

810 CMR: DIVISION OF CAPITAL ASSET MANAGEMENT

810 CMR 4.00: CERTIFICATION OF CONTRACTORS ~~AND SUB-BIDDERS~~ PURSUANT TO M.G.L. c. 149 §44D IN ORDER TO BID ON PUBLIC BUILDING CONSTRUCTION CONTRACTS PURSUANT TO M.G.L. c. 149, § 44A THROUGH 44J AND RELATED AWARDING AUTHORITY PROJECT EVALUATION, AND M.G.L. c. 149A Section BID REQUIREMENTS

~~4.01: Definitions~~

CERTIFICATION OF CONTRACTORS

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4.01: Definitions

Aggregate Work Limit, the maximum dollar amount of outstanding construction work amount of outstanding construction works that to which the a Prime Contractor may obligate itself to complete at the time the Prime Contractor# submits a bid.

Average Project Rating, the numerical average score derived from the completion of Standard Contractor Evaluation Forms for Building Projects completed within the time frame established in M.G.L. c. 149, § 44D applicable Lookback Period.

Awarding Authority, a publican agency asundertaking a Building Project, including a "Public agency" defined in M.G.L. c. 149, § 44A undertaking a Building or a "State agency" or "Local governmental body" defined in M.G.L. c. 25A § 3. Project.

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Overall Numerical Rating, the numerical score which is ~~calculated for certification purposes and is derived from the Average Project Rating and other evaluation criteria in a manner prescribed by the Commissioner and, as may be modified from time to time, including criteria identified in 810 CMR 4.00 and DCAM's the Guidelines.~~

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Owner's Project Manager, an individual or firm contracted, retained, or designated by the Awarding Authority who ~~will act~~ as the Awarding Authority's agent in managing a public

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Building Project on behalf of the Awarding Authority in accordance with the requirements set forth in M.G.L. c.149, § 44A½.

Prime Categories of Work, the categories of work for Prime Contractors established in the Prime Guidelines.

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Prime Contractor's Update Statement, a form, as may be modified from time to time, developed by DCAMM to be completed by Prime Contractors and submitted with all bids pursuant to M.G.L. c. 149, M.G.L. c. 149A or M.G.L. c. 25A §§ 11C and 11I, updating the information contained in the certification application for the current Certificate of Eligibility including, but not limited to, the Prime Contractor's Building Projects in progress and Building Projects completed by the Prime Contractor.

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Prime Contractor, a contractor engaged in the construction, reconstruction, installation, demolition, maintenance, or repairs of buildings whose work falls within at least one of the Prime Categories of Work.

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Prime Guidelines, written standards, policies, and procedures for the certification of Prime Contractors by DCAMM issued by the Commissioner, as may be modified from time to time.

Project Rating, a numerical score on a Building Project derived from ~~the completion of the Standard~~ a reliable Contractor Evaluation Form.

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Single Project Limit, the maximum dollar amount ~~the a Prime Contractor~~ may bid on any single Building Project.

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Standard Contractor Evaluation Form, an evaluation form used for rating a Contractor's Small Project Contractor, a Prime Contractor, with separate eligibility requirements, designed for small projects in any of the Prime Categories of Work, as more fully described in the Prime Guidelines.

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~~Sub-Bidder Contractor or Sub-bidder's performance to be completed by Awarding Authorities and other appropriate parties upon Completion of a Building Project.~~

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Sub-bidder Bidder, a ~~business contractor~~ engaged in one or more trades of work pursuant to M.G.L. c. 149, § 44F. The term "Sub-bidder Bidder" shall also include trade contractors pursuant to projects bid under M.G.L. c. 149A.

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- (a) ~~name~~Name and address of the Contractor;
- (b) Categories of Work for which the Contractor has been certified;
- (c) ~~Contractor's Single Project Limit,~~
- (d) ~~Contractor's Aggregate Work Limit,~~
- (e) ~~time~~Time period during which the ~~certificae~~Certificate of eligibility shall be ~~v~~valid, and
- (d~~f~~) ~~any~~Any other information the Commissioner may prescribe.

Prime Contractor Certificates of Eligibility shall also contain the following:

- (a) Prime Contractor's Single Project Limit
- (b) Prime Contractor's Aggregate Work Limit

(2) Expiration. Each Certificate of Eligibility shall automatically expire at 11:59 P.M. on the last day the certificate is valid as stated on the Certificate of Eligibility.

(3) Decertified, Suspended, or Debarred Contractors. A Contractor is not eligible to receive a Certificate of Eligibility while the Contractor is decertified, suspended, or debarred from public contracting in the stateCommonwealth or by the federal government. Any Certificate of Eligibility issued to a Contractor who is subsequently decertified, suspended, or debarred from public contracting shall be deemed void and not be valid in the Commonwealth or by the federal government shall be deemed automatically void and revoked during the period of decertification, suspension or debarment, without any right of appeal in connection with the

revocation of the Contractor's Certificate of Eligibility.

(4) Extension. DCAMDCAMM may extend a Contractor's Certificate of Eligibility for one or more periods of time not to exceed six months in the aggregate, provided that there has been no material adverse change in the qualifications or capacity of the Contractor to perform Building Projects of the type and size for which the Contractor was initially certified.

