

HOUSE No. 4185

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act MAKING TECHNICAL CORRECTIONS TO THE PUBLIC CONSTRUCTION REFORM LAW..

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

1 Section 38H of chapter 7 of the General Laws as appearing in the 2008 Official edition is
2 hereby amended by inserting after the word “towns”, in line 88, the following words:-

3 , subject to the provisions of section 44A1/2 of chapter 149,

4 SECTION 2. Subsection (a) of section 40N of chapter 7 of the General Laws, as so
5 appearing, is hereby amended by striking clause (2) and inserting in place thereof the following
6 clause:-

7 (2) and in 1994, the executive office of transportation and construction and in 1996 the
8 division of capital planning and operations produced disparity studies which documented a
9 history of discrimination against minority and women owned businesses, in which the
10 commonwealth's agencies were participants;

11 SECTION 3. Subsection (b) of said section 40N of said chapter 7 of the General Laws,
12 as so appearing, is hereby amended by striking the definition of “minority-owned business” and
13 inserting in place thereof the following definition:-

14 “Minority-owned business”, any contracting or subcontracting business, or a business
15 that provides construction materials, equipment or supplies to contractors and subcontractors,
16 which is beneficially owned by one or more minority persons as follows:

17 (i) the business must be at least 51 percent owned by minority persons; in the case of a
18 corporation having more than one class of stockholders, the ownership requirement must be met
19 as to each class of stock;

20 (ii) the minority owners shall demonstrate that they have dominant control over
21 management;

22 (iii) the business has not been established solely for the purpose of taking advantage of a
23 special program which has been developed to assist minority businesses;

24 (iv) in the case of a joint venture between a minority business meeting the requirements
25 of clauses (i) to (iii), inclusive, and a non-minority business, the joint venture shall be found to
26 be a minority business if the minority business meeting the requirements of said clauses (i) to
27 (iii), inclusive, shall have more than one-half control over management of the project bid upon
28 and shall have the right to receive more than one-half of the profits deriving from that project.

29 SECTION 4. Said subsection (b) of said section 40N of said chapter 7 of the General
30 Laws, as so appearing, is hereby amended by striking the definition “women-owned business”
31 and inserting in place thereof the following definition:-

32 "Women-owned business", any contracting or subcontracting business or a business that
33 provides construction materials, equipment or supplies to contractors or subcontractors which is
34 beneficially owned by one or more women meeting the requirements set forth in clauses (i) to
35 (iv), inclusive, of the definition of minority-owned business in this section, except that the terms
36 "women", "women owners", and "women-owned business", shall be substituted for the terms
37 "minority" and "minority persons", "minority owners", and "minority business" appearing in said
38 definition.

39 SECTION 5. Subsection (d) of said section 40N of said chapter 7 of the General Laws, as
40 so appearing, is hereby amended by striking, in line 101, the word "establish" and inserting in
41 place thereof the following word:- publish

42 SECTION 6. Section 44 of chapter 23A of the General Laws, as so appearing, is hereby
43 amended by striking out, in line 123, the words "capital facility" and inserting in place thereof
44 the following words:- state assisted building

45 SECTION 7. Subsection (a) of section 39M of chapter 30 of the General Laws, as so
46 appearing, is hereby amended by inserting after the third paragraph the following paragraph:-

47 For cases involving security sensitive information as defined by sub-clause (n) of clause
48 Twenty-sixth of section 7 of chapter 4 and in order to maintain the confidentiality of security
49 sensitive information, the awarding authority may, with prior approval of the commissioner,
50 implement a prequalification process whereby the awarding authority selects a final list of a
51 minimum of 3 general contractors who are eligible to submit bids and the awarding authority
52 may award a contract to the lowest bidder amongst the final list of bidders. The commissioner of

53 the division of capital asset management and maintenance shall promulgate regulations to
54 implement this paragraph.

55 SECTION 8. Section 44A of chapter 149 of the General Laws, as so appearing, is hereby
56 amended by striking out subsection (2) and inserting in place thereof the following subsection:-

57 (2)(A) Every procurement for the construction, reconstruction, installation, demolition,
58 maintenance or repair of any building by a public agency estimated to cost less than \$5,000 shall
59 be obtained through the exercise of sound business practices. The public agency shall make and
60 keep a record of each such procurement. Said record shall, at a minimum, include the name and
61 address of the person from whom the services were procured. Written price quotations submitted
62 in accordance with this subsection do not require bid deposits.

