

**HOUSE . . . . . No. 2971**

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**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:

Antonio F.D. Cabral

DISTRICT/ADDRESS:

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 amended  
2 by inserting after the word “towns”, in line 88, the following words:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 bidder amongst the final list of bidders. The commissioner of the division of capital asset management  
49 and maintenance shall promulgate regulations to implement this paragraph.

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

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

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

67 (C) Every contract for the construction, reconstruction, installation, demolition, maintenance or  
68 repair of any building estimated to cost not less than \$10,000 but not more than \$25,000 shall be awarded  
69 to the responsible person offering to perform the contract at the lowest price. The public agency shall  
70 make public notification of the contract and shall seek written responses from persons who customarily  
71 perform such work. The public notification shall include a scope of work statement that defines the work  
72 to be performed and provides potential responders with sufficient information regarding the objectives  
73 and requirements of the public agency and the time period within which the work is to be completed. For  
74 purposes of this subsection "public notification" shall include, but not be limited to, posting, no less than  
75 2 weeks before the time specified in the notification for the receipt of responses, the contract and scope of  
76 work statement on the website of the public agency and, either on the COMPASS system, so-called, or in  
77 the central register established under section 20A of chapter 9, and in a conspicuous place in or near the  
78 primary office of the public agency. Written price quotations submitted in accordance with this  
79 subsection do not require bid deposits.

80 (D) Every contract for the construction, reconstruction, installation, demolition, maintenance or  
81 repair of any building by a public agency estimated to cost more than \$25,000 but not more than  
82 \$100,000 shall be awarded to the lowest responsible and eligible bidder on the basis of competitive bids  
83 publicly opened and read in accordance with the procedure set forth in said section 39M of said chapter  
84 30. The term "pumping station" as used in this section shall mean a building or other structure which  
85 houses solely pumps and appurtenant electrical and plumbing fixtures.

86 (E) Every contract for the construction, reconstruction, installation, demolition, maintenance or  
87 repair of any building by a public agency estimated to cost more than \$100,000, except for a pumping  
88 station to be constructed, reconstructed, installed, demolished, maintained or repaired as an integral part  
89 of a sewer construction or water construction project bid under the provisions of section 39M of chapter  
90 30, shall be awarded to the lowest responsible and eligible general bidder on the basis of competitive bids  
91 in accordance with the procedure set forth in section 44A to 44H, inclusive.

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

97 (G) Notwithstanding paragraph (E), a public agency may undertake the procurement of modular  
98 buildings, in accordance with section 44E. A public agency may procure site work for modular buildings,  
99 including but not limited to, construction of foundations, installations, and attachment to external utilities,  
100 or any portion of site work, either in combination with the procurement of modular buildings pursuant to  
101 section 44E or on the basis of competitive bids pursuant to paragraph (E). Notwithstanding the paragraph  
102 (E), a public agency may procure energy management services in accordance with section 11C of chapter  
103 25A and regulations promulgated thereunder.

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

106 (4A) For projects involving security sensitive information as defined by sub-clause (n) of clause  
107 Twenty-sixth of section 7 of chapter 4 and in order to maintain the confidentiality of security sensitive  
108 information, the awarding authority may, with prior approval of the commissioner of the division of  
109 capital asset management and maintenance, implement a prequalification process whereby the awarding  
110 authority selects a final list of a minimum of 3 general contractors who are eligible to submit bids and the

111 awarding authority may award a contract to the lowest bidder amongst the final list of bidders. The  
112 commissioner of the division of capital asset management and maintenance shall promulgate regulations  
113 to implement this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

193 SECTION 20. Said section 44D 1/2 of said chapter 149 of the General Laws, as so appearing, is  
194 hereby amended by striking out, in lines 156 to 157, inclusive, the words: , “invite general bids pursuant  
195 to sections 44B to 44E, inclusive,” and inserting in place thereof the following words:- or invite general  
196 bids, without further prequalification, pursuant to sections 44A to 44J, inclusive, with the exception of  
197 44D1/2 and 44D3/4;

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



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

205 (a) Notwithstanding section 44E, an awarding authority on contracts subject to section 44A and  
206 which are estimated to cost not less than \$10,000,000 shall prequalify subcontractors to submit sub-bids  
207 in accordance with the provisions of subsections (a) to (j), inclusive; provided, that on such contracts  
208 subject to section 44A and which are estimated to cost more than \$100,000 but not more than  
209 \$10,000,000, an awarding authority may elect to prequalify subcontractors to submit sub-bids in  
210 accordance with subsections (a) to (j), inclusive. The prequalification process shall be for all sub-bid  
211 classes of work listed in subsection (1) of section 44F that meet or exceed the threshold value for sub-bid  
212 work of said subsection (1) of said section 44F. When prequalifying the subcontractors, the awarding  
213 authority shall initiate said prequalification through the solicitation of responses to a request for  
214 qualifications pursuant to subsection (d) of this section.

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

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

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

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

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

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

229 (i) A commitment letter for payment and performance bonds at 100 percent of the estimated  
230 contract value from a surety company licensed to do business in the commonwealth and whose name  
231 appears on United States Treasury Department Circular 570. The cost for such payment and performance

232 bonds shall be paid by the sub-bidder and included in any sub-bid price submitted following  
233 prequalification.

