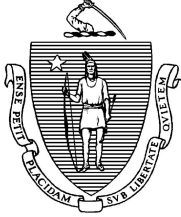


# Senate, No. 2101

[Senate, June 30, 2009 – Text of the further amendment (Menard) to the Senate Bill mobilizing economic recovery in the Commonwealth (Senate, No. 2061)]



## The Commonwealth of Massachusetts

---

IN THE YEAR OF TWO THOUSAND AND NINE

---

1           SECTION 1. Section 30 of chapter 151A of the General Laws, as appearing in the  
2   2006 Official Edition, is hereby amended by striking out, in line 32, the word “eighteen” and  
3   inserting in place thereof the following figure:- 26.

4           SECTION 2. Said section 30 of said chapter 151A, as so appearing, is hereby further  
5   amended by striking out, in lines 43 to 45, inclusive, the words “because of the individual’s  
6   need to address the physical, psychological and legal effects of domestic violence; provided  
7   that” and inserting in place thereof the following words:- ; provided, however, that such  
8   circumstances shall include an individual’s need to address the physical, psychological and  
9   legal effects of domestic violence, as well as any period in which economic circumstances  
10   permit the provision of extended benefits or any other emergency benefits funded in whole  
11   or in part by the federal government; provided, further, that.

12          SECTION 3. Said section 30 of said chapter 151A, as so appearing, is hereby further  
13   amended by inserting after the word “claim”, in line 64, the following words:- unless the  
14   period is tolled by regulation.

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

21 SECTION 5. Notwithstanding section 38D of chapter 7 of the General Laws, each  
22 contract for designer services for a project which is funded in whole or in part by the  
23 American Recovery and Reinvestment Act of 2009 and which is subject to the jurisdiction of  
24 the designer selection board shall be publicly advertised by the board either: (i) within the  
25 COMPASS system, not less than 2 weeks before the deadline for filing applications, and in  
26 the central register established under section 20A of chapter 9, not less than 2 weeks before  
27 the deadline for filing applications; or (ii) if the contract is not advertised within the  
28 COMPASS system, the contract shall be publicly advertised in the central register at least 2  
29 weeks before this deadline. Every contract for design services for a project which is funded  
30 in whole or in part by the American Recovery and Reinvestment Act of 2009 and subject to  
31 section 38K of said chapter 7 shall be publicly advertised under this section.

32 SECTION 6. Subsection (d) of section 38F of chapter 7 of the General Laws shall not  
33 apply to contracts which are funded in whole or in part by the American Recovery and  
34 Reinvestment Act of 2009. For those projects, the designer selection board may delegate its  
35 powers and duties under subparagraph (b) of section 38D of said chapter 7, paragraphs (c)  
36 and (d) of section 38E of said chapter 7, and subsections (a) and (b) of sections 38G, and  
37 subsections 38H and 38I of said chapter 7 to panels of less than all the board members. A  
38 panel of at least 6 members shall be required for selection of designers under this section, 4

39 of whom shall be architects or engineers; provided, however, that there shall be at least 1  
40 architect and 1 engineer on the panel.

41 SECTION 7. Notwithstanding section 38H of chapter 7 of the General Laws, for  
42 contracts which are funded in whole or in part by the American Recovery and Reinvestment  
43 Act of 2009, the certification required by clause (iv) of subsection (e) of said section 38H of  
44 said chapter 7 shall only apply to contracts which exceed \$25,000 or which are for the  
45 design of a building for which the budgeted or estimated construction costs exceed  
46 \$250,000.

47 SECTION 8. Notwithstanding section 38K of chapter 7, a contract for design services  
48 which is funded in whole or in part by the American Recovery and Reinvestment Act of  
49 2009 and which would otherwise be subject to the requirements of said section 38K of said  
50 chapter 7 shall not be subject to those requirements unless the project at issue is estimated  
51 to exceed \$250,000.

52 SECTION 9. Notwithstanding section 40B of chapter 7 of the General Laws, for  
53 projects which are funded in whole or in part by the American Recovery and Reinvestment  
54 Act of 2009, the commissioner of capital asset management and maintenance may, upon  
55 request of a state agency or building authority, delegate project control and supervision to  
56 that state agency or building authority over projects involving structural or mechanical  
57 work in which the estimated cost is less than \$2,000,000 if the commissioner determines  
58 that the agency or authority has the ability to control and supervise such project. Except as  
59 otherwise provided in said section 40B of said chapter 7, any state agency or building  
60 authority shall control and supervise its own building projects when the estimated cost of  
61 such project is less than \$250,000 or if the project does not involve structural or mechanical  
62 work.

63           SECTION 10. The second and third paragraphs of section 7K of chapter 29 of the  
64 General Laws shall not apply to projects which are funded in whole or in part by the  
65 American Recovery and Reinvestment Act of 2009; provided, however, that this section  
66 shall apply.

67           No provider of design services for any building project for which a state agency is  
68 the using agency shall be selected by the designer selection board or by the administering  
69 agency in accordance with sections 38A ½ to 38N, inclusive, of chapter 7 of the General  
70 Laws, and no design services shall be performed for or by such administering agency for  
71 any building project for which the satisfactory completion of a study program is required  
72 before the design or construction of that project, until: (a) the study, program or, where  
73 appropriate, both have been satisfactorily completed to such extent that a contract for final  
74 design may be awarded in the discretion of the commissioner of capital asset management  
75 and maintenance; (b) the using agency certifies in writing to the commissioner of capital  
76 asset management and maintenance that the study, program or, where appropriate, both  
77 correspond to the current needs of that agency, including its current long-term capital  
78 facilities development plan; and (c) the commissioner requests that 1 or more of the  
79 directors of the office of programming, office of project management or office of facilities  
80 management review the study or program or, where appropriate, both and the directors  
81 certify in writing to the commissioner that the study, program or, where appropriate, both  
82 reflect the using agency's needs as stated, that they provide an accurate estimate of the  
83 project requirements, cost and schedule, that the project can be accomplished within the  
84 appropriation or authorization for that project, and recommends proceeding with design,  
85 construction or, where appropriate, both.

86           This section shall not apply to maintenance or repair projects, as defined by section  
87 39A of chapter 7 of the General Laws, estimated to cost less than \$250,000, if the executive  
88 head of the agency administering the project certifies in writing that the design work is or  
89 shall be such as to specify a project that can be accomplished and that there are funds  
90 available to pay for the design services.

91           SECTION 11. Section 26A of chapter 29 of the General Laws shall not apply to  
92 maintenance or repair projects, as defined by section 39A of chapter 7 of the General Laws,  
93 which are funded in whole or in part in the American Recovery and Reinvestment Act of  
94 2009 and are estimated to cost less than \$250,000, if the executive head of the agency  
95 administering the project certifies in writing that the design work is or shall be such as to  
96 specify a project that can be accomplished, and that there are funds available to pay for the  
97 design services.

98           SECTION 12. Notwithstanding any general or special law to the contrary, the Water  
99 Pollution Abatement Trust established in section 2 of chapter 29C of the General Laws may  
100 establish such terms and conditions for any loan or other form of financial assistance made  
101 under said chapter 29C that is funded in whole or in part by amounts provided under the  
102 American Recovery and Reinvestment Act of 2009 as the board of trustees of the trust shall  
103 determine to be in the best interests of the commonwealth and as required to comply with  
104 federal law including, without limitation, the interest rate, repayment period, number of  
105 payments to be made and amount of principal to be repaid on such loan or other form of  
106 financial assistance.

107           SECTION 13. Notwithstanding any general or special law to the contrary, the Water  
108 Pollution Abatement Trust established in section 2 of chapter 29C of the General Laws may  
109 transfer amounts held in the Drinking Water Revolving Fund to the Water Pollution

110 Abatement Revolving Fund for application by the trust to the purposes specified in section 5  
111 of said chapter 29C, and may transfer amounts held in the Water Pollution Abatement  
112 Revolving Fund to the Drinking Water Revolving Fund for application by the trust to the  
113 purposes specified in section 18 of said chapter 29C, in each case to the extent authorized  
114 by the federal Clean Water Act and the federal Safe Drinking Water Act.