(5) Amendments. DCAMDCAMM may amend a Contractor's Certificate of Eligibility to add or delete Categories of Work, to adjust the Prime Contractor's Single Project Limit or Aggregate Work Limit, and for such other purposes as the Commissioner may prescribe.

4.03: Categories of Work

(1) Standard Categories. DCAMM shall establish a list of Prime Categories of Work and Sub-Bidder Categories of Work, as may be modified from time to time. The Contractor shall identify on the application for certification each Prime Category of Work and/or Sub-Bidder Category of Work for which certification is sought.

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- (a) ~~a record of three or more Project Ratings on separate projects in the same Category of Work that fall below the passing score established in the Guidelines on three or more separate Building Projects; or~~
- (b) ~~a record of three or more contract terminations for cause and/or three or more invoked performance bonds, wherein the surety is required to honor the terms of the bond, of a Contractor or its predecessors or its successors in interest; or~~
- (c) ~~failure to obtain and/or maintain worker's compensation insurance for the proper classification(s) of work; or~~
- (d) ~~any conviction of a criminal offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of labor laws; or~~
- ~~(e) willfully~~ (e) any other offense indicating a lack of business integrity or business honesty
- (f) supplying materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract-
- ~~(g) failure to provide complete and accurate answers to all the questions, as more fully described in 810 CMR 4.04 (7)~~
- (h) failure to satisfy all requirements for certification.

~~(409)~~ One or more of the following that occurred within the past five years applicable Lookback Period may constitute cause for decertification or denial of certification:

- ~~(a)~~ (a) a record of two or more Project Ratings on separate projects that fall below the passing score in the same or multiple Categories of Work
- ~~(b)~~ (b) legal or administrative proceedings brought against the Contractor; or
- ~~(c)~~ (c) termination for cause from one or more Building Projects;
- ~~(d)~~ (d) abandonment of one or more Building Projects; or
- ~~(e)~~ (e) a record of excessive direct payment claims or payment bond claims;
- ~~(f)~~ (f) a record of excessive safety violations; or
- (f) a record of excessive safety violations
- ~~(g)~~ (g) a record of excessive workers' compensation injuries; or
- ~~(h)~~ (h) failure to comply with record-keeping and accounting requirements prescribed by law or regulation; or
- ~~(i)~~ (i) failure to perform in accordance with the terms of one or more public contracts;
- ~~(j)~~ (j) a record of two Project Ratings that fall below the passing score established in the Guidelines on more than one Building Project; or
- (j) failure to obtain and/or maintain any other mandatory insurance coverage; or
- (k) a record of invoked performance bond(s), wherein the surety is required to honor the terms of the bond, of a Contractor or its predecessors or its successors in interest; or
- (l) any other factor bearing on a Contractor's competency or responsibility that, in the Commissioner's discretion, may warrant denial of certification or decertification.

(10) A Contractor must have management or supervisory personnel who are experienced in the performance of Building Projects.

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4.05: Capacity Ratings for Prime Contractors

~~(1) DCAMDCAMM shall determine the maximum amount of work an applicant for certification is capable of undertaking on an individual project basis and on an aggregate basis, and shall assign each Prime Contractor a Single Project Limit and Aggregate Work Limit for certification purposes.~~

~~(2) Single Project Limit. A Prime Contractor's Single Project Limit shall be based upon the average of the largest two public or private Building Projects in a Category of Work for which the Contractor obtains certification, completed by the Prime Contractor within the past five years. The two projects must be reliable and each receive satisfactory Project Ratings in order for them to be considered for capacity purposes. Capacity Ratings. Subject to the Prime Contractor's bonding limits as provided in 810 CMR 4.05(4), a Prime Contractor's Single Project Limit shall equal 130% of the mean average of the contract dollar value of the two projects. The Commissioner may institute a procedure for increasing the foregoing percentage to 180% for any Prime Contractor who has demonstrated a capacity to successfully undertake larger projects based upon a record of superior performance or other factors prescribed by the Commissioner.~~

~~(3) Aggregate Work Limit. A Prime Contractor's Aggregate Work Limit shall be based on the dollar value of the largest volume of construction work completed by the Prime Contractor during any twelve consecutive month period within the past five years as demonstrated in CPA prepared documentation subject, but in no event greater than the Prime Contractor's Single Project Limit. Subject to the Contractor's bonding limits. As provided in 810 CMR 4.05(4), a Prime Contractor's Aggregate Work Limit shall equal 130% of such dollar value, provided that the Commissioner may institute a procedure for increasing the foregoing percentage to 180% for any Prime Contractor who has demonstrated a capacity to successfully undertake a greater volume of work based upon a record of superior performance or other factors prescribed by the Commissioner.~~

~~(4) Bonding Limits. A Prime Contractor applying for certification or recertification must establish to the satisfaction of DCAMDCAMM that it will be able to secure a performance bond and a payment bond by when required from a firm that is duly licensed by the Commonwealth of Massachusetts Division of Insurance and is on the most current list of approved sureties issued by the United States Department of the Treasury. qualified Surety. In no event may shall the Prime Contractor's Single Project Limit or Aggregate Work Limit exceed the~~

