

DEPARTMENT OF TRANSPORTATION

BUREAU OF FINANCE & ADMINISTRATION

ADMINISTRATIVE RULES GOVERNING THE PREQUALIFICATION OF
CONSTRUCTION CONTRACTORS

Filed with the Secretary of State on December 4, 2009

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the Department of Transportation by section 33 of 1969 P.A. 306, MCL 24.233 and 1933 P.A. 170, MCL 123.501 et seq.

R 247.11, R 247.21, R 247.22, R 247.32, R 247.34, R 247.40, R 247.43, R 247.48, R 247.49, R 247.50, R 247.52, R 247.53, R 247.61, R 247.62, R 247.81, R 247.82, and R 247.83 are being amended as follows:

PART 1. GENERAL PROVISIONS

R 247.11 Definitions.

Rule 11. As used in these rules:

(a) "Bidder" means a sole proprietor, a partnership, a corporation, or a combination thereof that seeks to perform work for the department. When a combination of any of the entities is prequalified, it shall be prequalified as only 1 bidder which may act through an authorized representative.

(b) "Contractor" means a bidder that has been awarded a contract to perform construction, maintenance, or repair work for the department.

(c) "Day" means a calendar day.

(d) "Department" means the Michigan department of transportation.

(e) "Director" means the principal executive officer of the department.

(f) "Net financial rating" means the dollar amount equal to the bidder's overall financial rating less its work on hand.

(g) "Numerical rating" means the maximum dollar amount for a specific work classification for which a bidder may submit a bid.

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(h) "Overall financial rating" means the overall dollar amount for which a bidder is prequalified and represents the maximum amount of work in which the bidder may be engaged for any entity.

(i) "Prequalification appeal board" means 3 employees of the department who are assigned to consider and make the final decision of the department on an appeal of a prequalification decision under part 8 of these rules.

(j) "Prequalification application" means the forms developed by the department to elicit the information needed to prequalify bidders. The prequalification application for a specific bidder includes the forms and

the information and documentation provided by the bidder to obtain prequalification.

(k) "Prequalification committee" means a group of employees of the department who are assigned to review all bidders' prequalification ratings, as well as any performance issues of the contractors.

(l) "Prequalification manager" means the department employee assigned to perform the responsibilities of the prequalification manager as delegated to him or her under these rules. The prequalification manager may consult with other persons in carrying out the assigned responsibilities.

(m) "Prequalification review panel" means 3 employees of the department who are assigned to conduct informal review of a prequalification decision under part 8 of these rules in an effort to resolve the differences.

(n) "Work classification" means a specific category of work as defined in the prequalification application.

(o) "Work on hand" means the total uncompleted work for which the bidder is a prime contractor or subcontractor, excluding any work that the bidder has subcontracted to other contractors.

PART 2. PREQUALIFICATION COMMITTEE

R 247.21 General duties.

Rule 21.(1) The prequalification committee shall review the overall financial ratings, all classifications and numeric ratings of bidders for the department's construction, maintenance, or repair work.

(2) The 4 major factors used in arriving at these ratings are as follows:

(a) The bidder's financial resources and related information.

(b) The bidder's experience, including that of key personnel on work of a similar nature.

(c) The bidder's past performance.

(d) Availability of equipment and facilities which the bidder proposes to use on the department's work.

R 247.22 Action by prequalification committee.

Rule 22. (1) The prequalification committee shall review a bidder's application and other relevant information for any of the following:

(a) Initial prequalification.

(b) Renewal of prequalification.

(c) Reconsideration of prequalification previously granted, after receipt of information justifying an interim review.

(2) Based on the review, the prequalification committee shall determine and grant or renew numerical ratings, an overall financial rating, and work classifications for the bidder. The prequalification committee shall review the bidder's contractor performance evaluations for at least the last 2 years, if available, before granting or renewing prequalification.

