

Administrative Rules Governing the Prequalification of Bidders for Construction Work

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FOREWORD

Effective December 23, 1978, the Michigan State Transportation Commission, by law, became the successor to the Michigan State Highway Commission. The administration of the "Administrative Rules Governing the Prequalification of Bidders for Highway and Transportation Construction Work" was one of the many duties assumed by the new Commission. The Administrative Rules were originally promulgated on December 31, 1968 based upon Act 170 of the Public Acts of 1933.

The amendments to certain of the rules do not materially change the meaning of the individual sections of the 1968 Administrative Rules, but are primarily clarification for the more efficient administration of the rules by the Michigan State Transportation Commission's appointed Prequalification Committee. The rules were amended, effective April 15, 1975, according to procedures embodied in existing State of Michigan Statutes, therefore, prior to their adoption, consideration was given to recommendations submitted by various contracting organizations as well as the Federal Highway Administration.

Michigan State Highway Commission

By

Director, Michigan Department of Transportation

MICHIGAN STATE TRANSPORTATION COMMISSION SUCCESSOR TO MICHIGAN STATE HIGHWAY COMMISSION

As required by Public Act 88, P.A. of 1943, as amended, the rules governing the classification and rating of bidders on construction work were;

Approved by Commission: November 6, 1974

Approved by Legislative Service Bureau: December 4, 1974

Approved by Attorney General: December 10, 1974

Approved by Michigan Legislative Joint Committee on Administrative Rules: February 25, 1975

Adopted by Commission: March 26, 1975

Approved by Governor: March 26, 1975

Filed with Secretary of State March 31, 1975

(By authority conferred on the State Highway Commission by Section 9 of Act No. 286 of the Public Acts of 1964 and Sections 2 and 4 of Act. No. 197 of the Public Acts of 1952, as amended, being Sections 247.809, 24.102 and 24.104 of the Compiled Laws of 1948.)

Effective April 15, 1975

ACT NO. 170
PUBLIC ACTS OF 1933

AN ACT to regulate the practice of taking bids and awarding contracts on public work construction, maintenance or repair work, except public buildings, and to provide a means of prohibiting those not qualified by experience, financial resources or any other valid reason from undertaking such public construction work.

The People of the State of Michigan enact:

Bidders on Public Work; Statement as to Qualifications, Notice of Rejection.

Section 1. Any officer, board, commission, committee or department of the state, county, city, village or township government authorized to receive bids for the construction, maintenance and/ or repair of public works, except public buildings, may require that any person proposing to bid on any such work, submit a sworn statement at least ten days before bids are opened on such standard form and in such detail and at such time as may be deemed necessary by said officer, board, commission, committee or department, set forth his qualifications to satisfactorily carry out the work to be performed within the time specified for such performance. Said qualifications may be judged by said officer, board, commission, committee or department upon the basis of the proposed bidder's past performance on work of a similar nature, his financial resources and his construction equipment and facilities which he proposes to use on the work advertised for construction as disclosed by such sworn statement and any other available information and a determination made whether or not the proposed bidder is a suitable person to bid on the work. Any person determined not to be a suitable person to bid on any proposed work shall be notified in writing five days before bids are opened for such determination.

Same; Failure to File Statement; Rejection of Bid.

Section 2. Should the prospective bidder fail to file the statement as required by said officer, board, commission, committee or department within the time specified, or should he, in the judgment of said officer, board, commission, committee or department be not qualified to bid on the work duly advertised, such officer, board, commission, committee or department may refuse to furnish such person with plans, specifications and proposals and may reject any bid made by him.

Allotment of Work by Public Officers.

Section 3. It is further provided that when, in the judgment of such officer, board, commission, committee or department, the volume of work regularly advertised for construction would justify such course, bidders on public work may be rated according to their experience, equipment and resources and be furnished with proposals, plans and specifications for only such type and quantity of work as their qualifications as outlined in section one of this act would warrant.

Questionnaire and Statement; Confidential Treatment.

