

# COMMONWEALTH OF VIRGINIA

## DEPARTMENT OF TRANSPORTATION

### RULES GOVERNING PREQUALIFICATION PRIVILEGES

#### Purpose

The Code of Virginia ensures that all contracts for the construction, improvement, and maintenance of roads are awarded to the lowest responsible bidder. Contract award is to be the result of open competition in bidding; impartiality in the selection of contractors; integrity in business practices; and skillful performance of public contracts. The Commonwealth Transportation Board, as the governing body of the public agency, has wide discretion in determining the responsibility of the contractor particularly regarding their moral and ethical judgment.

Certain rules for establishing proof of the competency and responsibility of those who wish to submit bids were approved by the Board on August 18, 1960. Accordingly, each Prospective Bidder on contracts advertised by the Virginia Department of Transportation shall submit an Application on the forms provided to become prequalified. These forms require the completion of information on the ownership of the firm, experience of its personnel, equipment under their control, any affiliations with other construction firms and the type of contracts for which qualification is requested. In conjunction with this Application, the contractor shall furnish a complete original Annual Financial Statement (current within the previous 12-month period).

The following will set forth the rules and regulations adopted by the Commonwealth Transportation Board.

**I DEFINITIONS**

- A. Affiliate – Any business entity which is closely associated to another business entity so that one has the power to control the other either directly or indirectly; or, where one business entity systematically shares resources, officers, and/or other management with another business entity to the extent that a business relationship legally exists or is publicly perceived to exist; or, when a third party has the power to control both; or, where one business entity has been so closely allied with another through an established course of dealings, including but not limited to the lending of financial wherewithal or engaging in joint ventures, so as to cause a public perception that the two firms are one entity.
- B. Board of Review – Will be an assembled panel to review appeals of decisions made by the Prequalification Committee. This Board will be assembled in accordance with Section 2.2-4365 of the Code of Virginia.
- C. Commissioner – The Commonwealth Transportation Commissioner or his designee.
- D. Contractor or Firm – Any person, partnership, corporation, limited liability company, business trust or other business entity that is eligible through prequalification to bid on contracts let by the Department, or that functions or seeks to function, as a subcontractor on any such contract used in the construction or maintenance of a part of the Commonwealth’s highway system. This firm must be legally authorized, as stated in Section 13.1 of the Code of Virginia, to conduct business in the Commonwealth.
- E. Department – The Virginia Department of Transportation.
- F. Disadvantaged Business Enterprise or DBE – means a “for profit” small business concern –
1. That is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of a corporation, at least 51 percent of the stock of which is owned by one or more such individuals; **and**
  2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- G. Engineer – The Chief Engineer or his authorized representative. The representative acts within the authority given to him.
- H. Experience Modification Ratio (EMR) – A standard factor used in the pricing of Worker’s Compensation Insurance, which is based on the employer’s claim history.
- I. Letting – The process of publicly opening the sealed bids.
- J. Non-Current Assets – Those assets that a firm possesses that are not liquid for the current fiscal year.
- K. Non-Current Liabilities – Those liabilities that a firm possesses that are not payable for the current fiscal year.
- L. Prequalification – Qualification of a firm is based on its bonding ability, equipment availability, experience of key personnel, safety record, and past performance of the firm in highway construction.
- M. Prequalification Committee – A panel consisting of the Contract Engineer, Construction Management Engineer, and the Administrative Services Division Administrator or their designee.

- N. Prequalification Score – Score used in determining a firm’s eligibility for prequalification by the Department. This score is derived using the following formula:

$$\text{Prequalification Score} = (\text{Quality Score} \times .70) + (\text{Safety Score} \times .30)$$

Firms without VDOT past performance reports will be awarded inactive.

- O. Prospective Bidder – Any person, firm or business entity that intends to submit bids on contracts advertised by the Department.
- P. Quality Score – A number that is derived from a firm’s Quality of Performance Evaluation based on past performance on Department contracts. This score is 70% of a firm’s Prequalification Score. (See Appendix B)
- Q. Safety Score – A number that is based on a Firm’s Experience Modification Ratio (EMR). This score is 30% of a Firm’s Prequalification Score. (See Appendix C)

## **II GENERAL REQUIREMENTS**

- A. All firms must be prequalified prior to submitting a bid as a prime contractor or beginning work as a subcontractor.
- B. All bidders must comply with the bonding requirements in Section 103.05 of the current Road and Bridge Specifications.
- C. There is no limit on the amount of work a prequalified firm can have underway as a subcontractor.

