

SENATE No. 2047

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act mobilizing economic recovery in Massachusetts.

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

7 SECTION 2. Notwithstanding section 38D of chapter 7 of the General Laws, each
8 contract for designer services for a project which is funded in whole or in part by the American
9 Recovery and Reinvestment Act of 2009 and is subject to the jurisdiction of the board shall be
10 publicly advertised by the board either (i) within the COMPASS system, not less than 2 weeks
11 before the deadline for filing applications, and in the central register established under section
12 20A of chapter 9, not less than 1 week before the deadline for filing applications, or (ii) if the
13 contract is not advertised within the COMPASS system, the contract shall be publicly advertised
14 in the central register at least 2 weeks before this deadline. Every contract for design services for

15 a project which is funded in whole or in part by the American Recovery and Reinvestment Act of
16 2009 and subject to section 38K of chapter 7 shall be publicly advertised under this section.

17 SECTION 3. Notwithstanding section 38H of chapter 7 of the General Laws, for
18 contracts which are funded in whole or in part by the American Recovery and Reinvestment Act
19 of 2009, the certification required by paragraph (iv) of subsection (e) shall only apply to
20 contracts which exceed \$25,000 or which are for the design of a building for which the budgeted
21 or estimated construction costs exceed \$250,000.

22 SECTION 4. Notwithstanding section 38K of chapter 7, a contract for design services
23 which is funded in whole or in part by the American Recovery and Reinvestment Act of 2009
24 and which would otherwise be subject to the requirements of section 38K shall not be subject to
25 those requirements unless the project at issue is estimated to exceed \$250,000.

26 STREAMLINE DSB PROCESS

27 SECTION 5. Subsection (d) of section 38F of chapter 7 of the General Laws shall not
28 apply to contracts which are funded in whole or in part by the American Recovery and
29 Reinvestment Act of 2009. For those projects, the designer selection board may delegate its
30 powers and duties under paragraph (b) of section 38D, paragraphs (c) and (d) of section 38E, and
31 paragraphs (a) and (b) of sections 38G, 38H and 38I to panels of less than all the board members.
32 A panel of no less than 6 members shall be required for selection of designers under this section,
33 4 of whom shall be architects or engineers provided there must be at least 1 architect and 1
34 engineer on that panel.

35 INCREASE THE THRESHOLDS FOR DCAM TO DELEGATE TO PUBLIC 36 AGENCIES THE AUTHORITY TO CONTROL PROJECTS

37 SECTION 6. Notwithstanding section 40B of chapter 7 of the General Laws, for
38 projects which are funded in whole or in part by the American Recovery and Reinvestment Act
39 of 2009, the commissioner of capital asset management and maintenance may, upon request of a
40 state agency or building authority, delegate project control and supervision to that state agency or
41 building authority over projects involving structural or mechanical work whose estimated cost is
42 less than \$2,000,000 if the commissioner determines that the agency or authority has the ability
43 to control and supervise such project. Except as otherwise provided in section 40B, any state
44 agency or building authority shall control and supervise its own building projects when the
45 estimated cost of such project is less than \$250,000, or if the project does not involve structural
46 or mechanical work.

47 MODIFY STUDY REQUIREMENTS FOR LARGER PROJECTS AND ELIMINATE
48 STUDY AND ENCUMBRANCE REQUIREMENTS FOR SMALL DESIGN PROJECTS

49 SECTION 7. The second and third paragraphs of section 7K of chapter 29 of the General
50 Laws shall not apply to projects which are funded in whole or in part by the American Recovery
51 and Reinvestment Act of 2009, but in place thereof the following provision shall apply:-

52 No provider of design services for any building project for which a state agency is the
53 using agency shall be selected by the designer selection board or by the administering agency in
54 accordance with sections 30B through 30P, inclusive, of chapter 7, and no design services shall
55 be performed for or by such administering agency for any building project for which the
56 satisfactory completion of a study program is required before the design or construction of that
57 project, unless and until: (a) the study, program or where appropriate, both, have been
58 satisfactorily completed to such extent that a contract for final design may be awarded in the

59 discretion of the commissioner of capital asset management and maintenance; (b) the using
60 agency certifies in writing to the commissioner of capital asset management and maintenance
61 that the study, program, or where appropriate both, correspond to the current needs of that
62 agency, including its current long term capital facilities development plan; and (c) the
63 commissioner requests that one or more of the directors of the office of programming, office of
64 project management, or office of facilities management review the study or program, or where
65 appropriate, both, and the director or directors certify in writing to the commissioner that the
66 study, program, or where appropriate both, reflect the using agency's needs as stated, that they
67 provide an accurate estimate of the project requirements, cost and schedule, that the project can
68 be accomplished within the appropriation or authorization for that project, and recommends
69 proceeding with design, construction, or where appropriate, both.

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

75 SECTION 8. Section 26A of chapter 29 of the General Laws shall not apply to
76 maintenance or repair projects, as defined by section 39A of chapter 7, which are funded in
77 whole or in part by the American Recovery and Reinvestment Act of 2009, and are estimated to
78 cost less than \$250,000, if the executive head of the agency administering the project certifies in
79 writing that the design work is or shall be such as to specify a project that can be
80 accomplished, and that there are funds available to pay for the design services.

81 INCREASE THE THRESHOLD FOR SMALL BUILDING PROJECT
82 PROCUREMENTS

83 SECTION 9. For contracts which are funded in whole or in part by the American
84 Recovery and Reinvestment Act of 2009, section 39M of chapter 30 of the General Law shall
85 only apply if the contract is estimated to cost more than \$50,000 but not more than \$100,000.

86 INCREASE THE THRESHOLD FOR PROJECTS REQUIRING PAYMENT BONDS
87 TO \$25,000

88 SECTION 10. Notwithstanding section 29 of chapter 149 of the General Laws, contracts
89 which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009
90 shall only be subject to the requirements of section 29 if the amount of the contract is more than
91 \$25,000.

92 REVISE ADVERTISING AND BIDDING THRESHOLDS FOR SMALL PROJECTS

93 SECTION 11. Subsection (2) of section 44A of chapter 149 of the General Laws shall
94 not apply to contracts which are funded in whole or in part by the American Recovery and
95 Reinvestment Act of 2009, but in place thereof the following provision shall apply:-

96 (2)(a) Every contract for the construction, reconstruction, installation, demolition,
97 maintenance or repair of any building by a public agency estimated to cost less than \$10,000, and
98 where the overall project is also estimated to cost less than \$10,000, shall be obtained through
99 the exercise of sound business practices. The public agency shall make and keep a record of
100 each such contract solicitation. The record shall at a minimum include a written description of
101 how the services were procured, and the name and address of the person from whom the services

102 were procured. Written price quotations submitted in accordance with this subsection shall not
103 require certificates of eligibility, update statements or bid deposits. In no event shall public
104 agencies solicit price quotations from persons if to do so would violate chapter 268A of the
105 General Laws.

