

The Commonwealth of Massachusetts

**Executive Office
for
Administration & Finance**



Division of Capital Asset Management

GUIDELINES FOR PREQUALIFICATION

OF

GENERAL CONTRACTORS

AND

SUBCONTRACTORS

TO WORK ON PUBLIC BUILDING CONSTRUCTION PROJECTS

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Part One: General Overview of Prequalification Process

I. Preface

The Division of Capital Asset Management (DCAM) hereby issues its *Guidelines for Prequalification of General Contractors and Subcontractors* (hereinafter referred to as "*Prequalification Guidelines*") to assist public awarding authorities, owner's project managers, architects, general contractors, subcontractors and all entities and individuals involved in public building construction projects in the Commonwealth of Massachusetts.¹

The *Prequalification Guidelines* are intended to be informational for the purpose of providing guidance and assistance to awarding authorities, general contractors and subcontractors who are either administering the prequalification process or seeking prequalification for a particular project under M.G.L. c. 149, §§ 44D $\frac{1}{2}$ and 44D $\frac{3}{4}$ and 810 CMR §§ 9.00 and 10.00. Therefore, where a conflict exists between the *Prequalification Guidelines* and M.G. L. c. 149 §§ 44D $\frac{1}{2}$ and 44D $\frac{3}{4}$ or 810 CMR §§ 9.00; 10.00, priority shall always be given to the General Laws and Code of Massachusetts Regulations.

II. Definitions

A. General Definition of Prequalification. Prequalification is part of a new two-phased procurement process utilized by public awarding authorities, on a project-by project basis, which enables public awarding authorities to limit the "bidding pool" to general contractors and subcontractors who they deem qualified to do the work.

1. **Request for Qualifications (RFQ) Phase.** The awarding authority issues an RFQ and reviews the information submitted by general contractors and subcontractors to determine if they are qualified bidders.
2. **Bidding Phase.** Only "prequalified" bidders are invited to submit a bid on the Building Project.

B. Statutory and Regulatory Definitions. The following statutory and regulatory definitions from M.G.L. c. 149 §§ 44D $\frac{1}{2}$ and 44D $\frac{3}{4}$ and 810 CMR §§ 9.00; 10.00 are repeated and incorporated herein by reference:

1. **Awarding Authority**, a "public agency" as defined in M.G.L. c. 149, §44A undertaking a Building Project.

¹ DCAM reserves the right to revise and amend these guidelines and procedures at any time, without prior notice.

2. **Bondable**, a written determination made by a Surety Company, as defined herein, regarding a particular general contractor or subcontractor, as defined herein, that based on the information known at the time issued by the Surety Company that it would approve the issuance of payment and performance bonds for 100% of the estimated contract value of a Building Project, as defined herein, on behalf of that general contractor or subcontractor, if the general contractor or subcontractor is prequalified by the awarding authority and ultimately awarded the a contract on the Building Project.
3. **Building Project**, any project for the construction, reconstruction, installation, demolition, maintenance or repair, of a public building.
4. **Certificate of Eligibility**, a certificate issued annually by DCAM, pursuant to M.G.L. c. 149, §44D and in accordance with 810 CMR §§ 4.02 and 4.09. All general contractors and subcontractors, as defined herein, desiring to perform work on public Building Projects must obtain such Certificate of Eligibility from DCAM.
5. **Commissioner**, the Commissioner of the Division of Capital Asset Management and Maintenance (“DCAM”).
6. **Commitment Letter**, a written communication from a Surety Company submitted by the general contractor or subcontractor as part of its Statement of Qualifications that states that the Surety Company has determined the general contractor or subcontractor to be Bondable, if the general contractor or subcontractor is prequalified and ultimately awarded the la contract on the Building Project.
7. **Designer**, the design firm for the Building Project.
8. **Evaluation Report**, a report prepared by the Prequalification Committee after it has completed its deliberations which indicates a general contractor’s or subcontractor’s prequalification score in each of the evaluation categories and subcategories set forth in the Request for Qualifications.
9. **Exempt Public Awarding Authorities**, DCAM, the Massachusetts Port Authority, the Massachusetts Water Resources Authority, the Massachusetts State College Building Authority, and the University of Massachusetts Building Authority.
10. **General Contractor**, a general bidder or prime bidder, engaged in the business of construction, reconstruction, demolition, installation, maintenance, or repair of buildings, seeking prequalification from

an Awarding authority to submit a general bid for a designated public Building Project in accordance with M.G.L. c. 149, § 44E.

11. **Guidelines**, written standards, policies, and procedures for the prequalification of General Contractors and subcontractors by an Awarding authority issued by the Commissioner.
12. **Non-exempt Public Awarding Authorities**, all public awarding authorities other than the “exempt public awarding authorities”.
13. **Owner’s Project Manager (“OPM”)**, 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 Building Project on behalf of the awarding authority in accordance with the requirements set forth in M.G.L. c. 149, § 44A½.
14. **Request for Qualifications (“RFQ”)**, a request published by an awarding authority as required by M.G.L. c. 149, §§44D½ and 44D¾ soliciting information regarding the qualifications and competency of general contractors and subcontractors.
15. **Statement of Qualifications**, an application form, prescribed by an awarding authority and required to be completed by interested general contractors and subcontractors responding to an RFQ. The Statement of Qualifications shall include any schedules and supporting documents, which are required to be completed and submitted by a general contractor or subcontractor in response to an RFQ.
16. **Subcontractor**, a filed sub-bidder, engaged in the business of one or more of the sub-trades identified in M.G.L. c. 149, § 44F(1), seeking prequalification in a particular trade or trades from an awarding authority to submit a filed sub-bid for such trade or trades, on a designated public Building Project in accordance with M.G.L. c. 149, § 44F.
17. **Surety Company**, a surety company which is licensed to do business in the Commonwealth and whose name appears on the United States Treasury Department Circular 570.
18. **Update Statement**, a form developed by DCAM, as defined in 810 CMR 4.01, to be completed by a general contractor and subcontractor and submitted with all bids pursuant to M.G.L. c. 149, § 44A through J and M.G.L. c. 149A. The Update Statement requires information, including, but not limited to, information on all of the general contractor’s or subcontractors Building Projects in progress and Building Projects completed by the general contractor

or subcontractor since the issuance date of the general contractor's or subcontractor's current Certificate of Eligibility.

III. Statutory Origin of Prequalification

A. Special Commission on Construction Reform

By way of background, Section 12 of the Chapter 55 of the Acts of 2003 provided authority for the Legislation to form a "Special Commission on Construction Reform". Specifically, Section 12 provided that:

There shall be a special commission to investigate, study and make legislative recommendations on the adequacy and efficiency of laws and regulations governing public construction projects. The commission shall consist of 20 members²...The commission shall file a report on the results of its study, together with its recommendations, if any, and drafts of legislation necessary to carry such recommendations into effect, with the clerks of the house of representatives and the senate not later than January 15, 2004.

