

810 CMR 9.00: PREQUALIFICATION OF GENERAL CONTRACTORS TO BID ON PUBLIC BUILDING CONTRACTS PURSUANT TO M.G.L. c. 149, §§ 44A THROUGH 44J

Section

- 9.01: Definitions
- 9.02: Mandatory Prequalification of General Contractors
- 9.03: Discretionary Prequalification of General Contractors
- 9.04: Prequalification Committee
- 9.05: Contents of the Request for Qualifications
- 9.06: Statement of Qualifications
- 9.07: Public Notice of Prequalification
- 9.08: Evaluation Process
- 9.09: Required Notices Upon Completion of Prequalification Evaluation
- 9.10: Invitation to Bid to Prequalified General Contractors
- 9.11: Entitlement to Evaluation Score/Right of Appeal

9.01: Definitions

The following definitions are for the purpose of 810 CMR 9.00 pertaining to the prequalification of General Contractors to bid on public building contracts pursuant to M.G.L. c. 149, §§ 44A through 44J.

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

Bondable, a written determination made by a Surety Company, as defined in 810 CMR 9.01, regarding a particular General Contractor, as defined in 810 CMR 9.01, 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 particular Building Project, as defined in 810 CMR 9.01, on behalf of that General Contractor, if the General Contractor is prequalified by the Awarding Authority and ultimately awarded the general contract for said Building Project.

Building Project, any project for the construction, reconstruction, installation, demolition, maintenance or repair, of a public building, as defined in M.G.L. c. 149, § 44A.

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(1). All General Contractors desiring to perform work on public Building Projects must obtain such Certificate of Eligibility from DCAM.

Commissioner, the Commissioner of the Division of Capital Asset Management and Maintenance (“DCAM”).

Commitment Letter, a written communication from a Surety Company submitted by the General Contractor as part of its Statement of Qualifications, as defined in 810 CMR 9.01, for a particular Building Project that states that the Surety Company has determined the General Contractor to be Bondable, if the General Contractor is prequalified and ultimately awarded the general contract for said Building Project.

Designer, the design firm for a Building Project.

Exempt Agencies, DCAM, the Massachusetts Port Authority, the Massachusetts Water Resources Authority, the Massachusetts State Colleges Building Authority, and the University of Massachusetts Building Authority.

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 Building Project in accordance with M.G.L. c. 149, § 44E.

9.01: continued

Guidelines, written standards, policies, and procedures for the prequalification of contractors by an Awarding Authority issued by the Commissioner.

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

Prequalification Evaluation Report, a report prepared by the Prequalification Committee, established pursuant to 810 CMR 9.04, after it has completed its deliberations which indicates a General Contractor's prequalification score in each of the evaluation categories and subcategories set forth in a Request for Qualifications, as defined in 810 CMR 9.01.

Prequalification of General Contractors, a process in accordance with M.G.L. c. 149, § 44D½ whereby all General Contractors seeking to bid on a particular Building Project are prequalified by the Awarding Authority undertaking said Building Project.

Request for Qualifications ("RFQ"), a request published by an Awarding Authority as required by M.G.L. c. 149, § 44D½ soliciting information regarding the qualifications and competency of General Contractors.

Statement of Qualifications ("SOQ"), an application form, prescribed by an Awarding Authority and required to be completed by General Contractors responding to an RFQ. The SOQ shall include any schedules and supporting documents, which are required to be completed and submitted by the General Contractor in response to an RFQ.

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 Building Project in accordance with M.G.L. c. 149, § 44F.

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.

Update Statement, a form developed by DCAM, as defined in 810 CMR 4.10, to be completed by a General Contractor and submitted with all bids pursuant to M.G.L. c. 149, §§ 44A through 44J and M.G.L. c. 149A. The Update Statement requires information, including, but not limited to, information on all of the General Contractor's Building Projects in progress and Building Projects completed by the General Contractor since the issuance date of the General Contractor's current Certificate of Eligibility.

9.02: Mandatory Prequalification of General Contractors

For all contracts subject to M.G.L. c. 149, § 44A where the estimated construction cost for a Building Project is not less than \$10,000,000, all Awarding Authorities, other than the Exempt Agencies, shall prequalify all General Contractors to submit general bids. The provisions of 810 CMR 9.00 do not apply to prequalification of General Contractors in the context of a Building Project being undertaken using a Construction Manager at Risk delivery method under M.G.L. c. 149A.

9.03: Discretionary Prequalification of General Contractors

(1) Where a Building Project is estimated to cost more than \$100,000 but less than \$10,000,000, an Awarding Authority may elect, in its own discretion, to prequalify General Contractors to submit general bids, provided that the Awarding Authority conducts the prequalification process in accordance with M.G.L. c. 149, § 44D½ and in accordance with 810 CMR 9.00.

9.03: continued

(2) An Exempt Agency may, in its own discretion, elect to prequalify General Contractors to submit general bids for a particular Building Project, provided that upon such election the Exempt Agency conducts the prequalification process in accordance with M.G. L. c.149, § 44D½ and 810 CMR 9.00.

(3) Where prequalification is discretionary and an Awarding Authority, including any Exempt Agency, elects to prequalify General Contractors, the Awarding Authority may also elect to prequalify all or only certain Subcontractors for the same Building Project in accordance with 810 CMR 10.03, but is not mandated to do so.

9.04: Prequalification Committee

(1) Establishment. When the prequalification process is utilized by an Awarding Authority, whether mandated or elected by the Awarding Authority, the Awarding Authority shall establish a Prequalification Committee prior to issuing the RFQ to General Contractors.

(2) Purpose. The Prequalification Committee established by the Awarding Authority shall be responsible for the evaluation of each General Contractor seeking prequalification for a particular Building Project. Such evaluation shall be conducted by review of the SOQs (and required supporting documentation) submitted by General Contractors in response to an RFQ issued by an Awarding Authority for the prequalification of General Contractors on said Building Project.

(3) Composition. The Prequalification Committee shall be comprised of three representatives of the Awarding Authority and one representative from the Designer. Where the Building Project requires an OPM pursuant to M.G.L. c 149, § 44A½, the OPM shall fill one of the three Awarding Authority seats on the Prequalification Committee. Variance from the aforementioned size and composition of the Prequalification Committee is prohibited, except as specifically provided for in 810 CMR 9.00. Whenever the Awarding Authority is prequalifying both General Contractors and Subcontractors for a particular Building Project, to the extent possible, the Prequalification Committee members should be the same for the prequalification evaluation of both.

(a) Awarding Authority Representatives.

1. The Awarding Authority shall appoint three representatives to the Prequalification Committee who, in the sole discretion of the Awarding Authority, will best serve the interests of the Building Project. Where a particular Building Project is being undertaken by one Awarding Authority for the beneficial use of another Awarding Authority, one representative of the Awarding Authority on the Prequalification Committee may be a representative of the beneficiary Awarding Authority or user agency.

2. If the Building Project is one where an OPM is required pursuant to M.G.L. c. 149, § 44A½, then the OPM shall be one of the three Awarding Authority representatives on the Prequalification Committee.

3. If the OPM is a third party, not employed directly by the Awarding Authority, then the Prequalification Committee services performed by the OPM shall be included in the scope of work of the OPM's contract with the Awarding Authority and the costs associated with the same shall be included in the OPM contract price and specifically approved by the Awarding Authority. The OPM shall not be entitled to additional compensation for any work associated with prequalification services provided by the OPM unless agreed to and approved in writing by the Awarding Authority.

4. If the OPM is not an employee of the Awarding Authority but a third party retained by the Awarding Authority, then the OPM must be independent of the Designer in order to avoid an appearance of or an actual conflict of interest.

(b) Designer Representative.

1. The Designer Representative shall be an individual person employed by the Designer who either prepared the design documents for the Awarding Authority and is familiar with the requirements of the Building Project or who will be the Designer's designated representative for said Building Project.

9.04: continued

2. The selection of the Designer Representative must be approved by the Awarding Authority. The Awarding Authority has the right to reject the Designer Representative to the Prequalification Committee selected by the Designer where, in its sole discretion, the Awarding Authority concludes that the inclusion of said Design Representative would not be in the best interest of the Building Project.

3. The Prequalification Committee services performed by the Designer Representative should be included in the scope of work of the Designer's contract with the Awarding Authority and the costs associated with the same should be included in the design contract price and specifically approved by the Awarding Authority.

