

350 CMR 7.00: CLASSIFICATION AND RATING OF PROSPECTIVE BIDDERS

Section

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7.01: Definitions

Commission shall mean the Metropolitan District Commission.

Commissioner shall mean the "Commissioner of the Metropolitan District Commission." He shall issue necessary rules and directives to carry out the intent of M.G.L. c. 29, § 8B.

Contractor or Prospective Bidder. Any individuals, co-partnerships, associations, corporations, joint venturers, or joint stock companies and their representatives, trustees, or receivers appointed by any court of competent jurisdiction.

Current Capacity Rating the net difference between a Contractor's "Maximum Capacity Rating" and the dollar value of the contractor's current uncompleted work, regardless of its location and with whom it may be contracted.

Experience the number of years engaged in highway and/or bridge construction and/or maintenance, or other public works contracts completed by the contractor for this Commission, other state highway and/or bridge departments, Federal bureaus or similar agencies.

Maximum Capacity Rating - the total aggregate amount (dollar value), as rounded off, of work a bidder may have under contract at any time, either as principal or sub-contractor, regardless of its location and with whom it may be contracted: provided, however that said aggregate amount of work shall not be less than the amount of the bidder's current bonding capacity, as verified to the Commissioner or the Commissioner's designee's satisfaction, by a surety company incorporated pursuant to M.G.L. c. 175, § 105, or authorized to do business in the Commonwealth under M.G.L. c. 175, § 106, and satisfactory to the Commissioner or the Commissioner's designee.

Maximum Single Project Rating. The Commission, acting through its Prequalification Committee, reserves the right to establish a maximum single project rating in a lesser amount than the maximum capacity (aggregate) rating in cases where said committee has substantial and valid reason to believe that a prospective bidder is unqualified, either because of lack of experience or unsatisfactory performance on a previous contract, to satisfactorily perform a contract in the full amount of the contractor's maximum capacity (aggregate) rating

Prequalification Appeal Board. This Board consists of the Commissioner and the Associate Commissioners. A written decision of a majority of the members of the Prequalification Appeal Board shall be considered final.

Prequalification Committee. This is the committee within the Commission consisting of five members of the engineering staff as designated by the Commissioner. one of which shall be the prequalification officer who shall serve as Chairman.

Ratings. The Prequalification Officer shall determine prequalification ratings based upon the Contractor's ability to properly finance the work as evidenced by the their financial statement and supporting documents. See 350 CMR 7.03.

7.02: Application for Prequalification

(1) General. Any Contractor proposing to bid on work under the direction of the Commission, aggregating \$50,000 or more, must furnish a notarized statement on forms provided by the Commission, setting forth their financial resources, adequacy of plant and equipment, organization, experience and other pertinent facts. The financial data shall be as of a date within four months of filing, except for an initial filing where this period shall be extended by eight more months, and shall be certified by a Certified Public Accountant. Any significant change in the financial condition or the status of equipment and/or change in the name or structure of the firm, officers or ownership, which occurs between the date of the audited financial statement and the filing date, must be reported to the Metropolitan District Commission at the time of filing. The Contractor's Prequalification Statement must have the "Certificate of Accountant" form (FN*) on page 12 completed, before the request for prequalification will be considered. The Commission reserves the right to demand additional information at any time.

For work aggregating under \$50,000 prequalification and certification is desirable but not required.

All information furnished in any statement by a prospective bidder shall be held in strict confidence by the Commission and its agents, and shall be used only to determine the prospective bidder's Maximum Capacity Rating and the Class of work he shall be entitled to undertake in accordance with the regulations herein contained. No information contained in any such statement shall be imparted to any other person without the written consent of the prospective bidder.

(2) "Out of State" Contractors. A contractor claiming a legal address of principal office outside of Massachusetts shall submit a completed Prequalification Statement accompanied by a Certificate from each State in which he has worked, stating the Rating, if any accorded him in that State. All corporations must show proof of registration with the State Secretary to do business in Massachusetts.

