

**HOUSE . . . . . No. 4128**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act Text of an amendment recommended by the House committee on Ways and Means to the Senate Bill mobilizing economic recovery in the Commonwealth (Senate, No. 2061), as changed by the House committee on Bills in the Third Reading, and as further amended by the House. June 11, 2009..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           Text of an amendment recommended by the House committee on Ways and Means to the  
2   Senate Bill mobilizing economic recovery in the Commonwealth (Senate, No. 2061), as changed  
3   by the House committee on Bills in the Third Reading, and as further amended by the House.  
4   June 11, 2009.

5           Striking out all after the enacting clause and inserting in place thereof the following:–

6           SECTION 1. Section 30 of chapter 151A of the General Laws, as appearing in the 2006  
7   Official Edition, is hereby amended by striking out, in line 32, the word “eighteen” and inserting  
8   in place thereof the following figure:– 26.

9           SECTION 2. Said section 30 of said chapter 151A, as so appearing, is hereby further  
10   amended by striking out, in lines 43 to 45, inclusive, the words “because of the individual’s need  
11   to address the physical, psychological and legal effects of domestic violence; provided that” and  
12   inserting in place thereof the following words:– ; provided, however, that such circumstances

13 shall include an individual's need to address the physical, psychological and legal effects of  
14 domestic violence, as well as any period in which economic circumstances permit the provision  
15 of extended benefits or any other emergency benefits funded in whole or in part by the federal  
16 government; provided, further, that.

17 SECTION 3. Said section 30 of said chapter 151A, as so appearing, is hereby further  
18 amended by inserting after the word "claim", in line 64, the following words:- unless the period  
19 is tolled by regulation.

20 SECTION 3A. As used in this act, the terms "federal act", "ARRA" and the "American  
21 Recovery and Reinvestment Act" shall mean the American Recovery and Reinvestment Act of  
22 2009, Pub. L. No. 111-5.

23 SECTION 4. Notwithstanding section 38C of chapter 7 of the General Laws, contracts  
24 for design services which are funded in whole or in part by the American Recovery and  
25 Reinvestment Act of 2009 shall be exempt from the jurisdiction of the designer selection board if  
26 the design fee under the contract is less than \$25,000, if the estimated construction cost of the  
27 project for which the design services are required is less than \$250,000 or if the contract is  
28 otherwise exempt under said section 38C.

29 SECTION 5. Notwithstanding section 38D of chapter 7 of the General Laws, each  
30 contract for designer services for a project which is funded in whole or in part by the American  
31 Recovery and Reinvestment Act of 2009 and which is subject to the jurisdiction of the designer  
32 selection board shall be publicly advertised by the board either: (i) within the Compass system,  
33 not less than 2 weeks before the deadline for filing applications, and in the central register  
34 established under section 20A of chapter 9, not less than 2 weeks before the deadline for filing

35 applications; or (ii) if the contract is not advertised within the Compass system, the contract shall  
36 be publicly advertised in the central register at least 2 weeks before this deadline. Every contract  
37 for design services for a project which is funded in whole or in part by the American Recovery  
38 and Reinvestment Act of 2009 and subject to section 38K of chapter 7 shall be publicly  
39 advertised under this section.

40 SECTION 6. Subsection (d) of section 38F of chapter 7 of the General Laws shall not  
41 apply to contracts which are funded in whole or in part by the American Recovery and  
42 Reinvestment Act of 2009. For those projects, the designer selection board may delegate its  
43 powers and duties under subparagraph (b) of section 38D of said chapter 7, paragraphs (c) and  
44 (d) of section 38E of said chapter 7, and subsections (a) and (b) of sections 38G, and subsections  
45 38H and 38I of said chapter 7 to panels of less than all the board members. A panel of at least 6  
46 members shall be required for selection of designers under this section, 4 of whom shall be  
47 architects or engineers; provided, however, that there shall be at least 1 architect and 1 engineer  
48 on the panel.

49 SECTION 7. Notwithstanding section 38H of chapter 7 of the General Laws, for  
50 contracts which are funded in whole or in part by the American Recovery and Reinvestment Act  
51 of 2009, the certification required by clause (iv) of subsection (e) of said section 38H of said  
52 chapter 7 shall only apply to contracts which exceed \$25,000 or which are for the design of a  
53 building for which the budgeted or estimated construction costs exceed \$250,000.

54 SECTION 8. Notwithstanding section 38K of chapter 7, a contract for design services  
55 which is funded in whole or in part by the American Recovery and Reinvestment Act of 2009  
56 and which would otherwise be subject to the requirements of said section 38K of said chapter 7

57 shall not be subject to those requirements unless the project at issue is estimated to exceed  
58 \$250,000.

59 SECTION 9. Notwithstanding section 40B of chapter 7 of the General Laws, for  
60 projects which are funded in whole or in part by the American Recovery and Reinvestment Act  
61 of 2009, the commissioner of capital asset management and maintenance may, upon request of a  
62 state agency or building authority, delegate project control and supervision to that state agency or  
63 building authority over projects involving structural or mechanical work in which the estimated  
64 cost is less than \$2,000,000 if the commissioner determines that the agency or authority has the  
65 ability to control and supervise such project. Except as otherwise provided in said section 40B of  
66 said chapter 7, any state agency or building authority shall control and supervise its own building  
67 projects when the estimated cost of such project is less than \$250,000 or if the project does not  
68 involve structural or mechanical work.

69 SECTION 10. The second and third paragraphs of section 7K of chapter 29 of the  
70 General Laws shall not apply to projects which are funded in whole or in part by the American  
71 Recovery and Reinvestment Act of 2009; provided, however, that this section shall apply.

72 No provider of design services for any building project for which a state agency is  
73 the using agency shall be selected by the designer selection board or by the administering agency  
74 in accordance with sections 38A ½ to 38N, inclusive, of chapter 7 of the General Laws, and no  
75 design services shall be performed for or by such administering agency for any building project  
76 for which the satisfactory completion of a study program is required before the design or  
77 construction of that project, until: (a) the study, program or, where appropriate, both have been  
78 satisfactorily completed to such extent that a contract for final design may be awarded in the

79 discretion of the commissioner of capital asset management and maintenance; (b) the using  
80 agency certifies in writing to the commissioner of capital asset management and maintenance  
81 that the study, program or, where appropriate, both correspond to the current needs of that  
82 agency, including its current long-term capital facilities development plan; and (c) the  
83 commissioner requests that 1 or more of the directors of the office of programming, office of  
84 project management or office of facilities management review the study or program or, where  
85 appropriate, both and the directors certify in writing to the commissioner that the study, program  
86 or, where appropriate, both reflect the using agency's needs as stated, that they provide an  
87 accurate estimate of the project requirements, cost and schedule, that the project can be  
88 accomplished within the appropriation or authorization for that project, and recommends  
89 proceeding with design, construction or, where appropriate, both.

90         This section shall not apply to maintenance or repair projects, as defined by section 39A  
91 of chapter 7 of the General Laws, estimated to cost less than \$250,000, if the executive head of  
92 the agency administering the project certifies in writing that the design work is or shall be such  
93 as to specify a project that can be accomplished and that there are funds available to pay for the  
94 design services.

95         SECTION 11. Section 26A of chapter 29 of the General Laws shall not apply to  
96 maintenance or repair projects, as defined by section 39A of chapter 7 of the General Laws,  
97 which are funded in whole or in part in the American Recovery and Reinvestment Act of 2009  
98 and are estimated to cost less than \$250,000, if the executive head of the agency administering  
99 the project certifies in writing that the design work is or shall be such as to specify a project that  
100 can be accomplished, and that there are funds available to pay for the design services.

101 SECTION 12. Notwithstanding any general or special law to the contrary, the Water  
102 Pollution Abatement Trust established in section 2 of chapter 29C of the General Laws may  
103 establish such terms and conditions for any loan or other form of financial assistance made under  
104 said chapter 29C that is funded in whole or in part by amounts provided under the American  
105 Recovery and Reinvestment Act of 2009 as the board of trustees of the trust shall determine to be  
106 in the best interests of the commonwealth and as required to comply with federal law including,  
107 without limitation, the interest rate, repayment period, number of payments to be made and  
108 amount of principal to be repaid on such loan or other form of financial assistance.

109 SECTION 13. Notwithstanding any general or special law to the contrary, the Water  
110 Pollution Abatement Trust established in section 2 of chapter 29C of the General Laws may  
111 transfer amounts held in the Drinking Water Revolving Fund to the Water Pollution Abatement  
112 Revolving Fund for application by the trust to the purposes specified in section 5 of said chapter  
113 29C, and may transfer amounts held in the Water Pollution Abatement Revolving Fund to the  
114 Drinking Water Revolving Fund for application by the trust to the purposes specified in section  
115 18 of said chapter 29C, in each case to the extent authorized by the federal Clean Water Act and  
116 the federal Safe Drinking Water Act.