106 (b) Every contract for the construction, reconstruction, installation, demolition,
107 maintenance or repair of any building by a public agency estimated to cost not less than \$10,000,
108 but not more than \$50,000, and where the overall project is also estimated to cost not more than
109 \$50,000, shall be awarded to the responsible person offering to perform the contract at the lowest
110 price quotation; provided however, that the public agency shall seek written price quotations
111 from no fewer than 3 persons customarily providing the work for which the contract is being
112 made available. When seeking written quotations the public agency shall make and keep a record
113 of the names and addresses of all persons from whom price quotations were sought, the names of
114 the persons submitting price quotations, and the date and amount of each price quotation. Written
115 price quotations submitted in accordance with this subsection shall not require certificates of
116 eligibility, update statements or bid deposits. In no event shall public agencies solicit price
117 quotations from persons if to do so would violate chapter 268A of the General Laws.

118 (c) Every contract for the construction, reconstruction, installation, demolition,
119 maintenance or repair of any building by a public agency estimated to cost more than \$50,000
120 but not more than \$100,000, except for a pumping station to be constructed as an integral part of
121 a sewer construction or water construction project bid under section 39M of chapter 30, shall be
122 awarded to the lowest responsible and eligible bidder on the basis of competitive bids publicly
123 opened and read in accordance with the procedure set forth in section 39M of chapter 30. The

124 term "pumping station" as used in this section shall mean a building or other structure which
125 houses solely pumps and appurtenant electrical and plumbing fixtures.

126 (d) Every contract for the construction, reconstruction, installation, demolition,
127 maintenance or repair of any building by a public agency estimated to cost more than \$100,000,
128 except for a pumping station to be constructed as an integral part of a sewer construction or
129 water construction project bid under section 39M of chapter 30, shall be awarded to the lowest
130 responsible and eligible general bidder on the basis of competitive bids in accordance with the
131 procedure set forth in sections 44A to 44H, inclusive.

132 (e) When the general court has approved the use of an alternative mode of procurement
133 of construction for a project under section 7E of chapter 29, the awarding authority responsible
134 for procuring construction services for the project shall follow the policies and procedures of this
135 section and of sections 44B to 44H, inclusive, to the extent compatible with the mode of
136 construction procurement selected.

137 (f) Notwithstanding paragraph (d), a public agency may undertake the procurement of
138 modular buildings, in accordance with section 44E. A public agency may procure site work for
139 modular buildings, including but not limited to, construction of foundations, installations, and
140 attachment to external utilities, or any portion of site work, either in combination with the
141 procurement of modular buildings pursuant to section 44E or on the basis of competitive bids
142 pursuant to paragraph (d). Notwithstanding paragraph (d), a public agency may procure energy
143 management services in accordance with sections 11C or 11I of chapter 25A and regulations
144 promulgated under those sections.

145 ELIMINATE NEWSPAPER AD REQUIREMENT AND ABBREVIATE CENTRAL
146 REGISTER ADVERTISING

147 SECTION 12. Subsection (f) of section 44D1/2 of chapter 149 shall not apply to
148 contracts which are funded in whole or in part by the American Recovery and Reinvestment Act
149 of 2009, but in place thereof the following subsection shall apply:-

150 (f) The public notice and solicitation required in subsection (d) shall be advertised in the
151 central register under section 20A of chapter 9 and within the COMPASS system. The public
152 notice and solicitation shall be given within the COMPASS system not less than 2 weeks before
153 the deadline for submitting responses to the RFQ, and in the central register under section 20A of
154 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

155 SECTION 13. Subsection (f) of section 44D3/4 of chapter 149 of the General Laws shall
156 not apply to contracts which are funded in whole or in part by the American Recovery and
157 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

158 (f) The public notice and solicitation required in subsection (d) shall be advertised in the
159 central register under section 20A of chapter 9 and within the COMPASS system. The public
160 notice and solicitation shall be given within the COMPASS system not less than 2 weeks before
161 the deadline for submitting responses to the RFQ, and in the central register under section 20A of
162 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

163 SECTION 14. Subsection (1) of section 44J of chapter 149 of the General Laws shall not
164 apply to contracts which are funded in whole or in part by the American Recovery and
165 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

166 (1) No public agency or authority of the commonwealth or any political subdivision
167 thereof shall award any contract for which competitive bids are required under section 44A of
168 this chapter or section 39M of chapter 30, or for which competitive proposals are required under
169 subsection (4) of section 44E of this chapter or section 11C of chapter 25A, unless a notice
170 inviting bids or proposals therefor shall have been posted not less than 1 week before the time
171 specified in the notice for the receipt of the bids or proposals in a conspicuous place in or near
172 the offices of the awarding authority, and shall have remained posted until the time so specified,
173 and unless the notice shall also have been advertised either within the COMPASS system, not
174 less than 2 weeks prior to the time specified and in the central register published by the secretary
175 of state under section 20A of chapter 9 not less than 1 week before the time specified for the
176 receipt of the bids or proposals, or, if the notice is not advertised within the COMPASS system,
177 the notice shall be advertised in the central register at least 2 weeks before the time specified.
178 The notice shall also be published at such other times and in such other newspapers or trade
179 periodicals as the commissioner of capital asset management and maintenance may require,
180 having regard to the locality of the work involved.

181 SECTION 15. Subsection (e) of section 5 of chapter 149A of the General Laws shall not
182 apply to contracts which are funded in whole or in part by the American Recovery and
183 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

184 (e) The public notice and solicitation required in subsection (c) shall be advertised in the
185 central register under section 20A of chapter 9, and within the COMPASS system. The public
186 notice and solicitation shall be given within the COMPASS system not less than 2 weeks before
187 the deadline for submitting responses to the RFQ, and in the central register under section 20A of
188 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

189 SECTION 16. Subsection (d) of section 8 of chapter 149A of the General Laws shall not
190 apply to contracts which are funded in whole or in part by the American Recovery and
191 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

192 (d) The public notice and solicitation required in subsection (c) shall be advertised in the
193 central register under section 20A of chapter 9, and within the COMPASS system. The public
194 notice and solicitation shall be given within the COMPASS system not less than 2 weeks before
195 the deadline for submitting responses to the RFQ, and in the central register under section 20A of
196 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

197 SECTION 17. Subsection (b) of section 17 of chapter 149A of the General Laws shall
198 not apply to contracts which are funded in whole or in part by the American Recovery and
199 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

200 (b) The public notice and solicitation required in subsection (a) shall be advertised either
201 within the COMPASS system not less than 2 weeks before the deadline for submitting the letters
202 of interest and in the central register established under section 20A of chapter 9 not less than 1
203 week before the deadline, or if the public notice and solicitation are not given within the
204 COMPASS system, the public notice and solicitation shall be advertised in the central register
205 published by the secretary of state under section 20A of chapter 9 not less than 2 weeks before
206 the deadline for submitting the letters of interest.

