

720-700 CMR: MASSACHUSETTS DEPARTMENT OF HIGHWAYS TRANSPORTATION
DIVISION OF HIGHWAYS

720-700 CMR 514.00: PREQUALIFICATION OF CONTRACTORS AND PROSPECTIVE
BIDDERS FOR STATEWIDE ENGINEERING FIELD SURVEY
SERVICES FOR HORIZONTAL CONSTRUCTION

Section

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514.01: Definitions

(1) Applicable to 720-700 CMR 514.00 et seq.:

Commissioner Administrator, shall mean the Commissioner Administrator of the Department.
The Commissioner Administrator shall from time to time issue necessary rules and directives to carry out the intent of M.G.L. c. 2981, § 8B.

Department, shall mean the Massachusetts Department of Highways Transportation, established under M.G.L. c. 16, § 1 *et seq.*

Division, shall mean the Highway Division of the Department.

~~Highway Commission, shall mean the Commission of the Department, as constituted under M.G.L. c. 16, § 1 *et seq.*~~

~~Prequalification Appeal Board, shall consist of the Commissioner, the Associate Commissioners, and the Chief Engineer, or their designee(s).~~

(2) Applicable to 720-700 CMR 514.02 Through 514.08-07 Inclusive:

Application for Prequalification, shall mean the Contractor's statement, on forms provided by the Department Division, setting forth its Aggregate and Single Bonding Capacity, financial resources, adequacy of plant and equipment, organization, ~~e~~Experience and other pertinent facts, and any other statement or information provided by the Contractor in connection therewith.

Aggregate Bonding Capacity, shall be the highest total dollar amount of Performance and Labor and Material bonds a survey surety will provide to the Contractor.

Contractor or Bidder, shall include individuals, partnerships, associations, corporations, joint venturers, or other enterprises, and their representatives, trustees, or receivers appointed by any court of competent jurisdiction.

Experience, shall mean the number of years of relevant experience of the Contractor ~~or and the its Contractor's respective~~ employees in one or more of the ~~categories classes~~ of work established by the Prequalification Committee.

Informational Proposal Book Proposal Documents, shall mean the ~~proposal~~ proposed plans and specifications and other materials showing the location and description of the contemplated work, an itemized proposal form listing the estimates of the various quantifies of work to be performed and materials to be furnished, the time in which the work must be completed, and a

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~~Notice to Contractors or Instructions for Bidders and special provisions for the particular project.~~ provided solely for the purpose of an informal evaluation of a project. A bid will not be accepted based upon an Informational Proposal Book.

Official Proposal ~~Book~~Documents, shall mean the ~~proposal-plans~~ and specifications ~~showing the location and description of the contemplated work, an itemized proposal form listing the estimates of the various quantities of work to be performed and materials to be furnished, the time in which the work must be completed, and a Notice to Contractors or Instructions for Bidders and special provisions for the particular project, all of which are~~ provided to a Prequalified Contractor. A bid will only be accepted based upon ~~an~~ Official Proposal ~~Book~~Documents. Official Proposal ~~Books~~Documents are not transferable.

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Prequalification Appeal Board, shall consist of the Administrator and the Chief Engineer, or their designee(s).

Prequalification Committee, shall mean a committee established within the Department in accordance with the provisions of M.G.L. c. 2981, § 8B, consisting of at least three members of the engineering staff, including the Director of Prequalification and the Chairperson, appointed-designated by the Commissioner/Administrator.

Prequalified Contractor, shall mean a firm which has been prequalified by the Prequalification Committee, authorized to receive an Official Proposal Book/Proposal Documents, and authorized to submit a bid.

Project Value, shall mean the dollar value of the work under the contract as estimated by the awarding authority.

Single Contract Limit, shall be the total dollar amount a Contractor may bid on an individual contract within a particular-particular class-class of work.