~~Contractor's bonding capacity. If the Contractor's single project or aggregate bonding capacity is less than the Contractor's for each of the Single Project Limit or Aggregate Work Limit, as determined by DCAM, then the Contractor's Single Project Limit or Aggregate Work Limit will the case may be limited to such, shown on a current bonding capacity letter from a Surety.~~

4.065: Selection of Projects for Evaluation

~~(1) (4) DCAMDCAMM shall consider evaluations of public and/or private Building Projects completed by the Contractor within five years prior to the date DCAM receives the Contractor's application for certification the applicable Lookback Period.~~

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(2) DCAMDCAMM shall not be required to obtain evaluations of all Building Projects completed by the Contractor. DCAMDCAMM may consider a representative sample of completed reliable projects and may require that each evaluated project be of a minimum dollar value, as described in the Guidelines.

(3) DCAMDCAMM shall consider project evaluations of ~~Awarding Authorities, owner's project managers, or owners of public and private~~ Building Projects on properly completed ~~Standard~~ Contractor Evaluation Forms ~~issued by DCAM pursuant to M.G.L. c. 149, § 44D and~~ and submitted to DCAMDCAMM as prescribed in the Guidelines. DCAMDCAMM shall consider only reliable evaluations applicable to one or more specific Categories of Work that are indicative of Contractor's ability to perform Building Projects of the type and size for which certification is requested.

(4) ~~DCAMDCAMM~~ may ~~also~~ obtain evaluations of completed Building Projects through telephone interviews. ~~DCAM of a qualified evaluator.~~ DCAMM personnel shall use the ~~Standard~~ Contractor Evaluation Form as ~~a questionnaire when the basis for~~ obtaining evaluations through telephone interviews.

4.076: Rating of Project Performance

(1) ~~Standard Contractor Evaluation Form.~~ The ~~Standard~~ Contractor Evaluation Form shall be used to rate ~~the a~~ Contractor on a single Building Project according to criteria established by the Commissioner for assessing the performance of the Contractor on the projectBuilding Project, as may be modified from time to time.

(2) Project Rating. The representative of the Awarding Authority or private Building Project owner evaluating the Contractor's performance on the project shall score the ~~contractor~~Contractor on each performance criterion. The Contractor's Project Rating for the project shall be the total of the scores for reliable evaluations given for each criterion.

(3) ~~Average Project Rating.~~ DCAMDCAMM shall assign each Contractor an Average Project Rating which shall be the average of Project Ratings given to the Contractor for all of the evaluated Building Projects which are deemed reliable and completed within the time frame established by M.G.L. c. 149, applicable Lookback Period. The Contractor's performance on projects shall be considered satisfactory only if the Average Project Rating meets or exceeds the minimum rating outlinedestablished in the Guidelines.

4.087: Submission of Contractor Evaluation Forms by Awarding Authorities and Others

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(1) Each Awarding Authority shall submit to DCAMDCAMM a properly completed Contractor Evaluation Form for the Contractor on each Building Project undertaken by such Awarding Authority. For Prime Contractors, the Contractor Evaluation Form must be submitted within seventy calendar days from Completion of each Building Project or Termination of a Prime Contractor on a Building Project. For Sub-Bidders, the Contractor Evaluation Form must be

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submitted within ninety calendar days from Completion of each Building Project or Termination of a Sub-Bidder on a Building Project.

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(2) Each Awarding Authority must forward directly to the Contractor an Interim Evaluation of the Contractor's performance at the mid-point of a Building Project's Completion, which shall not be submitted to DCAMDCAMM.

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(3) Each Awarding Authority must forward directly to the Contractor and DCAMDCAMM a final Contractor Evaluation Form at the Completion of the Building Project or the Termination of the Contractor.

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(4) All Contractor Evaluation Forms must be completed and signed as follows:

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(a) For a Building Project that requires an Owner's Project Manager, then said Owner's Project Manager shall complete and sign the Contractor Evaluation Form. The Owner's Project Manager may seek input from others involved in the Building Project, including within the Awarding Authority.

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(b) For a Building Project that does not require an Owner's Project Manager, then an official from the Awarding Authority, architect/designer representing the Awarding Authority, or any other party responsible for the oversight of the Building Project shall complete and sign the Contractor Evaluation Form. The evaluator may seek input from others involved in the Building Project, including within the Awarding Authority.

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(c) In addition, an official of the Awarding Authority must sign every Contractor Evaluation Form (even if the individual is the same official who completed the Contractor Evaluation Form), certifying to the accuracy of the Contractor Evaluation Form and the Project Rating and that neither the contents of the evaluation nor the Project Rating were negotiated for any reason with the Contractor or its representative.

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4.098: Contractor Appeal Process

A Contractor aggrieved by any action or decision by DCAMDCAMM may, within five business days of receipt of notice of same, request copies of the information upon which DCAMDCAMM relied in making its preliminary determination. Within ten business days of receipt of notice, the Contractor may submit further information to DCAMDCAMM with a request for reconsideration. DCAMDCAMM shall issue a final determination regarding any action or decision by DCAMDCAMM within ~~30~~twenty business days from the date of its

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preliminary determination, unless the Contractor and DCAMDCAMM agree to extend the

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~~30~~<sup>twenty</sup> day period. Any Contractor aggrieved by the final determination of ~~DCAM~~<sup>DCAMM</sup> may appeal in writing to the Office of the Attorney General within five business days of receipt of final determination.