115 SECTION 14. For contracts which are funded in whole or in part by the American  
116 Recovery and Reinvestment Act of 2009, section 39M of chapter 30 of the General Laws  
117 shall only apply if the contract is estimated to cost more than \$50,000 but not more than  
118 \$100,000.

119 SECTION 15. Notwithstanding the first sentence of subsection (a) of section 39M of  
120 chapter 30 of the General Laws, a transportation or public works project subject to award  
121 under said section 39M of said chapter 30 by a department, agency or authority of the  
122 commonwealth that is funded in whole or in part through the American Recovery and  
123 Reinvestment Act of 2009 and that is expected to interfere with the movement of traffic or  
124 the traveling public may, in the discretion of the awarding authority, be procured through a  
125 bidding method that awards the project to the responsible and eligible bidder with the  
126 lowest bid value after taking into account the amount of time that the bidder has identified  
127 in the bid for completion of the project, hereinafter referred to as cost-plus-time bidding;  
128 provided, however, that such awarding authority may reject any bid if it is in the public  
129 interest to do so.

130 In utilizing a cost-plus-time bidding procurement method, the awarding authority  
131 shall use a cost parameter A and a time parameter B to determine a bid value. The cost  
132 parameter A shall be the traditional bid for the contract items and shall be the dollar  
133 amount for the work to be performed under the contract. The time parameter B shall be the

134 total number of calendar days required to complete the project, as estimated by the bidder,  
135 multiplied by an agency-determined daily road user cost RUC to translate time into dollars.  
136 The total bid value, which shall be clearly detailed in the bid documents, shall equal the A +  
137 B (RUC). The total bid value shall be used only to evaluate bids. The winning bid, which  
138 shall be calculated at a public bid opening at a time and location designated in the bid  
139 documents, shall be the lowest bid value submitted by a responsible and eligible bidder.  
140 The contract amount for payment purposes shall be based on the bid price A, not the total  
141 bid value. The number of days bid B shall become the contract time. For purposes of this  
142 section, "responsible and eligible bidder" shall be defined pursuant to the criteria in  
143 subsection (c) of said section 39M of said chapter 30; provided, however, that the reference  
144 to "lowest" in said subsection (c) of said section 39M of said chapter 30 shall mean "lowest  
145 bid value" as provided in this section.

146 The provisions of the General Laws generally applicable to public works projects  
147 including, but not limited to, sections 26, 27, 27A, 27B, 27C, 27D, 27F and 34A of chapter  
148 149 of the General Laws and sections 39F, 39G, 39H, 39J, 39K, 39M except the first sentence  
149 of subsection (a), 39N, 39O, 39P and 39R of said chapter 30 shall apply to all public works  
150 projects using the cost-plus-time bidding procurement method provided in this section.

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

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

158 (b) A contract for the construction, reconstruction, installation, demolition,  
159 maintenance or repair of any building by a public agency estimated to cost less than  
160 \$10,000 and where the overall project is also estimated to cost less than \$10,000 shall be  
161 obtained through the exercise of sound business practices. The public agency shall make  
162 and keep a record of each such contract solicitation. At a minimum, the record shall include  
163 a written description of how the services were procured and the name and address of the  
164 person from whom the services were procured. Written price quotations submitted in  
165 accordance with this subsection shall not require certificates of eligibility, update  
166 statements or bid deposits. In no event shall public agencies solicit price quotations from  
167 persons if to do so would violate chapter 268A of the General Laws.

168 (c) A contract for the construction, reconstruction, installation, demolition,  
169 maintenance or repair of any building by a public agency estimated to cost not less than  
170 \$10,000, but not more than \$50,000 and where the overall project is also estimated to cost  
171 not more than \$50,000, shall be awarded to the responsible person offering to perform the  
172 contract at the lowest price quotation; provided, however, that the public agency shall seek  
173 written price quotations from at least 3 persons customarily providing the work for which  
174 the contract is being made available. When seeking written quotations, the public agency  
175 shall make and keep a record of the names and addresses of all persons from whom price  
176 quotations were sought, the names of the persons submitting price quotations and the date  
177 and amount of each price quotation. Written price quotations submitted in accordance with  
178 this subsection shall not require certificates of eligibility, update statements or bid deposits.  
179 In no event shall public agencies solicit price quotations from persons if to do so would  
180 violate chapter 268A of the General Laws.

181 (d) A contract for the construction, reconstruction, installation, demolition,  
182 maintenance or repair of any building by a public agency estimated to cost more than  
183 \$50,000 but not more than \$100,000, except for a pumping station to be constructed as an  
184 integral part of a sewer construction or water construction project bid under section 39M of  
185 chapter 30 of the General Laws, shall be awarded to the lowest responsible and eligible  
186 bidder on the basis of competitive bids publicly opened and read in accordance with the  
187 procedure set forth in said section 39M of said chapter 30. As used in this section, the  
188 “pumping station” shall mean a building or other structure which houses only pumps and  
189 appurtenant electrical and plumbing fixtures.

190 (e) A contract for the construction, reconstruction, installation, demolition,  
191 maintenance or repair of any building by a public agency estimated to cost more than  
192 \$100,000, except for a pumping station to be constructed as an integral part of a sewer  
193 construction or water construction project bid under section 39M of chapter 30 of the  
194 General Laws, shall be awarded to the lowest responsible and eligible general bidder on the  
195 basis of competitive bids in accordance with the procedure set forth in sections 44A to 44H,  
196 inclusive of chapter 149 of the General Laws.

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

203 (g) Notwithstanding subsection (f), a public agency may undertake the procurement  
204 of modular buildings in accordance with section 44E of chapter 149 of the General Laws. A

205 public agency may procure site work for modular buildings including, but not limited to,  
206 construction of foundations, installations and attachment to external utilities, or any portion  
207 of site work, either in combination with the procurement of modular buildings pursuant to  
208 said section 44E of said chapter 149 or on the basis of competitive bids pursuant to  
209 subsection (e). Notwithstanding said subsection (f), a public agency may procure energy  
210 management services in accordance with sections 11C or 11I of chapter 25A of the General  
211 Laws and regulations promulgated thereunder.

212 SECTION 18. (a) For contracts subject to the prequalification requirements set  
213 forth in section 44D½ of chapter 149 of the General Laws which are funded in whole or in  
214 part by the American Recovery and Reinvestment Act of 2009, an awarding authority shall  
215 have the option to use the condensed prequalification process for general contractors  
216 described in this section in lieu of the full prequalification process set forth in said section  
217 44D½ of said chapter 149. The purpose of the condensed prequalification process shall be  
218 to allow awarding authorities an opportunity to expedite the prequalification process  
219 provided in section 44D½ of said chapter 149 in order to most efficiently meet the specified  
220 goals and time parameters set forth in the American Recovery and Investment Act. All of  
221 the requirements of the full prequalification process set forth in said section 44D½ of said  
222 chapter 149 shall be required under the condensed prequalification process unless  
223 specifically modified in this section.

224 (b) Where an awarding authority opts to use the condensed prequalification  
225 process, the requirements for public notice of the building project and solicitation of  
226 responses to the request for qualifications from interested general contractors shall include  
227 all items set forth in paragraphs (1) to (8), inclusive, of subsection (d) of said section 44D½  
228 of said chapter 149 but shall also include the following statements:

229 (1) a statement that the project is funded in whole or in part under the American  
230 Recovery and Investment Act and shall use the condensed prequalification process; and

231 (2) a statement that the evaluation procedure and the criteria for the  
232 prequalification of interested general contractors shall include an evaluation of all the  
233 criteria set forth in subsection (e) of said section 44D½ of said chapter 149 but, in order to  
234 avoid duplication and promote the expeditious commencement of projects under the  
235 American Recovery and Investment Act and without sacrificing the importance of the  
236 prequalification process, for certain evaluation categories and subcategories specifically  
237 identified in said subsection (e) of said chapter 44D ½ of said chapter 149, the  
238 prequalification committee shall evaluate interested general contractors based on a review  
239 of the information contained in the division of capital asset management and maintenance  
240 certification files including, but not limited to, the project evaluations required by  
241 subsection (7) of section 44D of said chapter 149 and the update statements required by  
242 subclause (ii) of clause (4) of said subsection (e) of section 44D½ of said chapter 149 to be  
243 submitted by interested general contractors. The prequalification committee shall exercise  
244 due diligence in checking appropriate references.