Prequalification evolved out of the recommendations of the Special Commission.

B. Enactment of the Construction Reform Law

After a year of deliberations, the Special Commission ultimately proposed a legislative package of reforms to the public construction process which was approved by the General Court. Ultimately, Chapter 193 of the Acts of 2004, entitled "An Act Further Regulating Construction in the Commonwealth" was enacted on July 19, 2004 (*Construction Reform Law*) and provided the most comprehensive reforms to public construction contracting in decades.

² Representation on the Special Commission was mandated as follows: 1 of whom shall be appointed by the governor; ***3 members of the senate;***3 members of the house of representatives;***the commissioner of capital asset management and maintenance; the inspector general; the chairperson of the Massachusetts Municipal Association or his designee; the president of the Massachusetts Building Trades Council or his designee; the president of the Associated General Contractors of Massachusetts or his designee; the president of the Building Trades Employers Association or his designee; the president of Associated Subcontractors of Massachusetts or his designee; the president of Construction Industries of Massachusetts or his designee; the president of the Massachusetts AFL-CIO or his designee; the president of Women in the Building Trades or his designee; the president of the New England Chapter of the National Association of Minority Contractors or his designee; the president of the Massachusetts Chapter of Associated Builders and Contractors or his designee and the executive director of the Boston Society of Architects or his designee.

Prior to the enactment of the *Construction Reform Law*, awarding authorities were limited to the selection of the “lowest responsible and eligible bidder” with the only option for rejection of the lowest bid being a determination that that bidder was not deemed a “responsible” or “eligible” bidder. The result was often the lowest bidder getting the job, but unable to perform the work in the most skilled and cost efficient manner.

The establishment of a prequalification process for general contractors and subcontractors in Section 19 of the *Construction Reform Law* was one of the most significant changes that evolved out of the Special Commission. Section 19 amends M.G.L. c. 149 by adding two new sections, M.G.L. c. 149, §§44D¹/₂ and 44D³/₄ intending to provide public awarding authorities with a new tool to screen general contractors and subcontractors performing work on public construction projects. Sections 44D¹/₂ and 44D³/₄ set forth the parameters of the new statutory prequalification process to be utilized by Awarding Authorities administering prequalification and by general contractors and subcontractors seeking to be prequalified to perform work on a public construction project in the Commonwealth. A copy of the *Construction Reform Law* as adopted in 2004 can be found at the following link: [insert web link address for new law]

IV. Mandatory v. Discretionary Prequalification

The *Construction Reform Law* provides that *Prequalification* is mandatory in certain instances and discretionary in others. The “estimated construction cost” for a particular building project is the barometer by which an awarding authority must determine whether its project is subject to mandatory or discretionary prequalification.

- A. When is Prequalification Mandatory?** Where the estimated construction cost is not less than \$10 million, M.G.L. c. 149 §§44D¹/₂ and 44D³/₄ mandates that all Awarding Authorities MUST “prequalify” both general contractors and subcontractors to perform work on public building projects. The **ONLY** exception to this new rule is for the Exempt Awarding Authorities defined in Section II herein³.
- B. When is Prequalification Discretionary?** Where the estimated construction cost is greater than \$100,000, but less than \$10 million, the awarding authority has the discretion to decide if it wants to utilize prequalification on a building project.

The discretion afforded to the awarding authority for building projects of this size allows it to elect to “prequalify”:

³Exempt Awarding Authorities still have the discretion to utilize prequalification for any project, but they are just not required to do so.

- both general contractors and subcontractors;
- only general contractors;
- only subcontractors;
- certain subcontractors; or
- any combination thereof.

In the context of a building project where prequalification is deemed “discretionary”, an awarding authority should still give serious consideration to utilizing prequalification with at least the general contractor and key trades which are essential to the success of the building project. This is because prequalification arms the awarding authority with a tool beyond selecting the “lowest responsible bidder” to select the best qualified general contractor and subcontractors to perform work on the particular Building Project.

While it is acknowledged that there will be additional time and administrative burdens on the awarding authority where prequalification is utilized, the benefits of selecting higher caliber general contractors and subcontractors for the building project should ideally recover the impact of any such administrative burdens by “raising the bar” with the increased quality and efficiency obtained by selecting prequalified general contractors and subcontractors to perform the work.

C. Exempt Awarding Authorities. Notwithstanding the threshold amounts for mandatory and discretionary prequalification, the Construction Reform Law exempts certain awarding authorities from mandatory prequalification and allows such Awarding Authorities the discretion to elect to use prequalification if it deems appropriate. These exempt awarding authorities are as follows:

- Division of Capital Asset Management
- MassPort
- MWRA
- Massachusetts State Colleges Building Authority
- University of Massachusetts Building Authority

V. Understanding the Distinction Between DCAM Certification and Prequalification

Since the enactment of the *Construction Reform Law*, there has been confusion between the new prequalification requirements set forth in M.G.L. c. 149 §§ 44D ½ and 44D¾ and the new requirement for filed sub-bidders to be DCAM Certified as of January 1, 2006. See M.G.L. c. 149 §44D. It is critical for all participants in

public construction contracting to fully understand the difference between these new requirements.

A. DCAM Certification In A Nutshell

DCAM Certification is an annual review conducted by DCAM to determine whether a general contractor or sub-bidder is eligible to perform public construction work in the Commonwealth.

Prior to the enactment of the *Construction Reform Law*, *DCAM Certification* was only required for Prime or general contractors. Under the *Construction Reform Law*, however, *DCAM Certification* will be required as of January 1, 2006 for all filed sub-trades identified in M.G.L. c. 149, § 44F seeking to perform work on public building projects.

DCAM has established minimum threshold financial and performance requirements which are required to become "DCAM Certified". Each year, applicants for *DCAM Certification* are required to submit a standard application (with certain required attachments) for consideration by DCAM. DCAM evaluates the information submitted by the applicant general contractors and filed sub-bidders as well as evaluations of their performance submitted by awarding authorities for which they have previously worked to make a determination as to whether the applicant general contractor or filed sub-bidder has the requisite financial capacity and experience to be "DCAM Certified" to work on public building projects. If, upon review of the required business experience and financial information required, DCAM deems a general contractor or subcontractor to be certified, then DCAM will issue the general contractor or subcontractor a "Certificate of Eligibility" evidencing its certified status and will include the general contractor or subcontractor on its list of certified firms.