Section 4. Such questionnaire and statement, filed with said officer, board, commission, committee or department, shall be deemed to be confidential and shall not be imparted to any other person, firm or corporation without the consent of the bidder.

Refusal to Furnish Data to Bidder; Discretion of Public Officers.

Section 5. No action or proceeding of any nature or description in any court, except as hereinafter stated, shall lie against any officer of the state, county, municipal or township government because of his refusal to furnish plans, specifications or proposals or to award to any person a contract for the construction of a public work, maintenance or repair thereof for the satisfactory performance of which such person is not, in the opinion of the officer, fully qualified, or who has failed to comply with the provisions of this act.

Review of Decision of Public Officers.

Section 6. Any person feeling himself aggrieved at the determination of any such officer, board, commission, committee or department shall have the right of appeal by mandamus, certiorari or other proper remedy to the Supreme Court of the State of Michigan, or in any proper case to any Circuit Court having jurisdiction.

False Statements, Penalty.

Section 7. Any person who willfully makes, or causes to be made any false, deceptive or fraudulent statement in any questionnaire or statement required to be submitted under this act shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not less than one hundred dollars, or more than one thousand dollars, or to imprisonment in the county jail for a period not exceeding six months.

Definition of Person.

Section 8. The word "Person" as used herein, shall mean and include any individual, corporation, copartnership, association or their lessees, trustees or receivers.

This act is ordered to take immediate effect.

Approved June 8, 1933.

PART 1. GENERAL PROVISIONS

R 247.1. Effective date and applicability.

Rule 1. These rules are effective April 15, 1975.

R 247.11. Definitions.

Rule 11. (1) "Commission" means the State Highway Commission.

(2) "Committee" means the prequalification committee authorized by these rules.

(3) "Department" means the Department of State Highways and Transportation.

(4) "Financial resources" means the information shown on an annual financial statement, which shall include a balance sheet, an operating statement and appropriate supporting schedules based upon the bidder's established annual accounting period.

(5) "Bidder" means an individual proprietor, a person acting under an assumed name, a partnership, a corporation or a combination thereof which seeks to perform work for the commission. When a combination of any of the aforementioned entities is prequalified, it shall be prequalified as only 1 bidder which may act through an authorized representative.

(6) "Day" means a calendar day.

PART 2. PREQUALIFICATION COMMITTEE

R 247.21. Membership and general duties.

Rule 21. (1) The commission shall appoint a prequalification committee composed of members of the department's staff. The committee shall classify and numerically rate bidders for the commission's construction work. The 3 major factors used in arriving at this rating are:

- (a) The bidder's financial resources and related information.
- (b) The bidder's experience, key personnel and past performance on work of a similar nature.
- (c) The bidder's construction equipment and facilities which it proposes to use on the work advertised for construction.

(2) The committee shall determine if the bidder is a suitable person to bid on the work. The committee shall keep minutes of its proceedings and shall notify bidders in writing of their classification and ratings.

R 247.22. Action by committee.

Rule 22. (1) After approval by the commission, the committee shall notify a bidder in writing of his work classification and rating. The work classification and rating is accepted unless the committee is notified in writing to the contrary within 15 days after a bidder is officially notified.

- (2) A bidder submitting a false statement will not be prequalified.
- (3) A bidder who fails to comply with each provision of the rules or fails to complete each applicable item and schedule set forth in the prequalification forms is disqualified from bidding on Department construction work, until all requirements are met.
- (4) A bidder may at any time be given a provisional numerical rating while hearings or investigations are being conducted upon its submitted financial, experience, or equipment data. The provisional prequalification may be removed as a result of the findings of the committee, and be converted to:

- (a) Disqualification upon findings adverse to the bidder.
- (b) Continuous qualification upon findings favorable to the bidder.

(c) Continued provisional prequalification pending further investigation and findings by the committee.

(5) The committee may declare a prequalified bidder ineligible to bid at any time because of developments subsequent to prequalification which, in their opinion, would affect the responsibility of the bidder or his ability to perform the contract work. The committee shall notify the bidder of any such action taken and give him the opportunity to present additional information at a hearing.

