

Rules and Regulations for Prequalifications of Contractors



Commonwealth of Kentucky
Transportation Cabinet
Division of Construction Procurement
Frankfort, Kentucky

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Rules and Regulations

relating to the

Prequalification

of

Contractors

Prequalification Rules and Regulations

TRANSPORTATION CABINET
Department of Highways

603 KAR 2:015 Prequalification for construction; certificate of eligibility

RELATES TO: KRS 176.130 to 176.220, KRS 45A.245 and 176.909-176.110

STATUTORY AUTHORITY: KRS 174.080,176.140

NECESSITY, FUNCTION and CONFORMITY: KRS 176.140 authorizes the Department of Highways to determine the eligibility of bidders for construction contracts with the department. This administrative regulation is promulgated to provide a method by which the determination shall be made.

SECTION 1

(Relates to Section 2 of 603 KAR 2:015)

Certificate of Eligibility

- (1)
 - (a) A contractor bidding on a construction or maintenance project or accepting a subcontract on a construction or maintenance project of the Transportation Cabinet, Department of Highways, shall be prequalified and possess a certificate of eligibility issued by the department to bid on construction projects.
 - (b) The certificate shall state the maximum eligibility amount and types of work for which the contractor is qualified.
 - (c) The department may waive this requirement on a project not specifically involving the construction or maintenance of a public road in connection with the letting of a contract if the requirement is not mandated by KRS 176.130. The waiver shall be contained in the notice to contractors and the bid proposal for the project.
- (2) The Commissioner of Highways shall appoint a construction prequalification committee composed of department employees to review each application and make a

recommendation to the State Highway Engineer concerning the eligibility of a contractor to bid on a department construction or maintenance contract.

SECTION 2
(Relates to Section 3 of 603 KAR 2:015)
Application for Certificate of Eligibility

A contractor desiring to procure a certificate shall submit, on the application and financial statement form(s) *TC 14-1, Application for Certificate of Eligibility, September 1995 edition* provided by the department, information relating to the following:

- (1) Ability to perform the types of work for which eligibility is requested.
- (2) Construction experience resumes of the principal officers and key personnel of the contractor.
- (3) Description of plant and equipment.
- (4) Balance sheet and financial statement prepared as of the close of the last fiscal year or to reflect the current financial status of a newly established contractor.
 - (a) The financial statement of an applicant desiring eligibility in excess of \$1,000,000 shall be audited and attested by an independent public accountant or certified public accountant who holds a valid registration card from the Kentucky State Board of Accountancy or a registration card in the state in which the principal officer of the contractor is located. The audit shall be made in accordance with the generally accepted auditing standards adopted by the membership of the American Institute of Certified Public Accountants. Standard audit forms and procedures shall conform with the institute's recommendations for the audit program of contractors. The accountant shall also comply with the specific instructions relative to the presentation of supporting detail requested by the department to determine the amount of net current assets available.
 - (b) The financial statement of an applicant desiring eligibility of \$1,000,000 or less shall be signed by the person preparing the statement and by a principal officer of the contractor.
- (5) A Certificate of Authority if required by KRS 176.150(4).

SECTION 3
(Relates to Section 4 of 603 KAR 2:015)
Confidentiality of Financial Information

In order to comply with KRS 61.878(1)(c) and KRS 176.210 the department shall not make available to the public the application information required in subsections (3) and

(4) of Section 3 of this administrative regulation.