In the amendments to M.G.L. c. 149, §44D included in the Construction Reform Law, DCAM was required to promulgate regulations pertaining to the new requirement for subcontractor certification. In developing the new procedures for the implementation of subcontractor certification, DCAM also prescribed some changes to the existing certification requirements for general contractors and prime contractors. As a result, the following regulations and guidelines governing the certification process (copies of which are all available on DCAM's website at the following link www.mass.gov/cam):

- 810 CMR §4.00 - Certification of Contractors and Sub-Bidders To Bid on Public Building Construction Contracts Pursuant to M.G.L. c. 149, §§ 44A Through 44J and M.G.L. c. 149A

- 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
- Certification Guidelines and Procedures for Prime/General Contractors and Awarding Authorities
- Certification Guidelines and Procedures for Sub-bidders and Awarding Authorities

In summary, the DCAM Certification process is an annual “snap shot” of prime/general contractors and sub-bidders to determine if they meet the minimum requirements to engage in work on public building contracts.

B. *Prequalification In A Nutshell*

By contrast, prequalification is a **project by project** review conducted by **individual awarding authorities** for a particular project to identify a pool of general contractors and subcontractors with sufficient skill and experience to perform work on that particular project. While *DCAM Certification* is a mandatory prerequisite to prequalification, it is only one of the threshold requirements. Therefore, there may be instances where a *DCAM Certified* general contractor or subcontractor is not ultimately *Prequalified* for a specific project because it does not meet the additional statutory criteria. Or, there may be instances where a general contractor or subcontractor is *Prequalified* by one awarding authority for one project, but not *Prequalified* by the same or other awarding authority for a different project. Also, it should be noted that the prequalification of an interested general contractor or subcontractor by an awarding authority for a particular project does not guarantee that the prequalified general contractor or subcontractor will be deemed a responsible and eligible bidder as defined in M.G.L. c. 149, §44A.

In addition to the prequalification Guidelines herein, DCAM has promulgated the following regulations and standard forms governing the prequalification process (copies of which are all available on DCAM's website at the following link www.mass.gov/cam):

- 810 CMR §9.00 – Prequalification of General Contractors to Bid on Public Building Contracts Pursuant to M.G.L. c. 149, §§ 44A through 44J.
- 810 CMR §10.00 – Prequalification of Subcontractors to Bid on Public Building Contracts Pursuant to M.G.L. c. 149, §§ 44A through 44J.

- *Standard Forms for General Contractor Prequalification* (Exhibit A, attached hereto);
- *Standard Forms for Subcontractor Prequalification* (Exhibit B, attached hereto)
- Standard Evaluation form for General Contractor Prequalification (Exhibit C, attached hereto)
- Standard Evaluation form for Subcontractor Prequalification (Exhibit D, attached hereto).

Part Two: Guidelines For Awarding Authorities Utilizing Prequalification

I. Key Considerations for Awarding Authorities Conducting Prequalification – Areas of Discretion

The prequalification process set forth in the Construction Reform Law provides awarding authorities with an opportunity to identify skilled and qualified general contractors and subcontractors **BEFORE** putting a project “out for bid” so they can “weed out” general contractors and subcontractors who are not sufficiently skilled or qualified in the type of work required by the project. As intended, prequalification limits those bidding on a public construction project to those general contractors and subcontractors who have been prequalified by the awarding authority to do so.

The use of prequalification by an awarding authority, whether mandatory or discretionary, DOES NOT, however, give awarding authorities unfettered discretion in the administration of the prequalification process. Instead, by dictating the specific evaluation categories and subcategories upon which awarding authorities **MUST** base the evaluations of interested general contractors and subcontractors it limits the extent of such discretion to only 3 distinct aspects of the prequalification process as follows:

- A. The allocation of points and weight assigned for each of the required statutory evaluation subcategories. Note that while the Construction Reform Law specifies the point allocation for each of the evaluation categories (i.e. “Management Experience” category is required to have 50 points; “Capacity to Complete” category is required to have 30 points and “References” category is required to have 20 points) the Construction Reform Law does not dictate the specific point allocations among the required subcategories in each of those categories. Such allocation is within the discretion of the awarding authority, PROVIDING that the allocation is stated up front in the RFQ and is not changed during the evaluation process. The awarding authority DOES NOT have any

discretion to change such allocation of points in the subcategories once the point allocations have been provided for in the RFQ. See Part Two, Section III(C) herein. (See also, M.G. L. c. 149, §§ 44D¹/₂(e)(1) and 44D³/₄(e)(1) and Section VI (C) Exhibits A and B attached hereto).

- B. The definition of “similar project experience” for the specific project at issue. The awarding authority has the discretion to define “similar project experience” as narrowly or as broadly as it deems appropriate for the project at hand. The goal of the awarding authority should be to strike a balance between making the definition too narrow, thereby eliminating good contractors who may not have the specific narrowly defined experience prescribed versus making the definition too broad, thereby opening the flood gates to contractors that may not have the requisite skill and experience to undertake the project. See Part Two, Section III herein. (See also, M.G.L. c. 149, §§ 44D¹/₂ (e)(1)(iii) and 44D³/₄ (e)(1)(iii); Section VI (C)(1)(c) of Exhibits A and B attached hereto).
- C. The actual evaluation of the responses to the RFQ and determination. Absent fraud or collusion, the prequalification Committee for the awarding authority has the discretion to evaluate the responses to the RFQ from interested general contractors and interested subcontractors in order to determine which of those firms shall be prequalified to bid on the project. See Part Two, Section III herein.

Effective and strategic utilization of the aforementioned three (3) areas of discretion afforded to the awarding authority are the key to a successful prequalification process. Therefore, it is essential for awarding authorities to understand how to initiate the prequalification process while being mindful of how to best utilize these 3 areas of discretion available to them.

II. Essential Early Steps for Awarding Authorities Initiating Prequalification

A. Determine Whether Prequalification Is Mandatory or Discretionary for Your Project

It is essential in the early stages of a building project that the awarding authority work closely with its designer, owner’s project manager (OPM), and project team to develop the best total estimated construction cost possible for the building project. Based on the estimate construction cost for the building project, the awarding authority may determine whether prequalification is mandatory or discretionary as set forth in Part One, Section V above. Where prequalification may be discretionary, the awarding authority may want to review the complexity of the project as a whole or in the context of particular trades to determine if prequalification may be advantageous for a particular building project.