117 SECTION 14. For contracts which are funded in whole or in part by the American  
118 Recovery and Reinvestment Act of 2009, section 39M of chapter 30 of the General Laws shall  
119 only apply if the contract is estimated to cost more than \$50,000 but not more than \$100,000.

120 SECTION 15. Notwithstanding the first sentence of subsection (a) of section 39M of  
121 chapter 30 of the General Laws, a transportation or public works project subject to award under  
122 said section 39M of said chapter 30 by a department, agency or authority of the commonwealth

123 that is funded in whole or in part through the American Recovery and Reinvestment Act of 2009  
124 and that is expected to interfere with the movement of traffic or the traveling public may, in the  
125 discretion of the awarding authority, be procured through a bidding method that awards the  
126 project to the responsible and eligible bidder with the lowest bid value after taking into account  
127 the amount of time that the bidder has identified in the bid for completion of the project,  
128 hereinafter referred to as cost-plus-time bidding; provided, however, that such awarding  
129 authority may reject any bid if it is in the public interest to do so.

130           In utilizing a cost-plus-time bidding procurement method, the awarding authority  
131 shall use a cost parameter (a) and a time parameter (b) to determine a bid value. The cost  
132 parameter (a) shall be the traditional bid for the contract items and shall be the dollar amount for  
133 the work to be performed under the contract. The time parameter (b) shall be the total number of  
134 calendar days required to complete the project, as estimated by the bidder, multiplied by an  
135 agency-determined daily road user cost hereinafter referred to as RUC to translate time into  
136 dollars. The total bid value, which shall be clearly detailed in the bid documents, shall equal the  
137  $a + b$  (RUC). The total bid value shall be used only to evaluate bids. The winning bid, which  
138 shall be calculated at a public bid opening at a time and location designated in the bid  
139 documents, shall be the lowest bid value submitted by a responsible and eligible bidder. The  
140 contract amount for payment purposes shall be based on the bid price (a), not the total bid value.  
141 The number of days bid (b) shall become the contract time. For purposes of this section,  
142 “responsible and eligible bidder” shall be defined pursuant to the criteria in subsection (c) of said  
143 section 39M of said chapter 30; provided, however, that the reference to “lowest” in said  
144 subsection (c) of said section 39M of said chapter 30 shall mean “lowest bid value” as provided  
145 in this section.

146           The provisions of the General Laws generally applicable to public works projects  
147 including, but not limited to, sections 26, 27, 27A, 27B, 27C, 27D, 27F and 34A of chapter 149  
148 of the General Laws and sections 39F, 39G, 39H, 39J, 39K, 39M except the first sentence of  
149 subsection (a), 39N, 39O, 39P and 39R of said chapter 30 shall apply to all public works projects  
150 using the cost-plus-time bidding procurement method provided in this section.

151           SECTION 16. Notwithstanding section 29 of chapter 149 of the General Laws, contracts  
152 which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009  
153 shall only be subject to the requirements of said section 29 of said chapter 149 if the amount of  
154 the contract is more than \$25,000.

155           SECTION 17. (a) Subsection (2) of section 44A of chapter 149 of the General Laws  
156 shall not apply to contracts which are funded in whole or in part by the American Recovery and  
157 Reinvestment Act of 2009; provided, however, that this section shall apply.

158           (b) A contract for the construction, reconstruction, installation, demolition, maintenance  
159 or repair of any building by a public agency estimated to cost less than \$10,000 and where the  
160 overall project is also estimated to cost less than \$10,000 shall be obtained through the exercise  
161 of sound business practices. The public agency shall make and keep a record of each such  
162 contract solicitation. At a minimum, the record shall include a written description of how the  
163 services were procured and the name and address of the person from whom the services were  
164 procured. Written price quotations submitted in accordance with this subsection shall not require  
165 certificates of eligibility, update statements or bid deposits. In no event shall public agencies  
166 solicit price quotations from persons if to do so would violate chapter 268A of the General Laws.



167 (c) A contract for the construction, reconstruction, installation, demolition, maintenance  
168 or repair of any building by a public agency estimated to cost not less than \$10,000, but not more  
169 than \$50,000 and where the overall project is also estimated to cost not more than \$50,000, shall  
170 be awarded to the responsible person offering to perform the contract at the lowest price  
171 quotation; provided, however, that the public agency shall seek written price quotations from at  
172 least 3 persons customarily providing the work for which the contract is being made available.  
173 When seeking written quotations, the public agency shall make and keep a record of the names  
174 and addresses of all persons from whom price quotations were sought, the names of the persons  
175 submitting price quotations and the date and amount of each price quotation. Written price  
176 quotations submitted in accordance with this subsection shall not require certificates of  
177 eligibility, update statements or bid deposits. In no event shall public agencies solicit price  
178 quotations from persons if to do so would violate chapter 268A of the General Laws.

179 (d) A contract for the construction, reconstruction, installation, demolition, maintenance  
180 or repair of any building by a public agency estimated to cost more than \$50,000 but not more  
181 than \$100,000, except for a pumping station to be constructed as an integral part of a sewer  
182 construction or water construction project bid under section 39M of chapter 30 of the General  
183 Laws, shall be awarded to the lowest responsible and eligible bidder on the basis of competitive  
184 bids publicly opened and read in accordance with the procedure set forth in said section 39M of  
185 said chapter 30. As used in this section, the “pumping station” shall mean a building or other  
186 structure which houses only pumps and appurtenant electrical and plumbing fixtures.

187 (e) A contract for the construction, reconstruction, installation, demolition, maintenance  
188 or repair of any building by a public agency estimated to cost more than \$100,000, except for a  
189 pumping station to be constructed as an integral part of a sewer construction or water

190 construction project bid under section 39M of chapter 30 of the General Laws, shall be awarded  
191 to the lowest responsible and eligible general bidder on the basis of competitive bids in  
192 accordance with the procedure set forth in sections 44A to 44H, inclusive of chapter 149 of the  
193 General Laws.

194 (f) When the general court has approved the use of an alternative mode of procurement of  
195 construction for a project under section 7E of chapter 29, the awarding authority responsible for  
196 procuring construction services for the project shall follow the policies and procedures of this  
197 section and of sections 44B to 44H, inclusive of chapter 149 of the General Laws, to the extent  
198 compatible with the mode of construction procurement selected.

199 (g) Notwithstanding subsection (f), a public agency may undertake the procurement of  
200 modular buildings in accordance with section 44E of chapter 149 of the General Laws. A public  
201 agency may procure site work for modular buildings including, but not limited to, construction of  
202 foundations, installations and attachment to external utilities, or any portion of site work, either  
203 in combination with the procurement of modular buildings pursuant to said section 44E of said  
204 chapter 149 or on the basis of competitive bids pursuant to subsection (e). Notwithstanding said  
205 subsection (f), a public agency may procure energy management services in accordance with  
206 sections 11C or 11I of chapter 25A of the General Laws and regulations promulgated thereunder.

207 SECTION 18. (a) For contracts subject to the prequalification requirements set forth in  
208 section 44D½ of chapter 149 of the General Laws which are funded in whole or in part by the  
209 American Recovery and Reinvestment Act of 2009, an awarding authority shall have the option  
210 to use the condensed prequalification process for general contractors described in this section in  
211 lieu of the full prequalification process set forth in said section 44D½ of said chapter 149. The

212 purpose of the condensed prequalification process shall be to allow awarding authorities an  
213 opportunity to expedite the prequalification process provided in section 44D½ of said chapter  
214 149 in order to most efficiently meet the specified goals and time parameters set forth in the  
215 federal act. All of the requirements of the full prequalification process set forth in said section  
216 44D½ of said chapter 149 shall be required under the condensed prequalification process unless  
217 specifically modified in this section.