(3) Joint Venturers. If recurrent joint venture bidding is desired, a combined Prequalification Statement of experience, principal personnel, equipment, previous record, financial resources, and the number, size and completion dates of construction jobs in this or other States presently under contract, shall be submitted. The joint relationship shall be considered in effect until one of the Contractors notifies the Commission that the joint relationship is concluded.

(4) Subsidiary Companies (When Parent Company Already Holds Prequalification Status). In the event that a prequalified parent company has formed or intends to form a subsidiary company with intent to prequalify, Prequalification Ratings may be established for the subsidiary company subject to the following rule of procedure:

The subsidiary company shall be considered as an independent entity and shall be rated on the basis of its own independent financial resources, equipment, personnel, experience, and the number, size, and completion dates of construction jobs in this or other States presently under contract.

(5) Time Limitation in Submitting Request for Prequalification. A request for prequalification will not be considered until a properly and correctly completed questionnaire and financial statement, including all necessary supporting data has been submitted.

Requests for Prequalification shall be submitted at least 14 calendar days preceding the day set for opening of bids for work upon which a Contractor intends to bid.

(6) Class of Work Desired. Each prospective bidder shall indicate, in the place provided on page three in the Prequalification Statement (FN**), the particular class or classes of work upon which he desires to bid; but such indication shall not be binding upon the Commission in classifying a prospective bidder according to the facts disclosed in their Prequalification Statement.

Although a Contractor may possess and list many types of equipment in their Prequalification Statement as fixed assets for the purpose of establishing its "Maximum Capacity Rating", only those types of equipment which will be useful in performing the contemplated work will be considered in determining the class or classes of work which he shall be prequalified to undertake.

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Contractors must show that they have appropriate and sufficient equipment available to satisfactorily perform the contemplated class or classes of work and that such equipment will not be leased or otherwise limited in use during the period of any contract with which he/she may be awarded. In lieu of actual equipment on hand, the Contractor may show current assets sufficient to provide the necessary equipment, and may show that he will have sole jurisdiction over the equipment for a period of not less than 12 months from the date of application. In addition to a complete description, a statement as to the condition of each piece of equipment shall be required. The Commission shall have the right to inspect all equipment in order to determine its operating condition and value.

(7) Action on Requests for Prequalification. Each Contractor's Prequalification Statement shall be reviewed by the Prequalification Committee. This Committee shall analyze each statement, verify as it deems necessary the information set forth therein, and determine the class and aggregate amount of work the prospective bidder shall be entitled to undertake. Whenever the Committee is not satisfied with the sufficiency of the answers contained in any Statement, it may require the Contractor to submit additional information, and pending the filing of such additional information, the Commission may refuse to furnish such Contractor with an official proposal form for any duly advertised project. The Committee may require a personal interview with a prospective bidder when considering the contractor's qualification for a Rating.

On or before the tenth calendar day after receipt of a prospective bidder's Prequalification Statement by the Prequalification Officer, the Commission shall give the applicant written notice of its determination of the bidder's "Maximum Capacity Rating" and the class of work the contractor shall be entitled to undertake, which determination shall be subject to a right of appeal as set forth in 350 CMR 7.05(5).

(FN*) The "Certificate of Accountant" form is on page 12 of this Contractor's Prequalification statement.

(FN**) The Contractor's Prequalification Statement.

7.03: Ratings

(1) General. Ratings shall be basically determined upon the Contractor's ability to properly finance the work as evidenced by their financial statement and supplementing documents, and on their competency and responsibility as indicated by the amount and condition of equipment, experience of principal personnel and Contractor's previous experience record with this and other awarding authorities. Letters of credit shall not be accepted. Unlimited Maximum Capacity Ratings shall not be allowed. The resultant Ratings shall include the following component parts:

- (a) Class of work.
- (b) Maximum Capacity Rating.
- (c) Maximum Single Project Rating.

