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Wyoming Department of Transportation
Bidder Prequalification Procedures for Transportation Projects

CHAPTER 6

Section 1. **Authority.**

(a) This chapter is promulgated pursuant to W.S. 24-2-108, which authorizes the Transportation Commission of Wyoming “to determine the qualifications and responsibilities of bidders.”

(b) The Commission shall interpret the rules promulgated in this chapter and shall revise them pursuant to the Wyoming Administrative Procedure Act, W.S. 16-3-101 through W.S. 16-3-115, as required.

Section 2. **General Purposes.**

(a) So that the state may obtain the services of only well-qualified, experienced, and financially secure contractors to construct or reconstruct state highway facilities, public roads, or Department-owned buildings, the Transportation Commission of Wyoming requires that every contractor wishing to undertake any state road or building project prequalify before submitting a bid. No contract shall be awarded to any bidder who has not prequalified under these rules and abided by them.

(b) Informal bids shall be advertised in newspapers or other publications in the proposed project’s locality. The Transportation Commission of Wyoming shall determine the amounts for these informal bids and may accept them without prequalification requirements.

Highway Contractors

Section 3. **Prequalification.**

(a) All persons proposing to bid on any Wyoming Department of Transportation (WYDOT) construction project shall first submit a ~~PQ-2 (Standard Highway Contractor Prequalification Questionnaire and Financial Statement for Bidders)~~, which is statement under oath, on a questionnaire furnished by the Department. Such statements shall fully indicate the applicant’s financial ability, the adequacy of its plant and equipment, and its organization and past experience. The statements shall also include any pertinent information necessary to assess the applicant’s status accurately.

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Section 3. **Prequalification.**

(a) All persons proposing to bid on any Wyoming Department of Transportation (WYDOT) construction project shall first submit a statement under oath, on a questionnaire furnished by the Department. Such statements shall fully indicate the applicant’s financial ability, the adequacy of its plant and equipment, and its organization and past experience. The statements shall also include any pertinent information necessary to assess the applicant’s status accurately.

(b) Applicants shall furnish, at the time of submitting for prequalification,

satisfactory evidence of compliance with Wyoming Worker's Compensation Act (W.S. 27-14-101, *et seq.*) by providing a current certificate of good standing or, if from out of state, proof of a worker's compensation insurance policy.

(c) All financial statements shall be filed with WYDOT within 15 months of the end of the applicant's fiscal year and shall be submitted in one of the following ways:

(i) An unaudited financial statement, to include a review or compilation:

The net worth from an unaudited financial statement, up to a maximum of \$500,000, may be used for determining the prequalification rating. An unaudited financial statement shall include the opinion and signature of a reputable public accountant who is neither a member employee of the applicant's firm nor related to the owner or owners.

(ii) An audited financial statement:

The net worth from an audited financial statement, regardless of amount, may also be used in determining the prequalification rating. The audited financial statement shall bear the signature of the certified public accountant (CPA) actually performing the financial audit and the CPA's opinion and CPA registration number.

(d) The Department shall use the name of the firm as it appears on the accountant's opinion for prequalification and bidding purposes. The applicant therefore needs to verify that the accountant shows the firm's name properly in the opinion.

Section 4. **Prequalification Term.**

Prequalification shall last for a 15-month period, which shall commence on the date of the applicant's fiscal year end. A 90-day extension, or another additional period approved by the prequalification officer, may be obtained if the applicant plans to revise its fiscal year. The Department shall consider the extension when it receives a notarized affidavit from the applicant. WYDOT shall not consider prequalification extensions for any other reason.

Section 5. **Financial Worth, Assets, Liabilities, and Proof of Residence.**

Applicants shall show that they possess sufficient net current assets or working capital to render it probable they can satisfactorily execute their contracts and meet all contractual obligations incurred. The applicant shall authorize the Department to obtain all information pertinent to the applicant's financial standing from financial institutions, surety companies, equipment dealers or suppliers, or any other persons having financial dealings

with the applicant. The applicant shall authorize the businesses or individuals described in this section to furnish the information requested.

Section 6. All Information Confidential.

