontract
- Payment Bond Security
- Demand for Direct Payment Rights

## Why Structural Steel As A Filed Sub-Bid? Indirect Benefits

Competitive pricing: as non-filed sub-bid trade, bidder (fabricator) needs to factor into its price the costs for risks associated with such work (not having all rights afforded under MGL c.149) resulting in bidders inability to be competitive.

### Economic Multiplier:

If purchased outside the United States, national income decreased due to economic multiplier, as follows:

- Spending has multiplier impacts on employment, income, and tax revenues.
- In the steel fabrication industry, economic analysis shows that for every \$1 of initial spending, total spending ultimately rises by \$2. If spending is done within the local economy, then the greater will be the multiplier effect benefits locally. The initial spending on the materials and labor associated with steel fabrication will result in income to local residents. This income will be spent on local goods and services such as restaurants, lodging, hardware stores and other local industries.
- For Public construction projects and with Structural Steel as a filed sub-trade, when public construction work is awarded to local firms, then the greater will be the economic benefits to the local and regional economy. If such work is awarded to domestic firms, then the greater will be the economic benefits to the United States. \$1 of initial spending will ultimately yield \$2 in domestic spending.
- This multiplier analysis applies to job creation as well. For every job created by local spending, there will be multiple jobs created in the regional economy.

### What Is SFNE?

The Steel Fabricators of New England (SFNE) is an association of structural steel and miscellaneous metal fabricators and allied companies that serve the building and bridge construction markets in New England.

The mission of SFNE is to promote the use of fabricated structural steel and miscellaneous metals in buildings, bridges and similar structures through education, legislative advocacy, and networking activities.

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