218 (b) Where an awarding authority chooses to use the condensed prequalification process,  
219 the requirements for public notice of the building project and solicitation of responses to the  
220 request for qualifications from interested general contractors shall include all items set forth in  
221 paragraphs (1) to (8), inclusive, of subsection (d) of said section 44D½ of said chapter 149 but  
222 shall also include the following statements:

223 (1) a statement that the project is funded in whole or in part under the federal act and  
224 shall use the condensed prequalification process; and

225 (2) a statement that the evaluation procedure and the criteria for the prequalification of  
226 interested general contractors shall include an evaluation of all the criteria set forth in subsection  
227 (e) of said section 44D½ of said chapter 149 but, in order to avoid duplication and promote the  
228 expeditious commencement of projects under the federal act and without sacrificing the  
229 importance of the prequalification process, for certain evaluation categories and subcategories  
230 specifically identified in said subsection (e) of said chapter 44D ½ of said chapter 149, the  
231 prequalification committee shall evaluate interested general contractors based on a review of the  
232 information contained in the division of capital asset management and maintenance certification  
233 files including, but not limited to, the project evaluations required by subsection (7) of section

234 44D of said chapter 149 and the update statements required by subclause (ii) of clause (4) of  
235 subsection (e) of section 44D½ to be submitted by interested general contractors. The  
236 prequalification committee shall exercise due diligence in checking appropriate references.

237 (c) The request for qualifications and evaluation criteria for the condensed  
238 prequalification process shall include all criteria set forth in said subsection (e) of said section  
239 44D½ of said chapter 149 but shall not include the total or minimum point allocations for the  
240 evaluation categories and subcategories designated therein. In addition, in the interest of  
241 expediting the prequalification of general contractors for contracts funded in whole or in part  
242 under the federal act but not sacrificing the prequalification process, where certain of the  
243 evaluation subcategories specifically identified in this section require similar reporting by  
244 contractors in connection with the certification process set forth in said section 44D of said  
245 chapter 149 and the information contained in the required update statements submitted by  
246 interested general contractors, an awarding authority issuing a request for qualifications under  
247 this condensed prequalification process shall maintain as part of the project record the written  
248 certification by the prequalification committee that it has evaluated interested general contractors  
249 based on a review of both the information contained in the certification files including, but not  
250 limited to, the project evaluations required by subsection (7) of said section 44D of said chapter  
251 149, and the current update statements submitted by interested general contractors, and that it has  
252 exercised due diligence in checking appropriate references.

253 (d) Where an awarding authority chooses to use the condensed prequalification process,  
254 the review of the terminations, legal proceedings, safety record and compliance record provided  
255 in subclauses (iv) to (vii) , inclusive, of clause (1) of subsection (e) of said section 44D½ of said  
256 chapter 149 and the review of credit references and public project record under subclauses (ii)

257 and (iii) of clause (2) of said subsection (e) of said section 44D½ of said chapter 149 and the  
258 review of audited financial statements under subclause (i) of clause (3) of said subsection (e) of  
259 said section 44D½ of said chapter 149 shall be satisfied by a requirement that the  
260 prequalification committee evaluate both the information contained in the division of capital  
261 asset management and maintenance certification files including, but not limited to, the project  
262 evaluations required by subsection (7) of section 44D of said chapter 149 and the current update  
263 statements submitted by interested general contractors, and by a requirement that the  
264 prequalification committee exercise due diligence in checking appropriate references. The  
265 prequalification committee shall further be required to certify in writing that it has met these  
266 requirements, and the certification shall be maintained by the awarding authority in the project  
267 record.

268 (e) Notwithstanding subsection (f) of said section 44D½ of said chapter 149, the public  
269 notice requirements for the condensed prequalification process shall be for the request for  
270 qualifications to be advertised in the central register established by section 20A of chapter 9 of  
271 the General Laws and in the COMPASS system for not less than 2 weeks. In addition, these  
272 projects shall be advertised on the central website to be established for all projects in the  
273 commonwealth funded in whole or in part under the federal act and in accordance with any  
274 requirements contained in the federal act.

275 (f) Where an awarding authority chooses to use the condensed prequalification process  
276 in lieu of the evaluation requirements set forth in subsection (h) of said section 44D½ of said  
277 chapter 149, the prequalification committee shall evaluate each statement of qualifications based  
278 on the criteria provided in the request for qualifications, the information contained in the division  
279 of capital asset management and maintenance certification files including, but not limited to, the

280 project evaluations required by subsection (7) of said section 44D of said chapter 149 and the  
281 current update statements submitted by interested general contractors. The prequalification  
282 committee shall exercise due diligence in checking appropriate references. As provided in  
283 subsection (c), the total and minimum point allocations designated in subsection (e) of said  
284 section 44D½ of said chapter 149 shall not be included in the request for qualifications and shall  
285 not be used in the evaluation of interested general contractors where the condensed  
286 prequalification process is utilized. The evaluation of interested general contractors shall be  
287 based on the evaluation criteria set forth in this subsection and conducted within the discretion of  
288 the prequalification committee; provided, however, that the prequalification committee shall  
289 evaluate each interested general contractor on the same fair and equitable basis. A general  
290 contractor's score shall be made available to the general contractor upon request. The decision of  
291 the prequalification committee shall be final and shall not be subject to appeal except on grounds  
292 of arbitrariness, capriciousness, fraud or collusion.

293 (g) Where an awarding authority chooses to use the condensed prequalification process,  
294 in lieu of the requirements for the re-issuance of the request for qualifications set forth in  
295 subsection (i) of said section 44D½ of said chapter 149, if the awarding authority prequalifies  
296 fewer than 3 general contractors to submit bids, the awarding authority may invite general bids  
297 under sections 44B to 44E, inclusive, of said chapter 149 or, if the awarding authority  
298 prequalifies at least 2 general contractors, then the awarding authority may invite bids from the 2  
299 prequalified general contractors.

300 (h) Procedures shall be adopted by the commissioner of capital asset management and  
301 maintenance to implement this section and to ensure that the condensed prequalification process  
302 is sufficient, fair and consistent.

303 SECTION 19. (a) Subsection (f) of section 44D<sup>1</sup>/<sub>2</sub> of chapter 149 of the General laws  
304 shall not apply to contracts which are funded in whole or in part by the American Recovery and  
305 Reinvestment Act of 2009; provided, however, that this section shall apply.

306 (b) The public notice and solicitation required in subsection (d) of said section 44D<sup>1</sup>/<sub>2</sub> of  
307 said chapter 149 shall be advertised in the central register pursuant to section 20A of chapter 9 of  
308 the General Laws and within the Compass system. The public notice and solicitation shall be  
309 given within the Compass system and the central register not less than 2 weeks before the  
310 deadline for submitting responses to the request for qualifications.

311 SECTION 20. (a) For contracts subject to the prequalification requirements set forth in  
312 section 44D<sup>3</sup>/<sub>4</sub> of chapter 149 of the General Laws which are funded in whole or in part by the  
313 American Recovery and Reinvestment Act of 2009, an awarding authority shall have the option  
314 to use the condensed prequalification process for subcontractors described in this section in lieu  
315 of the full prequalification process set forth in said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149. The  
316 purpose of the condensed prequalification process shall be to allow awarding authorities an  
317 opportunity to expedite the prequalification process provided in said section 44D<sup>3</sup>/<sub>4</sub> of said  
318 chapter 149 in order to most efficiently meet the specified goals and time parameters set forth in  
319 the federal act. All of the requirements of the full prequalification process set forth in said  
320 section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149 shall be required under the condensed prequalification process  
321 unless specifically modified in this section.

322 (b) Where an awarding authority chooses to use the condensed prequalification process,  
323 the requirements for public notice of the building project and solicitation of responses to the  
324 request for qualifications from interested subcontractors shall include all items set forth in

325 paragraphs (1) to (8), inclusive, of subsection (d) of said section 44D<sup>3/4</sup> of said chapter 149 but  
326 shall also include the following statements:

327 (1) a statement that the project is funded in whole or in part under the federal act and  
328 shall use the condensed prequalification process; and

329 (2) a statement that the evaluation procedure and the criteria for the prequalification of  
330 interested subcontractors shall include an evaluation of all the criteria set forth in subsection (e)  
331 of said section 44D <sup>3/4</sup> of said chapter 149 but, in order to avoid duplication and promote the  
332 expeditious commencement of projects under the federal act and without sacrificing the  
333 importance of the prequalification process, for certain evaluation categories and subcategories  
334 specifically identified in said subsection (e) of said section 44D<sup>3/4</sup> of said chapter 149, the  
335 prequalification committee shall evaluate interested subcontractors based on a review of the  
336 information contained both in the division of capital asset management and maintenance  
337 certification files including, but not limited to, the project evaluations required by subsection (7)  
338 of section 44D and the update statements required by paragraph (e) herein to be submitted by  
339 interested subcontractors. The prequalification committee shall exercise due diligence in  
340 checking appropriate references.

