



**THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE INSPECTOR GENERAL**

**Qualifying Contractors for Public
Building Projects:
A Case Study and System Review**

**Robert A. Cerasoli
Inspector General
August 1998**



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His Excellency the Governor

The Honorable President of the Senate

The Honorable Speaker of the House of Representatives

The Honorable Chairman of the Senate Ways and Means Committee

The Honorable Chairman of the House Ways and Means Committee

The Honorable Chairman of the Senate Post Audit and Oversight Committee

The Honorable Chairman of the House Post Audit and Oversight Committee

The Directors of the Legislative Post Audit Committees

The Secretary of Administration and Finance

Members of the General Court

Omnibus ad quos praesentes literae pervenerint, salutem.

I am today releasing a report on the current system of qualifying contractors for public construction work in Massachusetts. The Commonwealth's construction bidding process is predicated on the assumption that the system can accurately and reliably restrict public building contracts to qualified contractors. At the request of several members of the Legislature, I initiated a review of deficient construction projects in three municipalities undertaken by a contractor that had been deemed qualified to bid on public building contracts. My Office's investigation revealed that the contractor had made false statements in its certification application to the Commonwealth and Update Statements to the three municipalities.

My Office also identified weaknesses in the current system of qualifying public building contractors. These weaknesses include inadequate review of contractors' financial condition, overly generous limits on the dollar value of public work contractors

may undertake, understaffing of the Commonwealth's contractor certification function, and reluctance of awarding authorities to provide unfavorable evaluations of contractors' performance.

Reforming the current system of qualifying contractors for public building contracts is essential to ensuring that Massachusetts awarding authorities and taxpayers obtain high-quality construction services at competitive prices. This report offers a series of reform recommendations designed to raise the eligibility standards for public building contractors, strengthen the Commonwealth's capacity to screen out unqualified contractors, and encourage awarding authorities to reject unqualified bidders. Competition among qualified vendors is the key to best-value contracting in construction as well as other areas of public procurement. My Office will continue to work with the Legislature, the Administration, awarding authorities, and industry groups to improve and strengthen the system of public construction.

Sincerely,

Robert A. Cerasoli
Inspector General

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Executive Summary

Under Massachusetts law, public building contracts must be performed by contractors who possess the skill, ability, and integrity necessary to faithfully perform the work. In September 1997, at the request of several members of the Legislature, the Office of the Inspector General initiated a review of three recent public construction projects undertaken in 1996 by Anchor Contractors, Inc., for the Towns of Carver, Medfield, and Millis. The Towns identified numerous deficiencies in Anchor Contractors' performance on each of the projects, including defective workmanship, inadequate project staffing and scheduling, and failure to pay subcontractors. Anchor Contractors failed to complete the projects, and by 1998, all three municipalities had invoked Anchor Contractors' performance bonds.

The Office reviewed the process by which Anchor Contractors was certified in 1996 by the Division of Capital Planning and Operations¹ to bid on public building projects and then deemed qualified by the Towns of Carver, Medfield, and Millis. The Office also conducted a broader examination of weaknesses in the current system of certifying and qualifying contractors for public building projects. This report's findings and recommendations are summarized below.

Anchor Contractors' Performance on Recent Public Projects

- In May 1996, the Town of Millis executed a \$1,812,697 contract with Anchor Contractors for a renovation project to convert the Millis Memorial School into a community center and Town offices. Anchor Contractors failed to meet the contract completion date; and in April 1997, the Town notified Anchor Contractors and its surety (bonding company) that Anchor Contractors was in default of the contract. In September 1997, with the project approximately 80 percent complete, Anchor Contractors removed its crews from the project site. In November 1997, the Town terminated its contract with Anchor Contractors. After lengthy negotiations, Anchor Contractors' surety agreed to complete the contract using a new contractor by September 1998. As of July 1998, however, the work had not begun, and the Town did not expect the work to be completed until November 1998.

¹ Chapter 194 of the Acts of 1998 changed this name to "Division of Capital Asset Management and Maintenance."

- In July 1996, the Town of Carver signed a \$2,704,945 contract with Anchor Contractors to construct a new public library. In October 1997, according to Town records, Anchor Contractors removed its crews from the project site with the project approximately 90 percent complete, and the Town invoked Anchor Contractors' performance bond. As of July 1998, a new contractor hired by Anchor Contractors' surety had achieved substantial completion of the project.
- In September 1996, the Town of Medfield executed a \$1,985,800 contract with Anchor Contractors to renovate its Town Hall. Project records show that by the contract completion date of September 1, 1997, Anchor Contractors had stopped work after completing only 35 percent of the work. The Town subsequently terminated the contract and invoked Anchor Contractors' performance bond. As of July 1998, a new contractor hired by Anchor Contractors' surety had achieved substantial completion of the Town Hall project.

Certification of Anchor Contractors by DCPO

- The maximum allowable dollar value of a single project on which Anchor Contractors could bid was increased by 2,150 percent between 1991 and 1997 by DCPO on the basis of a project reference who apparently had undisclosed family and financial ties to Anchor Contractors.
- The maximum dollar value of all projects that Anchor Contractors could undertake at one time was increased by 1,500 percent between 1991 and 1997 by DCPO with minimal analysis of the firm's financial capability.
- The certification applications submitted by Anchor Contractors in 1996 and 1997 to DCPO contained false statements and omissions.
- Because of a DCPO application backlog, Anchor Contractors was eligible to continue bidding on public projects for four months after its 1996 certification had expired.

Qualification of Anchor Contractors by Awarding Authorities

- Reference checks by the Towns of Millis, Carver, and Medfield did not disclose significant performance problems on previous projects completed by Anchor Contractors.
- The Update Statements Anchor Contractors submitted to the Towns of Millis, Carver, and Medfield contained false statements and omissions.

Certification and Qualification of Contractors: Weaknesses in the Current System

- Current contractor certification standards may not adequately protect Massachusetts awarding authorities from unqualified construction contractors.
 - Current procedures for setting limits on the size of projects contractors may undertake do not take into account the size of evaluated projects and do not require a detailed examination of each applicant's financial condition.
 - The process of averaging ratings of evaluated projects can mask deficient performance.
 - The certification process does not require disclosure and evaluation of claims by subcontractors for direct payment.
 - The certification application and contractor evaluation form do not require disclosure of related-party projects.
- Awarding authorities do not always submit required contractor evaluations to DCPO and are reportedly reluctant to provide unfavorable evaluations of contractors' performance on public contracts.

Conclusion and Recommendations

The story of Anchor Contractors' certification is, in a sense, a case study of a system that worked. DCPO did deny certification to Anchor Contractors in December 1997 on the basis of its poor performance on two recent projects. Yet the Anchor Contractors case also demonstrates that systemic improvements can and should be made. The widespread perception that many public contractors are unqualified has sown doubt about the effectiveness of the construction bidding process, which is predicated on the assumption that the system can accurately and reliably identify and restrict public building contractors to responsible contractors.

Reforming the system is essential to restoring the confidence of awarding authorities, contractors, and the public in the construction bidding process. This reform effort will require both statutory changes by the Legislature and procedural changes by DCPO

and Massachusetts awarding authorities. The Inspector General's recommendations for reform are as follows:

1. Standards for eligibility to bid on public building contracts should be raised.
 - 1a. More restrictive methods for calculating contractor certification limits should be developed.
 - 1b. Each Certificate of Eligibility should list summary information regarding the projects and numerical ratings considered by DCPO during the certification process.
 - 1c. Contractors that routinely fail to pay their subcontractors should be denied certification.
 - 1d. Safeguards for certification extensions should be instituted.
2. DCPO's capacity to identify and disqualify ineligible and nonresponsible contractors should be strengthened.
 - 2a. DCPO contractor certification staff should be increased to enable thorough certification reviews and timely, informed certification decisions.
 - 2b. The Contractor Qualification Statement should be revised to require disclosure of each applicant's family and financial relationships with the owners and designers of all projects listed in the application.
 - 2c. Contractors should be required to sign the Contractor Qualification Statement under the pains and penalties of perjury, as required by M.G.L. c. 149.
3. Legislation protecting awarding authorities and their designers from litigation in connection with contractor performance evaluations should be enacted.
4. Effective measures should be instituted to enable awarding authorities to reject unqualified low bidders.
 - 4a. M.G.L. c. 149 should be amended to give awarding authorities explicit authority to reject unqualified low bidders on the basis of past performance on projects completed within the past five years.
 - 4b. Contractor evaluations should be computerized for ready access by awarding authorities.

- 4c. Awarding authorities should establish clear procedures for obtaining and documenting low-bidder references.
- 4d. Local awarding authorities should be required to provide DCPO with completed contractor evaluation forms as a condition of receiving state funds for construction.
- 4e. Awarding authorities should notify bidders that failure to provide résumés of all project superintendents may be grounds for bid rejection.
- 4f. The contractor evaluation form should solicit information on related-party projects.

Introduction

In September 1997, at the request of several members of the Legislature, the Office of the Inspector General initiated a review of recent public construction projects undertaken by Anchor Contractors, Inc., a general contractor based in Weymouth, Massachusetts. The Office had received complaints alleging that Anchor Contractors' performance on some municipal projects was seriously deficient. The Office reviewed documents and information provided by the Town of Carver, the Town of Medfield, the Town of Millis, the City of Boston, and the Massachusetts Department of Environmental Management regarding recent building construction contracts awarded to Anchor Contractors. The Office also reviewed documents and information on contractor certification and prequalification from the Division of Capital Planning and Operations (DCPO),² the Massachusetts Highway Department, and the Metropolitan District Commission. Finally, the Office interviewed DCPO officials regarding the certification process for contractors bidding on projects subject to M.G.L. c. 149, the construction bidding law applicable to public building contracts estimated to cost more than \$25,000.

Concurrent with the Office's review, the Executive Office for Administration and Finance convened a Construction Reform Task Force to review the Commonwealth's construction procurement and contract management practices, including contractor certification. The Office of the Inspector General has participated on Task Force subcommittees and is a member of the Construction Reform Advisory Board. The Task Force issued its *Final Report* on May 29, 1998. Several of the Task Force's recommendations are consistent with the recommendations developed by the Office during the course of this review.

This report is divided into five sections. The first section provides a brief summary of Anchor Contractors' performance on three recent municipal construction projects. The second section provides an overview of the Commonwealth's contractor certification process and summarizes the Office's findings regarding the certification of Anchor

² Chapter 194 of the Acts of 1998 changed this name to "Division of Capital Asset Management and Maintenance."

Contractors by DCPO. The third section provides an overview of awarding authorities' use of Update Statements to qualify bidders and summarizes the Office's findings regarding the qualification of Anchor Contractors by municipal awarding authorities. The fourth section provides a broader examination of weaknesses in the current system of certifying and qualifying contractors for public building projects. The final section of this report offers the Inspector General's conclusions and recommendations for strengthening safeguards against unqualified contractors.

The Office provided DCPO with a confidential draft of the report. DCPO's response is included in Appendix A of this report.

Anchor Contractors' Performance on Recent Public Projects

During 1996, the Towns of Carver, Medfield, and Millis awarded public building contracts to Anchor Contractors, Inc. By 1998, Anchor Contractors had removed its crews from the three municipal project sites, leaving the projects incomplete, and the three municipalities had invoked Anchor Contractors' performance bonds. Project documents and information reviewed by the Office contained evidence of major deficiencies in Anchor's performance on each contract, including defective workmanship, inadequate project staffing and scheduling, and failure to pay subcontractors. This section of the report summarizes the performance problems exhibited by Anchor Contractors on the three projects, in chronological order.