(2) Duration of Prequalification Ratings. Prequalification Ratings shall remain in effect for not more than 16 months following the date of the Contractor's balance sheet used in the prequalification statement.

(3) Revision of Prequalification Ratings.

- (a) Whenever the Commission has substantial reason to believe that the condition of a firm previously prequalified is less favorable than at the time of its last application, a new Prequalification Statement shall be requested in writing stating the reason therefor. If the requested statement is not filed within 30 days from date of notice, the current Ratings shall be considered forfeited, and the party concerned shall not be permitted to bid until a new Prequalification Statement has been received and acted upon by the Commission.
- (b) Qualification Ratings shall be modified whenever it is determined that a Contractor does not have sufficient equipment, or sufficient assets to provide necessary equipment either through purchase or lease agreements, or the contractor's performance is unsatisfactory.
- (c) Requests by contractors for the revision of Prequalification Ratings will be considered by the Commission at any time provided a new Prequalification Statement is submitted. Such Statements must be submitted in proper form at least 14 calendar days prior to a bid opening in order to receive consideration for that bid opening.

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(d) If at any time subsequent to filing, any significant change occurs in the financial condition or the status of equipment and/or any change in the name or structure of the firm, officers, or ownership, a written notice shall be given to the Commission, whereupon a new application for prequalification may be required.

(e) If an individual or member of a partnership withdraws cash, securities, or any assets subsequent to the filing of a financial statement with the Commission, he shall give written notice to the Commission of such withdrawals; the Commission will then adjust the financial Rating of the individual or partnership accordingly.

7.04: Proposal Forms

(1) Requests for Proposal Forms. All prospective bidders who wish to bid on work to be awarded by the Commission must submit a completed "Request for Proposal Forms" to the Commission, accompanied by cash, bank check, certified check or money order in the amount in the Notice to Contractors, made payable to the Metropolitan District Commission. Prospective bidders are required to submit a letter to the Prequalification Officer listing the names of all individuals authorized to sign the "Request for Proposal Forms". The letter is to be signed by a member or officer of the firm together with their title.

Unless a prospective bidder has "prequalified", he/she shall not be entitled to bid on work, the value of which when added to the value of his uncompleted work, already under contract with the Commission, will aggregate \$50,000.00 or more.

A Contractor may take out more than one proposal book at a time, to be opened either on the same date or on subsequent dates, providing that no one single project exceeds their current capacity rating. Any proposal, the project value of which places the bidder in a position of exceeding their current capacity rating, shall be rejected.. A bidder shall be entitled to receive all other proposals whether opened on the same date or on subsequent dates.

Two or more Contractors who have been prequalified may combine all or a portion of their assets for occasional bidding purposes, by filing with the Commission a completed joint "Request for Proposal Forms", stating on an attached separate sheet the portion of each of their assets to be considered jointly. The sum of these will determine the "Maximum Capacity Rating" of the joint venturers. One of the joint venturers must be prequalified in the class of work for which they intend to submit bids. (See 350 CMR 7.02(3))

(2) Action on Request for Proposal Forms. The Commission shall act upon a "Request for Proposal Forms" within three days following receipt by the Prequalification Officer, excluding a Saturday, Sunday or holiday.

Prior to the issuance of a proposal form, consideration will be given to the number of projects the prospective bidder has under contract, the state of progress thereon, and his "Current Capacity Rating" as determined by deducting the total dollar value of uncompleted work shown in the "Request for Proposal Forms" from his "Maximum Capacity Rating".

Each proposal form shall have an identifying number and shall be non-transferable. A bid submitted on a proposal form issued to another contractor shall be rejected.

(3) Non-issuance of Proposal Forms.

(a) A proposal form shall not be issued to a prospective bidder:

1. If the Commission's Project Value (P.V.) for the particular project upon which he desires to bid exceeds his "Current Capacity Rating"; or

2. On non-federally aided projects, if the prospective bidder has been adjudged guilty of any irregularity in connection with public works before a court of competent jurisdiction.