63 (B) Every contract for the construction, reconstruction, installation, demolition,
64 maintenance or repair of any building by a public agency estimated to cost not less than \$5,000
65 but less than \$10,000 shall be awarded to the responsible person offering to perform the contract
66 at the lowest price quotation; provided, however, that the public agency shall seek written price
67 quotations from no fewer than 3 persons customarily providing the work for which the contract
68 is being made available. When seeking written quotations the public agency shall make and keep
69 a record of the names and addresses of all persons from whom price quotations were sought, the
70 names of the persons submitting price quotations and the date and amount of each price
71 quotation. Written price quotations submitted in accordance with this subsection do not require
72 bid deposits.

73 (C) Every contract for the construction, reconstruction, installation, demolition,
74 maintenance or repair of any building estimated to cost not less than \$10,000 but not more than

75 \$25,000 shall be awarded to the responsible person offering to perform the contract at the lowest
76 price. The public agency shall make public notification of the contract and shall seek written
77 responses from persons who customarily perform such work. The public notification shall
78 include a scope of work statement that defines the work to be performed and provides potential
79 responders with sufficient information regarding the objectives and requirements of the public
80 agency and the time period within which the work is to be completed. For purposes of this
81 subsection "public notification" shall include, but not be limited to, posting, no less than 2 weeks
82 before the time specified in the notification for the receipt of responses, the contract and scope of
83 work statement on the website of the public agency and, either on the COMPASS system, so-
84 called, or in the central register established under section 20A of chapter 9, and in a conspicuous
85 place in or near the primary office of the public agency. Written price quotations submitted in
86 accordance with this subsection do not require bid deposits.

87 (D) Every contract for the construction, reconstruction, installation, demolition,
88 maintenance or repair of any building by a public agency estimated to cost more than \$25,000
89 but not more than \$100,000 shall be awarded to the lowest responsible and eligible bidder on the
90 basis of competitive bids publicly opened and read in accordance with the procedure set forth in
91 said section 39M of said chapter 30. The term "pumping station" as used in this section shall
92 mean a building or other structure which houses solely pumps and appurtenant electrical and
93 plumbing fixtures.

94 (E) Every contract for the construction, reconstruction, installation, demolition,
95 maintenance or repair of any building by a public agency estimated to cost more than \$100,000,
96 except for a pumping station to be constructed, reconstructed, installed, demolished, maintained
97 or repaired as an integral part of a sewer construction or water construction project bid under the

98 provisions of section 39M of chapter 30, shall be awarded to the lowest responsible and eligible
99 general bidder on the basis of competitive bids in accordance with the procedure set forth in
100 section 44A to 44H, inclusive.

101 (F) When the General Court has approved the use of an alternative mode of procurement
102 of construction for a project pursuant to section 7E of chapter 29, the awarding authority
103 responsible for procuring construction services for the project shall follow the policies and
104 procedures of this section and of section 44B to 44H, inclusive, to the extent compatible with the
105 mode of construction procurement selected.

106 (G) Notwithstanding paragraph (E), a public agency may undertake the procurement of
107 modular buildings, in accordance with section 44E. A public agency may procure site work for
108 modular buildings, including but not limited to, construction of foundations, installations, and
109 attachment to external utilities, or any portion of site work, either in combination with the
110 procurement of modular buildings pursuant to section 44E or on the basis of competitive bids
111 pursuant to paragraph (E). Notwithstanding the paragraph (E), a public agency may procure
112 energy management services in accordance with section 11C of chapter 25A and regulations
113 promulgated thereunder.

114 SECTION 9. Said section 44A of said chapter 149 of the General Laws, as so appearing,
115 is hereby further amended by inserting after subsection (4) the following new subsection:-

116 (4A) For projects involving security sensitive information as defined by sub-clause (n) of
117 clause Twenty-sixth of section 7 of chapter 4 and in order to maintain the confidentiality of
118 security sensitive information, the awarding authority may, with prior approval of the
119 commissioner of the division of capital asset management and maintenance, implement a

120 prequalification process whereby the awarding authority selects a final list of a minimum of 3
121 general contractors who are eligible to submit bids and the awarding authority may award a
122 contract to the lowest bidder amongst the final list of bidders. The commissioner of the division
123 of capital asset management and maintenance shall promulgate regulations to implement this
124 paragraph.

