

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT MOBILIZING ECONOMIC RECOVERY IN MASSACHUSETTS.

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

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

1 SECTION 1. Notwithstanding section 38C of chapter 7 of the General Laws, contracts for design  
2 services which are funded in whole or in part by the American Recovery and Reinvestment Act  
3 of 2009 shall be exempt from the jurisdiction of the designer selection board if the design fee  
4 under the contract is less than \$25,000, or if the estimated construction cost of the project for  
5 which the design services are required is less than \$250,000 or if the contract is otherwise  
6 exempt under section 38C.

7 SECTION 2. Notwithstanding section 38D of chapter 7 of the General Laws, each contract for  
8 designer services for a project which is funded in whole or in part by the American Recovery and  
9 Reinvestment Act of 2009 and is subject to the jurisdiction of the board shall be publicly  
10 advertised by the board either (i) within the COMPASS system, not less than 2 weeks before the  
11 deadline for filing applications, and in the central register established under section 20A of  
12 chapter 9, not less than 1 week before the deadline for filing applications, or (ii) if the contract is  
13 not advertised within the COMPASS system, the contract shall be publicly advertised in the  
14 central register at least 2 weeks before this deadline. Every contract for design services for a  
15 project which is funded in whole or in part by the American Recovery and Reinvestment Act of  
16 2009 and subject to section 38K of chapter 7 shall be publicly advertised under this section.

17 SECTION 3. Notwithstanding section 38H of chapter 7 of the General Laws, for contracts  
18 which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009,  
19 the certification required by paragraph (iv) of subsection (e) shall only apply to contracts which  
20 exceed \$25,000 or which are for the design of a building for which the budgeted or estimated  
21 construction costs exceed \$250,000.

22 SECTION 4. Notwithstanding section 38K of chapter 7, a contract for design services which is  
23 funded in whole or in part by the American Recovery and Reinvestment Act of 2009 and which  
24 would otherwise be subject to the requirements of section 38K shall not be subject to those  
25 requirements unless the project at issue is estimated to exceed \$250,000.

### 26 **STREAMLINE DSB PROCESS**

27 SECTION 5. Subsection (d) of section 38F of chapter 7 of the General Laws shall not apply to  
28 contracts which are funded in whole or in part by the American Recovery and Reinvestment Act  
29 of 2009. For those projects, the designer selection board may delegate its powers and duties  
30 under paragraph (b) of section 38D, paragraphs (c) and (d) of section 38E, and paragraphs (a)  
31 and (b) of sections 38G, 38H and 38I to panels of less than all the board members. A panel of no  
32 less than 6 members shall be required for selection of designers under this section, 4 of whom  
33 shall be architects or engineers provided there must be at least 1 architect and 1 engineer on that  
34 panel.

### 35 **INCREASE THE THRESHOLDS FOR DCAM TO DELEGATE TO PUBLIC** 36 **AGENCIES THE AUTHORITY TO CONTROL PROJECTS**

37 SECTION 6. Notwithstanding section 40B of chapter 7 of the General Laws, for projects which  
38 are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, the  
39 commissioner of capital asset management and maintenance may, upon request of a state agency  
40 or building authority, delegate project control and supervision to that state agency or building  
41 authority over projects involving structural or mechanical work whose estimated cost is less than  
42 \$2,000,000 if the commissioner determines that the agency or authority has the ability to control  
43 and supervise such project. Except as otherwise provided in section 40B, any state agency or  
44 building authority shall control and supervise its own building projects when the estimated cost  
45 of such project is less than \$250,000, or if the project does not involve structural or mechanical  
46 work.

### 47 **MODIFY STUDY REQUIREMENTS FOR LARGER PROJECTS AND ELIMINATE** 48 **STUDY AND ENCUMBRANCE REQUIREMENTS FOR SMALL DESIGN PROJECTS**

49 SECTION 7. The second and third paragraphs of section 7K of chapter 29 of the General Laws  
50 shall not apply to projects which are funded in whole or in part by the American Recovery and  
51 Reinvestment Act of 2009, but in place thereof the following provision shall apply:-

52 No provider of design services for any building project for which a state agency is the using  
53 agency shall be selected by the designer selection board or by the administering agency in  
54 accordance with sections 30B through 30P, inclusive, of chapter 7, and no design services shall  
55 be performed for or by such administering agency for any building project for which the  
56 satisfactory completion of a study program is required before the design or construction of that  
57 project, unless and until: (a) the study, program or where appropriate, both, have been  
58 satisfactorily completed to such extent that a contract for final design may be awarded in the  
59 discretion of the commissioner of capital asset management and maintenance; (b) the using  
60 agency certifies in writing to the commissioner of capital asset management and maintenance  
61 that the study, program, or where appropriate both, correspond to the current needs of that  
62 agency, including its current long term capital facilities development plan; and (c) the  
63 commissioner requests that one or more of the directors of the office of programming, office of  
64 project management, or office of facilities management review the study or program, or where  
65 appropriate, both, and the director or directors certify in writing to the commissioner that the  
66 study, program, or where appropriate both, reflect the using agency's needs as stated, that they  
67 provide an accurate estimate of the project requirements, cost and schedule, that the project can  
68 be accomplished within the appropriation or authorization for that project, and recommends  
69 proceeding with design, construction, or where appropriate, both.

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

74 SECTION 8. Section 26A of chapter 29 of the General Laws shall not apply to maintenance or  
75 repair projects, as defined by section 39A of chapter 7, which are funded in whole or in part by  
76 the American Recovery and Reinvestment Act of 2009, and are estimated to cost less than  
77 \$250,000, if the executive head of the agency administering the project certifies in writing that  
78 the design work is or shall be such as to specify a project that can be accomplished, and that  
79 there are funds available to pay for the design services.

80 **INCREASE THE THRESHOLD FOR SMALL BUILDING PROJECT**  
81 **PROCUREMENTS**

82 SECTION 9. For contracts which are funded in whole or in part by the American Recovery and  
83 Reinvestment Act of 2009, section 39M of chapter 30 of the General Lawsshall only apply if the  
84 contract is estimated to cost more than \$50,000 but not more than \$100,000.

85 **INCREASE THE THRESHOLD FOR PROJECTS REQUIRING PAYMENT BONDS TO**  
86 **\$25,000**

87 SECTION 10. Notwithstanding section 29 of chapter 149 of the General Laws, contracts which  
88 are funded in whole or in part by the American Recovery and Reinvestment Act of 2009 shall

89 only be subject to the requirements of section 29 if the amount of the contract is more than  
90 \$25,000.