PART 3. INFORMATION FROM BIDDERS

R 247.31. Prequalification for bidding

Rule 31. The rules governing financial statements and financial resources govern the numerical rating given to a bidder seeking prequalification whether it wishes to bid at a single bid letting or wishes annual prequalification.

R 247.32. Time for filing forms and statements.

Rule 32. (1) Prequalification forms shall be submitted at least 15 days before the formal date for opening bids for a project on which the bidder desires to bid if he is not previously prequalified.

(2) A financial statement as at the close of the bidder's fiscal year is required. Interim financial statements will not be accepted.

(3) For annual prequalifications, a bidder shall submit prequalification forms and its financial statement within 3 1/2 months after the close of the bidder's fiscal year.

(4) A request for an extension of time in which to file the prequalification questionnaire shall be applied for in writing on or before the due date of the questionnaire. If approved, the extension shall not exceed 60 days.

(5) A statement of current contracts and subcontracts shall be submitted as required under subrules (3) and (4) of Rule 43.

R 247.33. Forms and effect.

Rule 33. (1) A bidder's financial resources shall be set forth in appropriate prequalification forms to be furnished by the Commission.

(2) The operating statement will not affect the rating factors and methods set forth in these rules.

R 247.34. Certification and verification of statements.

Rule 34. (1) A bidder applying for prequalification for construction work for more than \$200,000.00 shall submit with the financial statement portions of the prequalification forms a copy of its most recent audited financial statement as of the same date as on the prequalification forms reflecting the accounting theory and practice consistently employed by the bidder and prepared and certified to by an independent certified public accountant. If the certified public accountant cannot express an opinion as to the overall fairness of

the financial statement, the bidder's prequalification for work will be limited to \$200,000.00. If an opinion contains exceptions which are material in the judgment of the committee, the items may be disallowed for prequalification purposes. The certification of a certified public accountant employed on the payroll of the bidder or who is an officer of or a director of the firm seeking prequalification is not acceptable. The certification and subsequent submission of questionnaires or other certified documents to the prequalification committee for acceptance and approval by any certified public accountant who is related to or associated in any business enterprise with a member of the committee or the committee staff shall not be accepted by the committee. If 60% or more of the total annual fees of a certified public accountant are derived from a single prequalifying bidder, his certification of the financial statement of that bidder for prequalification is not acceptable.

(2) Prequalification for work of \$200,000.00 or less does not require certification of the financial statement; however, it is desirable. When the statement is not certified, or when a certification contains exceptions, the department may request clarification and verification of any information submitted, and if necessary, examine the bidder's records and accounts.

(3) Prequalification forms shall be sworn to before a notary public by an authorized officer, owner, or partner of the bidder.

R 247.35. Period covered by financial statements.

Rule 35. (1) An annual financial statement submitted by the bidder shall cover the same period as its established fiscal year. A financial statement found to be inconsistent with the bidder's fiscal year will result in the bidder being declared ineligible for prequalification.

(2) A newly formed organization requesting prequalification shall file its opening balance sheet for an initial prequalification rating. Thereafter, financial statements shall cover the same period as its established fiscal year.

R 247.36. Statement of accounting method and basis.

Rule 36. (1) Instructions contained in the prequalification forms shall require a statement of the accounting method and basis used by the bidder in keeping its books of account, which shall also be set forth in the notes to the financial statement or in the accountant's certificate, as follows:

(a) Percentage of completion method.

(b) Completed contract method.

(c) Any other accounting method used by the bidder in keeping its books of account shall

require approval in writing by the committee, prior to submission of the bidder's annual report for prequalification.

(2) This rule takes into account the American Institute of Certified Public Accountants Bulletin 45, dated October, 1955, entitled "Long Term Construction Type Contracts," with particular reference to the handling of the current asset account, "Cost in excess of billings," and the current liability account, "Billings in excess of cost." Income tax liabilities arising from earned contract income on a completed contract method or percentage of completion method shall be shown as current liabilities. Prior written approval shall be obtained before submission of prequalification financial statements where the books of account are kept by any other method. A written approval may be granted after hearing by the committee.