SECTION 4

(Relates to Section 5 of 603 KAR 2:015)

Method of Computing Maximum Eligibility Amount

- (1)
 - (a) The allowable net current assets as determined from the financial statement plus the cash surrender value, less loans, of life insurance on which the applicant is the beneficiary (exclude all policies with other beneficiaries) shall be multiplied by a factor of twelve (12) to establish the net current assets factor.
 - (b) The book value of owned equipment shall be multiplied by a factor of six (6) to establish the equipment factor.
 - (c) The equipment factor shall be added to the net current assets factor to determine the maximum capacity factor of the contractor.
- (2) The contractor's percentage rating shall be established by the department by evaluating the contractor's organization and experience, plant and equipment and performance in accordance with the following maximum percentages:
 - (a) Organization and experience-twenty (20) percent;
 - (b) Plant and equipment-thirty (30) percent;
 - (c) Performance-fifty (50) percent.
- (3)
 - (a) The maximum eligibility amount shall be determined by multiplying the contractor's percentage rating and the maximum capacity factor.
 - (b) A contractor's current eligibility amount shall be the net difference between the contractor's maximum eligibility amount as shown on the certificate of eligibility issued by the department and the total value of uncompleted prime contract work charged to the contractor regardless of its location and with whom it may be contracted.

SECTION 5

(Relates to Section 6 of 603 KAR 2:015)

Issuance of Certificate of Eligibility

- (1)
 - (a) The Construction Prequalification Committee shall review each application for a certificate of eligibility and make a recommendation of eligibility to the State Highway Engineer.
 - (b) The State Highway Engineer shall issue a determination of eligibility within thirty (30) days after receipt of the application unless the application is deferred as

provided in Section 7(3) of this administrative regulation.

- (c) Upon receiving a separate written request from a contractor not prequalified with the department indicating its intent to bid on a specific federal-aid project which has been advertised for a bid opening within the thirty (30) day period, the department shall review the application and make a determination of eligibility within fifteen (15) calendar days.
- (2) A certificate of eligibility shall terminate 120 days after the end of the applicant's fiscal year unless the certificate is suspended or revoked prior to that time. Ninety (90) days of this period is to permit the applicant to file a new application in accordance with Section 3 of this administrative regulation, thirty (30) days is for the department's review of the application and, if approved, the issuance of the new certificate of eligibility.
 - (3) The certificate of eligibility in effect as of the bid opening date shall constitute the basis for determining the eligibility of a bidder.
 - (4) An applicant may, in regard to the department's decision on its application:
 - (a) Request reconsideration of the department's decision in accordance with Section 7 of this administrative regulation; or
 - (b) Appeal the department's decision in accordance with Section 10 of this administrative regulation.

SECTION 6

(Relates to Section 7 of 603 KAR 2:015)

Reconsideration of Decisions of Construction Prequalification Committee

- (1)
 - (a) An applicant may at any time request reconsideration of an application if the applicant is denied a certificate of eligibility or disagrees with the maximum eligibility amount or the types of work set forth in its certificate of eligibility by notifying the department in writing. An applicant may also request reconsideration of a department decision to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount if the request is submitted in writing within ten (10) days after receipt of the notice of the Department's action.
 - (b) A request for reconsideration shall clearly state the basis of the request and be supported by information and evidence which indicates why a certificate of eligibility should be issued or why the certificate of eligibility should be amended.
 - (c) The Construction Prequalification Committee shall review the request, may contact the applicant for clarification or expansion of the submitted information and shall make recommendation to the State Highway Engineer.
 - (d) The Department of Highways shall notify the applicant of its determination within thirty (30) days after receipt of the request for reconsideration.
 - (e) If the Department of Highways does not concur with the reconsideration

request of the applicant, the applicant shall be notified of his right to an administrative hearing pursuant to Section 10 of this administrative regulation.