MILLIS COMMUNITY CENTER AND TOWN OFFICES

In May 1996, the Town of Millis executed a \$1,812,697 contract with Anchor Contractors for a renovation project to convert the Millis Memorial School into a community center and Town offices. Anchor Contractors failed to meet the contract completion date of April 1, 1997. On April 4, 1997, the Town notified Anchor Contractors and its surety (bonding company), Nobel Insurance Company, that Anchor Contractors was in default of the contract. In September 1997, with the project approximately 80 percent complete, Anchor Contractors removed its crews from the project site. In November 1997, the Town terminated its contract with Anchor Contractors, alleging the following contract violations:

1. Persistent and repeated refusal or failure to supply enough properly skilled workers or proper materials for performance of the contract work;
2. Persistent failure to make payment to subcontractors for materials or labor in accordance with the agreements between Anchor Contractors and its subcontractors;
3. Failure to achieve substantial completion of the contract work within the time required by the contract;

4. Failure to comply with the directions of the project architect regarding correction of defective work;
5. Abandonment of the contract work.

The Town's ensuing negotiations with Anchor Contractors' surety, Nobel Insurance Company, proved lengthy and difficult. In May 1998, Nobel Insurance Company agreed to complete the contract using a new contractor by September 1998. As of July 1998, however, the work had not begun, and the Town did not expect the work to be completed until November 1998.

The following examples of Anchor Contractors' defective workmanship, inadequate project staffing and scheduling, and nonpayment of subcontractors are drawn from project records and information provided to the Office by the Town of Millis.

Defective workmanship: According to records prepared by the Town's designer in July 1997, Anchor Contractors constructed a structurally deficient steel gymnasium ramp with improperly sized column-bearing plates. The designer's October 1997 field report advised the Town that Anchor Contractors had not corrected the deficient ramp:

The steel columns at the gymnasium ramp are rejected. They are installed with the wrong sized bearing plates and a poor cover up plate installed after the clerk and architect brought the problem to the super's . . . attention. When the fix was rejected, he refused to correct the plates and instructed the masons to install the walls and the carpenters to install the interior wall. The columns are now covered up, they are still rejected.

The ramp had not been corrected when the Town terminated the contract in November 1997.

Inadequate project staffing and scheduling: Project documents indicate that the Town repeatedly expressed concern to Anchor Contractors about inadequate project staffing and scheduling. In a June 1997 letter to Anchor Contractors' surety, the Millis Town Administrator stated:

The contract called for a completion date of April 1, 1997. Last fall, and over the winter, the building was not properly heated and Anchor did not properly staff the job. Anchor has also not properly managed and

coordinated the work in the building, causing delays by Anchor and its subcontractors. As a result, Anchor has missed the completion deadline and is now being assessed \$400 per day in liquidated damages as specified in the contract. . . .

Anchor made an acceptable effort on the project in April and May, increasing staffing to a level where it should have been the entire job. In the last three weeks, however, staffing has sunk to new lows and the job has virtually stopped.

Nonpayment of subcontractors: Project records indicate that the Town received requests for direct payment³ from 11 Anchor subcontractors. In a June 1997 letter to Anchor Contractors' surety, the Millis Town Administrator stated:

In addition to performance problems, the Town has received several direct payment demands from subcontractors, and has received numerous phone calls from subcontractors stating that Anchor has not paid them. We have received calls regarding nonpayment of bills from the HVAC subcontractor, the mechanical controls subcontractor, the electrical subcontractor, the elevator subcontractor, and the painting subcontractor.

CARVER LIBRARY

The Town of Carver signed a \$2,704,945 contract with Anchor Contractors in July 1996 to construct a new public library. In October 1997, according to Town records, Anchor Contractors removed its crews from the project site with the project approximately 90 percent complete, and the Town invoked Anchor Contractors' performance bond. As of July 1998, a new contractor hired by Nobel Insurance Company, Anchor Contractors' surety, had achieved substantial completion⁴ of the project.

The following examples of Anchor Contractors' defective workmanship, inadequate project staffing and scheduling, nonpayment of subcontractors, and improper use of

³ Under M.G.L. c. 30, §39F, a subcontractor is entitled to request payment directly from the awarding authority if the general contractor fails to make payment to the subcontractor within 70 days after the subcontractor has completed the subcontracted work.

⁴ "Substantial completion" refers to the point at which the value of the remaining work to be done is less than one percent of the contract price or the awarding authority takes possession of the building for occupancy.

subcontractors are drawn from project records and information provided to this Office by the Town.

Defective workmanship: In August 1996, the Town's designer sent a memorandum to Anchor Contractors documenting deficiencies in the building foundation. Test pits dug at the request of the designer had revealed that Anchor Contractors had filled part of the building footprint with untested organic material:

In the first pit, at approximately line 1.5 (between band E), a significant layer of organic material was encountered immediately below the fill material. The extent of the organic material was not determined at that time. A second test pit in the vicinity of interior footing D-3 or D-4 yielded similar results. . . . The extent of the deficiencies listed above must be established, and completely corrected to the satisfaction of the Testing Agency, Geotechnical Engineer and the Clerk of the Works prior to forming and pouring footings in those areas.

In November 1996, a structural subconsultant documented additional deficiencies in the ongoing construction work:

The enclosed site visit report for 11-07-96 describes two major areas of construction of the building's main frame that will have to be undone and reconstructed to be consistent with the project's structural drawings. Namely, the premature final welding of all of the diagonal steel braces and perimeter frame walls constructed to incorrect heights. In addition, other portions of the steel frame appear to require other corrective action. . . .

In January 1997, a roofing subconsultant reported that Anchor Contractors had installed the asphalt shingles on one section of the library roof in violation of the manufacturer's instructions and roofing industry guidelines. According to a project observation report prepared by the roofing subconsultant:

The fastening of the shingles was noted to be improper in approximately 50% of the fasteners observed. The majority of such improper fastening conditions involved the over driving of the fasteners resulting from the pneumatically powered power tools. The over driving was cracking and/or blowing through the shingle surfaces. Additional fallacies in the fastening included under driven fasteners and improperly angled fasteners. It was also noted in a substantial number of instances, that the fasteners were not correctly placed in the shingles within the prescribed limitations of the manufacturers printed package wrapping instructions.

The roofing subconsultant estimated the cost of removing the existing shingles and reinstalling shingles according to the specifications at \$12,000 to \$13,000.

Inadequate project staffing and scheduling: In February 1997, the Town's construction manager wrote to Anchor Contractors expressing concern over Anchor Contractors' failure to set and adhere to a realistic, achievable schedule for completing the project. The letter stated:

Through the end of January 1997, after seven of the twelve months originally scheduled for construction (58% of the scheduled project duration), Anchor has requisitioned for only 37% of the total contract value of \$2,704,945. To complete the project on schedule, Anchor Contractors will have to complete \$350,000 of work each month for the five months that remain. You have averaged less than \$85,000 of work per month for the last three months. How are you realistically going to regain the time that has been lost?

Six months later, in August 1997, the Town's construction manager wrote the following in a letter to Anchor Contractors regarding its inadequate project staffing:

It has become clear to me that Anchor Contractors will not complete the Carver Library prior to the (revised) required completion date of August 31, 1997. The manpower levels on the site during the last week are inadequate to meet your schedule.

Nonpayment of subcontractors: Project records show that the Town received multiple requests for direct payment from Anchor Contractors' subcontractors. In an October 1997 letter to the Carver Library Building Committee Chairman, the designer summarized the problem and the additional work it created for the Town's representatives on the project:

Some months ago, it became apparent that Anchor was not billing according to their Subcontractors requisitions, nor paying their Subcontractors in a timely way, when Subcontractors began contacting ARC [the Town's designer]. Some stated their intention to walk off the job if they weren't paid.

In order to keep the job going, ARC, CCG [the Town's construction manager], and Anchor all agreed that direct payment to eligible subs and two party payments to other subs was necessary. . . . All of this required considerable phone and fax time with CCG, Anchor, and the various

Subcontractors. In addition, a certain amount of “hand holding” was/is necessary to convince the Subcontractors that they can and will be paid.

Improper use of subcontractors: Although Anchor Contractors’ bid listed Anchor Contractors itself as the filed sub-bidder on the painting subcontract for the project, project records indicate that Anchor Contractors may have violated M.G.L. c.149, §44F by improperly subcontracting this work to another contractor that was not a filed sub-bidder on the project.⁵ The private firm submitted an invoice to Anchor Contractors for \$13,000. When Anchor Contractors did not pay the invoice, the private firm contacted the Town to request direct payment.

MEDFIELD TOWN HALL

In September 1996, the Town of Medfield executed a \$1,985,800 contract with Anchor Contractors to renovate its Town Hall. Project records show that by the contract completion date of September 1, 1997, Anchor Contractors had stopped work after completing only 35 percent of the work. The Town subsequently terminated the contract and invoked Anchor Contractors’ performance bond. As of July 1998, a new contractor hired by Anchor Contractors’ surety, Fidelity and Deposit Company of Maryland, had achieved substantial completion of the Town Hall project.

The following examples of Anchor Contractors’ defective workmanship and inadequate project staffing and scheduling are drawn from project records and information provided to this Office by the Town.

Defective workmanship: In October 1997, the structural subconsultant to the Town’s designer notified the designer of a dangerous structural flaw in the work performed by Anchor Contractors. The joists installed by Anchor Contractors on the third floor level of the Town Hall were too short, and Anchor Contractors had covered the resulting gaps with plywood. This approach did not meet the project specifications and, even more importantly, would not have provided the third floor with the necessary load-bearing

⁵ Under M.G.L. c. 149, subcontractors on public building projects are selected through a filed sub-bid system. Filed sub-bidders are generally prohibited from contracting out the filed sub-trade work to a sub-subcontractor.

capacity. In a letter to the Town's designer, the structural subconsultant provided the following description of Anchor Contractors' work:

During my recent inspection of the above [Medfield Town Hall project], it was brought to my attention the condition as-built at the TJI joists on the third floor level. The joists, obviously short in length, were erected with insufficient bearing on the joist hangers and the gap between the end joist and the beam ledger was filled with pieces of TJI chords and covered with plywood.

We are not aware of any suggestion from the manufacturer as to the adequacy of this work, however, I am extremely concerned about this dangerous condition and all such joists and flooring are to be removed before any personnel have access to the third floor level.

Based upon a visual inspection of this condition, the Chief Engineer of the Office of the Inspector General concurred with the structural subconsultant that the work performed by Anchor Contractors, if left uncorrected, would have posed substantial safety hazards to building occupants.

Also in October 1997, at the request of Anchor Contractors' surety, the Town's designer prepared a list of 47 deficiencies in the new work installed by Anchor Contractors. The list included the following items:

Roof trusses are twelve (12) inches too short. . . .

Conventional framing joist hangers used on site are not the type of joist hangers submitted for approval. . . .

Steel channels below third floor framing at exterior walls are rejected. Presently the channel[s] support the new steel floor beams. They have been bolted to the exterior walls. The bolt holes in the channels have been burnt [cut out with a torch] and are over sized which allow movement of the channels. . . .

First Floor Entry: Demolition of the existing stair wall performed, the existing wall was not waterproofed before backfilling this area. This will need excavating and waterproofing applied.

Inadequate project staffing and scheduling: In June 1997, nine months after executing the contract with Anchor Contractors, the Town's designer provided Anchor Contractors

with written notice that its rate of progress was not satisfactory to meet the agreed-upon schedule for construction of the project.

Project records show that during the ensuing months, the designer's site representative repeatedly contacted Anchor Contractors to report that the firm had not provided the necessary project staffing. For example, in July 1997, the site representative sent Anchor Contractors the following message:

The workforce on this project has been reduced contrary to the Architect and the Town field directive to increase the force to enable completion on schedule. We have 3 laborers and 2 carpenters on site. No masons, no roofers, no ironworkers on site. It is apparent that is not enough people to complete the project as scheduled. Please address and remedy this problem now.