R 247.37. Supplemental statements.

Rule 37. (1) A bidder who maintains accounting records on a cash basis shall submit a supplemental statement of assets and liabilities on an accrual basis on the schedule provided in the prequalification forms.

(2) A bidder who maintains accounting records on an accrual basis but reports on a completed contract method has the option of submitting a supplemental statement on the schedule provided in the prequalification forms which adjust the completed contract method, as per its audited annual financial statement, to the percentage of completion method of financial reporting for prequalification rating. However, the bidder shall request approval of the committee to report for prequalification purposes using an accounting method other than the method used in maintaining its accounting records and shall receive written approval by the committee. Once having exercised the option, the bidder shall not change the method of reporting without written approval by the committee

(3) The certified public accountant who prepared and certified the bidder's annual financial report shall prepare and sign the statements.

R 247.38. Evidence of equipment and experience.

Rule 38. At the time a bidder submits the prequalification forms and the required attachments, it shall submit therein evidence that:

(a) It owns or currently leases the major equipment items necessary to perform the work in the various classifications for which it is requesting prequalification. Only 1 additional classification shall be allowed by presenting, for approval by the committee, a copy of a bona fide purchase order or a lease agreement for a minimum of 1 year thereby indicating that it shall purchase or lease the major equipment necessary to perform work in the additional classification. The 1 additional work classification allowed shall be limited to a maximum numerical rating of 20.

(b) The experience of its key personnel makes it capable of performing work in the

classifications for which it seeks approval.

R 247.39. Equal employment opportunity policies.

Rule 39. A bidder for highway contracts shall submit on the prequalification form, a statement that it has initiated and intends to continue an equal employment opportunity policy designed to eliminate any discrimination in employment because of race, color, religion, sex, or national origin.

If the committee finds that a prequalified bidder is not in compliance with the bidder's approved equal employment opportunity policy, the committee may reduce or suspend the bidder's numerical rating subject to the provisions of subrule (1) of rule 46 and part 7 of these rules.

R 247.40. Audits, investigations and comparisons.

Rule 40 (1) The Commission, through the committee, may designate auditors to perform audits on the books of accounts, or investigate any items on the prequalification forms submitted by a bidder. The bidder has the right to a hearing before the committee to explain any conflict arising from such audits or investigations prior to a determination of the bidder's prequalification rating. During the course of such proceedings, the bidder may be given a provisional numerical rating until the Commission has made its findings and determinations based on the hearing.

(2) The committee may cause comparative reviews to be made at any time between the bidder's annual prequalification statements and any reports filed by the bidder with other departments of this state based upon the bidder's books of account. When significant variance appears between such reports and the prequalification statement, for which prior approval of the committee was not obtained in writing, the committee shall notify the bidder of a hearing at which the bidder shall show cause why its numerical rating and classifications should not be suspended.

PART 4. NUMERICAL RATINGS

R 247.41. Factors applying to assets.

Rule 41. The assets as determined from the financial statement shall be used in computing the numerical rating of a bidder by use of the sum of the following factors:

- (a) Working capital either positive or negative multiplied by 9.
- (b) Depreciation expense on construction and transportation equipment in the amount of one and one half times this allowable amount of depreciation, as recorded on the bidder's books of account and also shown in the space provided in the prequalification questionnaire for the same fiscal year as covered by the prequalification statement, multiplied by 9.
- (c) Net construction and transportation equipment values multiplied by 4. This value is the bidder's equity in such equipment less the long term portion of the obligation on this equipment.

R 247.42. Rating Table.

Rule 42. (1) The following table shall be used in designating the numerical rating and dollar value of work each bidder is eligible to bid:

RATING TABLE

Numerical Rating	Value of Work	Numerical Rating	Value of Work
½	5,000	10	100,000
1	10,000	20	200,000
2	20,000	30	300,000
3	30,000	40	400,000
4	40,000	50	500,000
5	50,000	60	600,000
6	60,000	70	700,000
7	70,000	80	800,000
8	80,000	90	900,000
9	90,000	100	1,000,000

For ratings above \$1,000,000.00 use same system of numerical rating.

