

4000 Office of Management and Budget
4100 Division of Facilities Management

4102 Regulations for the Annual Prequalification of Contractors and Subcontractors

1.0 Purpose

- 1.1 The Department of Administrative Services ("Department"), Division of Facilities Management ("Division") has written these regulations for the Annual Pre-Qualification of Contractors and Subcontractors pursuant to 29 **Del.C.** §6962(c)(5)(a). The regulations establish the mechanism and standards by which the Department may assign classifications and maximum dollar limits to contractors and subcontractors that apply for annual prequalification pursuant to 29 **Del.C.** Section 6962(c). However, these regulations are not inclusive of the full set of contractor and subcontractor prequalification criteria referenced in 29 **Del.C.** § 6962(c).
- 1.2 The purpose of this regulation is threefold and is intended to accomplish the following three goals:
 - 1.2.1 Define the mechanism and standards by which the Department will publish classifications for which a contractor or subcontractor may apply for annual prequalification.
 - 1.2.2 Define the mechanism and standards by which the Department shall assign a classification or classifications to a prequalification applicant.
 - 1.2.3 Define the mechanism that sets the maximum dollar value of contracts for which the prequalified contractor or subcontractor may submit a bid.

2.0 Definitions

"Applicant" means the contractor or subcontractor that submits an application for annual prequalification to the Department.

"Classifications" means the trade categories for which a contractor or subcontractor may apply for prequalification. Examples of trade categories include "electrical," "mechanical," "roofing," "masonry" and others that are specified by the Department in accordance with this regulation.

"Combined, maximum contract value" means the maximum contract value for which a prequalified contractor or subcontractor may submit a bid that includes the provision work, services, labor, materials, supplies and equipment associated with more than one prequalified classification.

"Contractor" means an individual, firm, corporation, partnership or other entity that enters into one or more large public works contracts with a contracting agency bound by the requirements of 29 **Del.C.** Section 6962.

"Estimated Contract Value" means a dollar amount specified by the bidding agency that corresponds to the expected value of work associated with a classification or trade. Estimated contract value shall be equal to the base bid where alternates are specified.

"Maximum Contract Dollar Value" means the upper limit of anticipated contract value for a specific classification for which a prequalified contractor or subcontractor may submit a bid. Maximum contract dollar value shall be based on information provided by the applicant subject to the regulations contained herein.

"Multiplier" means a number expressed as a percentage (e.g. 120%) that will be applied to the dollar value of projects submitted as evidence of expertise and experience to calculate a "maximum contract dollar value."

"Prequalified" means the standing achieved by a contractor or subcontractor after completing the prequalification process to the satisfaction of the Department pursuant to 29 **Del.C.** § 6962(c).

"Prequalification" means the process by which a contractor or subcontractor becomes prequalified to bid on large public works contracts that require prequalified bidders pursuant to 29 **Del.C.** § 6962(c).

"Project/classification combination" means work specific to one project and one classification or trade associated with that project. An applicant shall provide information pertaining to a "project/classification combination" to document its experience and abilities to become prequalified for a specific classification.

"Secretary" means the Secretary of the Department of Administrative Services.

"Subcontractor" means an individual, firm, corporation, partnership or other entity that enters into one or more contracts with one or more contractors as defined in Section 2.9 herein.

3.0 Assigning Classifications for Which Applications for Prequalification Shall be Accepted

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- 3.1 The Department shall publish annually, on March 1 of each year, classifications for which contractors and subcontractors may seek annual prequalification. The classifications specified by the Department shall include but shall not be limited to trade categories associated with prior or anticipated large public works contracts executed by state agencies and school districts. The Department may publish an amended list of classifications, as required, at any time during the year in accordance with the requirements of sections 3.3 and 4.9 herein.
- 3.2 Classifications for which the Department accepts applications for contractor and subcontractor prequalification shall be clearly stated in the forms and procedures associated with the prequalification process. Each listed classification may include additional, specific instructions such as, but not limited to, the basis on which to value work associated with completed projects submitted as part of the prequalification application process.
- 3.3 From time to time, the Department may add to or subtract from the list of prequalification categories specified in the forms and procedures that are used by contractors and subcontractors to apply for prequalification. Classifications may be removed from the published prequalification list at the discretion of the Department, based on changes in construction practices and as a result of periodic reviews of trade categories for which contracting agencies specify prequalification pursuant to 29 **Del.C.** § 6962. Notice of the Department's intent to delete such classifications shall be sent to those contractors and subcontractors that are prequalified under proposed classification(s) to be deleted. Notice shall be sent to the affected contractors and subcontractors with a request for comment on the proposed deletions at least 60 days prior to the proposed date of deletion. The Department shall consider all such comments and may not delete classifications unless such deletions are in the best interest of the state. Classifications may be added to the published prequalification list based on requests from contracting agencies, from contractors and subcontractors and from periodic evaluations of changes and developments in the construction industry. The Department shall decide whether or not to add a classification(s) within 60 days from the date of a request to expand the list of published prequalification classifications. The Department's decision shall be based on changes and developments in the construction industry, the nature and scope of pending or anticipated large public works contracts that may require prequalification and the identification of classifications that may result in the enhanced quality of large public works contracts. The list of prequalification classifications shall be maintained on the World-Wide Web, the address of which shall be published in all bid documents and applications for prequalification .
- 3.4 The Department shall not be required to accept applications for annual prequalification for classifications not listed in the forms and procedures provided to applicants, but may do so if such acceptance is in the best interest of the State of Delaware.