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## CERTIFICATION OF SUB-BIDDERS

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### 4.4.09: Sub bidder Certificate~~4.09: Examination of Eligibility Certification Records~~

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~~(1) Contents. Each Sub bidder Certificate of Eligibility issued by DCAM shall contain the following information:~~

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~~(a) name and address of the Sub bidder,~~ <sup>(1) All Contractor Evaluation Forms, Contractor responses and final determination letters of denial of certification or decertification (except for portions that may fall within a public records exception, requiring redaction) shall be public records. All other information in the Contractor certification file shall not be considered public records, but shall be made available to an Awarding Authority pursuant to 810 CMR 4.09 (2).</sup>

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(2) An Awarding Authority,

~~(b) Sub bidder Categories of Work for which the Sub bidder has been certified,~~

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~~(c) time period during which the Sub bidder Certificate of Eligibility shall be valid,~~

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~~(d) the number of prior to awarding a contract, must inspect DCAM's Contractor certification file for any Contractor under consideration for a public Building Projects evaluated by DCAM on the Sub bidder, (e) the Average Project Rating for the purpose of the Sub bidder,~~

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~~(f) the number of Project Ratings that fall below the passing score, and~~

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~~(g) any other information the Commissioner may prescribe establishing.~~

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~~(2) Expiration. Each Sub bidder Certificate of Eligibility shall automatically expire at 11:59 P.M. on the last day the certificate is valid as stated on the Certificate.~~

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~~Decertified, Suspended, or Debarred Sub-bidders. A Sub bidder is not eligible to receive a Sub bidder Certificate of Eligibility while the Sub bidder is decertified, suspended, or debarred from public contracting in the state or by the federal government. Any Sub bidder Certificate of Eligibility issued to a Sub bidder who is subsequently decertified, suspended, or debarred from public contracting shall be deemed void and not be valid.~~

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~~(3) Extension. DCAM may extend a Sub bidder Certificate of Eligibility for one or more periods of time not to exceed six months in the aggregate, provided that there has been no material adverse change in the qualifications, competence, or responsibility of the Sub bidder Contractor to perform Building Projects for which the Sub bidder was initially certified.~~

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~~(4) Amendments. DCAM may amend a Sub bidder Certificate of Eligibility to add or delete Sub bidder Categories of Work and for such other purposes as the Commissioner may prescribe.~~

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4.10: ~~Sub bidder Categories of Work~~

~~(1) DCAM shall certify a Sub bidder in one or more Sub bidder Categories of Work and shall certify a Sub bidder in a requested Sub bidder Category of Work if DCAM's evaluation of the Sub bidder establishes that the Sub bidder has the experience and competence to perform such work and the Sub bidder has met all other requirements for certification.~~

~~(2) Standard Categories. DCAM shall establish a list of Sub bidder Categories of Work from among the various trades of work in the building construction industry pursuant to M.G.L. c. 149, § 44F. The Sub bidder shall identify on the application for certification each Sub bidder Category of Work for which certification is sought.~~

~~(3) Special Categories. In the event an Awarding Authority intends to solicit bids for a Building Project requiring sub bids from Sub bidders skilled in a unique or specialized class of work not included among the standard Sub bidder Categories of Work, DCAM may establish a special category of work for such project in consultation with the Awarding Authority. If DCAM establishes a special category of work, then for the Awarding Authority shall also establish a schedule that will allow interested Sub bidders to seek and obtain certification in the special category of work prior to the date of receipt of general bids. DCAM shall make a file available when the awarding authority certifies in writing that it shall use all non-public and/or proprietary information obtained from such examination solely for the purpose of determining the contractor's~~

4.11: ~~Sub bidder Requirements/Conditions for Certification~~

~~A Sub bidder must establish to the satisfaction of DCAM that it is competent, qualifications and responsible. DCAM shall not issue a Sub bidder Certificate of Eligibility to a Sub bidder if DCAM determines that the Sub bidder lacks competence or responsibility. make any of the non-public.~~

~~(1) The Commissioner shall establish in the Sub bidder Guidelines a minimum Overall Numerical Rating required for certification. DCAM shall not issue a Certificate of Eligibility to a Sub bidder who fails to achieve an Overall Numerical Rating at least equal to the minimum Overall Numerical Rating required for certification. The Commissioner reserves the right not to certify a Sub bidder and may decertify a Sub bidder who fails to meet other requirements for certification even though the Sub bidder otherwise meets the Overall Numerical Rating for certification.~~

~~(2) An applicant for certification must be a Contractor and have all licenses as required by law in the Sub bidder Categories of Work for which it seeks certification.~~

~~(3) A Sub bidder must establish to the satisfaction of DCAM that the Sub bidder is financially responsible, based upon such criteria concerning the Sub bidder's financial condition as the Commissioner may prescribe.~~

