

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F.D. Cabral

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act making technical corrections to the public construction reform law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Antonio F.D. Cabral	13th Bristol

The Commonwealth of Massachusetts

In the Year Two Thousand and 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 2006 Official edition is hereby
2 amended by inserting after the word "towns", in line 88, the following words:-

3

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

5

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

8

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

13

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

17

18 "Minority-owned business", any contracting or subcontracting business, or a business that provides
19 construction materials, equipment or supplies to contractors and subcontractors, which is beneficially
20 owned by one or more minority persons as follows:

21

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

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

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

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

33

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

37

38 "Women-owned business", any contracting or subcontracting business or a business that provides
39 construction materials, equipment or supplies to contractors or subcontractors which is beneficially
40 owned by one or more women meeting the requirements set forth in clauses (i) to (iv), inclusive, of the

41 definition of minority-owned business in this section, except that the terms "women", "women
42 owners", and "women-owned business", shall be substituted for the terms "minority" and "minority
43 persons", "minority owners", and "minority business" appearing in said definition.

44

45 SECTION 5. Subsection (d) of said section 40N of said chapter 7 of the General Laws, as so appearing, is
46 hereby amended by striking, in line 2, the word "establish" and inserting in place thereof the following
47 word:- publish

48

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

52

53

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

56

57 For cases involving security sensitive information as defined by sub-clause (n) of clause Twenty-
58 sixth of section 7 of chapter 4 and in order to maintain the confidentiality of security sensitive
59 information, the awarding authority may, with prior approval of the commissioner, implement a
60 prequalification process whereby the awarding authority selects a final list of a minimum of 3 general
61 contractors who are eligible to submit bids and the awarding authority may award a contract to the
62 lowest bidder amongst the final list of bidders. The commissioner of the division of capital asset
63 management and maintenance shall promulgate regulations to implement this paragraph.

64

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

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

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

82 (C) Every contract for the construction, reconstruction, installation, demolition, maintenance or
83 repair of any building estimated to cost not less than \$10,000 but not more than \$25,000 shall be
84 awarded to the responsible person offering to perform the contract at the lowest price. The public
85 agency shall make public notification of the contract and shall seek written responses from persons who
86 customarily perform such work. The public notification shall include a scope of work statement that
87 defines the work to be performed and provides potential responders with sufficient information
88 regarding the objectives and requirements of the public agency and the time period within which the
89 work is to be completed. For purposes of this subsection "public notification" shall include, but not be
90 limited to, posting, no less than 2 weeks before the time specified in the notification for the receipt of
91 responses, the contract and scope of work statement on the website of the public agency and, either on
92 the COMPASS system, so-called, or in the central register established under section 20A of chapter 9,
93 and in a conspicuous place in or near the primary office of the public agency. Written price quotations
94 submitted in accordance with this subsection do not require bid deposits.

95 (D) Every contract for the construction, reconstruction, installation, demolition, maintenance or
96 repair of any building by a public agency estimated to cost more than \$25,000 but not more than
97 \$100,000 shall be awarded to the lowest responsible and eligible bidder on the basis of competitive bids

98 publicly opened and read in accordance with the procedure set forth in said section 39M of said chapter
99 30. The term "pumping station" as used in this section shall mean a building or other structure which
100 houses solely pumps and appurtenant electrical and plumbing fixtures.

101 (E) Every contract for the construction, reconstruction, installation, demolition, maintenance or
102 repair of any building by a public agency estimated to cost more than \$100,000, except for a pumping
103 station to be constructed, reconstructed, installed, demolished, maintained or repaired as an integral
104 part of a sewer construction or water construction project bid under the provisions of section 39M of
105 chapter 30, shall be awarded to the lowest responsible and eligible general bidder on the basis of
106 competitive bids in accordance with the procedure set forth in section 44A to 44H, inclusive.

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

112 (G) Notwithstanding paragraph (E), a public agency may undertake the procurement of modular
113 buildings, in accordance with section 44E. A public agency may procure site work for modular buildings,
114 including but not limited to, construction of foundations, installations, and attachment to external
115 utilities, or any portion of site work, either in combination with the procurement of modular buildings
116 pursuant to section 44E or on the basis of competitive bids pursuant to paragraph (E). Notwithstanding
117 the paragraph (E), a public agency may procure energy management services in accordance with section
118 11C of chapter 25A and regulations promulgated thereunder.

