



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Stephanie Pollack, Secretary & CEO
Jonathan L. Gulliver, Highway Administrator



January 1, 2019

To: Massachusetts Cities / Towns & Other Awarding Authorities (OAA)

Re: Massachusetts Horizontal Construction Prequalification Process, per 720 CMR 5.00

Dear Colleagues:

The Massachusetts Department of Transportation through its Office of Construction Prequalification / Records & Procedures is providing this reminder of Horizontal Construction Prequalification requirements for publically bid projects in Massachusetts:

- (1) That involves the use of State funds where the cost exceeds \$50,000;**
- (2) That involves work on State numbered roads & highways; or**
- (3) That includes MassDOT Prequalification, as a requirement of the Advertisement and or bid documents, regardless of funding sources.**
- (4) Requires MassDOT Prequalification as a condition for State Funding Reimbursement.**

To eliminate confusion on future projects, we are providing this information so that all Awarding Authorities are aware of MassDOT's Horizontal Construction Prequalification process and the potential reasons for MassDOT to inquire into a City/Town or Other Awarding Authority (OAA) project advertised in the Central Register and either 100% or partially Funded by "OTHER" state funds such as the Chapter 90 Program, Complete Streets Program, Municipal Small Bridge Program, Utility Grants Program and Mass-Works Program.

The following criteria are routinely checked when performing project Prequalification reviews and/or sending Central Register (CR) Inquiries:

1. **Project Advertised (Central Register) requiring MassDOT Prequal.** If, regardless of funding sources, a City/Town or OAA elects to make MassDOT Prequalification a requirement of its procurement, then MassDOT will apply its same process as any other project requiring MassDOT prequalification. This includes review of documentation to determine class of work, determination of the "Total Project Value (including any added Alternates & Extension Option costs)", and issuance of approved prequalified Contractor lists for each contract advertised within 1 week of receiving the required documentation.
When City/Town or OAA projects are advertised as requiring MassDOT Prequalification, please be aware that Contractors seeking waivers to bid on such projects must be allowed to submit them to MassDOT's Prequal. Committee at least 1 week prior to the bid date to afford them the opportunity to appeal such decisions.
2. **Work on State Roads-** We confirm whether the work is being performed on state roads. Work on state roads triggers the Prequalification requirement, regardless of funding source; moreover, a District Access Permit to perform the work should be available with the bid documents. (see IG web-site reference below)
3. **State Funded Projects** – If 100% or partially funded by "OTHER" state funds such as, but not limited to, the 1. Chapter 90 Program (need approved copy of Ch. 90 Form), 2. Complete Streets Program (need copy of approval letter), 3. Municipal Small Bridge Program (need copy of approval letter), 4. Utility Grants Program (need copy of approval; and 5. Mass-Works Program(need copy of approval letter)
4. **Central Register (CR) weekly review of projects advertised** - We perform weekly reviews of the Central Register for projects that may have been inadvertently advertised requiring Prequal, when in fact it is not required; moreover, that may have not been advertised correctly and are "potential Prequal. Projects" meeting at least one of criteria 1 thru 4 above. We must inquire about these potential projects to confirm whether they in fact do or do not need MassDOT

prequalification before bids are opened, as we have found several occurrences of both instances in the past 6 months that have prompted bid protests.

Note that the Office of the Inspector General has released a useful guide on public procurement. The full guide can be found at the following link, which also includes discussion of the prequalification requirements:

https://www.mass.gov/files/documents/2018/07/13/Procurement%20Charts%202018.pdf?_ga=2.148160116.291473291.1536681180-1497554904.1536681180

Procurement/ Prequalification requirements for projects >\$50,000 under **M.G.L. c. 30, § 39M, or M.G.L. c. 30B, § 5 – PUBLIC WORKS (NON-BUILDING) CONSTRUCTION CONTRACTS (WITH LABOR):**

“7. Although M.G.L. c. 30, § 39M, does not mandate a contractor prequalification process, prequalification of bidders by the Massachusetts Department of Transportation is required for contracts of \$50,000 or more (1) if the awarding authority receives State Aid funds under M.G.L. c. 90, § 34; or **(2) the work is on a state road, regardless of whether the awarding authority receives State Aid funds under M.G.L. c. 90, § 34.**”

Many Cities, Towns and OAA presently utilize MassDOT’s prequalification process. There have been instances where consultants have requested “**un-official**” prequalification contractor lists, without submitting the required documentation prior to bids, which should never be used for awards. In other instances consultants have requested prequalified lists after bid opening, which are not advisable and problematic as it may result in a potential bid protest; furthermore, it may identify Prequalification violations. **Note that all qualified bidders must have a fair opportunity to bid on such projects.**

In order for MassDOT to issue a list of prequalified bidders prior to bid, the following forms or approvals are required:

- 1. City/Town or OAA application
- 2. Detailed Scope of work
- 3. Engineers Bid Estimate items with quantity & value / duration of project to arrive at Total Project Cost
- 4. Legal advertisement
- 5. Approved State Funding Source document

Once we receive this packet, our office will then determine the work classification & email a list of eligible bidders to you. Please forward all documentation to prequal.r109@dot.state.ma.us. Below is the link to our website for your convenience.

<https://www.mass.gov/how-to/citytown-and-other-awarding-authorities-prequalification-process>

We hope this provides more clarification to our process, what is required and by when.

Should you have any questions or concerns please do not hesitate to contact the PREQUALIFICATION HOT LINE at 857-368-8660 or me directly at 857-368-8784.

Isidoro DeJesus Perez

Director - Office of Construction Prequalification / Records & Procedures

Prequalification Committee Chairperson, MassDOT Construction Engineering

CC: Prequal Committee, M. McGrath, R109, T. Ward