125 SECTION 10. Section 44A½ of said chapter 149 of the General Laws, as so appearing,
126 is hereby amended by striking out paragraph (a) and inserting in place thereof the following new
127 paragraph:-

128 (a) A public agency, before entering into a contract for design services, except for
129 services relating exclusively to preparation of master plans, studies, surveys, soil tests, cost
130 estimates, or programs, pursuant to section 38D or section 38K of chapter 7, shall contract for
131 the services of an owner's project manager to serve as the public agency's agent and consultant
132 during the planning, design and implementation of a contract for the construction, reconstruction,
133 installation, demolition, maintenance or repair of any building by the public agency estimated to
134 cost not less than \$1,500,000. The duties of the owner's project manager shall include, but need
135 not be limited to: providing advice and consultation with respect to design, value engineering,
136 scope of the work, cost estimating, general contractor and subcontractor prequalification,
137 pursuant to section 44D1/2 or 44D3/4 when applicable, scheduling, construction and the
138 selection, negotiation with and oversight of a designer and a general contractor for the project,
139 ensuring the preparation of time schedules which shall serve as control standards for monitoring
140 performance of the building project, and assisting in project evaluation including, but not limited
141 to, written evaluations of the performance of the design professional, contractors, and
142 subcontractors. For the purposes of this subsection, the term "owner's project manager" shall

143 mean a person, corporation, partnership, sole proprietorship, joint stock company, joint venture,
144 or other entity engaged in the practice of providing project management services for the
145 construction and supervision of construction of buildings. The owner's project manager shall be a
146 person, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other
147 entity registered by the commonwealth as an architect or professional engineer and who has at
148 least 5 years of relevant experience in the construction and supervision of construction of
149 buildings or, if not registered as an architect or professional engineer, a person, corporation,
150 partnership, sole proprietorship, joint stock company, joint venture, or other entity who has at
151 least 7 years relevant experience in the construction and supervision of construction of buildings.
152 The owner's project manager shall be independent of the designer, general contractor or any sub-
153 contractor involved in the building project.

154 SECTION 11. Section 44D of said chapter 149 of the General Laws, as so appearing, is
155 hereby amended by striking out subsection (16) and inserting in place thereof the following
156 subsection:-

157 (16) The division of capital asset management and maintenance shall develop a standard
158 subcontractor evaluation form that shall be completed by every public agency as defined in
159 section 44A, upon completion of a building project under its control, and submitted to the
160 division for the subcontractor's qualification file. The official from the public agency, or the
161 owner's representative, shall certify that the information contained on the subcontractor
162 evaluation form represents, to the best of his knowledge, a true and accurate analysis of the
163 subcontractor's performance record on that contract. The public agency shall mail a copy of the
164 subcontractor evaluation form to the subcontractor and the subcontractor shall, within 30 days,
165 submit a written response to the division disputing any information contained in the evaluation

166 form and setting forth any additional information concerning the building project or the oversight
167 of the contract that may be relevant to the evaluation of the subcontractor's performance on the
168 contract. The division shall attach any such response to the evaluation form for inclusion in the
169 subcontractor's qualification file. No person shall be liable for any injury or loss to a
170 subcontractor as a result of the completion of a subcontractor evaluation form as required by this
171 section unless the individual completing the form has been found by a court of competent
172 jurisdiction to have acted in a willful, wanton or reckless manner. If a suit is commenced by a
173 subcontractor against a public employee, an owner's representative, an architect or an engineer
174 who has completed a subcontractor evaluation form as required by this section seeking to recover
175 damages resulting from injury caused by such evaluation, the public agency for whom the
176 evaluation form was completed, or the commonwealth if the evaluation was completed for a state
177 agency, shall provide for the legal representation of the employee, owner's representative,
178 architect or engineer. The public agency, or the commonwealth, shall also indemnify the person
179 from all financial loss and expenses, including but not limited to legal fees and filing costs, in an
180 amount not to exceed \$1,000,000. No person shall be indemnified for losses other than legal fees
181 and filing costs under this section if the person is found by a court or a jury to have acted in a
182 willful, wanton or reckless manner.

183 Evaluations, including any responses submitted by the subcontractor, submitted to the
184 division pursuant to this subsection shall be a public record as defined in section 7 of chapter 4.

185 Any public agency that fails to complete and submit the subcontractor evaluation form,
186 together with any written response by any subcontractor, to the division within 90 days of the
187 completion of a project shall be ineligible to receive any public funds disbursed by the
188 commonwealth for the purposes of any public buildings or public works projects.

