

HOUSE No. 3172

The Commonwealth of Massachusetts

PETITION OF:

Antonio F. D. Cabral
Robert L. Rice, Jr.
Mary E. Grant

In the Year Two Thousand and Seven.

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:*

SECTION 1. Section 38H of chapter 7 as amended by chapter 193 of the acts of 2004 is hereby further amended by striking subsection (i) and inserting in place thereof the following subsection: --

“(i) Awarding authorities in cities and towns, subject to the provisions of section 44A1/2 of chapter 149 of the General Laws, may allow a designer who conducted a feasibility study to continue with the design of a project; but, nothing herein shall prohibit the awarding authorities from commissioning, at the discretion of the awarding authorities, an independent review, by a knowledgeable and competent individual or business doing such work, of the feasibility of the designer's work to insure its reasonableness and its adequacy before allowing the designer to continue on the project.”

SECTION 2. Paragraph (a) of section 40N of chapter 7 of the General Laws as amended by chapter 193 of the Acts of 2004 is hereby amended by striking clause (2) and inserting in place thereof the following clause: --

“(2) and in 1994, the executive office of transportation and construction and in 1996 the Division of Capital Planning and Operations produced disparity

studies which documented a history of discrimination against minority and women owned businesses, in which the commonwealth's agencies were participants;”

SECTION 3. Said paragraph (b) of said section 40N of said chapter 7 as amended by chapter 193 of the Acts of 2004 is hereby further amended by striking the definition of “minority-owned business” and inserting in place thereof the following new definition: --

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

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

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

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

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

SECTION 4. Said paragraph (b) of said section 40N of said chapter 7 as amended by chapter 193 of the Acts of 2004 is hereby further amended by striking the definition “women-owned business” and inserting in place thereof the following new definition: ==

“Women-owned business”, any contracting or subcontracting business or a business that provides construction materials, equipment or supplies to contractors or subcontractors which is beneficially owned by one or more women meeting the requirements set forth in clauses (i) to (iv), inclusive, of the definition of minority-owned business in this section, except that the terms

"women", "women owners", and "women-owned business", shall be substituted for the terms "minority" and "minority persons", "minority owners", and "minority business" appearing in said definition."

SECTION 5. Paragraph (d) of said section 40N of said chapter 7 as amended by chapter 193 of the Acts of 2004 is hereby further amended by striking, in line 2, the word "establish" and inserting in place thereof the word: "publish"

SECTION 6. Paragraph Subsection 11 of section 44 of chapter 23A as inserted by chapter 193 of the Acts of 2004 is hereby further amended by striking the fourth paragraph and inserting in place thereof the following new paragraph:

"The director shall develop a written procedure by which participation goals, for an individual state assisted building project, may be adjusted for minority-owned businesses, women-owned businesses or both; but, the adjustment shall be based upon the actual availability of minority-owned businesses and women-owned businesses, the geographic location of the project, the scope of work of the state assisted building project or other relevant factors."

SECTION 7. Subsection (a) of section 39M of chapter 30 is hereby amended by inserting at the end of the third paragraph the following: --

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

SECTION 8. Section 44A of [chapter 149](#) of the General Laws as amended by chapter 193 of the Acts of 2004 is hereby further amended by striking out subsection (2) and inserting in place thereof the following subsection:-

(2)(A) Every procurement for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost less than \$5,000 shall be obtained through the exercise of sound business practices. The public agency shall make and keep a record of each such procurement. Said record shall, at a minimum, include the name and address of

the person from whom the services were procured. Written price quotations submitted in accordance with this subsection do not require bid deposits.

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

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

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

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

(F) When the general court has approved the use of an alternative mode of procurement of construction for a project pursuant to [section 7E of chapter 29](#), the awarding authority responsible for procuring construction services for the project shall follow the policies and procedures of this section and of section 44B to 44H, inclusive, to the extent compatible with the mode of construction procurement selected.