4.0 Assigning Classification(s) to Contractors and Subcontractors

- 4.1 Classifications for which contractors and subcontractors may submit applications for prequalification shall be clearly stated in the forms and procedures associated with the prequalification process. Each stated classification shall be accompanied by a brief description of the work, services, labor, material, supplies or equipment generally associated with that classification and may be accompanied by specific instructions pursuant to Section 3.3 herein.
- 4.2 Each contractor or subcontractor that submits an application for prequalification shall indicate on the application the classification or classifications for which the contractor or subcontractor wishes to be prequalified.
- 4.3 For each classification for which an applicant wishes to be prequalified, the applicant shall use a form provided by the Department to provide documentation that the contractor or subcontractor has the experience and expertise to perform the work or provide the services, labor, material, supplies or equipment generally associated with that classification.
- 4.4 The documentation provided by the applicant shall include a description of one or more projects that include the scope of work, services, labor, materials, supplies and equipment provided by the contractor or subcontractor in its involvement with the project. The documentation shall include the project name, location, duration, completion date, owner name and address and the name and address of the project architect and/or engineer.
- 4.5 The contractual dollar value of work associated with each project submitted as documentation for each classification shall conform to Sections 5.5 and 6.6 herein.
- 4.6 The Department shall use the information and documentation provided by the applicant to determine if the contractor or subcontractor should be prequalified in the selected classification or classifications. If the information and documentation provided by the applicant is, at the sole discretion of the Department, unclear,

ambiguous, vague or does not provide a sufficient basis on which to prequalify the applicant, as a courtesy, the Department shall contact the applicant once via certified mail, the project owner, architect, engineer or other knowledgeable individuals in an attempt to ascertain whether or not the applicant has the experience and expertise to be prequalified in the selected classification or classifications. However, it is the applicant's responsibility, not the Department's, to ensure that the information on the application meets the requirements of these regulations.

- 4.7 The Department shall make every reasonable attempt to ascertain if the applicant has the experience and expertise to be prequalified in the classification or classifications indicated on the application form. Based on construction industry practices and norms, if the information and documentation provided by the applicant, or information obtained by the Department pursuant to Section 4.6 herein, confirms that the applicant possesses the experience and expertise to perform or provide the work, services, labor, materials, supplies and equipment associated with the classification or classifications indicated on the application form, the contractor or subcontractor shall be prequalified pursuant to 29 **Del.C.** § 6962(c) and shall be so informed either within 10 working days of the receipt of the application or not less than 14 calendar days prior to the closing date of a bid for a specific project. If the information and documentation does not support the applicant's request to be prequalified in one or more of the indicated classifications pursuant to 29 **Del.C.** § 6962(c)(6) and Section(c)(9), the application shall be rejected and prequalification shall be denied. The applicant shall be so informed within 10 working days of the receipt of the application or within 14 calendar days prior to the closing date of a bid for a specific project.
- 4.8 The Department shall not be required to complete the prequalification process and to notify the applicant not less than 14 calendar days prior to the closing date of a bid for a specific project unless the prequalification application is received by the Department at least 28 days prior to the closing date of the bid.
- 4.9 At the sole discretion of the Department, if the information and documentation provided by the applicant, or information obtained by the Department, confirms that the applicant possesses the experience and expertise to perform or provide the work, services, labor, materials, supplies and equipment associated with a classification or classifications not indicated by the contractor or subcontractor on the application form, the Department may recommend that the applicant be prequalified in one or more appropriate classifications not indicated by the contractor or subcontractor. If the Department recommends the prequalification of an applicant in a classification or classifications other than the classification or classifications indicated on the application form, the applicant shall, in writing, accept or reject prequalification in the recommended classification or classifications within 30 days of the Department's notice of such proposed additional classifications or before bidding on a project in said classification(s).

