

CHAPTER 25. HIGHWAY CONTRACTORS

SUBCHAPTER 3. CONTRACTOR PREQUALIFICATION AND PROPOSALS

730:25-3-1. Prequalification

(a) The purpose of contractor qualification is to make an initial determination if a contractor has adequate financial resources, integrity, experience, and proven performance to maintain progress on Oklahoma Department of Transportation projects and to make timely payments to sub-contractors and material suppliers. Prequalification is the method of qualification which has been adopted by the Oklahoma Transportation Commission and the Department pursuant to the Public Competitive Bidding Act at Title 61 OS § 118. Prequalification provides a method by which the Department may review a contractor's financial resources and technical expertise before a contractor is allowed to bid on projects which have not been exempted from the prequalification requirement. Prequalification is not a license, but is rather a procedure used by the Department to evaluate prospective bidders' ability to perform. Prospective bidders must ensure that their prequalification application is accurate and complete in all aspects, and fully discloses all information requested in the application form. Prospective bidders will be allowed to submit one application in a twelve month period. The Department may request additional information for clarification of a prospective bidder's application. The owners and officers who comprise a company will be the determinative factor as to the existence of prior prequalification applications not an alteration or change of an organization name. The prequalification application and all financial information submitted to the Department by a contractor for the purpose of prequalification shall be held in confidence by the Department and shall not be an open record pursuant to the Oklahoma Open Records Act at Title 51 OS §24A.3(1)(d)(5)(1)(h).

(b) Except as provided in this subchapter, only prequalified contractors will be permitted to bid on construction and maintenance contracts to be awarded by the Commission on the recommendation of the Department. When projects do not encompass highway construction maintenance, the Department may waive prequalification when it is in the best interest of the State and to increase competition on individual projects of a special nature including, but not limited to:

- (1) Right-of-Way Clearance
- (2) Landscaping
- (3) Wetland creation
- (4) Repair or maintenance of railroad facilities
- (5) Environmental cleanup or mitigation
- (6) Transportation enhancement projects

(c) A prospective bidder may obtain a "sample" copy of the bidding documents for use in preparing bid computations after official advertisement of a project, but must submit an application for prequalification not less than twenty-one days prior to the announced bid opening date to the Office Engineer Division and obtain a Certificate of Qualification in order to submit a bid proposal to the Department. The submitted application for prequalification will be considered by a prequalification committee composed of the Office Engineer, along with representatives from the Comptroller Division, the Construction Division, Director of Operations, and the General Counsel's Office. Contractors prequalified by the committee may be approved for the classes of work specified by the applicant on the prequalification application, dependent on personnel, equipment, capital and experience in highway construction.

(d) A prospective bidder must submit as part of their Prequalification Application, an Audited Financial Statement in which a Certified Public Accountant has expressed an opinion. The prospective bidder's fiscal year end Audited Financial Statement shall not be dated more than 180 days prior to the date of receipt by the Department of the Prequalification Application. Based upon these statements and other materials submitted or subsequently requested by the Department, the Department may, at its discretion, grant the prospective bidder a conditional prequalification. The Department shall impose such additional requirements on a conditionally prequalified contractor as the Department deems necessary and in the best interests of the public. If a prospective bidder cannot provide a current Audited Financial Statement with their Prequalification Application, then the prospective bidder may provide their most recent Audited Financial Statement. If a conditional prequalification is granted, it is valid only for the remainder of the prospective bidder's fiscal year in which the conditional prequalification is granted, plus an additional period not to exceed 180 days.

(e) No prospective bidder will be qualified unless the prospective bidder's Prequalification Application and the Department's review of that Application determines that the prospective bidder possesses working capital, equipment, experience and personnel sufficient in the judgment of the Department, to indicate that the prospective bidder can satisfactorily perform its contract and meet all obligations incurred therein. The Audited Financial Statement must show all liabilities (current, deferred and contingent). The prospective bidder will not be qualified for more than two and one-half times its current working capital as computed by the Department, based on an evaluation of the contractor's Audited Financial Statement. When a conditionally prequalified contractor receives a notice of project completion on a project, that notice may be submitted to the Department for removal of that project from its bidding limit.

(f) If the prospective bidder submits cash value of life insurance as an asset, the applicant will support the submission with a letter from the insurance company, showing that the prospective bidder absolutely controls the cash value and that there are no legal encumbrances, preexisting loans or any other impediment which would prevent or interfere with the access of the prospective bidder to that cash value.

(g) When a partnership is being considered, an Audited Financial Statement of the partnership, which will include all the assets and liabilities of each member, will be required.

