

810 CMR: DIVISION OF CAPITAL ASSET MANAGEMENT

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

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8.01: Definitions

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

Building Project, any project for the construction, reconstruction, installation, demolition, maintenance or repair, of a building.

Capacity Ratings, the maximum dollar limits imposed on a Contractor's ability to bid.

Categories of Work, various classes of work in the building construction industry, as established in DCAM's Guidelines.

Commissioner, the Commissioner of the Division of Capital Asset Management.

Completion, for the purpose of 810 CMR 8.00, shall be use and/or occupancy, or upon issuance of a certificate of use and/or occupancy, or termination of a Building Project, *whichever is earlier*.

Contractor, a business engaged in the construction, reconstruction, demolition, installation, maintenance, or repair of buildings.

DCAM, the Division of Capital Asset Management and Maintenance of the Executive Office for Administration and Finance.

Guidelines, written standards, policies, and procedures for the certification of contractors by DCAM issued by the Commissioner.

Interim Evaluation, an evaluation of the Contractor completed by an Awarding Authority at the mid-point of a Building Project.

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

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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.
- (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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- (c) Contractor's Single Project Limit,
- (d) Contractor's Aggregate Work Limit,
- (e) time period during which the certificate of eligibility shall be valid, and
- (f) any other information the Commissioner may prescribe.

(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.

8.04: Submission of Bid

(1) Awarding Authorities shall reject any bid submitted without an appropriate Certificate of Eligibility and Update Statement.

(2) An Awarding Authority, in determining the lowest eligible and responsible bidder, shall consider the information submitted in the Update Statement and must review the Contractor's certification file from DCAM.

8.05: Correction of Update Statements

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

(2) Correction of Other Defects. An Awarding Authority may, in its discretion, give a Contractor notice of non-material errors and omissions in the Contractor's Update Statement and provide an opportunity to correct its Update Statement. However, the Contractor shall not be allowed to make corrections to an Update Statement in the event of material errors or omissions filed in the Update Statement with the Contractor's bid. The Awarding Authority shall advise DCAM of any material erroneous statements or omissions in a Contractor's Update Statement.

8.06: Update Statement Requirements

In addition to any other information called for in the Update Statement, the Update Statement shall require the Contractor to list each public or private construction project that the Contractor 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.

8.07: Capacity Limits

(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.

(2) The 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 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 Contractor's incomplete work under its currently held contracts, which shall be determined by adding together the annualized value of the incomplete work under each of the Contractor's currently held contracts.

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,

(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 shall not issue Capacity Ratings for Sub-bidders. Sub-bidders that are bonded shall provide evidence of said bonding to DCAM.

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.

(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 8.00: M.G.L. c. 149, § 44A through 44J and M.G.L. c. 149A.

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