



# *The Commonwealth of Massachusetts* *Division of Capital Asset Management*

## **CERTIFICATION GUIDELINES AND PROCEDURES FOR SUB-BIDDERS AND AWARDING AUTHORITIES**

<b>I.</b>	<b>PREFACE</b>	<b>p. 2</b>
	Categories of Work	p. 2
<b>II.</b>	<b>INFORMATION ON CONTRACTOR CERTIFICATION APPLICATION</b>	<b>p. 4</b>
A.	Submission of Application	p. 4
B.	Application Requirements	p. 5
C.	Threshold Certification Requirements	p. 6
<b>III.</b>	<b>PROCESSING OF APPLICATION FOR CERTIFICATION</b>	<b>p. 7</b>
A.	Evaluation of Completed Projects	p. 7
B.	Calculation of Average Project Rating of Contractors' Performance	p. 11
C.	Calculation of Overall Numerical Rating	p. 12
D.	Certification of Related Entities	p. 13
E.	Certification of New Companies Formed from Certified Companies	p. 14
F.	Certification of Joint Ventures	p. 15
<b>IV.</b>	<b>DENIAL OF CERTIFICATION</b>	<b>p. 15</b>
<b>V.</b>	<b>APPEAL RIGHTS</b>	<b>p. 17</b>
<b>VI.</b>	<b>INFORMATION FOR PUBLIC AWARDING AUTHORITIES</b>	<b>P. 17</b>

## I. PREFACE

The Division of Capital Asset Management and Maintenance ("DCAM"), pursuant to MGL Chapter 149, Section 44D hereby issues these Certification Guidelines and Procedures for Sub-Bidders and Awarding Authorities which set forth the procedures and criteria governing the eligibility of contractors for public building construction projects in the Commonwealth of Massachusetts. DCAM reserves the right to revise and amend these guidelines and procedures at any time, without prior notice.

### Categories of Work

- A. A contractor who meets eligibility requirements may be certified in one or more of the standard categories of work listed below.
1. **Acoustical Tile.** Installation of tile-shaped blocks of sound-absorbent material used for ceilings or as wall facing within a building.
  2. **Electrical Work.** Installation, renovation, repair and maintenance of electrical wiring, circuits, panel boards, fixtures and equipment within a building, including such incidental or related work as is customarily performed by those in the electricians' trade. Certification in this category requires possession of a Massachusetts Master Electrician's License.
  3. **Elevators.** The installation, maintenance and repair of elevators, handicapped accessible chair lifts, moving stairs, or dumbwaiters within a building.
  4. **Fire Protection Sprinkler Systems.** Installation, renovation, repair and maintenance of fire protection sprinklers in buildings including such incidental or related work as is customarily performed by those in the Fire Protection Sprinkler Systems' trade.
  5. **Glass and Glazing.** Installation and securing of glass in prepared openings in windows, door panels, screens, partitions, etc. that are not part of a correlated window system.
  6. **HVAC.** Installation, renovation repair and maintenance of the systems and apparatus required, collectively or individually, to provide comfort heating, ventilation and/or cooling within or associated with a building, including such incidental or related work as is customarily performed by those in the HVAC trade. This category does not include sheet metal work by itself.
  7. **Lathing and Plastering.** The application of, but not limited to, plaster, Keene cement plaster, furring, metal and gypsum lathing, scratch coat and lathing for ceramic tile walls, and plaster ceiling suspension systems to a building.