91 **REVISE ADVERTISING AND BIDDING THRESHOLDS FOR SMALL PROJECTS**

92 SECTION 11. Subsection (2) of section 44A of chapter 149 of the General Laws shall not apply  
93 to contracts which are funded in whole or in part by the American Recovery and Reinvestment  
94 Act of 2009, but in place thereof the following provision shall apply:-

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

104 (b) Every contract for the construction, reconstruction, installation, demolition, maintenance or  
105 repair of any building by a public agency estimated to cost not less than \$10,000, but not more  
106 than \$50,000, and where the overall project is also estimated to cost not more than \$50,000, shall  
107 be awarded to the responsible person offering to perform the contract at the lowest price  
108 quotation; provided however, that the public agency shall seek written price quotations from no  
109 fewer than 3 persons customarily providing the work for which the contract is being made  
110 available. When seeking written quotations the public agency shall make and keep a record of  
111 the names and addresses of all persons from whom price quotations were sought, the names of  
112 the persons submitting price quotations, and the date and amount of each price quotation. Written  
113 price quotations submitted in accordance with this subsection shall not require certificates of  
114 eligibility, update statements or bid deposits. In no event shall public agencies solicit price  
115 quotations from persons if to do so would violate chapter 268A of the General Laws.

116 (c) Every contract for the construction, reconstruction, installation, demolition, maintenance or  
117 repair of any building by a public agency estimated to cost more than \$50,000 but not more than  
118 \$100,000, except for a pumping station to be constructed as an integral part of a sewer  
119 construction or water construction project bid under section 39M of chapter 30, shall be awarded  
120 to the lowest responsible and eligible bidder on the basis of competitive bids publicly opened and  
121 read in accordance with the procedure set forth in section 39M of chapter 30. The term "pumping  
122 station" as used in this section shall mean a building or other structure which houses solely  
123 pumps and appurtenant electrical and plumbing fixtures.

124 (d) Every contract for the construction, reconstruction, installation, demolition, maintenance or  
125 repair of any building by a public agency estimated to cost more than \$100,000, except for a

126 pumping station to be constructed as an integral part of a sewer construction or water  
127 construction project bid under section 39M of chapter 30, shall be awarded to the lowest  
128 responsible and eligible general bidder on the basis of competitive bids in accordance with the  
129 procedure set forth in sections 44A to 44H, inclusive.

130 (e) When the general court has approved the use of an alternative mode of procurement of  
131 construction for a project under section 7E of chapter 29, the awarding authority responsible for  
132 procuring construction services for the project shall follow the policies and procedures of this  
133 section and of sections 44B to 44H, inclusive, to the extent compatible with the mode of  
134 construction procurement selected.

135 (f) Notwithstanding paragraph (d), a public agency may undertake the procurement of modular  
136 buildings, in accordance with section 44E. A public agency may procure site work for modular  
137 buildings, including but not limited to, construction of foundations, installations, and attachment  
138 to external utilities, or any portion of site work, either in combination with the procurement of  
139 modular buildings pursuant to section 44E or on the basis of competitive bids pursuant to  
140 paragraph (d). Notwithstanding paragraph (d), a public agency may procure energy management  
141 services in accordance with sections 11C or 11I of chapter 25A and regulations promulgated  
142 under those sections.

143 **ELIMINATE NEWSPAPER AD REQUIREMENT AND ABBREVIATE CENTRAL**  
144 **REGISTER ADVERTISING**

145 SECTION 12. Subsection (f) of section 44D1/2 of chapter 149 shall not apply to  
146 contracts which are funded in whole or in part by the American Recovery and Reinvestment Act  
147 of 2009, but in place thereof the following subsection shall apply:-

148 (f) The public notice and solicitation required in subsection (d) shall be advertised in the central  
149 register under section 20A of chapter 9 and within the COMPASS system. The public notice and  
150 solicitation shall be given within the COMPASS system not less than 2 weeks before the  
151 deadline for submitting responses to the RFQ, and in the central register under section 20A of  
152 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

153 SECTION 13. Subsection (f) of section 44D3/4 of chapter 149 of the General Laws shall  
154 not apply to contracts which are funded in whole or in part by the American Recovery and  
155 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

156 (f) The public notice and solicitation required in subsection (d) shall be advertised in the central  
157 register under section 20A of chapter 9 and within the COMPASS system. The public notice and  
158 solicitation shall be given within the COMPASS system not less than 2 weeks before the  
159 deadline for submitting responses to the RFQ, and in the central register under section 20A of  
160 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

161 SECTION 14. Subsection (1) of section 44J of chapter 149 of the General Laws shall not  
162 apply to contracts which are funded in whole or in part by the American Recovery and  
163 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

164 (1) No public agency or authority of the commonwealth or any political subdivision thereof shall  
165 award any contract for which competitive bids are required under section 44A of this chapter or  
166 section 39M of chapter 30, or for which competitive proposals are required under subsection (4)  
167 of section 44E of this chapter or section 11C of chapter 25A, unless a notice inviting bids or  
168 proposals therefor shall have been posted not less than 1 week before the time specified in the  
169 notice for the receipt of the bids or proposals in a conspicuous place in or near the offices of the  
170 awarding authority, and shall have remained posted until the time so specified, and unless the  
171 notice shall also have been advertised either within the COMPASS system, not less than 2 weeks  
172 prior to the time specified and in the central register published by the secretary of state under  
173 section 20A of chapter 9 not less than 1 week before the time specified for the receipt of the bids  
174 or proposals, or, if the notice is not advertised within the COMPASS system, the notice shall be  
175 advertised in the central register at least 2 weeks before the time specified. The notice shall also  
176 be published at such other times and in such other newspapers or trade periodicals as the  
177 commissioner of capital asset management and maintenance may require, having regard to the  
178 locality of the work involved.

179 SECTION 15. Subsection (e) of section 5 of chapter 149A of the General Laws shall not  
180 apply to contracts which are funded in whole or in part by the American Recovery and  
181 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

182 (e) The public notice and solicitation required in subsection (c) shall be advertised in the central  
183 register under section 20A of chapter 9, and within the COMPASS system. The public notice and

184 solicitation shall be given within the COMPASS system not less than 2 weeks before the  
185 deadline for submitting responses to the RFQ, and in the central register under section 20A of  
186 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

187 SECTION 16. Subsection (d) of section 8 of chapter 149A of the General Laws shall not  
188 apply to contracts which are funded in whole or in part by the American Recovery and  
189 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

190 (d) The public notice and solicitation required in subsection (c) shall be advertised in the central  
191 register under section 20A of chapter 9, and within the COMPASS system. The public notice and  
192 solicitation shall be given within the COMPASS system not less than 2 weeks before the  
193 deadline for submitting responses to the RFQ, and in the central register under section 20A of  
194 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

195 SECTION 17. Subsection (b) of section 17 of chapter 149A of the General Laws shall  
196 not apply to contracts which are funded in whole or in part by the American Recovery and  
197 Reinvestment Act of 2009, but in place thereof the following subsection shall apply:-

198 (b) The public notice and solicitation required in subsection (a) shall be advertised either within  
199 the COMPASS system not less than 2 weeks before the deadline for submitting the letters of  
200 interest and in the central register established under section 20A of chapter 9 not less than 1  
201 week before the deadline, or if the public notice and solicitation are not given within the  
202 COMPASS system, the public notice and solicitation shall be advertised in the central register  
203 published by the secretary of state under section 20A of chapter 9 not less than 2 weeks before  
204 the deadline for submitting the letters of interest.