~~(4) A Sub bidder must have management or supervisory personnel who are experienced in the performance of the respective Sub bidder Categories of Work being sought.~~

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~~(5) A Sub bidder must provide complete and accurate answers to all questions in the application for certification and Sub bidder Update Statement and all other/or proprietary information and documentation required by DCAM for certification. Providing false or misleading information or failure to provide all required information will be considered grounds for denial, decertification and/or debarment. The owner and/or the person representing the owner in submitting the application must verify the accuracy of all information submitted on the application and must verify that the information submitted is in fact accurate and true, under oath. Failure to provide accurate information to regulatory authorities, legal counsel, accountants or any other party with whom a Sub bidder engages in legal contracts shall be grounds for denial and debarment.~~

~~(6) A Sub bidder must meet all other requirements for certification established by the Commissioner in the Sub bidder Guidelines, which may include, but are not limited to: (a) a minimum length of time in business  
(b) completion of a minimum number of projects of a certain dollar value with satisfactory Project Ratings, as outlined in the Guidelines.  
(c) a demonstrated history of competence and responsibility.~~

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~~4.11: continued~~

~~(7) Any of the following that occurred within the past three years shall constitute cause for decertification or denial of certification:~~

- ~~(a) a record of three or more Project Ratings that fall below the passing score established in the Sub bidder Guidelines on three or more separate Building Projects; or~~
- ~~(b) a record of three or more contract terminations for cause and/or three or more invoked performance bonds, wherein the surety is required to honor the terms of the bond, of a Sub bidder or its predecessors or its successors in interest; or~~
- ~~(c) failure to obtain and/or maintain worker's compensation insurance for the proper classification(s) of work; or~~
- ~~(d) any conviction of a criminal offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of labor laws, or any other offense indicating a lack of business integrity or business honesty.~~
- ~~(e) willfully supplying materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract.~~

~~(8) One or more of the following that occurred within the past three years may constitute cause for decertification or denial of certification:~~

- ~~(a) legal or administrative proceedings brought against the Sub bidder; or~~
- ~~(b) termination for cause from one or more Building Projects; or~~
- ~~(c) abandonment of one or more Building Projects; or~~
- ~~(d) a record of excessive payment bond claims; or~~
- ~~(e) a record of excessive safety violations; or~~
- ~~(f) a record of excessive workers' compensation injuries; or~~
  - ~~(g) failure to comply with record keeping and accounting requirements prescribed by law or regulation; or~~
- ~~(h) failure to perform in accordance with the terms of one or more public contracts; or~~

- ~~(i) a record of two Project Ratings that fall below the passing score established in the Sub bidder Guidelines on more than one Building Project; or~~
- ~~(j) failure to obtain and/or maintain any other mandatory insurance coverage; or~~
- ~~(k) a record of invoked performance bond(s), wherein the surety is required to honor the terms of the bond, of a Sub bidder or its predecessors or its successors; or~~
- ~~(l) any other factor bearing on a Sub bidder's competency or responsibility that, in the Commissioner's discretion, may warrant denial of certification or decertification.~~

~~4.12: Selection of Projects for Evaluation~~

- ~~(1) DCAM shall consider evaluations of public and/or private Building Projects completed by the Sub bidder within three years prior to the date DCAM receives the Sub bidder's application for certification.~~
- ~~(2) DCAM shall not be required to obtain evaluations of all Building Projects completed by the Sub bidder. DCAM may consider a representative sample of completed projects and may require that each evaluated project be of a minimum dollar value.~~

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- ~~(3) DCAM shall consider project evaluations by Awarding Authorities, owners of private Building Projects, Owner's Project Managers, or general contractors on properly completed Standard Contractor Evaluation Forms issued by DCAM pursuant to M.G.L. c. 149, § 44D and submitted to DCAM as prescribed in the Sub-bidder Guidelines. DCAM shall consider only evaluations which DCAM, in its sole discretion, deems reliable and that are indicative of the Sub-bidder's ability to perform Categories of Work for which certification is requested.~~
- ~~(4) DCAM may also obtain evaluations of completed Building Projects through telephone interviews. DCAM personnel shall use the Standard Contractor Evaluation Form as a questionnaire when obtaining evaluations through telephone interviews.~~

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~~4.13: Rating of Project Performance~~

- ~~(1) Standard Contractor Evaluation Form. The Standard Contractor Evaluation Form shall be used to rate the Sub bidder on a single Building Project according to criteria established by the Commissioner for assessing the performance of the Sub bidder on the project.~~
- ~~(2) Project Rating. The representative of the Awarding Authority or private Building Project owner evaluating the Sub bidder's performance on the project shall score the Sub bidder on each performance criterion. The Sub bidder's Project Rating for the project shall be the total of the scores given for each criterion.~~
- ~~(3) Average Project Rating. DCAM shall assign each Sub bidder an Average Project Rating which shall be the average of Project Ratings given to the Sub bidder for all of the evaluated Building Projects completed within the time frame established by M.G.L. c. 149. The Sub bidder's performance on projects shall be considered satisfactory only if the Average Project Rating meets or exceeds the minimum rating outlined in the Sub bidder Guidelines.~~

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Capacity Ratings

DCAM shall not issue Capacity Ratings for Sub bidders.

