



# MASSACHUSETTS VERTICAL CONSTRUCTION PROCUREMENT AND THE FILED-SUBBID PROCESS

STATE OF CONNECTICUT CONSTRUCTION CONTRACTING AND  
BIDDING TRANSPARENCY WORKING GROUP  
SEPTEMBER 16, 2014

Division of Capital Asset Management  
and Maintenance (DCAMM)

Carole Cornelison-Commissioner

Presenters:

George Matthews, Deputy General Counsel

Michael Lambert, Director  
Office of Planning, Design & Construction

[www.mass.gov/dcamm](http://www.mass.gov/dcamm)



# AGENDA

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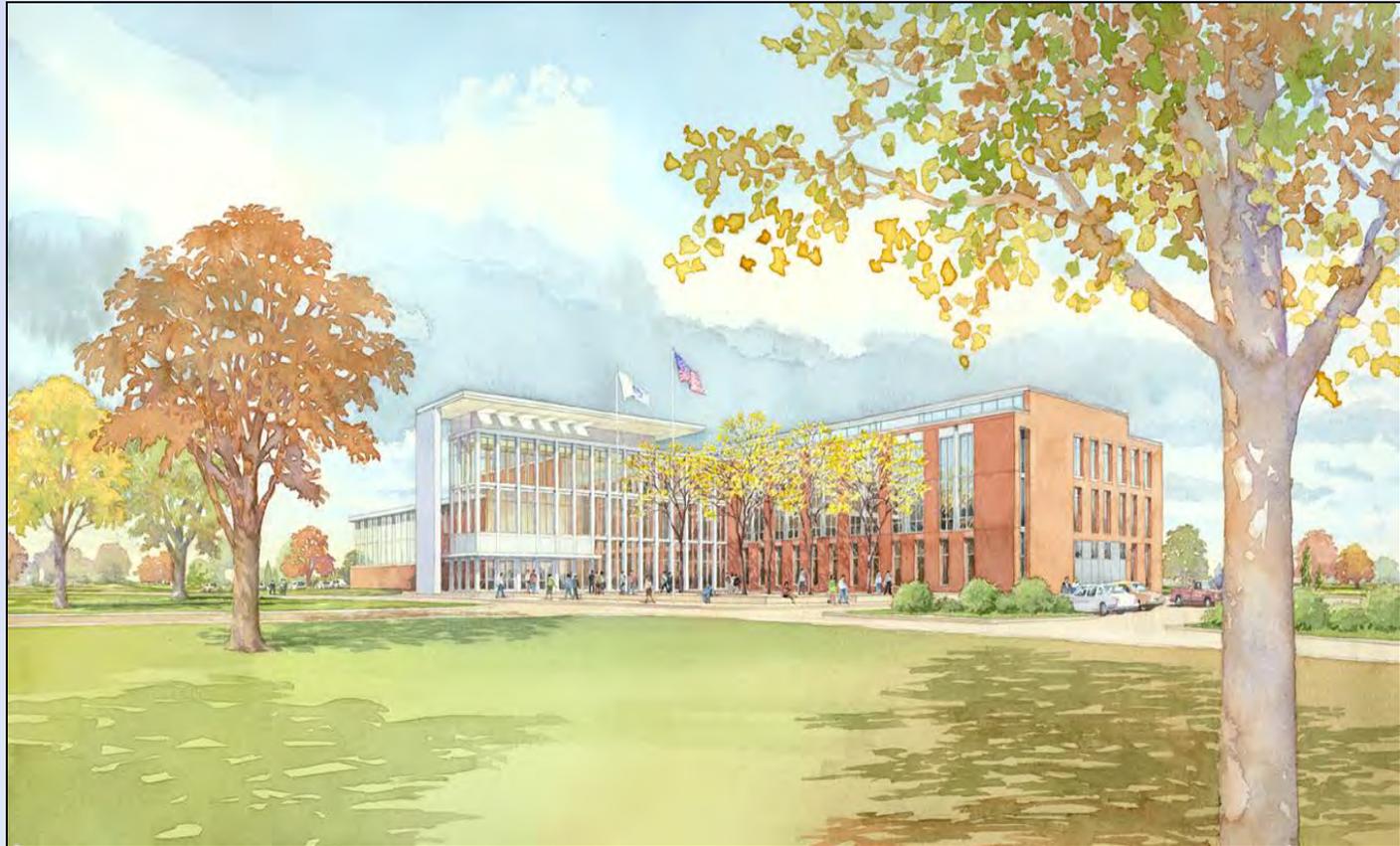
- DCAMM - The Commonwealth's Real Estate, Construction and Facilities Management Agency
- Filed-Sub-bid Process in Design-Bid-Build Projects Overview Pros and Cons
- Construction Reform and the Filed Sub-bid Law
- Sub-bid Prequalification on Construction Manager at Risk and Design-Bid-Build Over \$10 Million
- Affirmative Marketing MBE/WBE Program & Minority and Women Workforce Participation
- Discussion Points
- Questions and Answers