B. Establishment of the Prequalification Committee

As soon as possible after an awarding authority determines that prequalification will be utilized on a particular building project (whether mandatory or discretionary), the awarding authority must establish the prequalification committee. M.G.L. c. 149 §§ 44D¹/₂ and 44D³/₄ and 810 CMR §§9.03 and 10.03 require that the prequalification committee have only 4 members: 3 representatives from the awarding authority and 1 representative from the designer. The specific requirements for the prequalification committee representatives are as follows:

1. **Selection of Awarding Authority Representatives/OPM:** M.G.L. c. 44A¹/₂ provides that if the building project requires an Owner's Project Manager (OPM) then the OPM (whether an employee of the awarding authority or third party) **MUST** fill 1 of the 3 awarding authority seats on the prequalification committee. The awarding authority has total discretion with respect to the selection of its other 2 representatives, but those selected should be the individuals who have the most knowledge about the project and who will be involved in its day to day oversight and management. Awarding Authorities engaging in the prequalification process for a particular building project should give careful consideration to the selection of its representatives to the prequalification committee in order to ensure the evaluations are given appropriate consideration.
2. **Selection of Designer Representative:** M.G.L. c. 149, §44D¹/₂ and §44D³/₄ require that 1 member of the prequalification committee be a representative from the design firm for the building project. The appointment of the design firm representative is subject to the following conditions:
 - a. **Minimum Requirements for Designer Representative.** In order to ensure that the design representative is sufficiently familiar with requirements of the Building Project to evaluate general contractors and subcontractors for prequalification, 810 CMR §9.04(3(b) further requires that the design firm representative be:

“an individual person employed by the design firm for the Project who actually prepared the design documents for the Awarding Authority and is familiar with the Building Project requirements or who will be the design firm's designated representative for the Building Project”.

b. **Approval of Awarding Authority.** Notwithstanding the requirements in 810 CMR §9.04(3)(b) set forth above, the design firm representative is also subject to the approval of the awarding authority. Therefore, the awarding authority can reject the person designated by the designer to sit on the prequalification committee.

3. **Appointment of Chairperson.** Although not required by statute, once formed, the Awarding Authority is encouraged to appoint a chairperson of the prequalification committee. The purpose of appointing a chairperson is to be sure that one person is coordinating the administration of the prequalification process. The chairperson should be one of 3 representatives of the awarding authority and may either be appointed by the awarding authority or agreed upon by the members of the prequalification committee. The appointment of a chairperson is an administrative function only and does not empower the chairperson with any special authority with respect to the prequalification process and deliberations of the prequalification committee.

C. **Scope of Work Considerations for Contracts with OPM/Designer**

The *Construction Reform Law* requires the OPM and a representative from the design firm to be appointed to the prequalification committee and assist the awarding authority in conducting the prequalification process. The statute is silent, however, with regard to the specific scope of work and compensation issues that have arisen with respect to this new role of the OPM and designer in the prequalification process. This is potentially problematic in that the scope of work and compensation sections of existing standard contracts between Awarding Authorities and OPMs or Designers do not adequately address the added scope of work made necessary by prequalification. Prudent contracting practices demand that Awarding Authority's clarify the respective roles of the OPM and designer in their contracts up front, including the identification of specific tasks required, so there is no resulting dispute regarding the additional costs of these services.

Therefore, in contracting with the designer and OPM on building projects where prequalification is expected to be utilized, the following recommendations are provided in accordance with the prequalification regulations codified at 810 CMR §9.00 and 810 CMR §10.00 (http://www.mass.gov/cam/Creform/Cert_Prequal_Regulations.pdf):

1. **OPM Scope of Work Considerations.** M.G.L. c. 149 §44A½ specifically states that OPMs are to provide the awarding authority with advice and consultation throughout the prequalification process. As such, the awarding authority should also be careful to include this and all other statutorily defined duties of the OPM in the

section of the contract entitled "Scope of Work". . 810 CMR §9.04(3)(a)(3); 810 CMR § 10.04(3)(a)(3).

2. **Designer Contract Considerations.** Similarly, as set forth in 810 CMR §9.04(3)(b)(3) and 810 CMR § 10.04(3)(b)(3), whenever possible, the prequalification services and cost of the same should be included in scope of work of the designer delineated in the design contract. This is to protect the awarding authority from incurring unexpected and costly fees for the statutorily mandated tasks in the prequalification process. While an awarding authority may not know at the early stage in the building project whether prequalification is to be utilized, it should be cognizant of the fact that prequalification may be required and structure the solicitation for the design firm accordingly to include the potential for prequalification services. Best practices would call for the prequalification services and fees for conducting the same to be included in the scope of services provided for in the design contract so as to avoid the characterization of such services as "additional services".

D. Preparing the RFQ and Required Forms for Prequalification.

Once the prequalification committee has been established, the focus of the prequalification committee should be the completion of the DCAM Standard Forms for Prequalification (which includes the Notice of RFQ, the RFQ, the RFQ Interest Form, and the Statement of Qualifications response form). If the Awarding Authority has already prepared DRAFTS of these forms, the prequalification committee should be given an opportunity to review the DRAFTS and finalize these DRAFTS with any necessary changes or edits BEFORE the RFQ is advertised in accordance with Section III below.

III. Preparing the Prequalification Package

A. General Information/Location of DCAM Standard Forms.

As set forth in 810 CMR §§ 9.05, 9.06 and 810 CMR §§ 10.05, 10.06, DCAM has developed two "standard form" packages for *Prequalification* entitled "*Standard Forms for General Contractor Prequalification*" and "*Standard Forms for Subcontractor Prequalification*". Copies of these standard form packages are attached hereto as Exhibits A and B, respectively, and available electronically on DCAM's website at www.mass.gov/cam.

The DCAM standard forms incorporate the statutory evaluation categories and subcategories. In using the standard DCAM forms, it is important to understand that:

- The standard form packages are “generic” and need be customized by each awarding authority with project specific information relating to the project before issuing to interested general contractors and subcontractors. It is important that the project specific information be easily identified for review and response by interested general contractors and subcontractors.
- There are distinctions between the *Standard Forms for General Contractor Prequalification* and *Standard Forms for Subcontractor Prequalification*. Therefore, awarding authorities are cautioned not to use them interchangeably since the forms for general contractors and subcontractors mirror the discreet differences in the statutory submission requirements for general contractors versus subcontractors. Such distinctions are noted as necessary herein.

B. RFQ Interest Form

As part of the Standard Forms for Prequalification included in Exhibits A and B attached hereto, DCAM has included an “RFQ Interest Form”. The intent of this form is to allow interested general contractors and subcontractors to be notified if there are any changes in the project that might impact prequalification. Prior to issuing the RFQ, the awarding authority should customize this form to include project specific information and instructions as to where it should be submitted by interested general contractors and subcontractors that wish to be advised of pre-bid changes in the project. The failure of an interested general contractor or subcontractor to submit an RFQ Interest Form should not preclude it from consideration for prequalification if it responds to the RFQ in accordance with the requirements provided therein.

C. RFQ – Customizing For Your Project

Both the Standard RFQ form for general contractors and subcontractors developed by DCAM are divided into seven sections (Sections I through VII). Sections I through VI of the RFQ must be completed by the Awarding Authority PRIOR to issuing the RFQ in order to provide notice to interested general contractors and subcontractors regarding specific project information and details of the administrative aspects of the prequalification process.

A description of and instructions on each section of the standard RFQ form is as follows below.