5.0 Assigning Maximum Contract Dollar Value

- 5.1 Each applicant for prequalification shall provide the Department with documentation that demonstrates that the contractor or subcontractor has the experience and ability to provide the work, services, labor, materials, supplies and equipment associated with the classification(s) or trades for which the applicant seeks prequalification. The documentation shall include the contractual dollar value for each classification or trade for which the applicant seeks prequalification for each prior project submitted as part of the prequalification application process. If the applicant seeks prequalification for multiple classifications or trades, the applicant shall submit a separate contractual dollar value for each classification. The dollar value of each project/classification combination shall be submitted to the Department by providing a copy of an executed contract or subcontract and all change orders that increase or decrease the value of the submitted contract or subcontract, or a schedule of values, or a certified letter from an owner verifying a contract dollar value and the classification to which it applies, or another form of documentation specified by the Secretary pursuant to Section 9.0 herein.
- 5.2 For each classification or trade for which a contractor or subcontractor becomes prequalified, the Department shall assign the maximum contract dollar value for which the contractor or subcontractor may submit a bid. The maximum dollar value shall be based on the dollar value of projects that the contractor or subcontractor submits as documentation of prior experience pursuant to 29 **Del.C.** § 6962(c)(3).
- 5.3 The Department shall request that an applicant for prequalification submit at least two projects completed within the previous 60 months for each classification for which the applicant seeks prequalification as documentation of prior experience pursuant to 29 **Del.C.** § 6962(c)(3). If an applicant submits one project as documentation of prior experience for each classification for which the applicant seeks prequalification, such project shall have been completed within the previous 60 months, and if prequalified, the maximum dollar

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assigned to a contractor or subcontractor for bid submittal shall be subject to a lower limit pursuant to Sections 5.4 and 5.7 herein.

- 5.4 The maximum contract dollar value for bid submittal that the Department shall assign to a prequalified contractor or subcontractor (for each classification for which the contractor or subcontractor is prequalified) shall be no less than 120% of the higher dollar value of the two projects that the contractor or subcontractor submits as documentation of prior experience pursuant to 29 **Del.C.** § 6962(c)(3). If an applicant submits one project as documentation of prior experience, the maximum dollar value for which bids may be submitted shall be no less than 110% of the dollar value of the project submitted as part of the prequalification application. The percentage cited in this section shall be known as the “multiplier.”
- 5.5 A contractor or subcontractor that is prequalified for more than one classification shall be assigned a separate, maximum contract dollar value for each classification. A contractor or subcontractor that is prequalified in more than one classification shall also be assigned a combined, maximum contract dollar value. The combined, maximum contract dollar value shall apply to contracts for which the prequalified contractor or subcontractor submits a bid that involves the provision work, services, labor, materials, supplies and equipment associated with more than one prequalified classification. The combined, maximum contract value assigned by the Department shall be derived from the total value of all work, services, labor, materials, supplies and equipment provided by the applicant in conjunction with prior projects that the applicant submits as documentation of the experience and ability to complete projects of a specific dollar value. The documentation shall consist of a copy of an executed contract or subcontract and all change orders that increase or decrease the value of the submitted contract or subcontract, or a schedule of values, or a certified letter from an owner verifying the total contract dollar value of all work, services, labor, materials, supplies and equipment associated with a specific project or projects, or another form of documentation specified by the Secretary pursuant to Section 9.0 herein. An applicant may cite a single project as documentation of its experience and abilities associated with a specific classification or classifications as well as its experience and abilities to complete a project of a specific dollar value that involves the provision of work, services, labor, materials, supplies and equipment in many trades or classifications. An applicant may also submit one or more projects that demonstrates its experience and abilities associated with a specific classification or classifications and one or more other, unrelated projects that demonstrates its experience and abilities to complete a project of a specific dollar value that involve the provision of work, services, labor, materials, supplies and equipment in many trades or classifications.
- 5.6 The assignment of a maximum, combined dollar value by the Department shall not increase or decrease the maximum dollar value assigned to the contractor or subcontractor for each classification in which the contractor or subcontractor is prequalified.
- 5.7 The maximum, combined contract dollar value shall be calculated in the same way the Department calculates and assigns the maximum contract dollar value for a specific classification. Sections 5.1, 5.2, 5.3 and 5.4 herein shall also apply to the calculation of maximum, combined contract dollar value. However, the calculation of maximum, combined contract dollar value shall be based on the total value of all work, services, labor, materials, supplies and equipment provided by the applicant in conjunction with the project or projects cited as documentation of experience and ability to complete projects that involve many trades or classifications.
- 5.8 On a case-by-case basis, the Department may, at its discretion, evaluate an applicant’s submission of project documentation that deviates from the requirements established in Section 5.4 herein. Based on the nature and substance of the documentation submitted by an applicant, the Department may reject the documentation and deny prequalification, or may accept the documentation and use the information pertaining to the contractual dollar value of prior projects/classification combinations to evaluate the application. Regardless of whether an alternate form of project documentation is accepted for evaluation by the Department, the applicant must provide separate contractual dollar values for each classification for which the applicant seeks prequalification, or the documentation shall not be accepted by the Department.
- 5.9 On a periodic basis, the Secretary shall establish the criteria by which the Department sets the maximum contract dollar value for each classification for which a contractor or subcontractor may apply for prequalification. On a periodic basis, the Secretary shall also establish the criteria by which the Department sets the combined, maximum contract value. The Department shall send notice of any change in criteria established pursuant to this Section to all prequalified contractors and subcontractors within ten working days of the establishment of the criteria. The Secretary shall have the authority to make the effective date of any change in criteria retroactive up to 12 calendar months. If the Secretary establishes a retroactive effective date for criteria established pursuant to this Section, all maximum contract dollar values and all combined, maximum contract dollar values associated with valid applications for prequalification received on or after the effective date shall be recalculated according to the criteria established by the Secretary. The criteria for the