### III APPLICATION

The same application will be required whether a firm wishes to bid as a prime contractor or to work as a subcontractor.

Firms desiring to bid on highway projects with a cumulative value in excess of \$100,000 are required to file a complete original annual financial statement (must be current within the past 12 months) and an original Certification of Experience Modification Rate letter (see Appendix A).

Firms unable to obtain a bond for the total value of the work they intend to bid on will be limited to bidding on highway projects with a cumulative value of \$100,000. These firms are required to file a complete original annual financial statement or annual balance sheet (must be current within the past 12 months) and an original Certification of Experience Modification Rate letter (see Appendix A).

- A. **Organizational Structure** – The firm shall provide a list of all owners, officers, partners, or individuals authorized to represent or conduct business for or sign legal documents for the firm. This list must include the full legal name, typed or printed in a clear legible form, a signature, and State Driver’s License Number for any principal of the firm that is authorized to submit a bid on the behalf of the firm.

Firms experiencing changes in ownership, organizational structure, or changes in assets must inform the Department within 30 days. Failure of the contractor to comply with this requirement may result in suspension of the contractor’s prequalification until the required submission is made and review completed.

- B. **Classification** – The firm shall indicate the type(s) of work the firm’s workforce and equipment normally perform. Qualification for one or more types of work will be based on the adequacy of equipment, experience, bonding ability, and other pertinent information.
- C. **Experience** – The firm shall furnish information that documents the ability of their organization to undertake a project involving the type(s) of work for which prequalification is requested.
- D. **Equipment** – Firms must document the ability to access sufficient equipment to perform the work, or have sufficient assets to purchase/lease the necessary equipment. Ownership or control of specific equipment may be required. The firm shall furnish a list of all equipment available, whether owned, leased, or otherwise acquired. Arrangements such as valid leases, rental agreements, status as owner, major stockholder, or officer in an equipment company, may be considered. Such arrangements must be reported and fully explained.
- E. **Legal Authorization** – All firms shall be legally authorized to conduct business in the Commonwealth as stated in Section 13.1 of the Code of Virginia.
- F. **Work underway Reports (Forms C-42 and C-42a)** –Both forms, C-42 and C-42a are required to be submitted annually with the prequalification application, or upon a request by the Department.
- G. **Submitting** – The application is to be submitted to the Department at least thirty (30) calendar days prior to submitting a bid or applying to work as a subcontractor. The act of submitting the application does not permit the firm to submit a bid or begin work as a subcontractor. It is the responsibility of the firm to be prequalified before bids are opened, before signing subcontractor agreements, and before requesting to be approved as a subcontractor. Incomplete applications will be returned for further detail or correction.

The application is to be signed, notarized, and mailed/delivered to:

Virginia Department of Transportation  
Scheduling and Contract Division, Prequalification Section  
1401 East Broad Street  
Richmond, Virginia 23219

- H. **Review of Application** – The Department’s Prequalification Officer will review all information to determine the firm’s prequalification eligibility and the type(s) of work the workforces and equipment normally perform. Upon completion of the Department’s Prequalification Officer’s review of the firm’s application, the firm may be granted one of the following three levels of prequalification:
1. **Prequalified** – in good standing with the Department and may bid on all projects up to their bonding ability. This level of prequalification requires a minimum Prequalification Score of 80, a minimum Quality Score of 85 and a minimum Safety Score of 70.
  2. **Prequalified (Probationary)** or inactive - a firm with this level of prequalification is in good standing with the Department with regard to safety and has a demonstrated ability to complete the type of work for which they are requesting prequalification but has not performed work for the Department and thus has no Quality Score. With this level of prequalification a firm can be awarded/have under contract no more than three projects at any given time. Each of these contracts will be limited to a maximum contract value of \$2,000,000. The Contract Engineer has the authority to waive this restriction on a project-by-project basis. Such waiver must be obtained, in writing, by the firm prior to bidding on that project. A firm with this level of prequalification must file an updated Form C-42 including all active VDOT projects each time they submit a bid. A firm at this level of prequalification will be assigned a minimum Prequalification Score of 75, provided they have a minimum Safety Score of 70.
  3. **Prequalified (Conditional)** – a firm with this level of prequalification is below the Department’s desired standard in the area of quality and/or safety. This level of prequalification may also be considered for situations where a firm or its officers have previously filed for bankruptcy. With this level of prequalification a firm can be awarded/have under contract no more than one project at any given time. This contract will be limited to a maximum contract value of \$1,000,000. The Contract Engineer has the authority to waive this restriction on a project-by-project basis. Such waiver must be obtained, in writing, by the firm prior to bidding on that project. A firm with this level of prequalification must file an updated Form C-42 including all active VDOT projects each time they submit a bid. This level of prequalification requires a minimum Prequalification Score of 70, a minimum Quality Score of 75 and a minimum Safety Score of 60. Should the firm not improve to meet the Department’s standards by their next prequalification renewal, the Contract Engineer may Administratively Revoke the firm’s prequalification privileges until the Department’s standards are met.
- I. **Certificate of Qualification** – The firm becomes prequalified when approved by the Prequalification Officer. A Certificate of Qualification signed by the Department’s Contract Engineer will be issued following the firm’s prequalification approval.