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

SECTION 9. Said section 44A of said chapter 149 as amended by chapter 193 of the Acts of 2004 is hereby further amended by inserting after paragraph (4) the following new paragraph: --

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

SECTION 10. Section 44A^{1/2} of chapter 149 as amended by chapter 193 of the Acts of 2004 is here by further amended by striking paragraph (a) and inserting in place thereof the following new paragraph: --

“(a) A public agency, before entering into a contract for design services, except for services relating exclusively to preparation of master plans, studies, surveys, soil tests, cost estimates, or programs, pursuant to section 38D or section 38K of chapter 7, shall contract for the services of an owner's project manager to serve as the public agency's agent and consultant during the planning, design and implementation of a contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by the public agency estimated to cost not less than \$1,500,000. The duties of the owner's project manager shall include, but need not be limited to: providing advice and consultation with respect to design, value engineering, scope of the work, cost estimating, general contractor and subcontractor prequalification, pursuant to section 44D^{1/2} or 44D^{3/4} when applicable, scheduling, construction and the selection, negotiation with and oversight of a designer and a general contractor for the project, ensuring the preparation of time schedules which shall serve as control standards for monitoring performance of the building project, and assisting in project evaluation including, but not limited to, written evaluations of the performance of the design professional, contractors, and subcontractors. For the purposes of this subsection, the term "owner's project manager" shall mean an individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of providing project management services for the construction and supervision of construction of buildings. The owner's project manager shall be a person who is registered by the commonwealth as an architect or professional engineer and who has at least 5 years relevant experience in the construction and supervision of construction of buildings or a person, if not registered as an architect or professional engineer, who has at least 7 years relevant experience in the construction and supervision of construction of buildings. The owner's project manager shall be independent of the designer, general contractor or any subcontractor involved in the building project.”

SECTION 11. Section 44D of chapter 149 as inserted by chapter 149 of the Acts of 2004 is hereby amended by striking subsection (16) and inserting in place thereof the following:

“(16) The division of capital asset management and maintenance shall develop a standard subcontractor evaluation form that shall be completed by every public agency as defined in section 44A, upon completion of a building project under its control, and submitted to the division for the subcontractor's qualification file. The official from the public agency, or the owner's representative, shall

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

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

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

SECTION 12. Section 44D1/2 of chapter 149 as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking subsection (a) in its entirety and replacing it with the following new subsection (a):

“(a) Notwithstanding section 44E, an awarding authority on contracts subject to section 44A and which are estimated to cost not less than \$10,000,000 shall prequalify general contractors to submit general bids in accordance with the provisions of subsections (a) to (j), inclusive; provided, that on such contracts subject to section 44A and which are estimated to cost more than \$100,000 but not more than \$10,000,000, an awarding authority may elect to prequalify general contractors to submit general bids in accordance with subsections (a) to (j), inclusive. When prequalifying general contractors, the awarding authority shall initiate said prequalification through the solicitation of responses to a request for qualifications pursuant to subsection (d) of this section.”

SECTION 13. Subsection (b) of section 44D1/2 of chapter 149 as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking paragraph (2) in its entirety.

SECTION 14. Subsection (c) of section 44D1/2 of chapter 149 as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking the second sentence and inserting in place thereof the following sentence: “The prequalification committee shall be comprised of one representative of the designer and three representatives of the awarding authority, as designated by the awarding authority.”

SECTION 15. Subsection (e) of said section 44D1/2 of said chapter 149 as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking clause (vii) and inserting in place the new following new clause: --

“(vii) Compliance Record, Information on and evidence of the firm's compliance record with respect to minority business enterprise and women business enterprise inclusion goals and workforce inclusion goals, if applicable.”