Pursuant to W.S. 16-4-203(d)(v) prequalification information and ratings are considered confidential and may be released only by court order.

Section 7. Advance Submission of Prequalification Statement.

After receiving the questionnaire, WYDOT shall examine and verify the information submitted. Applications may take up to two weeks once all required information has been received. A decision regarding the applicant's prequalification and rating, including the type of work classification, shall be made after all information has been received. Application status notification shall be made by the WYDOT prequalification officer. The Wyoming Department of Employment's Labor Standards office shall certify the applicant's residency eligibility.

Section 8. Appeals Procedure.

When the Department receives written notice from an applicant appealing a prequalification determination, WYDOT shall hold an informal hearing to review the applicant's appeal. The prequalification committee—composed of the five district engineers, the state construction engineer, and the prequalification officer—shall hear the appeal within 30 days of receiving the appeal. The applicant shall be notified of the prequalification committee's findings within 10 days after the informal hearing. If not satisfied with the prequalification committee's findings, the applicant has 30 days to formally request that the WYDOT executive staff review the prequalification committee's findings. The applicant, if dissatisfied with the findings of the executive staff, has 30 days to formally request that the Transportation Commission of Wyoming review the executive staff's findings. The Commission's findings of fact shall be deemed final, binding, and conclusive—without further recourse.

Section 9. Previous and Present Job Performance.

The Department shall evaluate the applicant's previous and present job performance by using the Department's contractor performance evaluation system to determine the current prequalification rating. Work performed by subcontractors shall be reflected in the contractor's performance evaluation.

Section 10. Prequalification Revocation.

Following a review of the applicant's prequalification, the prequalification committee may take action to revoke the prequalification if the applicant:

- (i) Is declared in default while qualified in accordance with the applicable provision of any contract issued by the Transportation Commission of Wyoming.
- (ii) Has been determined to have made false, deceptive, or fraudulent statements on the prequalification questionnaire.
- (iii) Has been and is currently under debarment or restricted from bidding because of criminal acts or serious breach of contract by another governmental agency.
- (iv) Has been disqualified for substantial reason by another governmental agency.
- (v) Has attempted to or has influenced Department policy through gratuities or gifts to WYDOT personnel or by employing Department personnel.
- (vi) Has, while qualified, demonstrated an inability to meet WYDOT requirements for specifications and contracts.

Section 11. Bidding Eligibility.

(a) Applicants requesting a proposal envelope shall submit Form E-103 and indicate the total dollar value of all work under contract or subcontract (regardless of whom the contract is with), less work subcontracted out to a third party, currently remaining to be completed. To determine the prequalification amount remaining, WYDOT shall subtract the incomplete project work from the applicant's maximum prequalification rating.

(b) WYDOT shall issue a proposal envelope to an applicant who meets all the prequalification criteria and prequalifies for the type of work involved if the proposed project does not significantly exceed the applicant's prequalification amount. The applicant shall be considered eligible for a particular type of work as long as the applicant commits its own workforce to perform at least 30 percent of the proposed work. Materials purchased for items to be subcontracted or placing other contractors' employees on the applicant's payroll shall not be considered as part of the 30 percent. This provision shall not allow subcontracting more than the percentage of the contract as established in the project contract.

_____ (c) _____ The Department shall issue a joint venture proposal envelope to prequalified applicants upon request. WYDOT requires a completed Form E-103 from each firm in the

joint venture before it issues the proposal envelope. **If the joint venture has one or more companies *not registered in Wyoming*, then the in state preference shall not apply.**

Section 12. **Caveat.**

Nothing contained in this chapter shall be construed to deprive the Transportation Commission of Wyoming of the right to reject any bid, or to refuse to award a contract to the lowest bidder, when circumstances or developments have, in the Commission's opinion, changed the bidder's qualification or responsibility.

Section 13. **Highway Contractor Prequalification Correspondence.**

All questionnaires and other correspondence regarding highway contractor prequalification shall be directed to the Prequalification Officer, Construction Program, Wyoming Department of Transportation, 5300 Bishop Blvd., Cheyenne, WY 82009-3340.