8. **Marble.** Installation/application of marble, including but not limited to, toilet and shower compartments, counters, cladding, fixed furnishings including fountains, thin skin exterior and interior, granite, and limestone walls and facings, marble and pre-cast terrazzo treads and risers, blue stone and slate walls and floors, and stone window stools and thresholds to a building.
9. **Masonry Work.** Installation, renovation, repair and maintenance of masonry units composed of concrete, stone, or brick which are part of a building, including such incidental or related work as is customarily performed by those in the masons' trade.
10. **Metal Windows.** Installation to a building of steel windows, aluminum windows, detention windows and screens, and entrance and sidelight systems if a part of a correlated window system.
11. **Miscellaneous and Ornamental Iron.** Installation of miscellaneous and ornamental iron including, but not limited to, steel chairs, handrails and railings, ornamental metal, elevator ladders, ladders, balconies, catwalks, fire escapes, decorative grilles and screens, and any other non-standard metal items requiring custom fabrication and installation to a building.
12. **Painting.** Application of paint to interior and exterior surfaces of buildings and preparation of such surfaces for the purpose of receiving a finish coat of paint, including such incidental or related work as is customarily performed by those in the painting trade.
13. **Plumbing.** Installation, renovation repair and maintenance of pipes, fixtures and other apparatus in buildings for bringing in and distributing the water supply and removing liquid and water-borne wastes, including such incidental or related work as is customarily performed by those in the plumbers' trade. Certification in this category requires possession of a Massachusetts Master Plumber's License.
14. **Resilient Floors.** Installation of, but not limited to, vinyl tile, asphalt tile, rubber and other resilient tile, resilient sheet flooring, linoleum, resilient vinyl or rubber bases, resilient stair treads and adhesives to a building.
15. **Roofing and Flashing.** The installation of various types of roofing materials to a building, including shingles, slate, rubber, PVC and related flashing and drainage systems.
16. **Terrazzo.** Installation of terrazzo to a building including, but not limited to, sand cushion terrazzo floors, bond to concrete terrazzo floors, thin set terrazzo, conductive terrazzo floors, pre-cast terrazzo, and plastic-matrix terrazzo.
17. **Tile.** Installation of tile which includes, but is not limited to, ceramic floor and wall tile, quarry tile, glass mosaic tile, special shapes, setting materials and accessories to a building.

**18. Waterproofing, Damp-proofing, and Caulking.** Installation, renovation, repair or maintenance of materials required to make foundations, walls and other surfaces of a building damp-proof or impervious to water, including such incidental or related work as is customarily performed by those in the waterproofing and damp-proofing trade. This category does not include roofing by itself.

B. As allowed under 810 CMR 4.10 (3), awarding authorities may request DCAM to establish special categories of work when there is good reason to limit bidding to contractors possessing skills or abilities not covered by the above listed standard categories. Special categories are awarded on a project specific basis. It is the obligation of the awarding authority to notify potential bidders of the need to apply for certification in the special category. A contractor currently certified in a standard category of work need only submit an update statement and information outlining their experience and qualifications in the special category. DCAM reserves the right to waive or modify provisions of these procedures in connection with the certification of contractors in special categories.

## **II. INFORMATION ON CONTRACTOR CERTIFICATION APPLICATION**

### **A. Submission of Application**

1. Applications will be considered in the order which they are received by the certification office.
2. Renewal applicants may be eligible for up to one (1) extension to their Certificate of Eligibility, provided the applicant's Application is received by the Contractor Certification Office prior to the expiration date shown on the applicant's Certificate. If the current financial statement or bonding information causes reasonable doubt as to whether the applicant is financially sound, an extension may be denied.
3. Renewal applicants may request an extension to their Certificate of Eligibility prior to submitting their Application, however, the request must be signed and sworn under the pains and penalties of perjury that there have been no adverse changes in financial condition and bonding status since the date of the applicant's last certification. The request must be received by the Contractor Certification Office prior to the expiration date shown on the applicant's Certificate and signed by an officer or partner of the firm. Applicants will be requested by DCAM to provide their complete application and all required materials within thirty days of the applicant's original expiration date even though the extension may be for a longer period of time. Only one (1) extension may be granted.