119
120 SECTION 9. Said section 44A of said chapter 149 of the General Laws, as so appearing, is hereby further
121 amended by inserting after subsection (4) the following new subsection:-

122
123 (4A) For projects involving security sensitive information as defined by sub-clause (n) of clause
124 Twenty-sixth of section 7 of chapter 4 and in order to maintain the confidentiality of security sensitive
125 information, the awarding authority may, with prior approval of the commissioner of the division of
126 capital asset management and maintenance, implement a prequalification process whereby the

127 awarding authority selects a final list of a minimum of 3 general contractors who are eligible to submit
128 bids and the awarding authority may award a contract to the lowest bidder amongst the final list of
129 bidders. The commissioner of the division of capital asset management and maintenance shall
130 promulgate regulations to implement this paragraph.

131

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

134 (a) A public agency, before entering into a contract for design services, except for services relating
135 exclusively to preparation of master plans, studies, surveys, soil tests, cost estimates, or programs,
136 pursuant to section 38D or section 38K of chapter 7, shall contract for the services of an owner's project
137 manager to serve as the public agency's agent and consultant during the planning, design and
138 implementation of a contract for the construction, reconstruction, installation, demolition, maintenance
139 or repair of any building by the public agency estimated to cost not less than \$1,500,000. The duties of
140 the owner's project manager shall include, but need not be limited to: providing advice and consultation
141 with respect to design, value engineering, scope of the work, cost estimating, general contractor and
142 subcontractor prequalification, pursuant to section 44D1/2 or 44D3/4 when applicable, scheduling,
143 construction and the selection, negotiation with and oversight of a designer and a general contractor for
144 the project, ensuring the preparation of time schedules which shall serve as control standards for
145 monitoring performance of the building project, and assisting in project evaluation including, but not
146 limited to, written evaluations of the performance of the design professional, contractors, and
147 subcontractors. For the purposes of this subsection, the term "owner's project manager" shall mean a
148 person, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity
149 engaged in the practice of providing project management services for the construction and supervision
150 of construction of buildings. The owner's project manager shall be a person, corporation, partnership,
151 sole proprietorship, joint stock company, joint venture, or other entity registered by the commonwealth
152 as an architect or professional engineer and who has at least 5 years relevant experience in the
153 construction and supervision of construction of buildings or, if not registered as an architect or
154 professional engineer, a person, corporation, partnership, sole proprietorship, joint stock company, joint
155 venture, or other entity who has at least 7 years relevant experience in the construction and supervision
156 of construction of buildings. The owner's project manager shall be independent of the designer, general
157 contractor or any sub-contractor involved in the building project.

158

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

161 (16) The division of capital asset management and maintenance shall develop a standard
162 subcontractor evaluation form that shall be completed by every public agency as defined in section 44A,
163 upon completion of a building project under its control, and submitted to the division for the
164 subcontractor's qualification file. The official from the public agency, or the owner's representative, shall
165 certify that the information contained on the subcontractor evaluation form represents, to the best of
166 his knowledge, a true and accurate analysis of the subcontractor's performance record on that contract.
167 The public agency shall mail a copy of the subcontractor evaluation form to the subcontractor and the
168 subcontractor shall, within 30 days, submit a written response to the division disputing any information
169 contained in the evaluation form and setting forth any additional information concerning the building
170 project or the oversight of the contract that may be relevant to the evaluation of the subcontractor's
171 performance on the contract. The division shall attach any such response to the evaluation form for
172 inclusion in the subcontractor's qualification file. No person shall be liable for any injury or loss to a
173 subcontractor as a result of the completion of a subcontractor evaluation form as required by this
174 section unless the individual completing the form has been found by a court of competent jurisdiction to
175 have acted in a willful, wanton or reckless manner. If a suit is commenced by a subcontractor against a
176 public employee, an owner's representative, an architect or an engineer who has completed a
177 subcontractor evaluation form as required by this section seeking to recover damages resulting from
178 injury caused by such evaluation, the public agency for whom the evaluation form was completed, or
179 the commonwealth if the evaluation was completed for a state agency, shall provide for the legal
180 representation of the employee, owner's representative, architect or engineer. The public agency, or the
181 commonwealth, shall also indemnify the person from all financial loss and expenses, including but not
182 limited to legal fees and filing costs, in an amount not to exceed \$1,000,000. No person shall be
183 indemnified for losses other than legal fees and filing costs under this section if the person is found by a
184 court or a jury to have acted in a willful, wanton or reckless manner.

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

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

191

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

194

195 SECTION 13. Section 44D1/2 of said chapter 149 of the General Laws, as appearing in the 2006 Official
196 Edition, is hereby amended by striking out, in line 6, the words "not less" and inserting in place thereof
197 the following words:- more

198

199 SECTION 14. Paragraph (b) of said section 44D1/2 of said chapter 149 is hereby further amended by
200 striking out subsection (2).