Valuable Resources: [Inspector General's Handbook](#)  
"Designing and Constructing Public Facilities 7<sup>th</sup> ed. 2011"  
available on IG's website [www.mass.gov/ig](http://www.mass.gov/ig);

[Inspector General's 2004 "An Interim Report" on Pilot Program Suspending Filed-Sub-bids on Certain School Construction Projects Filed-Sub-bid Process](#) [www.mass.gov/ig](http://www.mass.gov/ig)

# THE DIVISION OF CAPITAL ASSET MANAGEMENT & MAINTENANCE DCAMM



# Division of Capital Asset Management & Maintenance

The Commonwealth's Real Estate, Construction and Facilities Management Agency

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## DCAMM Scope of Services

- Planning
- Design
- Construction
- Capital Repairs and Improvements
- Integrated Facility Maintenance and Management
- Contractor Certification and Compliance
- Leasing
- Asset Management
- Acquisition and Disposition



# Division of Capital Asset Management & Maintenance

The Commonwealth's Real Estate, Construction and Facilities Management Agency

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## DCAMM Clients:

- Judiciary (Courthouses)
- Higher Education (UMASS, State and Community Colleges)
- Public Safety (Corrections, State Police, Fire Fighting, Medical Examiner)
- Human Services (Mental Health, Mental Retardation, Public Health, DYS)
- State Office Buildings (Boston, Springfield, State House)
- Environment (DCR, DEP, Food & Agriculture, Fish & Wildlife)
- Counties (Jails, Courthouses, Hospitals)
- Other Public Agencies



# Division of Capital Asset Management & Maintenance

The Commonwealth's Real Estate, Construction and Facilities Management Agency

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- DCAMM Office of Planning, Design and Construction (OPDC) responsible for all phases of state building construction project management from project initiation and development to final design and construction
- DCAMM has Control and Supervision of State Capital Facility Projects when the estimated cost of the project is \$2 million or more and involves structural or mechanical work. DCAMM delegates project control and supervision for such projects when the estimated cost is less than \$2 million and greater than \$250,000
- DCAMM Certifies prime contractors and subcontractors to perform public building construction for all public projects estimated to cost > \$100,000: state, county, municipal, etc. The certification process is conducted by DCAMM's Contractor Certification Office



# Division of Capital Asset Management & Maintenance

The Commonwealth's Real Estate, Construction and Facilities Management Agency

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- DCAMM's OPDC employs about 100 of DCAMM 400 employees including the Director, Deputy Directors, Project Managers, Project Engineers, Resident Engineers, and Administrative Staff
- Approximately \$550 million approved for the capital budget for FY 2015
- OPDC working with DCAMM's Offices of Finance, Legal, and Bid Room solicits, awards and contracts with contractors who perform the work, and with Designers (through the Designer Selection Board) who provide study, design and construction supervision services