Building Contractors

Section 14. **Prequalification.**

(a) All persons proposing to bid on any Wyoming Department of Transportation construction project shall first submit a PQ-5 (Standard Highway Contractor Prequalification Questionnaire for Bidders), which is furnished by the Department. This proof shall be submitted to WYDOT's agent no sooner than 30 days nor less than 5 days before the bid letting.

(b) Applicants shall furnish, at the time of submitting for prequalification, satisfactory evidence of compliance with Wyoming Worker's Compensation Act (W.S. 27-104-101, *et seq.*) by providing a current certificate of good standing or, if out of state, proof of a worker's compensation insurance policy.

Section 15. **Prequalification Term.**

Prequalification shall be obtained each time for every project that the contractor plans to bid.

Section 16. **All Information Confidential.**

Please see preceding Section 6, All Information Confidential, of these rules.

Section 17. **Prequalification Revocation.**

Please see preceding Section 10, Prequalification Revocation, of these rules.

Section 18. **Caveat.**

Please see preceding Section 12, Caveat, of these rules.

Section 19. **Building Contractor Prequalification Correspondence.**

All questions and correspondence regarding prequalification of building contractors shall be directed to the Prequalification Officer, Construction Program, Wyoming Department of Transportation, 5300 Bishop Boulevard, Cheyenne, WY 82009-3340.

(b) Applicants shall furnish, at the time of submitting for prequalification, satisfactory evidence of compliance with Wyoming Worker's Compensation Act (W.S. 27-14-101, *et seq.*) by providing a current certificate of good standing or, if from out of state, proof of a worker's compensation insurance policy.

(c) All financial statements shall be filed with WYDOT within 15 months of the end of the applicant's fiscal year and shall be submitted in one of the following ways:

(i) An unaudited financial statement, to include a review or compilation:

The net worth from an unaudited financial statement, up to a maximum of \$500,000, may be used for determining the prequalification rating. An unaudited financial statement shall include the opinion and signature of a reputable public accountant who is neither a member employee of the applicant's firm nor related to the owner or owners.

(ii) An audited financial statement:

The net worth from an audited financial statement, regardless of amount, may also be used in determining the prequalification rating. The audited financial statement shall bear the signature of the certified public accountant (CPA) actually performing the financial audit and the CPA's opinion and CPA registration number.

(d) The Department shall use the name of the firm as it appears on the accountant's opinion for prequalification and bidding purposes. The applicant therefore needs to verify that the accountant shows the firm's name properly in the opinion.

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Pursuant to W.S. 16-4-203(d)(v) prequalification information and ratings are considered confidential and may be released only by court order.

Section 7. Advance Submission of Prequalification Statement.

After receiving the questionnaire, WYDOT shall examine and verify the information submitted. ~~Applicants from out-of-state and those prequalifying for the first time shall submit the questionnaire at least **two weeks** before bid lettings to allow adequate time to confirm the information. In-state applicants who have been prequalified previously shall submit questionnaires at least **one week** before bid lettings to insure sufficient time for processing and confirming information submitted in the prequalification questionnaire.~~ Applications may take up to two weeks once all required information has been received. A decision regarding the applicant's prequalification and rating, including the type of work classification, shall be made after all information has been received. Notification from the WYDOT prequalification officer shall be made by mail. Application status notification shall be made by the WYDOT prequalification officer. The Wyoming Department of Employment's Labor Standards office shall certify the applicant's residency eligibility.

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When the Department receives written notice from an applicant appealing a prequalification determination, WYDOT shall hold an informal hearing to review the applicant's appeal. The prequalification committee—composed of the five district engineers, the state construction engineer, and the prequalification officer—shall hear the appeal within 30 days of receiving the appeal. The applicant shall be notified of the prequalification committee's findings within 10 days after the informal hearing. If not satisfied with the prequalification committee's findings, the applicant has 30 days to formally request that the WYDOT executive staff review the prequalification committee's findings. The applicant, if dissatisfied with the findings of the executive staff, has 30 days to formally request that the Transportation Commission of Wyoming review the executive staff's findings. The Commission's findings of fact shall be deemed final, binding, and conclusive—without further recourse.

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