- **Section I of the RFQ: General Project Information.** This section is intended to provide very general information to interested general contractors and subcontractors. Using an electronic version of DCAM's RFQ form, Awarding Authorities should insert into the RFQ form the following general information:
 - Name of Awarding Authority
 - Project No.
 - Project Name
 - Project Location
 - Project Description
 - RFQ Informational Meeting (if applicable)
 - Optional Site Visit (if applicable)
 - Submission Deadline
 - Submission Address
 - Estimated Construction Cost
 - Estimated Project Duration
 - Name of Owners' Project Manager
 - Name of Project Architect
 - Any Project Specific Requirements (i.e. PLA, MBE, WBE, etc.)

- **Section II of the RFQ: Detailed Project Description.** This section of the RFQ is where the awarding authority has the opportunity to describe its project and outline the expected scope of work. In order to get the best quality responses to the RFQ, Awarding Authorities are advised to provide as much substantive detail about the project as possible in this section of the RFQ.

- **Section III of the RFQ: General Instructions.** This section of the RFQ is where the awarding authority provides notice of the prequalification process and requirements to interested general contractors and subcontractors. It is important for the awarding authority to detail instructions in all of the following areas as set forth in DCAM's standard RFQ forms:
 - **Contents of Statement of Qualifications Package.** In this subsection of the RFQ, the awarding authority must provide notice of all required forms that must be submitted by interested general contractors and subcontractors in order to be considered for prequalification.

 - **Submission Deadline.** In this subsection of the RFQ, the awarding authority must provide notice to interested general contractors and subcontractors of the submission deadline and requirements. While the deadline for Submission is indicated generally in *Section I*, the awarding authority issuing the RFQ should indicate all required details and

instructions for the actual submission of responses here.

- **Required Exterior Label for SOQ Application Package Envelope.** In this subsection of the RFQ, the awarding authority must provide notice to interested general contractors and subcontractors of any specific references required on the labels of the SOQ packages submitted for consideration.
- **RFQ Informational Meeting specifics (if applicable).** If the awarding authority intends to conduct an informational meeting prior to the RFQ submission deadline, notice of the date, time and location of that meeting should be included in this subsection of the RFQ.
- **Optional Site Visit specifics (if applicable).** If the awarding authority intends to conduct an optional site visit prior to the RFQ submission deadline, notice of the date, time and location of that visit should be included in this section of the RFQ.
- **Reviewing/Availability of Contract Documents.** For the majority of projects, Awarding Authorities need not allow interested general contractors or subcontractors to review drawings, specifications and other contract documents during the prequalification *process*. To the extent they are completed and available for review, however, it may be beneficial to allow interested general contractors and subcontractors to review in order to increase interest in the project. If such review is to be permitted, however, it should provide notice of the same in this subsection of the RFQ.
- **Notice of Subcontractor Prequalification.** Where an awarding authority is prequalifying all or some subcontractors, notice of the specific subcontractors to be prequalified should be indicated in this subsection of the RFQ. This should be included in both the general contractor RFQ and the subcontractor RFQ so that there is no confusion as to the subcontractor trades subject to prequalification on the project at issue. For example, if the project requires mandatory prequalification, the list of all subcontractor trades utilized on the project subject to prequalification pursuant to M.G.L. § 44D ¾ should be clearly indicated. Similarly, where the project is subject to discretionary prequalification and the awarding authority is electing to prequalify only certain trades for the project, those trades should be clearly indicated in the RFQ.

- **Additional Instructions.** To the extent that there are any special instructions or additional information necessary for the prequalification process, Awarding Authorities must provide notice of the same in this subsection of the RFQ.
- **Section IV of the RFQ: Overview Of Prequalification Process.** The purpose of this section of the RFQ is to provide notice to interested general contractors and subcontractors that prequalification is being utilized on the project and that the RFQ is being issued pursuant to M.G.L. c. 149, § 44D½ and/or § 44D¾. It must be clearly stated that interested general contractor or subcontractor firms wanting to provide services for the construction of the project described in *Section I and Section II* MUST submit a SOQ in response to this RFQ to the awarding authority as instructed in *Section III and Section VII*.
- **Section V of the RFQ: Administration/Schedule For Prequalification Process.** In this section of the RFQ, the awarding authority must provide notice to interested general contractors and subcontractors regarding the expected timing and schedule for the prequalification process. While some of the information contained in this section will be duplicative of other portions of the RFQ, it is important that the awarding authority provide the information.
- **Section VI of the RFQ: Evaluation Procedure/Criteria For Prequalification Selection.** An interested general contractor or subcontractor needs a minimum of 70 points to be Prequalified for a particular project. In this Section of the RFQ, the awarding authority is required to give notice of the prequalification evaluation procedure and evaluation categories and the allocation of points in each evaluation category to interested general contractors and subcontractors. In evaluating the SOQs submitted by interested general contractors and subcontractors and awarding points to each evaluation category and subcategory, the prequalification Committee should ensure that the criteria and process they use is applied consistently and equally to all interested general contractors and subcontractors.
 - **General Evaluation Categories.** The *Construction Reform Law* prescribes 4 general evaluations categories and required point allocations that the prequalification committee must utilize to evaluate interested general contractors and subcontractors for prequalification. In this section of the RFQ, the awarding authority must provide notice of each of these general evaluation categories and the statutory point allocation for each as indicated. The Awarding Authority has

no authority to modify the statutory point allocations provided.

1. *Management Experience - (50 points available in this category; minimum of 25 points required in this category for prequalification approval)*
2. *References - (30 points available in this category; minimum of 15 points required in this category for prequalification approval)*
3. *Capacity to Complete Projects - (20 points available in this category; minimum of 10 points required in this category for prequalification approval)*
4. *Mandatory Requirements - (no points assigned)*

➤ **Evaluation Subcategories.** *The Construction Reform Law also dictates subcategories within each of the required general categories above that the prequalification committee must review and measure during the evaluation process. As indicated in Section IA above, the Awarding Authority does have the discretion to allocate the points provided for in each evaluation category among the statutory subcategories. Once allocated, however, the Awarding Authority must give notice of the same and shall not deviate from the allocation of the subcategory points. The statutory subcategories are as follows:*

1. ***Management Experience*** - *(50 points available in this category; minimum of 25 points required in this category for prequalification approval)*
 - a. ***Business Owners:*** For this statutory subcategory, the awarding authority should request the name, title of the business owners of the interested general contractor or subcontractor, including a detailed description of the role and job responsibilities, scope of work and numbers of years with the firm for each of the business owner(s) of the firm. The awarding authority must also give notice of the number of points it has assigned to this subcategory in the RFQ. While the scoring of interested general contractors and subcontractors for this subcategory is within the discretion of the prequalification committee, the scoring should be conducted on a fair and

unbiased basis and should consider the level of experience that the business owners listed in the SOQ have in successfully running a construction contracting business. (Note: If the interested general contractor or subcontractor is a wholly owned subsidiary then individuals do not need to be named but only the name of the parent company is necessary).