245 (c) The request for qualifications and evaluation criteria for the condensed  
246 prequalification process shall include all criteria set forth in said subsection (e) of said  
247 section 44D½ of said chapter 149 but shall not include the total or minimum point  
248 allocations for the evaluation categories and subcategories designated therein. In addition,  
249 in the interest of expediting the prequalification of general contractors for contracts funded  
250 in whole or in part under the American Recovery and Investment Act but not sacrificing the  
251 prequalification process, where certain of the evaluation subcategories specifically  
252 identified in this section require similar reporting by contractors in connection with the

253 certification process set forth in said section 44D of said chapter 149 and the information  
254 contained in the required update statements submitted by interested general contractors,  
255 an awarding authority issuing a request for qualifications under this condensed  
256 prequalification process shall maintain as part of the project record the written certification  
257 by the prequalification committee that it has evaluated interested general contractors based  
258 on a review of both the information contained in the certification files including, but not  
259 limited to, the project evaluations required by subsection (7) of said section 44D of said  
260 chapter 149, and the current update statements submitted by interested general  
261 contractors, and that it has exercised due diligence in checking appropriate references.

262 (d) Where an awarding authority opts to use the condensed prequalification  
263 process, the review of the terminations, legal proceedings, safety record and compliance  
264 record provided in subclauses (iv) to (vii) , inclusive, of clause (1) of subsection (e) of said  
265 section 44D<sup>1</sup>/<sub>2</sub> of said chapter 149 and the review of credit references and public project  
266 record under subclauses (ii) and (iii) of clause (2) of said subsection (e) of said section  
267 44D<sup>1</sup>/<sub>2</sub> of said chapter 149 and the review of audited financial statements under subclause  
268 (i) of clause (3) of said subsection (e) of said section 44D<sup>1</sup>/<sub>2</sub> of said chapter 149 shall be  
269 satisfied by a requirement that the prequalification committee evaluate both the  
270 information contained in the division of capital asset management and maintenance  
271 certification files including, but not limited to, the project evaluations required by  
272 subsection (7) of section 44D of said chapter 149 and the current update statements  
273 submitted by interested general contractors, and by a requirement that the prequalification  
274 committee exercise due diligence in checking appropriate references. The prequalification  
275 committee shall further be required to certify in writing that it has met these requirements,  
276 and the certification shall be maintained by the awarding authority in the project record.

277 (e) Notwithstanding subsection (f) of said section 44D½ of said chapter 149, the  
278 public notice requirements for the condensed prequalification process shall be for the  
279 request for qualifications to be advertised in the central register established by section 20A  
280 of chapter 9 of the General Laws and in the COMPASS system for not less than 2 weeks. In  
281 addition, these projects shall be advertised on the central website to be established for all  
282 projects in the commonwealth funded in whole or in part under the American Recovery and  
283 Investment Act and in accordance with any requirements contained in the American  
284 Recovery and Investment Act.

285 (f) Where an awarding authority opts to use the condensed prequalification process  
286 in lieu of the evaluation requirements set forth in subsection (h) of said section 44D½ of  
287 said chapter 149, the prequalification committee shall evaluate each statement of  
288 qualifications based on the criteria provided in the request for qualifications, the  
289 information contained in the division of capital asset management and maintenance  
290 certification files including, but not limited to, the project evaluations required by  
291 subsection (7) of said section 44D of said chapter 149 and the current update statements  
292 submitted by interested general contractors. The prequalification committee shall exercise  
293 due diligence in checking appropriate references. As provided in subsection (c), the total  
294 and minimum point allocations designated in subsection (e) of said section 44D½ of said  
295 chapter 149 shall not be included in the request for qualifications and shall not be used in  
296 the evaluation of interested general contractors where the condensed prequalification  
297 process is utilized. The evaluation of interested general contractors shall be based on the  
298 evaluation criteria set forth in this subsection and conducted within the discretion of the  
299 prequalification committee; provided, however, that the prequalification committee shall  
300 evaluate each interested general contractor on the same fair and equitable basis. A general  
301 contractor's score shall be made available to the general contractor upon request. The

302 decision of the prequalification committee shall be final and shall not be subject to appeal  
303 except on grounds of arbitrariness, capriciousness, fraud or collusion.

304 (g) Where an awarding authority opts to use the condensed prequalification  
305 process, in lieu of the requirements for the re-issuance of the request for qualifications set  
306 forth in subsection (i) of said section 44D $\frac{1}{2}$  of said chapter 149, if the awarding authority  
307 prequalifies fewer than 3 general contractors to submit bids, the awarding authority may  
308 invite general bids under sections 44B to 44E, inclusive, of said chapter 149 or, if the  
309 awarding authority prequalifies at least 2 general contractors, then the awarding authority  
310 may invite bids from the 2 prequalified general contractors.

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

314 SECTION 19. (a) Subsection (f) of section 44D $\frac{1}{2}$  of chapter 149 of the General laws  
315 shall not apply to contracts which are funded in whole or in part by the American Recovery  
316 and Reinvestment Act of 2009; provided, however, that this section shall apply.

317 (b) The public notice and solicitation required in subsection (d) of said section  
318 44D $\frac{1}{2}$  of said chapter 149 shall be advertised in the central register pursuant to section 20A  
319 of chapter 9 of the General Laws and within the COMPASS system. The public notice and  
320 solicitation shall be given within the COMPASS system and the central register not less than  
321 2 weeks before the deadline for submitting responses to the request for qualifications.

322 SECTION 20. (a) For contracts subject to the prequalification requirements set forth  
323 in section 44D $\frac{3}{4}$  of chapter 149 of the General Laws which are funded in whole or in part by  
324 the American Recovery and Reinvestment Act of 2009, an awarding authority shall have the  
325 option to use the condensed prequalification process for subcontractors described in this

326 section in lieu of the full prequalification process set forth in said section 44D<sup>3</sup>/<sub>4</sub> of said  
327 chapter 149. The purpose of the condensed prequalification process shall be to allow  
328 awarding authorities an opportunity to expedite the prequalification process provided in  
329 said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149 in order to most efficiently meet the specified goals  
330 and time parameters set forth in the federal act. All of the requirements of the full  
331 prequalification process set forth in said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149 shall be required  
332 under the condensed prequalification process unless specifically modified in this section.

333 (b) Where an awarding authority opts to use the condensed prequalification  
334 process, the requirements for public notice of the building project and solicitation of  
335 responses to the request for qualifications from interested subcontractors shall include all  
336 items set forth in paragraphs (1) to (8), inclusive, of subsection (d) of said section 44D<sup>3</sup>/<sub>4</sub> of  
337 said chapter 149 but shall also include the following statements:

338 (1) a statement that the project is funded in whole or in part under the  
339 American Recovery and Investment Act and shall use the condensed  
340 prequalification process; and

341 (2) a statement that the evaluation procedure and the criteria for the  
342 prequalification of interested subcontractors shall include an evaluation of all the  
343 criteria set forth in subsection (e) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149 but, in  
344 order to avoid duplication and promote the expeditious commencement of projects  
345 under the federal act and without sacrificing the importance of the prequalification  
346 process, for certain evaluation categories and subcategories specifically identified in  
347 said subsection (e) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149, the prequalification  
348 committee shall evaluate interested subcontractors based on a review of the  
349 information contained both in the division of capital asset management and

350 maintenance certification files including, but not limited to, the project evaluations  
351 required by subsection (7) of section 44D of said chapter 149 and the update  
352 statements required by paragraph (e) herein to be submitted by interested  
353 subcontractors. The prequalification committee shall exercise due diligence in  
354 checking appropriate references.