189 SECTION 12. Subsections (8) and (9), inclusive, of said section 44D of said chapter 149
190 are hereby repealed.

191 SECTION 13. Subsection (a) Section 44D1/2 of said chapter 149 of the General Laws,
192 as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 6, the words
193 “not less” and inserting in place thereof the following words:- more

194 SECTION 14. Subsection (b) of said section 44D1/2 of said chapter 149 is hereby
195 further amended by striking out clause (2).

196 SECTION 15. Paragraph (c) of said section 44D1/2 of said chapter 149 of the General
197 Laws, as so appearing, is hereby further amended by, inserting after the word “authority”, in line
198 35, the following words:- , as designated by the awarding authority

199 SECTION 16. Said section 44D1/2 of said chapter 149 of the General Laws, as so
200 appearing, is hereby further amended by striking out, in line 89, the second time they appear, the
201 words “evidence of”

202 SECTION 17. Said section 44D1/2 of said chapter 149 of the General Laws, as so
203 appearing, is hereby further amended by striking out, in line 94, the words “References from”
204 and inserting in place thereof the following words:- Provide a list of

205 SECTION 18. Said section 44D1/2 of said chapter 149 of the General Laws, as so
206 appearing, is hereby further amended by striking out, in line 98, the letter “A” and inserting in
207 place thereof the following words:- Provide a list of a

208 SECTION 19. Said section 44D1/2 of said chapter 149 of the General Laws, as so
209 appearing, is hereby further amended by striking out, in line 118, the word “an” and inserting in
210 place thereof the following words:- a completed

211 SECTION 20. Said section 44D 1/2 of said chapter 149 of the General Laws, as so
212 appearing, is hereby amended by striking out, in lines 156 to 157, inclusive, the words: , “invite
213 general bids pursuant to sections 44B to 44E, inclusive,” and inserting in place thereof the
214 following words:- or invite general bids, without further prequalification, pursuant to sections
215 44A to 44J, inclusive, with the exception of 44D1/2 and 44D3/4;

216 SECTION 21. Said section 44D 1/2 of said chapter 149 of the General Laws, as so
217 appearing, is hereby amended by striking out, in lines 164 to 166, inclusive, the words: , “invite
218 general bids pursuant to sections 44B to 44E, inclusive, without further prequalification” and
219 inserting in place thereof the following words:- or invite general bids, without further
220 prequalification, pursuant to sections 44A to 44J, inclusive, with the exception of 44D1/2 and
221 44D3/4;

222 SECTION 22. Section 44D3/4 of said chapter 149 of the General Laws, as so appearing,
223 is hereby amended by striking out subsection (a) and inserting in place thereof the following
224 subsection:-

225 (a) Notwithstanding section 44E, an awarding authority on contracts subject to section
226 44A and which are estimated to cost not less than \$10,000,000 shall prequalify subcontractors to
227 submit sub-bids in accordance with the provisions of subsections (a) to (j), inclusive; provided,
228 that on such contracts subject to section 44A and which are estimated to cost more than \$100,000
229 but not more than \$10,000,000, an awarding authority may elect to prequalify subcontractors to

230 submit sub-bids in accordance with subsections (a) to (j), inclusive. The prequalification process
231 shall be for all sub-bid classes of work listed in subsection (1) of section 44F that meet or exceed
232 the threshold value for sub-bid work of said subsection (1) of said section 44F. When
233 prequalifying the subcontractors, the awarding authority shall initiate said prequalification
234 through the solicitation of responses to a request for qualifications pursuant to subsection (d) of
235 this section.

236 SECTION 23. Subsection (c) of section 44D3/4 of said chapter 149 of the General Laws,
237 as so appearing, is hereby amended by inserting after the word “authority”, in line 27, the
238 following words:- , as designated by the awarding authority

239 SECTION 24. Clause (2) of subsection (e) of said section 44D3/4 of said chapter 149 of
240 the General Laws, as so appearing, is hereby amended by striking out subclauses (i) and (ii) and
241 inserting in place thereof the following:-

242 (i) Project references, Provide a list of owners, architects and general contractors for all
243 projects listed in clause (iii) of paragraph (1), including project names and the names of the
244 owners, architects and general contractors, with address, telephone and fax number, and contact
245 person for each.

246 (ii) Credit references, Provide a list of a minimum of five credit references, including the
247 telephone and fax number of contact person from key suppliers, vendors and banks.