341 (c) The request for qualifications and evaluation criteria for the condensed  
342 prequalification process shall include all criteria set forth in subsection (e) of said section 44D<sup>3/4</sup>  
343 of said chapter 149 but shall not include the total or minimum point allocations for the evaluation  
344 categories and subcategories designated therein. In addition, in the interest of expediting the  
345 prequalification of subcontractors for contracts funded in whole or in part under the federal act  
346 but not sacrificing the prequalification process, where certain of the evaluation subcategories



347 specifically identified in this section require similar reporting by contractors in connection with  
348 the certification process set forth in said section 44D of said chapter 149 and the information  
349 contained in the required update statements submitted by interested subcontractors, an awarding  
350 authority issuing an request for qualifications under this condensed prequalification process shall  
351 maintain as part of the project record the written certification by the prequalification committee  
352 that it has evaluated interested subcontractors based on a review of both the information  
353 contained in the certification files including, but not limited to, the project evaluations required  
354 by subsection (16) of said section 44D of said chapter 149, and the current update statements  
355 submitted by interested subcontractors, and that it has exercised due diligence in checking  
356 appropriate references.

357 (d) Where an awarding authority chooses to use the condensed prequalification process,  
358 the review of the terminations, legal proceedings and safety record provided in subclauses (iv) to  
359 (vi), inclusive, of clause (1) of subsection (e) of said section 44D<sup>3/4</sup> of said chapter 149, and the  
360 review of credit references and public project record under subclauses (ii) and (iii) of clause (2)  
361 of said subsection (e) of said section 44D<sup>3/4</sup> of said chapter 149 and the review of annual revenue  
362 under subclause (i) of clause (3) of said subsection (e) of said section 44D<sup>3/4</sup> of said chapter 149  
363 shall be satisfied by a requirement that the prequalification committee evaluate both the  
364 information contained in the division of capital asset management and maintenance certification  
365 files, including but not limited to the project evaluations required by said subsection (16) of said  
366 section 44D of said chapter 149 and the current update statements submitted by interested  
367 subcontractors, and by a requirement that the prequalification committee exercise due diligence  
368 in checking appropriate references. The prequalification committee shall further be required to

369 certify in writing that it has met these requirements, and the certification shall be maintained by  
370 the awarding authority in the project record.

371 (e) Where an awarding authority chooses to use the condensed prequalification process,  
372 the mandatory requirements for the solicitation and submission of a commitment letter for  
373 payment and performance bonds at 100 per cent of the estimated contract value from a surety  
374 company licensed to do business in the commonwealth and whose name appears on United  
375 States Treasury Department Circular 570 shall be as set forth in clause (4) of said subsection (e)  
376 of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149. In addition, it shall be mandatory for the awarding  
377 authority to solicit in the request for qualifications, and an interested subcontractor to submit  
378 with its statement of qualifications, a certificate of eligibility for the subcontractor trade for  
379 which it is seeking to be prequalified, issued by the division of capital asset management and  
380 maintenance under said section 44D of said chapter 149.

381 (f) Notwithstanding subsection (f) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149, the public  
382 notice requirements for the condensed prequalification process shall be for the request for  
383 qualifications to be advertised on the central register established pursuant to section 20A of  
384 chapter 9 and in the COMPASS system for not less than 2 weeks. In addition, these projects  
385 shall be advertised in the central website to be established for all projects in the commonwealth  
386 funded in whole or in part under the federal act and in accordance with any requirements  
387 contained in the federal act.

388 (g) Where an awarding authority chooses to use the condensed prequalification process  
389 in lieu of the evaluation requirements set forth in subsection (h) of said section 44D<sup>3</sup>/<sub>4</sub> of said  
390 chapter 149, the prequalification committee shall evaluate each statement of qualifications based

391 on the criteria provided in the request for qualifications, the information contained in the division  
392 of capital asset management and maintenance certification files including, but not limited, to the  
393 project evaluations required by subsection (16) of said section 44D of said chapter 149 and the  
394 current update statement submitted by interested subcontractors. The prequalification committee  
395 shall exercise due diligence in checking appropriate references. As provided in subsection (c)  
396 the total and minimum point allocations designated in subsection (e) of said section 44D<sup>3/4</sup> shall  
397 not be included in the request for qualifications and shall not be used in the evaluation of  
398 interested subcontractors where the condensed prequalification process is utilized. The  
399 evaluations of interested subcontractors shall be based on the evaluation criteria set forth in this  
400 subsection and conducted within the discretion of the prequalification committee; provided,  
401 however, that the prequalification committee shall evaluate each interested subcontractor on the  
402 same fair and equitable basis. A subcontractor's score shall be made available to the  
403 subcontractor upon request. The decision of the prequalification committee shall be final and  
404 shall not be subject to appeal except on grounds of arbitrariness, capriciousness, fraud or  
405 collusion.

406 (h) Where an awarding authority chooses to use the condensed prequalification process  
407 in lieu of the requirements for the re-issuance of the request for qualifications set forth in  
408 subsection (i) of said section 44D<sup>3/4</sup> of said chapter 149, if the awarding authority prequalifies  
409 fewer than 3 subcontractors to submit bids, the awarding authority may invite general bids under  
410 sections 44B to 44E, inclusive, of said chapter 149 or, if the awarding authority prequalifies at  
411 least 2 subcontractors, then the awarding authority may invite bids from the 2 prequalified  
412 subcontractors.

413 (i) Procedures shall be adopted by the commissioner of capital asset management and  
414 maintenance to implement this section and to ensure that the condensed prequalification process  
415 set forth in this section is sufficient, fair and consistent.

416 SECTION 21. (a) Subsection (f) of section 44D<sup>3</sup>/<sub>4</sub> of chapter 149 of the General Laws  
417 shall not apply to contracts which are funded in whole or in part by the American Recovery and  
418 Reinvestment Act of 2009; provided, however, that his section shall apply.

419 (b) The public notice and solicitation required in subsection (d) of said section 44D <sup>3</sup>/<sub>4</sub> of  
420 said chapter 149 shall be advertised in the central register under section 20A of chapter 9 of the  
421 General Laws and within the Compass system. The public notice and solicitation shall be given  
422 within the Compass system and the central register not less than 2 weeks before the deadline for  
423 submitting responses to the request for qualifications.

424 SECTION 22. (a) Paragraph (a) of subsection 4 of section 44F of chapter 149 of the  
425 General Laws shall not apply to contracts which are funded in whole or in part by the American  
426 Recovery and Reinvestment Act of 2009; provided, however, that this section shall apply.

427 (b) In inviting general bids and sub-bids, the awarding authority shall reserve the right to  
428 reject any bid if it is in the public interest to do so. In inviting sub-bids in connection with a  
429 contract, the awarding authority shall reserve the right to reject any sub-bid on any sub-trade if it  
430 determines that the sub-bidder is not a person competent to perform the work as specified or if  
431 less than 3 sub-bids were received, which are not restricted to the use of 1 or more general  
432 bidders and the prices are not reasonable for acceptance without further competition.

433 (c) If no sub-bid is filed for a sub-trade designated in the general bid form or if the only  
434 sub-bids which are filed are restricted to the use of 1 or more general bidders, the awarding

435 authority may state, in an addendum issued with the list of sub-bidders required by subdivision  
436 (d), that the general bidder shall include in the cost of his own work an amount to cover all of the  
437 work required for any such sub-trade. The general contractor shall cause the work covered by the  
438 sub-trade to be done by a qualified and responsible subcontractor, subject to the written approval  
439 of the awarding authority. If the awarding authority determines that a subcontractor chosen by  
440 the general contractor under this section is not qualified or responsible, the general contractor  
441 shall obtain another subcontractor who is satisfactory to the awarding authority with no  
442 adjustment in the general contractor's price.

443 (d) If a rejection of all sub-bids for such a sub-trade occurs under this section, the  
444 awarding authority shall state, in an addendum issued with the list of sub-bidders, the amount to  
445 be included by a general bidder on the general bid form for such sub-trade and, without in any  
446 way affecting other sub-bidders in other sub-trades who have conformed to the prescribed  
447 bidding procedure, new sub-bids for such sub-trade shall be requested by written invitation to 3  
448 or more qualified sub-bidders, including any that had previously submitted bids, and the sub-bids  
449 shall be publicly opened and read by the awarding authority at a time and place to be specified in  
450 the invitation. The general contractor shall cause the work covered by the sub-trade to be done  
451 by the lowest responsible and eligible sub-bidder against whose standing and ability the general  
452 contractor makes no objection or, if there is no sub-bidder, by the subcontractor against whose  
453 standing and ability the general contractor and awarding authority make no objection and for a  
454 sum upon which the general contractor and the awarding authority may agree. The contract price  
455 shall be adjusted by the difference between the subcontract sum and the amount stated in the  
456 addendum. The general bidder shall include in the cost of his own work on the general bid form  
457 all expenses and profits on account of such adjustments.