In September 1997, the designer notified Anchor Contractors that it was in default of the contract. The designer's letter to Anchor Contractors stated:

As Project Architect we have certified to the Town that Anchor has failed to perform its obligations under the Contract, including but not limited to: abandonment of the Project, defective and incomplete work, failure to conform to the approved project schedule, and delay and disruption to the Project.

Certification of Anchor Contractors by DCPO

Anchor Contractors was certified by DCPO for public building construction work every year from 1991 to 1997, at which time DCPO denied Anchor Contractors' application for recertification. This section of the report provides an overview of contractor certification for public building projects in Massachusetts and summarizes the Office's findings regarding the process by which Anchor Contractors was certified.

CONTRACTOR CERTIFICATION OVERVIEW

Certification of contractors on public building construction projects in Massachusetts was a key component of reform legislation enacted in 1980 on the recommendation of the Special Commission Concerning State and County Buildings, which spent two years probing corruption in the Commonwealth's public building construction process. The so-called Ward Commission, led by John William Ward, identified the lack of an effective contractor certification system as a central cause of inferior and unsafe public building construction in Massachusetts. The Commission's *Final Report* noted:

The combination of a low bid system for awarding general contracts with the lack of an effective system for screening out those contractors who are unqualified, overcommitted, underfinanced, incompetent, or lacking in business integrity almost ensures that many contractors selected to build public buildings will perform poorly.⁶

The contractor certification process instituted in response to the Ward Commission's findings is thus intended to help ensure that public building construction projects in Massachusetts are awarded to contractors who are both "responsible" and "eligible." "Responsible" means:

Demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work called for by a particular contract, based upon a determination of competent workmanship and financial soundness. . . .
[M.G.L. c. 149, §44A(1)]

⁶ *Final Report of The Special Commission Concerning State and County Buildings*, December 31, 1980, Volume 8, p. 343.

“Eligible” means:

able to meet all requirements for bidders or offerers . . . and not debarred from bidding . . . and who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work. [M.G.L. c. 149, §44A(1)]

The Ward Commission had originally recommended that awarding authorities themselves certify bidders on every public building project estimated to cost more than \$5,000, and legislation requiring project-by-project certification was contained in Chapter 579 of the Acts of 1980, the reform legislation enacted in response to the Ward Commission’s recommendations. In 1984, on the recommendation of a public-private task force convened to review the Ward Commission reforms and implementation, legislation was enacted amending M.G.L. c. 149 to require annual certification by DCPO of bidders on every public building project. This legislation, Chapter 484 of the Acts of 1984, also increased the certification threshold from \$5,000 to \$25,000, which is the current threshold.

The Contractor Certification Process

DCPO is responsible for certifying contractors on an annual basis. The certification process is governed by M.G.L. c. 149, §44D; by Massachusetts regulations (810 CMR 4.00); and by procedures adopted by DCPO. DCPO issues a Certificate of Eligibility to each certified contractor, which must submit a copy of the Certificate with every bid submitted for a public building contract subject to M.G.L. c. 149.⁷ The Certificate of Eligibility contains three major pieces of information:

- the category or categories of work for which the contractor is certified;
- the contractor’s Single Project Limit, which represents the maximum dollar value of a single building project subject to M.G.L. c. 149 that the firm is certified to undertake; and
- the contractor’s Aggregate Rating Limit, which represents the maximum dollar value of construction work that the contractor may

⁷ M.G.L. c. 149 requires a competitive bidding procedure for public building contracts estimated to cost more than \$25,000.

obligate itself to complete at the time that it submits a bid on a project subject to M.G.L. c. 149.

Table 1 lists the standard categories of work⁸ in which contractors may apply for certification. Awarding authorities may request that DCPO establish additional categories of work in specialized areas on a project-by-project basis.

Table 1.
Contractor Certification Categories

General building construction	Telecommunication systems
Asbestos removal	Alarm systems
Deleading	Painting
Demolition	Plumbing
Doors and windows	HVAC
Elevators	Electrical
Energy management systems	Masonry
Floor covering	Waterproofing
Hazardous waste removal	Fire protection sprinkler systems
Mechanical systems	Historical building restoration
Modular construction/Prefabrication	Historical painting
Pumping stations	Historical masonry
Roofing	Historical roofing
Sewage and water treatment plants	

The contractor certification process relies on information provided by the contractor to DCPO in a detailed application form called the Contractor Qualification Statement. The certification process also relies on evaluations of the applicant's projects by awarding authorities. Under DCPO's contractor certification procedures, DCPO first determines whether the application is complete and whether the applicant meets certain certification requirements: for example, the applicant must have been in business for at least one year. Applicants whose applications are deemed to be complete and who appear to meet the minimum certification requirements are then evaluated on the basis of their performance on completed projects.

⁸ For each project to be bid, the awarding authority must designate the certification category (or categories) in which the general contractor must be qualified and include this information in the published notices inviting bids.

Upon completion of every building project, public agencies are required to fill out a contractor evaluation form and submit it to DCPO, with a copy to the contractor. The contractor evaluation form requires awarding authorities to provide the following information:

- General information about the project, including the scope of work, total contract cost, contract start and end dates, and actual completion date.
- Evaluations and numerical ratings reflecting the contractor's quality of work, performance and accountability, and supervisory personnel on the project. The numerical ratings are based on weighted point scales corresponding to unsatisfactory, below average, average, and above average ratings. A minimum numerical rating of 70 on a scale of 100 points is treated as a passing grade.
- Information on legal proceedings, invoked bonds, and damages assessed or penalties levied against the contractor.

Massachusetts regulations governing contractor certification require DCPO to consider evaluations of public and private building projects completed by the contractor in the five years prior to the application for certification. Under DCPO's procedures, a minimum of five projects must have been evaluated in any one category of work in which the contractor is seeking certification.⁹ In determining whether a contractor meets the required average numerical rating of 70, DCPO averages the numerical ratings for all evaluations of projects completed by the contractor in the previous five years.¹⁰ When the number of written project evaluations submitted to DCPO by awarding authorities is insufficient to enable DCPO to complete the certification process for an applicant, DCPO is authorized under the contractor certification procedures to obtain additional project evaluations through telephone interviews with project references listed in the

⁹ For certification renewal applications, DCPO procedures require that if the applicant has completed additional projects since the last certification, at least one additional project be evaluated if possible.

¹⁰ For contractors seeking renewal of their certification status, numerical ratings from evaluations of projects completed prior to the last certification are averaged and assigned a weight of 40 percent, and numerical ratings from evaluations of projects completed since the date of the last certification are averaged and assigned a weight of 60 percent.

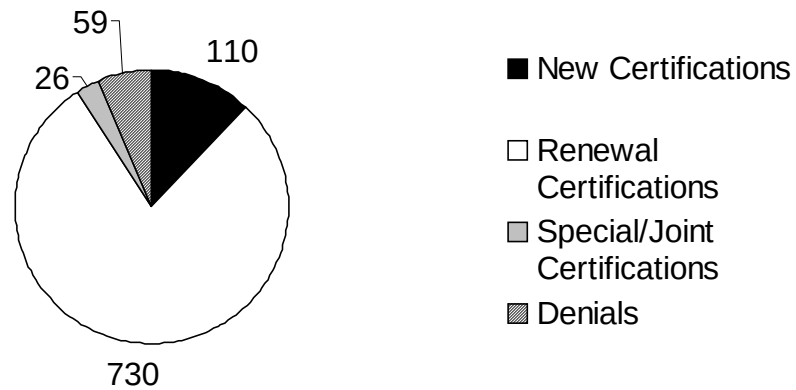
applicant's Contractor Qualification Statement. In these cases, a DCPO evaluator fills out the agency's standard evaluation form based on information and numerical scores provided by the reference.

DCPO then establishes the contractor's rating limits on the sizes of individual public projects and the aggregate workload for which the contractor will be certified. These limits – the "Single Project Limit" and the "Aggregate Rating Limit" – are discussed in detail later in this section.

DCPO Contractor Certification Staffing and Workload

DCPO's Certification Office is staffed by three full-time and one part-time staff. The office reviews and processes first-time Contractor Qualification Statements, annual renewal applications, and requests for changes in project limits and certification categories. DCPO also reviews all written evaluations of completed projects submitted by awarding authorities. According to statistics provided by DCPO, 1,248 contractors were certified to bid on public building projects as of March 1998. Since 1996, certification renewals have accounted for approximately 84 percent of total certifications processed. In 1997, DCPO denied certification to 59 applicants – approximately five percent of the total number of applicants seeking both certification renewals and new certifications. Figure 1 shows a breakdown of DCPO's contractor certification decisions during 1997, excluding amendments and extensions.

Figure 1.
1997 DCPO Contractor Certification Decisions



The Certification Office's backlog of unprocessed certification applications has increased in recent years. When DCPO is unable to process a renewal application in a timely manner, DCPO often extends the contractor's certification status for several months beyond the expiration date. Table 2 shows the average monthly backlog of applications and the increases in the number of extensions granted from 1996 to 1997.

Table 2.
DCPO Contractor Certification Workload Indicators

	<u>1996</u>	<u>1997</u>
Average monthly backlog	211	265
Extensions	552	728

FINDINGS

Finding 1.

Anchor Contractors' Single Project Limit was increased by 2,150 percent between 1991 and 1997 on the basis of a reference who apparently had undisclosed family and financial ties to Anchor Contractors.

The Single Project Limit (SPL) established by DCPO limits the dollar value of public building construction projects on which a certified contractor may bid. The SPL is based on the largest building project completed in the last five years with a satisfactory evaluation. DCPO computes the SPL at either 140 percent or 200 percent of the inflation-adjusted dollar value of the largest completed project. Massachusetts regulations require DCPO to develop a procedure for applying the higher percentage to “any Contractor who has demonstrated a capacity to successfully undertake larger projects based upon a record of superior performance or other factors prescribed by the Commissioner.” By regulation, however, the SPL may not exceed the applicant’s single project bonding capacity.

DCPO’s contractor certification procedures state that the project used to compute the SPL must be for work in a certifiable category for which the applicant is eligible, and must receive a minimum numerical rating of 70 when evaluated. The procedures also state that DCPO will use the higher percentage to compute the SPL when an applicant’s average rating – the average score derived from the project evaluations provided by awarding authorities – is 85 or higher.

The Contractor Qualification Statement does not require applicants to disclose their family and financial relationships to owners and designers listed by the applicants as references for completed projects. The Office’s review of the information used by DCPO to establish Anchor Contractors’ SPL each year between 1991 and 1997 indicates that the largest project Anchor Contractors completed during that period was owned by a private party or parties with family and financial ties to Anchor Contractors that were not disclosed to DCPO. On the basis of this single project, Anchor

Contractors' SPL was increased by 2,150 percent between 1991 and 1996 – from \$200,000 in March 1991 to \$4.5 million by December 1997, when DCPO denied Anchor Contractors' application for certification.