248 SECTION 25. Said subsection (e) of said chapter 44D3/4 of said chapter 149 of the
249 General Laws, as so appearing, is hereby amended by striking out clause (4) and inserting in
250 place thereof the following:-

251 (4) Mandatory requirements, for which no points are assigned:

252 (i) A commitment letter for payment and performance bonds at 100 percent of the
253 estimated contract value from a surety company licensed to do business in the commonwealth
254 and whose name appears on United States Treasury Department Circular 570. The cost for such
255 payment and performance bonds shall be paid by the sub-bidder and included in any sub-bid
256 price submitted following prequalification.

257 (ii) As of January 1, 2006, subcontractors seeking prequalification by an awarding
258 authority for a particular project shall be required to submit to the awarding authority a copy of
259 the certificate of eligibility issued by the division of capital asset management and maintenance
260 along with a completed update statement.

261 SECTION 26. Said section 44D3/4 of said chapter 149 of the General Laws, as so
262 appearing, is hereby amended by striking out, in lines 148 to 149, inclusive, the words “, invite
263 filed sub-bids pursuant to sections 44B to 44E, inclusive, without further prequalification,” and
264 inserting in place thereof the following words:-; or invite filed sub bids, without further
265 prequalification, pursuant to sections 44A to 44J, inclusive, with the exception of sections
266 44D1/2 and 44D3/4;

267 SECTION 27. Said section 44D3/4 of said chapter 149 of the General Laws, as so
268 appearing, is hereby amended by striking out, in lines 156 to 157, inclusive, the words “, invite
269 filed sub-bids pursuant to said sections 44B to 44E, inclusive, without further prequalification,”
270 and inserting in place thereof the following words- ; or invite filed sub bids, without further
271 prequalification, pursuant to sections 44A to 44J, inclusive, with the exception of sections
272 44D1/2 and 44D3/4;

273 SECTION 28. Subsection (1) of section 44E of said chapter 149 of the General Laws, as
274 so appearing, is hereby amended by inserting after the first paragraph the following paragraphs:-

275 In inviting general bids, the awarding authority shall reserve the right to reject any or all
276 such general bids, if it is in the public interest to do so. In inviting sub-bids in connection with
277 such a contract, the awarding authority shall reserve the right to reject any sub-bid on any sub-
278 trade, if it determines that such sub-bid does not represent the sub-bid of a person competent to
279 perform the work as specified or that less than 3 such sub-bids were received and that the prices
280 are not reasonable for acceptance without further competition.

281 If the awarding authority decides to reject all general bids or if the awarding authority
282 does not receive any general bids, the awarding authority may retain and use the sub-bids
283 received for a second opening of general bids; provided, however, that there are no changes in
284 the work involved for the sub-trades for which the sub-bids are so retained and used; and
285 provided further, that the awarding authority shall obtain the consent of each sub-bidder included
286 in any award of a general contract made pursuant to the second opening of general bids if such
287 award is not made within 90 days, Saturday, Sundays, and legal holidays excluded, after the
288 opening of such sub-bids.

289 SECTION 29. Subsection (2) of section 44E of said chapter 149 as so appearing is hereby
290 further amended by striking out paragraph D in its entirety and inserting in place thereof the
291 following:

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

293 Item 1: The work of the general contractor, being all work other than that covered by

294 Item 2. \$ _____

295 Item 2. Sub-bids as follows; provided, however, that column (d) shall not apply to
296 projects with subcontractor prequalification pursuant to section 44D³/₄:

297 :--

298 (A)	(B)	(C)	(D)
299 Sub-trade	Name of Sub-bidder	Amount	Bonds requested

300 by general bidder

301 (Yes or No)

302 _____ \$

303 _____ \$

304 _____ \$

305 _____ \$

306

307

308 Total of Item 2 \$ _____

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

314 premiums for payment and performance bonds furnished by sub-bidders pursuant to section 44D
315 3/4 shall not be included in the amount set forth in Item 1, but shall be paid by the sub-bidders
316 and included in their sub-bid price.