458 (e) If after new sub-bids for a sub-trade are requested by written invitation under  
459 subsection (d) the awarding authority still does not receive any sub-bids that are unrestricted to  
460 the use of 1 or more general bidders and are reasonable for acceptance based upon the estimated  
461 cost for the work of that sub-trade, the awarding authority may assign the work to the general  
462 contractor if the awarding authority first confirms that its estimate for the cost of the work of that  
463 sub-trade is accurate. The general contractor shall cause the work covered by the sub-trade to be  
464 done by the subcontractor against whose standing and ability the general contractor and  
465 awarding authority make no objection, and for a sum upon which the general contractor and the  
466 awarding authority shall agree. The contract price shall be adjusted by the difference between  
467 the sub-contract sum and the amount stated in the addendum. The general bidder shall include in  
468 the cost of his own work on the general bid form all expenses and profits on account of such  
469 adjustments.

470 SECTION 23. (a) Subsection (1) of section 44J of chapter 149 of the General Laws shall  
471 not apply to contracts which are funded in whole or in part by the American Recovery and  
472 Reinvestment Act of 2009; provided, however, that this section shall apply.

473 (b) No public agency or authority of the commonwealth or any political subdivision  
474 thereof shall award any contract for which competitive bids are required under section 44A of  
475 said chapter 149 or section 39M of chapter 30 of the General Laws or for which competitive  
476 proposals are required under subsection (4) of section 44E of said chapter 149 or section 11C of  
477 chapter 25A of the General Laws unless a notice inviting bids or proposals therefor shall have  
478 been posted not less than 1 week before the time specified in the notice for the receipt of the bids  
479 or proposals in a conspicuous place in or near the offices of the awarding authority and shall  
480 have remained posted until the time so specified, and unless the notice shall also have been

481 advertised either within the Compass system and in the central register published by the state  
482 secretary under section 20A of chapter 9 of the General Laws not less than 2 weeks before the  
483 time specified for the receipt of the bids or proposals, or if the notice is not advertised within the  
484 Compass system, the notice shall be advertised in the central register at least 2 weeks before the  
485 time specified. The notice shall also be published at such other times and in such other  
486 newspapers or trade periodicals as the commissioner of capital asset management and  
487 maintenance may require, having regard to the locality of the work involved.

488 SECTION 24. (a) Subsection (e) of section 5 of chapter 149A of the General Laws shall  
489 not apply to contracts which are funded in whole or in part by the American Recovery and  
490 Reinvestment Act of 2009; provided, however, that this section shall apply.

491 (b) The public notice and solicitation required in subsection (c) of said section 5 of said  
492 chapter 149A shall be advertised in the central register under section 20A of chapter 9 of the  
493 General Laws and within the Compass system not less than 2 weeks before the deadline for  
494 submitting responses to the request for qualifications.

495 SECTION 25. (a) Notwithstanding section 5 of chapter 149A of the General Laws, for  
496 contracts which are funded in whole or in part by the American Recovery and Reinvestment Act  
497 of 2009, the procedure in this section shall apply.

498 (b) (1) The division of capital asset management and maintenance, in this section called  
499 the division, shall annually undertake a prequalification process set forth in this section to  
500 provide a standing list of prequalified construction management at-risk firms to be used by the  
501 division in requesting proposals pursuant to subsection (c) for construction management at risk  
502 services for specific projects to be determined at a later date. Public awarding authorities other

503 than the division shall have the option to use the standing list and related procedures upon  
504 application to, and approval by, the inspector general. A contract between a construction  
505 management at-risk firm and the division or other public awarding authority shall be secured by  
506 a performance and payment bond in the full sum of the guaranteed maximum price by a surety  
507 company licensed to do business in the commonwealth and whose name appears on the United  
508 States Treasury Department Circular 570.

509 (2) Firms included on the division's standing list of prequalified construction  
510 management at-risk firms shall be prequalified for a period of 1 year from the date of issuance of  
511 the standing list by the division. Upon issuance of the standing list, the division shall publish the  
512 standing list of prequalified construction manager at-risk firms in the central register, the  
513 Compass system and the division's website. The division shall re-advertise and solicit  
514 applications quarterly through the request for qualifications process provided for in this section  
515 to keep the statewide standing list current.

516 (3) Before issuing a request for qualifications, in this section referred to as RFQ, the  
517 division shall establish a prequalification committee for the purpose of reviewing and evaluating  
518 responses submitted to the RFQ issued pursuant to paragraph (4). The prequalification  
519 committee shall be comprised of at least 1 registered architect or 1 registered professional  
520 engineer on the division's staff who has at least 5 years experience in the construction and  
521 supervision of construction of buildings or, if not registered as an architect or professional  
522 engineer, who has at least 7 years experience in the construction and supervision of construction  
523 of buildings and at least 2 other representatives from the division as designated by the  
524 commissioner.



525 (4) The selection process for the annual prequalification of the division's standing list of  
526 construction manager at-risk firms shall begin once the division gives public notice of the  
527 solicitation and requests responses to an RFQ from construction management at-risk firms. The  
528 public notice and RFQ shall include: (i) a statement indicating that the RFQ is not for a specific  
529 project, but will be used to prequalify construction management at-risk firms for inclusion on the  
530 division's annual standing list and that only those construction manager at-risk firms included on  
531 the standing list shall be invited to submit proposals in response to requests for proposals issued  
532 pursuant to subsection (c); (ii) the time and date for receipt of responses to the RFQ, the address  
533 of the office to which the responses are to be delivered and the timeframe in which the public  
534 agency shall respond to the responses; (iii) a description of the experience that will be required  
535 for construction manager at-risk firms to be included on the division's standing list, which shall  
536 include a minimum of 3 public or private construction manager at-risk projects during the past  
537 10 years; (iv) the evaluation procedure and criteria under paragraph (7), including any rating  
538 system; (v) a general description of the scope of services that would be expected of a  
539 prequalified construction manager firm during the predesign, preconstruction and construction  
540 phases of a construction manager at-risk project; (vi) the anticipated schedule for the selection  
541 process of construction manager at risk firms to be included on the division's standing list; and  
542 (vii) a prohibition against any unauthorized communication or contact with the public agency  
543 outside of official preproposal meetings.

544 (5) The division shall require interested construction management at-risk firms to submit  
545 a statement of qualifications in response to the RFQ issued pursuant to paragraph (4). The  
546 statement of qualifications shall include, at a minimum, the following: (i) a cover letter or  
547 executive summary detailing the key elements and factors that differentiate the firm from other

548 responders; (ii) completion of a qualifications application similar in form to the American  
549 Institute of Architects Document A305, 1986 edition, listing general business information and  
550 financial capacity; (iii) a list of lawsuits and arbitrations to which the firm is a party in regard to  
551 construction contracts within the last 3 years, including a list of all convictions or fines for  
552 violations of state or federal law; (iv) submission of an organization chart with specific  
553 information on key project personnel or consultants; (v) submission of an audited financial  
554 statement for the most recent fiscal year and a letter from the surety company of the firm  
555 confirming the ability to provide performance and payment bonds for the building project under  
556 consideration, but the financial information submitted shall remain confidential and shall be  
557 exempt from chapter 66 of the General Laws; (vi) submission of information on the firm's safety  
558 record, including its workers' compensation experience modifier for the prior 3 years; (vii)  
559 submission of information on and evidence of the firm's compliance record with respect to  
560 minority business enterprise and women business enterprise inclusion goals and workforce  
561 inclusion goals, if applicable; (viii) submission of information regarding the firm's experience on  
562 construction manager at-risk projects, including references from the owners and architects of the  
563 building projects; (ix) submission of information on any projects where the firm was terminated,  
564 failed to complete the work or paid liquidated damages; (x) a certificate of eligibility issued by  
565 the division pursuant to section 44D of chapter 149 of the General Laws showing the  
566 construction manager at-risk firm's capacity rating and an update statement; and (xi) any other  
567 relevant information that the division determines desirable. The statement of qualifications shall  
568 be signed under pains and penalties of perjury.

569 (6) The public notice and solicitation required in paragraph (4) shall be advertised in the  
570 central register pursuant to section 20A of chapter 9, and within the Compass system not less  
571 than 2 weeks before the deadline for submitting responses to the RFQ.

572 (7) Upon receipt of the statement of qualifications submitted by construction  
573 management at-risk firms, the prequalification committee established by paragraph (3) shall  
574 evaluate each statement of qualifications using the criteria provided in the RFQ. Only  
575 construction management at risk firms achieving an acceptable rating as defined by clause (iv) of  
576 paragraph (4) will be selected for inclusion on the standing list.

