

SENATE, NO, 2061, printed as amended

[Senate, May 27, 2009– Text, printed as amended to the Senate Bill relative to mobilizing economic recovery in Massachusetts. (Senate, No. 2047)].



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND NINE

AN ACT MOBILIZING ECONOMIC RECOVERY IN THE COMMONWEALTH.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to infuse the state economy with available federal funds, create jobs and provide economic relief to the people of the Commonwealth of Massachusetts in the present fiscal emergency, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

7 SECTION 8. Notwithstanding section 38D of chapter 7 of the General Laws, each
8 contract for designer services for a project which is funded in whole or in part by the American

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

18 SECTION 9. Notwithstanding section 38H of chapter 7 of the General Laws, for
19 contracts which are funded in whole or in part by the American Recovery and Reinvestment Act
20 of 2009, the certification required by clause (iv) of subsection (e) of said section 38H of said
21 chapter 7 shall only apply to contracts which exceed \$25,000 or which are for the design of a
22 building for which the budgeted or estimated construction costs exceed \$250,000.

23 SECTION 10. Notwithstanding section 38K of chapter 7, a contract for design services
24 which is funded in whole or in part by the American Recovery and Reinvestment Act of 2009
25 and which would otherwise be subject to the requirements of said section 38K of said chapter 7
26 shall not be subject to those requirements unless the project at issue is estimated to exceed
27 \$250,000.

28 SECTION 11. Subsection (d) of section 38F of chapter 7 of the General Laws shall not
29 apply to contracts which are funded in whole or in part by the American Recovery and
30 Reinvestment Act of 2009. For those projects, the designer selection board may delegate its
31 powers and duties under subparagraph (b) of section 38D of said chapter 7, paragraphs (c) and
32 (d) of section 38E of said chapter 7, and subsections (a) and (b) of sections 38G, and subsections
33 38H and 38I of said chapter 7 to panels of less than all the board members. A panel of at least 6

34 members shall be required for selection of designers under this section, 4 of whom shall be
35 architects or engineers; provided, however, that there shall be at least 1 architect and 1 engineer
36 on the panel.

37 SECTION 12. Notwithstanding section 40B of chapter 7 of the General Laws, for
38 projects which are funded in whole or in part by the American Recovery and Reinvestment Act
39 of 2009, the commissioner of capital asset management and maintenance may, upon request of a
40 state agency or building authority, delegate project control and supervision to that state agency or
41 building authority over projects involving structural or mechanical work in which the estimated
42 cost is less than \$2,000,000 if the commissioner determines that the agency or authority has the
43 ability to control and supervise such project. Except as otherwise provided in said section 40B of
44 said chapter 7, any state agency or building authority shall control and supervise its own building
45 projects when the estimated cost of such project is less than \$250,000 or if the project does not
46 involve structural or mechanical work.

47 SECTION 13. The second and third paragraphs of section 7K of chapter 29 of the
48 General Laws shall not apply to projects which are funded in whole or in part by the American
49 Recovery and Reinvestment Act of 2009; provided, however, that this section shall apply.

50 No provider of design services for any building project for which a state agency is the
51 using agency shall be selected by the designer selection board or by the administering agency in
52 accordance with sections 38A ½ to 38O, inclusive, of chapter 7 of the General Laws, and no
53 design services shall be performed for or by such administering agency for any building project
54 for which the satisfactory completion of a study program is required before the design or
55 construction of that project, until: (a) the study, program or, where appropriate, both have been

56 satisfactorily completed to such extent that a contract for final design may be awarded in the
57 discretion of the commissioner of capital asset management and maintenance; (b) the using
58 agency certifies in writing to the commissioner of capital asset management and maintenance
59 that the study, program or, where appropriate, both correspond to the current needs of that
60 agency, including its current long-term capital facilities development plan; and (c) the
61 commissioner requests that 1 or more of the directors of the office of programming, office of
62 project management or office of facilities management review the study or program or, where
63 appropriate, both and the directors certify in writing to the commissioner that the study, program
64 or, where appropriate, both reflect the using agency's needs as stated, that they provide an
65 accurate estimate of the project requirements, cost and schedule, that the project can be
66 accomplished within the appropriation or authorization for that project, and recommends
67 proceeding with design, construction or, where appropriate, both.

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

73 SECTION 14. Section 26A of chapter 29 of the General Laws shall not apply to
74 maintenance or repair projects, as defined by section 39A of chapter 7 of the General Laws,
75 which are funded in whole or in part in the American Recovery and Reinvestment Act of 2009
76 and are estimated to cost less than \$250,000, if the executive head of the agency administering
77 the project certifies in writing that the design work is or shall be such as to specify a project that
78 can be accomplished, and that there are funds available to pay for the design services.

79 SECTION 15. For contracts which are funded in whole or in part by the American
80 Recovery and Reinvestment Act of 2009, section 39M of chapter 30 of the General Laws shall
81 only apply if the contract is estimated to cost more than \$50,000 but not more than \$100,000.

82 SECTION 16. Notwithstanding section 29 of chapter 149 of the General Laws, contracts
83 which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009
84 shall only be subject to the requirements of said section 29 of said chapter 140 if the amount of
85 the contract is more than \$25,000.

86 SECTION 17. (a) Subsection (2) of section 44A of chapter 149 of the General Laws
87 shall not apply to contracts which are funded in whole or in part by the American Recovery and
88 Reinvestment Act of 2009; provided, however, that this section shall apply.

89 (b) A contract for the construction, reconstruction, installation, demolition, maintenance
90 or repair of any building by a public agency estimated to cost less than \$10,000 and where the
91 overall project is also estimated to cost less than \$10,000 shall be obtained through the exercise
92 of sound business practices. The public agency shall make and keep a record of each such
93 contract solicitation. At a minimum, the record shall include a written description of how the
94 services were procured and the name and address of the person from whom the services were
95 procured. Written price quotations submitted in accordance with this subsection shall not require
96 certificates of eligibility, update statements or bid deposits. In no event shall public agencies
97 solicit price quotations from persons if to do so would violate chapter 268A of the General Laws.

98 (c) A contract for the construction, reconstruction, installation, demolition, maintenance
99 or repair of any building by a public agency estimated to cost not less than \$10,000, but not more
100 than \$50,000 and where the overall project is also estimated to cost not more than \$50,000, shall

101 be awarded to the responsible person offering to perform the contract at the lowest price
102 quotation; provided however, that the public agency shall seek written price quotations from at
103 least 3 persons customarily providing the work for which the contract is being made available.
104 When seeking written quotations, the public agency shall make and keep a record of the names
105 and addresses of all persons from whom price quotations were sought, the names of the persons
106 submitting price quotations and the date and amount of each price quotation. Written price
107 quotations submitted in accordance with this subsection shall not require certificates of
108 eligibility, update statements or bid deposits. In no event shall public agencies solicit price
109 quotations from persons if to do so would violate chapter 268A of the General Laws.

110 (d) A contract for the construction, reconstruction, installation, demolition, maintenance
111 or repair of any building by a public agency estimated to cost more than \$50,000 but not more
112 than \$100,000, except for a pumping station to be constructed as an integral part of a sewer
113 construction or water construction project bid under section 39M of chapter 30 of the General
114 Laws, shall be awarded to the lowest responsible and eligible bidder on the basis of competitive
115 bids publicly opened and read in accordance with the procedure set forth in said section 39M of
116 said chapter 30. As used in this section, the "pumping station" shall mean a building or other
117 structure which houses only pumps and appurtenant electrical and plumbing fixtures.