355 (c) The request for qualifications and evaluation criteria for the condensed  
356 prequalification process shall include all criteria set forth in subsection (e) of said section  
357 44D<sup>3/4</sup> of said chapter 149 but shall not include the total or minimum point allocations for  
358 the evaluation categories and subcategories designated therein. In addition, in the interest  
359 of expediting the prequalification of subcontractors for contracts funded in whole or in part  
360 under the American Recovery and Investment Act but not sacrificing the prequalification  
361 process, where certain of the evaluation subcategories specifically identified in this section  
362 require similar reporting by contractors in connection with the certification process set  
363 forth in said section 44D of said chapter 149 and the information contained in the required  
364 update statements submitted by interested subcontractors, an awarding authority issuing  
365 an request for qualifications under this condensed prequalification process shall maintain  
366 as part of the project record the written certification by the prequalification committee that  
367 it has evaluated interested subcontractors based on a review of both the information  
368 contained in the certification files including, but not limited to, the project evaluations  
369 required by subsection (16) of said section 44D of said chapter 149, and the current update  
370 statements submitted by interested subcontractors, and that it has exercised due diligence  
371 in checking appropriate references.

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

374 subclauses (iv) to (vi), inclusive, of clause (1) of subsection (e) of said section 44D<sup>3</sup>/<sub>4</sub> of said  
375 chapter 149, and the review of credit references and public project record under subclauses  
376 (ii) and (iii) of clause (2) of said subsection (e) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149 and  
377 the review of annual revenue under subclause (i) of clause (3) of said subsection (e) of said  
378 section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149 shall be satisfied by a requirement that the  
379 prequalification committee evaluate both the information contained in the division of  
380 capital asset management and maintenance certification files, including but not limited to  
381 the project evaluations required by said subsection (16) of said section 44D of said chapter  
382 149 and the current update statements submitted by interested subcontractors, and by a  
383 requirement that the prequalification committee exercise due diligence in checking  
384 appropriate references. The prequalification committee shall further be required to certify  
385 in writing that it has met these requirements, and the certification shall be maintained by  
386 the awarding authority in the project record.

387 (e) Where an awarding authority opts to use the condensed prequalification  
388 process, the mandatory requirements for the solicitation and submission of a commitment  
389 letter for payment and performance bonds at 100 per cent of the estimated contract value  
390 from a surety company licensed to do business in the commonwealth and whose name  
391 appears on United States Treasury Department Circular 570 shall be as set forth in clause  
392 (4) of said subsection (e) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149. In addition, it shall be  
393 mandatory for the awarding authority to solicit in the request for qualifications, and an  
394 interested subcontractor to submit with its statement of qualifications, a certificate of  
395 eligibility for the subcontractor trade for which it is seeking to be prequalified, issued by the  
396 division of capital asset management and maintenance under said section 44D of said  
397 chapter 149.

398 (f) Notwithstanding subsection (f) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149, the  
399 public notice requirements for the condensed prequalification process shall be for the  
400 request for qualifications to be advertised on the central register established pursuant to  
401 section 20A of chapter 9 and in the COMPASS system for not less than 2 weeks. In addition,  
402 these projects shall be advertised in the central website to be established for all projects in  
403 the commonwealth funded in whole or in part under the American Recovery and  
404 Investment Act and in accordance with any requirements contained in the American  
405 Recovery and Investment Act.

406 (g) Where an awarding authority opts to use the condensed prequalification  
407 process in lieu of the evaluation requirements set forth in subsection (h) of said section  
408 44D<sup>3</sup>/<sub>4</sub> of said chapter 149, the prequalification committee shall evaluate each statement of  
409 qualifications based on the criteria provided in the request for qualifications, the  
410 information contained in the division of capital asset management and maintenance  
411 certification files including, but not limited, to the project evaluations required by  
412 subsection (16) of said section 44D of said chapter 149 and the current update statement  
413 submitted by interested subcontractors. The prequalification committee shall exercise due  
414 diligence in checking appropriate references. As provided in subsection (c) the total and  
415 minimum point allocations designated in subsection (e) of said section 44D<sup>3</sup>/<sub>4</sub> shall not be  
416 included in the request for qualifications and shall not be used in the evaluation of  
417 interested subcontractors where the condensed prequalification process is utilized. The  
418 evaluations of interested subcontractors shall be based on the evaluation criteria set forth  
419 in this subsection and conducted within the discretion of the prequalification committee;  
420 provided, however, that the prequalification committee shall evaluate each interested  
421 subcontractor on the same fair and equitable basis. A subcontractor's score shall be made  
422 available to the subcontractor upon request. The decision of the prequalification committee

423 shall be final and shall not be subject to appeal except on grounds of arbitrariness,  
424 capriciousness, fraud or collusion.

425 (h) Where an awarding authority opts to use the condensed prequalification  
426 process in lieu of the requirements for the re-issuance of the request for qualifications set  
427 forth in subsection (i) of said section 44D<sup>3</sup>/<sub>4</sub> of said chapter 149, if the awarding authority  
428 prequalifies fewer than 3 subcontractors to submit bids, the awarding authority may invite  
429 general bids under sections 44B to 44E, inclusive, of said chapter 149 or, if the awarding  
430 authority prequalifies at least 2 subcontractors, then the awarding authority may invite bids  
431 from the 2 prequalified subcontractors.

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

435 SECTION 21. (a) Subsection (f) of section 44D<sup>3</sup>/<sub>4</sub> of chapter 149 of the General Laws  
436 shall not apply to contracts which are funded in whole or in part by the American Recovery  
437 and Reinvestment Act of 2009; provided, however, that this section shall apply.

438 (b) The public notice and solicitation required in subsection (d) of said section 44D  
439 <sup>3</sup>/<sub>4</sub> of said chapter 149 shall be advertised in the central register under section 20A of  
440 chapter 9 of the General Laws and within the COMPASS system. The public notice and  
441 solicitation shall be given within the COMPASS system and the central register not less than  
442 2 weeks before the deadline for submitting responses to the request for qualifications.

443 SECTION 22. (a) Paragraph (a) of subsection 4 of section 44F of chapter 149 of the  
444 General Laws shall not apply to contracts which are funded in whole or in part by the

445 American Recovery and Reinvestment Act of 2009; provided, however, that this section  
446 shall apply.

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

454 (c) If no sub-bid is filed for a subtrade designated in the general bid form or if the  
455 only sub-bids which are filed are restricted to the use of 1 or more general bidders, the  
456 awarding authority may state, in an addendum issued with the list of sub-bidders required  
457 by subsection (d), that the general bidder shall include in the cost of his own work an  
458 amount to cover all of the work required for any such subtrade. The general contractor shall  
459 cause the work covered by the subtrade to be done by a qualified and responsible  
460 subcontractor, subject to the written approval of the awarding authority. If the awarding  
461 authority determines that a subcontractor chosen by the general contractor under this  
462 section is not qualified or responsible, the general contractor shall obtain another  
463 subcontractor who is satisfactory to the awarding authority with no adjustment in the  
464 general contractor's price.

465 (d) If a rejection of all sub-bids for such a subtrade occurs under this section, the  
466 awarding authority shall state, in an addendum issued with the list of sub-bidders, the  
467 amount to be included by a general bidder on the general bid form for such subtrade and,  
468 without in any way affecting other sub-bidders in other subtrades who have conformed to

469 the prescribed bidding procedure, new sub-bids for such subtrade shall be requested by  
470 written invitation to 3 or more qualified sub-bidders, including any that had previously  
471 submitted bids, and the sub-bids shall be publicly opened and read by the awarding  
472 authority at a time and place to be specified in the invitation. The general contractor shall  
473 cause the work covered by the subtrade to be done by the lowest responsible and eligible  
474 sub-bidder against whose standing and ability the general contractor makes no objection or,  
475 if there is no sub-bidder, by the subcontractor against whose standing and ability the  
476 general contractor and awarding authority make no objection and for a sum upon which the  
477 general contractor and the awarding authority may agree. The contract price shall be  
478 adjusted by the difference between the subcontract sum and the amount stated in the  
479 addendum. The general bidder shall include in the cost of his own work on the general bid  
480 form all expenses and profits on account of such adjustments.