577 (c) (1) Before issuing a RFP, the division or other public awarding authority authorized  
578 under subsection (b) shall establish a selection committee for the purpose of reviewing and  
579 evaluating responses submitted to the RFP issued pursuant to paragraph (2) of this subsection.  
580 The selection committee shall be comprised of 1 representative of the designer, the owner's  
581 project manager and at least 2 representatives of the division or other public awarding authority  
582 authorized under said subsection (b).

583 (2) The division or any other public awarding authority authorized in subsection (b), shall  
584 issue an RFP to all construction management at-risk firms that have been prequalified by the  
585 division in accordance with said subsection (b) and who have a division certificate of eligibility  
586 indicating sufficient single project and aggregate limits for the project. RFPs issued under this  
587 section shall follow the procedure set forth in subsections (b) to (e), inclusive, of section 6 of  
588 chapter 149A of the General Laws.

589 SECTION 26. Notwithstanding section 7 of chapter 149A of the General Laws, under  
590 special circumstances, when unique project requirements and circumstances warrant, public

591 agencies may include an additional incentive clause with the contract providing for payment of  
592 an increased incentive of up to an additional ½ of 1 per cent; provided, however, that even under  
593 special circumstances, the total incentive payments to the construction management at risk firm  
594 shall not exceed 1 and ½ per cent of the estimated construction cost; provided, further, that the  
595 only contracts eligible for such additional incentive payments shall be contracts that are funded  
596 in whole or in part through the American Recovery and Reinvestment Act of 2009.

597 SECTION 27. (a) Subsection (d) of section 8 of chapter 149A of the General Laws shall  
598 not apply to contracts which are funded in whole or in part by the American Recovery and  
599 Reinvestment Act of 2009; provided, however, that this section shall apply.

600 (b) The public notice and solicitation required in subsection (c) of said section 8 of said  
601 chapter 149A shall be advertised in the central register under section 20A of chapter 9 of the  
602 General Laws and within the Compass system not less than 2 weeks before the deadline for  
603 submitting responses to the request for qualifications.

604 SECTION 28. (a) Subsection (b) of section 17 of chapter 149A of the General Laws  
605 shall not apply to contracts which are funded in whole or in part by the American Recovery and  
606 Reinvestment Act of 2009; provided, however, that this section shall apply.

607 (b) The public notice and solicitation required in subsection (a) of said section 17 of said  
608 chapter 149 shall be advertised either within the Compass system and in the central register  
609 established pursuant to section 20A of chapter 9 of the General Laws not less than 2 weeks  
610 before the deadline for submitting the letters of interest or, if the public notice and solicitation  
611 are not given within the Compass system, the public notice and solicitation shall be advertised in  
612 the central register not less than 2 weeks before the deadline for submitting the letters of interest.

613 SECTION 29. Notwithstanding section 53A of chapter 151A of the General Laws,  
614 moneys credited with respect to the special transfer made pursuant to subsection (g) of section  
615 903 of the Social Security Act shall be used solely for the purposes specified in said section 903  
616 and shall not be subject to appropriation.

617 SECTION 30. Notwithstanding any general or special law to the contrary, for the  
618 purpose of accommodating timing discrepancies between the receipt of revenues and related  
619 expenditures, a department may receive funds from the federal government related to the  
620 American Recovery and Reinvestment Act of 2009. The comptroller may authorize  
621 encumbrances and expenditures by a department in anticipation of the department's receipt of  
622 those funds; provided, however, that the department head shall certify that accounts will not be  
623 in deficit at the end of a fiscal year. The comptroller may establish accounts based on the  
624 provisions of section 6B of chapter 29 of the General Laws.

625 SECTION 31. Notwithstanding any general or special law to the contrary, should a  
626 matching funds requirement exist with respect to the receipt of any funds from the federal  
627 government related to the American Recovery and Reinvestment Act of 2009, the department  
628 that is applying for such funds shall notify the secretary of the executive office for administration  
629 and finance, in this section called the secretary, of the matching fund requirement. The secretary  
630 shall direct the state comptroller to establish matching accounts and to allow expenditure of  
631 funds in the accounts without further appropriation. The secretary shall also notify the joint  
632 committee on veterans and federal affairs and the house and senate committees on ways and  
633 means of such action. The accounts shall be established in the General Federal Grants Fund  
634 established in section 2C of chapter 29 of the General Laws, the Federal Highway Construction  
635 Program Fund established in section 2E of said chapter 29, or any other fund as the state

636 comptroller deems necessary to fulfill the terms and conditions of the American Recovery and  
637 Reinvestment Act of 2009.

638 SECTION 32. Notwithstanding any general or special law to the contrary, the secretary  
639 of the executive office for administration and finance, in this section called the secretary, may  
640 authorize accounts to receive federal funds from the American Recovery and Reinvestment Act  
641 of 2009. To the extent allowed by federal law, the secretary may transfer such funds to other  
642 central service agencies charged with implementation of the federal act and incur expenditures  
643 for charges related to the administrative costs of the federal act and to ensure that the  
644 commonwealth meets the efficient administration and statewide accountability requirements in  
645 the federal act. Notwithstanding any general or special law to the contrary, for the purpose of  
646 accommodating timing discrepancies between the receipt of revenues and related expenditures,  
647 the secretary may incur expenses and the state comptroller shall certify for payments amounts  
648 not to exceed the lesser of  $\frac{1}{2}$  of the authorization or the most recent revenue estimate therefor or  
649 as otherwise authorized by the secretary. The accounts may receive federal funds recovered  
650 from the American Recovery and Reinvestment Act of 2009 in accordance with section 6B of  
651 chapter 29 of the General Laws or any other general or special law. The recoveries shall be  
652 based on rates approved in accordance with the federal office of management and budget circular  
653 A-87 or any other guidance issued by the office of management and budget applicable to federal  
654 funds provided under the American Recovery and Reinvestment Act of 2009.

655 SECTION 33. (a) Notwithstanding any general or special law to the contrary, the  
656 following requirements shall apply to any public works project funded by the American  
657 Recovery and Reinvestment Act of 2009 where the amount of construction costs under any  
658 contract awarded is likely to exceed \$1,000,000. For the purposes of this section, “public works”

659 shall mean building or work the construction of which is carried on by authority of the  
660 commonwealth, or by a county, town, authority or district, or with funds of a federal agency or  
661 the commonwealth or a county, city, town, authority or district to serve the interest of the general  
662 public, regardless of whether title thereof is in the commonwealth or in a county, city, town,  
663 authority or district; provided, however, that for the purposes of this definition, “construction”  
664 shall have the meaning provided in section 27D of chapter 149 of the General Laws.

665 (b) For any public works project subject to subsection (a), the specifications set forth in  
666 any request for responses shall include a requirement that, on a per project basis, not less than 15  
667 per cent of the total hours of employees receiving an hourly wage who are directly employed on  
668 the site of the project, employed by the contractor or a subcontractor and subject to the prevailing  
669 wage, shall be performed by apprentices in bona fide apprentice training programs as provided in  
670 sections 11H and 11I of chapter 23 of the General Laws which are approved by the division of  
671 apprentice training in the executive office of labor and workforce development.

672 (c) During the performance of a public works project subject to subsections (a) and (b),  
673 the contractor shall submit periodic reports to the awarding authority with records indicating the  
674 total hours worked by all journeymen and apprentices in positions subject to the apprentice  
675 requirement. In any instance in which the apprentice hours do not constitute 5 per cent of the  
676 total hours of employees subject to the apprentice requirement, the contractor shall submit a plan  
677 to the awarding authority describing how the contractor shall comply with the apprentice  
678 requirement.

679 (d) The attorney general shall have all the necessary powers to require compliance with  
680 the requirements of subsections (a), (b) and (c) therewith including the power to institute and

681 prosecute proceedings in the superior court to restrain the award of contracts and the  
682 performance of contracts. Prior to award of the contract, an awarding authority may petition the  
683 attorney general for approval to adjust the requirements set forth in subsections (a), (b), and (c).  
684 The attorney general may adjust these requirements only if he determines that compliance with  
685 these requirements is not feasible or if application of the requirements would be preempted by  
686 federal law.

687 (e) An awarding authority serving a low-income population may require additional  
688 specifications that address the needs of its clients including, but not limited to, preferential hiring  
689 for residents of public housing authorities for available apprenticeship positions.

690 (f) Subject to appropriation, the division of apprentice training shall enhance its outreach  
691 efforts to underserved populations in order to increase and diversify the number of apprentices in  
692 the commonwealth.