- b. **Management Personnel:** For this statutory subcategory, the awarding authority should request the name, title, including a detailed description of the role and job responsibilities, scope of work, education, construction experience, years with the firm and list of all projects completed for all management personnel who will have any direct or indirect responsibility over the Project, including but not limited to project executives, project managers, field superintendents and field engineers. While there is no limit on the reporting time period provided for in the statute, limiting the reporting period to five (5) years should provide sufficient information to the awarding authority to reasonably evaluate the experience of the proposed management team. The awarding authority must also give notice of the number of points it has assigned to this subcategory in the RFQ. While the scoring of interested general contractors and subcontractors for this subcategory is within the discretion of the prequalification committee, the scoring should be conducted on a fair and unbiased basis and should consider the level of experience that the proposed managers have had successfully managing projects of similar size and scope.
- c. **Similar Project Experience:** For this statutory subcategory, the awarding authority should take full advantage of the opportunity to define what it deems to be a "similar project" and then request the project name(s), description, scope of work, original contract sum, final contract sum with explanation, and date of completion for each and every "similar project" undertaken by the firm during a specific period of time. In defining the "similar project experience" it is looking for, an awarding authority should

specify the type of similar experience sought for the project. For example, projects may be considered “similar” when they are of similar size, budget or program type; employ similar specialized sub-trades; have similar scheduling requirements; have similar site constraints; have similar operating constraints, such as being occupied or having similar security constraints; involve renovation of existing structure; or involve historic preservation issues. The awarding authority must also give notice of the number of points it has assigned to this subcategory in the RFQ. While the scoring of interested general contractors and subcontractors for this subcategory is within the discretion of the prequalification committee, the scoring should be conducted on a fair and unbiased basis and should consider the level of experience of the interested general contractor or subcontractor on projects of a similar scope and size provided by interested general contractors and subcontractors in Schedule C of the SOQ. In its evaluation of the information provided in Schedule C, the prequalification committee should not automatically deduct points for change orders indicated in Schedule C (i.e. where the amounts reported in *Original and Final Contract Amount and Explanation*” column of Schedule C indicate that there were change orders on a particular project). For example, there may be instances where change orders are agreed upon and executed between an owner and contractor as the result of owner directed changes in scope, design changes or defects or otherwise and the existence of change orders should not be construed negatively against the contractor.

- d. **Terminations:** For this statutory subcategory, the awarding authority should request a list of any projects on which the firm was the interested general contractor or subcontractor was terminated, held in default, or failed to complete the work and require the response to include the name of the project, the timeframe of the project and circumstances surrounding the termination or default consistent with the

information submitted to the DCAM Certification office through the project evaluation requirement and process. (See Section VI(2)(c) below. The awarding authority must also give notice of the number of points it has assigned to this subcategory in the RFQ. While the scoring of interested general contractors and subcontractors for this subcategory is within the discretion of the prequalification committee, the scoring should be conducted on a fair and unbiased basis and should consider the nature of the terminations reported by the interested general contractor or subcontractor in Schedule D of the SOQ. In its evaluation of the information provided in Schedule D, the prequalification committee should not automatically deduct points for terminations reported in Schedule D without consideration of the reason for termination provided. For example, a contractor may have reasonably terminated the contract for lack of payment and such termination should not be construed negatively against the contractor.

- e. ***Legal Proceedings:*** For this statutory subcategory, the awarding authority should request interested general contractor and subcontractor to provide information regarding each and every legal proceeding, administrative proceeding and arbitration currently pending or concluded adversely against it which relate to the procurement or performance of any public or private construction contract. General contractors are required to provide information from within the past five (5) years and Subcontractors are required to provide information from within the past three (3) years. The awarding authority must also give notice of the number of points it has assigned to this subcategory in the RFQ. While the scoring of interested general contractors and subcontractors for this subcategory is within the discretion of the prequalification committee, the scoring should be conducted on a fair and unbiased basis and should consider the size, scope and nature of the legal proceedings reported by the interested general contractor or subcontractor

in Schedule E of the SOQ. In response to this portion of the RFQ, general contractors are only required to report in Schedule E those legal proceedings which relate to the procurement or performance of a construction contract. Subcontractors are required to report the same but have a further limitation on this reporting requirement in that they are not required to report any actions that primarily involve personal injury or workers' compensation claims, or where the sole cause of action involves the subcontractor's rights for direct payment under M.G.L. c. 30, §39M. In its evaluation of the information provided in Schedule E, the prequalification committee should not automatically deduct points for legal proceedings reported in Schedule E without consideration of the explanation provided. For example, a contractor may have reasonably filed suit against an owner or subcontractor and such legal proceedings should not be construed negatively against the contractor.

- f. *Safety Record:*** For this statutory subcategory, the awarding authority should request interested general contractors and subcontractors to provide the three (3) year history of its workers' compensation experience modifier. The awarding authority must also give notice of the number of points it has assigned to this subcategory in the RFQ
- g. *MBE/WBE and Workforce Compliance Record:*** This statutory subcategory applies to interested general contractors only. For each interested general contractor, the awarding authority must seek information and evidence of the general contractor's compliance record with respect to Minority Business Enterprise and Women Business Enterprise goals and workforce inclusion goals for all projects completed which had such goals. While there is no limit on the reporting time period provided for in the statute, limiting the reporting period to five (5) years should provide sufficient information to the awarding authority to reasonably evaluate the MBE/WBE and workforce compliance record. The awarding

authority must also give notice of the number of points it has assigned to this subcategory in the RFQ.

2. **References** - (30 points available in this category; minimum of 15 points required in this category for prequalification approval)

a. **Project References:** For this evaluation subcategory, the awarding authority must request interested general contractors and subcontractors to provide project references for projects that meet the definition of “similar projects”. The awarding authority must also give notice of the number of points it has assigned to this subcategory in the RFQ. In order to conduct the reference checking process with consistency, the prequalification committee should document information obtained through the reference checking process on Project Reference Reports. A Sample Project Reference Report is provided in Exhibit H. Before assigning points in this evaluation category, the prequalification committee should endeavor to check all references provided and check the DCAM evaluation files for “similar projects” listed in the SOQ.

b. **Credit References:** For this evaluation subcategory, the awarding authority may dictate the number of credit records that it is seeking from interested general contractors and subcontractors. The awarding authority must also give notice of the number of points it has assigned to this subcategory in the RFQ. In order to conduct the reference checking process with consistency, the prequalification committee should document information obtained through the reference checking process on Credit Reference Reports. A Sample Credit Reference Report is provided in Exhibit G.

c. **Public Project Record:** For this statutory subcategory, the awarding authority must request a list of all completed public building construction projects (as defined by M.G.L. c.