Sub bidder Appeal Process

A Sub bidder aggrieved by any action or decision by DCAM may, within five business days of receipt of notice, request copies of the information upon which DCAM relied in making its preliminary determination. Within ten business days of receipt of notice, the Sub bidder may submit further information to DCAM with a request for reconsideration. DCAM shall issue a final determination regarding any action or decision by DCAM within 30 business days from the date of its preliminary determination, unless the Sub bidder and DCAM agree to extend the 30 day period. Any Sub bidder aggrieved by the final determination of DCAM may appeal in writing to the Office of the Attorney General within five business days of receipt of final determination.

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LATORY AUTHORITY

810 CMR 4.00: M.G.L. c. 149, § 44A through 44J and M.G.L. c. 149A.

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~~810 CMR 8.00: AWARDING AUTHORITY RESPONSIBILITY FOR EVALUATION OF CONTRACTORS' PERFORMANCE ON PUBLIC BUILDING PROJECTS BID PURSUANT TO M.G.L. c. 149, § 44A THROUGH 44J AND M.G.L. c. 149A~~

~~Definitions~~

~~CONTRACTORS~~

~~Submission of Standard Contractor Evaluation Forms by Awarding Authorities~~

~~Certificate of Eligibility~~

~~8.04:4.140: Submission of Bid~~

~~(1) 8.05: Correction of Update Statement~~

~~8.06: Update Statement Requirements~~

~~8.07: Capacity Limits~~

~~8.08: Examination of Certification Records~~

~~SUB-BIDDERS~~

~~8.09: Submission of Standard Contractor Evaluation Forms by Awarding Authorities~~

~~8.10: Sub-bidder Certificate of Eligibility~~

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~~8.01: continued~~

~~Project Rating, a numerical score on a Building Project derived from the completion of the Standard Contractor Evaluation Form.~~

~~Single Project Limit, the maximum dollar amount the Contractor may bid on any single Building Project.~~

~~Standard Contractor Evaluation Form, an evaluation form used for rating a Contractor's or Sub-bidder's performance to be completed by Awarding Authorities and other appropriate parties upon Completion of a Building Project.~~

~~Sub-bidder, a business engaged in one or more trades of work pursuant to M.G.L. c. 149, § 44F. The term "Sub-bidder" shall also include trade contractors pursuant to projects bid under M.G.L. c. 149A.~~

~~Sub-bidder Guidelines, written standards, policies, and procedures for the certification of Sub-bidders by DCAM issued by the Commissioner.~~

~~Sub-bidder Update Statement, a form to be completed by Sub-bidders and submitted with filed sub-bids and trade contractor bids pursuant to M.G.L. c. 149, § 44A through 44J and M.G.L. c. 149A. The Sub-bidder Update Statement provides information including, but not limited to, the Sub-bidder's Building Projects in progress and Building Projects completed by the Sub-bidder since the issuance date of the Sub-bidder's current Sub-bidder Certificate of Eligibility.~~

~~Update Statement, a form developed by DCAM to be completed by Contractors and submitted with all bids pursuant to M.G.L. c. 149, § 44A through 44J and M.G.L. c. 149A. The Update Statement provides information including, but not limited to, the Contractor's Building Projects in progress and Building Projects completed by the Contractor since the issuance date of the Contractor's current Certificate of Eligibility.~~

CONTRACTORS

8.02: Submission of Standard Contractor Evaluation Forms by Awarding Authorities

(1) Each Awarding Authority shall submit to DCAM a properly completed Standard Contractor Evaluation Form for the Contractor on each Building Project undertaken by such Awarding Authority within 70 calendar days from Completion of each Building Project or termination of a Contractor on a Building Project.

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~~(2) Each Awarding Authority must forward an Interim Evaluation of the Contractor's performance at the mid-point of a Building Project's Completion directly to the Contractor.~~

~~(3) All evaluation forms must be completed and signed by one of the following:~~

~~(a) For Building Projects that require an Owner's Project Manager, then said Project Manager shall complete the Standard Contractor Evaluation Form; or~~

~~(b) For Building Projects that do not require an Owner's Project Manager, then an official from the Awarding Authority, architect/designer representing the Awarding Authority, or any other party responsible for the oversight of the project shall complete all Standard Contractor Evaluation Forms.~~

~~(4) An Awarding Authority must certify in all evaluation forms as to the accuracy of its contents and shall not negotiate the contents of the Standard Contractor Evaluation Form or the Project Rating with the Contractor or its representative for any reason.~~

~~8.03: Certificate of Eligibility~~

~~(1) Contents. Each Certificate of Eligibility issued by DCAM shall contain the following information:~~

~~(a) name and address of the Contractor;~~

~~(b) Categories of Work for which the Contractor has been certified;~~



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(1) In addition to any other information called for in the Update Statement, the Prime Update Statement or the Sub-Bidder Update Statement, as the case may be, ~~shall require the Contractor shall be required to list each every public or private construction project completed since the certification application for the current Certificate of Eligibility submitted by the Contractor and every project that the Contractor currently has under contract at the time of the bid, giving the total contract value of each such contract, the percentage and dollar value of the work not completed, and the number of years remaining to complete the contract work. The Update Statement shall also require that the dollar value of the incomplete work under each of the Contractor's currently held contracts be annualized by dividing the dollar value of each such contract by the number of years remaining to complete such contract work. Update Statements and Sub bidder Update Statements shall not be public records and shall not be open to public inspection.~~

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8.07:— (2) Update Statements shall not be public records and shall not be open to public inspection.