~~Uncompleted Work, shall mean all incomplete current work of any type under contract or subcontract whether public or private.~~

~~Update Statement, shall be the form prescribed by the Commissioner, setting forth a non-Prequalified Contractor's Uncompleted Work with the Department and such other information as required.~~

~~(3) Applicable to 720 CMR 5.09 through 5.13 Inclusive:-~~

~~Experience, shall mean the number of years engaged in performing public or private sector survey work.~~

~~Maximum Capacity Rating, shall be the total number of survey parties approved for bid on Department work, subject to the inclusion of sufficient acceptable vehicle, instrument, equipment and personnel resources as part of the bid submitted.~~

~~Surveyors Prequalification Committee, shall mean a committee within the Department consisting of three members of the engineering staff as designated by the Commissioner.~~

~~Surveyor or Prospective Bidder, shall include individuals, partnerships, corporations, or other entities and their representatives, trustees, or receivers appointed by any court of competent jurisdiction.~~

514.02: Application for Prequalification of Contractors

(1) General. Any Contractor proposing to bid on work under the direction of ~~the Department~~the Division, and or city or town for which prequalification is required, must furnish for approval by the Prequalification Committee a statement on forms provided by the ~~Department~~Division setting forth its Aggregate Bonding and Single Bonding Capacity, financial information, adequacy of plant and equipment, organization, ~~experience~~Experience and any other pertinent facts as required, in accordance with M.G.L. c. 81, § 8B. The Application for Prequalification form may be obtained from the ~~Department~~Division through ~~its Construction and Contracts Engineer~~its Director of Construction Prequalification, Massachusetts Department of Transportation, Highway Department/Highway Division, Ten Park Plaza, Boston, MA 02116-3973 [(Tel. No. (617) 857-9733/68-7620/8660)] and at: http://www.massdot.state.ma.us/highway/Departments/PrequalificationofHorizontalConstructionFirms.aspx

(2) Class(es) of Work. The general definitions of, and prequalification requirements for, various classes of work established by the Prequalification Committee. ~~The definitions of classes of work are available at~~
http://www.massdot.state.ma.us/highway/Departments/PrequalificationofHorizontalConstruc

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The definitions of and/or the prequalification requirements within such classes of work may be amended by the Prequalification Committee from time to time. The Prequalification Committee may prequalify Contractors in one or more of the classes of work as indicated on the Prequalification Application and Prequalification Certificate. The Prequalification Committee may also establish additional classes of work for specialized contracts. Contractors shall be notified of such special classes of work in the Notice to Contractors, Advertisement for Bids, or Instructions to Proposers for the particular project, and may apply for Prequalification in such special classes of work in accordance with 700 CMR 14.03(3)(d).

~~(23)~~ Confidentiality. All information furnished in any statement or Application for Prequalification by a Contractor shall be held in strict confidence by the Department and its agents, and shall be used only to determine the Contractor's Aggregate Bonding Capacity, Single Contract Limit(s) and the class(es) of work it shall be entitled to undertake in accordance with ~~720-700~~ CMR ~~514.00~~, per M.G.L. c. 81, § 8B. No information contained in any such statement or Application for Prequalification shall be imparted or disclosed to any other person without the written consent of the Contractor, per M.G.L. c. 81, § 8B.

~~(34)~~ "Out of State" Contractors. All out-of-state Contractors must show proof of current registration with the Secretary of State by submitting a Certificate of Good Standing (Foreign Corporate Certificate) to do business in Massachusetts.

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(45) Joint Ventures.

(a) Subject to the following provisions, two or more Contractors (Joint Ventures) may combine for occasional bidding purposes, by submitting a joint bid:

1. All Joint Ventures must be prequalified.
2. At least one of the Joint Venturers must be Prequalified in the class of work specified in the contract documents.
3. The Single Contract Limit of each Joint Venturer may be combined to establish the Single Contract Limit of the Joint Venture. The Single Contract Limits can only be combined when they are in the same class of work.
4. The Aggregate Bonding Capacity of each Joint Venturer may be combined to establish the Aggregate Bonding Capacity of the Joint Venture.

~~Aggregate capacities can only be combined when they are in the same class of work.~~

5. The Department-Division may require submission of a copy of the Joint Venture agreement or other information deemed necessary.

(b) If continuous joint venture bidding is desired, a combined Application for Prequalification may be submitted. The Joint Venture shall be considered in effect until one of the Contractors-Joint Venturers notifies the Department-Division in writing that the Joint Venture is concluded.