205 **STREAMLINE SELECTION PROCESS WHEN UNREASONABLY HIGH SUB-BIDS**  
206 **ARE RECEIVED WITHOUT COMPETITION**

207 SECTION 18. Subdivision (a) of subsection 4 of section 44F of chapter 149 of the General  
208 Laws shall not apply to contracts which are funded in whole or in part by the American  
209 Recovery and Reinvestment Act of 2009, but in place thereof the following subdivision shall  
210 apply:-

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

217 (2) If no sub-bid is filed for a sub-trade designated in the general bid form, or if the only sub-bids  
218 which are filed are restricted to the use of 1 or more general bidders, the awarding authority may  
219 state, in an addendum issued with the list of sub-bidders required by clause (3), that the general  
220 bidder shall include in the cost of his own work an amount to cover all the work required for any  
221 such sub-trade. The general contractor shall cause the work covered by the sub-trade to be done  
222 by a qualified and responsible sub-contractor, subject to the written approval of the awarding  
223 authority. If the awarding authority determines that any sub-contractor chosen by the general  
224 contractor under this section is not qualified or responsible, the general contractor shall obtain  
225 another sub-contractor who is satisfactory to the awarding authority with no adjustment in the  
226 general contractor's price.

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

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



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

253 **ESTABLISH A STANDING LIST OF PREQUALIFIED CONSTRUCTION MANAGER**  
254 **AT RISK FIRMS**

255 SECTION 19. Notwithstanding section 5 of chapter 149A of the General Laws, for contracts  
256 which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009,  
257 the following procedure shall apply:-

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

268 (2) Firms included on the division's standing list of prequalified construction management at risk  
269 firms shall be prequalified for a period of 1 year from the date of issuance of the standing list by  
270 the division. Upon issuance of the standing list, the division shall publish the standing list of  
271 prequalified construction manager at risk firms in the central register, the COMPASS system,  
272 and the division's website. The division shall re-advertise and solicit applications quarterly  
273 through the request for qualifications process or RFQ process provided for herein to keep the  
274 statewide standing list current.

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

283 (4) The selection process for the annual prequalification of the division's standing list of  
284 construction manager at risk firms shall begin once the division gives public notice of the  
285 solicitation and requests responses to an RFQ from construction management at risk firms. The  
286 public notice and RFQ shall include: (a) a statement indicating that the RFQ is not for a specific

287 project, but will be used to prequalify construction management at risk firms for inclusion on the  
288 division's annual standing list and that only those construction manager at risk firms included on  
289 the standing list shall be invited to submit proposals in response to requests for proposals issued  
290 pursuant to subsection B; (b) the time and date for receipt of responses to the RFQ, the address  
291 of the office to which the responses are to be delivered, and the timeframe in which the public  
292 agency will respond to the responses; (c) a description of the experience that will be required for  
293 construction manager at risk firms to be included on the division's standing list, which shall  
294 include a minimum of 3 public or private construction manager at risk projects during the past 10  
295 years; (d) the evaluation procedure and criteria under paragraph (7), including any rating system;  
296 (e) a general description of the scope of services that would be expected of a prequalified  
297 construction manager firm during the pre-design, pre-construction and construction phases of a  
298 construction manager at risk project; (f) the anticipated schedule for the selection process of  
299 construction manager at risk firms to be included on the division's standing list; and (g) a  
300 prohibition against any unauthorized communication or contact with the public agency outside of  
301 official pre-proposal meetings.

302 (5) The division shall require interested construction management at risk firms to submit a  
303 statement of qualifications in response to the RFQ issued pursuant to paragraph (4). The  
304 statement of qualifications shall include, at a minimum, the following: (a) a cover letter or  
305 executive summary detailing the key elements and factors that differentiate the firm from other  
306 responders; (b) completion of a qualifications application similar in form to AIA Document  
307 A305, 1986 edition, listing general business information and financial capacity; (c) a list of  
308 lawsuits and arbitrations to which the firm is a party in regard to construction contracts within  
309 the last 3 years, including a list of all convictions or fines for violations of state or federal law;  
310 (d) submission of an organization chart with specific information on key project personnel or  
311 consultants; (e) submission of an audited financial statement for the most recent fiscal year and a  
312 letter from the surety company of the firm confirming the ability to provide performance and  
313 payment bonds for the building project under consideration, but, the financial information  
314 submitted shall remain confidential and shall not be a public record to the fullest extent  
315 permissible under the law; (f) submission of information on the firm's safety record including its  
316 workers' compensation experience modifier for the prior 3 years; (g) submission of information  
317 on and evidence of the firm's compliance record with respect to minority business enterprise and  
318 women business enterprise inclusion goals and workforce inclusion goals, if applicable; (h)  
319 submission of information regarding the firm's experience on construction manager at risk  
320 projects including references from the owners and architects of the building projects; (i)  
321 submission of information on any projects where the firm was terminated, failed to complete the  
322 work, or paid liquidated damages; (j) a certificate of eligibility issued by the division under  
323 section 44D of chapter 149, showing the construction manager at risk firm's capacity rating, and  
324 an update statement; and (k) any other relevant information that the division determines  
325 desirable. The statement of qualifications shall be signed under pains and penalties of perjury.

326 (6) The public notice and solicitation required in paragraph (4) shall be advertised in the central  
327 register under section 20A of chapter 9, and within the COMPASS system. The public notice  
328 and solicitation shall be given within the COMPASS system not less than 2 weeks before the  
329 deadline for submitting responses to the RFQ, and in the central register under section 20A of  
330 chapter 9 not less than 1 week before the deadline for submitting responses to the RFQ.

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

336 B. (1) Before issuing a request for proposals, in this section referred to as RFP, the division or  
337 any other public awarding authority authorized under subsection A shall establish a selection  
338 committee for the purpose of reviewing and evaluating responses submitted to the RFP issued  
339 under subsection (2). The selection committee shall be comprised of 1 representative of the  
340 designer, the owner's project manager, and at least 2 representatives of the division or other  
341 public awarding authority authorized under subsection A.

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

#### 348 **CONDENSED PREQUALIFICATION PROCESS**

349 SECTION 20. (a) For contracts subject to the prequalification requirements set forth in section  
350 44D½ of chapter 149 of the General Laws which are funded in whole or in part by the American  
351 Recovery and Reinvestment Act of 2009 (the federal act), an awarding authority shall have the  
352 option to use the condensed prequalification process for general contractors described in this  
353 section in lieu of the full prequalification process set forth in section 44D½. The purpose of the  
354 condensed prequalification process is to allow awarding authorities an opportunity to expedite  
355 the prequalification process provided in section 44D½ in order to most efficiently meet the  
356 specified goals and time parameters set forth in the federal act. All of the requirements of the  
357 full prequalification process set forth in section 44D½ shall be required under the condensed  
358 prequalification process unless specifically modified in this section.