- (h) Prospective bidders will furnish an itemized list of all Secondary Cash Resource items such as marketable securities, stocks and bonds.
- (i) Prospective bidders will sign, under oath, all forms submitted to the Department.
- (j) The Department will make such investigation of the information submitted as it deems necessary.
- (k) The Department will qualify, or refuse to qualify, any prospective bidder for paving, grade and drain, bridge or other Department construction work in accordance with such prospective bidder's experience and financial condition.
- (l) Prospective bidders who are conditionally prequalified will not be permitted to bid on individual projects that, in aggregate, exceed maximum bidding limits. Proposals may be "taken out" without limitation as to aggregate total. Should a conditionally prequalified contractor be low bidder on contracts totaling, in aggregate, more than the amount for which the contractor is conditionally prequalified, the Commission reserves the right to:
 - (1) Reject any or all of the contractor's bids and re-advertise for new bids as required in the best interests of the state; or,
 - (2) Award contract(s) on which the conditionally prequalified contractor would otherwise be the low bidder to the second lowest bidder; or
 - (3) Waive the maximum bidding limit and award all or any of such contracts to the conditionally prequalified contractor if the Department, in the exercise of sound discretion, shall determine that the contractor has the apparent ability to successfully perform the contract(s) and it is in the best interest of the Department for the award to be made.
- (m) Any prospective bidder not satisfied with a rejection of its application for prequalification may appeal to the Department's Executive Director or the Executive Director's designated representative by giving notice of the applicant's objection by certified mail addressed to the Executive Director. The applicant's objection must be mailed within fourteen (14) calendar days after the date such prospective bidder received written notice of the Department's action. The Executive Director, or his designee, shall review the prequalification file and make an independent determination concerning the applicant's prequalification.
- (n) Upon being conditionally prequalified a minimum of one (1) year from the date of the initial prequalification, and satisfactory final completion of either:
 - (1) A minimum of three (3) projects and not less than Five Million Dollars (\$5,000,000) of Department projects requiring prequalification as a prime contractor, or
 - (2) A single project in excess of Ten Million Dollars (\$10,000,000.00) as a prime contractor, the prequalification committee will consider upgrading the contractor's status from conditionally prequalified to fully prequalified. If found fully qualified, the Contractor's Certificate of Qualification will be reissued to allow the contractor to bid on and be awarded projects to the extent of their bonding capacity as a fully prequalified contractor. A conditionally prequalified contractor that completes a project as a joint venture with a fully prequalified contractor shall receive credit for its proportional share of the project and contract amount, limited to its bidding capacity.
- (o) A conditionally prequalified contractor's certificate shall expire after a two year term at the completion of the contractor's fiscal years following issue of the contractor's Certificate of Qualification. After the expiration date of the contractor's Certificate of Qualification, the contractor shall have a period of 180 days to submit audited financial statements, or a financial review of the contractor's business operations. During this 180-day period the contractor shall remain prequalified under its current Certificate of Qualification. If a conditionally prequalified contractor does not submit audited financial statements or a financial review of its operations within the 180-day period following the expiration date of the contractor's Certificate of Qualification, the Department shall limit the potential bidder's bidding capacity to an amount not to exceed the company's working capital as determined by the contractor's most recent audited financial statement or financial review until such time that the contractor can provide the Department with a current audited financial statement or financial review.
- (p) When a previously fully prequalified contractor re-applies for prequalification within two years of the expiration of their prequalification, upon approval the Department may, at its sole discretion, reinstate the contractor to fully prequalified status, provided that:
 - (1) the contractor was in good standing with the Department at the time that the contractor's prequalification expired,
 - (2) the contractor submits current audited financial statements that indicate financial resources equal to or greater than its last financial statements submitted to the Department, and
 - (3) it is demonstrated that such reinstatement of the contractor to fully prequalified status is in the best interests of the Department.
- (q) The Department will consider a contractor to be in good standing if:
 - (1) The contractor was demonstrating satisfactory performance on contracts which the contractor was awarded by the Department;
 - (2) The contractor had settled all debts and obligations owed to the Department;
 - (3) The contractor had made all necessary payments to subcontractors in accordance with its subcontract agreements;
 - (4) The contractor had made all necessary payments to suppliers for materials to be used on Department contracts;
 - (5) The contractor had settled all claims against the contractor;
 - (6) The contractor was not in the process of being suspended or debarred by the Department, or any other government entity, and the action and/or decision was later upheld;
 - (7) The contractor was not party to any criminal suit against the contractor in which the contractor was later convicted.
- (r) The Department may request a fully prequalified contractor's audited financial statement or financial review at any time for the purpose of evaluating the contractor's working capital. If the contractor fails or refuses to provide the requested document(s) to the Department within 30 days of its request, the Department may reimpose a bidding limit upon the contractor of an amount not to

exceed two and one-half times its working capital as computed by the Department, based on an evaluation of the contractor's most recent audited financial statement on file with the Department. The Department shall impose such additional requirements on a fully prequalified contractor as the Department deems necessary and for the best interest of the public.

(s) The contractor's audited financial statement or financial review of its operations must demonstrate that the contractor has a positive amount of working capital that is sufficient to satisfactorily perform its contract in the judgment of the Department. The Department will renew the contractor's Certificate of Qualification if the contractor's working capital is sufficient in the judgment of the Department. If the Department's review determines that the contractor has insufficient or negative working capital, the contractor's bidding capacity will be limited to the company's working capital as determined by the contractor's most recent audited financial statement or financial review until such time that the contractor can demonstrate to the Department that either:

(1) The contractor has sufficient working capital, or

(2) The contractor, in the judgment of the Department, has a viable financial recovery strategy to develop positive working capital which can be determined from the contractor's next year-end audited financial statement. The contractor's anticipation of obtaining future construction contracts with the Department will not be considered as part of the contractor's financial recovery strategy.

(t) If the Department determines the contractor's working capital is sufficient or the contractor's recovery strategy is approved, the contractor will have one and one-half years from the contractor's expiration date to demonstrate the company's positive working capital. If the contractor cannot demonstrate the company's positive working capital within the one and one-half year period, the contractor's prequalification status will cease and the contractor will not be eligible to submit bid proposals to the Department at that date.