

Accompanying the second recommendation of the Office of the Inspector General (House, No. 82). State Administration.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Nine.

AN ACT PROVIDING FOR REFORM IN PUBLIC CONSTRUCTION.

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. Paragraph (b) of section 38A½ of Chapter 7 of the
2 General Laws, as appearing in the 1996 Official Edition, is hereby
3 amended after line 72 by inserting the following definition:—

4 “Value engineering review”, a detailed, systematic analysis of a
5 project design, conducted by a knowledgeable and competent
6 designer or multi-disciplinary team of designers, to: evaluate pro-
7 gram requirements, design concepts, construction techniques,
8 building systems and materials; review construction cost estimates
9 and calculate estimated life-cycle costs, and; recommend design
10 changes that will produce a more cost-effective project by elimi-
11 nating or modifying features that add cost to the facility but do not
12 add to its quality, useful life, utility, or appearance.

1 SECTION 2. Section 38C of Chapter 7 of the General Laws, as
2 appearing in the 1996 Official Edition, is hereby amended by
3 inserting in line 3, after the words “design services” the following:—
4 , except value engineering,

1 SECTION 3. Section 38H of chapter 7 of the General Laws, as
2 appearing in the 1996 Official Edition, is hereby amended in
3 lines 27 through 33 by striking out paragraph (d) in its entirety.

1 SECTION 4. Section 38H of chapter 7 of the General Laws, as
2 so appearing, is hereby further amended after line 108 by inserting
3 the following new paragraphs:—

4 (k) For any project with an estimated construction cost in
5 excess of one million dollars the public agency shall require an
6 independent qualified value engineering consultant to conduct one
7 or more comprehensive value engineering reviews to analyze the
8 proposed functions of the facility, evaluate the construction cost
9 estimates, calculate estimated life-cycle costs, and develop recom-
10 mended design changes that will produce a more cost-effective
11 facility by modifying or eliminating features that add cost but do
12 not add to the quality, useful life, utility, or appearance of the
13 facility.

14 For any project with an estimated construction cost of more
15 than one million dollars but less than ten million dollars, the
16 public agency shall require a value engineering review of the con-
17 ceptual design following the completion of the study and program
18 for the project but prior to the acceptance of the study or program
19 by the public agency. For any project with an estimated construc-
20 tion cost of ten million dollars or more, the public agency shall
21 require value engineering reviews of the conceptual design and of
22 the schematic design prior to the acceptance by the public agency
23 of the design deliverables at each of these phases.

24 The public agency shall evaluate each design change recom-
25 mended in the value engineering review and prepare a written
26 determination of its reasons for accepting, modifying, or rejecting
27 the recommended design change.

28 For the purpose of this paragraph, "public agency" shall have
29 the meaning as set forth in section thirty-nine A.

30 (1) The commissioner shall annually solicit qualifications from
31 designers with demonstrated expertise in value engineering, eval-
32 uate all applications on the basis of relevant qualifications and
33 experience, and annually designate a pool of qualified value engi-
34 neering consultants. A public agency, including any city or town,
35 may select, without further competition, a qualified value engi-
36 neering consultant from this pool to conduct value engineering
37 reviews for a project.

1 SECTION 5. Section 38K of Chapter 7 of the General Laws, as
2 appearing in the 1996 Official Edition, is hereby amended after
3 line 41 by adding the following paragraph:—

4 (f) Any city, town or other public agency may contract for
5 value engineering services with any designer selected as a quali-
6 fied value engineering consultant by the division of capital asset
7 management and maintenance.

1 SECTION 6. Paragraph (a) of section 39M of Chapter 30 of the
2 General Laws, as appearing in the 1996 Official Edition, is hereby
3 amended in line 6 by striking out the word “ten” and inserting in
4 place thereof:— “fifty”.

1 SECTION 7. Said Paragraph (a) of section 39M of Chapter 30
2 of the General Laws, as so appearing, is further amended in
3 line 10, by striking out the words “more than ten thousand dollars
4 but not more than twenty-five thousand” and inserting in place
5 thereof:— more than fifty thousand dollars but not more than one
6 hundred thousand.