(4) Initial Meeting of the Prequalification Committee. Where the prequalification process is to be utilized on a Building Project by an Awarding Authority, either by mandate or by the election of the Awarding Authority, the Prequalification Committee shall convene as soon as possible upon designation by the Awarding Authority to perform the following administrative tasks required for the prequalification evaluation process:

(a) Appointment of Chairperson. The Prequalification Committee shall designate one of the three Awarding Authority members of the Prequalification Committee to be the chairperson for the committee. The chairperson shall be responsible for the coordination of meetings and the management of the evaluation process as set forth in 810 CMR 9.09;

(b) Finalize RFQ Form. Upon designation of a chairperson, the Prequalification Committee shall finalize the RFQ for the Building Project in accordance with the statutory requirements and evaluation categories set forth in M.G. L. c. 149, § 44D½. The RFQ shall only include the evaluation categories and criteria set forth in M.G.L. c. 149, § 44D½ and shall be in compliance with the requirements set forth in 810 CMR 9.05;

(c) Allocation of Points for Evaluation Subcategories. The Prequalification Committee shall, prior to the issuance of the RFQ for the Building Project, allocate the points available in each of the evaluation subcategories set forth in M.G.L. c. 149, § 44D½. The point allocations for each of the evaluation subcategories are within the discretion of the Prequalification Committee or as otherwise determined by the Awarding Authority.

(d) Finalize Statement of Qualifications Form. Included in the RFQ prepared by the Prequalification Committee there shall be a SOQ form in a form consistent with the standard SOQ form prescribed by DCAM in the *DCAM Guidelines for Prequalification* to be completed by General Contractors interested in being prequalified to bid on the Building Project. The SOQ form shall only solicit information from interested General Contractors that is specifically designated in M.G.L. c. 149, § 44D½ and shall conform to the requirements set forth in 810 CMR 9.06.

9.05: Contents of the Request for Qualifications

(1) General Information and Instructions. The RFQ shall repeat and contain all of the information required in the public advertisement as set forth in 810 CMR 9.07(4)(a). The RFQ shall contain instructions regarding the RFQ and prequalification process and how interested General Contractors shall respond to the RFQ in order to be considered for prequalification.

(2) RFQ Interest Form. The RFQ shall include an RFQ Interest Form, in a form consistent with the RFQ Interest Form prescribed by DCAM in the *DCAM Guidelines for Prequalification*, to be completed and returned by interested General Contractors upon receipt of the RFQ to alert the Awarding Authority of their potential interest in the Building Project and provide contact information in the event that any addenda to the RFQ are issued. By submitting the RFQ Interest Form the interested General Contractor is only expressing its interest in the Building Project and is requesting that it be added to the list of firms that will receive any addenda to the RFQ on the Building Project. The Awarding Authority assumes no responsibility for a General Contractor's failure to receive any addenda or other correspondence related to this RFQ if the General Contractor fails to submit an RFQ Interest Form to the Awarding Authority as directed in the RFQ. The Awarding Authority shall maintain a list of all firms that have submitted an RFQ Interest Form and shall provide notice of any addenda or other communications regarding the prequalification process to all firms that have submitted the RFQ Interest Form.

9.05: continued

(3) Overview of Selection Process. The RFQ shall include an overview of the selection process stating that the RFQ is being issued for a Building Project pursuant to M.G.L. c. 149, § 44D½ to solicit firms interested in providing General Contractor services for said Building Project. The RFQ shall also include a statement that the General Contractor selection process for the Building Project is a two-phase process as set forth in M.G.L. c. 149, § 44D½ and that the Awarding Authority is prequalifying firms interested in providing General Contractor services for said Building Project through this *RFQ* prequalification process.

(4) Evaluation Criteria. The RFQ shall include a detailed description of the evaluation categories and subcategories on which the Prequalification Committee will evaluate interested General Contractors for prequalification.

(a) General Evaluation Categories. The RFQ shall advise interested General Contractors that they will be evaluated for prequalification by the Prequalification Committee on the basis of the four general evaluation categories mandated in M.G.L. c. 149, § 44D½ and shall set forth the evaluation points allocated to each of the categories. The Awarding Authority shall not modify, add or delete from these prescribed four general categories in the RFQ or any addenda thereto. The mandated general evaluation categories and their respective point allocations are as follows:

1. Management Experience. The RFQ shall expressly state that there are a maximum of 50 points available in this evaluation category, but even if all other requirements for prequalification are met by an interested General Contractor, a minimum of 25 points are required in this evaluation category in order for an interested General Contractor to be deemed prequalified by the Prequalification Committee to submit a general bid for the Building Project.

2. References. The RFQ shall expressly state that there are a maximum of 30 points available in this evaluation category, but even if all other requirements for prequalification are met by an interested General Contractor, a minimum of 15 points are required in this evaluation category in order for an interested General Contractor to be deemed prequalified by the Prequalification Committee to submit a general bid for the Building Project.

3. Capacity to Complete. The RFQ shall expressly state that there are a maximum of 20 points available in this evaluation category, but even if all other requirements for prequalification are met by an interested General Contractor, a minimum of ten points are required in this evaluation category in order for an interested General Contractor to be deemed prequalified by the Prequalification Committee to submit a general bid for the Building Project.

4. Mandatory Requirements. The RFQ shall expressly state that there are no points available in this evaluation category, but even if all other requirements for prequalification are met by an interested General Contractor, an interested General Contractor must satisfy all of the Mandatory Requirements in order for an interested General Contractor to be deemed prequalified by the Prequalification Committee to submit a general bid for the Building Project.

(b) Evaluation Subcategories. The RFQ shall specifically state that interested General Contractors will be further evaluated for prequalification by the Prequalification Committee in accordance with certain mandated sub-categories within each of the four evaluation categories set forth in 810 CMR 9.05(4)(a)1. through 4. The evaluation sub-categories mandated by M.G.L. c. 149, § 44D½ are as follows:

1. Sub-Categories for Management Experience.

a. Business Owners. The name, title, years with firm of the owner(s) of the business.

b. Management Personnel. The names, title, education and construction experience, years with firm, and list of projects completed by all management personnel, including, but not limited to, all management personnel who will have any direct or indirect responsibility for the Building Project for which the RFQ is issued.

c. Similar Project Experience. The project name(s), description, original contract sum, final contract sum with explanation, and date completed of similar projects. The Awarding Authority shall have the discretion to include in the RFQ a description of what it considers a “similar project”.

d. Terminations. A list of any projects on which the firm was terminated or failed to complete the work, including an explanation for each instance listed.

9.05: continued

- e. Legal Proceedings. A list of all legal or administrative proceedings currently pending against the General Contractor or concluded adversely to the General Contractor within the past five years which relate to the procurement or performance of any public or private construction contract.
 - f. Safety Record. The three year history of the firm's workers' compensation experience modifier.
 - g. Compliance Record. Information on and evidence of the firm's compliance record with respect to minority business enterprise and women business enterprise inclusion goals and workforce inclusion goals, if applicable, on Building Projects within the past five years.
 - 2. Sub-categories for References.
 - a. Project References. A list of references from owners and architects for all "similar projects" listed by the General Contractor provided in response to the information sought in 910 CMR 9.05(4)(b)1.c. The list of references must include, at a minimum, project names and the names of the owners and architects, with current address, telephone and fax number, and a contact person for each.
 - b. Credit References. A list of a minimum of five credit references, including the current telephone and fax number of a contact person from key suppliers, vendors and banks.
 - c. Public Project Record. A list of all completed Building Projects during the past three years with owner's name, current address, telephone and fax number and a contact person for each.
 - 3. Sub-categories for Capacity to Complete Projects.
 - a. Audited Financial Statement. An interested General Contractor shall provide an audited financial statement for the most recent fiscal year. Such financial information submitted shall remain confidential and shall not be a public record under M.G.L. c. 4, § 7.
 - b. Revenue. An interested General Contractor shall provide its revenue under contract for the next three fiscal years. Such financial information submitted shall remain confidential and shall not be a public record under M.G.L. c. 4, § 7.
 - c. Preservation of Confidentiality of Financial Information Submitted in Response to RFQ. In order to preserve the confidentiality of interested General Contractors providing this information in response to an RFQ, interested General Contractors may submit the required financial information in 810 CMR 9.05(4)(b)3.a. and b. in a sealed envelope, attached to its SOQ package by staple, providing that the General Contractor clearly labels the outside of the envelope with its name, the project name, the project number and a notation that the envelope contains confidential financial information.
 - 4. Sub-categories for Mandatory Requirements.
 - a. Bonding Capacity. A Commitment Letter from a Surety Company indicating that an interested General Contractor is Bondable. If the Commitment Letter provided is written on behalf of a Surety Company but not actually from a Surety Company as defined in 810 CMR 9.01, then the Commitment Letter must be accompanied by an authorized power of attorney from a Surety Company or it will be deemed insufficient.
 - b. DCAM Certification. An interested General Contractor must provide a Certificate of Eligibility issued by DCAM pursuant to M.G.L. c. 149, § 44D, showing a single and aggregate capacity rating sufficient for the Building Project.
 - c. Update Statement. An interested General Contractor must provide a completed and currently valid Update Statement.
- (5) Allocation of Points for Evaluation General Categories and Sub-categories. The RFQ shall specify the point allocation of each evaluation category and subcategory.
- (a) Mandatory Point Allocation of Categories. The point allocation required in M.G.L. c 149, § 44D½ for the four general evaluation categories set forth in 810 CMR 9.05(4)(a)1. through 4. shall be expressly stated in the RFQ and may not be varied by the Awarding Authority under any circumstances.