201

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

205

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

208

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

212

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

216

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

220

221 SECTION 20. Said section 44D 1/2 of said chapter 149 of the General Laws, as so appearing, is hereby
222 amended by striking out, in lines 156 to 157, inclusive, the words: , "invite general bids pursuant to
223 sections 44B to 44E, inclusive," and inserting in place thereof the following words:- or invite general
224 bids, without further prequalification, pursuant to sections 44A to 44J, inclusive, with the exception of
225 44D1/2 and 44D3/4;

226

227 SECTION 21. Said section 44D 1/2 of said chapter 149 of the General Laws, as so appearing, is hereby
228 amended by striking out, in lines 164 to 166, inclusive, the words: , "invite general bids pursuant to
229 sections 44B to 44E, inclusive, without further prequalification" and inserting in place thereof the
230 following words:- or invite general bids, without further prequalification, pursuant to sections 44A to
231 44J, inclusive, with the exception of 44D1/2 and 44D3/4;

232

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

235 (a) Notwithstanding section 44E, an awarding authority on contracts subject to section 44A and
236 which are estimated to cost not less than \$10,000,000 shall prequalify subcontractors to submit sub-bids
237 in accordance with the provisions of subsections (a) to (j), inclusive; provided, that on such contracts
238 subject to section 44A and which are estimated to cost more than \$100,000 but not more than
239 \$10,000,000, an awarding authority may elect to prequalify subcontractors to submit sub-bids in
240 accordance with subsections (a) to (j), inclusive. The prequalification process shall be for all sub-bid

241 classes of work listed in subsection (1) of section 44F that meet or exceed the threshold value for sub-
242 bid work of said subsection (1) of said section 44F. When prequalifying the subcontractors, the
243 awarding authority shall initiate said prequalification through the solicitation of responses to a request
244 for qualifications pursuant to subsection (d) of this section.

245

246 SECTION 23. Said section 44D3/4 of said chapter 149 of the General Laws, as so appearing, is hereby
247 further amended by inserting after the word "authority", in line 27, the following words:- , as designated
248 by the awarding authority

249

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

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

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

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

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

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

266 (ii) As of January 1, 2006, subcontractors seeking prequalification by an awarding authority for a
267 particular project shall be required to submit to the awarding authority a copy of the certificate of

268 eligibility issued by the division of capital asset management and maintenance along with a completed
269 update statement.

270

271 SECTION 26. Said section 44D3/4 of said chapter 149 of the General Laws, as so appearing, is hereby
272 amended by striking out, in lines 148 to 149, inclusive, the words “, invite filed sub-bids pursuant to
273 sections 44B to 44E, inclusive, without further prequalification, and inserting in place thereof the
274 following words:-; or invite filed sub bids, without further prequalification, pursuant to sections 44A to
275 44J, inclusive, with the exception of sections 44D1/2 and 44D3/4;

276

277 SECTION 27. Said section 44D3/4 of said chapter 149 of the General Laws, as so appearing, is hereby
278 amended by striking out, in lines 156 to 157, inclusive, the words “, invite filed sub-bids pursuant to said
279 sections 44B to 44E, inclusive, without further prequalification, and inserting in place thereof the
280 following words- ; or invite filed sub bids, without further prequalification, pursuant to sections 44A to
281 44J, inclusive, with the exception of sections 44D1/2 and 44D3/4;

282

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

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

291

292 If the awarding authority decides to reject all general bids or if the awarding authority does not
293 receive any general bids, the awarding authority may retain and use the sub-bids received for a second
294 opening of general bids; provided, however, that there are no changes in the work involved for the sub-
295 trades for which the sub-bids are so retained and used; and provided further, that the awarding

296 authority shall obtain the consent of each sub-bidder included in any award of a general contract made
297 pursuant to the second opening of general bids if such award is not made within 90 days, Saturday,
298 Sundays, and legal holidays excluded, after the opening of such sub-bids.

299
300 SECTION 29. Subsection (2) of section 44E of said chapter 149 as so appearing is hereby further
301 amended by striking paragraph D in its entirety and inserting in place thereof the following:

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

303 Item 1: The work of the general contractor, being all work other than that covered by Item 2.
304 \$_____

305 Item 2. Sub-bids as follows; provided, however, that column (d) shall not apply to projects with
306 subcontractor prequalification pursuant to section 44D¾:

307 :--

308

309 (A)	(B)	(C)	(D)
310 Sub-trade	Name of Sub-bidder	Amount	Bonds requested
			by general
			al bidder
			(Yes or No)

314 _____ \$

315 _____ \$

316 _____ \$

317 _____ \$

318
319 Total of Item 2 \$_____

320 The undersigned agrees that each of the above named sub-bidders will be used for the work
321 indicated at the amount stated, unless a substitution is made. The undersigned further agrees to pay the
322 premiums for any performance and payment bonds furnished by sub-bidders as requested herein by the

323 undersigned, and that all of the cost of all such premiums is included in the amount set forth in Item 1 of
324 this bid. The undersigned further agrees that the cost of premiums for payment and performance bonds
325 furnished by sub-bidders pursuant to section 44D 3/4 shall not be included in the amount set forth in
326 Item 1, but shall be paid by the sub-bidders and included in their sub-bid price.