(3) If the suitability of the bidder is determined to be unsatisfactory for the performance of the work and the continuance of the existing prequalification, the prequalification committee

may, at any time, deny an application or decrease, suspend, or revoke a bidder's overall financial rating or the numerical ratings on 1 or more of the work classifications, based on an evaluation of any of the following:

- (a) Amount and variety of construction experience.
 - (b) Quality of current and past work performance.
 - (c) Record of payments of accounts and claims.
 - (d) Organization and personnel.
 - (e) Availability of equipment.
 - (f) Financial resources.
 - (g) Record of contract scheduling and completion.
 - (h) Record of compliance with requirements of the contract provisions or federal, state, or local laws, regulations, or ordinances.
 - (i) Record of submittal of required documents.
 - (j) Compliance with any applicable provisions of these rules.
 - (k) Common ownership and control of bidding entity.
 - (l) Compliance with the bidder's equal employment opportunity policy.
- (4) The prequalification committee may refuse to consider an application that fails to provide all of the information required for the application or that does not comply with each provision of these rules.
- (5) Except as provided in subrule (9) of this rule, prior to any adverse action being taken against a bidder's prequalification ratings, the prequalification committee will provide the bidder with written notification of the intended adverse action, and an opportunity to meet with the committee to present additional information or otherwise show why the adverse action should not be taken.
- (6) The prequalification committee shall notify a bidder in writing of its final decision, including the bidder's overall financial rating, approved numerical ratings, and work classifications.
- (7) The prequalification committee may deny, decrease, suspend, or revoke the prequalification of a bidder who submitted a prequalification application or other information required under these rules that is false or misleading.
- (8) A decision by the prequalification committee shall be effective on the date specified in the decision, unless, for good cause shown, that date is altered under Part 8 of these rules.
- (9) An adverse decision that decreases, suspends or revokes a bidder's prequalification shall not be effective sooner than 14 days after the date of the decision, unless the committee finds that the public health, safety or welfare requires emergency action and incorporates that finding in its decision.
- (10) A bidder may submit an appeal of the prequalification committee's determination following the appeal procedure described in part 8 of these rules.

PART 3. INFORMATION FROM BIDDERS

R 247.32 Filing forms; statements; period of effect for prequalification; extension of filing time.

Rule 32. (1) The department is not required to consider a prequalification application unless it is submitted not less than 15 days before the date of bid submittal for a project on which the bidder desires to bid.

(2) The prequalification application shall include a financial statement as of the close of the bidder's most recent fiscal year, except as noted in R 247.32(4). An interim financial statement will not be accepted.

(3) An application for renewal of prequalification shall be submitted within 4 months after the close of the bidder's fiscal year, except as noted in R 247.32(4).

(4) Subject to its modification or revocation as provided in these rules, prequalification shall be in effect for 16 months from the date of the fiscal year end reported by the bidder, and on which prequalification is based, for those bidders who have an overall prequalification rating of less than \$10,000,000.00. For those bidders who have an overall financial rating

greater than \$10,000,000.00, prequalification shall be in effect for 28 months from the date of the fiscal year end reported by the bidder. Any significant changes must be reported in accordance with R 247.34(3). If the circumstances are found by the department to warrant more frequent review of a bidder's qualifications, the department may require any bidder to request prequalification on a yearly basis.

(5) A bidder may submit a written request for an extension of time to submit an application for renewal of prequalification. The request shall document the reason for the request. The request must be received on or before the bidder's expiration date. If approved, the extension shall not be for more than 60 days.

(6) A statement reporting work on hand shall be submitted as required by R 247.43.

R 247.34 Audit, review, and verification of the financial statements.

Rule 34. (1) A bidder applying for an overall financial rating of greater than \$2,000,000.00, in addition to

completing the financial statement portions of the prequalification application, shall submit a copy of its most recent audited financial statement as of the close of the bidder's fiscal year, which date shall be the same fiscal year date stated on the prequalification application. At a minimum, the audited financial statement shall include all of the following that reflect the accounting theory and practice employed by the bidder:

- (a) An independent certified public accountant's audit report.
- (b) A balance sheet.
- (c) An income statement.
- (d) A statement of cash flows.
- (e) Appropriate notes.