9.05: continued

(b) Discretionary Point Allocation of Sub-categories. The Awarding Authority shall have the discretion to determine the point allocation for each of the sub-categories set forth in 810 CMR 9.05(4)(b) within each of the general categories set forth in 810 CMR 9.05(4)(a), provided however, that the total amount allocated among the sub-categories within each of the general categories does not exceed or fall short of the total points required in each general category.

(6) Contractors Required Response Format – Statement of Qualifications. The RFQ shall instruct interested General Contractors regarding the required submission procedures and shall include in the body of the RFQ a copy of the required SOQ form, including the required schedules, and a list of the required attachments thereto.

9.06: Statement of Qualifications

(1) Standardized Statement of Qualifications. In order to facilitate a uniform prequalification process and expedite the response and evaluation time required, an Awarding Authority utilizing prequalification, whether by mandate or by election, shall include as part of the RFQ a standardized SOQ, in a form consistent with the form prescribed by DCAM in the *DCAM Guidelines for Prequalification*. The SOQ may be customized by the Awarding Authority to include project specific information to seek information relative to the evaluation criteria set forth in 810 CMR 9.05(4), but shall not be otherwise modified or changed. The Awarding Authority shall make the SOQ available to interested General Contractors both electronically and in paper form.

(2) Form of Response to RFQ. Interested General Contractors shall respond to an RFQ issued by an Awarding Authority for the purpose of prequalification by completing the SOQ provided by the Awarding Authority in the RFQ, including the required schedules and attachments thereto. The SOQ must be submitted in accordance with the instructions provided in the RFQ. Responses submitted in any form other than the form specified by the Awarding Authority in the RFQ shall be deemed disqualified from the prequalification process.

(3) Financial Information Submitted with Statement of Qualifications. In order to preserve the confidentiality of financial information submitted by a General Contractor in response to the information requested for the Capacity to Complete evaluation category, interested General Contractors may submit the required audited financial statement and revenue under contract information in accordance with the procedures set forth in 810 CMR 9.05(4)(b)3.c.

(4) Authorization to Submit Statement of Qualifications. The SOQ shall be signed under pains and penalties of perjury. The signatory of the SOQ shall be an officer of the General Contractor firm authorized to sign on behalf of the General Contractor firm who has full knowledge of the information being provided.

(5) Disqualification. Any General Contractor who fails to respond to the RFQ in accordance with the instructions provided in the RFQ in any material way shall be deemed to be disqualified from consideration for prequalification. This includes, but is not limited to, failure to submit the SOQ by the deadline set forth in the RFQ, failure to submit the SOQ to the address set forth in the RFQ, failure to submit the response to RFQ on the SOQ form provided, failure to sign the SOQ under the pains and penalties of perjury, and failure to comply with the mandatory requirements set forth in M.G.L. c. 149, § 44D½(e)(4).

9.07: Public Notice of Prequalification

(1) Public Notice and Solicitation of Responses to RFQ. Once the Prequalification Committee has met and finalized the RFQ and SOQ in accordance with the requirements set forth in 810 CMR 9.05 and 9.06, the Awarding Authority shall initiate the prequalification process by issuing a public notice to alert interested General Contractors that prequalification will be utilized for the procurement of a General Contractor on a particular Building Project and that general bids will not be accepted from General Contractors which have not been prequalified and invited to bid by the Awarding Authority as provided in M.G.L. c. 149, § 44D½ and 810 CMR 9.00.

(2) Advertisement of Public Notice and Solicitation of Responses to RFQ. The public notice shall be advertised in a newspaper of general circulation in the area in which the Building Project is located, in the Central Register pursuant to M.G.L. c. 9, §20A, and within the Commonwealth's state-wide Comm-PASS procurement system, which is administered by the Commonwealth's Operational Services Division. The public notice may also be posted on the Awarding Authority's web-site, but such posting will not eliminate or substitute the requirement to advertise the public notice as set forth in 810 CMR 9.07.

(3) Time for Public Notice and Solicitation of Responses to RFQ. The public notice that prequalification will be utilized and solicitation of responses to the RFQ issued for that purpose shall be published by the Awarding Authority not less than two weeks before the deadline for submission of responses to the RFQ.

(4) Contents of Public Notice and Solicitation.

(a) The public notice must contain the following minimum required information regarding the Building Project:

1. a statement indicating that the RFQ will be used to prequalify General Contractors for a particular Building Project and only General Contractors who are prequalified by the Awarding Authority will be invited to submit a bid for the Building Project pursuant to M.G.L. c. 149, § 44E;
2. the location or locations where interested General Contractors can obtain a full copy of the RFQ, including both the actual address or addresses where a hard copy may be obtained and the electronic address or addresses where an electronic copy may be obtained;
3. the time and date for receipt of responses to the RFQ, which shall be at least two weeks after the date of advertisement of the public notice and solicitation of responses to the RFQ;
4. both the mailing and physical address of the office to which the responses to the RFQ are to be delivered;
5. the timeframe in which the Awarding Authority will respond to said responses;
6. a general description of the Building Project which shall include a description of the physical location of the Building Project and the work to be performed;
7. the anticipated schedule for the Building Project from the time a notice to proceed is issued by the Awarding Authority;
8. the estimated construction cost for the Building Project;
9. a listing of the project team including the Awarding Authority, the Designer, and Awarding Authority's OPM, if applicable;
10. a detailed description of the evaluation procedure and the criteria for the prequalification of General Contractors, including the point rating system to be enlisted by the Prequalification Committee in evaluating responses to the RFQ and the specific point allocation for each evaluation category and sub-category, and the anticipated schedule for the start and completion of the evaluation process;
11. a prohibition against any unauthorized communication or contact with the Awarding Authority outside of official pre-bid meetings. (The only communications which shall be deemed authorized are inquiries made to the Awarding Authority for general information about obtaining the RFQ, RFQ submission deadlines, and the existence of any relevant addenda to the RFQ; and inquiries made at any official Pre-RFQ submission meeting held by the Awarding Authority); and,
12. if the Awarding Authority elects to limit the size and number of pages to be included in the responses to the RFQ then notice of that limitation must be included in the public notice and solicitation.

9.07: continued

(b) Where inclusion of all of the information set forth in 810 CMR 9.07(4)(a) in the text of the advertisement is not practicable due to the limitations of space and cost for such advertisement, the Awarding Authority shall include at a minimum the required information set forth in 810 CMR 9.07(4)(a)1. through 9. in the advertisement and explicitly state in the advertisement that all further required public notice information regarding the Building Project, including the prequalification evaluation criteria and the selection process, is included in the RFQ which shall be available to interested General Contractors at the physical and electronic locations set forth in the advertisement.

9.08: Evaluation Process

(1) Register of Responders. The Prequalification Committee shall prepare a “Register of Responders” at the opening of the SOQs. The “Register of Responders” shall include the name of each responder who submitted a SOQ in response to the RFQ and the date and time of receipt thereof.

(2) Opening of Responses. The Awarding Authority shall not open the SOQs publicly, but shall open them in the presence of one or more witnesses at the time specified in the RFQ. The opening of the SOQs by the Prequalification Committee shall be deemed to satisfy this requirement.

(3) Initial Evaluation Meeting of the Prequalification Committee. Immediately following the opening of the responses to the RFQ, the Prequalification Committee shall review the Register of Responders and obtain copies of each SOQ (and required supporting documentation) submitted by interested General Contractors in response to the RFQ and make arrangements for the checking of references.

(4) Delegation of Work. The Prequalification Committee may delegate the checking of references to individuals outside of the Prequalification Committee, provided however, that the Prequalification Committee develop a written reference check form with uniform questions to be asked of references by those checking references on its behalf. The chairperson of the Prequalification Committee may delegate additional administrative tasks necessary to facilitate the prequalification process.