# Filed Sub-bid Process under Design-Bid-Build Delivery Overview



# Filed Sub-bid Law – Design Bid Build

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- Estimated Construction Cost (ECC) over \$100,000
- Public Building Projects procured through M.G.L. c. 149, §44A-44J known as the Filed-Sub-bid Law
- Requires competitive bidding of 18 sub-trades directly to Public Awarding Authority instead of General Contractor
- Bid specifications have a separate section for each of the Filed-Sub-bid classes of work (listed below) if in the estimate of the awarding authority such class of work will exceed \$20,000. §44F(1)
- Public opening of filed sub-bids by Owner at least 4 days prior to opening of General bids. §44F(3). Subs must use statutory form of sub-bid. §44F(2)
- Sub-Sub trades: Subs must list sub subcontractor's names and bid prices on bid form for certain classes of work identified in the specifications, which are estimated to cost in excess of \$10,000, are customarily performed by sub subcontractors This sub-sub-bid work is known as "Paragraph E work", because it is listed under Paragraph E on the statutory standard bid form (insulation, ductwork and temperature controls are examples of sub subcontractor classes of work for HVAC)



# Filed Sub-bid Law – Design Bid Build

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- Public Owners may reject (declare ineligible) a sub-bid if it is determined that a sub bidder is not eligible and responsible or its sub-bid does not meet the bid submission requirements
- Eligible sub bidders are placed on a tabulation sheet and Awarding Authority must mail a copy of the listing to every general bidder who took out a set of plans for bidding prior to the general bid opening
- General contractors must choose from that sheet but are not required to list the lowest filed sub-bidder in their general bid submissions
- Filed sub bidders can restrict their bids to certain general contractors
- DCAMM Certification required of prime/general bidders with Update Statement (1)
- DCAMM Certification required of filed sub bidders (since 2006) & Update Statement
- Filed sub-bid process applies to 18 trades (next slide) in §44F(1) with ECC of \$20,000 or more



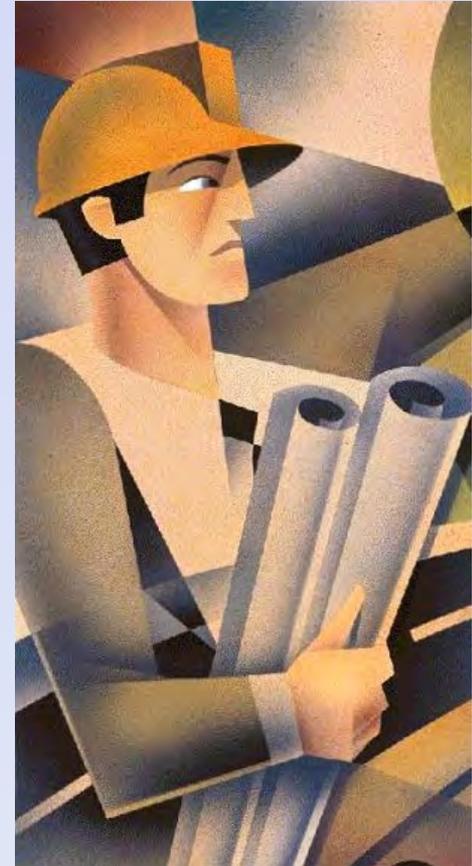
(1) Update Statement form updates Contractor's Certification Application for use by Awarding Authority as of bid date, i.e. book of work, completed projects, track record etc..

# Filed Sub-bid Law – Design Bid Build

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## Filed Sub-bid Categories G.L. c 149, §44F (18 trades)

- (a) roofing and flashing;
- (b) metal windows;
- (c) waterproofing, damp-proofing and caulking;
- (d) miscellaneous and ornamental iron;
- (e) lathing and plastering;
- (f) acoustical tile;
- (g) marble; (h) tile; (i) terrazzo;
- (j) resilient floors;
- (k) glass and glazing;
- (l) painting;
- (m) plumbing;
- (n) heating, ventilating and air-conditioning;
- (o) electrical work;
- (p) elevators;
- (q) masonry work;
- (r) fire protection sprinkler systems: and
- (s) any other class of work that awarding authority deems necessary