149, § 44A) worked on during the past three (3) years with the project name, scope of work, contract value, start date, completion date, status of the project, owner's name (including address, telephone number, fax number, and contact person) and architect's name (including address, telephone number, fax number and contact person). The awarding authority must also give notice of the number of points it has assigned to this subcategory. In order to conduct the reference checking process with consistency, the prequalification committee should document information obtained through the reference checking process on Project Reference Reports. A Sample Project Reference Report is provided in Exhibit H. In addition, as indicated in Part Two: Section IV herein, during the evaluation process, the prequalification committee is encouraged to review and confirm the information reported by interested general contractors and subcontractors in the SOQ response and schedules by reviewing the mandatory public project evaluations submitted by awarding authorities to the DCAM Certification Office in compliance with M.G.L. c. 149 §44D(7)). The prequalification committee should contact the DCAM Certification Office for this important reference checking information.

3. ***Capacity to Complete Projects - (20 points available in this category; minimum of 10 points required in this category for prequalification approval).*** (NOTE: *As set forth in M.G.L. c. 44D½(e)(3) and 44D¾(e)(3), the financial information submitted by interested general contractors and subcontractors for this evaluation category are not to be considered "public records". Interested general contractors and subcontractors may opt to submit this information in a sealed envelope attached to the SOQ to preserve its confidentiality. In any case, whether submitted in a sealed envelope or not, awarding authority's reviewing this financial information are to take appropriate precautions to secure this confidential information from inappropriate distribution).*

- a. **Audited Financial Statement:** This statutory subcategory is only required for interested general contractors. The awarding authority should request it in this section of the RFQ when prequalifying general contractors. The awarding authority must also give notice of the number of points it has assigned to this subcategory in the RFQ. While the scoring of interested general contractors in this subcategory is within the discretion of the prequalification committee, the scoring should be conducted on a fair and unbiased basis and should include a review of the audited financial statements to determine whether the general contractor is in a sufficiently strong financial position to perform a project of this size. The prequalification committee may seek assistance in this financial review to the extent it does not have the expertise to make an objective determination of financial capacity.
- b. **Annual Revenue.** This statutory subcategory is only required for interested subcontractors. The awarding authority should request it in this section of the RFQ when prequalifying subcontractors. The awarding authority must also give notice of the number of points it has assigned to this subcategory in the RFQ. While the scoring of subcontractors in this subcategory is within the discretion of the prequalification committee, the scoring should be conducted on a fair and unbiased basis and should include a review of the annual revenue information provided to determine whether the subcontractor is in a sufficiently strong financial position to perform a project of this size. The prequalification committee may seek assistance in this financial review to the extent it does not have the expertise to make an objective determination of financial capacity.
- c. **Revenue Under Contract:** For this statutory subcategory, the awarding authority should request interested general contractors and subcontractors to submit revenue under contract for the next three (3) years. The awarding authority must also give notice of the number of points it has assigned to this

subcategory the RFQ. While the scoring of general contractors and subcontractors in this subcategory is within the discretion of the prequalification committee, the scoring should be conducted on a fair and unbiased basis and should include a review of the revenue under contract information provided to determine whether the general contractor or subcontractor is in a sufficiently strong financial position to perform a project of this size. Prequalification committees should note that an interested general contractor or subcontractor having more revenue under contract is not necessarily an indication of greater financial capacity to perform the project; nor is less revenue under contract a necessarily an indication that an interested general contractor or subcontractor does not have sufficient capacity to perform the project. As such, to the extent that the prequalification committee does not have sufficient expertise to make an objective financial determination regarding financial capacity it is encouraged to seek assistance in this financial review.

4. ***Mandatory Requirements*** - (no points assigned)
 - a. ***Bonding Capacity***: For this statutory subcategory, the awarding authority must request all interested general contractors and subcontractors to provide a commitment letter (from a surety company licensed to do business in the Commonwealth of Massachusetts and whose name appears on the United States Treasury Department Circular 570) for payment and performance bonds in an amount equal to or greater than one hundred percent (100%) of the contract value (which will be the estimated construction cost for Project for interested general contractors and the estimated contract amount of the filed sub-bid trade work for interested subcontractors) as set forth in *Section I*.
 - b. ***DCAM Certification***: For this statutory subcategory, the awarding authority must require all interested general contractors and subcontractors to submit a currently valid

Certificate of Eligibility issued by DCAM to the pursuant to M.G.L. c. 149, § 44D.

- c. **Update Statement:** For this statutory subcategory, the awarding authority must request all interested general contractors and subcontractors to provide a current and completed Update Statement prepared by the interested general contractor or subcontractor.

- **Section VII of the RFQ: *Additional Information.*** This section of the RFQ is for any other project specific information that would impact the prequalification process. NOTE: The awarding authority is not permitted to include additional criteria here. This section is only provided to allow the awarding authority to provide information about the project that it deems relevant to interested general contractors and subcontractors and may be important to attract quality firms for the project.

D. Statement of Qualifications Response Form – Customizing for Your Project

Ideally the prequalification process will attract the interest of qualified general contractors and subcontractors to the project. Therefore, it is essential that the prequalification process be as “user friendly” as possible for interested general contractors and subcontractors.

The Statement of Qualifications (SOQ) form is the standard form developed by DCAM on which interested general contractors and subcontractors respond to an RFQ. In order to ensure consistency in the responses, it is imperative that the awarding authority customize the Statement of Qualifications form to be used for responding to the RFQ with project specific information.

It is particularly important that the SOQ forms issued for response to the RFQ include reference to the allocated evaluation points for each evaluation subcategory and the inclusion of a clear and concise definition of what the awarding authority will consider “similar project experience.”

The awarding authority should also customize the required schedules and attachments to the SOQ forms for ease of reference by interested general contractors and subcontractors.

IV. Notice and Advertisement of the RFQ

An awarding authority utilizing prequalification must give public notice of the RFQ. Sample advertisements for this purpose are attached hereto as Exhibit E.

A. Where to Advertise

The Construction Reform law requires that an RFQ for prequalification be advertised:

1. In a newspaper of general circulation in the area in which the building project is located
2. In the Central Register published by the Secretary of the Commonwealth pursuant to section 20A of chapter 9;
3. In the COM-PASS system, so called.

While not required, an awarding authority may also wish to consider advertising in other project notification services as well in order to maximize the responses to the RFQ and ensure an adequate pool of interested general contractors and subcontractors that may ultimately yield sufficient numbers of prequalified bidders (i.e. Dodge Reports, Reed Construction Data).

B. When to Advertise

The public notice and solicitation shall be given not less than 2 weeks before the deadline for submitting responses to the RFQ. Ideally, however, it should be given as early as possible to encourage the greatest response to the RFQ.