207 STREAMLINE SELECTION PROCESS WHEN UNREASONABLY HIGH SUB-BIDS
208 ARE RECEIVED WITHOUT COMPETITION

209 SECTION 18. Subdivision (a) of subsection 4 of section 44F of chapter 149 of the
210 General Laws shall not apply to contracts which are funded in whole or in part by the American

211 Recovery and Reinvestment Act of 2009, but in place thereof the following subdivision shall
212 apply:-

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

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

229 (3) If a rejection of all sub-bids for such a sub-trade occurs under this section, the
230 awarding authority shall state, in an addendum issued with the list of sub-bidders, the amount to
231 be included by a general bidder on the general bid form for such sub-trade; and without in any
232 way affecting other sub-bidders in other sub-trades who have conformed to the prescribed

233 bidding procedure, new sub-bids for such sub-trade shall be requested by written invitation to 3
234 or more qualified sub-bidders, including any that had previously submitted bids, and the sub-bids
235 shall be publicly opened and read by the awarding authority at a time and place to be specified in
236 the invitation. The general contractor shall cause the work covered by the sub-trade to be done
237 by the lowest responsible and eligible sub-bidder against whose standing and ability the general
238 contractor makes no objection or, if there is no sub-bidder, by the sub-contractor against whose
239 standing and ability the general contractor and awarding authority make no objection, and for a
240 sum upon which the general contractor and the awarding authority may agree. The contract price
241 shall be adjusted by the difference between the sub-contract sum and the amount stated in the
242 addendum. The general bidder shall include in the cost of his own work on the general bid form
243 all expenses and profits on account of such adjustments.

244 (4) If after new sub-bids for a sub-trade are requested by written invitation under the
245 preceding paragraph, the awarding authority still does not receive any sub-bids that are
246 unrestricted to the use of 1 or more general bidders and are reasonable for acceptance based upon
247 the estimated cost for the work of that sub-trade, the awarding authority may assign the work to
248 the general contractor if the awarding authority first confirms that its estimate for the cost of the
249 work of that sub-trade is accurate. The general contractor shall cause the work covered by the
250 sub-trade to be done by the sub-contractor against whose standing and ability the general
251 contractor and awarding authority make no objection and for a sum upon which the general
252 contractor and the awarding authority agree. The contract price shall be adjusted by the
253 difference between the sub-contract sum and the amount stated in the addendum. The general
254 bidder shall include in the cost of his own work on the general bid form all expenses and profits
255 on account of such adjustments.

256 ESTABLISH A STANDING LIST OF PREQUALIFIED CONSTRUCTION
257 MANAGER AT RISK FIRMS

258 SECTION 19. Notwithstanding section 5 of chapter 149A of the General Laws, for
259 contracts which are funded in whole or in part by the American Recovery and Reinvestment Act
260 of 2009, the following procedure shall apply:-

261 A. (1) The division of capital asset management shall annually undertake a
262 prequalification process set forth in this section to provide a standing list of prequalified
263 construction management at risk firms to be used by the division in requesting proposals
264 pursuant to Subsection B for construction management at risk services for specific projects to be
265 determined at a later date. Public awarding authorities other than the division have the option to
266 use the standing list and related procedures upon application to and approval by the inspector
267 general. Each contract between a construction management at risk firm and the division or other
268 public awarding authority shall be secured by a performance and payment bond in the full sum of
269 the guaranteed maximum price by a surety company licensed to do business in the
270 commonwealth and whose name appears on the United States Treasury Department Circular
271 570.

272 (2) Firms included on the division's standing list of prequalified construction
273 management at risk firms shall be prequalified for a period of 1 year from the date of issuance of
274 the standing list by the division. Upon issuance of the standing list, the division shall publish the
275 standing list of prequalified construction manager at risk firms in the central register, the
276 COMPASS system, and the division's website. The division shall re-advertise and solicit

277 applications quarterly through the request for qualifications process or RFQ process provided for
278 herein to keep the statewide standing list current.

279 (3) Before issuing a RFQ, the division shall establish a prequalification committee for the
280 purpose of reviewing and evaluating responses submitted to the RFQ issued pursuant to
281 paragraph (4). The prequalification committee shall be comprised of at least 1 registered
282 architect or 1 registered professional engineer on the division's staff who has at least 5 years
283 experience in the construction and supervision of construction of buildings or, if not registered as
284 an architect or professional engineer, who has at least 7 years experience in the construction and
285 supervision of construction of buildings, and at least 2 other representatives from the division as
286 designated by the commissioner.

287 (4) The selection process for the annual prequalification of the division's standing list of
288 construction manager at risk firms shall begin once the division gives public notice of the
289 solicitation and requests responses to an RFQ from construction management at risk firms. The
290 public notice and RFQ shall include: (a) a statement indicating that the RFQ is not for a specific
291 project, but will be used to prequalify construction management at risk firms for inclusion on the
292 division's annual standing list and that only those construction manager at risk firms included on
293 the standing list shall be invited to submit proposals in response to requests for proposals issued
294 pursuant to subsection B; (b) the time and date for receipt of responses to the RFQ, the address
295 of the office to which the responses are to be delivered, and the timeframe in which the public
296 agency will respond to the responses; (c) a description of the experience that will be required for
297 construction manager at risk firms to be included on the division's standing list, which shall
298 include a minimum of 3 public or private construction manager at risk projects during the past 10
299 years; (d) the evaluation procedure and criteria under paragraph (7), including any rating system;

300 (e) a general description of the scope of services that would be expected of a prequalified
301 construction manager firm during the pre-design, pre-construction and construction phases of a
302 construction manager at risk project; (f) the anticipated schedule for the selection process of
303 construction manager at risk firms to be included on the division's standing list; and (g) a
304 prohibition against any unauthorized communication or contact with the public agency outside of
305 official pre-proposal meetings.

306 (5) The division shall require interested construction management at risk firms to submit
307 a statement of qualifications in response to the RFQ issued pursuant to paragraph (4). The
308 statement of qualifications shall include, at a minimum, the following: (a) a cover letter or
309 executive summary detailing the key elements and factors that differentiate the firm from other
310 responders; (b) completion of a qualifications application similar in form to AIA Document
311 A305, 1986 edition, listing general business information and financial capacity; (c) a list of
312 lawsuits and arbitrations to which the firm is a party in regard to construction contracts within
313 the last 3 years, including a list of all convictions or fines for violations of state or federal law;
314 (d) submission of an organization chart with specific information on key project personnel or
315 consultants; (e) submission of an audited financial statement for the most recent fiscal year and a
316 letter from the surety company of the firm confirming the ability to provide performance and
317 payment bonds for the building project under consideration, but, the financial information
318 submitted shall remain confidential and shall not be a public record to the fullest extent
319 permissible under the law; (f) submission of information on the firm's safety record including its
320 workers' compensation experience modifier for the prior 3 years; (g) submission of information
321 on and evidence of the firm's compliance record with respect to minority business enterprise and
322 women business enterprise inclusion goals and workforce inclusion goals, if applicable; (h)

323 submission of information regarding the firm's experience on construction manager at risk
324 projects including references from the owners and architects of the building projects; (i)
325 submission of information on any projects where the firm was terminated, failed to complete the
326 work, or paid liquidated damages; (j) a certificate of eligibility issued by the division under
327 section 44D of chapter 149, showing the construction manager at risk firm's capacity rating, and
328 an update statement; and (k) any other relevant information that the division determines
329 desirable. The statement of qualifications shall be signed under pains and penalties of perjury.