(2) For bidding purposes, a bidder will be given the numerical rating nearest the sum of its financial rating or available balance as computed under these rules.

R 247.43. Work allowed.

Rule 43. (1) The maximum amount of work in dollars allowed at any time shall be the amount of the numerical rating less the bidder's uncompleted work on hand.

(2) "Work on hand" means any uncompleted work to be performed by the bidder.

(3) A contractor desiring to bid on department projects shall file with the department a statement of current contracts and subcontracts reporting work on hand. This statement must be received in the department contract office not less than 6 days or more than 30 days before the date of the specific bid letting at which he wishes to bid. Bidders failing to submit this statement of current contracts and subcontracts, in accordance with these rules, shall not be eligible to bid or be issued bidding documents.

(4) The value of any work not completed by the bidder shall be deducted from the bidder's numerical rating in determining his available balance. The value of uncompleted work shall be determined by subtracting from the contract awards the actual pay quantities of work completed up to the time of filing the statement of current contracts and subcontracts. Purchase orders for materials shall not be considered as subcontracts in computing a contractor's net prequalification numerical rating.

(5) Due to unusual delays in starting time on certain classifications of work on large package jobs and in recognition of the prequalification problem this causes in some cases, the committee, at the request of the bidder, may reduce the deduction from the bidder's maximum numerical rating not to exceed 50% for work on hand which cannot be begun in the year in which the prequalification rating applies as shown in the progress schedules. Such deduction shall not be given if the scheduled dates for performance of the work overlaps.

(6) A bidder that is a publicly held company whose stock is listed on either the New York or American stock exchange and who submits its annual certified financial statements for prequalification showing balance sheet current assets exceeding current liabilities of \$250,000,000.00 or more shall not be required to submit the monthly statement of current contracts and subcontracts.

R 247.44. Subcontracts.

Rule 44. In establishing a bidder's net numerical rating for all work:

(a) A bidder shall be given credit for the value of all work sublet to other approved contractors.

(b) A bidder, performing as a subcontractor, shall have deductions made for the value of its uncompleted subcontract work.

R 247.45. Tentative numerical ratings.

Rule 45. (1) Initially a bidder will be given a tentative numerical rating factor of 100% on its allowed work classifications. If, in the opinion of the committee, a requested work classification warrants a lower tentative numerical rating factor because of lack of construction experience, organization and personnel, or equipment, this numerical rating will be determined in accordance with rule 46.

(2) A numerical rating of 20 shall be the maximum granted a bidder for the work classifications it has not previously engaged in.

R 247.46. Changes in numerical ratings.

Rule 46. The numerical rating factor is subject to change, in accordance with these rules, and on completion of contracts with the department as determined by the committee from a summary of reports from field engineers and further investigations by the department of the following factors which may permit deductions up to 100%:

- (a) Construction experience.
- (b) Quality of work.
- (c) Record as to unpaid accounts and claims.
- (d) Organization and personnel.
- (e) Equipment.
- (f) Unfavorable working capital ratio.
- (g) Record of contract completion.
- (h) Record of compliance with safety specifications .
- (i) Failure to submit required documents.
- (j) Failure to comply with any applicable provisions of these rules.
- (k) Common ownership and control.

(1) Record of compliance with equal employment opportunity program.

(m) Failure to execute a contract.

(n) Violation of any other contract provisions

R 247.47. Scope of rules.

Rule 47. This set of rules defines those assets and liabilities, current and fixed, the accounting basis and contract method, depreciation allowance, net equipment values, and operating statement which will be specifically allowed by the committee in fixing the numerical rating of the bidder.

R 247.48. Current asset accounts.

Rule 48. The following current asset accounts will be used by the committee in determining the working capital position of a bidder:

A. Cash on hand or in banks.

B. Readily marketable securities: those securities that are verified by the certified public accountant and that represent investments of cash that are available for current operations, excluding investments in affiliated companies.