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

325 SECTION 30. Said section 44E of said chapter 149 of the General Laws, as so
326 appearing, is hereby further amended by inserting after the word “bid”, in line 121, the following
327 words:- , or (4) because of an election in error by a general bidder whether or not to request a
328 payment and performance bond of a sub-bidder who is subject to prequalification pursuant to
329 section 44D3/4

330 SECTION 31. Subsection (2) of section 44F of said chapter 149 of the General Laws, as
331 so appearing, is hereby amended by striking out paragraph D and inserting in place thereof the
332 following paragraph:-

333 D. The undersigned agrees that, if he is selected as a sub-bidder, he will, within 5 days,
334 Saturdays, Sundays and legal holidays excluded, after presentation of a subcontract by the
335 general bidder selected as the general contractor, execute with such general bidder a subcontract

336 in accordance with the terms of this sub-bid, and contingent upon the execution of the general
337 contract. If required to do so pursuant to the prequalification process under section 44D³/₄ or if
338 requested to do so by the general bidder in the general bid, the undersigned shall furnish a
339 payment and performance bond of a surety company licensed to do business in the
340 commonwealth and whose name appears on United States Treasury Department Circular 570, in
341 the full sum of the subcontract price. The premiums for the payment and performance bond shall
342 be paid by the sub-bidder and included in the sub-bid price when the subcontractors are
343 prequalified pursuant to section 44D³/₄, and shall be paid by the general bidder when there is no
344 subcontractor prequalification pursuant to section 44D³/₄ and the bonds are requested by the
345 general bidder.

346 SECTION 32. Said section 44F of said chapter 149 of the General Laws, as so appearing,
347 is hereby further amended by inserting after the word “where”, in line 421, the following words:-
348 the sub-bidders were required to furnish and pay for such payment and performance bonds
349 because subcontractors were prequalified under the provisions of section 44D³/₄ or

350 SECTION 33. Section 2 of chapter 149A of the General Laws, as so appearing, is hereby
351 amended by inserting after the word “years”, in lines 42 and 44, respectively, the following
352 words:-of relevant

353 SECTION 34. Section 4 of said chapter 149A of the General Laws, as so appearing, is
354 hereby amended by striking out, in line 39, the word “less” and inserting in place thereof the
355 following word:- more

356 SECTION 35. Subsection (d) of said section 4 of said chapter 149A of the General Laws,
357 as so appearing, is hereby amended by striking out the third sentence and inserting in place

358 thereof the following:- If an exempt agency modifies or amends the procedures so approved, the
359 exempt agency shall immediately submit the amended procedures to the inspector general for
360 approval.

361 SECTION 36. Section 5 of said chapter 149A of the General Laws, as so appearing, is
362 hereby amended by inserting after the word “firm”, in line 5, the following words:- , as
363 designated by the public agency

364 SECTION 37. Section 6 of said chapter 149A of the General Laws, as so appearing, is
365 hereby amended inserting after the word “agency”, in line 6, the following words:- , as
366 designated by the public agency

367 SECTION 38. Said section 6 of said chapter 149A of the General Law, as so appearing,
368 is hereby further amended by striking out, in line 58, the words “and 27 of chapter 149” and
369 inserting in place thereof the following words:- through 27D, inclusive, of chapter 149

370 SECTION 39. Section 8 of said chapter 149A of the General Laws, as so appearing, is
371 hereby amended by inserting after the number “149”, in line 32, the following words:-The
372 premiums for such bonds shall be paid by the trade contractor and included in the trade
373 contractor bid price.

374 SECTION 40. Subsection (e) of section 8 of said chapter 149A of the General Laws, as
375 so appearing, is hereby amended by striking out clause (4) and inserting in place thereof the
376 following clause: -

377 (4) Mandatory Requirements for which no points are assigned:

378 (i) Commitment Letter for payment and performance bonds at 110 per cent of the
379 estimated trade contract value from a surety company licensed to do business in the
380 commonwealth and whose name appears on United States Treasury Department Circular
381 570. The cost for such payment and performance bonds shall be paid by the trade contractor and
382 included in any trade contractor bid price submitted following prequalification.

383 (ii) As of January 1, 2006, trade contractors seeking prequalification by an awarding
384 authority for a particular project shall be required to submit to the awarding authority a copy of
385 the certificate of eligibility issued by the division of capital asset management and maintenance
386 along with a completed update statement.