(56) Submitting an Application for Prequalification. A request for Prequalification will not be considered until a completed Application has been submitted. Applications for Prequalification shall be submitted at least ~~twenty-one~~ 14 (21) calendar days preceding the day set for opening of bids for work upon which a Contractor intends to bid. Completed ~~applications—Applications~~ for ~~prequalification—Prequalification~~ submitted less than ~~14~~ twenty-one (21) days preceding the date which is set for bids to be opened may not be executed or acted upon prior to the bid opening date. A Contractor may file a new Application for Prequalification at any time; ~~however, no such Application for Prequalification need be considered by the Prequalification Committee if that Contractor's prequalification status has been modified or revoked following a determination by the Prequalification Committee in accordance with 700 CMR 14.05, until either the expiration of the period of the modification or revocation so determined by the Prequalification Committee, or the rendering of a decision favorable to that Contractor by the Prequalification Appeal Board in accordance with 700 CMR 14.06, per M.G.L. c. 81, § 8B.~~

(67) Class of Work Desired. Each Contractor shall indicate, in the place provided in the Application for Prequalification, the particular class or classes of work upon which it desires to be prequalified for bidding purposes; but such indication shall not be binding upon the Prequalification Committee in classifying a Contractor.

(78) Equipment. Contractors must show that they have appropriate and sufficient equipment available to satisfactorily perform the contemplated class or classes of work. In lieu of actual equipment on hand, the Contractor may show financial resources sufficient to provide the necessary equipment for the appropriate class(es) of work through a lease agreement for a period of not less than twelve (12) months from the date of application, and must also provide a copy of any such lease agreement, ~~and may show that it 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 may be required. The Department-Division shall have the right to inspect all equipment in order to determine its operating condition.

(89) Sureties. Contractor's Surety must be authorized to do business in the Commonwealth of Massachusetts and must be determined to be satisfactory to-by the Department-Division. "Satisfactory", for the purposes of 720-700 CMR 514.02(89), shall mean rated B+ or better by A.M. Best Company and included on the United States Treasury Department's Listing of Approved Sureties (Department Circular 570), or such other evaluation as may be designated by the Department-Division from time to time. The Contractor shall present, along with its Application for Prequalification, a letter from an authorized representative of the Surety setting forth the Contractor's Aggregate Bonding Capacity and ~~single~~ Single Contract Limit and any limitations imposed thereon by the Surety. Signing authorization such as Power of Attorney or Attorney-in-Fact must accompany such letter.

~~(910)~~ Action on Requests for Prequalification. Each Contractor's Application for Prequalification shall be reviewed by the Prequalification Committee. The Prequalification Committee shall analyze each statement, verify, to the extent necessary, the information set forth therein, including the Contractor's Aggregate Bonding Capacity, and establish the Single Project Limit(s) of the Contractor and the class(es) of work the Contractor shall be entitled to undertake, in accordance with M.G.L. c. 81, § 8B. Whenever the Prequalification Committee is not satisfied with the sufficiency of the information contained in any Application for Prequalification, it may require the Contractor to submit additional information and, pending the filing of such additional information, the Committee may refuse to allow the Contractor to

~~§14.02:~~ continued

bid on any work. The Committee may require a personal interview with principals and key employees of a Contractor when considering its qualifications. After receipt of a Contractor's Application for Prequalification and such other information as has been requested by the Prequalification Committee, the Prequalification Committee shall render its determination. This determination shall consist of either a Prequalification Certificate setting forth the Contractor's Aggregate Bonding Capacity, Single Contract Project Limit(s) and class(es) of work, or a written determination denying all or part of Contractor's Application for Prequalification. The determination of the Prequalification Committee shall be subject to the Contractor's right of appeal as set forth in ~~720-700~~ CMR ~~§14.07~~06.

~~§14.03:~~ Aggregate Bonding Capacity and Single Contract Limits for Contractors

(1) Aggregate and Single Bonding Capacity. The Prequalification Committee shall verify the Contractor's Aggregate and Single Bonding Capacity, as is evidenced by a letter from the Surety's authorized representative in accordance with 700 CMR 14.02(9), per M.G.L. c. 81, § 8B720-CMR 5.02(8). Unlimited Aggregate Bonding Capacities shall not be allowed.