1 SECTION 8. Section 39M of Chapter 30 of the General Laws,
2 as so appearing, is hereby further amended in clause (d), by
3 striking out in lines 87 through 90, the words “to any contract of
4 not more than twenty-five thousand dollars awarded by a govern-
5 mental body, as defined by section two of Chapter thirty B, in
6 accordance with the provisions of section five of said Chapter
7 thirty B.” and inserting in place thereof the following:— to any
8 contract estimated to cost not more than one hundred thousand
9 dollars awarded by a governmental body, as defined by section 2
10 of Chapter 30B, in accordance with the provisions of section 5 of
11 said Chapter 30B clauses (b) through (g); not including clause (a).

1 SECTION 9. Section 39M of Chapter 30 of the General Laws,
2 as so appearing, is further amended after line 92 by inserting the
3 following:—

4 (f) For any contract for the construction, reconstruction, alter-
5 ation, remodeling or repair of any public work, or for the purchase
6 of any material, as defined by subsection (e) of this chapter, by a
7 governmental body, as defined by section 2 of Chapter 30B, and
8 estimated by the governmental body to cost not more than fifty
9 thousand dollars, and every contract for the construction, recon-
10 struction, installation, demolition, maintenance, or repair of any

11 building by a governmental body, as defined by section 2 of
12 Chapter 30B, and estimated by the governmental body to cost not
13 more than fifty thousand dollars shall be awarded in accordance
14 with the provisions of Chapter 30B.

15 (g) For any contract for the construction, reconstruction,
16 remodeling or repair of any public work awarded pursuant to this
17 section and estimated by the awarding authority to cost more than
18 one million dollars, the awarding authority shall, as a condition
19 for the disbursement and acceptance of any funding from the com-
20 monwealth, employ or contract with an owner's representative, as
21 defined in Subsection (1) of Section 44A of Chapter 149. The
22 owner's representative shall coordinate communication among the
23 project participants, monitor the project budget and schedule,
24 maintain a central file for project records, and perform other pro-
25 ject oversight functions as directed by the awarding authority. The
26 owner's representative shall have appropriate fiscal, procurement,
27 and construction experience. By January 1, 2002, every owner's
28 representative subject to this section shall, in addition to other
29 requirements pertaining to qualifications and experience, have
30 obtained certification through the Massachusetts Certified Public
31 Purchasing Official program administered by the Massachusetts
32 Office of the Inspector General.

1 SECTION 10. Section 29 of Chapter 149 of the General Laws,
2 as appearing in the 1996 Official Edition, is hereby amended in
3 lines 6 and 7 by striking out the words "in the case of the com-
4 monwealth is more than five thousand dollars, and in any other
5 case is more than two thousand dollars" and inserting in place
6 thereof the following:— is more than fifty thousand dollars.

1 SECTION 11. Subsection (1) of section 44A of Chapter 149 of
2 the General Laws, as appearing in the 1996 Official Edition, is
3 hereby amended after line 44 by inserting, the following:—

4 "Owner's Representative", means the official or firm desig-
5 nated by the public agency to serve as the focal point of responsi-
6 bility and accountability on the project from the study and design
7 stages through construction completion. Such responsibilities
8 shall include, but need not be limited to, coordinating communica-
9 tion among the project participants, monitoring the project budget
10 and schedule, and maintaining a central file for project records.

1 SECTION 12. Subsection (2) of Section 44A of Chapter 149, as
2 so appearing, is hereby further amended in line 47 by striking out
3 the word “twenty-five”, and inserting in place thereof:— “one
4 hundred.”

1 SECTION 13. Section 44A of Chapter 149, as so appearing, is
2 hereby further amended after line 151 by adding the following
3 subsection:—

4 (6) For any construction, reconstruction, alteration, remodeling
5 or repair of a public building estimated to cost more than one mil-
6 lion dollars, a public agency shall, as a condition for the disburse-
7 ment and acceptance of any funding from the commonwealth,
8 employ or contract with an owner’s representative. The owner’s
9 representative shall coordinate communication among the project
10 participants, monitor the project budget and schedule, maintain a
11 central file for project records, and perform other project over-
12 sight function as directed by the public agency. The owner’s rep-
13 resentative shall have appropriate fiscal, procurement, and
14 construction experience. By January 1, 2002, every owner’s repre-
15 sentative subject to this section shall, in addition to other require-
16 ments pertaining to qualifications and experience, have obtained
17 certification through Massachusetts Certified Public Purchasing
18 Official program administered by the Massachusetts Office of the
19 Inspector General.