387 SECTION 41. Said section 8 of said chapter 149A of the General Laws, as so appearing,
388 is hereby further amended by striking out, in line 157, the words “and 27 of chapter 149” and
389 inserting in place thereof the following words:- through 27D, inclusive, of chapter 149;

390 SECTION 42. Said section 8 of said chapter 149A of the General Laws, as so appearing,
391 is hereby further amended inserting after the word “and”, in line 177, the following words:- the
392 trade contract

393 SECTION 43. Said section 8 of said chapter 149A of the General Law, as so appearing,
394 is hereby further amended by striking out subsection (i) and inserting in place thereof the
395 following:-

396 (i) All trade contractors shall return an executed trade contract including required
397 payment and performance bonds and insurance certificates to the construction manager at risk
398 firm within 10 business days of receipt of the trade contract from the construction manager at

399 risk firm. Trade contracts for the trade contractors selected by the construction manager at risk
400 firm shall be the trade contract agreement in subsection (k).

401 SECTION 44. Said section 8 of said chapter 149A of the General Laws, as so appearing,
402 is hereby further amended by striking out, in line 207, the word “if” and inserting in place
403 thereof the following words:- provided that

404 SECTION 45. Section 14 of said chapter 149A of the General Laws, as so appearing, is
405 hereby amended by striking out, in line 7, the words “ this section and sections 15 to 21,
406 inclusive; but,” and inserting in its place thereof the following words:- sections 14 to 21,
407 inclusive; provided, however,

408 SECTION 46. Section 15 of said chapter 149A of the General Laws, as so appearing, is
409 hereby amended by striking out, in line 1, the words “1 to 8” and inserting in place thereof the
410 following words:- 14 to 21

411 SECTION 47. Section 16 of said chapter 149A of the General Laws, as so appearing, is
412 hereby amended by striking out, in line 44, the words “1 to 10” and inserting in place thereof the
413 following words:- 14 to 21

414 SECTION 48. Section 17 of said chapter 149A of the General Laws, as so appearing, is
415 hereby amended by inserting after the word “as”, in lines 57 and 60, the following words:- highly
416 advantageous,

417 SECTION 49. The second paragraph of said section 18 of said chapter 149A of the
418 General Laws, as so appearing, is hereby amended by striking out the second sentence and
419 inserting in place thereof the following:- The scope of work statement shall include criteria and

420 preliminary design, general budget parameters, general schedule requirements and, to the extent
421 available, geotechnical reports, existing condition surveys, studies and specifications, including
422 detailed information on existing site conditions, to enable prospective design/build entities to
423 submit proposals in response to the RFP issued pursuant to section 19.

424 SECTION 50. Section 18 of said chapter 149A of the General Laws, as so appearing, is
425 hereby amended by striking out, in line 27, the number “4” and inserting in place thereof the
426 following number:- 17

427 SECTION 51. Said section 18 of said chapter 149A of the General Laws, as so
428 appearing, is hereby further amended by striking out, in line 30, the number “6” and inserting in
429 place thereof the following number:- 19

430 SECTION 52. Section 19 of said chapter 149A of the General Laws, as so appearing, is
431 hereby amended by striking out clause (1) and inserting in place thereof the following:-

432 (1) The RFP shall set forth a detailed scope of work including design concepts, technical
433 requirements, performance criteria, construction requirements, time constraints and, to the extent
434 available, geotechnical reports, existing condition surveys, studies and specifications, including
435 detailed information on existing site conditions, and all other requirements that have a substantial
436 impact on the cost, schedule and quality of the public works project and the project development
437 process, as determined by the awarding authority.

438 SECTION 53. Section 20 of said chapter 149A of the General Laws, as so appearing, is
439 hereby amended by inserting at the end thereof the following subsections:

440 (d) Chapter 30, 39N shall apply to all design build contracts unless the awarding
441 authority provides notice in the RFQ that it shall not apply, in whole or in part, to the particular
442 project. In addition to providing said notice in the RFQ, the awarding authority shall also provide
443 sufficient details within the RFP explaining the responsibility of the design build entity for actual
444 subsurface or latent physical conditions and the extent to which Chapter 30, 39N does not apply
445 to the particular project.

446 (e) Sections 39(F), 39(O), 39(P) and 39(R) of chapter 30 shall apply to design build
447 projects procured.