~~(2) Classes of Work. The Prequalification Committee shall prequalify Contractors in one or more of the classes of work as indicated on the Prequalification Application and Prequalification Certificate. The Prequalification Committee may also establish additional classes of work for specialized contracts. Contractors shall be notified of such special classes of work in the Notice to Contractors or Advertisement for Bids for the particular project and may apply for Prequalification in such special classes of work in accordance with 720-CMR 5.03(4)(d).~~

~~(3) Single Contract Limit. The Prequalification Committee may establish a Single Contract Limit for the Contractor in any ~~classes~~ Class of ~~work~~ Work for which the Contractor has been Prequalified. A Single Contract Limit may be established, if, in the opinion of the Prequalification Committee, the Contractor does not have adequate ~~experience~~ Experience, ~~responsibility~~, competency, or equipment necessary to undertake an individual contract valued at the Contractor's Single Bonding Capacity within that ~~class~~ Class of ~~work~~ Work. In establishing Single Contract Limits, the Prequalification Committee shall consider, but shall not be limited to considering, the Contractor's competency ~~and responsibility~~, the amount and condition of its equipment, the ~~experience~~ Experience of its principal or key personnel, its history of payment to subcontractors and material suppliers, and previous work ~~experience~~ Experience.~~

~~(4) Duration of Prequalification Status.~~

~~(a)~~ Prequalification certification shall remain in effect for a duration of time ~~stipulated~~ instated on the Prequalification Certificate with a maximum of ~~24~~ twelve (12) months as indicated in the Prequalification Certificate.

~~(b) Notwithstanding the previous 720-CMR 5.03(4)(a), if a ~~material~~ change has occurred in the Contractor's bonding capacity, surety, or financial condition, or if the Contractor has undergone any change in the name or structure of the firm, its officers, or ownership, written notice shall be given to the Prequalification Committee by the Contractor, whereupon a new Application for Prequalification or a letter verifying Contractor's Aggregate and Single Bonding Capacity shall be required and the Contractor's Prequalification status and Single Contract Limit(s) may be revised. Should the ~~issuance of a performance bond alter the current aggregate~~ Aggregate or ~~single~~ Single ~~bond~~ Bonding capacity of a Contractor ~~be altered~~ change, a letter from the ~~surety~~ Surety stating this fact must be submitted to the Prequalification Committee.~~

~~(c)~~ The Prequalification Committee may at any time request, in writing, that the Contractor furnish additional information relative to its Prequalification status and Single Contract Limit(s). Such request shall set forth the reason such information is required. If the requested information is not filed within thirty (30) days from the date of ~~such~~ notice request, the Contractor's Prequalification Certificate may be revoked, and, if revoked, bids from the Contractor shall not be accepted.

~~(d)~~ Requests by Contractors for the revision of Aggregate and Single Bonding Capacity, Single Contract Limits or for additional classes of work may be considered by the Prequalification Committee at any time. —Unless otherwise approved by the

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Prequalification Committee, such requests must be submitted at least 14-twenty-one (21) calendar days prior to a bid opening in order to receive consideration for that bid opening.

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~~(e) A Prequalification Certificate may be modified upon receipt of a Record of Contractor's Performance. This modification will be based on the Department's evaluation of the quality of the Contractor's performance, whether as a general contractor or subcontractor, in accordance with the Record of Contractor's Performance. (Form CSD-680).~~

~~§14.04: Proposal Forms Documents and Limitation of Proposals for Contractors~~

(1) Plans and Specifications. The Notice To Contractors, Instructions to Proposers, or Advertisement For Bids shall specify the location where plans and specifications ~~may be purchased~~ are available, usually either the ~~Department's Division's~~ offices, or the offices of a municipality advertising work under the provisions of M.G.L. c. ~~906C~~, § ~~344(b)~~.

(2) Limitation of ~~Proposals~~ Official Proposal Documents.

~~(a) Except for projects for which Prequalification is not required under 720-700 CMR §14.04(2)(b), an Official Proposal Documents with for a project with a Project value Value greater than or equal to \$50,000 shall only be issued to Contractors that have been prequalified by the Prequalification Committee prior to the time of the bid opening, or to prequalified Contractors that have received a written waiver to bid on the project from the Prequalification Committee, per M.G.L. c. 81, § 8B. Prequalification must be in the specified class of work for said proposal and any Single Contract Limit in that specified class of work must be in an amount greater than or equal to the project value of the proposal. If a Contractor is prequalified in the class of work for which a project is being bid, but the Project Value is above a Contractor's Single Contract Limit in that class of work, the Contractor may request and the from the Prequalification Committee may grant in its sole discretion a waiver to bid on the project if the Contractor has a single contract bond limit above the Project Value.~~