118 (e) A contract for the construction, reconstruction, installation, demolition, maintenance
119 or repair of any building by a public agency estimated to cost more than \$100,000, except for a
120 pumping station to be constructed as an integral part of a sewer construction or water
121 construction project bid under section 39M of chapter 30 of the General Laws, shall be awarded
122 to the lowest responsible and eligible general bidder on the basis of competitive bids in

123 accordance with the procedure set forth in sections 44A to 44H, inclusive of chapter 149 of the
124 General Laws.

125 (f) When the general court has approved the use of an alternative mode of procurement of
126 construction for a project under section 7E of chapter 29, the awarding authority responsible for
127 procuring construction services for the project shall follow the policies and procedures of this
128 section and of sections 44B to 44H, inclusive of chapter 149 of the General Laws, to the extent
129 compatible with the mode of construction procurement selected.

130 (g) Notwithstanding subsection (e), a public agency may undertake the procurement of
131 modular buildings in accordance with section 44E of chapter 149 of the General Laws. A public
132 agency may procure site work for modular buildings including, but not limited to, construction of
133 foundations, installations and attachment to external utilities, or any portion of site work, either
134 in combination with the procurement of modular buildings pursuant to said section 44E of said
135 chapter 149 or on the basis of competitive bids pursuant to said subsection (e) paragraph (d).
136 Notwithstanding said subsection (e), a public agency may procure energy management services
137 in accordance with sections 11C or 11I of chapter 25A of the General Laws and regulations
138 promulgated thereunder.

139 SECTION 18. (a) Subsection (f) of section 44D1/2 of chapter 149 of the General laws
140 shall not apply to contracts which are funded in whole or in part by the American Recovery and
141 Reinvestment Act of 2009; provided, however, that this section shall apply.

142 (b) The public notice and solicitation required in subsection (d) of said section 44D 1/2 of
143 said chapter 149 shall be advertised in the central register under section 20A of chapter 9 of the
144 General Laws and within the COMPASS system. The public notice and solicitation shall be

145 given within the COMPASS system not less than 2 weeks before the deadline for submitting
146 responses to the request for qualifications and in the central register under said section 20A of
147 said chapter 9 not less than 2 weeks before the deadline for submitting responses to the request
148 for qualifications .

149 SECTION 19. (a) Subsection (f) of section 44D3/4 of chapter 149 of the General Laws
150 shall not apply to contracts which are funded in whole or in part by the American Recovery and
151 Reinvestment Act of 2009; provided, however, that his section shall apply.

152 (b) The public notice and solicitation required in subsection (d) of said section 44D ³/₄ of
153 said chapter 149 shall be advertised in the central register under section 20A of chapter 9 of the
154 General Laws and within the COMPASS system. The public notice and solicitation shall be
155 given within the COMPASS system not less than 2 weeks before the deadline for submitting
156 responses to the request for qualifications and in the central register under said section 20A of
157 said chapter 9 not less than 2 weeks before the deadline for submitting responses to the request
158 for qualifications.

159 SECTION 20. (a) Subsection (1) of section 44J of chapter 149 of the General Laws shall
160 not apply to contracts which are funded in whole or in part by the American Recovery and
161 Reinvestment Act of 2009; provided, however, that this section shall apply.

162

163 (b) No public agency or authority of the commonwealth or any political subdivision
164 thereof shall award any contract for which competitive bids are required under section 44A of
165 said chapter 149 or section 39M of chapter 30 of the General Laws or for which competitive

166 proposals are required under subsection (4) of section 44E of said chapter 149 or section 11C of
167 chapter 25A of the General Laws unless a notice inviting bids or proposals therefor shall have
168 been posted not less than 1 week before the time specified in the notice for the receipt of the bids
169 or proposals in a conspicuous place in or near the offices of the awarding authority and shall
170 have remained posted until the time so specified, and unless the notice shall also have been
171 advertised either within the COMPASS system, not less than 2 weeks prior to the time specified
172 and in the central register published by the state secretary under section 20A of chapter 9 of the
173 General Laws not less than 2 weeks before the time specified for the receipt of the bids or
174 proposals or, if the notice is not advertised within the COMPASS system, the notice shall be
175 advertised in the central register at least 2 weeks before the time specified. The notice shall also
176 be published at such other times and in such other newspapers or trade periodicals as the
177 commissioner of capital asset management and maintenance may require, having regard to the
178 locality of the work involved.

179 SECTION 21. (a) Subsection (e) of section 5 of chapter 149A of the General Laws shall
180 not apply to contracts which are funded in whole or in part by the American Recovery and
181 Reinvestment Act of 2009; provided, however, that this section shall apply.

182 (b) The public notice and solicitation required in subsection (c) of said section 8 of said
183 chapter 149A shall be advertised in the central register under section 20A of chapter 9 of the
184 General Laws and within the COMPASS system. The public notice and solicitation shall be
185 given within the COMPASS system not less than 2 weeks before the deadline for submitting
186 responses to the request for qualifications and in the central register under said section 20A of

187 said chapter 9 not less than 2 weeks before the deadline for submitting responses to the request
188 for qualifications.

189 SECTION 22. (a) Subsection (d) of section 8 of chapter 149A of the General Laws shall
190 not apply to contracts which are funded in whole or in part by the American Recovery and
191 Reinvestment Act of 2009; provided, however, that this section shall apply.

192 (b) The public notice and solicitation required in subsection (c) of said section 8 of said
193 chapter 149A shall be advertised in the central register under section 20A of chapter 9 of the
194 General Laws and within the COMPASS system. The public notice and solicitation shall be
195 given within the COMPASS system not less than 2 weeks before the deadline for submitting
196 responses to the request for qualifications and in the central register under said section 20A of
197 said chapter 9 not less than 2 weeks before the deadline for submitting responses to the request
198 for qualifications.

199 SECTION 23. (a) Subsection (b) of section 17 of chapter 149A of the General Laws
200 shall not apply to contracts which are funded in whole or in part by the American Recovery and
201 Reinvestment Act of 2009; provided, however, that this section shall apply:-

202 (b) The public notice and solicitation required in subsection (a) of said section 17 of said
203 chapter 149 shall be advertised either within the COMPASS system not less than 2 weeks before
204 the deadline for submitting the letters of interest and in the central register established under
205 section 20A of chapter 9 of the General Laws not less than 2 weeks before the deadline or, if the
206 public notice and solicitation are not given within the COMPASS system, the public notice and
207 solicitation shall be advertised in the central register published by the state secretary under said

208 section 20A of said chapter 9 not less than 2 weeks before the deadline for submitting the letters
209 of interest.

210 SECTION 24. (a) Paragraph (a) of subsection 4 of section 44F of chapter 149 of the
211 General Laws shall not apply to contracts which are funded in whole or in part by the American
212 Recovery and Reinvestment Act of 2009; provided, however, that this section shall apply.

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

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

229 (d) If a rejection of all sub-bids for such a sub-trade occurs under this section, the
230 awarding authority shall state, in an addendum issued with the list of sub-bidders, the amount to
231 be included by a general bidder on the general bid form for such sub-trade and, without in any
232 way affecting other sub-bidders in other sub-trades who have conformed to the prescribed
233 bidding procedure, new sub-bids for such sub-trade shall be requested by written invitation to 3
234 or more qualified sub-bidders, including any that had previously submitted bids, and the sub-bids
235 shall be publicly opened and read by the awarding authority at a time and place to be specified in
236 the invitation. The general contractor shall cause the work covered by the sub-trade to be done
237 by the lowest responsible and eligible sub-bidder against whose standing and ability the general
238 contractor makes no objection or, if there is no sub-bidder, by the subcontractor against whose
239 standing and ability the general contractor and awarding authority make no objection and for a
240 sum upon which the general contractor and the awarding authority may agree. The contract price
241 shall be adjusted by the difference between the subcontract sum and the amount stated in the
242 addendum. The general bidder shall include in the cost of his own work on the general bid form
243 all expenses and profits on account of such adjustments.