(5) Review of Statements of Qualifications. The members of the Prequalification Committee shall review each of the SOQs submitted by interested General Contractors.

(6) Meetings of the Prequalification Committee. Upon completion of their individual review of the SOQs submitted by interested General Contractors and the completion of the reference checking, the Prequalification Committee shall collectively evaluate the responses to the RFQ. The Prequalification Committee must evaluate each application for prequalification using solely the criteria specified in M.G.L. c. 149, § 44D½ and set forth in the RFQ.

(7) Deliberations of the Prequalification Committee. The Prequalification Committee may consult with other representatives from the Awarding Authority, Designer, client or user agency (if applicable) or legal counsel, as necessary to expedite the evaluation process. In addition, members of the Prequalification Committee may contact interested General Contractors to clarify or verify timely information submitted by an interested General Contractor in its SOQ.

(8) Standard Prequalification Evaluation Report. Following the deliberations of the Prequalification Committee, the chairperson shall complete a Prequalification Evaluation Report, in a form consistent with the standard Prequalification Evaluation Report prescribed by DCAM in the *DCAM Guidelines for Prequalification*, which shall reflect the score achieved by an interested General Contractor in each evaluation category and subcategory. The Prequalification Evaluation Report completed by the chairperson shall reflect the consensus of the Prequalification Committee regarding the score received for each category and subcategory and shall indicate the total points awarded to the interested General Contractor. The Prequalification Evaluation Report may be customized by the Prequalification Committee to reflect project specific information only.

9.08: continued

(9) Minimum Score Required. In order to be prequalified by the Prequalification Committee, interested General Contractors must achieve the minimum number of points in each of the four general evaluation categories as well as a total minimum score overall of 70 points. All General Contractors obtaining the minimum required score in each category and a total of 70 points overall shall be prequalified by the Prequalification Committee and invited to submit bids consistent with M.G.L. c. 149, § 44E. The Awarding Authority shall invite all achieving a score of 70 or above to submit a general bid on the Building Project.

(10) Time for Review. The Prequalification Committee shall endeavor to complete the evaluation process in accordance with the schedule set forth in the RFQ. If, however, the Prequalification Committee is unable to complete the evaluation process within the time set forth in the RFQ and there are circumstances related to the Building Project that require additional time, the Prequalification Committee shall provide written notice of the change in schedule and expected completion date to all interested General Contractors who have submitted a SOQ.

(11) Insufficient Number of Prequalified General Contractors.

(a) Where Prequalification Is Mandatory. If the Awarding Authority qualifies fewer than three General Contractors to submit bids and the prequalification process was required, then the Awarding Authority shall reject all responses and shall issue a new RFQ, at least one additional time. If, however, the Awarding Authority issues at least one subsequent RFQ and is still unable to prequalify at least three General Contractors, then the Awarding Authority may do one of the following:

1. issue a new RFQ and attempt to prequalify at least three General Contractors;
2. abandon the prequalification process and invite general bids, without further prequalification, pursuant to M.G.L. c. 149, §§ 44A through 44J, with the exception of M.G.L. c. 149, § 44D½ or 44D¾; or
3. if at least two General Contractors were deemed prequalified by the Prequalification Committee, then the Awarding Authority may elect, in its sole discretion, to invite general bids from the two General Contractors that were prequalified.

(b) Where Prequalification is Discretionary. If the Awarding Authority qualifies fewer than three General Contractors to submit bids and the prequalification process was initiated at the option of the Awarding Authority, then Awarding Authority may do one of the following, without any further requirement to utilize the prequalification process:

1. issue a new RFQ and attempt again to prequalify at least three General Contractors;
2. abandon the prequalification process and invite general bids, without further prequalification, pursuant to M.G.L. c. 149, §§ 44A through 44J, with the exception of M.G.L. c. 149, § 44D½ or 44D¾; or
3. if at least two General Contractors were deemed prequalified by the Prequalification Committee, then the Awarding Authority may elect, in its sole discretion, to invite general bids from the two General Contractors that were prequalified.

(12) Re-issuance of RFQ. Where an RFQ is reissued because there were fewer than three General Contractors prequalified, any and all subsequent RFQs issued by the Awarding Authority for a particular Building Project shall comply with the requirements of M.G.L. c. 149, § 44D½ and 810 CMR 9.00. Where an Awarding Authority re-issues an RFQ pursuant to either 810 CMR 9.08(11)(a) or (b) it may stipulate that all General Contractors prequalified to submit general bids for the Building Project by the Prequalification Committee during the initial or prior prequalification review shall remain prequalified for that particular Building Project without further submission by the General Contractor or review by the Awarding Authority, for a maximum of 120 days from the due date of the responses of the initial RFQ.

9.09: Required Notices Upon Completion of Prequalification Evaluation

(1) Notice to Interested General Contractors Failing to Prequalify. Within 14 days of the completion of the evaluation process by the Prequalification Committee, the Awarding Authority shall send via first class mail, postage prepaid, written notices to all interested General Contractors advising that they did not achieve a sufficient score from the Prequalification Committee to be prequalified.

9.09: continued

(2) Notice to Prequalified General Contractors. Within 14 days of the completion of the evaluation process by the Prequalification Committee, the Awarding Authority shall send via first class mail, postage prepaid, written notice to each General Contractor advising that it has been prequalified by the Prequalification Committee and will be invited to submit a general bid on the Building Project.

(3) Public Notice of Prequalification. Within 14 days of the completion of the evaluation process by the Prequalification Committee, the Awarding Authority shall provide public notice of all of the General Contractors who have been prequalified to submit a general bid on a particular Building Project. The Awarding Authority shall publish such public notice stating that only the General Contractors prequalified to bid on said Building Project will be invited to submit general bids and shall post the list of prequalified General Contractors in its bid room or place of business where general bids are customarily received for the Awarding Authority's Building Projects. Such public notice of prequalified General Contractors shall also be posted within the Commonwealth's state-wide Comm-PASS procurement system, which is administered by the Commonwealth's Operational Services Division. The public notice may also be posted on the Awarding Authority's web-site. A copy of such public notice shall also be sent via first class mail, postage prepaid, to all prequalified General Contractors along with the invitation to bid required in 810 CMR 9.10.

9.10: Invitation to Bid to Prequalified General Contractors

All prequalified General Contractors as determined by the Prequalification Committee shall be invited in writing by the Awarding Authority to submit a general bid in accordance with the bidding procedures set forth in M.G.L. c. 149, § 44E. The invitation to bid shall be sent to all prequalified General Contractors via first class mail, postage prepaid, and shall specify therein the deadline for the submission of general bids from prequalified General Contractors and indicate where prequalified General Contractors may obtain copies of the plans and specifications for the Building Project. In no event shall the deadline for submission of general bids from prequalified General Contractors be less than 14 days from the date of the issuance of the invitation to bid. Any other parties interested in obtaining plans and specifications for the Building Project may do so by providing a deposit as designated by the Awarding Authority. The Awarding Authority shall only accept general bids from prequalified General Contractors.

9.11: Entitlement to Evaluation Score/Right of Appeal

(1) Upon written request to the Awarding Authority, any interested General Contractors, that submitted a SOQ for the purpose of being prequalified to submit a general bid on a Building Project shall be entitled to obtain its prequalification evaluation score, whether prequalified or not.

(2) The decision of the Prequalification Committee shall be final and shall not be subject to appeal except on grounds of fraud or collusion. The burden shall be on the appealing party to prove by a preponderance of evidence that such fraud or collusion existed.

REGULATORY AUTHORITY

810 CMR 9.00: M.G.L. c. 149, § 44D½.

NON-TEXT PAGE

810 CMR 10.00: PREQUALIFICATION OF SUBCONTRACTORS TO BID ON PUBLIC BUILDING CONTRACTS PURSUANT TO M.G.L. c. 149, §§ 44A THROUGH 44J

Section

- 10.01: Definitions
- 10.02: Mandatory Prequalification of Subcontractors
- 10.03: Discretionary Prequalification of Subcontractors
- 10.04: Prequalification Committee
- 10.05: Contents of the Request for Qualifications
- 10.06: Statement of Qualifications
- 10.07: Public Notice of Prequalification
- 10.08: Evaluation Process
- 10.09: Required Notices Upon Completion of Prequalification Evaluation
- 10.10: Invitation to Bid to Prequalified Subcontractors
- 10.11: Entitlement to Evaluation Score/Right of Appeal

10.01: Definitions

The following definitions are for the purpose of 810 CMR 10.00 pertaining to the prequalification of Subcontractors to bid on public building contracts pursuant to M.G.L. c. 149, §§ 44A through 44J.