~~The project value for the proposal when added to the Contractor's uncompleted work as certified by the Contractor at the time of the purchase of the proposal, must not exceed the Aggregate Bonding Capacity established by the bidder's surety company and the Contractor must otherwise be in compliance with 720 CMR 5.00.~~

~~(3b) An Official Proposal with a project Project value Value amount less than \$50,000 may be issued to non-prequalified Contractors in the sole discretion of the Prequalification Committee. Such Contractors must complete, prior to purchasing obtaining the Official Proposal, and Update Statement establishing that any uncompleted work under contract with the Department Division, when added to the project value of the proposal, equals less than \$50,000.~~

~~(3) Unofficial Proposal Documents. Unofficial Proposal Documents for a project with a Project Value greater than or equal to \$50,000 may be issued, upon request to the Prequalification Committee, to Contractors who have not been prequalified in accordance with 700 CMR 14.00.~~

~~§14.05: Modification or Revocation or Revision of Prequalification Certification~~

(1) Procedure. The Prequalification Committee may modify or revoke the Contractor's Prequalification certification ~~based on the Department's evaluation of the quality of the Contractor's performance, whether as a general contractor or subcontractor, in accordance with the Record of Contractor's Performance (Form CSD-680), or~~ if the Prequalification Committee determines that:

- (a) the Contractor is presently debarred from performing work of any kind under the provisions of M.G.L. c. 29, § 29F, or any other applicable debarment provisions of the Massachusetts General Laws or any rule or regulation promulgated thereunder; or
- (b) the Contractor is presently debarred from performing work of any kind under the laws of any state other than the Commonwealth of Massachusetts, or by any Federal agency or authority; or
- (c) there is reason to believe that the condition of the Contractor's firm is materially less favorable than at the time of its last Application for Prequalification; or
- (d) the Contractor does not have sufficient personnel, equipment, or sufficient assets to

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provide the necessary personnel, or to provide the necessary equipment either through purchase-ownership or lease agreements; or

(e) the Contractor's performance on past or current work with the Department or other awarding authorities ~~is or~~ has been deemed to be unsatisfactory, including but not limited to the Department's evaluation of the quality of the Contractor's performance, whether as a general contractor or subcontractor, in accordance with the Record of Contractor's Performance (Form CSD-680); or

(f) on current projects of the Department or other ~~public-awarding~~ authorities the Contractor frequently fails or has failed to pay its subcontractors or material suppliers in a timely manner; or

(g) ~~three or more~~Multiple subcontractors of the Contractor ~~for any projects currently under construction have, within any 12 month period, made payment bond claims, or have~~ filed demands for direct payment with the Department in accordance with M.G.L. c. 30, § 39F ~~and the claims have been voted on and approved by the Board of Commissioners;~~ or

(h) the Contractor has been convicted of a criminal offense involving embezzlement, theft, forgery, bribery, falsification of or destruction of records, receiving stolen property, violation of labor laws, or any other offense indicating a lack of business integrity or business honesty; or

(i) the Contractor has willfully supplied materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract; or

(j) the Contractor has a record of contract terminations for cause and/or invoked performance bonds, requiring the surety to honor the terms of the Contractor or its predecessors or its successors in interest; or

(k) the Contractor has failed to obtain and/or maintain worker's compensation insurance for the proper classification(s) of work; or

(l) the Contractor has failed to obtain and/or maintain any other mandatory insurance coverage; or

(m) the Contractor has failed to maintain record-keeping and accounting requirements prescribed by law or regulations; or

(n) the Contractor has a record of willful or repeat safety or health violations, or has otherwise failed to adequately provide for the health, safety and/or security of the public during any project with the Department or any other awarding authority; or

(o) the Contractor has abandoned or is in the process of abandoning one or more contracted projects with the Department or any other awarding authority; or

(p) the Contractor is not otherwise an eligible and responsible Bidder capable of performing the work; or

(q) any other factor bearing on a Contractor's competency or responsibility that, based upon the recommendation of the Prequalification Committee, in the discretion of the Administrator, may warrant the revocation of a Contractor's Prequalification certification.