The firm should allow 30 calendar days for the prequalification administrative process to be completed.

If the firm is denied prequalification, they may submit supplemental information that corrects any deficiencies. If this information is not received within sixty (60) calendar days, a new application (Form C-32) will be required to be submitted.

#### **IV APPEALS PROCEDURE**

The firm has two methods of appeal for an unsatisfactory or denied Certification of Qualification. These two methods include:

1. **Letter of Quality Assurance** – A letter of quality assurance can be filed explaining the methods by which the reasons for denial will be corrected. If the Contract Engineer accepts this letter, the Department will issue a Certificate of Qualification.

2. The Hearing Process – If a letter of quality assurance does not produce a satisfactory result or is not submitted, a hearing before the Prequalification Committee may be requested. This written request must be filed within ten (10) working days after the Certificate of Qualification is issued or after the notification of denial. The hearing shall be scheduled for a mutually agreeable time. Within ten (10) working days after the hearing, the Prequalification Committee will write the contractor describing the Committee’s findings and the status of the Certificate of Qualification.

If the firm is dissatisfied with the Committee’s findings, they may request a hearing before the Board of Review. This written request must be filed within ten (10) business days of the Committee’s ruling. The hearing shall be held at a mutually agreeable time, whereupon:

The firm may submit additional information.

The Board will review all information.

A ruling shall be determined by means of a simple majority.

The ruling of the Board of Review is final.

This ruling shall be forwarded to the Prequalification Committee. Within ten (10) working days of the Board’s ruling, the Committee shall supply written notification of the final decision to the firm.

**V. EXPIRATION**

The firm’s prequalification privileges will expire at the assigned expiration date on the certificate of qualification.

**Renewal of Prequalification and the Two-year Prequalification Cycle**

Prequalified contractors are required to submit a full application (Form C 32), a new certification of experience modification rate, forms C-42 and C-42a and a complete original annual financial statement every two (2) years, or on other intermediate occasions as may be considered necessary by the contractor or the Department. In the event the Department determines that conditions warrant re-evaluation of a contractor’s qualifications, the Department may require the contractor to submit an additional full application (Form C 32), new forms C-42, C-42a, and a complete original annual financial statement or an annual balance sheet. This annual financial statement or annual balance sheet must be current (within the past 12 months).

Prequalified firms nearing the first year of their prequalification cycle need only to submit the prequalification/certification renewal application (Form 32A), new forms C-42 and C-42a, new certification of experience modification rate, and a complete original annual financial statement. Applications shall be filed within thirty (30) calendar days prior to the expiration date of the current prequalification.

**VI. WORK UNDER CONTRACT**

**A. PRIME CONTRACT WORK**

All bidders are required to submit Form C 42 to the Prequalification Officer annually or upon a request by the Department. All projects in progress, or awarded but not yet begun, for where the firm is the low bidder pending the formal award of the contract, as a prime contractor must be listed. Form C 42 shall be signed by a person authorized to transact business on behalf of the firm as listed on Part B of the Prequalification Application, certifying that to the best of their knowledge the data furnished is complete and accurate. Each project on the form shall include the following data:

- Owner
- Location and Description
- Contract Amount
- Balance to be Completed

**B. SUBCONTRACT WORK**

All firms are required to submit an annual status of current subcontracts on hand (form C-42A). Form C-42A is required to be submitted annually, or upon a request by the Department. All projects where the firm has work in progress as a subcontractor, and all signed subcontract agreements where the work has not yet begun, must also be listed. Each project on the form shall include the following data:

- Owner
- Prime Contractor
- Location and Description
- Contract Amount
- Balance to be Completed

**VIII SUBCONTRACTOR**

All subcontractors must be prequalified with the Department unless the item to be sublet is denoted in the contract as a specialty item or the item is indicated as a waiver of prequalification, or the item is declared a specialty item by the Contract Engineer

**IX PERFORMANCE EVALUATION**

The District Administrator is required to complete a Quality of Performance Evaluation on each contractor and sub-contractor completing a contract in their district. This evaluation will be completed at the end of each project and/or at the end of each construction season for projects that are scheduled for more than one (1) year. This report will be used as a basis for determining the contractor's Performance Rating, and ultimately helping determine the firm's prequalification status.

**X TERMINATION OF PREQUALIFICATION PRIVILEGES**

- A. Prequalification privileges end at the assigned expiration date on the Certificate of Qualification unless extended by the Department.
- B. Prequalification Extension Policy – All firms with a Prequalification Score of 80.0 or above are eligible to obtain a prequalification extension. Prequalification extensions are limited to three 30-day periods. All requests for an extension of a firm's prequalification are required to meet the following standards:
  - 1. The letter requesting each 30-day extension is required to meet the following standards:
    - a. Be on the firm's original letterhead stationary.
    - b. Be dated before the firm's current prequalification expires.
    - c. Be signed by a person authorized to transact business on behalf of the firm as listed on Part B of the Prequalification Application. (Form C32).

All prequalification extension requests are required to be received in the Prequalification Office in a window opening 30 days before the firm's prequalification date, and closing on the firm's prequalification expiration date.

- C. Prequalification privileges can be administratively revoked immediately if the firm is found to be in violation of the prequalification rules and regulations. Examples include, but are not limited to, the following:

1. The firm is found not to be in good legal standing with the Virginia State Corporation Commission (SCC).
2. Monies owed the Department.

Prequalification privileges, which are administratively revoked, will be reinstated when the firm is found to be back in compliance with the prequalification rules and regulations.

- D. Prequalification privileges can be suspended if the firm is documented to be in violation of Sections 102.01, 102.08 or 110 of the current Road and Bridge Specifications or if the firm has been debarred by a state or federal agency. Firms whose prequalification privileges have been suspended will be enjoined from bidding during the term of the suspension. Examples include, but are not limited to, the following:
1. Documentation of the lack of progress on the Department's projects as stated in Section 102.01 of the Road and Bridge Specifications.
  2. Documentation of poor workmanship on the Department's projects as stated in Section 102.08 of the Road and Bridge Specifications.
  3. Documentation of the failure to meet DBE requirements on the Department's projects as stated in Section 110 of the Road and Bridge Specifications.
  4. Debarment by some other state or federal agency for any reason.
- E. Prequalification privileges can be lost if the firm is found in violation of any of the reasons contained in the Department's "Debarment policy."

## **If Prequalification is Currently-Inactive, Conditional or Denied**

(11-15-07)

Even if the firm is denied Prequalification, all may not be lost. The following are some actions the firm can take to improve a prequalification evaluation.

### **Short term actions**

#### **Submit supplemental material within the 60 day evaluation period**

All firms are given a sixty (60) calendar days to correct all the deficiencies on their Prequalification Applications (Form C-32). Supplemental information can be used to revise a firm's Prequalification, if it is received within this 60 day evaluation period. After the (60) day evaluation period has passed, the evaluation period is over and supplemental material will not be accepted.

After the Prequalification Evaluation process is complete, **if the firm is unsatisfied with its evaluation, it should promptly notify the Prequalification Office in writing that it wants to appeal its Prequalification status. Please see "The Prequalification Appeals Process"**

### **Long term actions**

#### **Improve the Prequalification Score**

The Prequalification Score is derived from the Contractors Performance Evaluation (CPE) scores and the Safety Index Scores (SIS). Therefore in order to improve the Prequalification Score, the firm must improve either the CPE Scores or the SIS scores, or both.