359 (b) Where an awarding authority opts to use the condensed prequalification process, the  
360 requirements for public notice of the building project and solicitation of responses to the RFQ  
361 from interested general contractors shall include all items set forth in clauses (1) through (8) of  
362 subsection (d) of section 44D½ but shall also include the following additional statements:

363 (1) a statement that the project is funded in whole or in part under the federal act and shall use  
364 the condensed prequalification process.

365 (2) a statement that the evaluation procedure and the criteria for the prequalification of interested  
366 general contractors shall include evaluation of all the criteria set forth in subsection (e) of section  
367 44D½ but, in order to avoid duplication and promote the expeditious commencement of projects  
368 under the federal act and without sacrificing the importance of the prequalification process, for  
369 certain of the evaluation categories and subcategories specifically identified in subsection (e), the  
370 prequalification committee shall evaluate interested general contractors based on a review of the  
371 information contained in the division of capital asset management and maintenance certification  
372 files, including but not limited to the project evaluations required by subsection (7) of section  
373 44D of the General Laws and the update statements required by clause (ii) of subdivision (4) of  
374 subsection (e) of section 44D½ to be submitted by interested general contractors. The  
375 prequalification committee shall exercise due diligence in checking appropriate references.

376 (c) The RFQ and evaluation criteria for the condensed prequalification process shall include all  
377 criteria set forth in subsection (e) of section 44D½ but shall not include the total or minimum  
378 point allocations for the evaluation categories and subcategories designated therein. In addition,  
379 in the interest of expediting the prequalification of general contractors for contracts funded in  
380 whole or in part under the federal act but not sacrificing the prequalification process, where  
381 certain of the evaluation subcategories specifically identified in this section require similar  
382 reporting by contractors in connection with the certification process set forth in section 44D and  
383 the information contained in the required update statements submitted by interested general  
384 contractors, an awarding authority issuing an RFQ under this condensed prequalification process  
385 shall maintain as part of the project record the written certification by the prequalification  
386 committee that it has evaluated interested general contractors based on a review of both the  
387 information contained in the certification files, including but not limited to the project  
388 evaluations required by subsection (7) of section 44D, and the current update statements  
389 submitted by interested general contractors and that it has exercised due diligence in checking  
390 appropriate references.

391 (d) Where an awarding authority opts to use the condensed prequalification process, the review  
392 of the terminations, legal proceedings, safety record and compliance record provided in clauses  
393 (iv) through (vii) of subdivision (1) of subsection (e) of section 44D½, and the review of credit  
394 references and public project record under clauses (ii) and (iii) of subdivision (2) of subsection  
395 (e) of section 44D½, and the review of audited financial statements under clause (i) of  
396 subdivision (3) of subsection (e) of section 44D½ shall be satisfied by a requirement that the  
397 prequalification committee evaluate both the information contained in the division of capital  
398 asset management and maintenance certification files, including but not limited to the project  
399 evaluations required by subsection (7) of section 44D, and the current update statements  
400 submitted by interested general contractors and by a requirement that the prequalification  
401 committee exercise due diligence in checking appropriate references. The prequalification

402 committee shall further be required to certify in writing that it has met these requirements, and  
403 the certification shall be maintained by the awarding authority in the project record.

404 (e) Notwithstanding subsection (f) of section 44D½, the public notice requirements for the  
405 condensed prequalification process shall be for the RFQ to be advertised in the central register  
406 for not less than 1 week and in the COMPASS system for not less than 2 weeks. In addition,  
407 these projects shall be advertised in the central website to be established for all projects in the  
408 commonwealth funded in whole or in part under the federal act and in accordance with any  
409 requirements contained in the federal act.

410 (f) Where an awarding authority opts to use the condensed prequalification process in lieu of the  
411 evaluation requirements set forth in subsection (h) of section 44D½, the prequalification  
412 committee shall evaluate each statement of qualifications based on the criteria provided in the  
413 RFQ, the information contained in the division of capital asset management and maintenance  
414 certification files, including but not limited to the project evaluations required by subsection (7)  
415 of section 44D and the current update statements submitted by interested general contractors.  
416 The prequalification committee shall exercise due diligence in checking appropriate references.  
417 As provided in subsection (c) the total and minimum point allocations designated in subsection  
418 (e) of 44D½ shall not be included in the RFQ and shall not be used in the evaluation of interested  
419 general contractors where the condensed prequalification process is utilized. The evaluation of  
420 interested general contractors shall be based on the evaluation criteria set forth in this subsection  
421 and conducted within the discretion of the prequalification committee, providing that the  
422 prequalification committee evaluates each interested general contractor on the same fair and  
423 equitable basis. A general contractor's score shall be made available to the general contractor  
424 upon request. The decision of the prequalification committee shall be final and shall not be  
425 subject to appeal except on grounds of arbitrariness, capriciousness, fraud or collusion.

426 (g) Where an awarding authority opts to use the condensed prequalification process, in lieu of  
427 the requirements for the re-issuance of the RFQ set forth in subsection (i) of section 44D½, if the  
428 awarding authority prequalifies fewer than 3 general contractors to submit bids, the awarding  
429 authority may invite general bids under sections 44B to 44E, inclusive, or, if the awarding  
430 authority prequalifies at least 2 general contractors, then the awarding authority may invite bids  
431 from the 2 prequalified general contractors.

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

435 SECTION 21. (a) For contracts subject to the prequalification requirements set forth in section  
436 44D¾ of chapter 149 of the General Laws which are funded in whole or in part by the American  
437 Recovery and Reinvestment Act of 2009 (the federal act), an awarding authority shall have the  
438 option to use the condensed prequalification process for subcontractors described in this section

439 in lieu of the full prequalification process set forth in section 44D<sup>3</sup>/<sub>4</sub>. The purpose of the  
440 condensed prequalification process is to allow awarding authorities an opportunity to expedite  
441 the prequalification process provided in section 44D<sup>3</sup>/<sub>4</sub> in order to most efficiently meet the  
442 specified goals and time parameters set forth in the federal act. All of the requirements of the  
443 full prequalification process set forth in section 44D<sup>3</sup>/<sub>4</sub> shall be required under the condensed  
444 prequalification process unless specifically modified in this section.

445 (b) Where an awarding authority opts to use the condensed prequalification process, the  
446 requirements for public notice of the building project and solicitation of responses to the RFQ  
447 from interested subcontractors shall include all items set forth in clauses (1) through (8) of  
448 subsection (d) of section 44D<sup>3</sup>/<sub>4</sub> but shall also require the following additional statements:

449 (1) a statement that the project is funded in whole or in part under the federal act and shall use  
450 the condensed prequalification process.