244 (e) If after new sub-bids for a sub-trade are requested by written invitation under
245 subsection (d) the awarding authority still does not receive any sub-bids that are unrestricted to
246 the use of 1 or more general bidders and are reasonable for acceptance based upon the estimated
247 cost for the work of that sub-trade, the awarding authority may assign the work to the general
248 contractor if the awarding authority first confirms that its estimate for the cost of the work of that
249 sub-trade is accurate. The general contractor shall cause the work covered by the sub-trade to be
250 done by the subcontractor against whose standing and ability the general contractor and
251 awarding authority make no objection and for a sum upon which the general contractor and the

252 awarding authority shall agree. The contract price shall be adjusted by the difference between
253 the sub-contract sum and the amount stated in the addendum. The general bidder shall include in
254 the cost of his own work on the general bid form all expenses and profits on account of such
255 adjustments.

256 SECTION 25. (a) Notwithstanding section 5 of chapter 149A of the General Laws, for
257 contracts which are funded in whole or in part by the American Recovery and Reinvestment Act
258 of 2009, the procedure in this section shall apply.

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

270 (2) Firms included on the division's standing list of prequalified construction
271 management at-risk firms shall be prequalified for a period of 1 year from the date of issuance of
272 the standing list by the division. Upon issuance of the standing list, the division shall publish the
273 standing list of prequalified construction manager at-risk firms in the central register, the

274 COMPASS system and the division's website. The division shall re-advertise and solicit
275 applications quarterly through the request for qualifications process process provided for in this
276 section to keep the statewide standing list current.

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

286 (4) The selection process for the annual prequalification of the division's standing list of
287 construction manager at-risk firms shall begin once the division gives public notice of the
288 solicitation and requests responses to an RFQ from construction management at-risk firms. The
289 public notice and RFQ shall include: (i) a statement indicating that the RFQ is not for a specific
290 project, but will be used to prequalify construction management at-risk firms for inclusion on the
291 division's annual standing list and that only those construction manager at-risk firms included on
292 the standing list shall be invited to submit proposals in response to requests for proposals issued
293 pursuant to subsection c; (ii) the time and date for receipt of responses to the RFQ, the address of
294 the office to which the responses are to be delivered and the timeframe in which the public
295 agency shall respond to the responses; (iii) a description of the experience that will be required
296 for construction manager at-risk firms to be included on the division's standing list, which shall

297 include a minimum of 3 public or private construction manager at-risk projects during the past
298 10 years; (iv) the evaluation procedure and criteria under paragraph (7), including any rating
299 system; (v) a general description of the scope of services that would be expected of a
300 prequalified construction manager firm during the predesign, preconstruction and construction
301 phases of a construction manager at-risk project; (vi) the anticipated schedule for the selection
302 process of construction manager at risk firms to be included on the division's standing list; and
303 (vii) a prohibition against any unauthorized communication or contact with the public agency
304 outside of official preproposal meetings.

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

320 years; (vii) submission of information on and evidence of the firm's compliance record with
321 respect to minority business enterprise and women business enterprise inclusion goals and
322 workforce inclusion goals, if applicable; (viii) submission of information regarding the firm's
323 experience on construction manager at-risk projects, including references from the owners and
324 architects of the building projects; (ix) submission of information on any projects where the firm
325 was terminated, failed to complete the work or paid liquidated damages; (x) a certificate of
326 eligibility issued by the division under section 44D of chapter 149 of the General Laws, showing
327 the construction manager at risk firm's capacity rating and an update statement; and (k) any
328 other relevant information that the division determines desirable. The statement of qualifications
329 shall be signed under pains and penalties of perjury.

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

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

340 (c) (1) Before issuing a request for proposals, in this section referred to as RFP, the
341 division or other public awarding authority authorized under subsection (b) shall establish a

342 selection committee for the purpose of reviewing and evaluating responses submitted to the RFP
343 issued under paragraph (2). The selection committee shall be comprised of 1 representative of
344 the designer, the owner's project manager and at least 2 representatives of the division or other
345 public awarding authority authorized under said subsection (b).

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

352 SECTION 26. (a) For contracts subject to the prequalification requirements set forth in
353 section 44D½ of chapter 149 of the General Laws which are funded in whole or in part by the
354 American Recovery and Reinvestment Act of 2009, an awarding authority shall have the option
355 to use the condensed prequalification process for general contractors described in this section in
356 lieu of the full prequalification process set forth in said section 44D½ of said chapter 149. The
357 purpose of the condensed prequalification process shall be to allow awarding authorities an
358 opportunity to expedite the prequalification process provided in section 44D½ of said chapter
359 149 in order to most efficiently meet the specified goals and time parameters set forth in the
360 federal act. All of the requirements of the full prequalification process set forth in said section
361 44D½ of said chapter 149 shall be required under the condensed prequalification process unless
362 specifically modified in this section.

363 (b) Where an awarding authority opts to use the condensed prequalification process, the
364 requirements for public notice of the building project and solicitation of responses to the request
365 for qualifications from interested general contractors shall include all items set forth in
366 paragraphs (1) to (8), inclusive, of subsection (d) of section 44D½ but shall also include the
367 following statements:

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

370 (2) a statement that the evaluation procedure and the criteria for the
371 prequalification of interested general contractors shall include evaluation of all the
372 criteria set forth in subsection (e) of said section 44D½ of said chapter 149 but, in order
373 to avoid duplication and promote the expeditious commencement of projects under the
374 federal act and without sacrificing the importance of the prequalification process, for
375 certain of the evaluation categories and subcategories specifically identified in said
376 subsection (e) of said chapter 44D ½ of said chapter 149, the prequalification committee
377 shall evaluate interested general contractors based on a review of the information
378 contained in the division of capital asset management and maintenance certification files
379 including, but not limited to, the project evaluations required by subsection (7) of section
380 44D of said chapter 149 the General Laws and the update statements required by
381 subclause (ii) of clause (4) of subsection (e) of section 44D½ to be submitted by
382 interested general contractors. The prequalification committee shall exercise due
383 diligence in checking appropriate references.

384 (c) The request for qualifications and evaluation criteria for the condensed
385 prequalification process shall include all criteria set forth in subsection (e) of said section 44D¹/₂
386 of said chapter 149 but shall not include the total or minimum point allocations for the evaluation
387 categories and subcategories designated therein. In addition, in the interest of expediting the
388 prequalification of general contractors for contracts funded in whole or in part under the federal
389 act but not sacrificing the prequalification process, where certain of the evaluation subcategories
390 specifically identified in this section require similar reporting by contractors in connection with
391 the certification process set forth in said section 44D of said chapter 149 and the information
392 contained in the required update statements submitted by interested general contractors, an
393 awarding authority issuing an request for qualifications under this condensed prequalification
394 process shall maintain as part of the project record the written certification by the
395 prequalification committee that it has evaluated interested general contractors based on a review
396 of both the information contained in the certification files including, but not limited to, the
397 project evaluations required by subsection (7) of said section 44D of said chapter 149, and the
398 current update statements submitted by interested general contractors, and that it has exercised
399 due diligence in checking appropriate references.

400 (d) Where an awarding authority opts to use the condensed prequalification process, the
401 review of the terminations, legal proceedings, safety record and compliance record provided in
402 subclauses (iv) to (vii) , inclusive, of clause (1) of subsection (e) of said section 44D¹/₂ of said
403 chapter 149 and the review of credit references and public project record under subclauses (ii)
404 and (iii) of clause (2) of said subsection (e) of said section 44D¹/₂ of said chapter 149 and the
405 review of audited financial statements under subclause (i) of clause (3) of said subsection (e) of
406 said section 44D¹/₂ of said chapter 149 shall be satisfied by a requirement that the

407 prequalification committee evaluate both the information contained in the division of capital
408 asset management and maintenance certification files including, but not limited to, the project
409 evaluations required by subsection (7) of section 44D of said chapter 149 and the current update
410 statements submitted by interested general contractors, and by a requirement that the
411 prequalification committee exercise due diligence in checking appropriate references. The
412 prequalification committee shall further be required to certify in writing that it has met these
413 requirements, and the certification shall be maintained by the awarding authority in the project
414 record.