SECTION 16. Paragraph (2) of said subsection (e) of said section 44D1/2 of said chapter 149 as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking clauses (i) and (ii), inclusive, and inserting in place the new following clauses: --

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

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

SECTION 17. Paragraph (4) of said subsection (e) of said section 44D1/2 of said chapter 149 as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking clauses (i) and (ii), inclusive, and inserting in place thereof the following clauses: --

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

(ii) A certificate of eligibility issued by the division of capital asset management and maintenance pursuant to section 44D, showing a capacity rating sufficient for the project, and a completed Update Statement”

SECTION 18. Said Section [44D 1/2 of chapter 149](#) of the General Laws, inserted by section 19 of chapter 193 of the acts of 2004 and as amended by chapter 507 of the acts of 2004, is hereby further amended by striking out subsection (i) and inserting in place thereof the following subsection:-

(i) Notwithstanding subsections (a) to (h), inclusive, if the awarding authority qualifies less than 3 general contractors to submit bids pursuant to said subsection (h) and the prequalification process was required pursuant to said subsection (a), the awarding authority shall reject all responses and issue at least 1 new request for qualifications and, if the awarding authority still prequalifies less than 3 general contractors to submit bids pursuant to said subsection (h), then the awarding authority may reject all responses and issue a new request for qualifications; or invite general bids, without further prequalification, pursuant to sections 44A to 44J, inclusive, with the exception of 44D1/2 and 44D3/4; or, if the awarding authority prequalifies at least 2 general contractors, then the awarding authority may invite bids from the 2 prequalified general contractors. If the awarding authority qualifies less than 3 general contractors to submit bids pursuant to said subsection (h) and the prequalification process was initiated at the option of the awarding authority pursuant to said subsection (a), the awarding authority may reject all responses and issue a new request for qualifications; or invite general bids, without further prequalification, pursuant to sections 44A to 44J, inclusive, with the exception of 44D1/2 and 44D3/4; or, if the awarding authority prequalifies at least 2 general contractors, then the awarding authority may invite bids from the 2 prequalified general contractors.

An awarding authority re-issuing a request for qualifications under this subsection may stipulate that a general contractor prequalified for a particular project during the first prequalification review by the awarding authority will remain prequalified for that particular project without further submission by the general contractor or review by the awarding authority, for not more than 120 days from the due date of the responses from the first request for qualifications issued to general contractors for the project.

SECTION 19. Section 44D3/4 of chapter 149 as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking subsection (a) in its entirety and replacing it with the following new subsection (a):

“(a) Notwithstanding section 44E, an awarding authority on contracts subject to section 44A and which are estimated to cost not less than \$10,000,000 shall prequalify subcontractors to submit sub-bids in accordance with the provisions of subsections (a) to (j), inclusive; provided, that on such contracts subject to section 44A and which are estimated to cost more than \$100,000 but not more than \$10,000,000, an awarding authority may elect to prequalify general contractors to submit general bids in accordance with subsections (a) to (j), inclusive. When prequalifying general contractors, the awarding authority shall initiate said prequalification through the solicitation of responses to a request for qualifications pursuant to subsection (d) of this section.”

SECTION 20. Subsection (c) of section 44D3/4 of chapter 149 as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking the second sentence contained therein and inserting in place thereof the following sentence: “The prequalification committee shall be comprised of one representative of the designer and three representatives of the awarding authority, as designated by the awarding authority.”

SECTION 21. Paragraph (2) of said subsection (e) of said section 44D3/4 of said chapter 149 as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking clauses (i) and (ii) and inserting in place the new following clauses: --

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

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

SECTION 22. Said subsection (e) of said chapter 44D3/4 of said chapter 149 as inserted by chapter 193 of the Acts of 2004 is hereby further amended by striking paragraph (4) and inserting in place thereof the following paragraph: --

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

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

(ii) As of January 1, 2006, subcontractors seeking prequalification by an awarding authority for a particular project shall be required to submit to the awarding authority a copy of the Certificate of Eligibility issued by the division of capital asset management and maintenance along with a completed Update Statement.”