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

Bondable, a written determination made by a Surety Company, as defined in 810 CMR 10.01, regarding a particular Subcontractor, as defined in 810 CMR 10.01, 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 the Subcontractor’s class of work on a Building Project, as defined in 810 CMR 10.01, on behalf of that Subcontractor, if the Subcontractor is prequalified by the Awarding Authority and ultimately awarded a subcontract on said Building Project.

Building Project, any project for the construction, reconstruction, installation, demolition, maintenance or repair, of a public building, as defined in M.G.L. c. 149, § 44A.

Certificate of Eligibility, a certificate issued annually by DCAM pursuant to M.G.L. c. 149, § 44D and in accordance with 810 CMR 4.09(1). All Subcontractors, as defined in 810 CMR 10.01, desiring to perform work on public Building Projects must obtain such Certificate of Eligibility from DCAM by no later than January 1, 2006.

Commissioner, the Commissioner of the Division of Capital Asset Management and Maintenance (“DCAM”).

Commitment Letter, a written communication from a Surety Company submitted by the Subcontractor as part of its Statement of Qualifications, as defined in 810 CMR 10.01, for a particular Building Project that states that the Surety Company has determined the Subcontractor to be Bondable, if the Subcontractor is prequalified and ultimately awarded a subcontract for said Building Project.

Designer, the design firm for a Building Project.

Exempt Agencies, DCAM, the Massachusetts Port Authority, the Massachusetts Water Resources Authority, the Massachusetts State Colleges Building Authority, and the University of Massachusetts Building Authority.

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.

10.01: continued

Guidelines, written standards, policies, and procedures for the prequalification of contractors by an Awarding Authority issued by the Commissioner.

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

Prequalification Evaluation Report, a report prepared by the Prequalification Committee, established pursuant to 810 CMR 10.04, after it has completed its deliberations which indicates a Subcontractor's prequalification score in each of the evaluation categories and subcategories set forth in a Request for Qualifications, as defined in 810 CMR 10.01.

Prequalification of Subcontractors, a process in accordance with M.G.L. c. 149, § 44D¾ whereby all Subcontractors seeking to bid on a particular Building Project are prequalified by the Awarding Authority undertaking said Building Project.

Request for Qualifications ("RFQ"), a request published by an Awarding Authority as required by M.G.L. c. 149, § 44D¾ soliciting information regarding the qualifications and competency of Subcontractors.

Statement of Qualifications ("SOQ"), an application form, prescribed by an Awarding Authority and required to be completed by 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 the Subcontractor in response to an RFQ.

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), including any other class of work selected by the Awarding Authority as filed sub-bid work pursuant to M.G.L. c. 149, § 44F(1)(r), 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 Building Project in accordance with M.G.L. c. 149, § 44F.

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.

Update Statement, a form developed by DCAM, as defined in 810 CMR 4.01, to be completed by a Subcontractor and submitted with all filed sub-bids pursuant to M.G.L. c. 149, §§ 44A through 44J and M.G.L. c. 149A. The Update Statement requires information including, but not limited to, information on all of the Subcontractor's Building Projects in progress and Building Projects completed by the Subcontractor since the issuance date of the Subcontractor's current Certificate of Eligibility.

10.02: Mandatory Prequalification of Subcontractors

For all contracts subject to M.G.L. c. 149, § 44A where the estimated construction cost for a Building Project is not less than \$10,000,000, all Awarding Authorities, other than the Exempt Agencies, shall prequalify all Subcontractors for all filed sub-bid classes of work identified in M.G.L. c. 149, § 44F(1), including any other class of work selected by the Awarding Authority as filed sub-bid work pursuant to M.G.L. c. 149, § 44F(1)(r), where the estimated cost of the Subcontractor trade work meets or exceeds the threshold value for filed sub-bid work of M.G.L. c. 149, § 44F(1). The provisions of 810 CMR 10.00 do not apply to prequalification of Subcontractors in the context of a Building Project being undertaken using a Construction Manager at Risk delivery method under M.G.L. c. 149A.

10.03: Discretionary Prequalification of Subcontractors

(1) Where a Building Project is estimated to cost more than \$100,000 but less than \$10,000,000, an Awarding Authority may elect, in its own discretion, to prequalify Subcontractors to submit filed sub-bids, provided that the Awarding Authority conducts the prequalification process in accordance with M.G.L. c. 149, § 44D¾ and in accordance with 810 CMR 10.00.

(2) An Exempt Agency may, in its own discretion, elect to prequalify Subcontractors to submit filed sub-bids for a particular Building Project, provided that upon such election the Awarding Authority conducts the prequalification process in accordance with M.G.L. c. 149, § 44D¾ and 810 CMR 10.00.

(3) Where prequalification is discretionary and an Awarding Authority, including any Exempt Agency, elects to prequalify Subcontractors, the Awarding Authority may also elect to prequalify General Contractors for the same Building Project in accordance with 810 CMR 9.00, but is not mandated to do so.

(4) Where prequalification is discretionary, an Awarding Authority, including any Exempt Agency, electing to prequalify Subcontractors may elect to prequalify all or only certain categories of Subcontractors, provided, however that where prequalification is elected for a particular filed sub-bid trade, then all Subcontractors for that filed sub-bid trade must be prequalified in order to be invited to submit a filed sub-bid.

10.04: Prequalification Committee

(1) Establishment. When the prequalification process is utilized by an Awarding Authority, whether mandated or elected by the Awarding Authority, the Awarding Authority shall establish a Prequalification Committee prior to issuing the RFQ to Subcontractors.

(2) Purpose. The Prequalification Committee established by the Awarding Authority shall be responsible for the evaluation of each Subcontractor seeking prequalification for a particular Building Project. Such evaluation shall be conducted by review of the SOQs (and required supporting documentation) submitted by Subcontractors in response to an RFQ issued by an Awarding Authority for the prequalification of Subcontractors on a particular Building Project.

(3) Composition. The Prequalification Committee shall be comprised of three representatives of the Awarding Authority and one representative from the Designer. Where the Building Project requires an OPM pursuant to M.G.L. c 149, § 44A½, the OPM shall fill one of the three Awarding Authority seats on the Prequalification Committee. Variance from the aforementioned size and composition of the Prequalification Committee is prohibited, except as specifically provided for in 810 CMR 10.00. Whenever the Awarding Authority is prequalifying both General Contractors and Subcontractors for a particular Building Project, to the extent possible, the Prequalification Committee members should be the same for the prequalification evaluation of both.

(a) Awarding Authority Representatives.

1. The Awarding Authority shall appoint three representatives to the Prequalification Committee who, in the sole discretion of the Awarding Authority, will best serve the interests of the Building Project. Where a Building Project is being undertaken by one Awarding Authority for the beneficial use of another Awarding Authority, one representative of the Awarding Authority on the Prequalification Committee may be a representative of the beneficiary Awarding Authority or user agency.

2. If the Building Project is one where an OPM is required pursuant to M.G.L. c. 149, § 44A½, then the OPM shall be one of the three Awarding Authority representatives on the Prequalification Committee.

10.04: continued

3. If the OPM is a third party, not employed directly by the Awarding Authority, then the Prequalification Committee services performed by the OPM shall be included in the scope of work of the OPM's contract with the Awarding Authority and the costs associated with the same shall be included in the OPM contract price and specifically approved by the Awarding Authority. The OPM shall not be entitled to additional compensation for any work associated with prequalification services provided by the OPM unless agreed to and approved in writing by the Awarding Authority.

4. If the OPM is not an employee of the Awarding Authority but a third party retained by the Awarding Authority, then the OPM must be independent of the Designer in order to avoid an appearance of or an actual conflict of interest.

(b) Designer Representative.

1. The Designer Representative shall be an individual person employed by the design firm for the Project who either prepared the design documents for the Awarding Authority and is familiar with the requirements of the Building Project or who will be the Designer's designated representative for the Building Project.

2. The selection of the Designer representative must be approved by the Awarding Authority. The Awarding Authority has the right to reject the Design Representative to the Prequalification Committee selected by the Designer where, in its sole discretion, the Awarding Authority concludes that the inclusion of such Design Representative would not be in the best interest of the Building Project.

3. The Prequalification Committee services performed by the Designer Representative should be included in the scope of work of the Designer's contract with the Awarding Authority and the costs associated with the same should be included in the design contract price and specifically approved by the Awarding Authority.

