

HOUSE No. 4185

The Commonwealth of Massachusetts

By Mr. Walsh of Lynn, for the committee on State Administration and Regulatory, on House, No. 2971, a Bill making technical corrections to the public construction reform law (House, No. 4185).
July 29, 2009.

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

FOR THE COMMITTEE:

NAME:	DISTRICT/ADDRESS:
Steven M. Walsh	11th Essex

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 2008 Official edition is
2 hereby amended by inserting after the word “towns”, in line 88, the following words:-

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

4 SECTION 2. Subsection (a) of section 40N of chapter 7 of the General Laws, as so appearing, is
5 hereby 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
7 division of capital planning and operations produced disparity studies which documented a
8 history of discrimination against minority and women owned businesses, in which the
9 commonwealth's agencies were participants;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

71 (C) Every contract for the construction, reconstruction, installation, demolition, maintenance
72 or repair of any building estimated to cost not less than \$10,000 but not more than \$25,000 shall

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

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

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

99 (F) When the General Court has approved the use of an alternative mode of procurement of
100 construction for a project pursuant to section 7E of chapter 29, the awarding authority
101 responsible for procuring construction services for the project shall follow the policies and

102 procedures of this section and of section 44B to 44H, inclusive, to the extent compatible with the
103 mode of construction procurement selected.

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

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

114 (4A) For projects involving security sensitive information as defined by sub-clause (n) of
115 clause Twenty-sixth of section 7 of chapter 4 and in order to maintain the confidentiality of
116 security sensitive information, the awarding authority may, with prior approval of the
117 commissioner of the division of capital asset management and maintenance, implement a
118 prequalification process whereby the awarding authority selects a final list of a minimum of 3
119 general contractors who are eligible to submit bids and the awarding authority may award a
120 contract to the lowest bidder amongst the final list of bidders. The commissioner of the division
121 of capital asset management and maintenance shall promulgate regulations to implement this
122 paragraph.

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

126 (a) A public agency, before entering into a contract for design services, except for services
127 relating exclusively to preparation of master plans, studies, surveys, soil tests, cost estimates, or
128 programs, pursuant to section 38D or section 38K of chapter 7, shall contract for the services of
129 an owner's project manager to serve as the public agency's agent and consultant during the
130 planning, design and implementation of a contract for the construction, reconstruction,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

213 SECTION 21. Said section 44D 1/2 of said chapter 149 of the General Laws, as so appearing, is
214 hereby amended by striking out, in lines 164 to 166, inclusive, the words: , “invite general bids

215 pursuant to sections 44B to 44E, inclusive, without further prequalification” and inserting in
216 place thereof the following words:- or invite general bids, without further prequalification,
217 pursuant to sections 44A to 44J, inclusive, with the exception of 44D1/2 and 44D3/4;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

290 :--

(A)	(B)	(C)	(D)
Sub-trade	Name of Sub-bidder	Amount	Bonds requested by neral bidder (Yes or No)

296 _____ \$

297 \$

298 _____ \$

299 \$

300

301

302 Total of Item 2 \$ _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

386 (i) All trade contractors shall return an executed trade contract including required payment
387 and performance bonds and insurance certificates to the construction manager at risk firm within
388 10 business days of receipt of the trade contract from the construction manager at risk
389 firm. Trade contracts for the trade contractors selected by the construction manager at risk firm
390 shall be the trade contract agreement in subsection (k).

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

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

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

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

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

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

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

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

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

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

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

430 (d) Chapter 30, 39N shall apply to all design build contracts unless the awarding authority
431 provides notice in the RFQ that it shall not apply, in whole or in part, to the particular project. In

432 addition to providing said notice in the RFQ, the awarding authority shall also provide sufficient
433 details within the RFP explaining the responsibility of the design build entity for actual
434 subsurface or latent physical conditions and the extent to which Chapter 30, 39N does not apply
435 to the particular project.

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

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

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

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

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

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

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

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

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

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

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

466 SECTION 60. The third paragraph of clause (4) of subsection (a) of said section 21F of said
467 chapter 703 of the acts of 1963, as inserted by said section 30 of said chapter 193 of the acts of
468 2004, is hereby amended by striking out the third sentence and inserting in place thereof the
469 following sentence:- In the event that a contract and guaranteed maximum price amendment
470 cannot be successfully negotiated between the selection committee and the next highest ranked
471 proposer, the authority shall terminate the procurement process and shall instead procure the
472 project in accordance with sections 44A to 44J, inclusive, of chapter 149 of the General Laws.

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

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

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

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

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

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

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

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

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

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

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

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