481 (e) If after new sub-bids for a subtrade are requested by written invitation under  
482 subsection (d) the awarding authority still does not receive any sub-bids that are  
483 unrestricted to the use of 1 or more general bidders and are reasonable for acceptance  
484 based upon the estimated cost for the work of that subtrade, the awarding authority may  
485 assign the work to the general contractor if the awarding authority first confirms that its  
486 estimate for the cost of the work of that subtrade is accurate. The general contractor shall  
487 cause the work covered by the subtrade to be done by the subcontractor against whose  
488 standing and ability the general contractor and awarding authority make no objection, and  
489 for a sum upon which the general contractor and the awarding authority shall agree. The  
490 contract price shall be adjusted by the difference between the sub-contract sum and the  
491 amount stated in the addendum. The general bidder shall include in the cost of his own  
492 work on the general bid form all expenses and profits on account of such adjustments.

493 SECTION 23. (a) Subsection (1) of section 44J of chapter 149 of the General Laws  
494 shall not apply to contracts which are funded in whole or in part by the American Recovery  
495 and Reinvestment Act of 2009; provided, however, that this section shall apply.

496 (b) No public agency or authority of the commonwealth or any political subdivision  
497 thereof shall award any contract for which competitive bids are required under section 44A  
498 of said chapter 149 or section 39M of chapter 30 of the General Laws or for which  
499 competitive proposals are required under subsection (4) of section 44E of said chapter 149  
500 or section 11C of chapter 25A of the General Laws unless a notice inviting bids or proposals  
501 therefor shall have been posted not less than 1 week before the time specified in the notice  
502 for the receipt of the bids or proposals in a conspicuous place in or near the offices of the  
503 awarding authority and shall have remained posted until the time so specified, and unless  
504 the notice shall also have been advertised either within the COMPASS system and in the  
505 central register published by the state secretary under section 20A of chapter 9 of the  
506 General Laws not less than 2 weeks before the time specified for the receipt of the bids or  
507 proposals, or if the notice is not advertised within the COMPASS system, the notice shall be  
508 advertised in the central register at least 2 weeks before the time specified. The notice shall  
509 also be published at such other times and in such other newspapers or trade periodicals as  
510 the commissioner of capital asset management and maintenance may require, having  
511 regard to the locality of the work involved.

512 SECTION 24. (a) Subsection (e) of section 5 of chapter 149A of the General Laws  
513 shall not apply to contracts which are funded in whole or in part by the American Recovery  
514 and Reinvestment Act of 2009; provided, however, that this section shall apply.

515 (b) The public notice and solicitation required in subsection (c) of said section 5 of  
516 said chapter 149A shall be advertised in the central register under section 20A of chapter 9

517 of the General Laws and within the COMPASS system not less than 2 weeks before the  
518 deadline for submitting responses to the request for qualifications.

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

522 (b) (1) The division of capital asset management and maintenance shall annually  
523 undertake a prequalification process set forth in this section to provide a standing list of  
524 prequalified construction management at-risk firms to be used by the division in requesting  
525 proposals pursuant to subsection (c) for construction management at risk services for  
526 specific projects to be determined at a later date. Public awarding authorities other than  
527 the division shall have the option to use the standing list and related procedures upon  
528 application to, and approval by, the inspector general. A contract between a construction  
529 management at-risk firm and the division or other public awarding authority shall be  
530 secured by a performance and payment bond in the full sum of the guaranteed maximum  
531 price by a surety company licensed to do business in the commonwealth and whose name  
532 appears on the United States Treasury Department Circular 570.

533 (2) Firms included on the division's standing list of prequalified construction  
534 management at-risk firms shall be prequalified for a period of 1 year from the date of  
535 issuance of the standing list by the division. Upon issuance of the standing list, the division  
536 shall publish the standing list of prequalified construction manager at-risk firms in the  
537 central register, the COMPASS system and the division's website. The division shall re-  
538 advertise and solicit applications quarterly through the request for qualifications process  
539 provided for in this section to keep the statewide standing list current.

540 (3) Before issuing a request for qualifications, in this section referred to as the RFQ,  
541 the division shall establish a prequalification committee for the purpose of reviewing and  
542 evaluating responses submitted to the RFQ issued pursuant to paragraph (4). The  
543 prequalification committee shall be comprised of at least 1 registered architect or 1  
544 registered professional engineer on the division's staff who has at least 5 years experience  
545 in the construction and supervision of construction of buildings or, if not registered as an  
546 architect or professional engineer, who has at least 7 years experience in the construction  
547 and supervision of construction of buildings and at least 2 other representatives from the  
548 division as designated by the commissioner.

549 (4) The selection process for the annual prequalification of the division's standing  
550 list of construction manager at-risk firms shall begin once the division gives public notice of  
551 the solicitation and requests responses to an RFQ from construction management at-risk  
552 firms. The public notice and RFQ shall include: (i) a statement indicating that the RFQ is  
553 not for a specific project, but will be used to prequalify construction management at-risk  
554 firms for inclusion on the division's annual standing list and that only those construction  
555 manager at-risk firms included on the standing list shall be invited to submit proposals in  
556 response to requests for proposals issued pursuant to subsection (c); (ii) the time and date  
557 for receipt of responses to the RFQ, the address of the office to which the responses are to  
558 be delivered and the timeframe in which the public agency shall respond to the responses;  
559 (iii) a description of the experience that will be required for construction manager at-risk  
560 firms to be included on the division's standing list, which shall include a minimum of 3  
561 public or private construction manager at-risk projects during the past 10 years; (iv) the  
562 evaluation procedure and criteria under paragraph (7), including any rating system; (v) a  
563 general description of the scope of services that would be expected of a prequalified  
564 construction manager firm during the predesign, preconstruction and construction phases

565 of a construction manager at-risk project; (vi) the anticipated schedule for the selection  
566 process of construction manager at-risk firms to be included on the division's standing list;  
567 and (vii) a prohibition against any unauthorized communication or contact with the public  
568 agency outside of official preproposal meetings.

569 (5) The division shall require interested construction management at-risk firms to  
570 submit a statement of qualifications in response to the RFQ issued pursuant to paragraph  
571 (4). The statement of qualifications shall include, at a minimum, the following: (i) a cover  
572 letter or executive summary detailing the key elements and factors that differentiate the  
573 firm from other responders; (ii) completion of a qualifications application similar in form to  
574 the American Institute of Architects Document A305, 1986 edition, listing general business  
575 information and financial capacity; (iii) a list of lawsuits and arbitrations to which the firm  
576 is a party in regard to construction contracts within the last 3 years, including a list of all  
577 convictions or fines for violations of state or federal law; (iv) submission of an organization  
578 chart with specific information on key project personnel or consultants; (v) submission of  
579 an audited financial statement for the most recent fiscal year and a letter from the surety  
580 company of the firm confirming the ability to provide performance and payment bonds for  
581 the building project under consideration, but the financial information submitted shall  
582 remain confidential and shall be exempt from chapter 66 of the General Laws; (vi)  
583 submission of information on the firm's safety record, including its workers' compensation  
584 experience modifier for the prior 3 years; (vii) submission of information on and evidence  
585 of the firm's compliance record with respect to minority business enterprise and women  
586 business enterprise inclusion goals and workforce inclusion goals, if applicable; (viii)  
587 submission of information regarding the firm's experience on construction manager at-risk  
588 projects, including references from the owners and architects of the building projects; (ix)  
589 submission of information on any projects where the firm was terminated, failed to

590 complete the work or paid liquidated damages; (x) a certificate of eligibility issued by the  
591 division pursuant to section 44D of chapter 149 of the General Laws showing the  
592 construction manager at-risk firm's capacity rating and an update statement; and (xi) any  
593 other relevant information that the division determines desirable. The statement of  
594 qualifications shall be signed under pains and penalties of perjury.

595 (6) The public notice and solicitation required in paragraph (4) shall be advertised  
596 in the central register pursuant to section 20A of chapter 9 of the General Laws, and within  
597 the COMPASS system not less than 2 weeks before the deadline for submitting responses to  
598 the RFQ.