C. Receivables: Trade accounts receivable--current:

Including earned estimates in process Show division of trade receivables as on balance sheet in prequalification forms Deduct: Reserve for non-collectable accounts

Notes Receivable: Notes due within 1 year. Exclude notes due from officers, employees and affiliated companies.

Interest and dividends receivable: Exclude interest or dividends due from affiliated companies, officers and employees.

D. Cost of uncompleted contracts in excess of related billings

E. Inventories (at the lower of market or cost) Construction materials and supplies on hand

F. Other allowable current assets

Bid deposits (including bid deposits on joint bidding ventures)

Prepayments: Insurance, interest, taxes, etc.

Cash surrender value of life insurance

Other assets realizable within 1 year (describe)

R 247.49. Current liability accounts.

Rule 49. The following current liability accounts, payable within 1 year, will be used by the committee in determining the working capital position of a bidder:

A. Notes payable, banks

B. Notes or contracts payable on construction equipment except notes due officers, employees and affiliated companies.

C. Accounts payable to subcontractors and trade accounts except accounts payable to officers, employees and affiliated companies.

D. Accrued expenses

Include wages, payroll taxes, fringe benefits, etc.

Exclude interest payable to officers, employees and affiliated companies.

E. Taxes

(1) Federal income tax liability

(Including taxes applicable to income arising from conversion to the percentage of completion method.)

PART 5. CLASSIFICATION OF BIDDERS

R 247.51. Work classifications.

Rule 51. A bidder may be classified for the performance of work in 1 or more of the following work classifications:

B. Concrete Pavement. Construction of portland cement concrete base and surface course.

Ba. Concrete pavement patching and widening

C. Bituminous paving. Construction of bituminous base and surface courses, as specified in the subheadings of this rule

Ca. Non-skid surface treatment. Road mix

Cb. Bituminous surface courses-dense graded. All plant mix

D. Aggregate construction. The construction of all non-bituminous gravel and crushed rock base and surface courses and aggregate shoulders.

Da. Producing aggregate material only

E. Grading and drainage structures. Construction of roadways including drainage structures and other construction incidental thereto.

Ea. Grading and drainage structures. Truck haul operation. Construction of roadways including drainage structures and other construction incidental thereto.

F. Bridges.

Fa. Bridges and special structures. Construction of masonry, fabricated steel or timber bridges, large culverts and grade separations, special structures and other construction incidental thereto.

Fb. Structural steel. Erection of structural steel and placing reinforcing steel on bridges and grade separations and other structures incidental thereto.

Fc. Structural steel and prestressed concrete. Furnishing, fabricating, shop painting, and delivery of structural steel, prestressed I-beams or girders for bridges and grade separations.

Fd. Pumphouses. Construction of pumphouses and other structures incidental thereto.

G. Building moving and demolition.

Building moving, demolition and other construction incidental thereto.

H. Landscaping. Contracts involving ornamentation of roadsides and parks and other construction incidental thereto.

I. Sodding, seeding, guard rail, fences. Placing of sod, seeding, erection of guard posts, guard rail, fences, and other construction incidental thereto.

J. Miscellaneous structures. Construction of small culverts, curb, curb and gutters, sidewalks, sewers, tiling, catch basins, manholes and other construction incidental thereto.

K. Watermains and open cut sewer 6 feet deep and over. Other construction incidental thereto.

Ka. Tunneling and jacking. Other construction incidental thereto.

L. Electrical construction.

M. Structure concrete repair. Pre-placed aggregate material method.

N. Special contracts. Blasting, clearing and grubbing, pavement marking, painting, railroad track construction, signs, waterproofing, marine, others.

A contractor shall check on prequalification forms in the space provided the items for which it requests prequalification.

R 247.52. Original and additional classifications.

Rule 52. A bidder will **be classified for types** of work on the basis of its experience at the time of filing the prequalification forms and financial statement. The Commission may grant additional classifications to a bidder based on written evidence submitted by the bidder that it is properly equipped and has had sufficient experience to warrant such additional classifications.