## **B. Application Requirements**

In order to be deemed certified as being eligible for work on public building construction projects, the applicant must first complete the Application for Sub-Bidder Certificate of Eligibility (hereinafter referred to as the “Application”), pay the appropriate application fee in the form of a certified check, bank check, or money order, in an amount determined by the fee schedule outlined in 801 CMR, and provide all the following documents:

1. If the applicant is a corporation, a copy of Articles of Organization (or Massachusetts Foreign Corporation Certificate if out of state firm) and a signed copy of Massachusetts Corporation Annual Report (or signed Massachusetts Foreign Corporation Annual Report) for the most recent completed fiscal year.
2. If the applicant is a limited liability company (LLC), a copy of the Certificate of Organization and a copy of the LLC Annual Report (or Foreign LLC Annual Report) for the most recently completed fiscal year.
3. If the applicant is neither a corporation nor an LLC, the applicant must provide a copy of the firm’s business certificate, partnership agreement, or any other related documentation.
4. If the applicant is a Massachusetts entity which seeks to use a business name other than its legal name, a copy of the DBA or Business Certificate as filed with the clerk of the city or town where the business is located.
5. If the applicant is certified by the Massachusetts State Office of Minority and Women Business Assistance (SOMWBA), the applicant must provide evidence of such certification.
6. Resumes of all principal, management and supervisory personnel including copies of all licenses held.
7. Workers Compensation Insurance Binder or policy.
8. Most recent year-ending financial statement completed by an independent CPA and, if available, the most recent CPA-prepared mid-year financial statement. The statements must include a CPA cover letter, balance sheet, and statement of income. The statements must be CPA-compiled, CPA-reviewed or CPA-audited. Mid-year statements may be CPA-compiled. Applicants that have parent companies, affiliates, or subsidiaries must provide a stand-alone financial statement that pertains solely to the applicant. In such cases if no reviewed or audited financial statement is available, the applicant may provide an in-house generated report, provided it includes a balance sheet, statement of income, and reviewed or audited statement of the parent company.

9. If the applicant has payment and performance bonding, a recent, original letter from the applicant's bonding agent or surety company addressed to the Commonwealth of Massachusetts DCAM listing minimum single and aggregate project limits and the name of the surety. The surety must be on the most recent list of approved sureties issued by the United States Department of the Treasury.

### **C. Threshold Certification Requirements**

The applicant must meet the following requirements in order to be considered for certification:

#### **1. One Year in Business**

The applicant must have been in business for at least one year in the category of work for which certification is sought, and provide satisfactory evidence as such.

#### **2. Licensure Requirement**

- (a) The applicant must be licensed in the Category(ies) of Work for which certification is sought, where licensure is required by state law.
- (b) If a corporation is seeking certification in Plumbing and/or Electrical Work, the company must possess a valid Massachusetts Master license in the name of the owner or principal of the company seeking certification. If a license is required by law to perform any other category of work, the applicant must possess such license.

#### **3. Experience and Qualifications of Principal and Supervisory Personnel**

Resumes of the applicant's principals, management, and supervisory personnel must demonstrate their experience on past work is comparable in type and complexity of construction of the categories of work shown on the Application.

#### **4. Experience and Qualifications of Applicant- Projects Performed**

- (a) Projects listed in the Application are reviewed to determine whether the applicant has the experience and competence in trade work in building construction and has completed the minimum number of projects required for certification and that those projects are comparable in type to the categories of work for which certification is sought.
- (b) New applicants must have completed a minimum of three (3) projects, each with a minimum value of \$20,000, within the past three years in each category of work for which certification is sought.

## 5. Bonding

The applicant must provide specific details regarding the circumstances surrounding the invocation of bonds on any of their projects or projects of a successor company performed within the past three years.

## 6. Financial Responsibility

The applicant must be deemed financially responsible (i.e. able to perform its projects and meet its obligations). If the current financial statement causes reasonable doubt as to whether the applicant is financially sound (e.g. deficits in working capital and/or net worth, and/or a net loss that exceeds ten percent of the applicant's gross revenues shown on the statement), additional financial information such as a letter of explanation from the applicant's CPA or a more recent CPA-prepared quarterly financial statement may be requested.

## 7. Minimum Number of Project Evaluations

For new and renewal applicants, each applicant's record must show a minimum of three successfully completed projects in any one Category of Work listed in Section I (A) of these Guidelines.