415 (e) Notwithstanding subsection (f) of said section 44D½ of said chapter 149, the public
416 notice requirements for the condensed prequalification process shall be for the request for
417 qualifications to be advertised in the central register for not less than 2 weeks and in the
418 COMPASS system for not less than 2 weeks. In addition, these projects shall be advertised on
419 the central website to be established for all projects in the commonwealth funded in whole or in
420 part under the federal act and in accordance with any requirements contained in the federal act.

421 (f) Where an awarding authority opts to use the condensed prequalification process in
422 lieu of the evaluation requirements set forth in subsection (h) of said section 44D½ of said
423 chapter 149, the prequalification committee shall evaluate each statement of qualifications based
424 on the criteria provided in the request for qualifications, the information contained in the division
425 of capital asset management and maintenance certification files including, but not limited to, the
426 project evaluations required by subsection (7) of said section 44D of said chapter 149 and the
427 current update statements submitted by interested general contractors. The prequalification
428 committee shall exercise due diligence in checking appropriate references. As provided in
429 subsection (c), the total and minimum point allocations designated in subsection (e) of said

430 section 44D½ of said chapter 149 shall not be included in the request for qualifications and shall
431 not be used in the evaluation of interested general contractors where the condensed
432 prequalification process is utilized. The evaluation of interested general contractors shall be
433 based on the evaluation criteria set forth in this subsection and conducted within the discretion of
434 the prequalification committee; provided, however, that the prequalification committee shall
435 evaluate each interested general contractor on the same fair and equitable basis. A general
436 contractor's score shall be made available to the general contractor upon request. The decision of
437 the prequalification committee shall be final and shall not be subject to appeal except on grounds
438 of arbitrariness, capriciousness, fraud or collusion.

439 (g) Where an awarding authority opts to use the condensed prequalification process, in
440 lieu of the requirements for the re-issuance of the request for qualifications set forth in
441 subsection (i) of said section 44D½ of said chapter 149, if the awarding authority prequalifies
442 fewer than 3 general contractors to submit bids, the awarding authority may invite general bids
443 under sections 44B to 44E, inclusive, of said chapter 149 or, if the awarding authority
444 prequalifies at least 2 general contractors, then the awarding authority may invite bids from the 2
445 prequalified general contractors.

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

449 SECTION 27. (a) For contracts subject to the prequalification requirements set forth in
450 section 44D¾ of chapter 149 of the General Laws which are funded in whole or in part by the
451 American Recovery and Reinvestment Act of 2009, an awarding authority shall have the option

452 to use the condensed prequalification process for subcontractors described in this section in lieu
453 of the full prequalification process set forth in said section 44D³/₄ of said chapter 149. The
454 purpose of the condensed prequalification process shall be to allow awarding authorities an
455 opportunity to expedite the prequalification process provided in said section 44D³/₄ of said
456 chapter 149 in order to most efficiently meet the specified goals and time parameters set forth in
457 the federal act. All of the requirements of the full prequalification process set forth in said
458 section 44D³/₄ of said chapter 149 shall be required under the condensed prequalification process
459 unless specifically modified in this section.

460 (b) Where an awarding authority opts to use the condensed prequalification process, the
461 requirements for public notice of the building project and solicitation of responses to the request
462 for qualifications from interested subcontractors shall include all items set forth in paragraphs (1)
463 to (8), inclusive, of subsection (d) of said section 44D³/₄ of said chapter 149 but shall also include
464 the following statements:

465 (1) a statement that the project is funded in whole or in part under the federal act and
466 shall use the condensed prequalification process; and

467 (2) a statement that the evaluation procedure and the criteria for the prequalification of
468 interested subcontractors shall include evaluation of all the criteria set forth in subsection (e) of
469 said section 44D³/₄ of said chapter 149 but, in order to avoid duplication and promote the
470 expeditious commencement of projects under the federal act and without sacrificing the
471 importance of the prequalification process, for certain of the evaluation categories and
472 subcategories specifically identified in subsection (e) of said section 44D³/₄ of said chapter 149,
473 the prequalification committee shall evaluate interested subcontractors based on a review of the

474 information contained both in the division of capital asset management and maintenance
475 certification files including, but not limited to, the project evaluations required by subsection (7)
476 of section 44D and the update statements required by subclause (ii) of clause (4) of subsection
477 (e) of said section 44D^{3/4} of said chapter 149 to be submitted by interested subcontractors. The
478 prequalification committee shall exercise due diligence in checking appropriate references.

479 (c) The request for qualifications and evaluation criteria for the condensed
480 prequalification process shall include all criteria set forth in subsection (e) of said section 44D^{3/4}
481 of said chapter 149 but shall not include the total or minimum point allocations for the evaluation
482 categories and subcategories designated therein. In addition, in the interest of expediting the
483 prequalification of subcontractors for contracts funded in whole or in part under the federal act
484 but not sacrificing the prequalification process, where certain of the evaluation subcategories
485 specifically identified in this section require similar reporting by contractors in connection with
486 the certification process set forth in said section 44D of said chapter 149 and the information
487 contained in the required update statements submitted by interested subcontractors, an awarding
488 authority issuing an request for qualifications under this condensed prequalification process shall
489 maintain as part of the project record the written certification by the prequalification committee
490 that it has evaluated interested subcontractors based on a review of both the information
491 contained in the certification files including, but not limited to, the project evaluations required
492 by subsection (16) of said section 44D of said chapter 149, and the current update statements
493 submitted by interested subcontractors, and that it has exercised due diligence in checking
494 appropriate references.

495 (d) Where an awarding authority opts to use the condensed prequalification process, the
496 review of the terminations, legal proceedings and safety record provided in subclauses (iv) to

497 (vi), inclusive, of clause (1) of subsection (e) of said section 44D³/₄ of said chapter 149, and the
498 review of credit references and public project record under subclauses (ii) and (iii) of clause (2)
499 of said subsection (e) of said section 44D³/₄ of said chapter 149 and the review of annual revenue
500 under subclause (i) of clause (3) of said subsection (e) of said section 44D³/₄ of said chapter 149
501 shall be satisfied by a requirement that the prequalification committee evaluate both the
502 information contained in the division of capital asset management and maintenance certification
503 files, including but not limited to the project evaluations required by said subsection (16) of said
504 section 44D of said chapter 149 and the current update statements submitted by interested
505 subcontractors, and by a requirement that the prequalification committee exercise due diligence
506 in checking appropriate references. The prequalification committee shall further be required to
507 certify in writing that it has met these requirements, and the certification shall be maintained by
508 the awarding authority in the project record.

509 (e) Where an awarding authority opts to use the condensed prequalification process, the
510 mandatory requirements for the solicitation of and submission of a commitment letter for
511 payment and performance bonds at 100 per cent of the estimated contract value from a surety
512 company licensed to do business in the commonwealth and whose name appears on United
513 States Treasury Department Circular 570 shall be as set forth in clause (4) of said subsection (e)
514 of said section 44D³/₄ of said chapter 149. In addition, it shall be mandatory for the awarding
515 authority to solicit in the request for qualifications and an interested subcontractor to submit with
516 its statement of qualifications a certificate of eligibility for the subcontractor trade for which it is
517 seeking to be prequalified, issued by the division of capital asset management and maintenance
518 under said section 44D of said chapter 149.