SECTION 23. Said section [44D 3/4 of said chapter 149](#), inserted by said [section 19 of said chapter 193](#) and as amended by chapter 507 of the acts of 2004 is hereby further amended by striking out subsection (i) and inserting in place thereof the following subsection:-

“(i) Notwithstanding subsections (a) to (h), inclusive, if the awarding authority qualifies less than 3 subcontractors in a particular trade to submit bids pursuant to said subsection (h) and the prequalification process was required pursuant to said subsection (a), the awarding authority shall reject all responses and issue at least 1 new request for qualifications and, if the awarding authority still prequalifies less than 3 subcontractors to submit filed sub-bids pursuant to said subsection (h), then the awarding authority may reject all responses and issue a new request for qualifications; or—invite filed sub bids, without further prequalification, pursuant to sections 44A to 44J, inclusive, with the exception of 44D1/2 and 44D3/4; or, if the awarding authority prequalifies at least 2 subcontractors in the particular trade, then the awarding authority may invite bids from the 2 prequalified subcontractors. If the awarding authority qualifies less than 3 subcontractors to submit filed sub-bids pursuant to said subsection (h) and the prequalification process was initiated at the option of the awarding authority pursuant to said subsection (a), the awarding authority may reject all responses and issue a new request for qualifications; or invite filed sub bids,

without further prequalification, pursuant to sections 44A to 44J, inclusive, with the exception of 44D1/2 and 44D3/4; or, if the awarding authority prequalifies at least 2 subcontractors in the particular trade, then the awarding authority may invite filed sub-bids from the 2 prequalified subcontractors. An awarding authority re-issuing a request for qualifications under this subsection may stipulate that a subcontractor prequalified for a particular project during the first prequalification review by the awarding authority will remain prequalified for that particular project without further submission by the subcontractor or review by the awarding authority for not more than 120 days from the due date of the responses from the first request for qualifications issued to subcontractors for the project.

SECTION 24. Subsection (1) of Chapter 44E of chapter 149 as amended by chapter 193 of the Acts of 2004 is hereby further amended by inserting after the first paragraph the following paragraphs: --

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

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

SECTION 25. Chapter 149A of the General Laws as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking the word “tuc” as it appears in the chapter title.

SECTION 26. Section 2 of chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking the definition “owner’s project manager” and inserting in place thereof the following definition: --

““Owner's project manager”, an individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged to provide project management services on behalf of a public agency for the construction and supervision of construction of a building project. Any individual assigned by the owner's project manager to provide the project management services for the building project shall be a person who is registered by the commonwealth as an architect or professional engineer and has at least 5 years relevant experience in the construction and supervision of construction of buildings of similar size and complexity; or a person who is not so registered and has at least 7 years relevant experience in the construction and supervision of construction of buildings of similar size and complexity. A public agency may utilize a member or members of its staff as owner's project manager provided such staff meets the required qualifications. The owner's project manager shall be independent of the designer and the construction management at risk firm. The term "Public Agency", shall have the same meaning as found in section 44A of chapter 149;”

SECTION 27. Section 4 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking paragraph (c) and inserting in place thereof the following paragraph:

“(c) Applications submitted to the inspector general for approval to use construction management at risk services shall be considered in a timely manner. All decisions shall be rendered by the inspector general to a public agency in not more than 60 days from the date the application is submitted to the inspector general.”

SECTION 28. Paragraph (d) of said section 4 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking the third sentence and inserting in place thereof the following sentence: --

“If an exempt agency modifies or amends the procedures so approved, the exempt agency shall immediately submit the amended procedures to the inspector general for approval.”

SECTION 29. Section 5 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking paragraph (b) and inserting in place thereof the following new paragraph: --

“(b) Before issuing a request for qualifications, hereinafter called RFQ, the public agency shall establish a prequalification committee for the purpose of reviewing and evaluating responses submitted to the RFQ issued pursuant to

subsection (c). The prequalification committee shall be comprised of 1 representative of the designer, the owner's project manager, and at least 2 representatives of the public agency, as designated by the public agency.”

SECTION 30. Section 6 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended in paragraph (a) by striking the second sentence and inserting in place thereof the following sentence: --

“The selection committee shall be comprised of 1 representative of the designer, the owner's project manager, and at least 2 representatives of the public agency, as designated by the public agency.”