(4) Initial Meeting of the Prequalification Committee. Where the prequalification process is to be utilized on a Building Project by an Awarding Authority, either by mandate or by the election of the Awarding Authority, the Prequalification Committee shall convene as soon as possible upon designation by the Awarding Authority to perform the following administrative tasks required for the prequalification evaluation process:

(a) Appointment of Chairperson. The Prequalification Committee shall designate one of the three Awarding Authority members of the Prequalification Committee to be the chairperson for the committee. The chairperson shall be responsible for the coordination of meetings and the management of the evaluation process as set forth in 810 CMR 10.09;

(b) Finalize RFQ Form. Upon designation of a chairperson, the Prequalification Committee shall finalize the RFQ for the Building Project in accordance with the statutory requirements and evaluation categories set forth in M.G. L. c. 149, § 44D³/₄. The RFQ shall only include the evaluation categories and criteria set forth in M.G.L. c. 149, § 44D³/₄ and shall be in compliance with the requirements set forth in 810 CMR 10.05;

(c) Allocation of Points for Evaluation Subcategories. The Prequalification Committee shall, prior to the issuance of the RFQ for the Building Project, allocate the points available in each of the evaluation subcategories set forth in M.G.L. c. 149, § 44D³/₄. The point allocations for each of the evaluation subcategories are within the discretion of the Prequalification Committee or as otherwise determined by the Awarding Authority.

(d) Finalize Statement of Qualifications Form. Included in the RFQ prepared by the Prequalification Committee there shall be a SOQ form in a form consistent with the standard SOQ form prescribed by DCAM in the *DCAM Guidelines for Prequalification* to be completed by Subcontractors interested in being prequalified to bid on the Building Project. The SOQ form shall only solicit information from interested Subcontractors that is specifically designated in M.G.L. c. 149, § 44D³/₄ and shall conform to the requirements set forth in 810 CMR 10.06.

10.05: Contents of the Request for Qualifications

(1) General Information and Instructions. The RFQ shall repeat and contain all of the information required in the public advertisement as set forth in 810 CMR 10.07(4)(a). The RFQ shall contain instructions regarding the RFQ and prequalification process and how interested Subcontractors shall respond to the RFQ in order to be considered for prequalification.

10.05: continued

(2) RFQ Interest Form. The RFQ shall include an RFQ Interest Form, in a form consistent with the RFQ Interest Form prescribed by DCAM in the *DCAM Guidelines for Prequalification*, to be completed and returned by interested Subcontractors upon receipt of the RFQ to alert the Awarding Authority of their potential interest in the Building Project and provide contact information in the event that any addenda to the RFQ are issued. By submitting the RFQ Interest Form the interested Subcontractor is only expressing its interest in the Building Project and is requesting that it be added to the list of firms that will receive any addenda to the RFQ on the Project. The Awarding Authority assumes no responsibility for a Subcontractor's failure to receive any addenda or other correspondence related to this RFQ if the Subcontractor fails to submit an RFQ Interest Form to the Awarding Authority as directed in the RFQ. The Awarding Authority shall maintain a list of all firms that have submitted an RFQ Interest Form and shall provide notice of any addenda or other communications regarding the prequalification process to all firms that have submitted the RFQ Interest Form.

(3) Overview of Selection Process. The RFQ shall include an overview of the selection process stating that the RFQ is being issued for a public Building Project pursuant to M.G.L. c. 149, § 44D³/₄ to solicit firms interested in providing Subcontractor services for said Building Project. The RFQ shall also include a statement that the Subcontractor selection process for the Building Project is a two-phase process as set forth in M.G.L. c. 149, § 44D³/₄ and that the Awarding Authority is prequalifying firms interested in providing public Subcontractor services for said Building Project through this *RFQ* prequalification process.

(4) Evaluation Criteria. The RFQ shall include a detailed description of the evaluation categories and subcategories on which the Prequalification Committee will evaluate interested Subcontractors for prequalification.

(a) General Evaluation Categories. The RFQ shall advise interested Subcontractors that they will be evaluated for prequalification by the Prequalification Committee on the basis of the four general evaluation categories mandated in M.G.L. c. 149, § 44D³/₄ and shall set forth the evaluation points allocated to each of the categories. The Awarding Authority shall not modify, add or delete from these prescribed four general categories in the RFQ or any addenda thereto. The mandated general evaluation categories and their respective point allocations are as follows:

1. Management Experience. The RFQ shall expressly state that there are a maximum 50 points available in this evaluation category, but even if all other requirements for prequalification are met by an interested Subcontractor, a minimum of 25 points are required in this evaluation category in order for an interested Subcontractor to be deemed prequalified by the Prequalification Committee to submit a sub-bid for the Building Project.
2. References. The RFQ shall expressly state that there are a maximum of 30 points available in this evaluation category, but even if all other requirements for prequalification are met by an interested Subcontractor, a minimum of 15 points are required in this evaluation category in order for an interested Subcontractor to be deemed prequalified by the Prequalification Committee to submit a sub-bid for the Building Project.
3. Capacity to Complete. The RFQ shall expressly state that there are a maximum 20 points available in this evaluation category, but even if all other requirements for prequalification are met by an interested Subcontractor, a minimum of ten points are required in this evaluation category in order for an interested Subcontractor to be deemed prequalified by the Prequalification Committee to submit a sub-bid for the Building Project.
4. Mandatory Requirements. The RFQ shall expressly state that there are no points available in this evaluation category, but even if all other requirements for prequalification are met by an interested Subcontractor, an interested Subcontractor must satisfy all of the Mandatory Requirements in order for an interested Subcontractor to be deemed prequalified by the Prequalification Committee to submit a sub-bid for the Building Project.

10.05: continued

(b) Evaluation Subcategories. The RFQ shall specifically state that interested Subcontractors will be further evaluated for prequalification by the Prequalification Committee in accordance with certain mandated sub-categories within each of the four evaluation categories set forth in 810 CMR 10.05(4)(a)1. through 4. The evaluation sub-categories mandated by M.G.L. c. 149, § 44D^{3/4} are as follows:

1. Sub-categories for Management Experience:

- a. Business Owners. The name, title, years with firm of the owner(s) of the business.
- b. Management Personnel. The names, title, education and construction experience, years with firm, and list of projects completed by all management personnel, including, but not limited to, all management personnel who will have any direct or indirect responsibility for the Building Project for which the RFQ is issued.
- c. Similar Project Experience. The project name(s), description, original contract sum, final contract sum with explanation, and date completed of similar projects. The Awarding Authority shall have the discretion to include in the RFQ a description of what it considers a “similar project”.
- d. Terminations. A list of any projects on which the firm was terminated or failed to complete the work, including an explanation for each instance listed.
- e. Legal Proceedings. A list of all legal or administrative proceedings currently pending against the Subcontractor or concluded adversely to the Subcontractor within the past three years which relate to the procurement or performance of any public or private construction contract.
- f. Safety Record. The three year history of the firm's workers' compensation experience modifier.

2. Sub-categories for References:

- a. Project References. A list of references from owners, architects and general contractors for all “similar projects” listed by the Subcontractor provided in response to the information sought in 810 CMR 10.05(4)(b)1.c. The list of references must include, at a minimum, project names and the names of the owners, architects and general contractors, with current address, telephone and fax number, and a contact person for each.
- b. Credit References. A list of a minimum of five credit references, including the current telephone and fax number of a contact person from key suppliers, vendors and banks.
- c. Public Project Record. A list of all completed Building Projects during the past three years with owner's name, current address, telephone and fax number and a contact person.

3. Sub-categories for Capacity to Complete Projects:

- a. Annual Revenue. An interested Subcontractor shall provide its annual revenue for the prior three fiscal years. Such financial information submitted shall remain confidential and shall not be a public record under M.G.L. c. 4, § 7.
- b. Revenue Under Contract. An interested Subcontractor shall provide its revenue under contract for the next three fiscal years. Such financial information submitted shall remain confidential and shall not be a public record under M.G.L. c. 4, § 7.
- c. Preservation of Confidentiality of Financial Information Submitted in Response to RFQ. In order to preserve the confidentiality of interested Subcontractors providing this information in response to an RFQ, interested Subcontractors may submit the required financial information in 810 CMR 10.05(4)(b)3.a. and b. in a sealed envelope, attached to its SOQ package by staple, providing that the Subcontractor clearly labels the outside of the envelope with its name, the project name, the project number and a notation that the envelope contains confidential financial information.