451 (2) a statement that the evaluation procedure and the criteria for the prequalification of interested  
452 subcontractors shall include evaluation of all the criteria set forth in subsection (e) of section  
453 44D<sup>1</sup>/<sub>2</sub> but, in order to avoid duplication and promote the expeditious commencement of projects  
454 under the federal act and without sacrificing the importance of the prequalification process, for  
455 certain of the evaluation categories and subcategories specifically identified in subsection (e) of  
456 section 44D<sup>3</sup>/<sub>4</sub>, the prequalification committee shall evaluate interested subcontractors based on a  
457 review of the information contained both in the division of capital asset management and  
458 maintenance certification files, including but not limited to the project evaluations required by  
459 subsection (7) of section 44D and the update statements required by clause (ii) of subdivision (4)  
460 of subsection (e) of section 44D<sup>3</sup>/<sub>4</sub> to be submitted by interested subcontractors. The  
461 prequalification committee shall exercise due diligence in checking appropriate references.

462 (c) The RFQ and evaluation criteria for the condensed prequalification process shall include all  
463 criteria set forth in subsection (e) of section 44D<sup>3</sup>/<sub>4</sub> but shall not include the total or minimum  
464 point allocations for the evaluation categories and subcategories designated therein. In addition,  
465 in the interest of expediting the prequalification of subcontractors for contracts funded in whole  
466 or in part under the federal act but not sacrificing the prequalification process, where certain of  
467 the evaluation subcategories specifically identified in this section require similar reporting by  
468 contractors in connection with the certification process set forth in section 44D and the  
469 information contained in the required update statements submitted by interested subcontractors,  
470 an awarding authority issuing an RFQ under this condensed prequalification process shall  
471 maintain as part of the project record the written certification by the prequalification committee  
472 that it has evaluated interested subcontractors based on a review of both the information  
473 contained in the certification files, including but not limited to the project evaluations required  
474 by subsection (16) of section 44D, and the current update statements submitted by interested  
475 subcontractors and that it has exercised due diligence in checking appropriate references.

476 (d) Where an awarding authority opts to use the condensed prequalification process, the review  
477 of the terminations, legal proceedings and safety record provided in clauses (iv) through (vi) of  
478 subdivision (1) of subsection (e) of section 44D<sup>3/4</sup>, and the review of credit references and public  
479 project record under clauses (ii) and (iii) of subdivision (2) of subsection (e) of section 44D<sup>3/4</sup>,  
480 and the review of annual revenue under clause (i) of subdivision (3) of subsection (e) of section  
481 44D<sup>3/4</sup> shall be satisfied by a requirement that the prequalification committee evaluate both the  
482 information contained in the division of capital asset management and maintenance certification  
483 files, including but not limited to the project evaluations required by subsection (16) of section  
484 44D, and the current update statements submitted by interested subcontractors and by a  
485 requirement that the prequalification committee exercise due diligence in checking appropriate  
486 references. The prequalification committee shall further be required to certify in writing that it  
487 has met these requirements, and the certification shall be maintained by the awarding authority in  
488 the project record.

489 (e) Where an awarding authority opts to use the condensed prequalification process, the  
490 “mandatory” requirements for the solicitation of and submission of a commitment letter for  
491 payment and performance bonds at 100 per cent of the estimated contract value from a surety  
492 company licensed to do business in the commonwealth and whose name appears on United  
493 States Treasury Department Circular 570 shall be as set forth in subdivision (4) of subsection (e)  
494 of section 44D<sup>3/4</sup>. In addition, it shall be mandatory for the awarding authority to solicit in the  
495 RFQ and an interested subcontractor to submit with its statement of qualifications a certificate of  
496 eligibility for the subcontractor trade for which it is seeking to be prequalified, issued by the  
497 division of capital asset management and maintenance under section 44D.

498 (f) Notwithstanding subsection (f) of section 44D<sup>3/4</sup>, the public notice requirements for the  
499 condensed prequalification process shall be for the RFQ to be advertised in the central register  
500 for not less than 1 week and in the COMPASS system for not less than 2 weeks. In addition,  
501 these projects shall be advertised in the central website to be established for all projects in the  
502 commonwealth funded in whole or in part under the federal act and in accordance with any  
503 requirements contained in the federal act.

504 (g) Where an awarding authority opts to use the condensed prequalification process in lieu of the  
505 evaluation requirements set forth in subdivision (h) of section 44D<sup>3/4</sup>, the prequalification  
506 committee shall evaluate each statement of qualifications based on the criteria provided in the  
507 RFQ, the information contained in the division of capital asset management and maintenance  
508 certification files, including but not limited to the project evaluations required by subsection (16)  
509 of section 44D and the current update statement submitted by interested subcontractors. The  
510 prequalification committee shall exercise due diligence in checking appropriate references. As  
511 provided in subsection (c) the total and minimum point allocations designated in subsection (e)  
512 of 44D<sup>3/4</sup> shall not be included in the RFQ and shall not be used in the evaluation of interested  
513 subcontractors where the condensed prequalification process is utilized. The evaluations of  
514 interested subcontractors shall be based on the evaluation criteria set forth in this subsection and

515 conducted within the discretion of the prequalification committee, provided that the  
516 prequalification committee evaluates each interested subcontractor on the same fair and equitable  
517 basis. A subcontractor's score shall be made available to the subcontractor upon request. The  
518 decision of the prequalification committee shall be final and shall not be subject to appeal except  
519 on grounds of arbitrariness, capriciousness, fraud or collusion.

520 (h) Where an awarding authority opts to use the condensed prequalification process in lieu of  
521 the requirements for the re-issuance of the RFQ set forth in subsection (i) of section 44D<sup>3/4</sup>, if the  
522 awarding authority prequalifies fewer than 3 subcontractors to submit bids, the awarding  
523 authority may invite general bids under sections 44B to 44E, inclusive, or, if the awarding  
524 authority prequalifies at least 2 subcontractors, then the awarding authority may invite bids from  
525 the 2 prequalified subcontractors.

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

529 **INCREASE INCENTIVE PAYMENTS TO CONSTRUCTION MANAGEMENT AT**  
530 **RISK FIRMS IN SPECIAL CIRCUMSTANCES**

531 SECTION 22. Notwithstanding section 7 of chapter 149A of the General Laws, as appearing in  
532 the 2006 Official Edition, under special circumstances, when unique project requirements and  
533 circumstances warrant, public agencies may include an additional incentive clause with the  
534 contract providing for payment of an increased incentive of up to an additional 1/2 of 1 per cent;  
535 provided however, that even under special circumstances the total incentive payments to the  
536 construction management at risk firm can not exceed 1 and 1/2 per cent of the estimated  
537 construction cost; provided further that the only contracts eligible for such additional incentive  
538 payments shall be contracts that are funded in whole or in part through the American Recovery  
539 and Reinvestment Act of 2009.