- (2) An applicant denied a certificate of eligibility may submit a new application when factors constituting the basis for the issuance of a certificate of eligibility warrant reconsideration. The department shall consider the new application and notify the applicant of the action taken within thirty (30) days after receipt of the application.
- (3)
 - (a) An application which is deferred by the department until the applicant settles outstanding debt to the Commonwealth, completes a project, or satisfies prior concerns about work performance on a project shall remain in the possession of the department until the time that the reason for deferral is resolved to the satisfaction of the department.
 - (b) The department shall then take action on the deferred application to issue or deny a certificate of eligibility.
 - (c) The applicant submitting an application, which is deferred, shall be notified of the deferral within ten (10) days after action is taken by the department to defer the application. The applicant shall be notified pursuant to Section 10 of this administrative regulation of his right to an administrative hearing regarding the deferral.
- (4) An interim application may be submitted when there has been a substantial increase in the net current assets of the applicant if the contractor wishes to apply for an increase in the maximum eligibility shown on the certificate of eligibility. The interim application shall contain a financial statement certified in the same manner as statements prepared as of the close of the fiscal year. The department shall review the interim application and notify the applicant of its determination within thirty (30) days after receipt of the application.
- (5) A certificate holder, upon receipt of a certified mail request from the department, shall submit an interim financial statement or current information relating to the applicant's organization, equipment and work status. The information requested shall be submitted within thirty (30) days after receipt of the request. Failure to provide the information requested shall constitute a basis for the suspension or revocation of a certificate of eligibility.
- (6) An applicant may request an administrative hearing when denied a certificate of eligibility, when his application is deferred, or when the applicant disagrees with the maximum eligibility amount or the types of work set forth in its certificate of eligibility by notifying the department in writing within ten (10) days after receipt of its denial or certificate of eligibility. The department shall hold an administrative hearing pursuant to the provisions of Section 10 of this administrative regulation.

SECTION 7
(Relates to Section 8 of 603 KAR 2:015)
Revocation of Certificate of Eligibility or Reduction
of Maximum Eligibility Amount

- (1) Upon receipt of information or evidence that a holder of a certificate of eligibility has failed to perform satisfactorily or adhere to the laws, administrative regulations, or specifications applicable to a contract or subcontract, the department may take action to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount.
- (2) A notice to the certificate holder, setting forth the grounds on which the action is proposed shall be sent by certified mail.
- (3) The proposed action shall become final unless the certificate holder submits a written request for a reconsideration pursuant to Section 7 of the administrative regulation or an administrative hearing within ten (10) days after receipt of the notice.
- (4) If the certificate holder requests an administrative hearing, the department shall hold the hearing in accordance with the provisions of Section 10 of this administrative regulation.

SECTION 8
(Relates to section 10 of 603 KAR 2:015)
Hearing Procedure

- (1) All requests for an administrative hearing pursuant to the provisions of this administrative regulation shall be in writing and mailed to the Commissioner, Department of Highways, Kentucky Transportation Office Building, 200 Mero Street, 6th Floor, Frankfort, Kentucky 40622.
- (2) Upon receipt of a request for an administrative hearing, the Commissioner shall proceed in accordance with the provisions of KRS Chapter 13B.

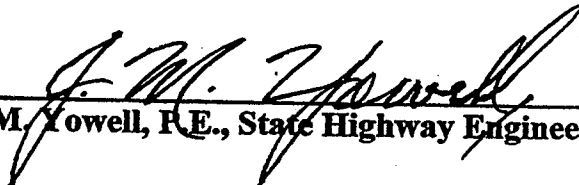
APPROVED AS TO FORM AND LEGALITY:



James R. Wood, General Counsel

9/22/04
Date

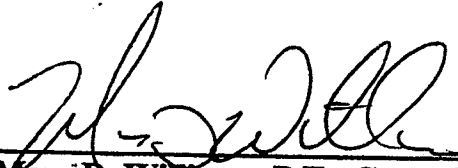
APPROVED:



J.M. Yowell, P.E., State Highway Engineer

9/22/04
Date

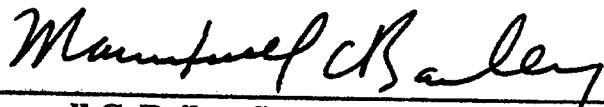
APPROVED:



Marc D. Williams, P.E., Commissioner of Highways

9/23/04
Date

APPROVED:



Maxwell C. Bailey, Secretary of Transportation

9-22-04
Date