If the certified public accountant cannot express an opinion as to the overall fairness of the financial statement, the bidder's prequalification for work may be limited to \$2,000,000.00. If an opinion contains qualifications which are material in the judgment of the prequalification committee, the items may be disallowed for prequalification purposes.

(2) An overall financial rating of \$2,000,000.00 or less does not require submittal of an audited financial statement. Instead, a bidder may provide either a compilation report, or a review report prepared by an independent certified public accountant. With approval of the department, a bidder may provide a bank account balance verification prepared by the bidder's bank or banks, accounts receivable balance confirmations prepared by specified

debtors, or a subsequent receipts verification letter prepared by a certified public accountant. The determination of which report, or combination of reports, to be provided will be made solely by the department based upon the circumstances surrounding each request.

(3) A bidder shall immediately notify the department of any significant change in the information provided by the bidder to obtain prequalification.

(4) The information included as part of the prequalification application shall be sworn to before a notary public by an authorized officer, owner, or partner of the bidder.

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

(6) A bidder who changes its fiscal year shall submit an explanation for the change and the department shall review the explanation submitted. The department may request additional information if considered necessary.

The prequalification committee may deny or limit prequalification for any of the following reasons:

(a) If no explanation is submitted.

(b) If the additional information submitted is inadequate.

(c) If the change is determined by the department to impair the bidder's suitability for its prequalification.

(7) The department may request clarification and verification of any information submitted and, if necessary, examine the bidder's records and accounts.

(8) An independent certified public accountant under these rules shall not be a person otherwise employed by, or serving as an officer or director of, the bidder.

R 247.36 Statement of accounting method and basis.

Rule 36. (1) The prequalification application shall require a statement of the accounting method used by the bidder in keeping its financial records, including the basis (percentage of completion or completed contract method) followed in accounting for its construction contracts.

(2) A bidder accounting for its construction contracts on a basis other than the percentage of completion or the completed contract method shall obtain approval, in writing, by the prequalification committee, before submission of the bidder's prequalification application.

R 247.37 Supplemental statements.

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

(2) A bidder who maintains accounting records on an accrual basis using the completed contract method has the option of submitting a supplemental statement on the schedule provided in the prequalification application which adjusts the completed contract method to the percentage of completion method for prequalification rating. However, the bidder shall obtain approval of the prequalification committee to report using an accounting method other than the method used in maintaining its

accounting records. Once having exercised the option, the bidder shall not change the method of reporting without written approval by the prequalification committee.

R 247.38 Equipment, experience, and key personnel.

Rule 38. As part of the prequalification application, the bidder shall submit evidence of all of the following:

(a) The availability of equipment required to perform work in the classifications for which the bidder seeks approval.

(b) Experience of its key qualified personnel who will provide field supervision of the work in the classifications for which the bidder seeks approval.

(c) Experience of the company or principals of the company, or both, in the work classifications requested.

R 247.40 Audits; investigations; comparisons.

Rule 40. (1) The director or director's designee, may perform or designate auditors to perform audits of the financial records or investigate any items regarding prequalification of a bidder.

(2) The prequalification committee may cause comparative reviews to be made at any time between the bidder's prequalification application and any reports submitted by the bidder with other departments of the state based upon the bidder's financial records. The information obtained may be used to modify or revoke the bidders prequalification.

PART 4. NUMERICAL RATINGS

R 247.41 Factors applied to assets.

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

(a) Working capital, either positive or negative, multiplied by 9.

(b) Depreciation expense on construction and transportation equipment in the amount of 1½ 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 Ratings.

Rule 42. The overall financial rating is expressed as a number truncated to the number of thousands for purposes of identifying a numerical rating in any given work classification. For example, an overall financial rating of \$1,000,000.00 is converted to 1,000, a financial rating of \$1,105,000.00 is converted to 1,105, and a financial rating of \$10,000.00 is converted to 10. Bidders may be given a full numerical rating, which is equal to the bidder's overall financial rating, or a partial numerical rating, contingent upon the results of an evaluation of the bidder being made by the department under these rules.