540 **A+B BIDDING**

541 SECTION 23. Notwithstanding the first sentence of section 39M(a) of chapter 30, any  
542 transportation or public works projects subject to award under section 39M of chapter 30 by any  
543 department, agency or authority of the commonwealth of Massachusetts that are funded in whole  
544 or in part through the American Recovery and Reinvestment Act and are expected to interfere  
545 with the movement of traffic and/or the travelling public may, in the discretion of the awarding  
546 authority, be procured through a bidding method that awards the project to the responsible and  
547 eligible bidder with the lowest bid value after taking into account the amount of time that the  
548 bidder has identified in the bid for completion of the project, hereinafter identified as cost-plus-  
549 time bidding; provided, however, that such awarding authority may reject any and all bids if it is  
550 in the public interest to do so.



551 In utilizing a cost-plus-time bidding procurement method, the awarding authority shall use a cost  
552 parameter (A) and a time parameter (B) to determine a bid value. The cost component (A) shall  
553 be the traditional bid for the contract items and is the dollar amount for the work to be performed  
554 under the contract. The time component (B) shall be the total number of calendar days required  
555 to complete the project, as estimated by the bidder, multiplied by an agency-determined daily  
556 road user cost (RUC) to translate time into dollars. The total bid value, which shall be clearly  
557 detailed in the bid documents, shall equal the A + B (RUC). The total bid value shall be used  
558 only to evaluate bids. The winning bid, which shall be calculated at a public bid opening at a  
559 time and location designated in the bid documents, shall be the lowest bid value submitted by a  
560 responsible and eligible bidder. The contract amount for payment purposes shall be based on the  
561 bid price (A), not the total bid value. The number of days bid (B) shall become the contract time.  
562 For purposes of this section, the term “responsible and eligible bidder” shall be defined pursuant  
563 to the criteria contained in paragraph (c) of section 39M of chapter 30 of the General Laws, as  
564 amended by section 11 of chapter 303 of the Acts of 2008; provided, however, that the concept  
565 of “lowest” has been replaced by “lowest bid value,” as defined in this section.

566 The provisions of the general laws generally applicable to public works projects, including, but  
567 not limited to, sections 26, 27, 27A, 27B, 27C, 27D, 27F and 34A of chapter 149 and 39F, 39G,  
568 39H, 39J, 39K, 39M (except the first sentence of 39M(a)), 39N, 39O, 39P and 39R of chapter 30,  
569 shall apply to all public works projects using the cost-plus-time bidding procurement method  
570 provided in this section.

571 **ALLOW THE MASSACHUSETTS WATER POLLUTION ABATEMENT TRUST**  
572 **BOARD TO SET LOAN TERMS TO COMPLY WITH FEDERAL LAW**

573 SECTION 25. Notwithstanding any general or special law to the contrary, the Massachusetts  
574 water pollution abatement trust may establish such terms and conditions for any loan or other  
575 form of financial assistance made under the provisions of chapter 29C of the General Laws that  
576 is funded in whole or in part by amounts provided under the American Recovery and  
577 Reinvestment Act of 2009 as the board of trustees of the trust shall determine to be in the best  
578 interests of the commonwealth and required to comply with federal law, including without  
579 limitation the interest rate, repayment period, number of payments to be made and amount of  
580 principal to be repaid on such loan or other form of financial assistance.

581 **ALLOW TRANSFERABILITY BETWEEN THE CLEAN WATER AND DRINKING**  
582 **WATER PROGRAMS TO TAP ADDITIONAL RESOURCES FOR DRINKING WATER**

583 SECTION 26. Notwithstanding any general or special law to the contrary, the Massachusetts  
584 water pollution abatement trust may transfer amounts held in the drinking water revolving fund  
585 to the water pollution abatement revolving fund for application by the trust to the purposes  
586 specified in section 5 of chapter 29C of the General Laws, and may transfer amounts held in the  
587 water pollution abatement revolving fund to the drinking water revolving fund for application by

588 the trust to the purposes specified in section 18 of chapter 29C, in each case to the extent  
589 authorized by the federal clean water act and the federal safe drinking water act.

590 **COMPTROLLER MAY AUTHORIZE EXPENDITURES WHEN THERE IS A TIMING**  
591 **DISCREPANCY**

592 SECTION 27. Notwithstanding any general or special law to the contrary, for the purpose of  
593 accommodating timing discrepancies between the receipt of revenues and related expenditures, a  
594 department may receive funds from the federal government related to the American Recovery  
595 and Reinvestment Act of 2009. The Comptroller may authorize encumbrances and expenditures  
596 by a department in anticipation of the department's receipt of the funds; provided that the  
597 department head certifies that accounts will not be in deficit at the end of a fiscal year. The  
598 Comptroller may establish accounts based on the provisions of section 6B of chapter 29 of the  
599 General Laws, including but not limited to a federal award notification and notification to the  
600 joint committee on veterans and federal affairs.

601 **MATCHING FUNDS**

602 SECTION 28. Notwithstanding any general or special law to the contrary, should a matching  
603 funds requirement exist with respect to the receipt of any funds from the federal government  
604 related to the American Recovery and Reinvestment Act of 2009, the department that is applying  
605 for such funds shall notify the secretary of administration and finance of the matching fund  
606 requirement. The secretary of administration and finance shall direct the comptroller to establish  
607 matching accounts and to allow expenditure of funds in the accounts without further  
608 appropriation. The secretary of administration and finance shall also notify the joint committee  
609 on veterans and federal affairs and the ways and means committees of such action. The accounts  
610 shall be established in the federal grants fund as established by Chapter 29, section 2C, the  
611 federal highway construction program fund as established by Chapter 29, Section 2E or any  
612 other fund as the comptroller deems necessary to fulfill the terms and conditions of the American  
613 Recovery and Reinvestment Act of 2009.

614 **POOL ADMINISTRATIVE COSTS**

615 SECTION 29. Notwithstanding any general or special law to the contrary, the secretary of  
616 administration and finance may authorize accounts to receive federal funds from the American  
617 Recovery and Reinvestment Act of 2009. To the extent allowed by federal law, the secretary of  
618 administration and finance may transfer said funds to other "central service" agencies charged  
619 with implementation of the act and incur expenditures for charges related to the administrative  
620 costs of the act and to ensure that the commonwealth meets the efficient administration and  
621 statewide accountability requirements in the act. Notwithstanding any general or special law to  
622 the contrary, for the purpose of accommodating timing discrepancies between the receipt of  
623 revenues and related expenditures, the secretary of administration and finance may incur  
624 expenses and the comptroller shall certify for payments amounts not to exceed the lesser of one

625 half of the authorization or the most recent revenue estimate therefore, or as otherwise authorized  
626 by the secretary of administration and finance. The accounts may receive federal funds  
627 recovered from the American Recovery and Reinvestment Act of 2009 in accordance with  
628 section 6B of chapter 29 of the General Laws or other state law. The recoveries shall be based  
629 on rates approved in accordance with the federal office of management and budget circular A-87  
630 or any other guidance issued by the office of management and budget applicable to federal funds  
631 provided under the American Recovery and Reinvestment Act of 2009.