330 (6) The public notice and solicitation required in paragraph (4) shall be advertised in the
331 central register under section 20A of chapter 9, and within the COMPASS system. The public
332 notice and solicitation shall be given within the COMPASS system not less than 2 weeks before
333 the deadline for submitting responses to the RFQ, and in the central register under section 20A of
334 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

335 (7) Upon receipt of the statement of qualifications submitted by construction
336 management at risk firms, the prequalification committee established under subsection (c) shall
337 evaluate each statement of qualifications using the criteria provided in the RFQ. Only
338 construction management at risk firms achieving an acceptable rating as defined under clause (c)
339 of paragraph (4) will be selected for inclusion on the standing list.

340 B. (1) Before issuing a request for proposals, in this section referred to as RFP, the
341 division or any other public awarding authority authorized under subsection A shall establish a
342 selection committee for the purpose of reviewing and evaluating responses submitted to the RFP
343 issued under subsection (2). The selection committee shall be comprised of 1 representative of

344 the designer, the owner's project manager, and at least 2 representatives of the division or other
345 public awarding authority authorized under subsection A.

346 (2) The division or any other public awarding authority authorized by subsection A shall
347 issue an RFP to all construction management at risk firms that have been prequalified by the
348 division in accordance with subsection A and who have a division certificate of eligibility
349 indicating sufficient single project and aggregate limits for the project. RFPs issued under this
350 section shall follow the procedure set forth in paragraphs (b) through (e) of section 6 of chapter
351 149A of the General Laws.

352 CONDENSED PREQUALIFICATION PROCESS

353 SECTION 20. (a) For contracts subject to the prequalification requirements set forth in
354 section 44D½ of chapter 149 of the General Laws which are funded in whole or in part by the
355 American Recovery and Reinvestment Act of 2009 (the federal act), an awarding authority shall
356 have the option to use the condensed prequalification process for general contractors described in
357 this section in lieu of the full prequalification process set forth in section 44D½. The purpose of
358 the condensed prequalification process is to allow awarding authorities an opportunity to
359 expedite the prequalification process provided in section 44D½ in order to most efficiently meet
360 the specified goals and time parameters set forth in the federal act. All of the requirements of the
361 full prequalification process set forth in section 44D½ shall be required under the condensed
362 prequalification process unless specifically modified in this section.

363 (b) Where an awarding authority opts to use the condensed prequalification process, the
364 requirements for public notice of the building project and solicitation of responses to the RFQ

365 from interested general contractors shall include all items set forth in clauses (1) through (8) of
366 subsection (d) of section 44D½ but shall also include the following additional statements:

367 (1) a statement that the project is funded in whole or in part under the federal act and
368 shall use the condensed prequalification process.

369 (2) a statement that the evaluation procedure and the criteria for the prequalification of
370 interested general contractors shall include evaluation of all the criteria set forth in subsection (e)
371 of section 44D½ but, in order to avoid duplication and promote the expeditious commencement
372 of projects under the federal act and without sacrificing the importance of the prequalification
373 process, for certain of the evaluation categories and subcategories specifically identified in
374 subsection (e), the prequalification committee shall evaluate interested general contractors based
375 on a review of the information contained in the division of capital asset management and
376 maintenance certification files, including but not limited to the project evaluations required by
377 subsection (7) of section 44D of the General Laws and the update statements required by clause
378 (ii) of subdivision (4) of subsection (e) of section 44D½ to be submitted by interested general
379 contractors. The prequalification committee shall exercise due diligence in checking appropriate
380 references.

381 (c) The RFQ and evaluation criteria for the condensed prequalification process shall
382 include all criteria set forth in subsection (e) of section 44D½ but shall not include the total or
383 minimum point allocations for the evaluation categories and subcategories designated therein. In
384 addition, in the interest of expediting the prequalification of general contractors for contracts
385 funded in whole or in part under the federal act but not sacrificing the prequalification process,
386 where certain of the evaluation subcategories specifically identified in this section require similar

387 reporting by contractors in connection with the certification process set forth in section 44D and
388 the information contained in the required update statements submitted by interested general
389 contractors, an awarding authority issuing an RFQ under this condensed prequalification process
390 shall maintain as part of the project record the written certification by the prequalification
391 committee that it has evaluated interested general contractors based on a review of both the
392 information contained in the certification files, including but not limited to the project
393 evaluations required by subsection (7) of section 44D, and the current update statements
394 submitted by interested general contractors and that it has exercised due diligence in checking
395 appropriate references.

396 (d) Where an awarding authority opts to use the condensed prequalification process, the
397 review of the terminations, legal proceedings, safety record and compliance record provided in
398 clauses (iv) through (vii) of subdivision (1) of subsection (e) of section 44D^{1/2}, and the review of
399 credit references and public project record under clauses (ii) and (iii) of subdivision (2) of
400 subsection (e) of section 44D^{1/2}, and the review of audited financial statements under clause (i)
401 of subdivision (3) of subsection (e) of section 44D^{1/2} shall be satisfied by a requirement that the
402 prequalification committee evaluate both the information contained in the division of capital
403 asset management and maintenance certification files, including but not limited to the project
404 evaluations required by subsection (7) of section 44D, and the current update statements
405 submitted by interested general contractors and by a requirement that the prequalification
406 committee exercise due diligence in checking appropriate references. The prequalification
407 committee shall further be required to certify in writing that it has met these requirements, and
408 the certification shall be maintained by the awarding authority in the project record.

409 (e) Notwithstanding subsection (f) of section 44D½, the public notice requirements for
410 the condensed prequalification process shall be for the RFQ to be advertised in the central
411 register for not less than 1 week and in the COMPASS system for not less than 2 weeks. In
412 addition, these projects shall be advertised in the central website to be established for all projects
413 in the commonwealth funded in whole or in part under the federal act and in accordance with any
414 requirements contained in the federal act.