SECTION 31. Paragraph (c) of said section 6 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking clause (2) and inserting in place thereof the following clause: --

“(2) The technical component shall include: (i) a detailed project approach, including preconstruction services, (ii) supplemental relevant project references, (iii) the project team members with position descriptions and relevant time commitments of said team members during the project, (iv) the construction management plan indicating approach to control of cost, schedule, quality, documents and claims; (v) preliminary definition of trade contractor and subcontractor bid packages and scopes of work, (vi) affidavit of prevailing wage compliance pursuant to sections 26 through 27D, inclusive, of chapter 149; (vii) a commitment letter from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570 stating the surety's willingness to bond the building project in the full sum of the contract at 110 percent of the budget for the building project, (viii) a technical challenges and solutions plan, and (ix) any qualifications or exceptions to the terms of the form of contract or supplemental conditions as included in the RFP.”

SECTION 32. Section 7 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended in paragraph (a) by striking the words “per cent” and inserting in place thereof the word: -- “percent”

SECTION 33. Paragraph (b) of said section 7 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended in clause (1) by striking the words “per cent” and inserting in place thereof the word: -- “percent”

SECTION 34. Paragraph (e) of section 8 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking clause (4) and inserting in place thereof the following clause: --

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

(i) Commitment Letter for payment and performance bonds at 110 percent of the estimated trade contract value from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570.

(ii) As of January 1, 2006, trade contractors seeking prequalification by an awarding authority for a particular project shall be required to submit to the awarding authority a copy of the Certificate of Eligibility issued by the division of capital asset management and maintenance along with a completed Update Statement.”

SECTION 35. Paragraph (g) of said section 8 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking clause (9) and inserting in place thereof the following clause: --

“(9) an affidavit of prevailing wage compliance pursuant to sections 26 through 27D, inclusive, of chapter 149; “

SECTION 36. Paragraph (g) of said section 8 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended in clause (11) by striking the words “per cent” and inserting in place thereof the word: -- “percent”

SECTION 37. Said section 8 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking paragraph (h) and inserting in place thereof the following paragraph: --

“(h) Bids shall be opened publicly by the public agency and the trade contract shall be awarded to the lowest prequalified bidder; but, if the public agency receives fewer than 3 responsive bids on any trade contract and the lowest bid exceeds the estimated cost for the work for which the bids are requested, the construction manager at risk firm shall attempt to negotiate an acceptable price with the lowest prequalified bidder. If the negotiations are unsuccessful, the construction manager at risk firm shall terminate negotiations with the lowest prequalified bidder and shall initiate negotiations with the trade contractor who was the second lowest prequalified bidder. If the construction manager is unsuccessful in negotiating an acceptable price with the lowest prequalified

bidder and second lowest prequalified bidder, the construction manager at risk firm, on behalf of and with the consent of the public agency, shall solicit additional bids, utilizing the procedures for selection of subcontractors who are not trade contractors, set out in subsection (j).”

SECTION 38. Said section 8 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby further amended by striking paragraph (i) and inserting in place thereof the following paragraph: --

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

SECTION 39. Said section 8 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby further amended in paragraph (j) in the second sentence by striking the word “if” and inserting in place thereof the words: -- “provided that”

SECTION 40. Said section 8 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby further amended in paragraph (k) by striking the word “” “tuc” as it appears before the phrase “Trade Contractor Agreement”.

SECTION 41. Said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby further amended by striking section 14 and inserting in its place thereof the following new section: --

“Section 14. Notwithstanding section 39M of chapter 30, for each contract for the construction, reconstruction, alteration, remodeling or repair of a public works project by an awarding authority and estimated by the awarding authority to cost not less than \$5,000,000, the awarding authority may utilize design build for the construction, reconstruction, alteration, remodeling or repair of such public works project pursuant to sections 14 to 21, inclusive; provided, that prior to using design build, the awarding authority shall seek the approval of the inspector general pursuant to section 16.”