(A specific time period during which a proposal will not be issued shall be established following such court action. Should an appeal be taken, the period of disqualification shall continue until the judgment is reversed, in which event the period of disqualification shall end); or

3. On federally-aided projects, if the prospective bidder has been established as being unacceptable for employment under administrative action taken in instances of irregularities as set forth in Federal Regulations, Chapter One, Part Two, Title 23, "Statement of policy as to administrative action to be taken by the Federal Highway Administrator in instances of irregularities". The time period during which a proposal form will not be issued in this instance shall be the period that the prospective bidder is

considered unacceptable by the Federal Highway Administrator.

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(b) The Commission may also refuse to issue a proposal form if the Prequalification Committee determines that:

1. The prospective bidder is making unsatisfactory progress or performing work which is substantially unsatisfactory on projects already under contract.
2. The prospective bidder has performed unsatisfactory work on prior contracts or his performance record has been unsatisfactory on prior contracts.

A prospective bidder shall be notified in writing of the refusal by the Commission to issue a proposal form within three days, excluding a Saturday, Sunday or holiday, following receipt of request for proposal form by the Prequalification Officer.

After receiving notification of refusal to issue a proposal form, the prospective bidder may make written request for a review or a hearing by the Prequalification Appeal Board of the decision of the Prequalification Committee. A request for a review shall set forth the prospective bidder's arguments for a revision of the decision. In the event the prospective bidder requests a hearing, the Prequalification Appeal Board shall hold a hearing and render a written decision thereon within a reasonable period of the prospective bidder's request. Where a review only is requested, the Prequalification Appeal Board shall give a written decision within seven calendar days of receipt of the prospective bidder's request. In either case, the decision shall be final and binding, subject to the right of the prospective bidder to a judicial review under the applicable provision of M.G.L. c. 30A (*Administrative Procedure Act*).

7.05: Miscellaneous

(1) Order of Bid Openings. Proposals shall be opened and read in the order of decreasing dollar values, commencing with the highest "Project Value", as set forth in 350 CMR 7.05(5).

(2) Bid Openings. A Contractor may submit proposals for more than one project to be opened on the same day, however, if a contractor is found to be the low bidder on one project, all subsequent bids opened on the same day which place this contractor in the position of exceeding their Current Capacity Rating shall be automatically rejected.

A bidder may submit proposals to be opened on subsequent dates, however any and all bids opened, which place the contractor in the position of exceeding their Current Capacity Rating shall be automatically rejected.

(3) Right to Reject Bids. Nothing in 350 CMR 7.00 shall be construed as depriving the Commission of the right to reject any bid when it is found that the bidder has exceeded his current capacity rating or when in the opinion of the Commission, circumstances and developments have changed the qualification or responsibility of the bidder.

(4) Rights of a Contractor for Hearing. A Contractor or prospective bidder who is aggrieved by a decision or determination of the Commission may file a new application for prequalification at any time, or within 15 calendar days after receiving notice of such decision or determination, may make written request for a hearing before the Prequalification Appeal Board, who shall conduct a hearing as soon as practicable and render a decision within 15 calendar days following receipt of the request. The previous Rating or decision shall remain in effect until the Prequalification Appeal Board renders a decision in writing on the appeal.

A Contractor or prospective bidder who is aggrieved by a decision of the Prequalification Appeal Board shall have a right to judicial review under the applicable provisions of M.G.L. c. 30A.

7.05: continued

(5) Project Value. In order to save space on various forms, each project shall be given a "Project Value" derived from the Commission's preliminary cost estimate stated in round figures as follows:

Cost Estimate	"Project Value"
\$50,000	0.5
\$100,000	1.0
\$500,000	5.0
\$1,000,000	10.0
\$5,000,000	50.0

Intermediate "Values" will be interpolated on the same basis.

REGULATORY AUTHORITY

350 CMR 7.00: M.G.L. c. 92, § 8B, c. 29, § 8B.