V. Processing of Responses to RFQ/Register of Responders

The Construction Reform law does not require awarding authorities to publically open responses to an RFQ issued for prequalification. Awarding Authorities must, however, prepare a "Register of Responders" logging the receipt of each response that is open to public inspection. A sample Register of Responders is attached hereto as Exhibit F.

VI. Evaluation Process and Criteria. Absent fraud or collusion, the prequalification committee has discretion with regard to the review and evaluation of the SOQs submitted for prequalification consideration by interested general contractors and subcontractors. Such review should be done in a fair and consistent manner, however, as outlined below:

- ### **A. Establishment of Realistic Evaluation Schedule.** The prequalification process can be time consuming. In order to conduct the process as efficiently as possible, it is suggested that upon receipt of the SOQs from interested general contractors and subcontractors, the prequalification committee should immediately set a realistic review and evaluation

schedule for meetings and time necessary to review the SOQs and conduct the required reference checks and deliberations. Every effort should be made to adhere to the review schedule agreed to by the prequalification committee.

- B. Distribution of Copies of the SOQs.** Providing sufficient copies are requested from and submitted by interested general contractors and Subcontractors, each member of the prequalification committee should receive a copy of the SOQ response from each firm submitting one.
- C. Independent Review of the SOQs.** In an effort to conduct the evaluation process efficiently, the members of the prequalification committee are strongly encouraged to review the SOQ submissions prior to the scheduled meetings with the prequalification committee as a whole. During that independent evaluation it may be helpful for Individual members of the prequalification committee to make personal notes on issues for discussion during the prequalification committee meetings, but individual members should NOT score or evaluate the SOQ responses until such time as the prequalification committee has occasion to meet as a group and review the issues and concerns raised by all members.
- D. Delegation of Aspects of Prequalification Review.** While the review of the responses is intended to be a collective effort by the entire prequalification committee, may seek assistance from those that may have expertise in a particular areas covered by the RFQ and have that information reported back to the prequalification committee.
 - 1. Credit /Project Reference Checking.** The required reference checking for the prequalification process may be delegated and divided by the prequalification committee providing that it is done in a fair and consistent manner and that such reference checking is documented by the individual(s) conducting the reference checks on behalf of the prequalification committee. All questions and inquiries made of references should be consistent and uniform and should be documented by the reference checker. For this purpose, DCAM has developed a sample of reference checking to be used for reference checking at Exhibits G and H, respectively.
 - 2. Public Project References DCAM Certification/Evaluation Files.** In checking the references submitted by interested general contractors or subcontractors for public project, the prequalification committee may rely on the mandatory public project evaluation files maintained and kept by the DCAM Certification Evaluation records in accordance with M.G.L. c. 44D, §44D(7).
- E. Prequalification Committee Meetings/Deliberations.** Depending on the number of responses to the RFQ and the number of subcontractor trades being prequalified, the documents required to be reviewed for the

evaluation process required of the prequalification committee may be quite voluminous and time consuming. The prequalification committee should meet and review all of the applications and supporting information provided or obtained through the reference check process before any scores are assigned to any interested general contractor or subcontractor. prequalification committee members should understand that the prequalification process may present a significant time commitment.

F. Consideration of Information From Third Parties. The prequalification committee may, at its option, review and consider unsolicited information submitted to it by third parties relating to the application of interested general contractors or subcontractors for prequalification. If the prequalification committee does consider such unsolicited information and such information is determinative in the deduction of points or the prequalification decision regarding an interested general contractor or subcontractor, then due process considerations require that the interested general contractor or subcontractor impacted should be afforded the opportunity to review the information submitted and respond to it accordingly.

G. Evaluation Scoresheet. The prequalification committee should evaluate each applicant and prepare a SINGLE scoresheet for each interested general contractor or subcontractor. The Prequalification Evaluation Scoresheets to be used by the prequalification committee for general contractors and subcontractors is attached hereto as Exhibits C and D

VII. Required Notice of Prequalified General Contractors and Subcontractors

Once the prequalification committee has determined which of the interested general contractors and subcontractors shall be considered prequalified for the project, it is required to give notice to those general contractors and subcontractors as well as notice to those that were not prequalified. Sample notice letters indicating that general contractor or subcontractor has been prequalified and/or has not been prequalified are attached hereto as Exhibit I and Exhibit J, respectively.

VIII. Invitation to Bid to Prequalified General Contractors and Subcontractors

Once the prequalification process is completed, the awarding authority must still give notice and advertise that it is soliciting bids for the project. The notice and advertisement must, however, clearly indicate that it will accept bids from only those firms that were previously prequalified by the prequalification committee. A sample advertisement giving notice of the request for proposals from prequalified general contractors or subcontractors is attached hereto as Exhibit K.

Where prequalification is mandatory and an awarding authority has prequalified at least 3 interested general contractors and/or subcontractors for a particular trade category, but less than 3 submit general bids or bids in a particular trade

category, the awarding authority may accept the bids if they are deemed reasonable and competitive or it may opt to reject all bids and reinstate the prequalification process in its entirety. In no event, however, where prequalification is mandatory, should the awarding authority solicit bids from general contractors or subcontractors who have not been prequalified unless and until all requirements of §§ 9.08 (11) and 10.08(11) have been met.

IX. Public Records Considerations

The *Construction Reform Law* specifically provides that the following shall be open for public inspection:

- **Register of Responders** – immediately upon opening of the SOQ responses.
- **Statements of Qualifications (excluding financial information) after the evaluation process is completed.** (NOTE: As set forth in M.G.L. c. 44D½(e)(3)(i), the financial information submitted by interested general contractors in response to this requirement are not public records. Therefore, interested general contractors may submit this information in a sealed envelope along with the SOQ to preserve its confidentiality. An awarding authority reviewing this financial information is required to take appropriate precautions to secure this confidential information from inappropriate distribution). It also should be noted Update Statements submitted by interested general contractors and subcontractors are NOT public records.

An interested general contractor or subcontractor may obtain its own evaluation score upon completion of the prequalification process.

Other records regarding the prequalification process may also be available pursuant to the Massachusetts Public Records Law, M.G.L. c. 4, §7(26).

X. Standard of Review

The *Construction Reform Law* provides that the decision of an awarding authority's prequalification committee "shall be final and shall not be subject to appeal except on grounds of fraud or collusion". In the event that an interested general contractor or subcontractor or third party elect to challenge a determination of prequalification by the prequalification committee, the party challenging the prequalification committee's decision would have to demonstrate that the prequalification committee was influenced by such fraud or collusion by prequalification committee members or that the decision of the prequalification committee was based on information that was a knowingly and intentionally false statement, omission, or act which has the *natural tendency* to influence the prequalification decision.