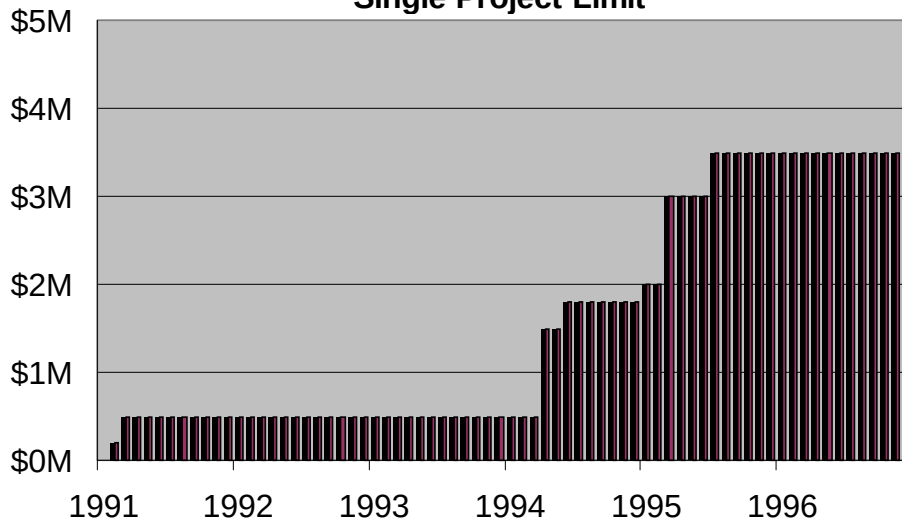
The process by which the SPL was computed was as follows. DCPO first ascertained the value of the largest project completed by Anchor Contractors over the previous five years, as stated in Anchor Contractors' Contractor Qualification Statements. According to DCPO records, that project was identified, starting in 1991, as a private \$5 million condominium rehabilitation and construction project located at 111 Foster Street in Peabody. In each Contractor Qualification Statement submitted to DCPO from 1991 to 1996, Anchor Contractors identified the 111 Foster Street property as its largest completed project. DCPO used this project to calculate Anchor Contractors' SPL for each of the six years.¹¹

According to the worksheets DCPO used to calculate Anchor Contractors' SPL each year, Anchor Contractors would have qualified for a \$10 million SPL every year between 1991 and 1996 if its bonding capacity had been sufficient. In 1991, Anchor Contractors' SPL was limited by its single project bonding limit of \$500,000. As Anchor Contractors' bonding limit increased in subsequent years, its SPL also increased. Figure 2 depicts the increases in Anchor Contractors' SPL.¹²

¹¹ DCPO records contain conflicting information on the completion date of the 111 Foster Street project. Anchor Contractors' 1996 Contractor Qualification Statement listed the completion date as December 1990, which would indicate that the project completion date was just beyond the five-year limit for inclusion on the 1996 Contractor Qualification Statement. Anchor Contractors also listed the project completion date as December 1990 in a separate portion of the application describing the largest project completed in the past five years; however, a handwritten "91" was inserted next to this notation. The completion date on the project evaluation form prepared by the DCPO evaluator who conducted the telephone interview with the project owner was also changed from 1990 to January 1991.

¹² A DCPO worksheet in 1996 shows that the \$5 million value of the 111 Foster Street project was adjusted for inflation and multiplied by 2, resulting in a potential SPL of \$11.3 million in 1996. However, the actual SPL was limited by Anchor's single project bonding capacity, which reached \$4.5 million in December 1996.

**Figure 2.
Increases in Anchor Contractors'
Single Project Limit**



The \$5 million project at 111 Foster Street was thus instrumental in enabling Anchor Contractors to increase the size of the projects on which it was certified to bid. However, a close examination of this project indicates that the principals of Anchor Contractors apparently had family and financial ties to the project owners, one of whom provided the required evaluation and rating of Anchor Contractors' performance to DCPO.

In its 1996 Contractor Qualification Statement, Anchor Contractors listed the owners of the 111 Foster Street project as "Mildred Maglione" and the "111 Foster Street Condominium Trust." The Office's review disclosed the following evidence of family or financial relationships between Anchor Contractors and the owner or owners of the 111 Foster Street project:

- The Articles of Organization filed by Anchor Contractors with the Secretary of the Commonwealth in 1988 listed the principals of Anchor Contractors as Peter C. Varrasso, Jr., President, Clerk, and Director; and Stephen A. Varrasso, Treasurer and Director.
- Records obtained during the course of this review list the names of the parents of Peter C. Varrasso, Jr. and Stephen A. Varrasso as Mildred Maglione and Peter Varrasso.

- According to documents filed in 1991 with the United States Bankruptcy Court, District of Massachusetts,¹³ the property located at 111 Foster Street property was one of several properties owned by Peter C. Varrasso, Sr. under the name of “111 Foster Street Trust.”

Under DCPO’s procedures, the project used as the basis for calculating a contractor’s SPL must receive a minimum numerical rating of 70 when evaluated. The 111 Foster Street project received a numerical rating of 92 from the project reference who provided a telephone evaluation of the project to DCPO.

DCPO records show that a DCPO evaluator conducted a telephone interview in March 1991 with an individual who identified himself as “John Maglione” of the “Foster Street Realty Trust,” the owner of the 111 Foster Street project. The evaluation of Anchor Contractors’ performance was extremely favorable. The DCPO evaluator’s record of the interview included the following statements regarding Anchor Contractors’ performance on the 111 Foster Street project and three other projects completed by Anchor Contractors for the Foster Street Realty Trust:

- “Quality was wonderful. No problems at all.”
- “Very few change orders – they work wonders with what they have. They try very hard not to use change orders.”
- “Met schedules – actually ahead a lot of the time.”
- “Very satisfactory. They are a very good contractor.”
- “They do wonderful work.”

There is no evidence that the DCPO evaluator conducting the interview was aware of any family and financial ties between Anchor Contractors and the owners of the 111 Foster Street project, nor was Anchor Contractors required to disclose such ties. When asked by the Office of the Inspector General how DCPO officials would treat a reference if they were aware that the project owners were related to the principals of the firm being evaluated, DCPO officials stated that they would not consider the reference to be

¹³ Peter C. Varrasso, Sr. and Mildred R. Varrasso d/b/a Dedham Realty Trust filed a petition under Chapter 11 of the U.S. Bankruptcy Code in October 1991.

objective and, thus, would not factor the numerical rating provided by the reference into the contractor's average numerical rating. Thus, it appears that if DCPO had been aware of the ties between the owners of the 111 Foster Street project and Anchor Contractors, DCPO would not have used the project as the basis for calculating the value of Anchor Contractors' SPL for the six-year period between 1991 and 1996.

DCPO records show that based on the 111 Foster Street project and Anchor Contractors' increased bonding limit, Anchor Contractors' SPL had risen sufficiently by 1994 to enable the firm to undertake its first public construction project over \$1 million in value: a \$1.6 million contract with the City of Boston's Public Facilities Department to renovate the Edison Middle School and Garfield Elementary School.¹⁴

The Office's review suggests that Anchor Contractors would not have been eligible to bid on projects over \$1 million in 1994 if DCPO had been aware of and eliminated from consideration all completed projects with apparent family and financial ties between Anchor Contractors and the project owners. Of the 24 projects Anchor Contractors listed as completed over the previous five years, only five projects exceeded \$1 million, and all five projects appear to have been owned by parties related to the principals of Anchor Contractors. Table 3 lists the five projects that exceeded \$1 million.

Table 3.
Projects Exceeding \$1 Million Listed in Anchor Contractors' 1994 CQS

<u>Contract Amount</u>	<u>Location</u>	<u>Project</u>
\$5 million	Peabody	111 Foster Street
\$3.5 million	Dedham	East Brook Executive Park Office Condominiums
\$2.9 million	Haverhill	Office Condominiums
\$2.5 million	Peabody	80 Foster Street Condominiums
\$2.3 million	Weymouth	Vittorian Office Park Office Building

According to DCPO records of the telephone interview regarding the 111 Foster Street project discussed above, "Foster Street Realty Trust" and "John Maglione" owned the first four of the five above-listed projects. Records on file at the United States

¹⁴ Anchor Contractors signed the contract in September 1994 and completed the project in September 1995.

Bankruptcy Court, District of Massachusetts, listed the owner of the fifth project – the Vittorian Office Park Office Building in Weymouth – as Peter C. Varrasso, Sr.

Moreover, the designer of each of the five above projects was a firm whose sole principal was Peter C. Varrasso. Anchor Contractors' Contractor Qualification Statements listed the project designer for each of the five projects as Tekton Architectural Team. Articles of Organization filed in 1987 with the Secretary of the Commonwealth listed Peter C. Varrasso¹⁵ as President, Treasurer, Clerk, and Director of Tekton Architectural Team, which was dissolved in 1990.

Aside from the five projects over \$1 million – all of which appear to have been owned and/or undertaken by parties related to Anchor Contractors – the remaining 19 projects completed by Anchor Contractors between 1990 and 1995 were relatively small. Their average value was \$182,580, and none exceeded \$400,000. If Anchor Contractors' 1994 SPL had been based on the largest of these completed projects, its SPL would have been no higher than \$800,000. Under this scenario, Anchor Contractors would not have been eligible to bid on the City of Boston contract to renovate the Edison and Garfield schools in 1994 or on subsequent public contracts exceeding \$1 million – including the 1996 contracts with the Towns of Millis, Carver, and Medfield.

Finding 2.

Anchor Contractors' Aggregate Rating Limit was increased by 1,500 percent between 1991 and 1997 with minimal analysis of its financial capability.

M.G.L. c. 149, §44D(3)] requires DCPO to establish:

the maximum amount of work the applicant is capable of undertaking as demonstrated by the applicant's financial condition, bonding capacity, size of previous projects, and present and anticipated work commitments. . . .

¹⁵ The Articles of Organization did not indicate whether "Peter C. Varrasso" referred to Peter C. Varrasso, Sr. or Peter C. Varrasso, Jr.

The Aggregate Rating Limit (ARL) set by DCPO limits the total amount of construction work a certified contractor may undertake at the time it submits a bid on a project subject to M.G.L. c. 149. According to DCPO's contractor certification regulations, the ARL must be based on the dollar value of the largest volume of construction work completed by the contractor during any 12-month period within the past five years. As in the case of the SPL, the ARL is computed at either 140 percent or 200 percent of the inflation-adjusted dollar value of the completed construction work. The regulations state that the higher percentage must be applied to "any Contractor who has demonstrated a capacity to successfully undertake larger projects based upon a record of superior performance or other factors prescribed by the Commissioner." However, the ARL may not exceed the applicant's aggregate bonding capacity.

DCPO evaluates each applicant's financial condition before establishing the ARL. DCPO's contractor certification procedures prescribe the following process for evaluating applicants' financial condition:

1. The most recent year-ending financial statement¹⁶ is reviewed to determine whether the applicant appears to be financially sound (i.e. able to perform its contracts and meet its obligations). Net worth, net income and working capital are noted on the worksheet.

- (a) If the current financial statement causes reasonable doubt as to whether the applicant is financially sound, additional financial information may be requested.

- (b) If, after considering sufficient financial information, the applicant's financial position is such that it is evident that the applicant is not financially sound, certification will be denied.

2. The names, addresses and telephone numbers of banks with which the applicant does business are recorded on the worksheet.

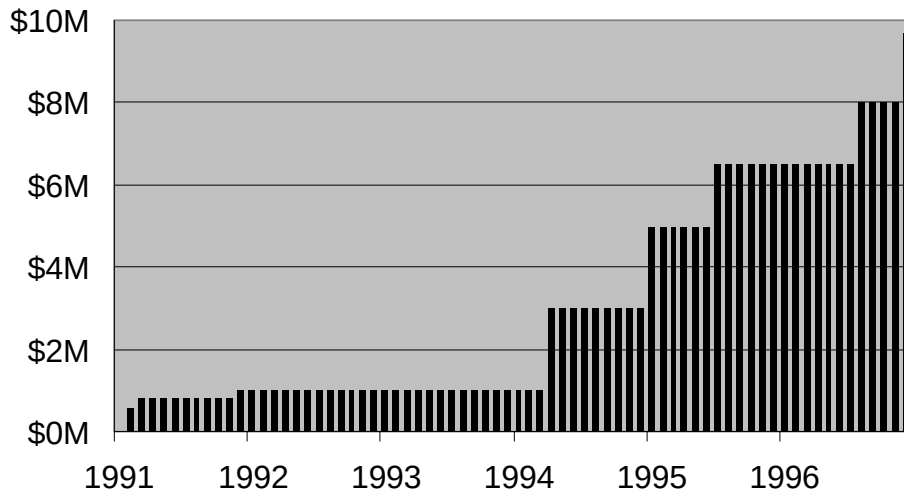
¹⁶ M.G.L. c. 149, §44D(2) requires a contractor seeking certification to provide the DCPO with a statement of financial condition prepared by a certified public accountant. The financial statement must include the information on the contractor's current assets and liabilities, including plant and equipment, bank and credit references, and maximum bonding capacity.