448 SECTION 54. Section 21 of said chapter 149A of the General Laws, as so appearing, is
449 hereby amended by striking out, in line 8, the number “4” and inserting in place thereof the
450 following number 16

451 SECTION 55. Section 21C of chapter 703 of the acts of 1963, as inserted by section 30
452 of chapter 193 of the acts of 2004, is hereby amended by striking out, in line 1, the word “may”
453 and inserting in place thereof the word:- shall

454 SECTION 56. Subsection (a) of section 21E of said chapter 703 of the acts of 1963, as
455 inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby further amended by
456 striking clause (3) and inserting in place thereof the following:-

457 (3) a list of lawsuits and arbitrations to which either member of the team is or has been a
458 party in regard to design or construction contracts within the last 3 years, including a list of all
459 convictions or fines for violations of state or federal law;

460 SECTION 57. Said subsection (a) of said section 21E of said chapter 703 of the acts of
461 1963, as inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby further
462 amended by striking out clause (10) and inserting in place thereof the following:-

463 (10) the construction manager at risk firm's certificate of eligibility issued by the division
464 of capital asset management and maintenance pursuant to section 44D of chapter 149 of the
465 General Laws, showing a capacity rating sufficient for the project, and an update statement; and

466 (11) any other relevant information that the authority determines is necessary to make an
467 informed decision regarding team selection.

468 SECTION 58. Subsection (b) of section 21E of said chapter 703 of the acts of 1963 as
469 inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby amended striking
470 out clause (6) and inserting in place thereof the following:-

471 (6) an affidavit of prevailing wage compliance pursuant to sections 26 through 27D,
472 inclusive, of chapter 149 of the General Laws;

473 SECTION 59. Subsection (e) of said section 21E of said chapter 703 of the acts of 1963
474 as inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby amended by
475 inserting after the word "negotiations", in line 1, the word:- with

476 SECTION 60. The third paragraph of clause (4) of subsection (a) of said section 21F of
477 said chapter 703 of the acts of 1963, as inserted by said section 30 of said chapter 193 of the acts
478 of 2004, is hereby amended by striking out the third sentence and inserting in place thereof the
479 following sentence:- In the event that a contract and guaranteed maximum price amendment
480 cannot be successfully negotiated between the selection committee and the next highest ranked

481 proposer, the authority shall terminate the procurement process and shall instead procure the
482 project in accordance with sections 44A to 44J, inclusive, of chapter 149 of the General Laws.

483 SECTION 61. Subsection (b) of section 21G of said chapter 703 of the acts of 1963, as
484 inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby amended by
485 inserting at the end thereof the following:- The premiums for such bonds shall be paid by the
486 trade contractor and included in the trade contractor bid price.

487 SECTION 62. Subsection (c) of section 21G of said chapter 703 of the acts of 1963, as
488 inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby amended by striking
489 out the word “minimum” and inserting in place thereof the following word:- maximum

490 SECTION 63. Subsection (g) of section 21G of said chapter 703 of the acts of 1963, as
491 inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby further amended by
492 striking out clause (4) and inserting in place thereof the following:-

493 (4) Mandatory requirements for which no points are assigned:

494 (i) Commitment letter for payment and performance bonds at 100 per cent of the
495 estimated trade contract value from a surety company licensed to do business in the
496 commonwealth and whose name appears on United States Department Circular 570. The cost
497 for such payment and performance bonds shall be paid by the trade contractor and included in
498 any trade contractor bid price submitted following prequalification.

499 (ii) As of January 1, 2006, trade contractors seeking prequalification for a particular
500 project shall be required to submit a copy of the certificate of eligibility issued by the division of
501 capital asset management and maintenance along with a completed update statement.

502 SECTION 64. Subsection (h) of said section 21G of said chapter 703 of the acts of 1963,
503 as inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby amended by
504 striking out the second sentence and inserting in place thereof the following sentence:- All trade
505 contractors who achieve a score of 70 points or greater shall be prequalified to submit a bid for a
506 specific building project.

507 SECTION 65. Subsection (i) of said section 21G of said chapter 703 of the acts of 1963,
508 as inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby amended by
509 striking out clause (9) and inserting in place thereof the following clause: --

510 (9) an affidavit of prevailing wage compliance pursuant to sections 26 through 27D,
511 inclusive, of chapter 149 of the General Laws;

512 SECTION 66. Subsection (i) of said section 21G of said chapter 703 of the acts of 1963,
513 as inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby amended in the
514 final paragraph, by striking the word “proposals” and inserting in place thereof the word: -- bids

515 SECTION 67. Subsection (j) of said section 21G of said chapter 703 of the acts of 1963,
516 as inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby amended by
517 striking the word “proposals”, each time it appears and inserting in place thereof the following
518 word:- bids

519 SECTION 68. Said subsection (j) of said section 21G of said chapter 703 of the acts of
520 1963, as inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby further
521 amended by striking the words “subsection (i)” and inserting in place thereof the words:- section
522 21H.