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

238 SECTION 26. Said section 44D3/4 of said chapter 149 of the General Laws, as so appearing, is hereby  
239 amended by striking out, in lines 148 to 149, inclusive, the words “, invite filed sub-bids pursuant to  
240 sections 44B to 44E, inclusive, without further prequalification, and inserting in place thereof the  
241 following words:-; or invite filed sub bids, without further prequalification, pursuant to sections 44A to  
242 44J, inclusive, with the exception of sections 44D1/2 and 44D3/4;

243 SECTION 27. Said section 44D3/4 of said chapter 149 of the General Laws, as so appearing, is hereby  
244 amended by striking out, in lines 156 to 157, inclusive, the words “, invite filed sub-bids pursuant to said  
245 sections 44B to 44E, inclusive, without further prequalification, and inserting in place thereof the  
246 following words- ; or invite filed sub bids, without further prequalification, pursuant to sections 44A to  
247 44J, inclusive, with the exception of sections 44D1/2 and 44D3/4;

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

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

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

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

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

266 Item 1: The work of the general contractor, being all work other than that covered by Item  
267 2. \$ \_\_\_\_\_

268 Item 2. Sub-bids as follows; provided, however, that column (d) shall not apply to projects with  
269 subcontractor prequalification pursuant to section 44D<sup>3</sup>/<sub>4</sub>:

270 :--

| 271 (A)       | (B)                | (C)    | (D)             |
|---------------|--------------------|--------|-----------------|
| 272 Sub-trade | Name of Sub-bidder | Amount | Bonds requested |
|               |                    |        | by _____ gen    |
|               |                    |        | eral bidder     |
|               |                    |        | (Yes or No)     |

276 \_\_\_\_\_ \$

277 \$

278 \_\_\_\_\_ \$

279 \$

280  
281

282 Total of Item 2 \$ \_\_\_\_\_

283 The undersigned agrees that each of the above named sub-bidders will be used for the work indicated  
284 at the amount stated, unless a substitution is made. The undersigned further agrees to pay the premiums  
285 for any performance and payment bonds furnished by sub-bidders as requested herein by the undersigned,  
286 and that all of the cost of all such premiums is included in the amount set forth in Item 1 of this bid. The  
287 undersigned further agrees that the cost of premiums for payment and performance bonds furnished by  
288 sub-bidders pursuant to section 44D 3/4 shall not be included in the amount set forth in Item 1, but shall  
289 be paid by the sub-bidders and included in their sub-bid price.

290 The undersigned agrees that if he is selected as general contractor, he will promptly confer with the  
291 awarding authority on the question of sub-bidders; and that the awarding authority may substitute for any

292 sub-bid listed above a sub-bid filed with the awarding authority by another sub-bidder for the sub-trade  
293 against whose standing and ability the undersigned makes no objection; and that the undersigned will use  
294 all such finally selected sub-bidders at the amounts named in the respective sub-bids and be in every way  
295 as responsible for them and their work as if they had been originally named in this general bid, the total  
296 contract price being adjusted to conform thereto.

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

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

303 D. The undersigned agrees that, if he is selected as a sub-bidder, he will, within 5 days, Saturdays,  
304 Sundays and legal holidays excluded, after presentation of a subcontract by the general bidder selected as  
305 the general contractor, execute with such general bidder a subcontract in accordance with the terms of this  
306 sub-bid, and contingent upon the execution of the general contract. If required to do so pursuant to the  
307 prequalification process under section 44D3/4 or if requested to do so by the general bidder in the general  
308 bid, the undersigned shall furnish a payment and performance bond of a surety company licensed to do  
309 business in the commonwealth and whose name appears on United States Treasury Department Circular  
310 570, in the full sum of the subcontract price. The premiums for the payment and performance bond shall  
311 be paid by the sub-bidder and included in the sub-bid price when the subcontractors are prequalified  
312 pursuant to section 44D3/4, and shall be paid by the general bidder when there is no subcontractor  
313 prequalification pursuant to section 44D3/4 and the bonds are requested by the general bidder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

368 SECTION 47. Section 16 of said chapter 149A of the General Laws, as so appearing, is hereby amended  
369 by striking out, in line 44, the words “1 to 10” and inserting in place thereof the following words:- 14 to  
370 21

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

424 (6) an affidavit of prevailing wage compliance pursuant to sections 26 through 27D, inclusive, of chapter  
425 149 of the General Laws;

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

429 SECTION 60. The third paragraph of clause (4) of subsection (a) of said section 21F of said chapter 703  
430 of the acts of 1963, as inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby  
431 amended by striking out the third sentence and inserting in place thereof the following sentence:- In the  
432 event that a contract and guaranteed maximum price amendment cannot be successfully negotiated  
433 between the selection committee and the next highest ranked proposer, the authority shall terminate the  
434 procurement process and shall instead procure the project in accordance with sections 44A to 44J,  
435 inclusive, of chapter 149 of the General Laws.



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

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

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

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

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

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

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

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

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

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

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

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