4. Sub-categories for Mandatory Requirements:

- a. Bonding Capacity. A Commitment Letter from a Surety Company indicating that an interested Subcontractor is Bondable as defined in 810 CMR 10.01. If the Commitment Letter provided is written on behalf of a Surety Company but not actually from a Surety Company as defined in 810 CMR 10.01, then the Commitment Letter must be accompanied by an authorized power of attorney from a Surety Company or it will be deemed insufficient.

10.05: continued

- b. DCAM Certification. An interested Subcontractor must provide a Certificate of Eligibility issued by DCAM pursuant to M.G.L. c. 149, § 44D.
- c. Update Statement. An interested Subcontractor must provide a completed and currently valid Update Statement.

(5) Allocation of Points for Evaluation General Categories and Sub-categories. The RFQ shall specify the point allocation of each evaluation category and subcategory.

(a) Mandatory Point Allocation of Categories. The point allocation required in M.G.L. c. 149, § 44D³/₄ for the four evaluation categories set forth in 810 CMR 10.05(4)(a)1. through 4. shall be expressly stated in the RFQ and may not be varied by the Awarding Authority under any circumstances.

(b) Discretionary Point Allocation of Sub-categories. The Awarding Authority shall have the discretion to determine the point allocation for each of the sub-categories set forth in 810 CMR 10.05(4)(b) within each of the general categories set forth in 810 CMR 10.05(4)(a), provided however, that the total amount allocated among the sub-categories within each of the general categories does not exceed or fall short of the total points required in each general category.

(6) Contractors Required Response Format – Statement of Qualifications. The RFQ shall instruct interested Subcontractors regarding the required submission procedures and shall include in the body of the RFQ a copy of the required SOQ form, including required schedules, and a list of the required attachments thereto.

10.06: Statement of Qualifications

(1) Standardized Statement of Qualifications. In order to facilitate a uniform prequalification process and expedite the response and evaluation time required, an Awarding Authority utilizing prequalification, whether by mandate or by election, shall include as part of the RFQ a standardized SOQ, in a form consistent with the form prescribed by DCAM in the *DCAM Guidelines for Prequalification*. The SOQ may be customized by the Awarding Authority to include project specific information to seek information relative to the evaluation criteria set forth in 810 CMR 10.05(4), but shall not be otherwise modified or changed. The Awarding Authority shall make the SOQ available to interested Subcontractors both electronically and in paper form.

(2) Form of Response to RFQ. Interested Subcontractors shall respond to an RFQ issued by an Awarding Authority for the purpose of prequalification by completing the SOQ provided by the Awarding Authority in the RFQ, including the required schedules and attachments thereto. The SOQ must be submitted in accordance with the instructions provided in the RFQ. Responses submitted in any form other than the form specified by the Awarding Authority in the RFQ shall be deemed disqualified from the prequalification process.

(3) Financial Information Submitted with Statement of Qualifications. In order to preserve the confidentiality of financial information submitted by a Subcontractor in response to the information requested for the Capacity to Complete evaluation category, interested Subcontractors may submit the annual revenue and revenue under contract information in accordance with the procedures set forth in 810 CMR 10.05(4)(b)3.c.

(4) Authorization to Submit Statement of Qualifications. The SOQ shall be signed under pains and penalties of perjury. The signatory of the SOQ shall be an officer of the Subcontractor firm authorized to sign on behalf of the Subcontractor firm who has full knowledge of the information being provided.

10.06: continued

(5) Disqualification. Any Subcontractor who fails to respond to the RFQ in accordance with the instructions provided in the RFQ in any material way shall be deemed to be disqualified from consideration for prequalification. This includes, but is not limited to, failure to submit the SOQ by the deadline set forth in the RFQ, failure to submit the SOQ to the address set forth in the RFQ, failure to submit the response to RFQ on the SOQ form provided, failure to sign the SOQ under the pains and penalties of perjury and failure to comply with the mandatory requirements set forth in M.G.L. c. 149, § 44D³/₄(e)(4).

10.07: Public Notice of Prequalification

(1) Public Notice and Solicitation of Responses to RFQ. Once the Prequalification Committee has met and finalized the RFQ and SOQ in accordance with the requirements set forth in 810 CMR 10.05 and 10.06, the Awarding Authority shall initiate the prequalification process by issuing a public notice to alert interested Subcontractors that prequalification will be utilized for the procurement of Subcontractors on a particular Building Project and that sub-bids will not be accepted from Subcontractors which have not been prequalified and invited to bid by the Awarding Authority as provided in M.G.L. c. 149, § 44D³/₄ and 810 CMR 10.00.

(2) Advertisement of Public Notice and Solicitation of Responses to RFQ. The public notice shall be advertised in a newspaper of general circulation in the area in which the Building Project is located, in the Central Register pursuant to M.G.L. c. 9, § 20A, and within the Commonwealth's state-wide Comm-PASS procurement system, which is administered by the Commonwealth's Operational Services Division. The public notice may also be posted on the Awarding Authority's web-site, but such posting will not eliminate or substitute the requirement to advertise the public notice as set forth in 810 CMR 10.07.

(3) Time for Public Notice and Solicitation of Responses to RFQ. The public notice that prequalification will be utilized and solicitation of responses to the RFQ issued for that purpose shall be published by the Awarding Authority not less than two weeks before the deadline for submission of responses to the RFQ.

(4) Contents of Public Notice and Solicitation.

(a) The public notice must contain the following minimum required information regarding the Building Project:

1. a statement indicating that the RFQ will be used to prequalify Subcontractors for a particular Building Project and only Subcontractors who are prequalified by the Awarding Authority will be invited to submit a bid for the Building Project pursuant to M.G.L. c. 149, § 44F;
2. the location or locations where interested Subcontractors can obtain a full copy of the RFQ, including both the actual address or addresses where a hard copy may be obtained and the electronic address or addresses where an electronic copy may be obtained;
3. the time and date for receipt of responses to the RFQ, which shall be at least two weeks after the date of advertisement of the public notice and solicitation of responses to the RFQ;
4. both the mailing and physical address of the office to which the responses to the RFQ are to be delivered;
5. the timeframe in which the Awarding Authority will respond to said responses;
6. a general description of the Building Project which shall include a description of the physical location of the Building Project and the work to be performed;
7. the anticipated schedule for the Building Project from the time a notice to proceed is issued by the Awarding Authority;
8. the estimated construction cost for the Building Project and the estimated construction cost for each and every subtrade for which Subcontractors will be prequalified in accordance with M.G.L. c. 149, § 44D³/₄ and 810 CMR 10.00;
9. a listing of the project team including the Awarding Authority, the Designer, and Awarding Authority's OPM, if applicable;

10.07: continued

10. a detailed description of the evaluation procedure and the criteria for the prequalification of Subcontractors, including the point rating system to be enlisted by the Prequalification Committee in evaluating responses to the RFQ and the specific point allocation for each evaluation category and sub-category, and the anticipated schedule for the start and completion of the evaluation process;

11. a prohibition against any unauthorized communication or contact with the Awarding Authority outside of official pre-bid meetings. (The only communications which shall be deemed authorized are inquiries made to the Awarding Authority for general information about obtaining the RFQ, RFQ submission deadlines, and the existence of any relevant addenda to the RFQ; and inquiries made at any official Pre-RFQ submission meeting held by the Awarding Authority); and,

12. if the Awarding Authority elects to limit the size and number of pages to be included in the responses to the RFQ then notice of that limitation must be included in the public notice and solicitation.

(b) Where inclusion of all of the information set forth in 810 CMR 10.07(4)(a) in the text of the advertisement is not practicable due to the limitations of space and cost for such advertisement, the Awarding Authority shall include at a minimum the required information set forth in 810 CMR 10.07(4)(a)1. through 9. in the advertisement and explicitly state in the advertisement that all further required public notice information regarding the Building Project, including the prequalification evaluation criteria and the selection process, is included in the RFQ which shall be available to interested Subcontractors at the physical and electronic locations set forth in the advertisement.

10.08: Evaluation Process

(1) Register of Responders. The Prequalification Committee shall prepare a “Register of Responders” at the opening of the SOQs. The “Register of Responders” shall include the name of each responder who submitted a SOQ in response to the RFQ and the date and time of receipt thereof.

(2) Opening of Responses. The Awarding Authority shall not open the SOQs publicly, but shall open them in the presence of one or more witnesses at the time specified in the RFQ. The opening of the SOQs by the Prequalification Committee shall be deemed to satisfy this requirement.

(3) Initial Evaluation Meeting of the Prequalification Committee. Immediately following the opening of the responses to the RFQ, the Prequalification Committee shall review the Register of Responders and obtain copies of each SOQ (and required supporting documentation) submitted by interested Subcontractors in response to the RFQ and make arrangements for the checking of references.