415 (f) Where an awarding authority opts to use the condensed prequalification process in
416 lieu of the evaluation requirements set forth in subsection (h) of section 44D½, the
417 prequalification committee shall evaluate each statement of qualifications based on the criteria
418 provided in the RFQ, the information contained in the division of capital asset management and
419 maintenance certification files, including but not limited to the project evaluations required by
420 subsection (7) of section 44D and the current update statements submitted by interested general
421 contractors. The prequalification committee shall exercise due diligence in checking appropriate
422 references. As provided in subsection (c) the total and minimum point allocations designated in
423 subsection (e) of 44D½ shall not be included in the RFQ and shall not be used in the evaluation
424 of interested general contractors where the condensed prequalification process is utilized. The
425 evaluation of interested general contractors shall be based on the evaluation criteria set forth in
426 this subsection and conducted within the discretion of the prequalification committee, providing
427 that the prequalification committee evaluates each interested general contractor on the same fair
428 and equitable basis. A general contractor's score shall be made available to the general
429 contractor upon request. The decision of the prequalification committee shall be final and shall
430 not be subject to appeal except on grounds of arbitrariness, capriciousness, fraud or collusion.

431 (g) Where an awarding authority opts to use the condensed prequalification process, in
432 lieu of the requirements for the re-issuance of the RFQ set forth in subsection (i) of section
433 44D¹/₂, if the awarding authority prequalifies fewer than 3 general contractors to submit bids, the
434 awarding authority may invite general bids under sections 44B to 44E, inclusive, or, if the
435 awarding authority prequalifies at least 2 general contractors, then the awarding authority may
436 invite bids from the 2 prequalified general contractors.

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

440 SECTION 21. (a) For contracts subject to the prequalification requirements set forth in
441 section 44D³/₄ of chapter 149 of the General Laws which are funded in whole or in part by the
442 American Recovery and Reinvestment Act of 2009 (the federal act), an awarding authority shall
443 have the option to use the condensed prequalification process for subcontractors described in this
444 section in lieu of the full prequalification process set forth in section 44D³/₄. The purpose of the
445 condensed prequalification process is to allow awarding authorities an opportunity to expedite
446 the prequalification process provided in section 44D³/₄ in order to most efficiently meet the
447 specified goals and time parameters set forth in the federal act. All of the requirements of the
448 full prequalification process set forth in section 44D³/₄ shall be required under the condensed
449 prequalification process unless specifically modified in this section.

450 (b) Where an awarding authority opts to use the condensed prequalification process, the
451 requirements for public notice of the building project and solicitation of responses to the RFQ

452 from interested subcontractors shall include all items set forth in clauses (1) through (8) of
453 subsection (d) of section 44D³/₄ but shall also require the following additional statements:

454 (1) a statement that the project is funded in whole or in part under the federal act and
455 shall use the condensed prequalification process.

456 (2) a statement that the evaluation procedure and the criteria for the prequalification of
457 interested subcontractors shall include evaluation of all the criteria set forth in subsection (e) of
458 section 44D¹/₂ but, in order to avoid duplication and promote the expeditious commencement of
459 projects under the federal act and without sacrificing the importance of the prequalification
460 process, for certain of the evaluation categories and subcategories specifically identified in
461 subsection (e) of section 44D³/₄, the prequalification committee shall evaluate interested
462 subcontractors based on a review of the information contained both in the division of capital
463 asset management and maintenance certification files, including but not limited to the project
464 evaluations required by subsection (7) of section 44D and the update statements required by
465 clause (ii) of subdivision (4) of subsection (e) of section 44D³/₄ to be submitted by interested
466 subcontractors. The prequalification committee shall exercise due diligence in checking
467 appropriate references.

468 (c) The RFQ and evaluation criteria for the condensed prequalification process shall
469 include all criteria set forth in subsection (e) of section 44D³/₄ but shall not include the total or
470 minimum point allocations for the evaluation categories and subcategories designated therein. In
471 addition, in the interest of expediting the prequalification of subcontractors for contracts funded
472 in whole or in part under the federal act but not sacrificing the prequalification process, where
473 certain of the evaluation subcategories specifically identified in this section require similar

474 reporting by contractors in connection with the certification process set forth in section 44D and
475 the information contained in the required update statements submitted by interested
476 subcontractors, an awarding authority issuing an RFQ under this condensed prequalification
477 process shall maintain as part of the project record the written certification by the
478 prequalification committee that it has evaluated interested subcontractors based on a review of
479 both the information contained in the certification files, including but not limited to the project
480 evaluations required by subsection (16) of section 44D, and the current update statements
481 submitted by interested subcontractors and that it has exercised due diligence in checking
482 appropriate references.

483 (d) Where an awarding authority opts to use the condensed prequalification process, the
484 review of the terminations, legal proceedings and safety record provided in clauses (iv) through
485 (vi) of subdivision (1) of subsection (e) of section 44D^{3/4}, and the review of credit references and
486 public project record under clauses (ii) and (iii) of subdivision (2) of subsection (e) of section
487 44D^{3/4}, and the review of annual revenue under clause (i) of subdivision (3) of subsection (e) of
488 section 44D^{3/4} shall be satisfied by a requirement that the prequalification committee evaluate
489 both the information contained in the division of capital asset management and maintenance
490 certification files, including but not limited to the project evaluations required by subsection (16)
491 of section 44D, and the current update statements submitted by interested subcontractors and by
492 a requirement that the prequalification committee exercise due diligence in checking appropriate
493 references. The prequalification committee shall further be required to certify in writing that it
494 has met these requirements, and the certification shall be maintained by the awarding authority in
495 the project record.

496 (e) Where an awarding authority opts to use the condensed prequalification process, the
497 “mandatory” requirements for the solicitation of and submission of a commitment letter for
498 payment and performance bonds at 100 per cent of the estimated contract value from a surety
499 company licensed to do business in the commonwealth and whose name appears on United
500 States Treasury Department Circular 570 shall be as set forth in subdivision (4) of subsection (e)
501 of section 44D^{3/4}. In addition, it shall be mandatory for the awarding authority to solicit in the
502 RFQ and an interested subcontractor to submit with its statement of qualifications a certificate of
503 eligibility for the subcontractor trade for which it is seeking to be prequalified, issued by the
504 division of capital asset management and maintenance under section 44D.

505 (f) Notwithstanding subsection (f) of section 44D^{3/4}, the public notice requirements for
506 the condensed prequalification process shall be for the RFQ to be advertised in the central
507 register for not less than 1 week and in the COMPASS system for not less than 2 weeks. In
508 addition, these projects shall be advertised in the central website to be established for all projects
509 in the commonwealth funded in whole or in part under the federal act and in accordance with any
510 requirements contained in the federal act.

511 (g) Where an awarding authority opts to use the condensed prequalification process in
512 lieu of the evaluation requirements set forth in subdivision (h) of section 44D^{3/4}, the
513 prequalification committee shall evaluate each statement of qualifications based on the criteria
514 provided in the RFQ, the information contained in the division of capital asset management and
515 maintenance certification files, including but not limited to the project evaluations required by
516 subsection (16) of section 44D and the current update statement submitted by interested
517 subcontractors. The prequalification committee shall exercise due diligence in checking
518 appropriate references. As provided in subsection (c) the total and minimum point allocations

519 designated in subsection (e) of 44D³/₄ shall not be included in the RFQ and shall not be used in
520 the evaluation of interested subcontractors where the condensed prequalification process is
521 utilized. The evaluations of interested subcontractors shall be based on the evaluation criteria set
522 forth in this subsection and conducted within the discretion of the prequalification committee,
523 provided that the prequalification committee evaluates each interested subcontractor on the same
524 fair and equitable basis. A subcontractor's score shall be made available to the subcontractor
525 upon request. The decision of the prequalification committee shall be final and shall not be
526 subject to appeal except on grounds of arbitrariness, capriciousness, fraud or collusion.