R 247.53. Duplicate classifications.

Rule 53. When a person is a director, partner, officer or has a financial interest in 2 or more bidders, which in the opinion of the committee would have a detrimental effect on

the department, the classifications of the type of work for which these bidders may pre-qualify shall not be duplicated. A bidder shall submit on the prequalification form the names and addresses of persons acting under an assumed name, the names and addresses of all partners, the names and addresses of all officers and directors of a corporation and the names and addresses of all persons owning more than 10% of any class of stock in any other prequalified or pre-qualifying corporation if that person is also an officer or a director of a prequalified or pre-qualifying corporation.

When a bidder or a director, officer or partner of a bidder has a financial interest in any other bidder who is prequalified or is seeking to pre-qualify, the name of the other bidder shall be given and the nature of the interest shall be described.

PART 6. BIDDING

R 247.61. Bidding procedure.

Rule 61. (1) In order to bid on any project advertised by the department, the bidder shall have prequalification in the required work classification and a net numerical rating equal to or greater than the required rating stated in the advertisement for that project. Ratings in the several work classifications are not cumulative or transferable.

(2) A prequalified bidder who has sufficient unencumbered prequalification and has met the requirements of rule 43 shall be issued plans and proposals on any project advertised until 5:00 p.m. on the day preceding the formal opening of bids. A charge shall be made for plans or proposals furnished for each project.

(3) If a bidder is low on 2 or more projects, the total of which exceeds its numerical rating, the department shall select the project or projects for award to the bidder which will give the best financial advantage to the department after approval by the commission and the state administrative board. The department may give credit for the value of the named designated subcontractors or named specialty subcontractors in determining the eligibility of the bidder for award of the projects in question.

(4) A contract will not be awarded to a bidder who does not present evidence at the time of bidding that he will subcontract to a prequalified contractor, those parts of the contract dealing with work classifications in which he is not prequalified, subject to the limitation for subcontracting as provided in the department's standard specifications for highway construction.

R 247.62. Joint bidding.

Rule 62. (1) Two but not more than 3 bidders may bid jointly on a project without declaring their intention to do so before the opening of bids, if each bidder has a net numerical rating equal to or greater than the total required for the project and has met the requirements of rule 43.

(2) A bidder with a net numerical rating equal to or greater than the total required for a project may bid jointly with not more than 2 bidders who have less than the total rating required but equal to or more than an equal proportion as determined by the number of joint bidders. The bidder with less than the total required shall declare the joint bidding arrangements before obtaining a bidding proposal. Bidders under this bidding arrangement who have met the requirements of rule 43, shall request approval of the joint venture combination before 5:00 p.m. of the day preceding the formal opening of bids.

(3) A bidder with a net numerical rating less than the total required but with equal to or more prequalification than the direct proportion as determined by the number of joint bidders, not more than 3, may bid jointly if the intention is declared when the request is

made for the bidding proposal. A bidder may obtain plans and a courtesy proposal and later may obtain a bidding proposal for joint bidding when the bidders declare their intention to bid jointly. Bidders under this bidding arrangement who have met the requirements of rule 43, shall request approval of the joint venture combination before 5:00 p.m. of the day preceding the formal opening of bids.

(4) Two but not more than 3 bidders who have met the requirements of rule 43 may bid jointly on a project and each be responsible for unequal shares of the work if, prior to the close of business 4 days before the opening of bids on the project, they declare in writing the percentage and classification of work they propose to do.

(5) All joint bidders shall be prequalified in the classification of work they intend to perform.

PART 7. HEARINGS

R 247.71. Requests and time of committee hearings.

Rule 71. (1) A bidder, who wishes to contest the numerical rating or classification given him by the committee or who wishes to contest the committee's decision not to prequalify him, has the right to a hearing before the committee if a written request for a hearing is filed with the committee within 15 days after receipt of the classification and numerical rating, or within 15 days after receipt of notice of not being prequalified. A hearing shall be held within 10 days after the written request is received by the committee.

