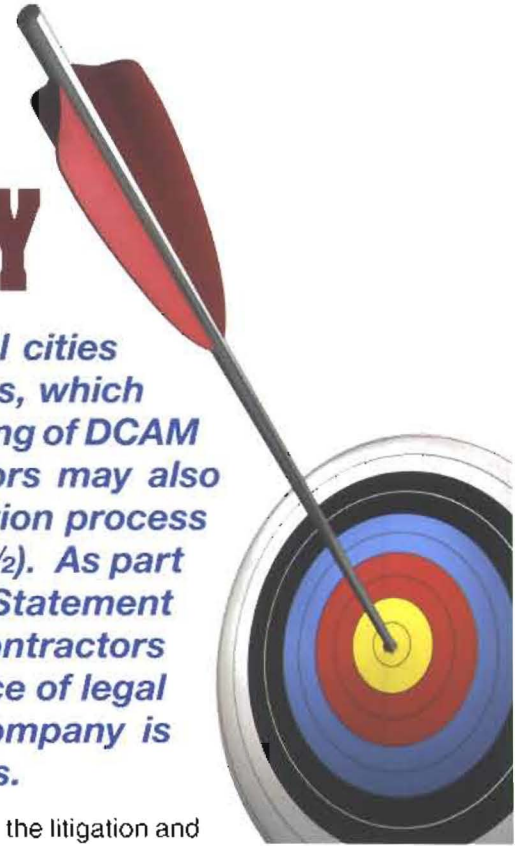




LEGAL CORNER

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THE NEED FOR ACCURACY



Many UCANE contractors pursue work with local cities and towns for the construction of treatment facilities, which are bid pursuant to M.G.L. c. 149 which require the filing of DCAM Update Statements. In addition, UCANE contractors may also pursue such projects through the local prequalification process which has been established by M.G.L. c. 149, § 44d(1/2). As part of these processes, either through a DCAM Update Statement or in response to a Request for Qualifications, contractors are required to submit information as to the existence of legal actions or administrative actions in which their company is involved together with the status of ongoing projects.

Recently, a contractor who had submitted qualifications for a local project to a municipality had their application rejected for what was characterized as misrepresentations concerning the status of litigation, as well as the status of the completion of a project upon which the company was currently working on. The contractor appealed the decision to the Attorney General who upheld the rejection of the proposal based on erroneous statements. The AG then forwarded its decision to DCAM for consideration with respect to whether this contractor should remain a certified contractor.

Subsequently, in July 2008, DCAM issued a preliminary determination to decertify this construction company. In late August, DCAM issued its "final determination to decertify" this company for its failure

to accurately set forth the litigation and administrative proceedings in which the company was involved, and inaccurately listing the various projects in which the company was involved as "on schedule". Numerous disputes existed on these projects to challenge decisions of the awarding authorities as to whether extensions of time were warranted, etc. There were, likewise, disputes as to the validity of many extra work claims.

DCAM found that the contractor's responses which were submitted to various public entities as part of either local prequalification packages or as part of DCAM's Update Statement were not accurate. As a result, the contractor's certification to bid on public projects was suspended for 18 months.

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While this decision does not immediately affect any pending projects, it eliminates the opportunity for this company to secure any new public work. The decertification by the Commonwealth will most likely result in this company not being able to do any public works projects either on the state or federal level. As this is a company that performs virtually all public work, it is questionable whether the company can continue in existence if it cannot secure new work for the next year and a half.

This decision and determination by DCAM is obvious. When contractors submit any information to a public entity, they must be extremely diligent in setting forth the accurate and complete description of the information which has been requested. Attempts to evade or obscure the true status of a matter can have significant implications. Accordingly, all are cautioned to be extremely diligent and careful in any such submissions. ■

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