527 (h) Where an awarding authority opts to use the condensed prequalification process in
528 lieu of the requirements for the re-issuance of the RFQ set forth in subsection (i) of section
529 44D³/₄, if the awarding authority prequalifies fewer than 3 subcontractors to submit bids, the
530 awarding authority may invite general bids under sections 44B to 44E, inclusive, or, if the
531 awarding authority prequalifies at least 2 subcontractors, then the awarding authority may invite
532 bids from the 2 prequalified subcontractors.

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

536 INCREASE INCENTIVE PAYMENTS TO CONSTRUCTION MANAGEMENT AT
537 RISK FIRMS IN SPECIAL CIRCUMSTANCES

538 SECTION 22. Notwithstanding section 7 of chapter 149A of the General Laws, as
539 appearing in the 2006 Official Edition, under special circumstances, when unique project
540 requirements and circumstances warrant, public agencies may include an additional incentive

541 clause with the contract providing for payment of an increased incentive of up to an additional
542 1/2 of 1 per cent; provided however, that even under special circumstances the total incentive
543 payments to the construction management at risk firm can not exceed 1 and 1/2 per cent of the
544 estimated construction cost; provided further that the only contracts eligible for such additional
545 incentive payments shall be contracts that are funded in whole or in part through the American
546 Recovery and Reinvestment Act of 2009.

547 A+B BIDDING

548 SECTION 23. Notwithstanding the first sentence of section 39M(a) of chapter 30, any
549 transportation or public works projects subject to award under section 39M of chapter 30 by any
550 department, agency or authority of the commonwealth of Massachusetts that are funded in whole
551 or in part through the American Recovery and Reinvestment Act and are expected to interfere
552 with the movement of traffic and/or the travelling public may, in the discretion of the awarding
553 authority, be procured through a bidding method that awards the project to the responsible and
554 eligible bidder with the lowest bid value after taking into account the amount of time that the
555 bidder has identified in the bid for completion of the project, hereinafter identified as cost-plus-
556 time bidding; provided, however, that such awarding authority may reject any and all bids if it is
557 in the public interest to do so.

558 In utilizing a cost-plus-time bidding procurement method, the awarding authority shall
559 use a cost parameter (A) and a time parameter (B) to determine a bid value. The cost component
560 (A) shall be the traditional bid for the contract items and is the dollar amount for the work to be
561 performed under the contract. The time component (B) shall be the total number of calendar days
562 required to complete the project, as estimated by the bidder, multiplied by an agency-determined

563 daily road user cost (RUC) to translate time into dollars. The total bid value, which shall be
564 clearly detailed in the bid documents, shall equal the A + B (RUC). The total bid value shall be
565 used only to evaluate bids. The winning bid, which shall be calculated at a public bid opening at
566 a time and location designated in the bid documents, shall be the lowest bid value submitted by a
567 responsible and eligible bidder. The contract amount for payment purposes shall be based on the
568 bid price (A), not the total bid value. The number of days bid (B) shall become the contract time.
569 For purposes of this section, the term “responsible and eligible bidder” shall be defined pursuant
570 to the criteria contained in paragraph (c) of section 39M of chapter 30 of the General Laws, as
571 amended by section 11 of chapter 303 of the Acts of 2008; provided, however, that the concept
572 of “lowest” has been replaced by “lowest bid value,” as defined in this section.

573 The provisions of the general laws generally applicable to public works projects,
574 including, but not limited to, sections 26, 27, 27A, 27B, 27C, 27D, 27F and 34A of chapter 149
575 and 39F, 39G, 39H, 39J, 39K, 39M (except the first sentence of 39M(a)), 39N, 39O, 39P and
576 39R of chapter 30, shall apply to all public works projects using the cost-plus-time bidding
577 procurement method provided in this section.

578 ALLOW THE MASSACHUSETTS WATER POLLUTION ABATEMENT TRUST
579 BOARD TO SET LOAN TERMS TO COMPLY WITH FEDERAL LAW

580 SECTION 25. Notwithstanding any general or special law to the contrary, the
581 Massachusetts water pollution abatement trust may establish such terms and conditions for any
582 loan or other form of financial assistance made under the provisions of chapter 29C of the
583 General Laws that is funded in whole or in part by amounts provided under the American
584 Recovery and Reinvestment Act of 2009 as the board of trustees of the trust shall determine to be

585 in the best interests of the commonwealth and required to comply with federal law, including
586 without limitation the interest rate, repayment period, number of payments to be made and
587 amount of principal to be repaid on such loan or other form of financial assistance.

588 ALLOW TRANSFERABILITY BETWEEN THE CLEAN WATER AND DRINKING
589 WATER PROGRAMS TO TAP ADDITIONAL RESOURCES FOR DRINKING WATER

590 SECTION 26. Notwithstanding any general or special law to the contrary, the
591 Massachusetts water pollution abatement trust may transfer amounts held in the drinking water
592 revolving fund to the water pollution abatement revolving fund for application by the trust to the
593 purposes specified in section 5 of chapter 29C of the General Laws, and may transfer amounts
594 held in the water pollution abatement revolving fund to the drinking water revolving fund for
595 application by the trust to the purposes specified in section 18 of chapter 29C, in each case to the
596 extent authorized by the federal clean water act and the federal safe drinking water act.

597 COMPTROLLER MAY AUTHORIZE EXPENDITURES WHEN THERE IS A
598 TIMING DISCREPANCY

599 SECTION 27. Notwithstanding any general or special law to the contrary, for the
600 purpose of accommodating timing discrepancies between the receipt of revenues and related
601 expenditures, a department may receive funds from the federal government related to the
602 American Recovery and Reinvestment Act of 2009. The Comptroller may authorize
603 encumbrances and expenditures by a department in anticipation of the department's receipt of
604 the funds; provided that the department head certifies that accounts will not be in deficit at the
605 end of a fiscal year. The Comptroller may establish accounts based on the provisions of section

606 6B of chapter 29 of the General Laws, including but not limited to a federal award notification
607 and notification to the joint committee on veterans and federal affairs.