# Filed Sub-bid Law – Design Bid Build

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## GENERAL CONTRACTOR BIDS

- Submitted on Statutory Bid Form. §44E(2).
- General Bid consists of the total of Item 1. Work, which is work of the general contractor (including non-filed subcontract work), plus Item 2. Work, which is the total of all filed subcontract work
- Awarding authority and general contractor can agree to substitute another filed sub-bidder for one named by the general contractor in its bid. The general contractor's bid price is adjusted by the difference in price between the original sub-bidder and the substituted sub-bidder
- Award to lowest eligible & responsible general bidder.
- Responsible – possessing the skill, ability and integrity to perform work based upon determination of competent workmanship and financial soundness



# Filed Sub-bid Law – Design Bid Build

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## Special Circumstances:

- If after review of sub-bids there are no sub-bids left in a particular category:
  - Owner may delay the general bid opening and re solicit sub-bids, or
  - May issue an addendum to the general bidders instructing them to carry a specific dollar amount for that sub-trade on the general bid form. After selection of the winning general bid, then re-solicit sub-bids for that trade and adjust the general contract price.
- If there are no sub-bids, or only sub-bids restricted to the use of one or more general bidders, in a particular category:
  - Owner may delay the general bid opening and re-solicit sub-bids for that sub-bid category only, following all the same procedures, or
  - Owner may issue a directive to the general bidders to include that sub trade work within the general bidder's scope of work. The winning general contractor can then select a subcontractor, subject to the approval of the awarding authority



# Pros and Cons of Filed Sub-bids

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- **Pros: Common arguments made in favor**
  - Access to public work for competent subs who don't usually get access
  - Useful pool of information regarding costs and specific components of scope of work
  - Selection and pricing of subcontract work is in public view
  - Transparency of sub-bids available to all general bidders
  - Prevents bid shopping after general bids submitted – bid shopping can bring in weak low-ball performers, which encourages change order requests and claims
  - Requires designers to prepare detailed plans and specs which benefits owner with more complete design and cost estimates, and competitive prices
  - More control to owner by allowing review of qualifications and elimination of unqualified subs
  - Largest group of qualified subcontractors put forth their best competitive price on bid day – benefits public
  - Increased number of sub-bid competitors and quality of work product
  - Provides protection to sub contractors with statutory contract form

# Pros and Cons of Filed Sub-bids

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- **Cons – Common arguments made against**
  - Too restrictive and inhibits GCs from assembling own team and structuring the project the way they would a private job
  - Perception that subcontractors don't feel answerable to the GCs because their bids filed directly with the Owner
  - Discourages certain GC's & Subcontractors from entering the public arena
  - Does not foster harmony where contractor required to work with certain subs they would not otherwise work with
  - Places undue responsibility and cost on designer with too much specificity at bid stage and takes away GCs ability to consolidate sub-bid work
  - Imposes administrative burden on public owner with multi-phased bid openings, selection of multiple sub bidders, opportunities for bid protests all increasing award time and adding to cost
  - Limited in guarantees of access for small business and women/minority owned businesses (MBE/WBE firms may obtain filed subcontract work, if qualified like any other firm, but sub-subbing to such firms is not a legally accepted practice currently)

# Construction Reform



# Construction Reform and the Filed Sub-bid Law

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- In 2004 Massachusetts passed the most significant public construction reform package in over twenty years. This law was the work product of the Commonwealth of Massachusetts Special Commission on Public Construction Reform.
- **Changes to filed sub-bid law on design-bid-build projects:**
  - threshold change from \$10-\$20 thousand dollars
  - DCAMM subcontractor certification required (next slides)
- **Provides for Alternative Delivery Methods**
  - Makes Owner prequalification of contractors widely available/mandatory in certain instances (GCs, subs).
  - Same 18 trades require separate specifications
  - Form of subcontract remains specified by statute
  - Bid awarded to lowest prequalified trade bidder



# Construction Reform and the Filed Sub-bid Law

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## Subcontractor Certification

Effective January 1, 2006

- Sub-bidders must be certified by DCAMM in much the same way that prime contractors are, after review of applicants' construction experience and financial condition.
- Every sub-bid for a building contract subject to the filed sub-bid law (estimated cost of construction >\$100,000) must be accompanied by a copy of a certificate of eligibility issued by the DCAMM Commissioner together with an Update Statement.
- The sub-bidder must include with its bid an Update Statement and also a list of completed construction projects submitted to DCAMM in its most recent application of subcontractor certification.