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3Special Capacity Limits Requirements

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(1) An Awarding Authority shall reject a Contractor's bid that exceeds the Contractor's Single Project Limit shown on the Contractor's Certificate of Eligibility. A Contractor's Single Project Limit must be equal to or greater than the Contractor's base bid plus all alternates irrespective of whether none, any, or all such alternates are used.

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(2) The Prime Contractor's Aggregate Work Limit may not be exceeded by the sum of the following: (a) The annualized value of the work to be performed on the Building Project for which the bid was submitted, which shall be determined by dividing the Prime Contractor's bid by the number of years given to complete the Building Project for which the bid was submitted; and (b) The total annualized value of the Prime Contractor's incomplete work under its currently held contracts, which shall be determine by adding together the annualized value of the incomplete work under each of the Prime Contractor's currently held contracts.

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8.08: Examination of Certification Records

~~(1) All Standard Contractor Evaluation Forms and Contractor responses in a Contractor's certification file shall be public records. All other information in the certification file shall not be considered public records, but shall be made available to an Awarding Authority only pursuant to 810 CMR 8.08(2).~~

~~(2) An Awarding Authority, prior to awarding a contract, must inspect DCAM's certification file for any Contractor under consideration for a public Building Project for the purpose of establishing the qualifications of the Contractor to perform the project for the Awarding Authority. DCAM shall make a file available when the Awarding Authority certifies in writing that it shall use all non public and/or proprietary information obtained from such examination solely for the purpose of determining the Contractor's qualifications and shall not make any of the non public and/or proprietary information public.~~

SUB-BIDDERS

8.09: Submission of Standard Contractor Evaluation Forms by Awarding Authorities

~~(1) Each Awarding Authority shall submit to DCAM a properly completed Standard Contractor Evaluation Form for each of the Sub bidder firms on each Building Project undertaken by such Awarding Authority within 90 calendar days from Completion of each Building Project or termination of a Sub bidder on a Building Project.~~

~~(2) The evaluation form must be completed and signed by one of the following:~~

~~(a) For Building Projects that require an Owner's Project Manager, then said Project Manager shall complete the Standard Contractor Evaluation Form; or~~

~~(b) For Building Projects that do not require an Owner's Project Manager, then an official from the Awarding Authority, architect/designer representing the Awarding Authority, or any other party responsible for the oversight of the project shall complete the Standard Contractor Evaluation Form. An Awarding Authority or Owner's Project Manager may seek input from the general contractor in evaluating a sub bidder's performance of a Building Project, however, the Awarding Authority or their representative must complete and sign the Standard Contractor Evaluation Form.~~

~~(3) An Awarding Authority must certify in the evaluation form as to the accuracy of its contents and shall not negotiate the contents of the Standard Contractor Evaluation Form or the Project Rating with the Sub bidder or its representatives for any reason.~~

8.10: Sub bidder Certificate of Eligibility

~~(1) Contents. Each Sub bidder Certificate of Eligibility issued by DCAM shall contain the following information:~~

~~(a) name and address of the Sub bidder;~~

~~(b) Sub bidder Categories of Work for which the Sub bidder has been certified;~~

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- ~~(c) time period during which the Sub-bidder Certificate of Eligibility shall be valid,~~
- ~~(d) the number of prior Building Projects evaluated by DCAM on the Sub-bidder,~~
- ~~(e) the Average Project Rating of the Sub-bidder,~~
- ~~(f) the number of Project Ratings that fall below the passing score, and~~
- ~~(g) any other information the Commissioner may prescribe.~~

8.11: Submission of Bid

- ~~(1) Awarding Authorities shall reject any bid submitted without an appropriate Sub-bidder's Certificate of Eligibility and Sub-bidder Update Statement.~~
- ~~(2) An Awarding Authority shall consider the information submitted in the Sub-bidder Update Statement and must review the Sub-bidder's certification file from DCAM.~~

8.12: Capacity Ratings

DCAM Prime Contractor Bonding Limits. shall not issue Capacity Ratings for Sub bidders. Sub bidders that are bonded shall provide evidence of said bonding to DCAM.

4.143: Prime Contractor Capacity Ratings and Bid Limitations for Prime Contractors

(1) Determining Project Limits. DCAMM shall determine the maximum amount of work an applicant for certification is capable of undertaking on an individual project basis and on an aggregate basis, and shall assign each Prime Contractor a Single Project Limit and Aggregate Work Limit for certification purposes.