519 (f) Notwithstanding subsection (f) of said section 44D^{3/4} of said chapter 149, the public
520 notice requirements for the condensed prequalification process shall be for the request for
521 qualifications to be advertised on the central register for not less than 2 weeks and in the
522 COMPASS system for not less than 2 weeks. In addition, these projects shall be advertised in
523 the central website to be established for all projects in the commonwealth funded in whole or in
524 part under the federal act and in accordance with any requirements contained in the federal act.

525 (g) Where an awarding authority opts to use the condensed prequalification process in
526 lieu of the evaluation requirements set forth in subsection (h) of section 44D^{3/4} of said chapter
527 149, the prequalification committee shall evaluate each statement of qualifications based on the
528 criteria provided in the request for qualifications, the information contained in the division of
529 capital asset management and maintenance certification files including, but not limited, to the
530 project evaluations required by subsection (16) of said section 44D of said chapter 149 and the
531 current update statement submitted by interested subcontractors. The prequalification committee
532 shall exercise due diligence in checking appropriate references. As provided in subsection (c)
533 the total and minimum point allocations designated in subsection (e) of said section 44D^{3/4} shall
534 not be included in the request for qualifications and shall not be used in the evaluation of
535 interested subcontractors where the condensed prequalification process is utilized. The
536 evaluations of interested subcontractors shall be based on the evaluation criteria set forth in this
537 subsection and conducted within the discretion of the prequalification committee; provided,
538 however, that the prequalification committee shall evaluate each interested subcontractor on the
539 same fair and equitable basis. A subcontractor's score shall be made available to the
540 subcontractor upon request. The decision of the prequalification committee shall be final and

541 shall not be subject to appeal except on grounds of arbitrariness, capriciousness, fraud or
542 collusion.

543 (h) Where an awarding authority opts to use the condensed prequalification process in
544 lieu of the requirements for the re-issuance of the request for qualifications set forth in
545 subsection (i) of said section 44D³/₄ of said chapter 149, if the awarding authority prequalifies
546 fewer than 3 subcontractors to submit bids, the awarding authority may invite general bids under
547 sections 44B to 44E, inclusive, of said chapter 149 or, if the awarding authority prequalifies at
548 least 2 subcontractors, then the awarding authority may invite bids from the 2 prequalified
549 subcontractors.

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

553 SECTION 28. Notwithstanding section 7 of chapter 149A of the General Laws, under
554 special circumstances, when unique project requirements and circumstances warrant, public
555 agencies may include an additional incentive clause a the contract providing for payment of an
556 increased incentive of up to an additional 1/2 of 1 per cent; provided however, that even under
557 special circumstances, the total incentive payments to the construction management at risk firm
558 shall not exceed 1 and 1/2 per cent of the estimated construction cost; provided further, that the
559 only contracts eligible for such additional incentive payments shall be contracts that are funded
560 in whole or in part through the American Recovery and Reinvestment Act of 2009.

561 SECTION 29. Notwithstanding the first sentence of subsection (a) of section 39M(a) of
562 chapter 30 of the General Laws, a transportation or public works project subject to award under

563 said section 39M of said chapter 30 by a department, agency or authority of the commonwealth
564 that is funded in whole or in part through the American Recovery and Reinvestment Act and that
565 is expected to interfere with the movement of traffic or the travelling public may, in the
566 discretion of the awarding authority, be procured through a bidding method that awards the
567 project to the responsible and eligible bidder with the lowest bid value after taking into account
568 the amount of time that the bidder has identified in the bid for completion of the project,
569 hereinafter referred to as cost-plus-time bidding; provided, however, that such awarding
570 authority may reject any bid if it is in the public interest to do so.

571 In utilizing a cost-plus-time bidding procurement method, the awarding authority shall
572 use a cost parameter (A) and a time parameter (B) to determine a bid value. The cost parameter
573 (A) shall be the traditional bid for the contract items and shall be the dollar amount for the work
574 to be performed under the contract. The time parameter (B) shall be the total number of calendar
575 days required to complete the project, as estimated by the bidder, multiplied by an agency-
576 determined daily road user cost (RUC) to translate time into dollars. The total bid value, which
577 shall be clearly detailed in the bid documents, shall equal the $A + B$ (RUC). The total bid value
578 shall be used only to evaluate bids. The winning bid, which shall be calculated at a public bid
579 opening at a time and location designated in the bid documents, shall be the lowest bid value
580 submitted by a responsible and eligible bidder. The contract amount for payment purposes shall
581 be based on the bid price (A), not the total bid value. The number of days bid (B) shall become
582 the contract time. For purposes of this section, “responsible and eligible bidder” shall be defined
583 pursuant to the criteria in subsection (c) of said section 39M of said chapter 30; provided,
584 however, that the reference to “lowest” in said subsection (c) of said section 39M of said chapter
585 30 shall mean “lowest bid value” as provided in this section.

586 The provisions of the General Laws generally applicable to public works projects
587 including, but not limited to, sections 26, 27, 27A, 27B, 27C, 27D, 27F and 34A of chapter 149
588 of the General Laws and sections 39F, 39G, 39H, 39J, 39K, 39M except the first sentence of
589 subsection (a), 39N, 39O, 39P and 39R of chapter 30 of the General Laws shall apply to all
590 public works projects using the cost-plus-time bidding procurement method provided in this
591 section.

592 SECTION 30. Notwithstanding any general or special law to the contrary, the water
593 pollution abatement trust established in section 2 of chapter 29C of the General Laws may
594 establish such terms and conditions for any loan or other form of financial assistance made under
595 chapter 29C of the General Laws that is funded in whole or in part by amounts provided under
596 the American Recovery and Reinvestment Act of 2009 as the board of trustees of the trust shall
597 determine to be in the best interests of the commonwealth and as required to comply with federal
598 law including, without limitation, the interest rate, repayment period, number of payments to be
599 made and amount of principal to be repaid on such loan or other form of financial assistance.

600 SECTION 31. Notwithstanding any general or special law to the contrary, the water
601 pollution abatement trust established in section 2 of chapter 29C of the General Laws may
602 transfer amounts held in the Drinking Water Revolving Fund to the Water Pollution Abatement
603 Revolving Fund for application by the trust to the purposes specified in section 5 of chapter 29C
604 of the General Laws, and may transfer amounts held in the Water Pollution Abatement
605 Revolving Fund to the Drinking Water Revolving Fund for application by the trust to the
606 purposes specified in section 18 of said chapter 29C, in each case to the extent authorized by the
607 federal Clean Water Act and the federal Safe Drinking Water Act.

608 SECTION 32. Notwithstanding any general or special law to the contrary, for the
609 purpose of accommodating timing discrepancies between the receipt of revenues and related
610 expenditures, a department may receive funds from the federal government related to the
611 American Recovery and Reinvestment Act of 2009. The comptroller may authorize
612 encumbrances and expenditures by a department in anticipation of the department's receipt of
613 those funds; provided, however, that the department head shall certify that accounts will not be
614 in deficit at the end of a fiscal year. The comptroller may establish accounts based on the
615 provisions of section 6B of chapter 29 of the General Laws including, but not limited to, a
616 federal award notification and notification to the joint committee on veterans and federal affairs.

617 SECTION 33. Notwithstanding any general or special law to the contrary, should a
618 matching funds requirement exist with respect to the receipt of any funds from the federal
619 government related to the American Recovery and Reinvestment Act of 2009, the department
620 that is applying for such funds shall notify the secretary of administration and finance of the
621 matching fund requirement. The secretary of administration and finance shall direct the
622 comptroller to establish matching accounts and to allow expenditure of funds in the accounts
623 without further appropriation. The secretary of administration and finance shall also notify the
624 joint committee on veterans and federal affairs and the ways and means committees of such
625 action. The accounts shall be established in the General Federal Grants Fund established in
626 section 2C of chapter 29 of the General Laws, the Federal Highway Construction Program Fund
627 established in section 2E of said Chapter 29 of the General Laws, or any other fund as the
628 comptroller deems necessary to fulfill the terms and conditions of the American Recovery and
629 Reinvestment Act of 2009.