# Prequalification of Subcontractors on Construction Manager at Risk & Design-Bid-Build Over \$10 Million



## CM at Risk Services – MGL c. 149A

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- Delivery method is optional for Awarding Authorities on building projects with an ECC of \$5 million or greater.
- Inspector General approval required on a project by project basis--- exceptions are DCAMM, Mass Port, MWRA, and MSCBA, which submit procedures for projects they choose to procure CM at Risk.
- CM at Risk firm and subcontractors in 18 trades must be certified by DCAMM.
- Prequalification of CMs and subcontractors in 18 trades.
- Laws governing prevailing wages, direct payment, prompt payment, unforeseen conditions, delays and contractor record keeping are all applicable.

# CM at Risk & Prequalification of Trades-M.G.L. c. 149A

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A construction management firm provides a range of pre-construction services and construction management services including:

- Cost estimation
- Consultation regarding the design
- Scheduling
- Preparation & coordination of bid packages
- Cost control - value engineering
- Assist with pre-qualification and evaluation of trade contractors and other subcontractors
- Act as the general contractor during the construction which includes holding trade contracts and other subcontracts
- Provide management and construction services



# CM at Risk & Prequalification of Trades-M.G.L. c. 149A

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## Guaranteed Maximum Price (GMP)

- GMP is the guaranteed maximum price the awarding authority will pay for the project.
- GMP is agreed to by Owner and CM and comprised of the:
  - Estimated hard cost of the work (trade and non-trade contracts);
  - General conditions costs (provided during bid);
  - Fee payable to the CM (provided during bid).
- CM may not share in any savings between the GMP and the final cost of the work but an incentive clause for various performance objectives of up to 1% of the estimated construction cost is permitted.

# CM at Risk & Prequalification of Trades-M.G.L. c. 149A

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Prequalification of trade contractors in 18 trades. c. 149A, §8.  
Estimated > \$20,000

- What is Prequalification?

**Prequalification** is part of a two-phased procurement process utilized by public awarding authorities which enables public awarding authorities to limit the “bidding pool” to general bidders and sub-bidders who are qualified to do the work.

## The Two-Phase Process:

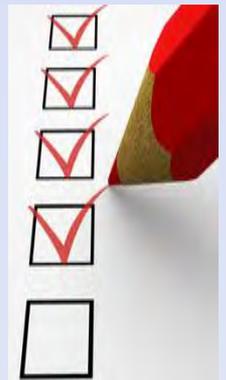
- **RFQ Phase** – the awarding authority issues a RFQ and reviews information submitted to determine qualified bidders.
- **RFP Phase** – only “prequalified” bidders are invited to bid.
- Laws governing DCAMM contractor certification, prevailing wages, direct payment, prompt payment, unforeseen conditions, delays and contractor record keeping are all applicable.

# CM at Risk & Prequalification of Trades-M.G.L. c. 149A

## TRADE CONTRACTOR SELECTION PROCESS

### Prequalification Steps:

- Prequalification Committee established.
- CM provides DCAMM detailed information for work of each trade contractor on the project.
- Public notice of RFQ for each trade contract.
- Statements of Qualifications submitted by interested trade contractor firms.
- Committee evaluates Statements of Qualifications.
- Selection of “prequalified” bidders.
- Bid documents issued to “prequalified” bidders.
- Bids accepted only from “prequalified” bidders.
- Award is to the lowest prequalified trade contractor
- Form of trade contract is specified in c. 149A, §8.