# III. PROCESSING OF APPLICATION FOR CERTIFICATION

The applicant will be promptly notified in writing of any missing information or if clarification of submitted information is necessary. Failure of the applicant to satisfactorily respond to such notifications by supplying the necessary additional information will result in a denial of certification.

## A. Evaluation of Completed Projects

### 1. Selection of Projects for Evaluation for Both New and Renewal Applicants

#### (a) General Criteria

- (i) Projects must have entailed construction, reconstruction, installation, demolition, maintenance, or repair of a building. Projects must also have been completed within the past three years. A project will be considered complete if a certificate of use and/or occupancy has been issued. Except for purposes of establishing the minimum number of completed projects required for certification as set forth in Section II (C) (**Threshold Certification Requirements**), a project will also be considered complete if the applicant has been terminated on the project.
- (ii) Projects must include significant work in the category or categories for which certification are sought.

- (iii) The work in each category for which certification is sought must have been performed by the applicant's own employees, except for labor and materials customarily supplied by sub-contractors to those performing work in such category under current trade practices.
- (iv) Projects must not reflect dollar values less than the minimum values set forth below.
- (v) Projects identified in Section II (C)(5) (Bonding) shall be evaluated.
- (vi) Projects shall include both public and private jobs if the applicant has performed public and private work in a category for which certification is requested.
- (vii) If DCAM is aware of projects where the applicant is alleged to have caused significant problems or to have performed in an unsatisfactory manner, these projects shall be evaluated.
- (viii) Apart from the above criteria, the selection of projects for consideration should be random.
- (ix) Projects that indicate business and/or family ties with the applicant shall not be evaluated.
- (x) Projects must have been performed in the continental United States.

(b) New Applicants

- (i) For any one certification category, a minimum of three (3) projects with contract values of at least \$20,000 shall be evaluated.
- (ii) A single project may be used for multiple categories of work as long as the value of the work in each category meets the required minimum dollar amounts.

(c) Renewal Applicants

- (i) For each certification category in which a renewal applicant has completed additional projects since the date of the most recently issued annual Certificate of Eligibility, a minimum of one such additional project shall be evaluated, if possible.



- (ii) To remain certified in any category of work, a renewal applicant must have successfully completed (i.e. achieved an average project rating of 80 or greater) at least three (3) projects in such category, within the past three years, each with a minimum value of \$20,000. Evaluations compiled from previous certifications may be reviewed, if necessary, to ensure that the applicant has completed the required three projects. DCAM may also obtain evaluations of other projects not previously evaluated to ensure that the applicant has completed the required three projects.

## 2. Evaluations –General Information

DCAM shall consider all written evaluations of the applicant's performance on public and private construction projects completed within the past three years submitted by public awarding authorities and private owners subject to the following:

- (a) Each certified contractor shall be sent a copy of the Standard Contractor Evaluation Form with its annual Certificate of Eligibility, together with a notice directing the contractor to submit the form to every public agency for whom it performs a building project.
- (b) Only such evaluations received by DCAM as of the date of the completion of processing of the application will be considered. Evaluations received after the date of the completion of processing will be placed in the applicant's file folder and will not be considered until the next application unless the evaluation(s) cause reasonable doubt as to the contractor's competence and responsibility.
- (c) Any such evaluation provided on an outdated Standard Contractor Evaluation Form may be rejected, provided the public awarding authority or private owner shall first be given a reasonable opportunity to complete a new evaluation on the current form.
- (d) A written evaluation that is incomplete shall be rejected only after DCAM has made a reasonable effort to obtain the missing information.
- (e) DCAM may interview the evaluator or other persons with direct knowledge of the project in order to verify that the project meets the general criteria for evaluation set forth in Section III (A)(1) (Selection of Projects for Evaluation for Both New and Renewal Applicants) and that the information presented is accurate. Evaluations that do not satisfy the general criteria for evaluation or which DCAM determines to be unreliable shall not be considered.