~~(h) the Contractor is not otherwise an eligible and responsible bidder capable of performing the work.~~

(2) Notice of Determination. In the event that the Prequalification Committee determines that it will modify or revoke the Contractor's Prequalification Certification for a reason or reasons noted in 720-700 CMR 514.05(1), the Contractor shall be notified in writing by certified mail, following the determination of the Prequalification Committee. The determination of the Prequalification Committee shall be subject to the Contractor's right of review as set forth in 720-700 CMR 514.0706.

~~5.06: Rejection of Bids~~

~~(1) Procedure. The Prequalification Committee may recommend that the Highway Commission reject the Contractor's bid if the Prequalification Committee determines that:~~

- ~~(a) Award of the contract would result in the Contractor exceeding the Bond Capacity established by its Surety Company, or the Contractor's bid exceeds its Single Contract Limit. In such circumstances, the Contractor's bid shall be rejected, but its prequalification status shall not be otherwise modified or revoked; or~~
- ~~(b) The Contractor is presently debarred from performing work of any kind under the provisions of M.G.L. c. 29, § 29F, or any other applicable debarment provisions of the Massachusetts General Laws, or any rule or regulation promulgated thereunder; or~~
- ~~(c) The Contractor is presently debarred from performing work of any kind under laws of any state other than the Commonwealth of Massachusetts, or by any Federal agency or authority; or~~
- ~~(d) The Contractor's performance on past or current work with the Department or any other awarding authorities is or has been unsatisfactory; or~~
- ~~(e) On current projects of the Department or other public authorities the Contractor fails to pay its subcontractors or material suppliers in a timely manner; or~~
- ~~(f) three or more subcontractors of the Contractor for any projects currently under construction have, within any 12 month period, filed demands for direct payment with the Department in accordance with M.G.L. c. 30, § 39F and the claims have been voted on and approved by the Board of Commissioners; or~~
- ~~(g) The Contractor is not otherwise an eligible and responsible bidder capable of performing the work.~~

~~(2) Notice of Determination. In the event that the Prequalification Committee determines that it will recommend that the Highway Commission reject the Contractor's bid for a reason or reasons noted in 720 CMR 5.06(1), the Contractor shall be notified in writing. The determination of the Prequalification Committee shall be subject to the Contractor's right of review as set forth in 720 CMR 5.07.~~

~~(3) Right to Reject Bids is Reserved. The Highway Commission reserves the right to reject any and all bids, or waive any informality, when deemed to be in the public interest. Nothing in 720 CMR 5.00 shall be interpreted as depriving the Highway Commission of the right to reject any bid when such bid does not fully comply with the specifications for the project or the applicable public bidding law or regulations, or the Contractor is otherwise not eligible or responsible to receive award of the contract.~~

~~514.0706: Review of Prequalification Committee Decisions for Contractors~~

~~(1) Review of Determination of the Prequalification Committee. A Contractor or prospective bidder who is aggrieved by a decision or determination of the Prequalification Committee may make a written request for informal review or a formal hearing by the Prequalification Appeal Board.~~

~~(2) Informal Review. A Contractor may request an informal review by the Prequalification Committee. In such request, the Contractor shall state its arguments for a review of the decision. The Contractor's right to an informal review shall be in addition to its right to a formal hearing. A Contractor who is aggrieved by a decision of the Prequalification Committee under 700 CMR 14.05(1), other than a decision of said Committee to revoke a Prequalification certification, may request an informal review by the Prequalification Committee.~~

514.0706: continued

(32) Formal Hearing—Review. A Contractor who is aggrieved by a decision of the Prequalification Committee to revoke a Prequalification certification may make a written request for a formal hearing by the Prequalification Appeal Board in accordance with M.G.L. c. 81, § 8B.

A request for a formal hearing before the Prequalification Appeal Board shall be filed in writing, by certified mail, within fifteen (15) days after receiving notice of the subject decision or determination, per M.G.L. c. 81, § 8B. The Prequalification Appeal Board, or its designee, shall conduct a hearing without delay and render a decision. The decision or determination of the Prequalification Committee shall remain in effect until the Prequalification Appeal Board renders a decision in writing on the appeal. The decision of the Prequalification Appeal Board shall be final and binding, subject to the right of the Contractor to a judicial review under the applicable provisions of M.G.L. c. 30A.