693 SECTION 34. Notwithstanding any general or special law to the contrary, employees  
694 who are hired to perform work related to the American Recovery and Reinvestment Act of 2009  
695 funded by the federal government shall be scheduled in accounts set up solely for the purpose of  
696 the American Recovery and Reinvestment Act of 2009. No expenditures of an employee  
697 scheduled in an item of appropriation established by the federal act shall be charged to any other  
698 item of appropriation and no expenditures of employees in any other item of appropriation shall  
699 be charged to an account under the federal act and the state comptroller shall not permit the  
700 transfers or charges unless otherwise approved by the secretary of the executive office for  
701 administration and finance. Positions funded by the American Recovery and Reinvestment Act  
702 of 2009 shall be eliminated once the funding ends.



703 SECTION 35. Notwithstanding any general or special law to the contrary, an employee  
704 hired by the commonwealth and paid from federal funds provided pursuant to the American  
705 Recovery and Reinvestment Act of 2009 shall not be subject to chapters 30 and 31 of the  
706 General Laws.

707 SECTION 36. (a) As used in this section, the following terms shall, unless the context  
708 indicates otherwise, have the following meaning: -

709 “Disadvantaged business enterprise”, shall have the same meaning as the term is defined  
710 in 49 CFR 26.5.

711 “Minority business enterprise”, shall have the same meaning as the term is defined in  
712 section 40 of chapter 23A of the General Laws.

713 “Secretary”, the secretary of the executive office for administration and finance.

714 “Women business enterprise”, shall have the same meaning as the term is defined in said  
715 section 40 of said chapter 23A.

716 (b) Notwithstanding any general or special law to the contrary, the secretary may  
717 implement a technical assistance and capacity building pilot program applicable solely to  
718 projects funded in whole or in part by the American Recovery and Reinvestment Act of 2009.  
719 The purpose of the technical assistance and capacity building program shall be to promote,  
720 encourage and otherwise facilitate full participation of minority and women business enterprises  
721 and disadvantaged business enterprises, and other small businesses in public construction and  
722 public works projects undertaken as part of the federal economic recovery effort and funded in  
723 whole or in part by the American Recovery and Reinvestment Act of 2009.

724 (c) The secretary shall promulgate rules, regulations or guidelines relative to the  
725 implementation and administration of the technical assistance and capacity building pilot  
726 program established in subsection (b).

727 (d) No later than 6 months after the conclusion of the provision of technical assistance  
728 and capacity building services provided pursuant to subsection (b), the secretary shall provide a  
729 written report to the governor and the joint committee on community development and small  
730 business on the provision of the services and performance outcomes relative thereto. The report  
731 shall include recommendations as to how the commonwealth may best facilitate the continued  
732 inclusion of minority and women business enterprises, disadvantaged business enterprises and  
733 small businesses in future public construction and public works projects.

734 SECTION 37. Notwithstanding any general or special law to the contrary, the assistant  
735 secretary for access and opportunity is hereby authorized and directed to undertake a  
736 comprehensive study regarding the challenges and barriers faced by owners of small businesses,  
737 including owners of minority and women business enterprises in accessing and obtaining  
738 working capital and debt financing. Said comprehensive study shall include, but not limited to,  
739 investigating the viability of implementing a short term loan program similar to that administered  
740 by the United States Department of Transportation's Office of Small and Disadvantaged  
741 Business Utilization. In undertaking the comprehensive study, the assistant secretary for access  
742 and opportunity shall consult the director of the office of small business and entrepreneurship,  
743 the director of the state office of minority and women business assistance and any other state  
744 agency or program whose mission is to assist small businesses, minority or women business  
745 enterprises. Said assistant secretary for access and opportunity shall report the results of his  
746 investigation and study and his recommendations, if any, together with drafts of legislation

747 necessary to carry his recommendations into effect to the governor, the secretary of the executive  
748 office for administration and finance and by filing the same with the clerks of the house of  
749 representatives and the senate, who shall forward the same to the house and senate committees  
750 on ways and means and the joint committee on community development and small business on  
751 or before October 1, 2009.

752 SECTION 38. (a) Notwithstanding any general or special law to the contrary and solely  
753 for the purposes of implementing public building and public works projects funded in whole or  
754 in part by the American Recovery and Reinvestment Act of 2009 while facilitating the  
755 involvement of small contractors, including minority and women contractors, the Massachusetts  
756 community development finance corporation may establish a contractor surety bond guarantee  
757 program pursuant to this section.

758 (b) As used in this section the following words shall have the following meanings unless  
759 the context clearly requires otherwise:-

760 “Bid bond”, a bond conditioned upon the bidder on a contract entering into the contract,  
761 if he receives the award thereof, and furnishing the prescribed payment bond and performance  
762 bond.

763 “Corporation”, the Massachusetts community development finance corporation.

764 “Eligible contractor”, a small contractor, a minority contractor or a woman contractor.

765 “Minority contractor”, a person who performs as a prime contractor or general contractor  
766 or as a subcontractor on a contract funded in whole or in part by the American Recovery and

767 Reinvestment Act of 2009 and is a minority business enterprise as such term is defined in section  
768 40 of chapter 23A of the General Laws.

769 “Obligee”, (i) in the case of a bid bond, the public agency requesting bids for the  
770 performance of a contract; or (ii) in the case of a payment bond or performance bond, the public  
771 agency that has contracted with a principal for the completion of the contract and to whom the  
772 obligation of the surety runs in the event of a breach by the principal of the conditions of a  
773 payment bond or performance bond.

774 “Payment bond”, a bond conditioned upon the payment by the principal of money to  
775 persons under contract with him.

776 “Performance bond”, a bond conditioned upon the completion by the principal of a  
777 contract in accordance with its terms.

778 “Person”, a natural person, business, partnership, corporation or other legal form.

779 “Prime contractor” or “general contractor”, the person with whom the obligee has  
780 contracted to perform a contract funded in whole or in part by the American Recovery and  
781 Reinvestment Act of 2009.

782 “Principal”, (i) in the case of a bid bond, a person bidding for the award of a contract; or  
783 (ii) the person primarily liable to complete a contract for the obligee or to make payments to  
784 other persons in respect of such contract and for whose performance of his obligation the surety  
785 is bound under the terms of a payment or performance bond; provided, however, that a principal  
786 may be a prime contractor, general contractor or a subcontractor.

787 “Small contractor”, a person who performs as a prime contractor, general contractor or  
788 subcontractor on a contract funded in whole or in part by the American Recovery and  
789 Reinvestment Act of 2009 and whose average annual gross revenue is \$5,000,000 or less per  
790 year for the most recent 2 fiscal years.

791 “Subcontractor”, a person who has contracted with a prime contractor, general contractor  
792 or another subcontractor to perform a contract funded in whole or in part by the American  
793 Recovery and Reinvestment Act of 2009.

794 “Surety”, a surety company licensed to do business in the commonwealth and whose  
795 name appears on United States Treasury Department Circular 570 and who: (i) under the terms  
796 of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal  
797 breaches the conditions of the bond; (ii) under the terms of a performance bond, undertakes to  
798 incur the cost of fulfilling the terms of a contract in the event the principal breaches the  
799 conditions of the contract; (iii) under the terms of a payment bond, undertakes to make payment  
800 to all persons supplying labor and material in the prosecution of the work provided for in the  
801 contract if the principal fails to make prompt payment; or (iv) is an agent, independent agent,  
802 underwriter or any other company or individual empowered to act on behalf of such company.

803 “Woman contractor”, a person who performs as a prime contractor, general contractor or  
804 as a subcontractor on a contract funded in whole or in part by the American Recovery and  
805 Reinvestment Act of 2009 and is a woman business enterprise as that term is defined in section  
806 40 of chapter 23A of the General Laws.

807 (c) The corporation may establish a contractor surety bond guarantee program and may,  
808 upon such terms and conditions as it may prescribe, guarantee and enter into commitments to

809 guarantee a surety against loss resulting from a breach of the terms of a bid bond, payment bond,  
810 performance bond or bonds ancillary thereto, by a principal on any total work order or contract  
811 amount at the time of bond execution that does not exceed \$250,000. No such guarantee may be  
812 issued, unless:

813 (i) the person who would be principal under the bond is an eligible contractor;

814 (ii) the bond is required in order for such person to bid on a contract or to serve as a  
815 prime contractor, general contractor or subcontractor on a contract;

816 (iii) such person is not able to obtain such bond on reasonable terms and conditions  
817 without a guarantee under this section; and

818 (iv) there is a reasonable expectation that such principal will perform the covenants and  
819 conditions of the contract with respect to which such bond is required and the terms and  
820 conditions of such bond are reasonable in the light of the risks involved and the extent of the  
821 surety's participation.