R 247.43 Work allowed.

Rule 43. (1) A bidder desiring to bid on department projects shall submit to the department, on a department form, a statement reporting work on hand. The form shall be received in the department contract office in accordance with the schedule provided by the department. Bidders failing to submit the form with all required information, and as provided in these rules, are not eligible to bid.

(2) A bidder will not be permitted to bid on projects requiring a rating greater than its net financial rating.

(3) To determine a bidder's net financial rating, the department may make deductions from the dollar amount of the bidder's work on hand, to account for work that is scheduled to be performed in future years. Based upon current, approved or verified progress schedules, the department may, at the request of the bidder, deduct up to 50% of the dollar amount of work to be performed in years subsequent to the year when the project to be bid is to commence. The department is not required to make the deductions and will exercise its judgment in the review of progress schedules to assure that bidders have adequate net financial rating to bid and to perform the work.

R 247.48 Current asset accounts.

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

(a) Cash.

(b) Readily marketable securities; that is, 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) The following receivables:

(i) Billed or accrued trade accounts receivable less allowance for doubtful accounts. Receivables due from joint venture affiliates, officers, employees, affiliated companies and any related parties are also excluded from receivables.

(ii) Notes receivable, that is, notes due within 1 year, excluding notes due from officers, employees, affiliated companies, and any related parties.

(iii) Interest and dividends receivable, excluding interest or dividends due from affiliated companies, officers, employees, and any related parties.

(d) Cost of uncompleted contracts in excess of related billings.

(e) Inventories of construction materials and supplies on hand at cost or market value, whichever is less.

(f) Other allowable current assets such as any of the following:

(i) Bid deposits including bid deposits on joint bidding ventures.

(ii) Prepayments such as insurance, interest, taxes.

(iii) Cash surrender value of life insurance.

(iv) Other assets realizable within 1 year and a description.

R 247.49 Current liability accounts.

Rule 49. All of the following current liability accounts that are payable within 1 year will be used by the prequalification committee in determining the net working capital of a bidder:

- (a) Notes payable to banks.
- (b) Notes or contracts payable on construction equipment, except notes due officers, employees, affiliated companies, and any related parties.
- (c) Accounts payable to subcontractors and trade accounts, except accounts payable to officers, employees, affiliated companies, and any related parties.
- (d) Accrued expenses as follows:
 - (i) Include wages, payroll taxes, and fringe benefits.
 - (ii) Exclude interest payable to officers, employees, affiliated companies, and any related parties.
- (e) Taxes as follows:
 - (i) Federal income tax liability, including taxes applicable to income arising from conversion to the percentage of completion method.
 - (ii) State of Michigan income taxes, including taxes applicable to income arising from conversion to the percentage of completion method.
 - (iii) All other taxes.
- (f) Pension and profit sharing contributions payable.
- (g) Billings on uncompleted contracts in excess of related costs.
- (h) Current portions of mortgages payable.
- (i) Other liabilities payable within 1 year. The bidder shall provide a description of each such other liability.
- (j) Long-term unsecured liabilities as follows:
 - (i) An unsecured long-term liability shall be accompanied by a signed statement from the lender and the bidder indicating that a decrease in the long-term unsecured borrowing shall be reported to the prequalification committee immediately. In addition, the statement from the lender shall disclose the date of the loan, the termination date, a statement disclosing any conditions and whether it is interest or non-interest bearing. A note in the audited financial statement detailing the obligations related to construction equipment may be accepted by the prequalification committee in place of the signed statement, if the note is found to contain sufficient detail.
 - (ii) If a review of the statement or note as specified in paragraph (i) of this subdivision reveals that the unsecured liability could be payable within 1 year, it may be treated as a current liability for prequalification rating purposes. An unsecured long-term liability that is not accompanied by a statement or note as specified in paragraph (i) of this subdivision shall be considered a current liability for prequalification rating purposes.