(2) When the committee determines that a bidder who has previously been given a satisfactory numerical rating and work classification should be disqualified or its numerical rating or work classification changed for any reason, the bidder shall have a hearing before the committee if a written request for a hearing is filed with the committee within 15 days after receipt of the notice of intent to disqualify or to change its numerical rating and/or its work classifications. A hearing shall be held within 10 days after the written request is received by the committee. Upon failure to request a hearing, the determination of the committee becomes final

R 247.72. Representation and appearances.

Rule 72. A bidder may represent himself at a hearing or be represented by legal counsel. The Department may be represented by the attorney general.

R 247.73. Opening statements, evidence and cross-examination.

Rule 73. (1) The chairman of the committee shall open the hearing with a concise statement of its nature and purpose. The committee shall follow the rules of evidence applicable to circuit court proceedings. However, in addition, the committee may admit and give probative effect to any evidence which possesses probative value commonly accepted by reasonable prudent men in the conduct of their affairs.

(2) Evidence, including documents and records in possession of the committee of which it desires to avail itself, shall be offered and made a part of the record, and no other factual information or evidence shall be considered in determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(3) The bidder and the committee have the right of cross-examination, which includes the right to cross-examine the author of any document prepared for the use of the committee, and to offer it in evidence; and have the right to submit rebuttal evidence.

R 247.74. Judicial notice.

Rule 74. The committee may take judicial notice of facts, and take notice of general technical or scientific facts within the specialized knowledge of its members. The bidder shall be notified 5 days before the hearing of material so noticed, and shall have an opportunity to rebut the facts so noticed. The committee may use the experience, technical competence and specialized knowledge of its members in the evaluation of the evidence presented to the committee.

R 247.75. Exhibits

Rule 75. (1) Evidence to be presented, consisting of matters so complex as to make the presentation difficult to follow, may be presented in exhibit form, supplemented and explained, but not duplicated by oral testimony. Documentary exhibits shall be typed on 1 side only of pages not exceeding 8 1/2 inches by 11 inches, or multiples thereof, with a sufficient margin for binding, preferably 1 1/2 inches to be left blank on left side of each page. An exhibit in excess of 8 1/2 inches wide shall be folded to be not more than 8 1/2 inches by 11 inches if practicable. It is desirable that an exhibit of 2 or more pages be stapled together and notation made at the top of the first page as to the number of pages contained in the exhibit. An exhibit shall indicate the docket number at the top of the first page and provide space for the name of the witness and the number and date of the exhibit. Exhibits shall be numbered in numerical sequence regardless of the identity of the party offering them. The number of the exhibit shall be prefixed with a letter indicating the identity of the party offering it.

(2) A party introducing documentary exhibits shall furnish 6 copies to the committee.

(3) Additional documentary evidence may be submitted subsequent to the closing of the hearing upon stipulation of the parties.

R 247.76. Arguments and decisions.

Rule 76. (1) After all of the evidence has been entered into the record, the bidder and the Department may summarize their arguments and the hearing shall be closed.

(2) Within 30 days after the hearing, the committee shall notify the bidder, in writing, of the hearing decision and send to the bidder a copy of the hearing transcript if the bidder has been given an unsatisfactory classification and numerical rating.

R 247.77. Appeals.

Rule 77. (1) Any decision of the committee pursuant to a hearing may be appealed to the commission if written notice of appeal is filed by the bidder with the commission within 10 days after the committee renders its hearing decision. On appeal to the commission, a brief which is filed by the bidder or the department shall be filed within 7 days of filing the notice of appeal of the committee's decision.

(2) In rendering its decision, the commission shall take into consideration the entire committee hearing record, together with any briefs which may have been filed by the bidder and the department. The commission shall inform the bidder and the department of its decision on the appeal by sending a copy of its written decision within 30 days after the date on which briefs were or could have been filed.

(3) If the Commission affirms the committee's decision, the bidder may seek legal remedies in the appropriate state courts as provided by statutes and court rules.

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