## 632 **SPECIAL TRANSFER FOR UNEMPLOYMENT INSURANCE**

633 SECTION 30. Section 53A of chapter 151A of the General Laws, as appearing in the 2006  
634 Official Edition, is hereby amended by adding after the second paragraph the following new  
635 paragraph:- Notwithstanding any of the foregoing provisions of this section, moneys credited  
636 with respect to the special transfer made under section 903(g) of the Social Security Act shall be  
637 used solely for the purposes specified in such section and shall not be subject to appropriation.

## 638 **REQUIREMENT TO USE APPRENTICES FOR 20% OF THE WORK PERFORMED** 639 **ON CONSTRUCTION PROJECTS OVER \$1 MILLION**

640 SECTION 31. a) Notwithstanding the provisions of any general or special law to the contrary,  
641 the following requirements shall apply to any public works project funded by the American  
642 Recovery and Reinvestment Act of 2009 where the amount of construction costs under any  
643 contract awarded is likely to exceed \$1 million. For the purposes of this section, the term  
644 “public works” shall have the following meaning: building or work the construction, as defined  
645 in G.L. c. 149, § 27D, of which is carried on by authority of the commonwealth, or by a county,  
646 town, authority or district, or with funds of a federal agency or the commonwealth, or a county,  
647 town, authority or district, to serve the interest of the general public, regardless of whether title  
648 thereof is in the commonwealth, or a county, town, authority or district.

649 (b) For any public works project subject to subsection (a), the specifications set forth in any  
650 request for responses shall include a requirement that, on a per project basis, no less than 20 per  
651 cent of the total hours of employees receiving an hourly wage who are directly employed on the  
652 site of the project, employed by the contractor or any subcontractor, and subject to the prevailing  
653 wage, shall be performed by apprentices in bona fide apprentice training programs as defined by  
654 sections 11H & 11I of chapter 23 of the General Laws which are approved by the division of  
655 apprentice training of the executive office of labor and workforce development.

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

661 to the awarding authority describing how the contractor shall comply with the apprentice  
662 requirement.

663 (d) An awarding authority may adjust the requirements set forth in subsections (a), (b), and (c)  
664 if, despite a good faith effort, and due to unavoidable circumstances, such as a demonstrated lack  
665 of apprentices in a specific geographic area, compliance with these requirements is not feasible  
666 or if application of the requirement would be preempted by federal law.

667 (e) An awarding authority serving a low-income population may require additional  
668 specifications that address the needs of its clients, such as preferential hiring for residents of  
669 public housing authorities for available apprenticeship positions.

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

673 **TRAINING FOR INDIVIDUALS RECEIVING UNEMPLOYMENT COMPENSATION**  
674 **BENEFITS**

675 SECTION 32. Subsection (c) of section 30 of chapter 151A, as appearing in the 2006 Official  
676 Edition, is hereby amended by striking out, in line 29, the word “commissioner” and inserting in  
677 place thereof the following words: director of the department of workforce development.

678 SECTION 33. Said subsection (c) is hereby further amended by striking out in line 32 the  
679 number “eighteen” and inserting in place thereof the following number:- 26.

680 SECTION 34. Said subsection (c) is hereby further amended by striking out, in lines 34, 41, 42,  
681 47, and 48, the word “commissioner” and inserting in place thereof the following word:-  
682 director.

683 SECTION 35. Said subsection (c) is hereby further amended by striking out, in lines 43 to 45,  
684 the words “because of the individual’s need to address the physical, psychological and legal  
685 affects of domestic violence” and inserting in place thereof the following words:- , provided  
686 that such circumstances shall include an individual’s need to address the physical, psychological  
687 and legal effects of domestic violence, as well as any period in which economic circumstances  
688 permit the provision of extended benefits or any other emergency benefits funded in whole or in  
689 part by the federal government.

690 SECTION 36. Said subsection (c) is hereby further amended by inserting after the word  
691 “claim”, in line 64, the following words:- unless the period is tolled by regulation.

692 **EMPLOYEES HIRED TO WORK ON ARRA PROJECTS WILL BE FUNDED BY**  
693 **ARRA**

694 SECTION 37. Notwithstanding any general or special law to the contrary, employees who are  
695 hired to perform work related to the American Recovery and Reinvestment Act of 2009 funded  
696 by the federal government shall be scheduled in accounts set up solely for the purpose of the  
697 American Recovery and Reinvestment Act of 2009. No expenditures of any employee scheduled  
698 in any item of appropriation established by the act shall be charged to any other item of  
699 appropriation and no expenditures of employees in any other item of appropriation shall be  
700 charged to any account under the act and the comptroller shall not permit the transfers or charges  
701 unless otherwise approved by the secretary for administration and finance. Positions funded by  
702 the American Recovery and Reinvestment Act of 2009 shall be eliminated once the funding  
703 ends.

704 **EMPLOYEES HIRED AND PAID FROM ARRA FUNDS ARE NOT SUBJECT TO**  
705 **CIVIL SERVICE**

706 SECTION 38. Notwithstanding any general or special law to the contrary, any employee hired  
707 by the commonwealth and paid from federal funds provided pursuant to the American Recovery  
708 and Reinvestment Act of 2009, shall not be subject to the provisions of chapters 30 and 31 of the  
709 General Laws.

710 **PROVIDING TECHNICAL ASSISTANCE AND CAPACITY BUILDING PILOT**  
711 **PROGRAM**

712 SECTION 39. (a) As used in this section, the following terms shall, unless the context indicates  
713 otherwise, have the following meaning: -

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

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

718 “Women business enterprise” shall have the same meaning as the term is defined in section 40 of  
719 chapter 23A of the General Laws.

720 (b) Notwithstanding any general or special law to the contrary, the secretary of administration  
721 and finance is hereby authorized to implement a technical assistance and capacity building pilot  
722 program, applicable solely to projects funded in whole or in part by the American Recovery and  
723 Reinvestment Act of 2009. The purpose of the technical assistance and capacity building  
724 program shall be to promote, encourage and otherwise facilitate full participation of minority  
725 business enterprises and women business enterprises, disadvantaged business enterprises, and  
726 other small businesses in public construction and public works projects undertaken as part of the  
727 federal economic recovery effort and funded in whole or in part by the American Recovery and  
728 Reinvestment Act of 2009.