(2) Single Project Limit. A Prime Contractor's Single Project Limit shall be based upon the average of the largest two public or private Building Projects in a Category of Work completed by the Prime Contractor within the past five years. The two projects must be reliable and each receive satisfactory Project Ratings in order for them to be considered for Capacity Ratings. Subject to the Prime Contractor's bonding limits as provided in 810 CMR 4.0513 (4), a Prime Contractor's Single Project Limit shall equal 130% of the mean average of the contract dollar value of the two projects. The Commissioner may institute a procedure for increasing the foregoing percentage to 180% for any Prime Contractor who has demonstrated a capacity to successfully undertake larger projects based upon a record of superior performance or other factors prescribed by the Commissioner.

(3) - Aggregate Work Limit. A Prime Contractor's Aggregate Work Limit shall be based on the dollar value of the largest volume of construction work completed by the Prime Contractor during any twelve consecutive month period within the past five years as demonstrated in CPA-prepared documentation, but in no event greater than the Prime Contractor's Single Project Limit. Subject to the Contractor's bonding limits as provided in 810 CMR 4.0513 (4), a Prime Contractor's Aggregate Work Limit shall equal 130% of such dollar value, provided that the Commissioner may institute a procedure for increasing the foregoing percentage to 180% for a Prime Contractor who has demonstrated a capacity to successfully undertake a greater volume of work based upon a record of superior performance or other factors prescribed by the Commissioner.

(4) Prime Contractor Bonding Limits. A Prime Contractor must have an established single project and aggregate project bonding capacity with a Surety. A Prime Contractor applying for certification or recertification must establish to the satisfaction of DCAMM that it will be able to secure a performance bond and a payment bond when required from a qualified Surety. In no event shall the Prime Contractor's Single Project Limit or Aggregate Work Limit exceed the Contractor's bonding capacity for each of the Single Project Limit or Aggregate Work Limit, as the case may be, shown on a current bonding letter from a Surety.

(5) Prime Contractor Bid Rejection.

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(a) An Awarding Authority shall reject a Prime Contractor's bid that exceeds the Prime Contractor's Single Project Limit shown on the Prime Contractor's Certificate of Eligibility. A Prime Contractor's Single Project Limit must be equal to or greater than the Prime Contractor's base bid plus all alternates irrespective of whether none, any, or all such alternates are used.

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(b) An Awarding Authority shall reject a Prime Contractor's bid if the Aggregate Work Limit is exceed by the sum of the following:

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The annualized value of the work to be performed on the Building Project for which the bid was submitted, which shall be determined by dividing the Prime Contractor's bid by the number of years given to complete the Building Project for which the bid was submitted; plus

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The total annualized value of the Prime Contractor's incomplete work under its currently held contracts, which shall be determine by adding together the annualized value of the incomplete work under each of the Prime Contractor's currently held contracts.

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(6) Prime Contractor Update Statement Bid Calculation. For each of the Prime Contractor's currently held contracts, the Prime Update Statement shall also require that the dollar value of the incomplete work be annualized by dividing the dollar value of work not completed for each such contract by the number of years remaining to complete such contract work.

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(7) ~~Capacity Limits not Required for Sub-Bidder Contractors.~~ DCAMM shall not issue Capacity Ratings for Sub-Bidder Contractors. Sub-Bidder Contractors that are bonded shall provide evidence of said bonding to DCAMM.

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REGULATORY AUTHORITY

8.13: ~~Correction of Sub bidder Update Statements~~

(1) ~~Matters of Form.~~ An Awarding Authority shall not reject a Sub bidder's bid because there are mistakes or omissions of form in the Sub bidder Update Statement submitted with the Sub bidder's bid pursuant to M.G.L. c. 149, § 44D, provided the Sub bidder promptly corrects those mistakes or omissions upon request of the Awarding Authority.

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~~(2) Correction of Other Defects. An Awarding Authority may, in its discretion, give a Sub-bidder notice of minor defects and omissions as to form in the Sub-bidder's Update Statement and provide an opportunity to correct its Sub-bidder Update Statement. However, the Sub-bidder shall not be allowed to make corrections to a Sub-bidder Update Statement if material information about the Sub-bidder was omitted from the Sub-bidder Update Statement filed with the Sub-bidder's bid. The Awarding Authority shall advise DCAM of any material omissions in a Sub-bidder's Update Statement.~~

8.14: Examination of Sub-bidder Certification Records

~~(1) All Standard Contractor Evaluation Forms and Sub-bidder responses in a Sub-bidder's certification file shall be public records. All other information in the certification file shall not be considered public records, but shall be made available to an Awarding Authority only pursuant to 810 CMR 8.14(2).~~

~~(2) An Awarding Authority must inspect DCAM's certification files for any Sub-bidder under consideration for a public Building Project for the purpose of establishing the qualifications of the Sub-bidder to perform the project for the Awarding Authority. The Awarding Authority shall certify in writing that it shall use all non-public and/or proprietary information obtained from such examination solely for the purpose of determining the Sub-bidder's qualifications and shall not make any of the non-public and/or proprietary information public. In addition, Sub-bidder Update Statements shall not be public records and shall not be open to public inspection.~~

REGULATORY AUTHORITY

~~810 CMR 8~~ 810 CMR 4.00: - M.G.L. c. 149, § 44A through 44J M.G.L. c. 149A, and M.G.L. c. 149A:25A §§ 11C and 11I

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