- (f) If a written evaluation is submitted to DCAM by a public awarding authority or private owner for a project previously evaluated pursuant to Section III (A)(3) (Evaluations Obtained by DCAM Personnel via Telephone Interviews) below (or otherwise utilizing telephone interviews conducted pursuant to previous versions of the DCAM contractor certification procedures), the new evaluation will be considered as follows:
  - (i) If the evaluation is from the same person contacted by DCAM and a different numerical rating is given for the project, that rating will be substituted for the numerical rating obtained by DCAM.
  - (ii) If the evaluation is from a different person, the two ratings will be averaged, and the resulting average numerical rating will be assigned to the project.
- (g) Awarding Authorities or private individuals who wish to revise a Standard Contractor Evaluation Form they previously submitted may do so, and the previous evaluation shall be considered null and void, provided they include a written explanation for the revision acceptable to DCAM. Contractors who wish to dispute the content or rating scores documented on a Standard Contractor Evaluation Form may file written rebuttals to DCAM which shall become part of the Contractors' certification files. Evaluation rebuttals filed with DCAM shall serve as a reference for awarding authorities authorized to review contractors' files. However, rebuttals shall have no effect on either the content or the rating scores documented on the evaluation form, unless it can be clearly demonstrated by the applicant that the evaluation submitted should be deemed unreliable, and DCAM makes the determination that the evaluation is unreliable.

### 3. Evaluations Obtained by DCAM Personnel via Telephone Interviews

- (a) If no written evaluations of the applicant's completed projects have been submitted to DCAM by public awarding authorities or private owners, DCAM shall attempt to obtain evaluations of completed projects listed by the applicant in its Application as outlined in Section III (A) (**Evaluation of Completed Projects**) by conducting telephone interviews.
- (b) DCAM shall also attempt to obtain additional evaluations of completed projects listed on the applicant's Application using telephone interviews when:
  - (i) The written evaluations submitted by public awarding authorities and private owners and accepted for consideration by DCAM will not satisfy all of the general criteria for

selection under Section III (A)(1) (Selection of Projects of Evaluation for Both New and Renewal Applicants); or

- (ii) An insufficient number of written evaluations have been submitted by public awarding authorities and private owners and accepted for consideration by DCAM to provide the minimum number of project evaluations required under Section III (A)(1) (Selection of Projects for Evaluation for Both New and Renewal Applicants).
- (c) If DCAM is not satisfied that the written evaluations submitted by public awarding authorities and private owners and considered by DCAM represent an accurate and balanced assessment of the applicant's qualifications, DCAM shall obtain evaluations of up to two (2) additional recently completed projects using telephone interviews.
- (d) DCAM personnel shall use the Standard Contractor Evaluation Form as a questionnaire when obtaining evaluations of completed projects by means of telephone interviews.
- (e) When obtaining evaluations of projects by means of telephone interviews, a reference for each project will be contacted. The evaluation shall be obtained only from persons having personal knowledge of the applicant's performance on the project.
  - (i) If DCAM determines that the reference is not well informed or is affected by personal animosity or favoritism toward the applicant, a different reference on the project shall be contacted, if feasible.
  - (ii) If the information elicited is not consistent with the applicant's history, an additional reference for the project shall be contacted, if feasible.
- (f) When more than one evaluation form is completed on a single project, the numerical ratings are to be averaged. The applicant then receives the resulting average numerical rating as the numerical rating on the project.

## **B. Calculation of Average Project Rating of Contractors' Performance**

The numerical ratings derived from building construction projects are compiled in accordance with the provisions of Section III (A) (**Evaluation of Completed Projects**) and are recorded on a Numerical Rating Summary Sheet. In order to be considered passing, an evaluation must achieve a minimum score of 80.

## 1. New Applicants

- (a) The numerical ratings are then added and divided by the number of projects listed to determine the Average Project Rating. This average represents the applicant's Average Project Rating for the year.
- (b) An Average Project Rating of 80 is required for certification. If the Average Project Rating falls below 80, certification will be denied even if the applicant's Overall Numerical Rating, pursuant to Section III (C) (**Calculation of Overall Numerical Rating**) of these Guidelines, is above 80. If an applicant is denied certification due to their Average Project Rating being below 80, the applicant must wait a period of one (1) year from the date of DCAM's Final Determination to Deny before reapplying for certification.
- (c) In the event an applicant seeks certification in multiple categories, if the average numerical rating for any particular category falls below 80, DCAM shall deny certification in that category. Notwithstanding, all evaluations shall be included in the applicant's Average Project Rating.