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514.0807: Miscellaneous for Contractors

(1) Proposals With Project Values Under \$50,000.
(a) If a multiple bid proposal contains projects with project values less than \$50,000, but totalling more than \$50,000, only prequalified contractors can purchase obtain the Official proposal Documents.
(b) A non-prequalified contractor must submit a current Update Statement prior to purchasing an Official Proposal in order to be considered for bidding purposes.

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(2) Contractor's Performance. The Contractor should be on notice that its conduct, not only as to the workmanship on the project, but also towards the travelling public and abutters alike may affect its prequalification status. The Contractor is directed to take special note of the Standard Specifications for Highways and Bridges, latest edition or revision thereof and amendments and supplements thereto in effect on the bid opening date, in particular 720 CMR 7.01 and 7.14, as well as, M.G.L. c. 81, § 18. The Contractor is reminded that respect towards the public during a Department-Division sponsored project is to be maintained at all times.

(3) Scope of Regulations. 720-700 CMR 514.00 shall not be construed as extending to decisions or actions of the Department or Division not pertaining to the Contractor's Prequalification status and competence to perform the work. Furthermore, 720-700 CMR 514.00 is not intended to set forth or create a regulatory or appeal mechanism concerning:
(a) the rejection by the Highway Commission-Administrator of Proposals-bids which contain informalities or otherwise fail to comply with the public bidding laws; or
(b) the Highway Commission's-Administrator's decision to reject all bids and re-advertise a project; or
(c) any other decision of the Department or Division not directly related to the Contractor's Prequalification status or competence to perform the work.

(4) Severability. If any provision of 720-700 CMR 514.00 shall be held invalid in any circumstance, such invalidity shall not affect any other provisions and shall be severable.

5.09: Application for Prequalification of Prospective Bidders for Statewide Engineering Field Survey Services

(1) General. Any Surveyor proposing to bid on Department survey work must furnish a statement on forms provided by the Department, setting forth its financial resources, vehicle, instrument, equipment and personnel resources, its organization, its experience, and other pertinent facts. The financial data shall be as of a date within one month prior to filing. The Department reserves the right to demand additional information at any time. All information furnished in any application by a prospective bidder shall be held in strict confidence by the Department and its agents, and shall be used only to determine the prospective bidder's Maximum Capacity Rating of work that the bidder shall be entitled to undertake in accordance with 720 CMR 5.00. No information contained in any such statement shall be imparted to any other person without the written consent of the prospective bidder. The Contractor must have

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~~appropriate and sufficient vehicles, instruments and equipment available to satisfactorily perform the contemplated work during the period of any contract which the contractor may be awarded, or show current assets sufficient to provide them. The Department shall have the right to inspect all required vehicles, instruments and equipment in order to determine compliance with proposed contract provisions.~~

~~5.09: continued~~

~~(2) Time Limitation in Submitting Application for Prequalification. A request for prequalification will not be considered until a properly completed application has been submitted. Application for prequalification shall be submitted at least 12 calendar days preceding the day set for opening of bids for work upon which a contractor intends to bid.~~

~~(3) Action on Requests for Prequalification. Each Prequalification Application shall be reviewed by the Surveyors Prequalification Committee. The Committee shall analyze and verify as it deems necessary the information set forth therein, and determine the number of survey parties the prospective bidder shall be entitled to propose. Whenever the Committee is not satisfied with the sufficiency of the information provided, it may require the Surveyor to submit additional information, and pending the filing of such additional information, the Department may refuse to furnish such Surveyor with an official proposal book for survey work. The Committee may require a personal interview with a prospective bidder when considering its qualifications for a Rating. On or before the tenth calendar day after receipt of a prospective bidder's Prequalification Application by the Surveyors Prequalification Committee, the Department shall give the applicant written notice of its determination of the applicant's "Maximum Capacity Rating" for the number of survey parties it shall be entitled to bid, and such determination shall be subject to the applicant's right of appeal as set forth in 720 CMR 5.13.~~

~~5.10: Ratings for Prequalification of Prospective Bidders for Statewide Engineering Field Survey Services~~

~~(1) General. Ratings shall be basically determined upon the Surveyor's financial resources, and upon its competency and responsibility as indicated by the vehicles, instruments, equipment and personnel available to the Surveyor, and by the prior experience of the Surveyor with this and other public or private clients. Unlimited Maximum Capacity Ratings shall not be allowed.~~

~~(2) Duration of Prequalification Ratings. Prequalification Ratings shall remain in effect for not more than 12 months following the date of prequalification.~~