maximum contract dollar value for each classification and the combined, maximum contract dollar value set by the Secretary shall include, but may not be limited to the following items and shall be subject to the minimum multipliers specified in Section 5.4 herein.

- 5.9.1 The number of projects that an applicant must cite as documentation that the contractor or subcontractor has the experience and expertise to perform or provide the work, services, labor, materials, supplies and equipment associated with a classification or classifications.
- 5.9.2 A multiplier pursuant to the minimum figures specified in Section 5.4 herein that shall be applied to the contractual dollar value of the project/classification that the applicant provides as documentation of the experience and expertise to perform or provide the work, services, labor, materials, supplies and equipment associated with a specific classification or classifications. The Secretary may assign one multiplier to all classifications, or, if there is a sufficiently compelling business reason, such as an inordinate increase in the cost of specific goods, materials, labor, services or other related factors may assign a different multiplier to each classification.
- 5.9.3 The specific mathematical formula pursuant to Sections 5.4 and 5.7.2 herein that will be used by the Department to set the maximum dollar limit for each classification for which the contractor or subcontractor has applied for prequalification. The mathematical formula will be made available on the Division's web site or in writing, if so requested.
- 5.10 Pursuant to 29 **Del.C** Section 6962(c)(2), a contractor or subcontractor which holds a valid prequalification classification shall report any material changes which could adversely affect the prequalification to the Department in writing within 10 days of the material change. A contractor or subcontractor may also report to the Department in writing material changes that could positively affect the contractor's or subcontractor's prequalification status or the maximum dollar values assigned by the Department to each prequalified contractor's or subcontractor's classification(s). If a prequalified contractor or subcontractor provides information and documentation concerning the successful completion of a project that was not complete, and therefore not able to be considered by the Department at the time of the applicant's application for prequalification, the Department shall reevaluate the maximum contract dollar value assigned to the contractor or subcontractor. The evaluation of project/classification information and documentation submitted at any time by a prequalified contractor or subcontractor shall be subject to all Sections of these regulations as well as the requirements of 29 **Del.C** Section 6962(c).
- 5.11 Any change in prequalification status as a result of information and documentation submitted pursuant to Section 5.10 herein shall not change the expiration date of the contractor's or subcontractor's twelve-month prequalification term.