R 247.50 Equipment.

Rule 50. (1) If a bidder owns new, used or rebuilt construction equipment, the purchase price will be allowed in computing the bidder's equipment value and be credited as a fixed asset. For each year after purchase of the equipment, the annual depreciation charge will be deducted from the purchase price in computing book value.

(2) At the written request of the bidder, the prequalification committee may consider the use of an appraised valuation but only when the appraisal is prepared and certified by an appraisal firm acceptable to the department. The appraisal shall be as of the close of the bidder's fiscal year and will be applicable for the prequalification rating period which applies for the

application with which it was submitted. The appraised value may be used as the basis for equipment value for a second year only if a statement is submitted by the independent certified public accountant who completed the audit or review and if the statement indicates that the equipment inventory items are the same as the items in the appraised inventory for the previous year or explains in detail any changes to the inventory. A bidder may compute the current value of equipment for the purpose of prequalification using the straight line method of depreciation if the bidder submits a schedule of depreciation in detail and form as required by the department together with the prequalification application.

(3) The value of the construction and transportation equipment for the purpose of computing the overall financial rating will be the book value of the equipment as shown under fixed assets less any long-term portion of notes or contracts payable on the equipment. If an appraisal is included with the prequalification application, the appraisal will be taken into consideration in the calculation of the equipment value by comparing the net book value to the appraised fair market value and the difference added to the net book value of the equipment. The value is then multiplied in accordance with R 247.41.

PART 5. CLASSIFICATION OF BIDDERS

R 247.51 Work classifications.

Rule 51. The department shall identify work classifications for which it is anticipating the need for bidders. The work classifications will be listed in the prequalification application. The bidder shall identify the work classification or classifications for which it is requesting prequalification when submitting a prequalification application.

R 247.52 Original and additional work classifications.

Rule 52. A bidder will be classified for types of work on the basis of its experience and resources at the time of filing the prequalification application. When additional experience or resources have been obtained, the bidder may submit information for consideration by the prequalification committee to add work classifications or increase a numerical rating.

R 247.53 Duplicate work classifications.

Rule 53. (1) A bidder shall indicate, on the prequalification application, whether the bidder is a partnership, a sole proprietorship, or a corporation. If the bidder is a corporation, the application shall include the names and addresses of all officers and directors. The application shall also include the names and addresses of all persons owning more than 10% of any class of stock in the bidder and in any other prequalified or prequalifying corporation and the nature of the interest shall be described. A bidder shall further disclose, on the prequalification application, the names, addresses, and assumed names of any owner, partner or holder of more than 10% of any class of stock that is acting under an assumed name. When a person is a director, partner, or officer, or has a financial interest in 2 or more bidders, the work classifications for which the bidders may be qualified shall not be duplicated, if the prequalification committee determines that the duplication would have a detrimental effect on the department.

(2) 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 become prequalified, the name of the other bidder shall be provided to the department and the nature of the interest shall be described.

PART 6. BIDDING

R 247.61 Bidding procedure.

Rule 61. (1) The department may disclose the engineer's estimate as a part of the advertisement of any project, or may withhold the engineer's estimate until the contract is awarded. To bid on, or receive award of, any project advertised by the department, the bidder shall be prequalified in the required prime work classification or classifications with a numerical rating and a net financial rating equal to or greater than the rating for the project. Ratings in the work classifications are not cumulative. If the department elects to withhold the engineer's estimate at the time of the advertisement, the department will limit bidding and consideration for possible award to only those bidders that have a numerical rating and a net financial rating equal to or greater than the engineer's estimate.

(2) The department will identify the required work classification or classifications when a project for bidding is advertised. If the work is not among the listed work classifications, the department may make a new or project specific evaluation of bidder qualifications to determine suitable bidders for the work, or may waive the prequalification requirement.