~~(3) Revision of Prequalification Ratings. Whenever the Department 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 Application shall be requested in writing stating the reason therefore. If the requested statement is not filed within 30 days from date of notice, the current rating shall be considered forfeited, and the party concerned will not be permitted to bid until a new Prequalification Application has been received and acted upon by the Department. A prequalification rating shall be modified whenever it is determined that the Surveyor does not have sufficient vehicle, instrument, equipment, personnel or other resources to satisfactorily perform the required survey work, or to provide the number of survey parties for which the Surveyor may have been qualified. A Surveyor's request for revision of a prequalification rating will be considered by the Department at any time provided a new Prequalification Application is submitted. If at any time subsequent to filing of the Prequalification Application any significant change occurs in the financial condition of the Surveyor, or in the status of its vehicles, instruments equipment or personnel that would materially affect the Surveyor's ability to provide the number of survey parties for which it is prequalified, and/or any change occurs in the name of structure of the firm, officers, or ownership, the Surveyor shall give written notice to the Department, whereupon the Department may require the Surveyor to submit a new application for prequalification.~~

~~5.11: Proposal Books for Prospective Bidders for Statewide Engineering Field Survey Services~~

~~(1) Proposal Book. Prior to the bidding period, a proposal book will be sent by the Department to each prequalified prospective bidder. Each proposal book shall have an identifying number and shall be non transferable. A bid submitted in a proposal book issued to another Surveyor shall be rejected.~~

~~(2) Non-Issuance of Proposal Books. A proposal book shall not be issued to a prospective bidder:~~

~~(a) if the prospective bidder has not been prequalified when the value of the work on~~

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~~which it is bidding added to the value of its uncompleted work already under contract with the Department will aggregate \$50,000 or more.~~

~~5.11: continued~~

~~(b) 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, Title 23 CFR e. 1 part 2, "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 during that period in which the prospective bidder is considered unacceptable by the Federal Highway Administrator.~~

~~(c) if the Prequalification Committee determines that:-~~

~~The prospective bidder is making unsatisfactory progress or performing work which is substantially unsatisfactory on current contract(s), or~~

~~The prospective bidder has performed unsatisfactory work on prior contract(s).~~

~~A prospective bidder shall be notified in writing of the refusal by the Department to issue a proposal book within three days, excluding Saturdays, Sundays, and holidays, of the date that such decision is made.~~

~~(3) Appeal from Refusal to Issue a Proposal Book. After receiving notification of refusal to issue a proposal book the prospective bidder may make written request for a review or hearing by the Prequalification Appeal Board of the decision of the Surveyors Prequalification Committee. A request for a review shall set forth the prospective bidder's arguments for 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 ten calendar days 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 provisions of M.G.L. c. 30A.~~

~~5.12: Bidding for Statewide Engineering Field Survey Services~~

~~(1) General. A bid shall be accepted only from a prospective bidder who has been prequalified, when the value of the work on which it is bidding, added to the value of its uncompleted work already under contract with the Department, will total \$50,000 or more.~~

~~(2) Bid Opening. Bids shall be opened and read in ascending order of proposal book number.~~

~~(3) Successful Bidders. The Department will establish a list of successful bidders, in ascending order from the lowest proposed per diem rate, sufficient to provide the number of survey parties desired by the Department.~~

~~(4) Right to Reject Bids. Nothing in 720 CMR 5.00 shall be construed as depriving the Department of the right to reject that portion of any bid found to be in excess of the bidder's Maximum Capacity Rating (i.e., the total number of parties approved for bid by the Department) or the entire bid, when in the opinion of the Department circumstances and developments have changed the qualifications or responsibility of the bidder to satisfactorily perform the work.~~

~~5.13: Appeal Rights for Prospective Bidders for Statewide Engineering Field Survey Services~~

~~A Surveyor or prospective bidder who is aggrieved by a decision or determination of the Department may make written request for a hearing before the Prequalification Appeal Board, who shall conduct a hearing without delay and render a decision within 15 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 Surveyor 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.~~

REGULATORY AUTHORITY

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| ~~720-700~~ CMR ~~514~~.00: M.G.L. c. ~~2981~~, § 8B.

~~(PAGES 35 THROUGH 58 ARE RESERVED FOR FUTURE USE.)~~