1 SECTION 14. Clause (1) of paragraph (a) of section 44D of
2 Chapter 149 of the General Laws, as appearing in the 1996
3 Official Edition, is hereby amended in line 17 by inserting after
4 the word “prescribe.” the following sentence:— The bidder or
5 offeror shall also include in its bid or offer and update statement
6 the list of completed construction projects submitted to the divi-
7 sion in its most recent application for contractor certification.

1 SECTION 15. Clause (2) of section 44D of Chapter 149 of the
2 General Laws, as so appearing, is hereby further amended in
3 line 36, by inserting after the word “completed” the following:—
4 the nature of any financial or familial relationship between the
5 applicant and any project owner or designer listed as references
6 for completed construction projects listed in the application;.

1 SECTION 16. Clause (2) of section 44D of Chapter 149 of the
2 General Laws, as so appearing, is hereby further amended in
3 line 53 by striking out the word “and”, and by inserting in line 54,
4 after the word “forty-four C”, the following:— and shall subject
5 the applicant to any of the punishments for perjury.

1 SECTION 17. Clause (3) of section 44D of Chapter 149 of the
2 General Laws, as so appearing, is hereby amended at the end of
3 line 80 by adding the following new sentence:— Said certificate
4 shall include the number of prior construction projects evaluated
5 by the division for each of the past five years and may include the
6 contractor’s average numerical score on those projects evaluated,
7 and the number of projects given numerically valued passing
8 scores, as defined by the division’s regulations or guidelines,
9 during each of the previous five years.

1 SECTION 18. Section 44D of Chapter 149 of the General
2 Laws, as so appearing, is hereby further amended in Subsec-
3 tion (6), by inserting in line 111, after the word “statement” the
4 following:— and may consider the bidder’s past performance on
5 projects undertaken or completed within the past five years.

1 SECTION 19. Section 44D of Chapter 149 of the General Laws,
2 as so appearing, is hereby further amended by striking out clause (7),
3 and inserting in place thereof the following paragraphs:—

4 (7)(a) The division shall develop a standard contractor evalua-
5 tion form that shall be completed by every public agency upon
6 completion of a building project under its control; said completed
7 form shall be submitted to the division for inclusion in the con-
8 tractor’s qualification file. The official from the public agency, or
9 the project manager, architect or engineer responsible for the
10 oversight of the building construction contract shall certify that
11 the information contained on the contractor evaluation form repre-
12 sents, to the best of his knowledge, a true and accurate analysis of
13 the contractor’s performance record on that contract. The public
14 agency shall mail a copy of the contractor evaluation form to the
15 contractor and the contractor may, within thirty days, submit a
16 written response to the division disputing any information con-
17 tained in the evaluation form. The division shall attach any such

18 response to the evaluation form for inclusion in the contractor's
19 qualification file. No public employee or public employer as
20 defined in section 2 of chapter 258, and no owner's representative,
21 project manager, architect or engineer shall be liable for any
22 injury or loss to any contractor as a result of the completion of a
23 contractor evaluation form as required by this section unless the
24 individual completing such evaluation form acted in a grossly
25 negligent or malicious manner. If a suit is commenced against a
26 public employee, owner's representative, project manager, archi-
27 tect, or engineer who has completed a contractor evaluation as
28 required by this section seeking to recover damages resulting from
29 injury caused by such evaluation, the public agency for whom
30 such evaluation form was completed, or the Commonwealth if
31 such evaluation was completed for a state agency, shall provide
32 for the legal representation of said public employee, owner's rep-
33 resentative, project manager, architect or engineer. Such public
34 agency, or the Commonwealth where an evaluation was completed
35 for a state agency, shall also indemnify such public employee,
36 owner's representative, project manager, architect or engineer
37 from all personal financial loss and expenses, including but not
38 limited to legal fees and costs, if any, in an amount not to exceed
39 one million dollars arising out of the completion of a contractor
40 evaluation form by such public employee, owner's representative,
41 project manager, architect or engineer pursuant to this section. No
42 person shall be indemnified under this section if such person acted
43 in a grossly negligent or malicious manner.

44 (b) As a condition for the disbursement and acceptance of any
45 funding from the commonwealth for the purposes of construction,
46 reconstruction, alteration, remodeling, repair or demolition of a
47 public building, a public agency shall complete and submit a con-
48 tractor evaluation form to the division.

