AGC Bills filed for 2017 – 2018 Legislative Session


- AGC was made aware of a dangerous unintended consequence in the 2010 Prompt Pay Law. AGC attempted to correct it in the Retainage legislation, but it was deemed a separate issue needing its own bill

- Issue: In order for GC/CM’s to preserve pay-if-paid rights in the event of owner insolvency, the GC/CM must have filed an NOC on the project prior to submission of its 1st req. after commencement of on-site work. If the NOC is dissolved once filed, all such pay-if-paid rights are forfeited and can’t be reinstated

- However, a GC/CM’s 1st req. often goes in prior to the financial closing. Lenders invariably object to the NOC being recorded prior to the mortgage and insist on dissolution of the NOC prior to closing. The GC/CM is faced with a difficult decision - hold off submitting its 1st req. for weeks/months until after the closing (cash negativity) or dissolving its NOC at the time of closing (forfeiting all pay-if-paid rights)

- Chapter 149, Section 29E (e)(2) is amended to say: “(2) to the extent of amounts not received from the third person because the third person is insolvent or becomes insolvent within 90 days after the date of submission of the requisition for which payment is sought; provided, however, that the person seeking to enforce the payment condition (i) filed a notice of contract under chapter 254 and in the case of a person having no direct contractual relationship with the original contractor, also sent a notice of identification within the time required under said chapter 254, prior to the person’s submission of the first application for payment after commencement of performance at the project site and did not dissolve the lien created by the filing of such notice of contract, provided however that dissolution of the lien prior to recordation of a mortgage to secure funding, financing or payment for any portion of the project for which labor, materials and/or equipment were or are to be provided, and for which the notice was filed, shall not be deemed a dissolution of the lien within the meaning of this subsection (2) if a notice or contract is refiled within thirty days after recordation of such a mortgage; and (ii) within the time periods allowed by said chapter 254 files a statement of amount due and commenced or commences a civil action to enforce the lien; and (iii) pursues all reasonable legal remedies to obtain payment from the person with whom the person had a direct contract unless and until there is a reasonable likelihood the action shall not result in obtaining payment.”
HB 1702 - Subcontractor Default Insurance (SDI) Option: A bill to allow qualified CM’s the option to utilize a subguard mechanism against defaults & deficiencies by trade contractors on Ch. 149A projects. (Rep. Rogers)

- The bill does not inhibit CMs lacking SDI experience from competing on 149A projects (not a prerequisite to prequalification and is only employed at the discretion of the CM)

- Subcontractors unable or unwilling to participate in an SDI program would still have the option to furnish payment & performance bonds. The bill also does not inhibit subs lacking SDI experience from bidding on projects

- Chapter 149A 68(a) paragraph 2 to be replaced with: “All trade contracts entered into in accordance with this chapter shall be secured by performance and payment bonds in the full amount of the trade contract from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570; provided that the bonds are subject to subsection (3) of section 44F of chapter 149 except for those subcontractors subject to a subcontractor default insurance policy obtained by the construction management at risk firm. The construction manager at risk firm shall have the option to obtain a subcontractor default insurance policy in lieu of payment and performance bonds for some or all trade contractors. The intention to use a subcontractor default insurance policy shall be made known by the construction manager at risk firm and the awarding authority after the receipt of trade contractor bids pursuant to subsection (g) of this section. Any trade contractor not covered through the subcontractor default insurance policy program must submit a payment and performance bond at no additional cost to the construction manager at risk firm or the awarding authority. All trade contractor bidders shall include anticipated bonding costs in their bids and, in the event of inclusion in a subcontractor default insurance program, trade contractors shall remit to the construction manager at risk firm a credit equivalent to those anticipated bonding costs.”

HB 3371 & SB 1710 - MBE/WBE Legislation: A bill to restore a public awarding authority’s ability to require appropriately identified filed sub-bidders on Chapter 149 projects or trade contractors on Chapter 149A projects sub out a portion of their work (no more than 10%) for the sole purpose of assisting the CM or GC with its overall MBE/WBE project goals on all state projects or state-assisted local projects (Rep. Holmes & Sen. Dorcena-Forry)

- For years AGC had filed a bill mandating filed sub bidders participate equally in MBE/WBE goals.

- In 2004, under Public Construction Reform and CM at Risk, trade contractors were finally allowed to assist the CM in meeting project goals; As a result, AGC stopped filing its bill.