In an interview, DCPO officials stated that, in reviewing audited financial statements submitted by applicants for certification, DCPO focuses on reported construction revenues, stockholders equity, net income, working capital, and current assets and liabilities in order to ascertain that the applicant is solvent. DCPO derives the dollar value of the applicant's highest consecutive 12-month volume of work completed within the past five years from the "contract income" line item in the audited financial statements, and adjusts this value by an inflation factor. DCPO then sets the ARL at 140 percent or 200 percent of the inflation-adjusted contract income. As in the case of the SPL, DCPO uses the higher percentage to compute the ARL of an applicant whose average rating – the average score derived from the project evaluations completed by awarding authorities – is 85 or higher.

As Figure 3 shows, Anchor Contractors' ARL increased from \$600,000 in 1991 to \$9.7 million in December 1996, when DCPO denied Anchor Contractors' application for certification. The highest volume of work DCPO used to compute Anchor Contractors' ARL in 1996 was \$4,771,191, which was the contract income reported in Anchor Contractors' 1995 financial statements¹⁷ submitted to DCPO with the 1996 Contractor Qualification Statement. DCPO records show that DCPO adjusted the \$4,771,191 figure by an inflation factor and multiplied the result by two to produce an Aggregate Rating Limit for Anchor Contractors of \$9,733,210. Thus, Anchor Contractors was deemed eligible – subject to its bonding capacity – for an ARL of \$9,733,210. Since its maximum bonding capacity was \$8 million, DCPO set Anchor Contractors' ARL at \$8 million in August 1996. This increase enabled Anchor Contractors to bid in September 1996 on the Medfield Town Hall project summarized in the first section of this report.

¹⁷ DCPO records do not contain Anchor Contractors' audited financial statements prior to 1995. However, the available documents suggest that some financial statements may have been prepared by a firm of which Peter C. Varrasso, Jr. was a principal. The worksheets prepared by DCPO for Anchor Contractors' applications in 1991, 1992, and 1994 listed the CPA responsible for preparing Anchor Contractors' financial statements as "MTG Consultants." The Articles of Organization filed by MTG Consultants with the Secretary of the Commonwealth in 1988 listed Peter C. Varrasso, Jr. as Treasurer of MTG Consultants.

**Figure 3.
Increases in Anchor Contractors'
Aggregate Rating Limit**



By December 1996, Anchor Contractors' bonding capacity had been increased to \$10 million, and DCPO amended the ARL to \$9,733,210. Over the ensuing months, Anchor Contractors' financial condition worsened, according to records on file at Suffolk Superior Court. These records show that Nobel Insurance Company, one of the sureties that provided Anchor Contractors with performance and payment bonds during this period, hired the firm of Forcon International – N.E., L.L.C. to perform an investigation of Anchor Contractors' financial status during 1997. In an affidavit filed in Suffolk Superior Court in February 1998 in connection with a lawsuit against Anchor Contractors and Nobel Insurance Company brought by a window supplier, the Vice President of Forcon International reported that the firm's investigation of Anchor Contractors had revealed that the latter was in poor financial condition:

Forcon bases its determination that Anchor Contractors, Inc. is in poor financial condition on the fact that Anchor's June [1997] operating account statement reflects an overdraft condition with two checks being returned for not sufficient funds (NSF). An additional check was returned NSF during July on that account, and a \$35,000 "tax levy" withdrawal is reflected on the August operating account statement. Anchor's May and June payroll account statement reflects an overdraft condition with checks being returned NSF. Furthermore, Anchor's business savings account

and its easy business checking account have low ending balances. . . . As of the end of October 1997, Anchor had a net reconciled book balance of its bank accounts of negative approximately \$16,000. . . .

For the eleven months ending November 1997, Anchor had an unadjusted loss of approximately \$1.5 million on unadjusted gross income of approximately \$6.3 million.

The 1995 financial statements Anchor Contractors submitted to DCPO with the 1996 Contractor Qualification Statement contained several warning signs concerning Anchor Contractors' cash flow situation. Anchor Contractors' 1995 balance sheet showed that its accounts receivable represented a high proportion of its total assets: 88.9 percent.¹⁸ Conversely, its ratio of cash to total assets was quite low: just over one percent.¹⁹ While these ratios by themselves might not have constituted grounds for denial of certification, they were indications that Anchor Contractors might lack the financial capability to handle an expanded project workload. Nevertheless, in August 1996 Anchor Contractors' ARL was increased from \$6.5 million to \$8 million in accordance with DCPO's contractor certification procedures.

Finding 3.

The certification applications submitted by Anchor Contractors in 1996 and 1997 contained false statements and omissions.

Anchor Contractors' 1996 and 1997 Contractor Qualification Statements contained false statements. M.G.L. c. 149, §44D(2) states:

Any materially false statement in the [certification] application or update statement . . . shall constitute cause for debarring the contractor from future public work. . . .

¹⁸ This ratio was significantly higher than the industry guideline of 46.6 percent for nonresidential construction during the period of April 1995 through March 1996, published in *Annual Statement Studies 1997* by Robert Morris Associates, a lending and credit risk association.

¹⁹ This ratio was significantly lower than the industry guideline of 19.8 percent for nonresidential construction during the period of April 1995 through March 1996, published in *Annual Statement Studies 1997* by Robert Morris Associates.

Moreover, DCPO's contractor certification procedures require DCPO to deny certification if:

it is determined at any time during the certification process that the applicant has willfully supplied materially false or misleading information in its application, certification will be denied.

3a. Anchor Contractors falsely stated that no litigation was pending.

The Contractor Qualification Statement requires the applicant to list:

all judicial or administrative proceedings currently pending; or concluded adversely against the applicant or a principal of your firm within the last five years which relate to procurement or performance of any public or private construction contracts.

In response to this question, Anchor listed "none" on both its 1996 and 1997 Contractor Qualification Statements. However, by the time the President of Anchor Contractors, Peter C. Varrasso, Jr., signed Anchor Contractors' 1996 Contractor Qualification Statement in June 1996, two lawsuits involving Anchor Contractors and relating to procurement or performance of construction contracts were pending in Norfolk and Suffolk County Superior Courts. As of July 1997, when Peter C. Varrasso, Jr. signed Anchor Contractors' 1997 Contractor Qualification Statement, the number of lawsuits involving Anchor Contractors pending in Norfolk and Suffolk County Superior Courts had risen to seven.²⁰ (See Table 4.)

²⁰ Norfolk Superior Court records show that Anchor Contractors was a party to four additional lawsuits as of July 1997. Because copies of the complaints were unavailable, the Office was unable to verify that these four lawsuits related to the procurement or performance of public contracts.

Table 4.
Pending Litigation Involving Anchor Contractors

Date Filed	Superior Court	Plaintiff	Defendant	Pending as of 6/96	Pending as of 8/97
05/26/95	Norfolk	Anchor Contractors, Inc.	Town of Braintree	✓	✓
03/05/96	Suffolk	Lynnwell Associates	Anchor Contractors, Inc.	✓	✓
08/19/96	Suffolk	R.J. Cronin Constructing, Inc.	Anchor Contractors, Inc.		✓
10/30/96	Suffolk	J.B. Sash & Door Company, Inc.	Anchor Contractors, Inc.		✓
12/30/96	Norfolk	The Cheviot Corporation	Anchor Contractors, Inc.		✓
01/09/97	Suffolk	Anthony Staffiere	Anchor Contractors, Inc.		✓
05/19/97	Norfolk	Anchor Contractors, Inc.	Belle Mechanical Contracting Co., Inc.		✓

3b. Anchor Contractors falsely stated that three incomplete projects had been completed.

The Contractor Qualification Statement requires the applicant to list all construction projects of at least \$25,000 the applicant has completed within the past five years, or the 20 most recent projects completed in the last five years. Anchor Contractors' 1996 Contractor Qualification Statement provided a list of completed projects that included two contracts with the City of Boston: a \$707,000 contract to renovate the Boston Latin Academy and a \$2.3 million contract to renovate the Boston High School and Snowden International High School. However, Anchor Contractors had not completed either of these contracts as of June 1996, when Peter C. Varrasso, Jr. signed the 1996 Contractor Qualification Statement.

According to a December 1997 DCPO telephone evaluation of Anchor Contractors' performance on the Boston Latin Academy project, the renovations were still incomplete at that time. The DCPO evaluator recorded the following notes of the interview with an official of the City of Boston's Public Facilities Department (PFD): "not substantially complete at this point! Because they walked off job." As of April 1998, the PFD had not yet issued a certificate of substantial completion for the project.

According to a January 1997 letter from the Boston High/Snowden High project designer to the General Manager of Anchor Contractors, Anchor Contractors had done no work on this project since November 1996, and many items were incomplete or deficient. As of April 1998, the PFD had not yet issued a certificate of substantial completion for the project.

In its 1997 Contractor Qualification Statement, Anchor Contractors provided a list of completed projects that included the Boston Latin Academy and Boston High/Snowden High contracts as well as the library construction contract with the Town of Carver discussed in the previous section of this report. Like the two Boston projects, the Carver project was incomplete at that time.

Finding 4.

Because of DCPO's application backlog, Anchor Contractors was eligible to continue bidding on public projects for four months after its 1996 certification had expired.

Anchor Contractors' Certificate of Eligibility expired on August 29, 1997. Although Anchor Contractors submitted its application for recertification in August 1997, DCPO's Certification Office was unable to process the application in a timely manner because of its mounting backlog of Contractor Qualification Statements. Accordingly, on August 8, 1997, DCPO granted Anchor Contractors a four-month certification extension without reviewing the new application. The extension meant that Anchor Contractors was eligible to continue bidding on public projects until December 1997.

In December 1997, a DCPO evaluator attempted to solicit evaluations of Anchor Contractors' performance on its ongoing contracts with the Towns of Millis, Carver, and Medfield. However, officials of all three jurisdictions declined to provide the requested evaluations – on the advice of counsel in two cases – because of the existence or threat

of litigation stemming from their incomplete contracts with Anchor Contractors.²¹ Anchor Contractors' deficient performance on these contracts was therefore not factored into its average numerical rating. Based on evaluations of 12 other projects, Anchor Contractors received an average numerical rating in December 1997 of 67 points – three points below the certification threshold of 70 points. On December 3, 1997, DCPO denied Anchor Contractors' application for recertification.

²¹ In one case, the jurisdiction provided DCPO with copies of project records detailing deficiencies in Anchor Contractors' recent performance; in another case, the jurisdiction advised DCPO that Anchor Contractors had, three months earlier, been removed for cause as contractor and subcontractor on the project.

Qualification of Anchor Contractors by Awarding Authorities

This section of the report provides an overview of the process by which awarding authorities use the Update Statement to qualify bidders on public building construction projects and summarizes the Office's findings regarding the qualification of Anchor Contractors by municipal awarding authorities.