599 (7) Upon receipt of the statement of qualifications submitted by construction  
600 management at-risk firms, the prequalification committee established pursuant to  
601 paragraph (3) shall evaluate each statement of qualifications using the criteria provided in  
602 the RFQ. Only construction management at risk firms achieving an acceptable rating as  
603 provided in clause (iv) of paragraph (4) will be selected for inclusion on the standing list.

604 (c) (1) Before issuing an RFP, the division or other public awarding authority  
605 authorized under subsection (b) shall establish a selection committee for the purpose of  
606 reviewing and evaluating responses submitted to the RFP issued pursuant to paragraph (2)  
607 of this subsection. The selection committee shall be comprised of 1 representative of the  
608 designer, the owner's project manager and at least 2 representatives of the division or other  
609 public awarding authority authorized under said subsection (b).

610 (2) The division or any other public awarding authority authorized in subsection  
611 (b), shall issue an RFP to all construction management at-risk firms that have been  
612 prequalified by the division in accordance with said subsection (b) and who have a division  
613 certificate of eligibility indicating sufficient single project and aggregate limits for the

614 project. RFPs issued under this section shall follow the procedure set forth in subsections  
615 (b) to (e), inclusive, of section 6 of chapter 149A of the General Laws.

616 SECTION 26. Notwithstanding section 7 of chapter 149A of the General Laws, under  
617 special circumstances, when unique project requirements and circumstances warrant,  
618 public agencies may include an additional incentive clause with the contract providing for  
619 payment of an increased incentive of up to an additional  $\frac{1}{2}$  of 1 per cent; provided,  
620 however, that even under special circumstances, the total incentive payments to the  
621 construction management at risk firm shall not exceed 1 and  $\frac{1}{2}$  per cent of the estimated  
622 construction cost; provided further, that the only contracts eligible for such additional  
623 incentive payments shall be contracts that are funded in whole or in part through the  
624 American Recovery and Reinvestment Act of 2009.

625 SECTION 27. (a) Subsection (d) of section 8 of chapter 149A of the General Laws  
626 shall not apply to contracts which are funded in whole or in part by the American Recovery  
627 and Reinvestment Act of 2009; provided, however, that this section shall apply.

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

632 SECTION 28. (a) Subsection (b) of section 17 of chapter 149A of the General Laws  
633 shall not apply to contracts which are funded in whole or in part by the American Recovery  
634 and Reinvestment Act of 2009; provided, however, that this section shall apply.

635 (b) The public notice and solicitation required in subsection (a) of said section 17 of  
636 said chapter 149 shall be advertised either within the COMPASS system and in the central

637 register established pursuant to section 20A of chapter 9 of the General Laws not less than 2  
638 weeks before the deadline for submitting the letters of interest or, if the public notice and  
639 solicitation are not given within the COMPASS system, the public notice and solicitation  
640 shall be advertised in the central register not less than 2 weeks before the deadline for  
641 submitting the letters of interest.

642 SECTION 29. Notwithstanding section 53A of chapter 151A of the General Laws,  
643 moneys credited with respect to the special transfer made pursuant to section 903(g) of the  
644 Social Security Act shall be used solely for the purposes specified in said section 903(g) and  
645 shall not be subject to appropriation.

646 SECTION 30. Notwithstanding any general or special law to the contrary, for the  
647 purpose of accommodating timing discrepancies between the receipt of revenues and  
648 related expenditures, a department may receive funds from the federal government related  
649 to the American Recovery and Reinvestment Act of 2009. The comptroller may authorize  
650 encumbrances and expenditures by a department in anticipation of the department's  
651 receipt of those funds; provided, however, that the department head shall certify that  
652 accounts will not be in deficit at the end of a fiscal year. The comptroller may establish  
653 accounts based on the provisions of section 6B of chapter 29 of the General Laws.

654 SECTION 31. Notwithstanding any general or special law to the contrary, should a  
655 matching funds requirement exist with respect to the receipt of any funds from the federal  
656 government related to the American Recovery and Reinvestment Act of 2009, the  
657 department that is applying for such funds shall notify the secretary of administration and  
658 finance of the matching fund requirement. The secretary shall direct the state comptroller  
659 to establish matching accounts and to allow expenditure of funds in the accounts without  
660 further appropriation. The secretary shall also notify the joint committee on veterans and

661 federal affairs and the house and senate committees on ways and means of such action. The  
662 accounts shall be established in the General Federal Grants Fund established in section 2C  
663 of chapter 29 of the General Laws, the Federal Highway Construction Program Fund  
664 established in section 2E of said chapter 29 or any other fund as the state comptroller  
665 deems necessary to fulfill the terms and conditions of the American Recovery and  
666 Reinvestment Act of 2009.

667           SECTION 32. Notwithstanding any general or special law to the contrary, the  
668 secretary of administration and finance may authorize accounts to receive federal funds  
669 from the American Recovery and Reinvestment Act of 2009. To the extent allowed by  
670 federal law, the secretary may transfer such funds to other central service agencies charged  
671 with implementation of the American Recovery and Reinvestment Act and incur  
672 expenditures for charges related to the administrative costs of the American Recovery and  
673 Reinvestment Act and to ensure that the commonwealth meets the efficient administration  
674 and statewide accountability requirements in the American Recovery and Reinvestment  
675 Act. Notwithstanding any general or special law to the contrary, for the purpose of  
676 accommodating timing discrepancies between the receipt of revenues and related  
677 expenditures, the secretary may incur expenses and the state comptroller shall certify for  
678 payments amounts not to exceed the lesser of  $\frac{1}{2}$  of the authorization or the most recent  
679 revenue estimate therefor or as otherwise authorized by the secretary. The accounts may  
680 receive federal funds recovered from the American Recovery and Reinvestment Act of 2009  
681 in accordance with section 6B of chapter 29 of the General Laws or any other general or  
682 special law. The recoveries shall be based on rates approved in accordance with the federal  
683 Office of Management and Budget circular A-87 or any other guidance issued by the office of  
684 management and budget applicable to federal funds provided under the American Recovery  
685 and Reinvestment Act of 2009.

686 SECTION 33. (a) Notwithstanding any general or special law to the contrary, the  
687 following requirements shall apply to any public works project funded by the American  
688 Recovery and Reinvestment Act of 2009 where the amount of construction costs under any  
689 contract awarded is likely to exceed \$1,000,000. For the purposes of this section, “public  
690 works” shall mean building or work the construction of which is carried on by authority of  
691 the commonwealth, or by a county, town, authority or district, or with funds of a federal  
692 agency or the commonwealth or a county, city, town, authority or district to serve the  
693 interest of the general public, regardless of whether title thereof is in the commonwealth or  
694 in a county, city, town, authority or district; provided, however, that for the purposes of this  
695 definition, “construction” shall have the meaning provided in section 27D of chapter 149 of  
696 the General Laws.

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

705 (c) During the performance of a public works project subject to subsections (a) and  
706 (b), the contractor shall submit periodic reports to the awarding authority with records  
707 indicating the total hours worked by all journeymen and apprentices in positions subject to  
708 the apprentice requirement. In any instance in which the apprentice hours do not  
709 constitute 5 per cent of the total hours of employees subject to the apprentice requirement,

710 the contractor shall submit a plan to the awarding authority describing how the contractor  
711 shall comply with the apprentice requirement.

712 (d) The attorney general shall have all the necessary powers to require compliance  
713 with the requirements of subsections (a), (b) and (c) therewith, including the power to  
714 institute and prosecute proceedings in the superior court to restrain the award of contracts  
715 and the performance of contracts. Prior to award of the contract, an awarding authority  
716 may petition the attorney general for approval to adjust the requirements set forth in said  
717 subsections (a), (b) and (c). The attorney general may adjust these requirements only if he  
718 determines that compliance with these requirements is not feasible or if application of the  
719 requirements would be preempted by federal law.