## 2. Renewal Applicants

- (a) The numerical ratings for all individual projects completed within the past three years are recorded on the Rating Summary Sheet. The numerical ratings of these evaluations are added and divided by the number of projects listed to determine the Average Project Rating.
- (b) An Average Project Rating of 80 is required for certification. If the Average Project Rating falls below 80, certification will be denied.
- (c) In the event an applicant seeks certification in multiple categories, if the average numerical rating for projects or work in any particular category falls below 80, DCAM shall deny certification in that category. Notwithstanding, all evaluations shall be included in the applicant's Average Project Rating.

## C. Calculation of Overall Numerical Rating

The Overall Numerical Rating is derived from combining an applicant's Average Project Rating and the rating of Other Criteria (see "Other Criteria" as described in Section III (C)(2)). The Contractor must achieve a minimum Overall Numerical Rating of 80 or above. If either the Average Project Rating or the Overall Numerical Rating falls below 80, certification will be denied. Calculation of the Overall Numerical Rating shall be performed as described below:

### 1. Value of Average Project Rating in Calculating the Overall Numerical Rating:

The Average Project Rating, which is the average score on all projects as calculated above in Section III (B) (Calculation of Average Project Rating of

Contractors' Performance), shall be given a weight of 70 percent in determining the Overall Numerical Rating.

2. Value of Other Criteria in Calculating the Overall Numerical Rating:

The Other Criteria are set forth in 810 CMR 4.00 and covers the applicant's experience and work history over the previous three years. The Other Criteria shall be given a weight of 30 percent in determining the Overall Numerical Rating. The five criteria items below have a total value of 100 points. The actual value earned by the applicant will be determined by the number of points deducted, if any, based on the standards listed below.

- (a) Applicants that have legal and/or administrative proceedings settled or concluded adversely against them in which each award amount exceeded five percent of the applicant's gross revenues (shown on the applicant's most recent year-ending CPA-prepared financial statement) shall lose 3 points for each occurrence.
- (b) Applicants that are terminated from projects for cause or abandon projects shall lose 10 points for each occurrence, up to 2 such instances for a maximum of 20 points. 3 such occurrences will result in denial, as provided in Section IV (A)(2) (**Denial of Certification**).
- (c) Applicants that have performance bonds invoked wherein the surety is required to honor the terms of the bond of the applicant or its predecessors or its successors in interest shall lose 10 points for each occurrence, up to 2 such instances for a maximum of 20 points. 3 such occurrences will result in denial, as provided in Section IV (A)(2) (**Denial of Certification**).
- (d) Applicants that have OSHA violations in excess of \$1,000 each shall lose 2 points per occurrence.
- (e) Applicants that have an Experience Modification Rating (EMR) greater than or equal to 1.1 but less than 1.5 shall lose 5 points. Applicants with an EMR greater than or equal to 1.5, up to and including 1.99 shall lose 10 points. Applicants with an EMR greater than 2.0 shall be denied certification.

3. Calculation:

The weighted numbers from Sections A and B above shall be added together to achieve the Overall Numerical Rating.

**D. Certification of Related Entities**

- 1. To receive company wide certification, a company with separately located divisions must satisfy DCAM that all its assets and expertise will be made fully available to any division actually performing work for which DCAM certification is required.

2. To obtain certification specific to itself, a division of a company must demonstrate that it will be fully able to perform work within limits sought and meet all normal contractual and financial obligations.