OVERVIEW OF CONTRACTOR QUALIFICATION USING THE UPDATE STATEMENT

In addition to a Certificate of Eligibility, each bidder on a M.G.L. c. 149 project is required to include with its bid a five-page Update Statement.²² The Update Statement is intended to provide the awarding authority with detailed information, including:

- a complete list of projects completed since the date of the bidder's most recent Certificate of Eligibility, including contact names and telephone numbers;
- a complete list of projects in process on the date of the bid submission, including contact names and telephone numbers;
- a complete list of projects the bidder's firm has failed to complete since the date of the most recent Certificate of Eligibility;
- any significant changes in the bidder's business organization, financial condition, or bonding references since the date of the most recent Certificate of Eligibility;
- the names and résumés of all supervisory personnel, such as project managers and superintendents, to be assigned to the project if the bidder is determined to be the lowest eligible and responsive bidder; and
- all judicial or administrative proceedings, related to procurement or performance of a public or private construction contract, instituted or concluded adversely against the bidder's firm or a principal of the firm since the date of the most recent Certificate of Eligibility.

The awarding authority has the right and obligation to evaluate the information provided in the apparent low bidder's Update Statement and reject any bid from an apparent low bidder who is not "responsible" and "eligible." M.G.L. c. 149, §44D(6) states:

In determining who is the lowest responsible and eligible bidder as required in paragraph (2) of section forty-four A, the awarding authority

²² Under M.G.L. c. 149 §44D(1)(a), any bid submitted without a Certificate of Eligibility and an Update Statement is invalid and must be rejected.

shall consider the information submitted by the bidder in the update statement. If the awarding authority determines that the low bidder is not responsible and eligible, the awarding authority shall reject the bidder and evaluate the next low bidder in accordance with this section; the awarding authority shall give notice of such action to the division of capital planning and operations.

DCPO's contractor certification regulations allow an awarding authority to request permission to inspect documents in a contractor's certification file for the purpose of establishing the contractor's qualifications.

FINDINGS

Finding 5.

Reference checks by the Towns of Millis, Carver, and Medfield did not disclose significant performance problems on previous projects completed by Anchor Contractors.

The Update Statements Anchor Contractors submitted to the Town of Millis in May 1996 and the Town of Carver in June 1996 each listed eight completed projects. DCPO records show that the largest completed project listed in each Update Statement – a \$1.6 million contract with the City of Boston's Public Facilities Department (PFD) to renovate the Edison Middle School and Garfield Elementary School – had received a rating of 90 from the PFD. However, the second largest completed project listed in each Update Statement – a \$368,000 housing construction contract with Dedham Housing Authority – had received below-average ratings of 37 and 65 from the designer and the Authority, respectively.

The Update Statement Anchor Contractors submitted to the Town of Medfield in September 1996 listed seven projects as completed. The largest project on the list was a \$2.3 million contract with the PFD to renovate the Boston High School and Snowden International High School. According to project records and information provided by the PFD, however, this project had not been completed as of September 1996. As of April 1998, the PFD had not yet issued a certificate of substantial completion for the project.

According to officials of the Towns of Millis, Carver, and Medfield, they or their designers checked Anchor Contractors' references before awarding contracts to Anchor Contractors, and these reference checks did not disclose significant performance problems. The three jurisdictions produced no documentation of these reference checks in response to the Office's request. Thus, the Office was unable to determine whether the reference checks included the Dedham Housing Authority project, which had received low numerical ratings, or the Boston High/Snowden High project, which was incomplete.

Anchor Contractors' bid on a public project had been rejected on the basis of reference checks in at least one previous instance. In May 1995, the Town of Braintree rejected Anchor Contractor's low bid of \$985,000 on a contract to construct a new fire station, after checking Anchor Contractors' references on other public construction projects for which the firm performed as general contractor.

On May 26, 1995, Anchor Contractors filed a lawsuit against the Town of Braintree in Norfolk Superior Court alleging that the Town's rejection of Anchor Contractors' bid was arbitrary, capricious, and in violation of the Massachusetts bidding laws, and requesting a preliminary injunction to prevent the Town from rejecting Anchor Contractors' bid. In an affidavit filed in response to Anchor Contractors' lawsuit, the Executive Secretary of the Town of Braintree stated that he had researched Anchor Contractors' experience and qualifications and concluded that Anchor Contractors was not qualified to act as a general contractor for the type of project on which it had bid and, thus, was not a responsible and eligible bidder within the provisions of M.G.L. c.149, §44A. The affidavit stated that the Executive Secretary's review of written evaluations of Anchor Contractors' performance on file at DCPO and reference calls to awarding authorities had disclosed four projects receiving unsatisfactory performance evaluations. The Executive Secretary's affidavit noted that he had contacted references for three other projects under construction by Anchor Contractors and that those projects had received satisfactory or good evaluations. The Executive Secretary's affidavit stated:

Based on the foregoing, it is my opinion that Anchor appears to perform at acceptable levels in projects involving site preparation, roadway

construction, drainage and masonry, but performs at unacceptable levels on projects in which Anchor is the general contractor responsible for coordinating subcontractors.

On June 14, 1995, the Court denied Anchor Contractors' request for a preliminary injunction. The Town then awarded the contract to the second lowest bidder, who completed the fire station construction project. On January 14, 1998, the Court dismissed Anchor Contractors' lawsuit against the Town of Braintree.

Finding 6.

The Update Statements Anchor Contractors submitted to the Towns of Millis, Carver, and Medfield contained false statements and omissions.

- 6a. Two Update Statements falsely stated that no litigation had been instituted against Anchor Contractors since the date of its most recent Certificate of Eligibility.**

The Update Statement contains the following instructions to contractors:

(a) List each judicial or administrative proceeding relating to the procurement or performance of any public or private construction contract instituted or concluded adversely against your firm or a principal of your firm since the date of your most recent annual Certificate of Eligibility.

In the Update Statements Anchor Contractors submitted with its May 1996 bid to the Town of Millis and its June 1996 bid to the Town of Carver, Anchor Contractors answered "none" in response to the above instructions. However, at least one lawsuit had been filed against Anchor Contractors since the July 1995 date on which Anchor Contractors' most recent Certificate of Eligibility had been issued. Court records show that Lynnwell Associates filed a complaint against Anchor Contractors in Suffolk Superior Court in March 1996.

6b. One Update Statement falsely stated that two incomplete projects had been completed by Anchor Contractors.

The Update Statement requires a contractor to list all construction projects completed since its most recent Certificate of Eligibility. The Update Statement Anchor Contractors submitted to the Town of Medfield in September 1996 listed seven projects completed since the date of Anchor Contractors' most recent Certificate of Eligibility in August 1996. Among the seven projects listed were two incomplete projects for the City of Boston's Public Facilities Department: the \$707,000 contract to renovate the Boston Latin Academy and the \$2.3 million contract to renovate the Boston High School and Snowden International High School. As of April 1998, the Public Facilities Department still had not issued certificates of substantial completion for these projects.

6c. Three Update Statements contained inaccurate information regarding Anchor Contractors' supervisory personnel.

The Update Statement contains the following instructions to contractors:

List the names of all supervisory personnel, such as project managers and superintendents, who will be assigned to the project if your organization is determined to be the low bidder. Attach resumes of these personnel.

The Update Statements submitted with Anchor Contractors' bids on projects in Millis, Carver, and Medfield listed Peter C. Varrasso, Jr. and Steven A. Varrasso as the project managers who would be assigned to the projects on which Anchor Contractors was bidding. However, project records and information provided by the three municipalities show that neither Peter C. Varrasso, Jr. nor Steven A. Varrasso functioned in a supervisory capacity on these projects.

Project correspondence on file at the Town of Millis indicated that Peter C. Varrasso, Sr. was the General Manager of Anchor Contractors and oversaw the \$1.8 million renovation of the Millis community center and Town offices on behalf of Anchor Contractors. Peter C. Varrasso, Sr. corresponded with the Town of Millis on behalf of Anchor Contractors, submitted change order requests to the Town on behalf of Anchor

Contractors, and conducted project negotiations with the Town on behalf of the company.

Similarly, project correspondence on file at the Town of Carver indicates that Peter C. Varrasso, Sr. oversaw the \$2.7 million Carver Library construction project. Peter C. Varrasso, Sr. corresponded with representatives of the Town of Carver concerning project workforce and scheduling issues on behalf of Anchor Contractors, and attended project meetings.

Peter C. Varrasso, Sr. was also responsible for overseeing the Medfield Town Hall renovation project. In a November 1997 court document,²³ Peter C. Varrasso, Sr. stated under oath that as General Manager of Anchor Contractors, he had sole responsibility for preparing Anchor Contractors' bid on the Medfield Town Hall renovation contract and for contracting with subcontractors on the project. He also stated in the document that he had sole responsibility for contracting with materials suppliers on the Medfield project, for approving payments to subcontractors and materials suppliers, for preparing construction schedules, and for preparing requests for change orders. He further stated that he shared responsibility with four other Anchor Contractors employees for assigning and scheduling work force to the project, for decisions to withdraw workers from the project, and for preparing requests for information to the designer. Neither Peter C. Varrasso, Jr., nor Steven A. Varrasso was identified in the court document as having any managerial or supervisory responsibilities in connection with the Medfield project.

Officials of Millis, Carver, and Medfield told this Office they were unaware of any managerial or supervisory functions performed on their projects by either Peter C.

²³ These statements are found in "Plaintiff, Anchor Contractors, Inc.'s Answers to Interrogatories of Defendant, Town of Medfield," filed in November 1997 by Anchor Contractors in Norfolk Superior Court in connection with a lawsuit filed by Anchor Contractors against the Town of Medfield. After removing its crews from the site of the Medfield project, Anchor Contractors filed a lawsuit against the Town and the project designer in September 1997, alleging breach of contract and design defects in the plans and specifications prepared by the designer.

Varrasso, Jr. or Steven A. Varrasso. The officials all said that the Anchor Contractors official with whom they maintained contact was Peter Varrasso, Sr.

Certification and Qualification of Contractors: Weaknesses in the Current System

The preceding sections of the report have examined the process by which Anchor Contractors was certified by DCPO and selected by several municipal awarding authorities. The Office's review of existing procedures and practices has identified the following areas of vulnerability that impede effective contractor certification by DCPO and qualification of contractors by awarding authorities.

FINDINGS

Finding 7.

Current contractor certification standards may not adequately protect Massachusetts awarding authorities from unqualified construction contractors.

7a. Current methods of establishing contractor certification limits do not adequately consider contractors' capacity to undertake additional work.

DCPO's contractor certification procedures do not require a detailed examination of each applicant's financial condition. In essence, DCPO reviews the applicant's financial statements to ensure that the applicant is solvent. Under current procedures, the limits on the size of the single and aggregate projects for which each contractor is certified are based on the contractor's largest single project and aggregate 12-month workload over the past five years; its average numerical rating on past projects, regardless of size; and its bonding limits. As discussed earlier in this report, the contractor certification limits are calculated using multipliers of 140 percent or 200 percent, depending upon the contractor's average numerical rating.

One practical effect of this system is illustrated by the following hypothetical example. A contractor may receive a high average numerical rating on the basis of a series of small projects and one large project. On the basis of this rating, the contractor will be certified to bid on projects with a dollar value double that of the large project, as long as the

contractor can find a surety that will agree to bond the contractor up to the certification limit. Similarly, the contractor whose workload has recently expanded may be certified for an aggregate volume of work with a dollar value that is double that of the contractor's current workload, assuming the contractor can obtain bonding in the aggregate amount. Thus, the contractor's ability to obtain bonding from a surety appears to be the primary litmus test of capacity to undertake additional work under the current system.