All trade contractors are required to obtain a performance and payment bond for the full amount of their contract.

# CM at Risk & Prequalification of Trades-M.G.L. c. 149A

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## NONTRADE CONTRACTOR SELECTION PROCESS

- When work estimated at less than \$20,000 for a trade, the CM submits to Owner qualifications required for each such category and a list of 3 subcontracting firms which the CM believes meets the qualifications
- The Owner may eliminate firms from the list and may add firms to the list; if any firm added is acceptable to the CM
- The CM invites each subcontractor approved by Owner to submit a bid for the work based on detailed bidding information developed by the CM
- The CM presents to the Owner a list of the bids submitted. The CM indicates the bidders who are selected to be awarded a subcontract with a written explanation as to the reason for the award of a subcontract
- Subcontracts with an award value of \$20,000 and less may be awarded by the CM using any selection method selected by the CM with the approval of the public agency



# Prequalification of GCs and Trades on Design-Bid-Build

## MGL c. 149 §§44D1/2 & 44D3/4

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### When is “prequalification” required by awarding authority?

- **Mandatory** for all “non-exempt” public awarding authorities to “pre-qualify” all general contractors and filed sub-bidders for public construction projects with estimated construction costs of \$10 million or more.
- **Discretionary** for all “non-exempt” public awarding authorities to “pre-qualify” all general contractors and filed sub-bidders where estimated construction costs are between \$100,000 and \$10 million.
- **Discretionary** for “exempt” agencies.  
DCAMM, Mass Port Authority, Mass Water Resource Authority, Mass State College Building Authority, U Mass Building Authority.



# Affirmative Marketing (MBE/WBE) Program Minority & Women Workforce Participation



# MBE/WBE Participation on Public Building Projects Affirmative Marketing Program

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*(Under MGL c.7C, §6 and relevant Executive Orders and ANF Bulletins)*

- MBE/WBE participation goals set by DCAMM & the Supplier Diversity Office (SDO) and shall apply to capital facility projects and state assisted building projects
- Workforce Goals Set by Executive Order - currently 15.3% minorities & 6.9% women participation on state projects.



# MBE/WBE Participation-Affirmative Marketing Program – Current Goals

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- Current MBE/WBE Participation Goals for projects advertised after January 1, 2012
  - Construction - Combined MBE/WBE Goal - 10.4%
  - A reasonable representation of both MBE and WBE firms is necessary
  - MBE/WBE participation is tracked separately
- Apply to DCAMM and state agency projects and all “state assisted building projects” includes projects by municipalities and political subdivisions when costs paid in whole or in part by Commonwealth.
- State agencies track and monitor their projects and report participation to ANF Office of Access and Opportunity and SDO tracks and monitors municipal building projects.

# IMPORTANT RESOURCES

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- DCAMM'S Website [www.mass.gov/dcam](http://www.mass.gov/dcam)  
Contractor Certification; Prequalification; Model Contracts
- Inspector General's Website [www.mass.gov/ig](http://www.mass.gov/ig)
  - Publication "Designing and Constructing Public Facilities (2011).
  - Inspector General's 2004 "An Interim Report" on Pilot Program Suspending Filed-Sub-bids on Certain School Construction Projects
  - Information on CM at Risk and Numerous Guidance Documents and Reports.
- Attorney General's Website [www.mass.gov/ag](http://www.mass.gov/ag)
  - Go to "Business and Labor Bureau" "Fair Labor Division" then "Public Construction."



# DISCUSSION POINTS

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- How does DCAMM determine delivery method – types of projects performed
- Impact of sub-bid process on bid shopping
- Procedure and resources dedicated to administering the bidding process
- Criteria used in selection process
  - Design-bid-build Process
  - Prequalification Process
- How does DCAMM address elements of work not included in 18 filed sub trades
- Reasoning for not including other elements of work
- Affirmative Marketing Program and DCAMM Bidding

# QUESTIONS AND ANSWERS