SECTION 42. Section 15 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking the words “1 to 8, inclusive” and inserting in place thereof the following words: -- “14 to 21, inclusive”

SECTION 43. Section 16 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking paragraph (d) and inserting in place thereof the following paragraph: --

“(d) Notwithstanding subsection (a), the Massachusetts highway department, the Massachusetts port authority, and the Massachusetts water resources authority, hereinafter, "exempt agencies", shall not be subject to said subsection (a). Each exempt agency shall submit its procedures for the procurement and use of design build to the inspector general, and so long as the inspector general determines that the procedures of an exempt agency comply with sections 14 to 21, inclusive, the inspector general shall approve the procedures and each exempt agency, so approved, may use the design build delivery method consistent with the procedures so approved on public works projects. Each exempt agency shall annually submit its procedures to the inspector general for review and approval by the inspector general. If an exempt agency modifies or amends the procedures so approved, the exempt agency shall immediately submit the amended procedures to the inspector general for approval. The inspector general shall have 60 days from the time an exempt agency submits its procedures to approve or disapprove the procedures. An exempt agency whose procedures have been disapproved may correct the deficiency or deficiencies contained therein and re-submit the corrected procedures to the inspector general for review and approval. The inspector general shall conduct an expedited review of corrected procedures.”

SECTION 44. Paragraph (d) of section 17 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 s hereby amended by striking clauses (1) and (2), inclusive, and inserting in place thereof the following clauses: --

“(1) for each evaluation criterion, a rating of each response as highly advantageous, advantageous, not advantageous, or unacceptable, and the reasons for the rating; and

(2) a composite rating for each proposal using said ratings as highly advantageous, advantageous, not advantageous, or unacceptable, and the reasons for said composite rating.”

SECTION 45. Section 18 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended in the second paragraph by striking the second sentence and inserting in place thereof the following sentence: --

“The scope of work statement shall include criteria and preliminary design, general budget parameters, general schedule requirements and, to the extent

available, geotechnical reports, existing condition surveys, studies and specifications, including detailed information on existing site conditions, to enable prospective design/build entities to submit proposals in response to the RFP issued pursuant to section 19.”

SECTION 46. Section 18 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended in the third paragraph by striking the second and third sentences and inserting in place thereof the following sentences:

“Design build entities receiving a draft RFP may submit written comments on the draft RFP to the awarding authority at the same time as submitting a response to the RFQ issued pursuant to section 17. The awarding authority may, at its sole discretion, incorporate written comments received from design build entities within the final RFP and may provide to design build entities prequalified to submit a proposal the final RFP pursuant to section 19.”

SECTION 47. Section 19 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby further amended by striking the clause (1) and inserting in place thereof the following clause: --

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

SECTION 48. Section 19 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended in clause (6) the words “per cent” and inserting in place thereof the word: -- “percent”.

SECTION 49. SECTION 20 of said Chapter 149A as inserted by 193 of the Acts of 2004 is hereby amended by inserting the following new subsections after subsection 20(c):

“20(d). Chapter 30, 39N shall apply to all Design Build contracts unless the awarding authority provides notice in the Request for Qualifications (RFQ) that it shall not apply, in whole or in part, to the particular project. In addition to providing said notice in the RFQ, the awarding authority shall also provide sufficient details within the Request for Proposals (RFP) explaining the responsibility of the design build entity for actual subsurface or latent physical

conditions and the extent to which Chapter 30, 39N does not apply to the particular project.

20(e). Sections 39(F), 39(O), 39(P) and 39(R) of chapter 30 of the general laws shall apply to design build projects procured.”

SECTION 50. SECTION 21 of said chapter 149A as inserted by chapter 193 of the Acts of 2004 is hereby amended in the third paragraph by striking the reference to “section 4” and inserting in place thereof the reference to “section 16”.

SECTION 51. Section 21C of chapter 703 of the Acts of 1963 as amended by chapter 193 of the Acts of 2004 is hereby further amended by striking in paragraph (a) the word “may” and inserting in place thereof the word “shall”.