While bonding capacity is an important and appropriate safeguard, it may not be sufficient to protect awarding authorities from contractors who are financially overextended, undercapitalized, understaffed, or otherwise ill equipped to take on additional public contracts. Moreover, the experiences of several jurisdictions that invoked Anchor Contractors' performance bonds illustrate that this process can be expensive, time-consuming, and difficult.

The multipliers of 140 percent and 200 percent thus appear excessively generous as well as risky. The primary function of the contractor certification limits should be to ensure that contractors are capable of undertaking the public contracts on which they are bidding – not to ensure that contractors are allowed to expand their public work by 140 percent to 200 percent each year.

7b. The certification process can mask deficient contractor performance on past projects.

Current certification procedures require DCPO to average the numerical ratings provided by awarding authorities in their written and telephone evaluations of contractors' performance on past projects. If the contractor's average rating is 70 or higher, and the contractor meets the other certification requirements, DCPO certifies the contractor.

Table 5 shows the numerical ratings that were the basis for DCPO's decision to certify Anchor Contractors in 1996.

Table 5.
Evaluations Used in Anchor Contractors' 1996 Certification

Date	Name	Amount	Rating
1991	111 Foster Street	\$5,000,000	92
1991	DPW—Westwood	116,029	87
1992	Taunton Light Plant	62,517	87
1992	Logan Pier B, Terminal C	282,251	57
1993	Highland Falls	110,000	87
1994	Boston PFD	300,000	93
1994	ERA	382,312	87
1994	Dedham Housing Authority	386,421	51
1995	McHales Pond	382,312	79
1996	Edison Garfield	1,652,655	90
1996	MHD Taunton	233,561	86
Weighted Average Rating			86

As Table 5 shows, Anchor Contractors' average numerical rating was 86 – 16 points above the certification threshold and one point above the threshold required for the 200 percent multiplier used to calculate the single project limit and aggregate rating limit. Yet two of the ratings were well below the passing score of 70: one project received a 57; the other received a 51. As this case illustrates, the current system allows a contractor who has performed poorly on some past projects to be certified without further scrutiny. DCPO procedures contain no mechanism for bringing projects with below-average ratings to the attention of awarding authorities attempting to determine whether the contractor is a responsible bidder – i.e., whether the contractor possesses the skill, ability, and integrity necessary to faithfully perform the work called for by a particular contract.

To make this determination, awarding authorities need more information about the contractor's past performance. While the Update Statement submitted by the contractor with its bid provides a list of contracts completed since the Certificate of Eligibility, the Update Statement does not provide information on the projects considered during the certification process. Unless they submit a request to DCPO to review a contractor's certification file, awarding authorities will have no information on deficient or failed projects for which the low numerical ratings were averaged into the contractor's overall rating. Awarding authorities clearly need this information in order to make an informed decision.

7c. The certification process does not require disclosure and evaluation of claims for direct payment.

Contractors who routinely fail to pay their subcontractors cause financial hardships for subcontractors and threaten successful completion of public projects. Moreover, contractor failure to pay subcontractors imposes substantial administrative burdens on the awarding authorities responsible for processing direct payment claims from subcontractors. However, neither the current Contractor Qualification Statement nor the contractor evaluation form solicits specific information on the number and value of direct payment claims filed with awarding authorities by subcontractors.

7d. The certification application and contractor evaluation form do not require disclosure of related-party projects.

According to DCPO officials, DCPO evaluators will discount a contractor evaluation if they know that the project owner or reference providing the evaluation has a family or financial relationship to the contractor. However, DCPO does not require contractors to identify such relationships in the CQS, nor does DCPO solicit this information from project owners and other project references on the contractor evaluation form or over the telephone. In Anchor Contractors' case, a favorable project evaluation provided by a reference with apparent family and financial ties to the firm enabled Anchor Contractors to increase the size of individual contracts for which it was certified from \$200,000 to \$4.5 million between 1991 and 1997. By failing to require contractors and evaluators to disclose family and financial relationships between the contractor and the project owners or references, current contractor certification procedures create an opportunity for contractor fraud and abuse.

Finding 8.

Awarding authorities do not always submit required contractor evaluations to DCPO and are reportedly reluctant to provide unfavorable evaluations of contractors' performance on public contracts.

In 1980, the Ward Commission concluded:

It is generally agreed that experience, not financial status, is the most important index of a contractor's ability to perform.

Accordingly, M.G.L. c. 149, §44D requires every public agency, or the architect or engineer responsible for contract oversight, to submit a completed contractor evaluation questionnaire to DCPO upon completion of every building project under the agency's control.²⁴ As the previous findings have shown, the contractor certification process established in response to the Ward Commission's findings is heavily reliant on the contractor evaluations provided to DCPO by awarding authorities. Under the current system, the numerical ratings contained in these contractor evaluations are by far the most important determinant of whether or not a contractor will be certified to bid on public contracts; they also help determine the size of the contractor's Single Project Limit and Aggregate Rating Limit. But a system that relies on contractor evaluations by awarding authorities will not reliably screen out unqualified contractors if awarding authorities do not provide the necessary evaluations and ratings to DCPO for all public projects – especially those projects on which contractor performance has been deficient.

For a variety of reasons, many awarding authorities do not provide DCPO with this critically important information on contractor performance. There are reportedly several factors contributing to this situation. In some cases, the time required to complete a detailed questionnaire is a deterrent. In other cases, the awarding authorities may

²⁴ The public agency must also mail a copy of the completed evaluation to the contractor who may, within 30 days, submit a written response to DCPO disputing any information contained in the evaluation.

simply be unaware of the key role the evaluations and scores play in the contractor certification process.

A major deterrent is reportedly the threat of litigation on projects where contractor performance has been deficient. In its 1998 *Final Report*, the Construction Reform Task Force noted that officials of state agencies were concerned about their personal liability in connection with contractor evaluations. According to DCPO officials, many public officials and designers on public projects have voiced reluctance to provide contractor evaluations – especially unfavorable evaluations – because of the real or perceived threat of litigation by the contractor. This proved to be the case for the three jurisdictions discussed in this report, two of which were advised by counsel not to provide DCPO with evaluations of Anchor Contractors' performance because of the existence or likelihood of litigation over Anchor Contractors' deficient performance on incomplete contracts. Although Anchor Contractors was ultimately denied certification in December 1997 on the basis of evaluations and numerical ratings provided to DCPO by other awarding authorities, its average numerical rating was 67 – only three points below the 70 score needed for recertification. If the Towns of Millis, Carver, and Medfield had provided DCPO with evaluations and ratings of Anchor Contractors' performance, it is unlikely that this margin would have been so narrow.²⁵

Designers, who are often assigned responsibility for managing and evaluating contractors' performance on public projects, are also reportedly reluctant to provide unfavorable contractor evaluations because of the negative impact of such evaluations on their future working relationships. Since designers have little or no control over the contractors with which they are paired on public projects, they have an additional disincentive to provide candid information about deficient contractor performance.

²⁵ DCPO contractor certification records show that DCPO had encountered similar difficulties several years earlier. A DCPO evaluator had contacted the Department of Environmental Management (DEM) repeatedly over a one-month period in 1994 to request an evaluation of Anchor Contractors' performance on a 1993 contract to construct a \$170,000 visitor's center at the Borderland State Park in Easton; however, DEM did not provide the requested evaluation.

To the extent that awarding authorities and their designers are deterred from providing candid assessments of contractors' performance to DCPO and other awarding authorities, contractors with records of deficient performance will continue to be certified and selected for public construction contracts.

Conclusion and Recommendations

Under M.G.L. c. 149, public building contracts must be performed by contractors who are responsible: i.e., who demonstrably possess the skill, ability, and integrity necessary to faithfully perform the work called for by a particular contract, based upon a determination of competent workmanship and financial soundness. The contractor certification system is intended to exclude from bidding contractors whose past performance, financial condition, or qualifications render them unqualified for public building projects. Awarding authorities are obligated to make a separate and final determination of whether a contractor is qualified for a particular building project. This report has identified some major weaknesses in the functioning of both aspects of the current system.

The story of Anchor Contractors' certification is, in a sense, a case study of a system that worked. DCPO did deny certification to Anchor Contractors in December 1997 on the basis of its poor performance on two recent projects. Yet the Anchor Contractors case also demonstrates that systemic improvements can and should be made.

No manageable system of certifying and qualifying contractors can be 100 percent effective or accurate, nor can it screen out all contractors whose certification applications contain deliberate false statements and misrepresentations. Nevertheless, credence must be given to the widespread perception that the current system of certifying and qualifying contractors for public building projects is flawed.

The Construction Reform Task Force convened by the Executive Office for Administration and Finance in late 1997 to review public construction procedures and practices concluded that public contracts are routinely awarded to contractors whose past performance has been unsatisfactory. The Task Force cited the problem of unqualified contractors as a compelling reason to reform the Commonwealth's construction practices. In its May 29, 1998 *Final Report*, the Task Force stated:

It is not uncommon for a contractor with less than satisfactory performance on previous public construction jobs to be awarded future

contracts. As long as the contractor has not received a substandard cumulative evaluation, the firm will receive contract awards for which it makes the lowest bid.

The Construction Reform Advisory Board, a group of public and private officials representing a broad spectrum of interests and constituencies, told the Task Force that the current prequalification system is ineffective “due to low standards, legal challenges, and [an] inadequate performance evaluation system.” Numerous state and local officials have expressed frustration to the Office of the Inspector General about the failure of the contractor certification process to screen out unqualified contractors and the lack of guidance to awarding authorities on the extent of their authority to disqualify low bidders.

The widespread perception that many public contractors are unqualified has sown doubt about the effectiveness of the construction bidding process, which is predicated on the assumption that the system can accurately and reliably identify and restrict public building contracts to responsible contractors. Reforming the system is essential to restoring the confidence of awarding authorities, contractors, and the public in the construction bidding process. This reform effort will require both statutory changes by the Legislature and procedural changes by DCPO and Massachusetts awarding authorities. The Inspector General's recommendations for reform are presented below.

Recommendation 1.

Standards for eligibility to bid on public building contracts should be raised.

Massachusetts awarding authorities, taxpayers, and citizens pay an unacceptably high price when contractors perform poorly on or fail to complete construction projects. DCPO should review all of its current contractor certification procedures to identify those that can and should be strengthened. For example, the current requirement that an applicant have been in business for only one year may be inadequate to protect awarding authorities from inexperienced and financially unstable contractors. Four specific suggestions for strengthening contractor eligibility standards are detailed below.

1a. More restrictive methods for calculating contractor certification limits should be developed.

Some contractors may have the capability to undertake a limited number of projects of limited size, but may lack the necessary financial and technical capacity to exceed these limits. The methods DCPO uses to calculate the Single Project Limit (SPL) and Aggregate Rating Limit (ARL) for each certified contractor should ensure that these limits do not cause otherwise competent contractors to become financially or technically overextended. Rather than basing the SPL calculation on the dollar value of the largest project the contractor has completed over the past five years, DCPO should devise a calculation method that takes into account the average dollar value of projects completed in the most recent year or years as well as the dollar value of the largest projects.

Similarly, rather than basing the ARL calculation on the highest contract revenues reported by the contractor within a 12-month period over the past five years, DCPO should develop more reliable standards – drawing on the expertise of a construction accountant, if necessary – for assessing each contractor's financial capability. While a detailed financial analysis of each applicant's financial statements would clearly be impractical, a more reliable financial screening method appears necessary.

In calculating the SPL and ARL, DCPO should consider according more weight to larger projects when computing the average numerical rating used to certify contractors and to determine the multiplier used to calculate the SPL and ARL for each certified contractor. Finally, DCPO should consider adopting a more conservative approach to increasing contractors' single project and aggregate rating limits by reducing the 140 percent and 200 percent multipliers currently used in calculating these limits. The contractor certification limits should allow room for modest growth in the dollar value of public contracts undertaken by financially stable contractors with strong performance records. Higher-risk contractors should not be permitted the same expansion.