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

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

726 SECTION 34. Notwithstanding any general or special law to the contrary, employees  
727 who are hired to perform work related to the American Recovery and Reinvestment Act of  
728 2009 funded by the federal government shall be scheduled in accounts set up solely for the  
729 purpose of the American Recovery and Reinvestment Act of 2009. No expenditures of an  
730 employee scheduled in an item of appropriation established by the American Recovery and  
731 Reinvestment Act shall be charged to any other item of appropriation and no expenditures  
732 of employees in any other item of appropriation shall be charged to an account under the  
733 American Recovery and Reinvestment Act and the state comptroller shall not permit the

734 transfers or charges unless otherwise approved by the secretary of administration and  
735 finance. Positions funded by the American Recovery and Reinvestment Act of 2009 shall be  
736 eliminated once the funding ends.

737 SECTION 35. Notwithstanding any general or special law to the contrary, an  
738 employee hired by the commonwealth and paid from federal funds provided pursuant to  
739 the American Recovery and Reinvestment Act of 2009 shall not be subject to chapters 30  
740 and 31 of the General Laws.

741 SECTION 36. (a) As used in this section, the following terms shall, unless the context  
742 indicates otherwise, have the following meaning:

743 “Disadvantaged business enterprise”, shall have the same meaning as the term is  
744 defined in 49 CFR 26.5.

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

747 “Secretary”, the secretary of administration and finance.

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

750 (b) Notwithstanding any general or special law to the contrary, the secretary may  
751 implement a technical assistance and capacity building pilot program applicable solely to  
752 projects funded in whole or in part by the American Recovery and Reinvestment Act of  
753 2009. The purpose of the technical assistance and capacity building program shall be to  
754 promote, encourage and otherwise facilitate full participation of minority and women  
755 business enterprises and disadvantaged business enterprises and other small businesses in

756 public construction and public works projects undertaken as part of the federal economic  
757 recovery effort and funded in whole or in part by the American Recovery and Reinvestment  
758 Act of 2009.

759 (c) The secretary shall promulgate rules, regulations or guidelines relative to the  
760 implementation and administration of the technical assistance and capacity building pilot  
761 program established in subsection (b).

762 (d) No later than 6 months after the conclusion of the provision of technical  
763 assistance and capacity building services provided pursuant to subsection (b), the secretary  
764 shall provide a written report to the governor and to the joint committee on community  
765 development and small business on the provision of the services and performance  
766 outcomes relative thereto. The report shall include recommendations as to how the  
767 commonwealth may best facilitate the continued inclusion of minority and women business  
768 enterprises, disadvantaged business enterprises and small businesses in future public  
769 construction and public works projects.

770 SECTION 37. Notwithstanding any general or special law to the contrary, the  
771 assistant secretary for access and opportunity shall undertake a comprehensive study  
772 regarding the challenges and barriers faced by owners of small businesses, including  
773 owners of minority and women business enterprises, in accessing and obtaining working  
774 capital and debt financing. The comprehensive study shall include, but not limited to,  
775 investigating the viability of implementing a short-term loan program similar to that  
776 administered by the United States Department of Transportation's Office of Small and  
777 Disadvantaged Business Utilization. In undertaking the comprehensive study, the assistant  
778 secretary for access and opportunity shall consult the director of small business and  
779 entrepreneurship, the director of minority and women business assistance and any other

780 state agency or program whose mission is to assist small businesses and minority or  
781 women business enterprises. The assistant secretary for access and opportunity shall  
782 report the results of his investigation and study and his recommendations, if any, together  
783 with drafts of legislation necessary to carry his recommendations into effect to the governor  
784 and to the secretary of administration and finance and by filing the same with the clerks of  
785 the house of representatives and the senate, who shall forward the same to the house and  
786 senate committees on ways and means and the joint committee on community development  
787 and small business on or before October 1, 2009.

788 SECTION 38. (a) Notwithstanding any general or special law to the contrary and  
789 solely for the purposes of implementing public building and public works projects funded in  
790 whole or in part by the American Recovery and Reinvestment Act of 2009 while facilitating  
791 the involvement of small contractors, including minority and women contractors, the  
792 Massachusetts Community Development Finance Corporation may establish a contractor  
793 surety bond guarantee program pursuant to this section.

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

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

799 "Corporation", the Massachusetts Community Development Finance Corporation.

800 "Eligible contractor", a small contractor, a minority contractor or a woman  
801 contractor.

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

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

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

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

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

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

819 “Principal”, (i) in the case of a bid bond, a person bidding for the award of a contract;  
820 or (ii) the person primarily liable to complete a contract for the obligee or to make  
821 payments to other persons in respect of such contract and for whose performance of his  
822 obligation the surety is bound under the terms of a payment or performance bond;  
823 provided, however, that a principal may be a prime contractor, general contractor or a  
824 subcontractor.

825 “Small contractor”, a person who performs as a prime contractor, general contractor  
826 or subcontractor on a contract funded in whole or in part by the American Recovery and  
827 Reinvestment Act of 2009 and whose average annual gross revenue is \$5,000,000 or less  
828 per year for the most recent 2 fiscal years.

829 “Subcontractor”, a person who has contracted with a prime contractor, general  
830 contractor or another subcontractor to perform a contract funded in whole or in part by the  
831 American Recovery and Reinvestment Act of 2009.

832 “Surety”, a surety company licensed to do business in the commonwealth and whose  
833 name appears on United States Treasury Department Circular 570 and who: (i) under the  
834 terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the  
835 principal breaches the conditions of the bond; (ii) under the terms of a performance bond,  
836 undertakes to incur the cost of fulfilling the terms of a contract in the event the principal  
837 breaches the conditions of the contract; (iii) under the terms of a payment bond, undertakes  
838 to make payment to all persons supplying labor and material in the prosecution of the work  
839 provided for in the contract if the principal fails to make prompt payment; or (iv) is an  
840 agent, independent agent, underwriter or any other company or individual empowered to  
841 act on behalf of such company.

842 “Woman contractor”, a person who performs as a prime contractor, general  
843 contractor or as a subcontractor on a contract funded in whole or in part by the American  
844 Recovery and Reinvestment Act of 2009 and is a woman business enterprise as that term is  
845 defined in section 40 of chapter 23A of the General Laws.

846 (c) The corporation may establish a contractor surety bond guarantee program and  
847 may, upon such terms and conditions as it may prescribe, guarantee and enter into  
848 commitments to guarantee a surety against loss resulting from a breach of the terms of a

849 bid bond, payment bond, performance bond or bonds ancillary thereto, by a principal on  
850 any total work order or contract amount at the time of bond execution that does not exceed  
851 \$250,000. No such guarantee shall be issued, unless:

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

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

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

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

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

865 The corporation, as guarantor, may exercise all of the rights and powers of a  
866 company authorized by the division of insurance to guarantee bonds pursuant to chapter  
867 175 of the General Laws, but shall not otherwise be subject to any laws related to a guaranty  
868 company under said chapter 175 nor to any rules of the division of insurance.

869 (d) For purposes of this section, the corporation shall establish and maintain  
870 accounts, identified individually or collectively as the Contractor Surety Bond Guarantee

871 Fund which shall be kept separate from other corporate funds. The fund shall consist of all  
872 monies deposited, credited or otherwise obtained pursuant to an appropriation or other  
873 allocation or assignment or grant of funds from the commonwealth; any grants, gifts and  
874 contributions received pursuant to section 3 of chapter 40F of the General Laws; all monies  
875 recovered following defaults; and any interest earned on monies within the accounts.

876 (e) The corporation may guarantee up to 90 per cent of the loss incurred and paid  
877 by a surety on bonds guaranteed under this section. Additionally, and subject to the  
878 provisions of this section, in connection with the issuance by the corporation of a guarantee  
879 to a surety as provided in subsection (c), the corporation may agree to indemnify the surety  
880 against a loss sustained by such surety in avoiding or attempting to avoid a breach of the  
881 terms of a bond guaranteed by the corporation pursuant to said subsection (c); provided,  
882 however, that prior to making a payment under this subsection, the corporation shall first  
883 determine that a breach of the terms of the bond was imminent and the surety shall obtain  
884 written approval from the corporation prior to making any payments pursuant to this  
885 subsection.

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

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

890 (ii) the total contract amount at the time of execution of the bond exceeds  
891 \$250,000; or

892 (iii) the surety has breached a material term or condition of such guarantee  
893 in the agreement.