822 The corporation shall administer the contractor surety bond guarantee program on a  
823 prudent and economically-justifiable basis and establish such fees for eligible contractors and  
824 premiums for sureties as it deems reasonable and necessary, to be payable at such time and under  
825 such conditions as may be determined by the corporation.

826 The corporation, as guarantor, may exercise all of the rights and powers of a company  
827 authorized by the division of insurance to guarantee bonds pursuant to chapter 175 of the  
828 General Laws, but shall not otherwise be subject to any laws related to a guaranty company  
829 under said chapter 175 nor to any rules of the division of insurance.

830 (d) For purposes of this section, the corporation shall establish and maintain accounts,  
831 identified individually or collectively as the contractor surety bond guarantee fund which shall be  
832 kept separate from other corporate funds. The contractor surety bond guarantee fund shall  
833 consist of all monies deposited, credited or otherwise obtained pursuant to an appropriation or  
834 other allocation or assignment or grant of funds from the commonwealth; any grants, gifts and  
835 contributions received pursuant to section 3 of chapter 40F of the General Laws; all monies  
836 recovered following defaults; and any interest earned on monies within the accounts.

837 (e) The corporation may guarantee up to 90 per cent of the loss incurred and paid by a  
838 surety on bonds guaranteed under this section. Additionally, and subject to the provisions of this  
839 section, in connection with the issuance by the corporation of a guarantee to a surety as provided  
840 in subsection (c), the corporation may agree to indemnify the surety against a loss sustained by  
841 such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the  
842 corporation pursuant to said subsection (c); provided, however, that prior to making a payment  
843 under this subsection, the corporation shall first determine that a breach of the terms of the bond  
844 was imminent and the surety shall obtain written approval from the corporation prior to making  
845 any payments pursuant to this subsection.

846 (f) Pursuant to any such guarantee, the corporation shall reimburse the surety, as provided  
847 in subsection (e), except that the corporation shall be relieved of all liability if:

848 (i) the surety obtained such guarantee or agreement or applied for such reimbursement by  
849 fraud or material misrepresentation;

850 (ii) the total contract amount at the time of execution of the bond exceeds \$250,000; or

851 (iii) the surety has breached a material term or condition of such guarantee in the  
852 agreement.

853 SECTION 39. Any entity located in the commonwealth that receives federal funds  
854 through the American Recovery and Reinvestment Act of 2009 shall provide information as  
855 directed by the secretary of the executive office for administration and finance, in this section  
856 called the secretary, regarding the use of the funds. The required information shall include, but  
857 not be limited to, the reporting information required by the federal government and any other  
858 information deemed necessary by the secretary to administer the American Recovery and  
859 Reinvestment Act of 2009 responsibly, efficiently and transparently. To the extent possible, the  
860 secretary shall work to streamline the reporting of this information, minimize duplication of data  
861 entry by recipients and ensure data consistency. The secretary may issue regulations to  
862 effectuate this reporting requirement.

863 SECTION 40. Employers and hiring agents on all projects funded in whole or in part by  
864 the American Recovery and Reinvestment Act of 2009 shall post notices of available  
865 employment opportunities to the commonwealth's job bank or the one-stop career centers closest  
866 to where the projects shall be located. The postings shall contain such information as directed by  
867 the secretary of the executive office of labor and workforce development. Said secretary may  
868 issue regulations to effectuate this job posting requirement.

869 SECTION 41. Notwithstanding any general or special law to the contrary, a carrier  
870 offering continuation coverage under a health benefit plan issued pursuant to chapter 176J of the  
871 General Laws to a qualified beneficiary eligible for the COBRA premium assistance benefit set  
872 forth in section 3001 of the American Recovery and Reinvestment Act of 2009 shall offer the



873 extended election period available therein to each qualified beneficiary who does not have an  
874 election of continuation coverage under a health benefit plan issued under said chapter 176J on  
875 the effective date of this act, but who would be an assistance-eligible individual under the  
876 American Recovery and Reinvestment Act if such election were in effect. Any such qualified  
877 beneficiary may elect such continuation coverage under said chapter 176J during the period  
878 beginning on the effective date of this act and ending 60 days after the date on which the  
879 notification required under this section is provided to such qualified beneficiary. Coverage  
880 elected in this extended election period shall commence with the first period of coverage  
881 beginning on or after the effective date of this act. For the purposes of this section, carriers or  
882 their designees shall comply with paragraph (5) of subsection (j) of section 9 of said chapter 176J  
883 and any applicable notice requirements under American Recovery and Retirement act of 2009,  
884 except that such notice shall be made within 60 days after the effective date of this act.

885 SECTION 42. The secretary of the executive office for administration and finance, in  
886 consultation with the state comptroller, shall submit comprehensive bi-monthly reports for a  
887 period of 3 years after the effective date of this act to the clerks of the senate and house of  
888 representatives who shall forward the same to the joint committee on federal stimulus oversight  
889 and the house and senate committees on ways and means on the programs, aid, grants and  
890 projects funded in whole or in part by the American Recovery and Reinvestment Act of 2009, in  
891 this section referred to as ARRA. The reports shall be posted on the commonwealth's official  
892 website. The reports shall include, but not be limited to:

893 (1) An accounting of all known or anticipated federal funding from ARRA that will be  
894 available for use by any public entity in fiscal years 2009, 2010 and 2011; provided, however,  
895 that the report shall delineate federal funding that may be used to supplant or supplement

896 general state appropriations in each fiscal year, with a further delineation between funding  
897 received as federal grants under section 6B of chapter 29 of the General Laws, funding received  
898 for public entities other than the commonwealth and funding received that is subject to further  
899 appropriation;

900 (2) An accounting of any funds collected or anticipated to be collected in fiscal years  
901 2009, 2010 and 2011 pursuant to an increase in the federal Medicaid assistance percentage rate  
902 pursuant to ARRA and the assumptions used in any future projections;

903 (3) A listing of grants of waiver issued under the provisions of ARRA;

904 (4) A listing of all competitive federal grants available under ARRA for which a state  
905 agency has filed an application; provided, however, that the report shall state the number of  
906 applications that have been accepted, the number that are still pending and the number that have  
907 been rejected and shall compare the number of accepted applications with no less than at least 10  
908 other states; and

909 (5) an accounting of the progress of all expenditures related to capital projects funded in  
910 whole or in part by ARRA; provided, however, that the report shall include, but not be limited to:  
911 the total amount allocated for each project, the total estimated cost of each project, the amount  
912 expended for the planning and design of each project up to the time the report is filed, the  
913 amount expended on construction of each project up to the time the report is filed, the total  
914 amount currently expended on each project, the estimated lifetime maintenance schedule and  
915 cost of each project, the original estimated completion date of each project, the current  
916 anticipated completion date of each project and, if the project has been de-authorized, the reason  
917 for and date of such de-authorization.

918 SECTION 43. The secretary of the executive office for administration and finance or the  
919 applicable state agency applying for funds through the American Recovery and Reinvestment  
920 Act of 2009 shall file with the house and senate committees on ways and means and the joint  
921 committee on federal stimulus oversight copies of all state applications requesting funding  
922 concurrently with submission of the application to the federal government. The secretary or the  
923 applicable state agency shall also inform the house and senate committees on ways and means  
924 and the joint committee on federal stimulus oversight in writing of the amount of funds to be  
925 allocated and the location of where funds shall be deposited as soon as notification from the  
926 federal government on each award is received.

927 SECTION 43A. There shall be a federal stimulus mobilization study commission that  
928 shall perform a review of the procedures required by this act and the potential benefits of the  
929 application of those procedures to all contracts awarded by the commonwealth. Said review shall  
930 include a review of the regulatory processes impacted by this act. The commission shall be  
931 comprised of 11 members: 3 of whom shall be appointed by the speaker of the house of  
932 representatives; 3 of whom shall be appointed by the senate president; 1 of whom shall be  
933 appointed by the house minority leader; 1 of whom shall be appointed by the senate minority  
934 leader; and the secretary of administration and finance, or his designee. None of the above  
935 appointments to the commission shall be members of the general court.

936 The commission shall report to the general court of its findings annually on or before July  
937 1 beginning in fiscal year 2011 and ending with a final report in the fiscal year immediately  
938 following the complete disbursement of funds received from the American Reinvestment and  
939 Recovery Act of 2009 detailing the results of its investigation and study and recommendations, if

940 any, together with drafts of legislation necessary to carry out its recommendations into effect by  
941 filing the same with the clerks of the senate and the house of representatives.

942 SECTION 44. Sections 4 to 11, inclusive, sections 14 to 28, inclusive and section 33  
943 shall apply only to contracts advertised after the effective date of this act.