6.0 "Maximum Contract Dollar Value," "Combined, Maximum Contract Value" "Estimated Contract Value" in the Submission of Bids by Prequalified Contractors and Subcontractors:

- 6.1 Each contractor and subcontractor that has been prequalified by the Department shall be assigned a "maximum contract dollar value" for each classification in which it is prequalified pursuant to Sections 5.1 through 5.9.5 herein. The maximum contract value shall be used to determine the contracts for which the prequalified contractor or subcontractor may submit a bid.
- 6.2 Pursuant to 29 **Del.C.** § 6962(c), for each contract that a contracting agency requires prequalified contractors and subcontractors, the contracting agency shall specify the classification(s) for which prequalification shall be required. The contracting agency shall also specify the estimated contract value for each classification.
- 6.3 A prequalified contractor or subcontractor may submit a bid for a contract in the classification in which it is prequalified if the maximum contract dollar value assigned to the contractor or subcontractor by the Department is equal to or greater than the estimated contract value for the classification in which the contractor or subcontractor wishes to submit a bid.
- 6.4 If a prequalified contractor or subcontractor submits a bid pursuant to Sections 6.1, 6.2 and 6.3 herein, and if the bid is more than the prequalified contractor's or subcontractor's maximum contract dollar value, the contracting agency may accept the bid and award a contract pursuant to 29 **Del.C.** § 6962. However, the contracting agency may elect to reject any bid received pursuant to 29 **Del.C.** § 6962(n)(3).
- 6.5 If a prequalified contractor or subcontractor wishes to submit a bid for a contract for which the contracting agency requires prequalified bidders, but the contractor's or subcontractor's maximum contract dollar value is less than the estimated contract value for a specific classification, the prequalified contractor or subcontractor may still submit a bid. However, if the contractor or subcontractor submits a bid higher than the bidder's maximum contract dollar value for a specific classification, the contracting agency shall reject the bid.

- 6.6 If a prequalified contractor or subcontractor intends to submit a bid for one contract in two or more classifications, the requirements of Sections 6.1 through 6.5 herein shall apply to each individual classification. The following additional requirements shall also apply:
- 6.6.1 A prequalified contractor or subcontractor may submit a bid for a contract in two or more classifications in which it is prequalified if the combined, maximum contract dollar value assigned to the contractor or subcontractor by the Department is equal to or greater than the total estimated contract values for the classifications in which the contractor or subcontractor submits a bid.
 - 6.6.2 If a prequalified contractor or subcontractor submits a bid pursuant to Section 6.6.1 herein, and if the combined bid is more than the prequalified contractor's or subcontractor's combined maximum contract dollar value, the contracting agency may accept the bid and award a contract pursuant to 29 **Del.C.** § 6962(3). However, the contracting agency may elect to reject any bid received pursuant to 29 **Del.C.** § 6962(n)(3).
 - 6.6.3 If a prequalified contractor or subcontractor intends to submit a bid for a contract for which the contracting agency requires prequalified bidders, but the contractor's or subcontractor's combined maximum contract dollar value is less than the combined estimated contract value for the specific classifications for which the contractor or subcontractor intends to bid, the prequalified contractor or subcontractor may still submit a bid. However, if the contractor or subcontractor submits a bid higher than the bidder's combined, maximum contract dollar value for the specific classifications bid, the contracting agency shall reject all or part of the bid. The contracting agency may accept bids for individual classifications pursuant to Section 6.5 herein as long as the combined value of the bids accepted by the contracting agency do not exceed the prequalified contractor's or subcontractor's combined, maximum contract dollar value.

7.0 Requirements of Contractors that Accept Bids

Contractors that accept bids from subcontractors shall follow the requirements of Subsections 6.1 through 6.6.3 herein for state projects that require the prequalification of subcontractors pursuant to 29 **Del.C.** Section 6962(c).

8.0 Registry of Contractors that are Prequalified

Pursuant to 29 **Del.C.** § 6962(c)(8) the Department shall maintain a registry of all contractors and subcontractors prequalified to bid on large public works contracts. The registry shall include the classification(s), maximum contract value and combined maximum contract value for each prequalified contractor and subcontractor. The Department may post the registry on the World-Wide Web and advertise and distribute it through other means, as deemed necessary by the Department

9.0 Necessary Documentation

From time to time, the Secretary may specify form of documentation that an applicant may submit to document its experience and ability to provide the work, services, labor, materials, supplies and equipment associated with the classification(s) or trades for which the applicant seeks prequalification. Notice of the Department's intent to change the form of documentation that an applicant may submit with its application shall be sent to all contractors and subcontractors listed in the Department's registry of then-current prequalified contractors and subcontractors with a request for comment on the proposed changes. The Department shall send requests for comment at least 60 days prior to the proposed date that the change of documentation becomes effective. The Department shall consider all such comments and may not change the form of documentation unless such change is in the best interest of the state.

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