#### **E. Certification of New Companies Formed from Certified Companies**

1. A new company formed from a certified company must submit an Application. This Section also pertains to certified companies that have been purchased, merged, or divided into separate corporations or LLCs. The applicant shall provide information about completed, in progress and pending projects for both the certified company and the new company, indicating which projects belong to the new company.
2. A new company will be considered to have been "formed from a certified company" if both of the following requirements are met:
  - (a) Evidence is presented that the certified company has ceased doing business and has been dissolved or is in the process of winding up its business, will take no new contracts and will be dissolved in the near future. Statements from the principals or officers of the certified company should be obtained, if necessary.
  - (b) Satisfactory evidence is presented that the new company grew out of the certified company, which may include a purchase and sale agreement or merger agreement and evidence of some or all of the following:
    - (i) Transfer of company stock
    - (ii) Transfer of management
    - (iii) Transfer of supervisory personnel
    - (iv) Transfer of employees
    - (v) Transfer of inventory
    - (vi) Transfer of equipment
    - (vii) Transfer of leases, utility accounts, etc.
    - (viii) Assumption of contracts, warranties, etc.
3. A recommendation to the DCAM Commissioner to certify a new company formed from a certified company shall be made if:
  - (a) Resumes are submitted for the new company's management showing that they have experience managing a company engaged in the same business as the new company. Such experience may have been with the certified company or with other companies; and
  - (b) Resumes are submitted for the new company's supervisory personnel showing that they have experience supervising projects of the same type and size as will be performed by the new company. Such experience may have been with the certified company or with other companies; and

- (c) The new company's financial statement shows that it is solvent; and
- (d) The new company has submitted the required bonding information, if applicable.

#### **F. Certification of Joint Ventures**

1. The joint venture as an entity must be certified to bid. Joint Venture Certificates of Eligibility are valid only for the specific project identified on the Joint Venture Certificate of Eligibility.
2. The joint venture must submit a copy of the joint venture agreement, signed by each participant, with its application for certification. The joint venture agreement must include the following;
  - (a) Breakdowns of the proportionate share of each participant in the joint venture (i.e. the percentage interest in the profits and assets or respective share in the losses and liabilities that result from the venture.)
  - (b) A statement indicating that, notwithstanding any agreements between the participants, each participant shall be jointly and severally responsible to the owner for all of the contractual undertakings of the joint venture.
3. Each participant must file an Application, except that a currently certified participant may submit an Update Statement in lieu of the Application.
4. All participants must be currently certified by DCAM in order to be eligible for Joint Venture certification.
5. At least one joint venture participant must be certified by DCAM in the category of work for which the joint venture seeks certification. In addition, the combined joint venture share of the individual participant(s) certified in that category must be at least 30 percent.

#### **IV. DENIAL OF CERTIFICATION**

In addition to the reasons listed in Section II (B) and (C) of these Guidelines, an applicant may be denied certification for the following reasons:

- A. An applicant that has had any of the following occurrences within the past three years shall be decertified or denied certification in any and all categories of work:
  1. A record of 3 or more Project Ratings, as defined in 810 CMR 4.00, that fall below the passing score of 80 on 3 or more separate building projects.
  2. A record of 3 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 bonds, of an applicant or its predecessors or its successors in interest.

3. Failure to obtain and/or maintain worker's compensation insurance for the proper classification of work.
  4. Any convictions 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.
  5. Willfully supplying or omitting materially false or misleading information incident to obtaining or attempting to obtain or performing any public contract or subcontract.
- B. One or more of the following that occurred within the past three years may constitute cause for decertification or denial of certification:
1. Legal or administrative proceedings brought against the Contractor; or
  2. Termination for cause from one or more Building Projects; or
  3. Abandonment of one or more Building Projects; or
  4. A record of excessive safety violations; or
  5. A record of excessive workers' compensation injuries; or
  6. Failure to comply with record-keeping and accounting requirements prescribed by law or regulation; or
  7. Failure to perform in accordance with the terms of one or more public contracts; or
  8. A record of two Project Ratings that fall below the passing score established in the Guidelines on more than one Building Project; or
  9. Failure to obtain and/or maintain any other mandatory insurance coverage; or
  10. 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
  11. Any other factor bearing on a Contractor's competency or responsibility that, in the Commissioner's discretion, may warrant denial of certification or decertification.
- C. Any applicant that is either decertified or denied certification for any reason pursuant to Section IV (**Denial of Certification**) must wait a minimum of one (1) year from the date of DCAM's Final Determination to Deny certification before reapplying for certification.