630 SECTION 34. Notwithstanding any general or special law to the contrary, the secretary
631 of administration and finance may authorize accounts to receive federal funds from the American
632 Recovery and Reinvestment Act of 2009. To the extent allowed by federal law, the secretary of
633 administration and finance may transfer such funds to other central service agencies charged
634 with implementation of the act and incur expenditures for charges related to the administrative
635 costs of the act and to ensure that the commonwealth meets the efficient administration and
636 statewide accountability requirements in the act. Notwithstanding any general or special law to
637 the contrary, for the purpose of accommodating timing discrepancies between the receipt of
638 revenues and related expenditures, the secretary of administration and finance may incur
639 expenses and the comptroller shall certify for payments amounts not to exceed the lesser of ½ of
640 the authorization or the most recent revenue estimate therefor or as otherwise authorized by the
641 secretary of administration and finance. The accounts may receive federal funds recovered from
642 the American Recovery and Reinvestment Act of 2009 in accordance with section 6B of chapter
643 29 of the General Laws or other state law. The recoveries shall be based on rates approved in
644 accordance with the federal office of management and budget circular A-87 or any other
645 guidance issued by the office of management and budget applicable to federal funds provided
646 under the American Recovery and Reinvestment Act of 2009.

647 SECTION 6. Section 53A of said chapter 151A, as so appearing, is hereby amended by
648 inserting after the second paragraph the following paragraph:-

649 Notwithstanding the foregoing, moneys credited with respect to the special transfer made
650 under section 903(g) of the Social Security Act shall be used solely for the purposes specified in
651 that section and shall not be subject to appropriation.

652 SECTION 35. a) Notwithstanding any general or special law to the contrary, the
653 following requirements shall apply to any public works project funded by the American
654 Recovery and Reinvestment Act of 2009 where the amount of construction costs under any
655 contract awarded is likely to exceed \$1 million. For the purposes of this section, “public works”
656 shall mean building or work the construction of which is carried on by authority of the
657 commonwealth, or by a county, town, authority or district, or with funds of a federal agency or
658 the commonwealth or a county, city, town, authority or district to serve the interest of the general
659 public, regardless of whether title thereof is in the commonwealth or in a county, city, town,
660 authority or district; provided, however, that for the purposes of this definition, “construction”
661 shall have the meaning provided in section 27D of chapter 149 of the General Laws.

662 (b) For any public works project subject to subsection (a), the specifications set forth in
663 any request for responses shall include a requirement that, on a per project basis, not less than 20
664 per cent of the total hours of employees receiving an hourly wage who are directly employed on
665 the site of the project, employed by the contractor or a subcontractor and subject to the prevailing
666 wage, shall be performed by apprentices in bona fide apprentice training programs as provided in
667 sections 11H and 11I of chapter 23 of the General Laws which are approved by the division of
668 apprentice training in the department of labor and workforce development.

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

674 to the awarding authority describing how the contractor shall comply with the apprentice
675 requirement.

676 (d) An awarding authority may adjust the requirements set forth in subsections (a), (b) (c) if the
677 agency determines that, despite a good faith effort and due to unavoidable circumstances including, but
678 not limited to, a demonstrated lack of apprentices in a geographic area, compliance with these
679 requirements is not feasible or if application of the requirements would be preempted by federal law. If an
680 awarding authority makes such a determination to adjust said requirements, said awarding authority shall
681 notify the attorney general of its determination. The attorney general may reverse a decision of the
682 awarding authority not to adjust said requirements if he determines that, despite a good faith effort, and
683 due to unavoidable circumstances, such as a demonstrated lack of apprentices in a geographic area,
684 compliance with these requirements is not feasible or if application of the requirements would be
685 preempted by federal law. The attorney general shall have all the necessary powers to require compliance
686 with the requirements of subsections (a), (b) and (c) therewith including the power to institute and
687 prosecute proceedings in the superior court to restrain the award of contracts and the performance of
688 contracts.

689 (e) An awarding authority serving a low-income population may require additional
690 specifications that address the needs of its clients including, but not limited to, preferential hiring
691 for residents of public housing authorities for available apprenticeship positions.

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

695 SECTION 1. Section 30 of chapter 151A of the General Laws, as appearing in the 2006
696 Official Edition, is hereby amended by striking out, in line 29, the word “commissioner” and
697 inserting in place thereof the following words:- director of workforce development.

698 SECTION 2. Said section 30 of said chapter 151A, as so appearing, is hereby further
699 amended by striking out, in line 32, the word “eighteen” and inserting in place thereof the
700 following figure:- 26.

701 SECTION 3. Said section 30 of said chapter 151A, as so appearing, is hereby further
702 amended by striking out, in lines 34, 41, 42, 47 and 48, the word “commissioner” and inserting
703 in place thereof, in each instance, the following word:- director.

704 SECTION 4. Said section 30 of said chapter 151A, as so appearing, is hereby further
705 amended by striking out, in lines 43 to 45, inclusive, the words “because of the individual’s need
706 to address the physical, psychological and legal effects of domestic violence; provided” and
707 inserting in place thereof the following words:- ; provided, however, that such circumstances
708 shall include an individual’s need to address the physical, psychological and legal effects of
709 domestic violence, as well as any period in which economic circumstances permit the provision
710 of extended benefits or any other emergency benefits funded in whole or in part by the federal
711 government; provided further,

712 SECTION 5. Said section 30 of said chapter 151A, as so appearing, is hereby further
713 amended by inserting after the word “claim”, in line 64, the following words:- unless the period
714 is tolled by regulation.

715 SECTION 36. Notwithstanding any general or special law to the contrary, employees
716 who are hired to perform work related to the American Recovery and Reinvestment Act of 2009

717 funded by the federal government shall be scheduled in accounts set up solely for the purpose of
718 the American Recovery and Reinvestment Act of 2009. No expenditures of an employee
719 scheduled in an item of appropriation established by the act shall be charged to any other item of
720 appropriation and no expenditures of employees in any other item of appropriation shall be
721 charged to an account under the act and the comptroller shall not permit the transfers or charges
722 unless otherwise approved by the secretary of administration and finance. Positions funded by
723 the American Recovery and Reinvestment Act of 2009 shall be eliminated once the funding
724 ends.

725 SECTION 37. Notwithstanding any general or special law to the contrary, an employee
726 hired by the commonwealth and paid from federal funds provided pursuant to the American
727 Recovery and Reinvestment Act of 2009 shall not be subject to chapters 30 and 31 of the
728 General Laws.

729 SECTION 38. (a) As used in this section, the following terms shall, unless the context
730 indicates otherwise, have the following meaning: -

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

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

735 “Women business enterprise” shall have the same meaning as the term is defined in said
736 section 40 of said chapter 23A.

737 (b) Notwithstanding any general or special law to the contrary, the secretary of
738 administration and finance may implement a technical assistance and capacity building pilot
739 program applicable solely to projects funded in whole or in part by the American Recovery and
740 Reinvestment Act of 2009. The purpose of the technical assistance and capacity building
741 program shall be to promote, encourage and otherwise facilitate full participation of minority and
742 women business enterprises disadvantaged business enterprises, and other small businesses in
743 public construction and public works projects undertaken as part of the federal economic
744 recovery effort and funded in whole or in part by the American Recovery and Reinvestment Act
745 of 2009.