894 SECTION 39. Any entity located in the commonwealth that receives federal funds  
895 through the American Recovery and Reinvestment Act of 2009 shall provide information as  
896 directed by the secretary of administration and finance regarding the use of the funds. The  
897 required information shall include, but not be limited to, the reporting information required  
898 by the federal government and any other information deemed necessary by the secretary to  
899 administer the American Recovery and Reinvestment Act of 2009 responsibly, efficiently  
900 and transparently. To the extent possible, the secretary shall work to streamline the  
901 reporting of this information, minimize duplication of data entry by recipients and ensure  
902 data consistency. The secretary may issue regulations to effectuate this reporting  
903 requirement.

904 SECTION 40. Employers and hiring agents on all projects funded in whole or in part  
905 by the American Recovery and Reinvestment Act of 2009 shall post notices of available  
906 employment opportunities to the commonwealth's job bank or the one-stop career centers  
907 closest to where the projects shall be located. The postings shall contain such information  
908 as directed by the secretary of labor and workforce development. The secretary may issue  
909 regulations to effectuate this job posting requirement.

910 SECTION 41. Notwithstanding any general or special law to the contrary, a carrier  
911 offering continuation coverage under a health benefit plan issued pursuant to chapter 176J  
912 of the General Laws to a qualified beneficiary eligible for the COBRA premium assistance  
913 benefit set forth in section 3001 of the American Recovery and Reinvestment Act of 2009  
914 shall offer the extended election period available therein to each qualified beneficiary who  
915 does not have an election of continuation coverage under a health benefit plan issued under  
916 said chapter 176J on the effective date of this act, but who would be an assistance-eligible  
917 individual under the American Recovery and Reinvestment Act if such election were in

918 effect. Any such qualified beneficiary may elect such continuation coverage under said  
919 chapter 176J during the period beginning on the effective date of this act and ending 60  
920 days after the date on which the notification required under this section is provided to such  
921 qualified beneficiary. Coverage elected in this extended election period shall commence  
922 with the first period of coverage beginning on or after the effective date of this act. For the  
923 purposes of this section, carriers or their designees shall comply with paragraph (5) of  
924 subsection (j) of section 9 of said chapter 176J and any applicable notice requirements  
925 under American Recovery and Retirement act of 2009, except that such notice shall be made  
926 within 60 days after the effective date of this act.

927 SECTION 42. The secretary of administration and finance, in consultation with the  
928 state comptroller, shall submit comprehensive bi-monthly reports for 3 years after the  
929 effective date of this act to the clerks of the senate and house of representatives who shall  
930 forward the same to the joint committee on federal stimulus oversight and the house and  
931 senate committees on ways and means on the programs, aid, grants and projects funded in  
932 whole or in part by the American Recovery and Reinvestment Act of 2009, in this section  
933 referred to as ARRA. The reports shall be posted on the commonwealth's official website.  
934 The reports shall include, but not be limited to:

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

942 (2) an accounting of any funds collected or anticipated to be collected in fiscal years  
943 2009, 2010 and 2011 pursuant to an increase in the federal Medicaid assistance percentage  
944 rate pursuant to ARRA and the assumptions used in any future projections;

945 (3) a listing of grants of waiver issued under ARRA;

946 (4) a listing of all competitive federal grants available under ARRA for which a state  
947 agency has filed an application; provided, however, that the report shall state the number of  
948 applications that have been accepted, the number that are still pending and the number that  
949 have been rejected and shall compare the number of accepted applications with not less  
950 than at least 10 other states; and

951 (5) an accounting of the progress of all expenditures related to capital projects  
952 funded in whole or in part by ARRA; provided, however, that the report shall include, but  
953 not be limited to: the total amount allocated for each project, the total estimated cost of each  
954 project, the amount expended for the planning and design of each project up to the time the  
955 report is filed, the amount expended on construction of each project up to the time the  
956 report is filed, the total amount currently expended on each project, the estimated lifetime  
957 maintenance schedule and cost of each project, the original estimated completion date of  
958 each project, the current anticipated completion date of each project and, if the project has  
959 been de-authorized, the reason for and date of such de-authorization.

960 SECTION 43. The secretary of administration and finance or the applicable state  
961 agency applying for funds through the American Recovery and Reinvestment Act of 2009  
962 shall file with the house and senate committees on ways and means and the joint committee  
963 on federal stimulus oversight copies of all state applications requesting funding  
964 concurrently with submission of the application to the federal government. The secretary  
965 or the applicable state agency shall also inform the house and senate committees on ways

966 and means and the joint committee on federal stimulus oversight in writing of the amount  
967 of funds to be allocated and the location of where funds shall be deposited as soon as  
968 notification from the federal government on each award is received.

969 SECTION 44. Notwithstanding any general or special law to the contrary, for  
970 projects which are funded in whole or in part by the American Recovery and Reinvestment  
971 Act of 2009, the awarding authority shall deem "Eligible" to be defined as follows:

972 "Eligible", a bidder or offeror who is able to meet all requirements for bidders or  
973 offerors set forth in sections forty44A to 44H, inclusive of chapter 149 of the General Laws  
974 and who shall certify that he is able to furnish labor that can work in harmony with all other  
975 elements of labor employed or to be employed on the work.; provided, however, that  
976 eligible shall not include a bidders or offeror that, at the time of procurement, is: (1)  
977 debarred from bidding under section 44C of said chapter 149 or any other applicable law;  
978 (2) debarred by any other state or by any agency of the United States, as determined by the  
979 Commonwealth after diligent efforts; or (3) otherwise excluded from public contracting or  
980 subcontracting for the reasons set forth in subsection (c) of section 29F of chapter 29 of the  
981 General Laws; and provided further, that notwithstanding any general or special law to the  
982 contrary, the Attorney General may waive or adjust the preceding requirements if he  
983 determines in writing that special circumstances exist which justify such waiver or  
984 adjustment.

985 SECTION 45. (a) The provisions and definitions of terms in the Federal-State  
986 Extended Unemployment Compensation Act of 1970 shall apply to this section; provided,  
987 however, that to the extend such definitions are in conflict with or supplement the  
988 provisions and definitions of terms in the American Recovery and Reinvestment Act of

989 2009, the provisions and definitions of the American Recovery and Reinvestment Act of  
990 2009 shall apply to this section.

991 (b) With respect to weeks of unemployment beginning on or after February 22,  
992 2009, and continuing until the week ending prior to the last week for which 100 per cent  
993 federal sharing is authorized by subsection (a) of Section 2005 the American Recovery and  
994 Reinvestment Act of 2009 for all claims except for entities described in Section 3306(c)(7)  
995 of the Internal Revenue Code, the following shall apply:

996 (1) In addition to the “state ‘on’ indicator” set forth in paragraph (d) of  
997 subsection (1) of section 30A of chapter 151A of the General Laws, there shall be a  
998 “state ‘on’ indicator” for the commonwealth for a week if the director determines, in  
999 accordance with the regulations of the United States Secretary of Labor, that:

1000 (A) the rate of insured unemployment for the period consisting of  
1001 such week and the immediately preceding 12 weeks equaled or exceeded 6  
1002 per cent, regardless of the rate of insured unemployment in the 2 previous  
1003 years; or

1004 (B) (i) the average rate of total unemployment, seasonally  
1005 adjusted, for the period consisting of the most recent 3 months for which  
1006 data for all states are published before the close of such week equals or  
1007 exceeds 6.5 per cent; and

1008 (ii) the average rate of total unemployment (seasonally adjusted) for  
1009 the three-month period referred to in clause (i) equals or exceeds 110 per  
1010 cent of such average rate for either or both of the corresponding 3-month  
1011 periods ending in the 2 preceding calendar years.



1035 (e) This section shall not be implemented unless the director of workforce  
1036 development determines that these provisions have been approved by the United States  
1037 Department of Labor. The director shall immediately provide a copy of this section to the  
1038 United States Department of Labor for review.

1039 SECTION 46. Sections 4 to 11, inclusive, sections 14 to 28, inclusive and section 33  
1040 shall apply only to contracts advertised after the effective date of this act.