## **V. APPEAL RIGHTS**

If the applicant does not appear to meet the minimum requirements for certification, or if the applicant is non-responsive to DCAM's requests for clarification and/or additional information, DCAM shall notify the applicant in writing of its preliminary determination to deny certification. The applicant will then have the right to appeal this decision as outlined in MGL c. 149 s. 44D (4).

- A. Applicants have the right to appeal any denial by DCAM as outlined in Chapter 149 § 44D (4).
- B. If an applicant chooses to appeal any Preliminary Denials issued by DCAM, they may do so by filing a reconsideration request, and DCAM will review all information presented by the applicant in accordance with the standards set forth in Sections I through IV of these Guidelines and Procedures.
- C. If the applicant properly challenges a particular evaluation or evaluations or wishes additional evaluations to be considered, DCAM, in its sole discretion, may consider additional evaluations that meet the evaluation criteria outlined in Section III (A) (**Evaluation of Completed Projects**).

## **VI. INFORMATION FOR PUBLIC AWARDING AUTHORITIES**

### **A. Submission of Standard Contractor Evaluation Forms**

In accordance with 810 CMR 8.09, Public Awarding Authorities must submit to DCAM a properly completed Standard Contractor Evaluation Form within 90 calendar days of use and/or occupancy, or upon issuance of a certificate of use and/or occupancy, or termination of a project, whichever is earlier, on all projects put out to bid under M.G.L. c. 149A and 149 § 44 (A-J). Any Awarding Authority that fails to complete and submit the Standard Contractor Evaluation Form, together with any written response by any contractor, to DCAM within 90 days of the completion of a project shall be ineligible for the receipt of any public funds disbursed by the Commonwealth of Massachusetts for the purposes of any public buildings or public works projects.

### **B. Written Evaluations Submitted by Public Awarding Authorities**

DCAM will take the following steps to assist public agencies in providing DCAM with written evaluations of contractor performance on building projects as required by MGL c. 149 s. 44D and 810 CMR 4.00 and 810 CMR 8.00:

1. DCAM shall make reasonable efforts to send a copy of the DCAM Standard Contractor Evaluation Form and a statement of the requirements of MGL c. 149 s. 44D and 810 CMR 4.00 and 810 CMR 8.00 to each public agency that advertises an award of a building project in the Central Register.
2. DCAM shall maintain an electronic diary system to keep track of public building projects advertised in the Central Register to ensure that awarding authorities are compliant with MGL c. 149 s. 44D.

3. Each certified contractor shall be sent a copy of the Standard Contractor Evaluation Form with its annual Certificate of Eligibility, together with a notice directing the contractor to submit the form to every public agency for whom it performs a building project.
4. DCAM shall, periodically, cause a notice to be published in the Central Register advising public awarding authorities of the requirements of MGL c. 149 s. 44D and 810 CMR 4.00 and 810 CMR 8.00.

#### C. Reviewing Contractors Certification Files

Public Awarding Authorities and/or owner's project managers are strongly encouraged to review the certification files of bidders being considered at DCAM's Contractor Certification Office.

1. Architects, Engineers, Construction Managers, or other officials representing Awarding Authorities seeking to review contractors' files must provide a letter of authorization from the respective Awarding Authority confirming approval to review files on behalf of the Awarding Authority.
2. Awarding Authorities that can provide satisfactory evidence to DCAM that reviewing contractors' files at DCAM offices may create undue hardship may request DCAM to provide copies of contractors' files by either mail service or facsimile and DCAM may provide such files at its discretion. Awarding Authorities must provide DCAM a minimum of three (3) business days notice requesting mail service/facsimile copies of contractors' files.
3. All reviewers must provide a signed letter acknowledging confidentiality of contractors' files.