- In 2011, the AG issued a decision that prohibited sub-subbing of work to other parties – which effectively prohibited subcontractors from assisting the CM in meeting the goals.

- In 2013, DCAMM Working Group developed draft language to allow subcontractor participation in MBE/WBE goals but in a limited fashion
• AGC’s new bill includes language from the DCAMM Working Group draft, which restores the practice of allowing the sub sub-bidding of work - but only for the purpose of assisting the CM/GC meet its overall project goals

• Amend M.G.L. Chapter 7C: Section 6 by creating entirely new Section 6 (h 1/2): “The provisions of this section shall only apply to filed sub-bids procured under section 44F of chapter 149 and trade contractor bids procured under section 8(a) of chapter 149A. For purposes of this section “applicable projects” shall mean any project procured by the division of capital asset management and maintenance, the Massachusetts State College Building Authority, the University of Massachusetts Building Authority, and the Massachusetts Port Authority under sections 44A-J of chapter 149 or sections 1-12 of chapter 149A and any state assisted building project with an overall estimated cost of $5,000,000 or more and the provisions of this section shall apply only to such filed sub-bid or CM at Risk trade packages. On applicable projects only, the awarding authority may establish minority owned business enterprise and women owned business enterprise participation goals for any of the filed sub-bid classes of work under section 44F of chapter 149 and for any of the trade contractor classes of work under section 8(a) of chapter 149A. The total minority owned business enterprise and women owned business enterprise participation goal set by the awarding authority for a particular class of work shall not exceed 10 percent of the value of the filed sub-bid or trade contractor work. Notwithstanding any general law or contractual provision to the contrary, on applicable projects filed sub-bidders and trade contractors in the classes of work listed in section 44F of chapter 149 and referenced in section 6 of chapter 149 respectively shall be permitted to meet the minority owned business enterprise and women owned business enterprise participation goals by subcontracting out portions of the trade contractor work which the sub-bider or trade contractor is otherwise required by law to perform with employees on its own payroll and/or portions of the trade work which is customarily performed by sub-trade subcontractors within the trade. Provided, the total value of the trade work which the filed sub-bidder or trade contractor is required by law to self-perform which the filed sub-bidder or trade contractor subcontracts out to meet the minority owned business enterprise and women owned business enterprise participation goal shall not exceed such goal by more than an additional 10 percent of the value of the filed sub-bidder or trade contractor’s work. The commissioner shall establish a good faith pre bid and post bid/pre-award waiver process for filed sub-bidders and trade contractors requesting a reduction or waiver of a participation goal.”

• Amend M.G.L. Chapter 149, Section 44F (1) (a) by adding new language by inserting in c.149, §44F (1)(a) at the end of the first paragraph (just before the last sentence): “Provided however, that a sub-bidder may subcontract out portions of its work in order to meet MBE/WBE goals set on Division of Capital Asset Management and Maintenance, Massachusetts State College Building Authority, University of Massachusetts Building Authority, and Massachusetts Port Authority projects and on any state assisted project as set forth in section 6(h1/2,) of chapter 7C.”

• Amend M.G.L. Chapter 149A, Section 8 (g) (6) by adding new language by inserting in c.149A, §8(g)(6) at the end sentence: “Provided however, that a trade contractor may subcontract out portions of its work in order to meet MBE/WBE goals set on Division of Capital Asset Management and Maintenance, Massachusetts State College Building Authority, University of
HB 1649 - OSHA 10-Hour Legislation: A Bill to expand the current requirement that all employees who are employed on a public construction contract are required to complete an OSHA 10-Hour Course to include that the employee must take the OSHA 10-Hour course once every 5 years (Rep. Arciero)

- “Notwithstanding any general or special law to the contrary, employees who are employed on a public construction contract as provided in Sections 29M and 39S of Chapter 30, and Paragraph E of subdivision (2) of Section 44E and Paragraph I of subdivision (2) of Section 44F of Chapter 149, who are required to complete a 10 hour course in construction safety and health approved by the United States Occupational Safety and Health Administration shall complete said course once every five years. The provisions of this section shall take effect 180 days after the effective date of this act.”

AGC Strongly Supports with Industry Coalition But Did Not File


- This bill directs the Department of Public Utilities to include a utility company’s record of providing new utility connections and relocations to connections as part of the service quality standards.