608 MATCHING FUNDS

609 SECTION 28. Notwithstanding any general or special law to the contrary, should a
610 matching funds requirement exist with respect to the receipt of any funds from the federal
611 government related to the American Recovery and Reinvestment Act of 2009, the department
612 that is applying for such funds shall notify the secretary of administration and finance of the
613 matching fund requirement. The secretary of administration and finance shall direct the
614 comptroller to establish matching accounts and to allow expenditure of funds in the accounts
615 without further appropriation. The secretary of administration and finance shall also notify the
616 joint committee on veterans and federal affairs and the ways and means committees of such
617 action. The accounts shall be established in the federal grants fund as established by Chapter 29,
618 section 2C, the federal highway construction program fund as established by Chapter 29, Section
619 2E or any other fund as the comptroller deems necessary to fulfill the terms and conditions of the
620 American Recovery and Reinvestment Act of 2009.

621 POOL ADMINISTRATIVE COSTS

622 SECTION 29. Notwithstanding any general or special law to the contrary, the secretary
623 of administration and finance may authorize accounts to receive federal funds from the American
624 Recovery and Reinvestment Act of 2009. To the extent allowed by federal law, the secretary of
625 administration and finance may transfer said funds to other “central service” agencies charged
626 with implementation of the act and incur expenditures for charges related to the administrative
627 costs of the act and to ensure that the commonwealth meets the efficient administration and

628 statewide accountability requirements in the act. Notwithstanding any general or special law to
629 the contrary, for the purpose of accommodating timing discrepancies between the receipt of
630 revenues and related expenditures, the secretary of administration and finance may incur
631 expenses and the comptroller shall certify for payments amounts not to exceed the lesser of one
632 half of the authorization or the most recent revenue estimate therefore, or as otherwise authorized
633 by the secretary of administration and finance. The accounts may receive federal funds
634 recovered from the American Recovery and Reinvestment Act of 2009 in accordance with
635 section 6B of chapter 29 of the General Laws or other state law. The recoveries shall be based
636 on rates approved in accordance with the federal office of management and budget circular A-87
637 or any other guidance issued by the office of management and budget applicable to federal funds
638 provided under the American Recovery and Reinvestment Act of 2009.

639 SPECIAL TRANSFER FOR UNEMPLOYMENT INSURANCE

640 SECTION 30. Section 53A of chapter 151A of the General Laws, as appearing in the
641 2006 Official Edition, is hereby amended by adding after the second paragraph the following
642 new paragraph:- Notwithstanding any of the foregoing provisions of this section, moneys
643 credited with respect to the special transfer made under section 903(g) of the Social Security Act
644 shall be used solely for the purposes specified in such section and shall not be subject to
645 appropriation.

646 REQUIREMENT TO USE APPRENTICES FOR 20% OF THE WORK PERFORMED
647 ON CONSTRUCTION PROJECTS OVER \$1 MILLION

648 SECTION 31. a) Notwithstanding the provisions of any general or special law to the
649 contrary, the following requirements shall apply to any public works project funded by the

650 American Recovery and Reinvestment Act of 2009 where the amount of construction costs under
651 any contract awarded is likely to exceed \$1 million. For the purposes of this section, the term
652 “public works” shall have the following meaning: building or work the construction, as defined
653 in G.L. c. 149, § 27D, of which is carried on by authority of the commonwealth, or by a county,
654 town, authority or district, or with funds of a federal agency or the commonwealth, or a county,
655 town, authority or district, to serve the interest of the general public, regardless of whether title
656 thereof is in the commonwealth, or a county, town, authority or district.

657 (b) For any public works project subject to subsection (a), the specifications set forth in
658 any request for responses shall include a requirement that, on a per project basis, no less than 20
659 per cent of the total hours of employees receiving an hourly wage who are directly employed on
660 the site of the project, employed by the contractor or any subcontractor, and subject to the
661 prevailing wage, shall be performed by apprentices in bona fide apprentice training programs as
662 defined by sections 11H & 11I of chapter 23 of the General Laws which are approved by the
663 division of apprentice training of the executive office of labor and workforce development.

664 (c) During the performance of any public works project subject to subsections (a) and
665 (b), the contractor shall submit periodic reports to the awarding authority with records indicating
666 the total hours worked by all journeymen and apprentices in positions subject to the apprentice
667 requirement. In any instance in which the apprentice hours do not constitute 20 per cent of the
668 total hours of employees subject to the apprentice requirement, the contractor shall submit a plan
669 to the awarding authority describing how the contractor shall comply with the apprentice
670 requirement.

671 (d) An awarding authority may adjust the requirements set forth in subsections (a), (b),
672 and (c) if, despite a good faith effort, and due to unavoidable circumstances, such as a
673 demonstrated lack of apprentices in a specific geographic area, compliance with these
674 requirements is not feasible or if application of the requirement would be preempted by federal
675 law.

676 (e) An awarding authority serving a low-income population may require additional
677 specifications that address the needs of its clients, such as preferential hiring for residents of
678 public housing authorities for available apprenticeship positions.

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

682 TRAINING FOR INDIVIDUALS RECEIVING UNEMPLOYMENT
683 COMPENSATION BENEFITS

684 SECTION 32. Subsection (c) of section 30 of chapter 151A, as appearing in the 2006
685 Official Edition, is hereby amended by striking out, in line 29, the word “commissioner” and
686 inserting in place thereof the following words: director of the department of workforce
687 development.

688 SECTION 33. Said subsection (c) is hereby further amended by striking out in line 32
689 the number “eighteen” and inserting in place thereof the following number:- 26.

690 SECTION 34. Said subsection (c) is hereby further amended by striking out, in lines 34,
691 41, 42, 47, and 48, the word “commissioner” and inserting in place thereof the following word:-
692 director.

693 SECTION 35. Said subsection (c) is hereby further amended by striking out, in lines 43
694 to 45, the words “because of the individual’s need to address the physical, psychological and
695 legal affects of domestic violence” and inserting in place thereof the following words:- ,
696 provided that such circumstances shall include an individual’s need to address the physical,
697 psychological and legal effects of domestic violence, as well as any period in which economic
698 circumstances permit the provision of extended benefits or any other emergency benefits funded
699 in whole or in part by the federal government.

700 SECTION 36. Said subsection (c) is hereby further amended by inserting after the word
701 “claim”, in line 64, the following words:- unless the period is tolled by regulation.

702 EMPLOYEES HIRED TO WORK ON ARRA PROJECTS WILL BE FUNDED BY
703 ARRA

704 SECTION 37. Notwithstanding any general or special law to the contrary, employees
705 who are hired to perform work related to the American Recovery and Reinvestment Act of 2009
706 funded by the federal government shall be scheduled in accounts set up solely for the purpose of
707 the American Recovery and Reinvestment Act of 2009. No expenditures of any employee
708 scheduled in any item of appropriation established by the act shall be charged to any other item
709 of appropriation and no expenditures of employees in any other item of appropriation shall be
710 charged to any account under the act and the comptroller shall not permit the transfers or charges
711 unless otherwise approved by the secretary for administration and finance. Positions funded by

712 the American Recovery and Reinvestment Act of 2009 shall be eliminated once the funding
713 ends.