1b. Each Certificate of Eligibility should list summary information regarding the projects and numerical ratings considered by DCPO during the certification process.

For example, the Certificate of Eligibility could list the number of projects evaluated, the contractor's average numerical rating, and the number of numerical ratings below the passing score of 70 received by the contractor for each of the previous five years. Awarding authorities could then determine whether to seek additional information by reviewing the complete contractor certification file at DCPO. Listing summary information on the Certificate of Eligibility could serve as an effective incentive to contractors to perform well on all projects rather than relying on the contractor certification process to average their poor numerical ratings with their stronger numerical ratings.

1c. Contractors that routinely fail to pay their subcontractors should be denied certification.

DCPO should establish a new contractor certification standard based on the number and value of direct payment claims to the awarding authority from subcontractors, as recommended by the Construction Reform Task Force. Contractors whose projects exceed a specified number or percentage of direct payment claims attributable to the contractor's failure to pay subcontractors should be penalized or denied certification.

1d. Safeguards for certification extensions should be instituted.

The current practice of extending a contractor's certification status without reviewing the contractor's new application – necessitated by workload demands – should be amended to include safeguards. For example, DCPO could conduct an abbreviated review of the contractor's pending application for terminated projects or invoked performance bonds prior to granting the extension.

Recommendation 2.

DCPO's capacity to identify and disqualify ineligible and nonresponsible contractors should be strengthened.

In addition to strengthening the certification standards, reforming the system will require measures to ensure that DCPO has sufficient staff and information to perform the contractor certification function efficiently and effectively. Four suggestions for accomplishing this objective are detailed below.

2a. DCPO contractor certification staff should be increased to enable thorough certification reviews and timely, informed certification decisions.

DCPO is responsible for certifying construction contractors for building projects undertaken by hundreds of state and local governments and agencies across Massachusetts. Many jurisdictions – especially small jurisdictions with limited budgets and construction expertise – rely on the DCPO certification process to create a pool of contractors who have the skill, ability, and integrity to complete public building contracts. But DCPO staff resources appear inadequate to the task, as evidenced by DCPO's backlog of unprocessed Contractor Qualification Statements and renewal requests numbering in the hundreds.

According to DCPO officials, elimination of the backlog and effective management of the certification function would require the addition of two full-time staff. This modest investment is clearly warranted by the need for a more reliable contractor certification process and its importance to Massachusetts awarding authorities, taxpayers, and citizens. The Construction Reform Task Force has also recommended increasing DCPO's contractor certification staff.

Implementing an effective contractor certification process may require an additional investment in training of DCPO staff. For example, DCPO staff should be able to

identify financial indicators that may warrant denial of certification or reduction in the certification limits for a particular contractor.

2b. The Contractor Qualification Statement should be revised to require disclosure of each applicant's family and financial relationships with owners or designers of all projects listed in the application.

A requirement that the applicant disclose such family and financial relationships in the Contractor Qualification Statement would enable DCPO to determine which projects listed in the Contractor Qualification Statement may yield biased or otherwise unreliable evaluations from the owners and/or designers. An applicant who failed to make the required disclosures should be subject to decertification and, where warranted, debarment.

2c. Contractors should be required to sign the Contractor Qualification Statement under the pains and penalties of perjury, as required by M.G.L. c. 149.

Although the Update Statement contains language requiring contractors to sign under the pains and penalties of perjury, the Contractor Qualification Statement does not contain the same language. Including this language in the Contractor Qualification Statement, as required by M.G.L. c. 149, §44D, would strengthen DCPO's ability to deny certification to and debar contractors who submit false information in their Contractor Qualification Statements.

Recommendation 3.

Legislation protecting awarding authorities and their designers from litigation in connection with contractor performance evaluations should be enacted.

Public officials and designers overseeing public construction contracts should not have to jeopardize the legal and financial positions of their jurisdictions and firms when they

provide other public agencies with written or telephone evaluations of contractor performance. Legislation providing immunity from liability stemming from contractor performance evaluations – unless it can be demonstrated that the evaluation is grossly negligent or malicious – would remove a major obstacle to an effective contractor performance evaluation system. The Construction Reform Task Force has recommended that legislation be enacted indemnifying those who fill out DCPO's contractor evaluation form; the Inspector General recommends that such legislation also indemnify those who provide telephone evaluations to DCPO or other awarding authorities checking low-bidder references.

Recommendation 4.

Effective measures should be instituted to enable awarding authorities to reject unqualified low bidders.

Legislative changes as well as information from DCPO and other awarding authorities would increase the likelihood that awarding authorities will reject unqualified, or nonresponsible, bidders. Awarding authorities themselves can also adopt measures to protect their jurisdictions. Six specific measures are detailed below.

4a. M.G.L. c. 149 should be amended to give awarding authorities explicit authority to reject unqualified low bidders on the basis of past performance on projects completed within the past five years.

Under M.G.L. c. 149, an awarding authority may reject a nonresponsible low bidder on a particular contract even if the bidder has been certified by DCPO. In resolving bidder protests, the Office of the Attorney General has consistently supported the right of awarding authorities to reject nonresponsible contractors. Nevertheless, in view of the dearth of case law in this area and the absence of clear guidelines to awarding authorities spelling out the scope of their discretion to evaluate a contractor's integrity, capacity, and reliability to perform on a particular project, this area of the law should be clarified. Amending M.G.L. c. 149 to give awarding authorities clear and explicit

authority to reject unqualified low bidders on the basis of past performance on projects completed within the past five years would provide awarding authorities with the clear statutory guidance they need. M.G.L. c. 149 should also be amended to require bidders to submit with their bids and Update Statements the list of completed projects submitted to DCPO in the most recent CQS. Coupled with recommendation 1b, above, this change would ensure that awarding authorities have full information on the bidder's project history.

4b. Contractor evaluations should be computerized for ready access by awarding authorities.

The Construction Reform Task Force has recommended using technology to facilitate access to contractor evaluations. The Inspector General endorses this proposal. An effective system of sharing this information would provide awarding authorities with an essential tool in ensuring that only qualified contractors receive public contracts.

4c. Awarding authorities should establish clear procedures for obtaining and documenting low-bidder references.

While some awarding authorities report that they check low-bidder references, these reference checks may often be informal and undocumented. By documenting reference checks of low bidders, awarding authorities would be more likely to detect and consider problems in other jurisdictions and to prevail if a rejected low bidder challenged the awarding authority's action. If the reference check function is delegated to the project designer, the awarding authority's contract with the designer should require documented reference checks in the contract scope of services.

4d. Local awarding authorities should be required to provide DCPO with completed contractor evaluation forms as a condition of receiving state funds for construction.

Preventing unqualified contractors from obtaining public contracts is in the interest of all taxpayers. Although M.G.L. c. 149 contains no penalties for failure by an awarding authority to provide DCPO with completed contractor evaluations, it is reasonable to require compliance with this requirement as a condition of receiving state reimbursement.

4e. Awarding authorities should notify bidders that failure to provide résumés of all project superintendents may be grounds for bid rejection.

The Update Statement requires each bidder to provide the names and résumés of all supervisory personnel, such as project managers and superintendents, who would be assigned to the project. Reviewing the project superintendents proposed by the low bidder would assist awarding authorities in determining whether the low bidder is qualified to undertake a specific contract. The awarding authority should also consider including a provision in the construction contract requiring the awarding authority's written approval prior to any change of project superintendent.

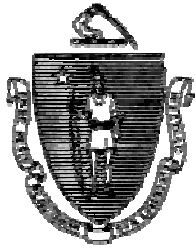
4f. The contractor evaluation form should solicit information on related-party projects.

As a crosscheck on the contractor's disclosure of related-party projects (as recommended above), DCPO should revise the contractor evaluation form to solicit specific information on the reference's family and/or financial ties to the contractor.

Appendix A: DCPO's Response

Based on the Commissioner's response* to a confidential draft of this report, Recommendation 1b of the draft report was amended. The final version of Recommendation 1b included in this report would not, in the opinion of the Office of the Inspector General, require DCPO to include confidential information in the Certificate of Eligibility.

* The original response letter was scanned and reformatted for electronic publishing. However, the text of the letter was not changed.



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August 14, 1998

Robert A. Cerasoli
Inspector General
Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108

Re: Confidential Draft Report on Anchor Contractors, Inc. and Contractor
Certification

Dear Inspector General Cerasoli:

Thank you for sending me your confidential draft report concerning Anchor Contractors, Inc. and the Commonwealth's certification process for contractors on public building construction projects. This letter provides the Division of Capital Asset Management's response to your draft report.

All of the recommendations in your draft report for improving the certification process merit serious consideration. Indeed, some of the proposed changes discussed in the draft report require legislative changes and the Division of Capital Asset Management already is implementing others administratively. Earlier this year, the Division of Capital Asset Management drafted legislation for the House Post Audit and Oversight Committee to protect and indemnify public officials and architects who complete contractor evaluation forms as required M.G.L. c.149, §44D, in order to increase the frequency and quality of evaluations submitted by awarding authorities. This legislation also will be included with the statutory changes to be submitted by the Construction Reform Task Force. With this protection, awarding authorities should be more willing to evaluate contractors such as Anchor with candor.

Your draft report recognizes that the Division of Capital Asset Management requires additional staff and other resources to address many of your recommendations for administrative changes. This would be necessary to implement your recommendation that we undertake more in depth financial analysis of certification applications in view of the high volume of applications. However, even without additional resources, the Division of Capital Asset Management already is revising the application for certification

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and the certification procedures to require that the applicant disclose family relationships and every direct payment claim filed against it. Our process will preclude the use of family contracts and the certification of contractors who routinely fail to pay their subcontractors moneys that are due (not all direct payment claims are legitimate). The Division of Capital Asset Management also already has implemented a process for reviewing pending applications more thoroughly before granting extensions.

I would like to clarify one point in your draft report. On page 39 of your draft report and in your recommendations, you express some concern that the Division of Capital Asset Management's procedures do not contain a mechanism for bringing a contractor's below-average projects to awarding authorities' attention. M.G.L. c.7, §44D provides that evaluations of a contractor's projects, which the Division of Capital Asset Management interprets to include the scoring by the awarding authority, are not public records, and must be kept confidential. Consequently, the Division of Capital Asset Management cannot put scores or other confidential evaluation information on the certificate of eligibility, which is a public record and open to inspection along with the bid. Nevertheless, the Division of Capital Asset Management allows awarding authorities to review the full contractor certification file, including all project evaluations, and strongly encourages awarding authorities to do so when they inquire about a particular contractor who has submitted a bid. Without a statutory change, the Division of Capital Asset Management is severely restricted in what we can do to bring project evaluations to awarding authorities' attention.

I agree with your draft report's determination that the Division of Capital Asset Management's certification of Anchor Contractors was attributable, in large measure, to Anchor's false statements in its application for certification and the decision by several public awarding authorities not to send to Division of Capital Asset Management evaluations of Anchor's problem projects, despite the statutory obligation to do so. The problems with Anchor identified in your report also bring into focus the areas in which the certification process should be improved. These Anchor problems demonstrate the continuing need for a strong Division of Capital Asset Management certification process to ensure that only competent and financially sound contractors are permitted to participate in Massachusetts' low-bid public construction projects.

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Thank you for your thoughtful report. The Division of Capital Asset Management will give all of your recommendations our serious consideration as we revise the agency's certification forms and procedures.

Very truly yours,

Lark Jurev Palermo,
Commissioner

cc: Jamie Lewis Keith, Assistant Commissioner and General Counsel