746 (c) The secretary of administration and finance shall promulgate rules, regulations or
747 guidelines relative to the implementation and administration of the technical assistance and
748 capacity building pilot program.

749 (d) Not later than 6 months after the conclusion of the provision of technical assistance
750 and capacity building services provided pursuant to subsection (b), the secretary of
751 administration and finance or her designee shall provide a written report to the governor on the
752 provision of the services and performance outcomes relative thereto. The report shall include
753 recommendations as to how the commonwealth may best facilitate the continued inclusion of
754 minority and women business enterprises, disadvantaged business enterprises and small
755 businesses in future public construction and public works projects.

756 SECTION 39A. Notwithstanding any general or special law to the contrary, the assistant
757 secretary for access and opportunity is hereby authorized and directed to undertake a comprehensive
758 study regarding the challenges and barriers faced by owners of small businesses, including owners of
759 minority business enterprises and women business enterprises in accessing and obtaining working capital

760 and debt financing. Said comprehensive study shall include, but not limited to, investigating the viability
761 of implementing a short term loan program similar to that administered by the United States department of
762 transportation's office of small and disadvantaged business utilization. In undertaking the comprehensive
763 study, the assistant secretary for access and opportunity shall consult the director of the office of small
764 business and entrepreneurship, the director of the state office of minority and women business assistance
765 and any other state agency or program whose mission is to assist small businesses, minority business
766 enterprises and/or women business enterprises. Not later than 90 days after enactment of this section, said
767 assistant secretary for access and opportunity shall prepare a written report indicating his findings,
768 including recommendations and legislative language if appropriate. Said written report shall be provided
769 to the Governor, the secretary of the executive office for administration and finance, and the chairs of the
770 joint committee on community development and small business.

771

772 **ESTABLISHING A SURETY BOND GUARANTEE PROGRAM**

773 SECTION 39. (a) Notwithstanding any general or special law to the contrary and solely
774 for the purposes of implementing public building and public works projects funded in whole or
775 in part by the American Recovery and Reinvestment Act of 2009 while facilitating the
776 involvement of small contractors, including minority and women contractors, the Massachusetts
777 Community Development Finance Corporation may establish a contractor surety bond guarantee
778 program pursuant to this section.

779 (b) As used in this section the following words shall have the following meanings unless
780 the context clearly requires otherwise:-

781 "Bid bond", a bond conditioned upon the bidder on a contract entering into the contract,
782 if he receives the award thereof, and furnishing the prescribed payment bond and performance
783 bond.

784 “Eligible contractor”, a small contractor, a minority contractor or a woman contractor.

785 “Minority contractor”, a person who performs as a prime contractor or general contractor
786 or as a subcontractor on a contract funded in whole or in part by the American Recovery and
787 Reinvestment Act of 2009 and is a minority business enterprise as such term is defined in section
788 40 of chapter 23A of the General Laws.

789 “Obligee”, (i) in the case of a bid bond, the public agency requesting bids for the
790 performance of a contract; or (ii) in the case of a payment bond or performance bond, the public
791 agency that has contracted with a principal for the completion of the contract and to whom the
792 obligation of the surety runs in the event of a breach by the principal of the conditions of a
793 payment bond or performance bond.

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

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

798 “Person”, a natural person, business, partnership, corporation or other legal form.

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

802 “Principal”, (i) in the case of a bid bond, a person bidding for the award of a contract; or
803 (ii) the person primarily liable to complete a contract for the obligee or to make payments to
804 other persons in respect of such contract and for whose performance of his obligation the surety

805 is bound under the terms of a payment or performance bond; provided, however, that a principal
806 may be a prime contractor, general contractor or a subcontractor.

807 “Small contractor”, a person who performs as a prime contractor ,general contractor or
808 subcontractor on a contract funded in whole or in part by the American Recovery and
809 Reinvestment Act of 2009 and whose average annual gross revenue is five million dollars or less
810 per year for the most recent 2 fiscal years.

811 “Subcontractor”, a person who has contracted with a prime contractor, general contractor
812 or another subcontractor to perform a contract funded in whole or in part by the American
813 Recovery and Reinvestment Act of 2009.“Surety”, a surety company licensed to do business in
814 the commonwealth and whose name appears on United States Treasury Department Circular 570
815 and who: (i) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in
816 the event the principal breaches the conditions of the bond; (ii) under the terms of a performance
817 bond, undertakes to incur the cost of fulfilling the terms of a contract in the event the principal
818 breaches the conditions of the contract; (iii) under the terms of a payment bond, undertakes to
819 make payment to all persons supplying labor and material in the prosecution of the work
820 provided for in the contract if the principal fails to make prompt payment; or (iv) is an agent,
821 independent agent, underwriter or any other company or individual empowered to act on behalf
822 of such company.

823

824 “Woman contractor”, a person who performs as a prime contractor or general contractor
825 or as a subcontractor on a contract funded in whole or in part by the American Recovery and

826 Reinvestment Act of 2009 and is a woman business enterprise as that term is defined in section
827 40 of chapter 23A of the General Laws.

828 (c) The Massachusetts Community Development Finance Corporation may establish a
829 contractor surety bond guarantee program and may, upon such terms and conditions as it may
830 prescribe, guarantee and enter into commitments to guarantee a surety against loss resulting from
831 a breach of the terms of a bid bond, payment bond, performance bond or bonds ancillary thereto,
832 by a principal on any total work order or contract amount at the time of bond execution that does
833 not exceed \$250,000. No such guarantee may be issued, unless:

834 (i) the person who would be principal under the bond is an eligible contractor;

835 (ii) the bond is required in order for such person to bid on a contract or to serve as a
836 prime contractor, general contractor or subcontractor on a contract;

837 (iii) such person is not able to obtain such bond on reasonable terms and conditions
838 without a guarantee under this section; and

839 (iv) there is a reasonable expectation that such principal will perform the covenants and
840 conditions of the contract with respect to which such bond is required and the terms and
841 conditions of such bond are reasonable in the light of the risks involved and the extent of the
842 surety's participation.

843 The corporation shall administer the contractor surety bond guarantee program on a
844 prudent and economically-justifiable basis and establish such fees for eligible contractors and
845 premiums for sureties as it deems reasonable and necessary, to be payable at such time and under
846 such conditions as may be determined by the corporation.

847 The corporation, as guarantor, may exercise all of the rights and powers of a company
848 authorized by the division of insurance to guarantee bonds pursuant to chapter 175 of the
849 General Laws, but shall not otherwise be subject to any laws related to a guaranty company
850 under said chapter 175 nor to any rules of the division of insurance.

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

858 (e) The corporation may guarantee up to 90 per cent of the loss incurred and paid by a
859 surety on bonds guaranteed under this section. Additionally, and subject to the provisions of this
860 section, in connection with the issuance by the corporation of a guarantee to a surety as provided
861 in subsection (c), the corporation may agree to indemnify the surety against a loss sustained by
862 such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the
863 corporation pursuant to said subsection (c); provided, however, that prior to making a payment
864 under this subsection, the corporation shall first determine that a breach of the terms of the bond
865 was imminent and the surety shall obtain written approval from the corporation prior to making
866 any payments pursuant to this subsection.

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

869 (i) the surety obtained such guarantee or agreement or applied for such reimbursement by
870 fraud or material misrepresentation; or

871 (ii) the total contract amount at the time of execution of the bond exceeds \$250,000 or
872 the surety has breached a material term or condition of such guarantee in the agreement.