714 EMPLOYEES HIRED AND PAID FROM ARRA FUNDS ARE NOT SUBJECT TO
715 CIVIL SERVICE

716 SECTION 38. Notwithstanding any general or special law to the contrary, any employee
717 hired by the commonwealth and paid from federal funds provided pursuant to the American
718 Recovery and Reinvestment Act of 2009, shall not be subject to the provisions of chapters 30
719 and 31 of the General Laws.

720 PROVIDING TECHNICAL ASSISTANCE AND CAPACITY BUILDING PILOT
721 PROGRAM

722 SECTION 39. (a) As used in this section, the following terms shall, unless the context
723 indicates otherwise, have the following meaning: -

724 “Disadvantaged business enterprise” shall have the same meaning as the term is defined
725 in 49 CFR part 26.

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

728 “Women business enterprise” shall have the same meaning as the term is defined in
729 section 40 of chapter 23A of the General Laws.

730 (b) Notwithstanding any general or special law to the contrary, the secretary of
731 administration and finance is hereby authorized to implement a technical assistance and capacity
732 building pilot program, applicable solely to projects funded in whole or in part by the American

733 Recovery and Reinvestment Act of 2009. The purpose of the technical assistance and capacity
734 building program shall be to promote, encourage and otherwise facilitate full participation of
735 minority business enterprises and women business enterprises, disadvantaged business
736 enterprises, and other small businesses in public construction and public works projects
737 undertaken as part of the federal economic recovery effort and funded in whole or in part by the
738 American Recovery and Reinvestment Act of 2009.

739 (c) The secretary shall promulgate rules, regulations or guidelines relative to the
740 implementation and administration of the technical assistance and capacity building pilot
741 program.

742 (d) Not later than 6 months upon the conclusion of the provision of technical assistance
743 and capacity building services provided pursuant to subsection (b), the secretary or her designee
744 shall provide a written report to the governor on the provision of the services and performance
745 outcomes relative thereto. The report shall also include a recommendation or recommendations
746 as to how the commonwealth may best facilitate the continued inclusion of minority business
747 enterprises and women business enterprises, disadvantaged business enterprises and small
748 businesses in future public construction and public works projects.

749 ESTABLISHING A SURETY BOND GUARANTEE PROGRAM

750 SECTION 40. (a) Notwithstanding any general or special law to the contrary and solely
751 for purposes of implementing public building and public works projects funded in whole or in
752 part by the American Recovery and Reinvestment Act of 2009 while facilitating the involvement
753 of small contractors, including minority contractors and women contractors, the Massachusetts

754 community development finance corporation, hereinafter the “corporation,” is hereby authorized
755 to establish a contractor surety bond guarantee program pursuant to this section.

756 (b) As used in this section the following words shall, unless the context requires
757 otherwise, have the following meanings:-

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

761 “Eligible contractor”, (a) a small contractor, (b) a minority contractor, or (c) a women
762 contractor.

763 “Minority contractor”, a person who performs as a prime contractor or general contractor
764 or as a subcontractor on a contract funded in whole or in part by the American Recovery and
765 Reinvestment Act of 2009 and is a minority business enterprise as such term is defined in section
766 40 of chapter 23A of the General Laws.

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

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

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

776 “Person”, any natural person, business, partnership, corporation or other legal form.

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

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

785 “Small contractor”, a person who performs as a prime contractor or general contractor or
786 as a subcontractor on a contract funded in whole or in part by the American Recovery and
787 Reinvestment Act of 2009 and whose average annual gross revenue is five million dollars or less
788 per year for the most recent two fiscal years.

789 “Surety”, a surety company licensed to do business in the commonwealth and whose
790 name appears on United States Treasury Department Circular 570 and who (a) under the terms of
791 a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches
792 the conditions of the bond, (b) under the terms of a performance bond, undertakes to incur the
793 cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the
794 contract, (c) under the terms of a payment bond, undertakes to make payment to all persons
795 supplying labor and material in the prosecution of the work provided for in the contract if the

796 principal fails to make prompt payment, or (d) is an agent, independent agent, underwriter, or
797 any other company or individual empowered to act on behalf of such company.

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

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

805 (c) Pursuant to this section, the corporation is hereby authorized to establish a contractor
806 surety bond guarantee program and may, upon such terms and conditions as it may prescribe,
807 guarantee and enter into commitments to guarantee any surety against loss resulting from a
808 breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto,
809 by a principal on any total work order or contract amount at the time of bond execution that does
810 not exceed \$250,000. No such guarantee may be issued, unless:

811 the person who would be principal under the bond is an eligible contractor;

812 the bond is required in order for such person to bid on a contract, or to serve as a prime
813 contractor or general contractor or as subcontractor on a contract;

814 such person is not able to obtain such bond on reasonable terms and conditions without a
815 guarantee under this section; and

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

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

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

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

835 (e) The corporation is hereby authorized to guarantee up to 90 per cent of the loss
836 incurred and paid by a surety on bonds guaranteed under this section. Additionally, subject to
837 the provisions of this section, in connection with the issuance by the corporation of a guarantee

838 to a surety as provided by subsection (c), the corporation may agree to indemnify such surety
839 against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of
840 a bond guaranteed by the corporation pursuant to subsection (c); provided, however that prior to
841 making any payment under this subsection, the corporation shall first determine that a breach of
842 the terms of such bond was imminent and the surety must obtain written approval from the
843 corporation prior to making any payments pursuant to this subsection.

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

846 the surety obtained such guarantee or agreement, or applied for such reimbursement, by
847 fraud or material misrepresentation,

848 the total contract amount at the time of execution of the bond or bonds exceeds \$250,000,
849 or

850 the surety has breached a material term or condition of such guarantee in the agreement.

851 REPORTING REQUIREMENT

852 SECTION 41. Any entity located in Massachusetts that receives federal funds through
853 the American Recovery and Reinvestment Act of 2009 shall provide information as directed by
854 the secretary of administration and finance regarding the use of the funds. The required
855 information shall include but not be limited to the reporting information required by the federal
856 government, and shall include any other information deemed necessary by the secretary to
857 administer the American Recovery and Reinvestment Act of 2009 responsibly, efficiently and
858 transparently. To the extent possible, the secretary shall work to streamline the reporting of this

859 information, minimize duplication of data entry by recipients and ensure data consistency. The
860 secretary of administration and finance may issue regulations to effectuate this reporting
861 requirement.

862 SECTION 42. Employers and hiring agents on all projects funded in whole or in part by
863 the American Recovery and Reinvestment Act of 2009 shall post notices of available
864 employment opportunities to the commonwealth's job bank or the one-stop career centers closest
865 to where the projects are located. The postings will contain such information as directed by the
866 secretary of labor and workforce development. The secretary may issue regulations to effectuate
867 this job posting requirement.

868 SECTION 43. Sections 1 to 24 and section 31 shall apply only to contracts advertised
869 after the effective date of this act.