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

731 (d) Not later than 6 months upon the conclusion of the provision of technical assistance and  
732 capacity building services provided pursuant to subsection (b), the secretary or her designee shall  
733 provide a written report to the governor on the provision of the services and performance  
734 outcomes relative thereto. The report shall also include a recommendation or recommendations  
735 as to how the commonwealth may best facilitate the continued inclusion of minority business  
736 enterprises and women business enterprises, disadvantaged business enterprises and small  
737 businesses in future public construction and public works projects.

### 738 **ESTABLISHING A SURETY BOND GUARANTEE PROGRAM**

739 SECTION 40. (a) Notwithstanding any general or special law to the contrary and solely for  
740 purposes of implementing public building and public works projects funded in whole or in part  
741 by the American Recovery and Reinvestment Act of 2009 while facilitating the involvement of  
742 small contractors, including minority contractors and women contractors, the Massachusetts  
743 community development finance corporation, hereinafter the “corporation,” is hereby authorized  
744 to establish a contractor surety bond guarantee program pursuant to this section.

745 (b) As used in this section the following words shall, unless the context requires otherwise, have  
746 the following meanings:-

747 “Bid bond”, a bond conditioned upon the bidder on a contract entering into the contract, if he  
748 receives the award thereof, and furnishing the prescribed payment bond and performance bond.

749 “Eligible contractor”, (a) a small contractor, (b) a minority contractor, or (c) a women contractor.

750 “Minority contractor”, a person who performs as a prime contractor or general contractor or as a  
751 subcontractor on a contract funded in whole or in part by the American Recovery and  
752 Reinvestment Act of 2009 and is a minority business enterprise as such term is defined in section  
753 40 of chapter 23A of the General Laws.

754 “Obligee”, (a) in the case of a bid bond, the public agency requesting bids for the performance of  
755 a contract, or (b) in the case of a payment bond or performance bond, the public agency who has  
756 contracted with a principal for the completion of the contract and to whom the obligation of the  
757 surety runs in the event of a breach by the principal of the conditions of a payment bond or  
758 performance bond.

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

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

763 “Person”, any natural person, business, partnership, corporation or other legal form.

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

767 “Principal”, (a) in the case of a bid bond, a person bidding for the award of a contract, or (b) the  
768 person primarily liable to complete a contract for the obligee, or to make payments to other  
769 persons in respect of such contract, and for whose performance of his obligation the surety is  
770 bound under the terms of a payment or performance bond. A principal may be a prime contractor  
771 or a general contractor or a subcontractor.

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

776

777 “Surety”, a surety company licensed to do business in the commonwealth and whose name  
778 appears on United States Treasury Department Circular 570 and who (a) under the terms of a bid  
779 bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the  
780 conditions of the bond, (b) under the terms of a performance bond, undertakes to incur the cost  
781 of fulfilling the terms of a contract in the event the principal breaches the conditions of the  
782 contract, (c) under the terms of a payment bond, undertakes to make payment to all persons  
783 supplying labor and material in the prosecution of the work provided for in the contract if the  
784 principal fails to make prompt payment, or (d) is an agent, independent agent, underwriter, or  
785 any other company or individual empowered to act on behalf of such company.

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

789 “Women contractor”, a person who performs as a prime contractor or general contractor or as a  
790 subcontractor on a contract funded in whole or in part by the American Recovery and  
791 Reinvestment Act of 2009 and is a women business enterprise as such term is defined in section  
792 40 of chapter 23A of the General Laws.

793 (c) Pursuant to this section, the corporation is hereby authorized to establish a contractor surety  
794 bond guarantee program and may, upon such terms and conditions as it may prescribe, guarantee  
795 and enter into commitments to guarantee any surety against loss resulting from a breach of the  
796 terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal

797 on any total work order or contract amount at the time of bond execution that does not exceed  
798 \$250,000. No such guarantee may be issued, unless:

799 the person who would be principal under the bond is an eligible contractor;

800 the bond is required in order for such person to bid on a contract, or to serve as a prime  
801 contractor or general contractor or as subcontractor on a contract;

802 such person is not able to obtain such bond on reasonable terms and conditions without a  
803 guarantee under this section; and

804 there is a reasonable expectation that such principal will perform the covenants and conditions of  
805 the contract with respect to which such bond is required, and the terms and conditions of such  
806 bond are reasonable in the light of the risks involved and the extent of the surety's participation.

807 The corporation shall administer the contractor surety bond guarantee program on a prudent and  
808 economically justifiable basis and establish such fee or fees for eligible contractors and premium  
809 or premiums for sureties as it deems reasonable and necessary, to be payable at such time and  
810 under such conditions as may be determined by the corporation.

811 The corporation, as guarantor, may exercise all the rights and powers of a company authorized  
812 by the division of insurance to guarantee bonds pursuant to chapter 175 of the General Laws, but  
813 is otherwise not subject to any laws related to a guaranty company under said chapter 175 nor to  
814 any rules of the division of insurance.

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

822 (e) The corporation is hereby authorized to guarantee up to 90 per cent of the loss incurred and  
823 paid by a surety on bonds guaranteed under this section. Additionally, subject to the provisions  
824 of this section, in connection with the issuance by the corporation of a guarantee to a surety as  
825 provided by subsection (c), the corporation may agree to indemnify such surety against a loss  
826 sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond  
827 guaranteed by the corporation pursuant to subsection (c); provided, however that prior to making  
828 any payment under this subsection, the corporation shall first determine that a breach of the  
829 terms of such bond was imminent and the surety must obtain written approval from the  
830 corporation prior to making any payments pursuant to this subsection.



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

833 the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or  
834 material misrepresentation,

835 the total contract amount at the time of execution of the bond or bonds exceeds \$250,000, or

836 the surety has breached a material term or condition of such guarantee in the agreement.

837 **REPORTING REQUIREMENT**

838 SECTION 41. Any entity located in Massachusetts that receives federal funds through the  
839 American Recovery and Reinvestment Act of 2009 shall provide information as directed by the  
840 secretary of administration and finance regarding the use of the funds. The required information  
841 shall include but not be limited to the reporting information required by the federal government,  
842 and shall include any other information deemed necessary by the secretary to administer the  
843 American Recovery and Reinvestment Act of 2009 responsibly, efficiently and transparently. To  
844 the extent possible, the secretary shall work to streamline the reporting of this information,  
845 minimize duplication of data entry by recipients and ensure data consistency. The secretary of  
846 administration and finance may issue regulations to effectuate this reporting requirement.

847 SECTION 42. Employers and hiring agents on all projects funded in whole or in part by the  
848 American Recovery and Reinvestment Act of 2009 shall post notices of available employment  
849 opportunities to the commonwealth's job bank or the one-stop career centers closest to where the  
850 projects are located. The postings will contain such information as directed by the secretary of  
851 labor and workforce development. The secretary may issue regulations to effectuate this job  
852 posting requirement.

853 SECTION 43. Sections 1 to 24 and section 31 shall apply only to contracts advertised after the  
854 effective date of this act.