The **CPE Score** is 70% of the Prequalification Score. It is based on performance reports that are submitted by VDOT'S field forces. Improved field reports can help a firm raise its CPE scores. The firm may want to perform smaller subcontract work in order to receive improved field reports. These improved field reports can be used to raise the firms overall CPE score on future Prequalification evaluations.

The **SIS** is 30% of the Prequalification Score. This independently developed score is a six (6) year average of the Experience Modification Ratio (EMR) scores. The EMR is computed by comparing the accident rate of each individual company to the accident rates to all other companies in the state and in the industry. Since the EMR Score is a six (6) year average, it may take years for an improvement in a firm's accident rate to be reflected in the overall SIS score. Improved safety scores can be used on future Prequalification evaluations.

# The Prequalification Appeals Process

(11-15-07)

## The Right to Appeal

After the Prequalification Evaluation Process is complete, if the firm is denied Prequalification or receives an unsatisfactory Certificate of Qualification, it has a right to a prompt appeal.

## Beginning the Appeals Process

The Appeals Process begins when the contractor formally notifies the Prequalification Office, in writing, that it wants to appeal the unsatisfactory Certificate of Qualification or the Denial of Prequalification.

Upon request, the Prequalification Office will promptly furnish (by fax) the contractor a copy of this Prequalification Appeals Process.

## First Level of Appeal

to the  
Contract Engineer

The Contract Engineer may be requested to review the prequalification application. Additional information may also be submitted to the Contract Engineer for use in the consideration of the appeal. This additional information may include but it is not limited to the following:

**Submit a Letter of Quality Assurance** documenting the methods by which the reasons for the prequalification denial will be corrected.

**Document Quality/Safety Improvements:** The firm should document the changes it has made to improve quality/safety on future projects with the Department. Documentation of new safety programs to improve work quality and safety should also be submitted. Employees hired to implement and enforce these programs should be documented. Other changes in staff to improve safety and quality should also be documented.

**Furnish additional Contractors Performance Evaluation (CPE) Reports:** At time of prequalification, the firm was furnished a computer print out of all the CPE Reports that were used in the prequalification evaluation. If the firm has copies of missing CPE Reports they should be furnished to the Contract Engineer as part of the Appeals Process. If your firm has not received its Annual CPE Report and/or the CPE Report that was performed at the completion of a project, contact the District Engineer. Request the District Construction Engineer have the CPE performed, and that he/she promptly furnish the original CPE to the Contract Engineer for use in the Appeals Process.

**Furnish additional Experience Modification Ratio (EMR) Scores.** Your local insurance office can furnish an original EMR letter documenting additional EMR scores. Documented scores going back 10 to 15 years can be used to document that a high EMR score for one year is abnormality in the firm's long term safety record.

The Contract Engineer will review all of the submitted information as well as the firm's prequalification application and render a decision.

The Contract Engineer has the authority to award a Certificate of Qualification, revise a Certificate of Qualification, or to deny the appeal. If the appeal is denied, the contractor will be sent a letter documenting the reason(s) for the denial of the appeal.

**Second Level of Appeal**  
to the  
Prequalification Committee

If the appeal to the Contract Engineer does not produce a satisfactory result, the contractor may request a formal appeal with the Prequalification Committee. A written request must be filed with the Prequalification Office within ten (10) working days after the Contract Engineer has issued a decision on the firm's appeal. Please also send a copy of this appeal request to the Contract Engineer. The hearing shall be scheduled for a mutually agreeable time, whereupon:

The contractor may submit additional information  
The Prequalification Committee will review all information  
The ruling shall be determined by a simple majority  
The Prequalification Committee will notify the contractor in writing within ten (10) working days describing the committee's finding and the status of the Certificate of Qualification.

**Third & Final Level of Appeal**  
to the  
Board of Review

If the contractor is dissatisfied with the Prequalification Committee's findings, a request for a hearing may be made to the Board of Review. This request must be filed with the Prequalification Office within ten (10) working days of the Prequalification Committee's ruling. Please also send a copy of this appeal request to the Scheduling and Contract Administrator and the Contract Engineer. The hearing shall be held at a mutually agreeable time, whereupon:

The contractor may submit additional information.  
The Board of Review will review all information.  
The ruling shall be determined by a simple majority.  
The ruling of the Board of Review is final.

This ruling shall be forwarded to the Prequalification Committee. Within ten (10) working days of the Board of Review, the Prequalification Committee shall supply written notification of the final decision to the contractor.