(4) Delegation of Work. The Prequalification Committee may delegate the checking of references to individuals outside of the Prequalification Committee, provided however, that the Prequalification Committee develop a written reference check form with uniform questions to be asked of references by those checking references on its behalf. The chairperson of the Prequalification Committee may delegate additional administrative tasks necessary to facilitate the prequalification process.

(5) Review of Statements of Qualifications. The members of the Prequalification Committee shall review each of the SOQs submitted by interested Subcontractors.

(6) Meetings of the Prequalification Committee. Upon completion of their individual review of the SOQs submitted by interested Subcontractors and the completion of the reference checking, the Prequalification Committee shall collectively evaluate the responses to the RFQ. The Prequalification Committee must evaluate each application for prequalification using solely the criteria specified in M.G.L. c. 149, § 44D³/₄ and set forth in the RFQ.

10.08: continued

(7) Deliberations of the Prequalification Committee. The Prequalification Committee may consult with other representatives from the Awarding Authority, Designer, client or user agency (if applicable) or legal counsel, as necessary to expedite the evaluation process. In addition, members of the Prequalification Committee may contact interested Subcontractors to clarify or verify timely information submitted by an interested Subcontractor in its SOQ.

(8) Standard Prequalification Evaluation Report. Following the deliberations of the Prequalification Committee, the chairperson shall complete a Prequalification Evaluation Report, in a form consistent with the standard Prequalification Evaluation Report prescribed by DCAM in the *DCAM Guidelines for Prequalification*, which shall reflect the score achieved by an interested Subcontractor in each evaluation category and subcategory. The Prequalification Evaluation Report completed by the chairperson shall reflect the consensus of the Prequalification Committee regarding the score received for each category and subcategory and shall indicate the total points awarded to the interested Subcontractor. The Prequalification Evaluation Report may be customized by the Prequalification Committee to reflect project specific information only.

(9) Minimum Score Required. In order to be prequalified by the Prequalification Committee, interested Subcontractors must achieve the minimum number of points in each of the four general evaluation categories as well as a total minimum score overall of 70 points. All Subcontractors obtaining the minimum required score in each category and a total of 70 points overall shall be prequalified by the Prequalification Committee and invited to submit bids consistent with M.G.L. c. 149, § 44F. The Awarding Authority shall invite all achieving a score of 70 or above to submit a sub-bid on the Building Project.

(10) Time for Review. The Prequalification Committee shall endeavor to complete the evaluation process in accordance with the schedule set forth in the RFQ. If, however, the Prequalification Committee is unable to complete the evaluation process within the time set forth in the RFQ and there are circumstances related to the Building Project that require additional time, the Prequalification Committee shall provide written notice of the change in schedule and expected completion date to all interested Subcontractors who have submitted a SOQ.

(11) Insufficient Number of Prequalified Subcontractors.

(a) Where Prequalification Is Mandatory. If the Awarding Authority qualifies fewer than three Subcontractors to submit bids in each sub-bid trade and the prequalification process was required, then the Awarding Authority shall reject all responses and shall issue a new RFQ, at least one additional time. If, however, the Awarding Authority issues at least one subsequent RFQ and is still unable to prequalify at least three Subcontractors in each sub-bid trade, then the Awarding Authority may do one of the following:

1. issue a new RFQ and attempt to prequalify at least three Subcontractors in each sub-bid trade for which three were not initially prequalified;
2. abandon the prequalification process and invite filed sub-bids, without further prequalification, pursuant to M.G.L. c. 149, §§ 44A through 44J, with the exception of M.G.L. c. 149, §§ 44D¹/₂ and 44D³/₄; or
3. if at least two Subcontractors were deemed prequalified by the Prequalification Committee in a particular sub-bid trade, then the Awarding Authority may elect, in its sole discretion, to invite sub-bids from the two Subcontractors that were prequalified in that sub-bid trade.

(b) Where Prequalification is Discretionary. If the Awarding Authority qualifies fewer than three Subcontractors to submit sub-bids in a particular sub-bid trade and the prequalification process was initiated at the option of the Awarding Authority, then Awarding Authority may do one of the following:

1. issue a new RFQ and attempt again to prequalify at least three Subcontractors in each sub-bid trade for which three were not initially prequalified;
2. abandon the prequalification process and invite filed sub bids, without further prequalification, pursuant to M.G.L. c. 149, §§ 44A through 44J, with the exception of M.G.L. c. 149, §§ 44D¹/₂ and 44D³/₄; or

10.08: continued

3. if at least two Subcontractors were deemed prequalified by the Prequalification Committee in a particular sub-bid trade, then the Awarding Authority may elect, in its sole discretion, to invite sub-bids from the two Subcontractors that were prequalified in that sub-bid trade.

(12) Re-issuance of RFQ. Where an RFQ is reissued because there were fewer than three Subcontractors prequalified in any particular sub-bid trades, any and all subsequent RFQs issued by the Awarding Authority for a particular Building Project shall comply with the requirements of M.G.L. c. 149, § 44D¾ and 810 CMR 10.00. Where an Awarding Authority re-issues an RFQ pursuant to either 810 CMR 10.08(11)(a) or (b), it may stipulate that all Subcontractors prequalified to submit sub-bids in the particular trade for the Building Project by the Prequalification Committee during the initial or prior prequalification review shall remain prequalified for that particular Building Project without further submission by the Subcontractor or review by the Awarding Authority, for a maximum of one hundred and 120 days from the due date of the responses of the initial RFQ.

10.09: Required Notices Upon Completion of Prequalification Evaluation

(1) Notice to Interested Subcontractors Failing to Prequalify. Within 14 days of the completion of the evaluation process by the Prequalification Committee, the Awarding Authority shall send via first class mail, postage prepaid, written notices to all interested Subcontractors advising that they did not achieve a sufficient score from the Prequalification Committee to be prequalified.

(2) Notice to Prequalified Subcontractors. Within 14 days of the completion of the evaluation process by the Prequalification Committee, the Awarding Authority shall send via first class mail, postage prepaid, written notice to each Subcontractor advising that it has been prequalified by the Prequalification Committee and will be invited to submit a sub-bid on the Building Project.

(3) Public Notice of Prequalification. Within 14 days of the completion of the evaluation process by the Prequalification Committee, the Awarding Authority shall provide public notice of all of the Subcontractors who have been prequalified to submit a sub-bid on the Building Project. The Awarding Authority shall publish such public notice stating that only Subcontractors prequalified to bid on the Building Project will be invited to submit sub-bids and shall post the list of prequalified Subcontractors in its bid room or place of business where sub-bids are customarily received for the Awarding Authority's Building Projects. Such public notice of prequalified Subcontractors shall also be posted within the Commonwealth's state-wide Comm-PASS procurement system, which is administered by the Commonwealth's Operational Services Division. The public notice may also be posted on the Awarding Authority's web-site. A copy of such public notice shall also be sent via first class mail, postage prepaid, to all prequalified Subcontractors along with the invitation to bid required in 810 CMR 10.10.

10.10: Invitation to Bid to Prequalified Subcontractors

All prequalified Subcontractors as determined by the Prequalification Committee shall be invited in writing by the Awarding Authority to submit a sub-bid in accordance with the bidding procedures set forth in M.G.L. c. 149, § 44F. The invitation to bid shall be sent to all prequalified Subcontractors via first class mail, postage prepaid, and shall specify therein the deadline for the submission of filed sub-bids from prequalified Subcontractors and indicate where prequalified Subcontractors may obtain copies of the plans and specifications for the particular Building Project. In no event shall the deadline for submission of sub-bids from prequalified Subcontractors be less than 14 days from the issuance of the invitation to bid. Any other parties interested in obtaining plans and specifications for the Building Project may do so by providing a deposit as designated by the Awarding Authority. The Awarding Authority shall only accept sub-bids from prequalified Subcontractors.

10.11: Entitlement to Evaluation Score/Right of Appeal

- (1) Upon written request to the Awarding Authority, any interested Subcontractors, that submitted a SOQ for the purpose of being prequalified to submit a sub-bid on a Building Project shall be entitled to obtain its prequalification evaluation score, whether prequalified or not.
- (2) The decision of the Prequalification Committee shall be final and shall not be subject to appeal except on grounds of fraud or collusion. The burden shall be on the appealing party to prove by a preponderance of evidence that such fraud or collusion existed.

REGULATORY AUTHORITY

810 CMR 10.00: M.G.L. c. 149, § 44D³/₄.