SECTION 52. Paragraph (a) of section 21E of said chapter 703 of the Acts of 1963 as amended by chapter 193 of the Acts of 2004 is hereby further amended by striking clause (3) and inserting in place thereof the following clause: --

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

SECTION 53. Said paragraph (a) of said section 21E of said chapter 703 of the Acts of 1963 as amended by chapter 193 of the Acts of 2004 is hereby further amended by striking clause (10) and inserting in place thereof the following clause: --

“(10) any other relevant information that the authority determines is necessary to make an informed decision regarding team selection.”

SECTION 54. Paragraph (b) of said section 21E of said chapter 703 of the Acts of 1963 as amended by chapter 193 of the Acts of 2004 is hereby further amended by striking in clause (7) the words “per cent” and inserting in place thereof the word: -- “percent”.

SECTION 55. Paragraph (e) of said section 21E of said chapter 703 of the Acts of 1963 as amended by chapter 193 of the Acts of 2004 is hereby amended by inserting after the words “The authority shall commence negotiations” the word: -- “with”.

SECTION 56. Paragraph (a) of section 21F of said chapter 703 of the Acts of 1963 as amended by chapter 193 of the Acts of 2004 is hereby further amended by striking the words “per cent” where such words appear in said paragraph (1) and inserting in place thereof the word: -- “percent”.

SECTION 57. Clause (4) of paragraph (a) of said section 21F of said chapter 703 of the Acts of 1963 as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking the third sentence in the third paragraph and inserting in place thereof the following sentence: --

“In the event that a contract and guaranteed maximum price amendment cannot be successfully negotiated between the selection committee and the next highest ranked proposer, the authority shall terminate the procurement process and shall instead procure the project in accordance with sections 44A to 44J, inclusive, of chapter 149 of the General Laws.”

SECTION 58. Paragraph (c) of section 21G of said chapter 703 of the Acts of 1963 as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking the word “minimum” and inserting in place thereof the word “maximum”.

SECTION 59. Paragraph (g) of said section 21G of said chapter 703 of the Acts of 1963 as inserted by chapter 193 of the Acts of 2004 is hereby amended in clause (4) by striking the words “per cent” and inserting in place thereof the word: -- “percent”.

SECTION 60. Paragraph (h) of said section 21G of said chapter 703 of the Acts of 1963 as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking the second sentence and inserting in place thereof the following sentence: --

“All trade contractors who achieve a score of 70 points or greater shall be prequalified to submit a bid for a specific building project.”

SECTION 61. Paragraph (i) of said section 21G of said chapter 703 of the Acts of 1963 as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking clause (9) and inserting in place thereof the following clause: --

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

SECTION 62. Paragraph (i) of said section 21G of said chapter 703 of the Acts of 1963 as inserted by chapter 193 of the Acts of 2004 is hereby amended in clause (11) by striking the words “per cent” and inserting in place thereof the word: -- “percent”.

SECTION 63. Said paragraph (i) of said section 21G of said chapter 703 of the Acts of 1963 as inserted by chapter 193 of the Acts of 2004 is hereby amended in clause (13) by striking the word “proposals” and inserting in place thereof the word: -- “bids”.

SECTION 64. Paragraph (j) of said section 21G of said chapter 703 of the Acts of 1963 as inserted by chapter 193 of the Acts of 2004 is hereby amended in the first and second sentences by striking the word “proposals” in each instance it appears and inserting in place thereof the word: -- “bids”.

SECTION 65. Said paragraph (j) of said section 21G of said chapter 703 of the Acts of 1963 as inserted by chapter 193 of the Acts of 2004 is hereby further amended in the fourth sentence by striking the words “subsection (i)” and inserting in place thereof the words: -- “Section 21H”

SECTION 66. Paragraph (k) of said section 21G of said chapter 703 of the Acts of 1963 as inserted by chapter 193 of the Acts of 2004 is hereby amended by striking the word “” “tuc” as it appears before the phrase “Trade Contractor Agreement”.