

HOUSE No. 2971

The Commonwealth of Massachusetts

PRESENTED BY:
Antonio F.D. Cabral

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:
An Act making technical corrections to the public construction reform law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Antonio F.D. Cabral	13th Bristol

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

AN ACT MAKING TECHNICAL CORRECTIONS TO THE PUBLIC CONSTRUCTION REFORM LAW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 38H of chapter 7 of the General Laws as appearing in the 2006 Official edition is hereby amended by inserting after the word “towns”, in line 88, the following words:-

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

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

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

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

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

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

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

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

(iv) in the case of a joint venture between a minority business meeting the requirements of clauses (i) to (iii), inclusive, and a non-minority business, the joint venture shall be found to be a minority business if

the minority business meeting the requirements of said clauses (i) to (iii), inclusive, shall have more than one-half control over management of the project bid upon and shall have the right to receive more than one-half of the profits deriving from that project.

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

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

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

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

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

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

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

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

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

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

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

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

(E) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost more than \$100,000, except for a pumping station to be constructed, reconstructed, installed, demolished, maintained or repaired as an integral part of a sewer construction or water construction project bid under the provisions of section 39M of chapter

30, shall be awarded to the lowest responsible and eligible general bidder on the basis of competitive bids in accordance with the procedure set forth in section 44A to 44H, inclusive.

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

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

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

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

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

(a) A public agency, before entering into a contract for design services, except for services relating exclusively to preparation of master plans, studies, surveys, soil tests, cost estimates, or programs, pursuant to section 38D or section 38K of chapter 7, shall contract for the services of an owner's project manager to serve as the public agency's agent and consultant during the planning, design and implementation of a contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by the public agency estimated to cost not less than \$1,500,000. The duties of the owner's project manager shall include, but need not be limited to: providing advice and consultation with respect to design, value engineering, scope of the work, cost estimating, general contractor and

subcontractor prequalification, pursuant to section 44D1/2 or 44D3/4 when applicable, scheduling, construction and the selection, negotiation with and oversight of a designer and a general contractor for the project, ensuring the preparation of time schedules which shall serve as control standards for monitoring performance of the building project, and assisting in project evaluation including, but not limited to, written evaluations of the performance of the design professional, contractors, and subcontractors. For the purposes of this subsection, the term "owner's project manager" shall mean a person, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of providing project management services for the construction and supervision of construction of buildings. The owner's project manager shall be a person, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity registered by the commonwealth as an architect or professional engineer and who has at least 5 years relevant experience in the construction and supervision of construction of buildings or, if not registered as an architect or professional engineer, a person, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity who has at least 7 years relevant experience in the construction and supervision of construction of buildings. The owner's project manager shall be independent of the designer, general contractor or any sub-contractor involved in the building project.

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

(16) The division of capital asset management and maintenance shall develop a standard subcontractor evaluation form that shall be completed by every public agency as defined in section 44A, upon completion of a building project under its control, and submitted to the division for the subcontractor's qualification file. The official from the public agency, or the owner's representative, shall certify that the information contained on the subcontractor evaluation form represents, to the best of his knowledge, a true and accurate analysis of the subcontractor's performance record on that contract. The public agency shall mail a copy of the subcontractor evaluation form to the subcontractor and the subcontractor shall, within 30 days, submit a written response to the division disputing any information contained in the evaluation form and setting forth any additional information concerning the building project or the oversight of the contract that may be relevant to the evaluation of the subcontractor's performance on the contract. The division shall attach any such response to the evaluation form for inclusion in the subcontractor's qualification file. No person shall be liable for any injury or loss to a subcontractor as a result of the completion of a subcontractor evaluation form as required by this section unless the individual completing the form has been found by a court of competent jurisdiction to have acted in a willful, wanton or reckless manner. If a suit is commenced by a subcontractor against a public employee, an owner's representative, an architect or an engineer who has completed a subcontractor

evaluation form as required by this section seeking to recover damages resulting from injury caused by such evaluation, the public agency for whom the evaluation form was completed, or the commonwealth if the evaluation was completed for a state agency, shall provide for the legal representation of the employee, owner's representative, architect or engineer. The public agency, or the commonwealth, shall also indemnify the person from all financial loss and expenses, including but not limited to legal fees and filing costs, in an amount not to exceed \$1,000,000. No person shall be indemnified for losses other than legal fees and filing costs under this section if the person is found by a court or a jury to have acted in a willful, wanton or reckless manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If the awarding authority decides to reject all general bids or if the awarding authority does not receive any general bids, the awarding authority may retain and use the sub-bids received for a second

opening of general bids; provided, however, that there are no changes in the work involved for the sub-trades for which the sub-bids are so retained and used; and provided further, that the awarding authority shall obtain the consent of each sub-bidder included in any award of a general contract made pursuant to the second opening of general bids if such award is not made within 90 days, Saturday, Sundays, and legal holidays excluded, after the opening of such sub-bids.

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

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

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

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

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(A)	(B)	(C)	(D)
Sub-trade	Name of Sub-bidder	Amount	Bonds requested by general bidder (Yes or No)
_____		\$ _____	
_____		\$ _____	
		\$ _____	

Total of Item 2 \$ _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 60 The third paragraph of clause (4) of subsection (a) of said section 21F of said chapter 703 of the acts of 1963, as inserted by said section 30 of said chapter 193 of the acts of 2004, is hereby

amended by striking out the third sentence and inserting in place thereof the following sentence:- In the event that a contract and guaranteed maximum price amendment cannot be successfully negotiated between the selection committee and the next highest ranked proposer, the authority shall terminate the procurement process and shall instead procure the project in accordance with sections 44A to 44J, inclusive, of chapter 149 of the General Laws.

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

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

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

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

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

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

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

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

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

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

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

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