873 SECTION 40. Any entity located in the Commonwealth that receives federal funds
874 through the American Recovery and Reinvestment Act of 2009 shall provide information as
875 directed by the secretary of administration and finance regarding the use of the funds. The
876 required information shall include, but not be limited to, the reporting information required by
877 the federal government, and any other information deemed necessary by the secretary to
878 administer the American Recovery and Reinvestment Act of 2009 responsibly, efficiently and
879 transparently. To the extent possible, the secretary shall work to streamline the reporting of this
880 information, minimize duplication of data entry by recipients and ensure data consistency. The
881 secretary of administration and finance may issue regulations to effectuate this reporting
882 requirement.

883 SECTION 41A. a) Notwithstanding any general or special law to the contrary, the secretary of
884 administration and finance shall promulgate regulations to monitor and enforce any contracting
885 commitments related to minority business enterprises and women business enterprises made by
886 contractors on projects using funds provided pursuant to American Recovery Reinvestment Act of 2009,
887 and to monitor the workforce participation goals of 15.3per cent for minorities and 6.9 per cent for
888 women as prescribed in the executive office for administration and finance administrative bulletin ANF
889 #14.

890 b) Such regulations shall require that any entity that receives funds through the American
891 Recovery and Reinvestment Act of 2009 shall provide written verification with every progress payment

892 request submitted to the awarding authority detailing the portion of the payment that will be allocated to
893 minority business enterprises and women business enterprises and the progress toward the workforce
894 participation goals in subsection (a); provided, however, that any such entity shall be deemed by the
895 awarding authority to be in compliance with minority business enterprise and women business enterprise
896 employment commitments, in order to receive any such payment.

897 c) The secretary of administration and finance shall require all contractors and subcontractors
898 working on projects funded through the American Recovery and Reinvestment Act of 2009 to report the
899 zip codes of residences of all employees working on such projects, while taking necessary steps to
900 prevent the disclosure of individually-identifying information. Such reports shall be published with the
901 verification required in subsection (b).

902 (d) For the purposes of this section, “minority business enterprise” and “women business
903 enterprise” shall have the same meanings as prescribed in section 40 of chapter 23A of the General Laws.

904

905 SECTION 41. Employers and hiring agents on all projects funded in whole or in part by
906 the American Recovery and Reinvestment Act of 2009 shall post notices of available
907 employment opportunities to the commonwealth’s job bank or the one-stop career centers closest
908 to where the projects shall be located. The postings shall contain such information as directed by
909 the secretary of labor and workforce development. Said secretary of labor and workforce
910 development may issue regulations to effectuate this job posting requirement.

911 SECTION 42. Sections 7 to 29 and section 35 shall apply only to contracts advertised
912 after the effective date of this act.

913 SECTION __. Notwithstanding any general or special law to the contrary, a carrier offering
914 continuation coverage under a health benefit plan issued under chapter 176J of the General Laws to
915 qualified beneficiary eligible for the COBRA premium assistance benefit set forth in section 3001 of the

916 American Recovery and Reinvestment Act of 2009 shall offer the extended election period available
917 therein to each qualified beneficiary who does not have an election of continuation coverage under a
918 health benefit plan issued under said chapter 176J on the effective date of this act, but who would be an
919 assistance-eligible individual under the American Recovery and Reinvestment Act if such election were
920 in effect. Any such qualified beneficiary may elect such continuation coverage under said chapter 176J
921 during the period beginning on the effective date of this act and ending 60 days after the date on which
922 the notification required under this section is provided to such qualified beneficiary. Coverage elected in
923 this extended election period shall commence with the first period of coverage beginning on or after the
924 effective date of this act. For the purposes of this section, carriers or their designees under paragraph (5)
925 of subsection (j) of said chapter 176J shall also comply with any applicable notice requirements under
926 American Recovery and Retirement act of 2009, except that such notice shall be made within 60 days
927 after the effective date of this act.

928

929 SECTION __. The secretary of administration and finance, in consultation with the comptroller,
930 shall submit comprehensive bi-monthly reports on the programs, aid, grants and projects funded in whole
931 or in part by the American Recovery and Reinvestment Act of 2009, hereinafter referred to as ARRA.
932 The report shall include, but is not limited to:

933 1) an accounting of all known or anticipated federal funding from ARRA that will be available
934 for use by any public entity in fiscal years 2009, 2010 and 2011; provided, however, that the
935 report shall delineate federal funding that may be used to supplant or supplement general
936 state appropriations in each fiscal year, with a further delineation between funding received
937 as federal grants under section 6B of chapter 29 of the General Laws, funding received for
938 public entities other than the commonwealth, and funding received that is subject to further
939 appropriation;

- 940 2) an accounting of any funds collected or anticipated to be collected in fiscal years 2009, 2010
941 and 2011 pursuant to an increase in the federal Medicaid assistance percentage rate pursuant
942 to ARRA and the assumptions used in any future projections;
- 943 3) a listing of all competitive federal grants available under ARRA for which a state agency has
944 filed an application; provided, however, that the report shall state the number of applications
945 that have been accepted, the number that are still pending and the number that have been
946 rejected and shall compare the number of accepted applications with no less than at least 10
947 other states; and
- 948 4) an accounting of the progress of all expenditures related to capital projects funded in whole or
949 in part by ARRA; provided, however, that the report shall include, but not be limited to: the
950 total amount allocated for each project, the total estimated cost of each project, the amount
951 expended for the planning and design of each project up to the time the report is filed, the
952 amount expended on construction of each project up to the time the report is filed, the total
953 amount currently expended on each project, the estimated lifetime maintenance schedule and
954 cost of each project, the original estimated completion date of each project, the current
955 anticipated completion date of each project and, if the project has been de-authorized, the
956 reason for and date of such de-authorization.

957 The Reports shall be submitted bi-monthly for a period of 3 years after the effective date
958 of this act and shall be posted publically and submitted to the clerks of the senate and house of
959 representatives, the senate and house chairs of the joint committee on federal stimulus oversight
960 and the chairs of the senate and house committees on ways and means.

961 SECTION __. The secretary of administration and finance or the applicable state agency applying
962 for funds through the American Recovery and Reinvestment Act of 2009 shall file with the house and
963 senate committees on ways and means and the joint committee on federal stimulus oversight copies of all
964 state applications requesting funding concurrently with submission of the application to the federal

965 government. The secretary or the applicable state agency shall also inform the house and senate
966 committees on ways and means and the joint committee on federal stimulus oversight in writing of the
967 amount of funds to be allocated and the location of where funds shall be deposited as soon as notification
968 from the federal government on each award is received.

969 SECTION __. Notwithstanding the definition of “eligible” in subsection (1) of section 44A of
970 chapter 149 of the General Laws or any other general or special law to the contrary, for projects which are
971 funded in whole or in part by the American Recovery and Reinvestment Act of 2009, the awarding
972 authority, shall deem:

973 “eligible” to mean capable of meeting all requirements for bidders or offerors in sections 44A to
974 44H, inclusive, of said chapter 149 and certifying that he is able to furnish labor that can work in
975 harmony with all other elements of labor employed or to be employed on the work; provided, however,
976 that “eligible” shall not include a bidder or offeror that: (i) has been debarred from bidding under section
977 44C of said chapter 149 or any other applicable law; (ii) has been debarred by any other state or by any
978 agency of the United States; (iii) is otherwise excluded from public contracting or subcontracting for the
979 reasons set forth in subsection (c) of section 29F of chapter 29 of the General Laws; iv) has been
980 convicted of a state or federal offense involving the Central Artery/ Ted Williams Tunnel construction
981 project, (v) has paid money into the Central Artery/Tunnel Project Repair and Maintenance Trust Fund or
982 (vi) has demonstrated a consistently poor record of fulfillment on contracting commitments related to
983 minority business enterprises and women business enterprises in past state-funded projects as determined
984 by the awarding authority. Notwithstanding any general or special law to the contrary, the attorney
985 general may waive or adjust the such requirements of this section if she determines in writing that special
986 circumstances exist which justify such waiver or adjustment.