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

334

335 SECTION 30. Said section 44E of said chapter 149 of the General Laws, as so appearing, is hereby further
336 amended by inserting after the word "bid", in line 119, the following words:- , or (4) because of an
337 election in error by a general bidder whether or not to request a payment and performance bond of a
338 sub-bidder who is subject to prequalification pursuant to section 44D3/4

339

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

342 D. The undersigned agrees that, if he is selected as a sub-bidder, he will, within 5 days, Saturdays,
343 Sundays and legal holidays excluded, after presentation of a subcontract by the general bidder selected
344 as the general contractor, execute with such general bidder a subcontract in accordance with the terms
345 of this sub-bid, and contingent upon the execution of the general contract. If required to do so pursuant
346 to the prequalification process under section 44D³/₄ or if requested to do so by the general bidder in the
347 general bid, the undersigned shall furnish a payment and performance bond of a surety company
348 licensed to do business in the commonwealth and whose name appears on United States Treasury
349 Department Circular 570, in the full sum of the subcontract price. The premiums for the payment and
350 performance bond shall be paid by the sub-bidder and included in the sub-bid price when the
351 subcontractors are prequalified pursuant to section 44D³/₄, and shall be paid by the general bidder when

352 there is no subcontractor prequalification pursuant to section 44D³/₄ and the bonds are requested by the
353 general bidder.

354

355 SECTION 32. Said section 44F of said chapter 149 of the General Laws, as so appearing, is hereby further
356 amended by inserting after the word “where”, in line 424, the following words:- the sub-bidders were
357 required to furnish and pay for such payment and performance bonds because subcontractors were
358 prequalified under the provisions of section 44D³/₄ or

359

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

362

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

365

366 SECTION 35. Subsection (d) of said section 4 of said chapter 149A of the General Laws, as so appearing,
367 is hereby amended by striking out the third sentence and inserting in place thereof the following:- If an
368 exempt agency modifies or amends the procedures so approved, the exempt agency shall immediately
369 submit the amended procedures to the inspector general for approval.

370

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

373

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

376

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

380

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

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

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

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

392

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

397

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

401

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

404

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

407

408 (i) All trade contractors shall return an executed trade contract including required payment and
409 performance bonds and insurance certificates to the construction manager at risk firm within 10
410 business days of receipt of the trade contract from the construction manager at risk firm. Trade
411 contracts for the trade contractors selected by the construction manager at risk firm shall be the trade
412 contract agreement in subsection (k).

413

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

417

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

421

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

424

425 SECTION 47. Section 16 of said chapter 149A of the General Laws, as so appearing, is hereby amended
426 by striking out, in line 44, the words "1 to 10" and inserting in place thereof the following words:- 14 to
427 21

428

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

431

432 SECTION 49. The second paragraph of said section 18 of said chapter 149A of the General Laws, as so
433 appearing, is hereby mended by striking out the second sentence and inserting in place thereof the
434 following:- The scope of work statement shall include criteria and preliminary design, general budget
435 parameters, general schedule requirements and, to the extent available, geotechnical reports, existing
436 condition surveys, studies and specifications, including detailed information on existing site conditions,
437 to enable prospective design/build entities to submit proposals in response to the RFP issued pursuant
438 to section 19.

439

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

442

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

446

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

449

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

456

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

459

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

465

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

468

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

471

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

475

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

479

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

483

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

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

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

492

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

496 (6) an affidavit of prevailing wage compliance pursuant to sections 26 through 27D, inclusive, of chapter
497 149 of the General Laws;

498

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

502

503 SECTION 60. The third paragraph of clause (4) of subsection (a) of said section 21F of said chapter 703
504 of the acts of 1963, as inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby
505 amended by striking out the third sentence and inserting in place thereof the following sentence:- In the
506 event that a contract and guaranteed maximum price amendment cannot be successfully negotiated

507 between the selection committee and the next highest ranked proposer, the authority shall terminate
508 the procurement process and shall instead procure the project in accordance with sections 44A to 44J,
509 inclusive, of chapter 149 of the General Laws.

510

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

515

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

519

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

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

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

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

532

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

537

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

541

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

544

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

548

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

552

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

556

557

558