(3) A prequalified bidder who has a sufficient net financial rating and numerical rating and has met the requirements of R 247.43 as of the close of business on the day preceding the deadline for the submittal of bids is eligible to submit a bid.

(4) If a bidder is low on 2 or more projects, the total of which exceeds its net financial rating, the department shall select the project or projects for award to the bidder which will give the best financial advantage to the department.

(5) The department may decline to award a contract to a prequalified bidder, and award the contract to the next lowest responsive bidder, if proceedings have been initiated to reduce, suspend, or revoke the bidder's prequalification and the department determines that delay in awarding the contract would be detrimental to the public interest.

R 247.62 Joint bidding.

Rule 62. (1) Each bidder shall have a sufficient net financial rating to perform the work that it proposes to do. Two, but not more than 3, bidders may bid jointly on a project without declaring their intention to do so before the submittal of bids, if each bidder has a net financial rating and numerical rating equal to or greater than the total required for the project and has met the requirements of R 247.43. All other joint ventures shall request department approval to bid as a joint venture not later than 5:00 p.m. on the day preceding the letting date for which the request is being made.

(2) The joint venture request form shall identify one of the entities as having responsibility for overall administration of the project.

(3) All parties in a joint venture will be held accountable for appropriate execution of the contract.

(4) Each party in a joint venture may be subject to changes in its overall financial rating or numerical ratings, or both, in accordance with R 247.22.

PART 8. APPEAL OF PREQUALIFICATION DECISIONS

R 247.81 Informal meeting with prequalification manager.

Rule 81. (1) A bidder may submit a written request, within 14 days after the date of a decision to deny, decrease, suspend, or revoke prequalification, for a meeting with the prequalification manager to discuss the decision and to seek its modification.

(2) If the bidder fails to submit a written request for a meeting in a timely manner, then the decision of the prequalification committee is final and not subject to further contest or appeal.

(3) If a meeting is requested in a timely manner, then the prequalification manager shall meet with the bidder to seek a resolution of the differences. The prequalification manager may have other department employees or representatives attend and participate in the meeting. The prequalification manager may seek agreement on an improvement plan.

(4) After the meeting and any further review by the prequalification manager, in consultation with department employees or representatives, the prequalification manager shall make a decision on the appeal and give the bidder written notice of the decision. The prequalification manager may impose an improvement plan as part of the decision.

R 247.82 Informal review of the prequalification decision; review panel.

Rule 82. (1) A bidder may submit a written request, within 14 days after a final decision under R 247.81, for a meeting with the prequalification review panel to discuss the decision of the prequalification manager and to seek its modification by the panel.

(2) If the bidder fails to submit a written request for a meeting in a timely manner, the decision of the prequalification manager is final and not subject to further contest or appeal.

(3) If a meeting is requested in a timely manner, the review panel, comprised of 3 staff appointed by the department director, shall meet with the bidder and conduct an informal inquiry and review of the prequalification decision and its basis. The review panel may seek agreement on an improvement plan.

(4) If an agreement is not reached, the panel may modify, confirm, or impose an improvement plan as part of its decision. The panel shall make its decision after the meeting and any further review and consultation with department employees and representatives.

(5) The panel shall give the bidder written notice of its decision within 30 days of the final meeting with a bidder.

R 247.83 Appeal to prequalification appeal board.

Rule 83. (1) A bidder may submit a written appeal to the prequalification appeal board within 14 days after a decision under R 247.82.

(2) A contested case hearing shall then be scheduled and conducted in accordance with 1969 P.A. 306, MCL 24.201 et seq.

(3) An administrative law judge will conduct the hearing and may choose to consult with the board during the course of the proceedings. The administrative law judge shall prepare a

proposal for decision, for approval and issuance by the board. The board retains the authority to decide any disputed issue.

(4) The decision of the prequalification appeal board constitutes the final decision of the department. An appeal may be submitted in a timely manner from an adverse decision under section 103 of 1969 P.A. 306, MCL 24.303.