



## **Pre-qualification for Construction Services Using a Qualifying System in Publicly Bid Projects**

### **Introduction:**

Pre-qualification provides a formal, comprehensive method of identifying companies that meet certain criteria through a uniform rating system either prior to the issuance of invitations for bids or prior to the receipt of bids. This brochure discusses why a prequalification system will benefit your company, what criteria should be used for prequalification, and how prequalification is impacting the construction industry.

A task force of construction professionals representing prime, general contractors, subcontractors, and material/equipment suppliers prepared the contents of this brochure. As this task force included companies with many years of experience in multiple construction disciplines, the information regarding the benefits of using a properly designed prequalification system to minimize risk and maximize profits is well tested.

### **Background:**

Pre-qualification is generally held as an acceptable and legal method of determining a list of firms that possess the qualifications to perform work on a specific project in the public bidding arena. Local bidding and procurement regulations may impact pre-qualification systems and should be reviewed by the owner of the construction project prior to implementing a pre-qualification process.

The benefits of using qualifying systems are equal at all levels of a construction project. Owners, often state and local governmental bodies, may use pre-qualification systems to identify qualified general contractors and subcontractors. In turn, general contractors and subcontractors may use pre-qualification systems to qualify suppliers and lower tiered subcontractors who meet the necessary criteria.

### **Pre-Qualification Considerations:**

The concept of pre-qualification of contractors is not new and has become increasingly popular in recent years. Pre-qualification is sometimes considered an alternative contracting method in that it varies from the long standing method of competitive bidding used by public agencies to procure fixed-price construction contracts. This traditional approach involved a contractor providing a bid to complete the designated work and a statement of qualifications. In this scenario, the owner evaluates a bidder's responsiveness and responsibility after it receives the bid. Prequalification, however, allows an owner or contractor to determine responsibility primarily and separately from the bid process. If an entity does not achieve prequalification, it is excluded from bidding for the contract.

Utilizing a prequalification program accomplishes more than change the order of when responsibility is determined and achieved. There are four basic notions that create the foundation for a successful pre-qualification program:

**The Substantial Benefits for All Involved in the Construction Process:**

Pre-qualification comprehensively addresses the needs and expectations of all parties involved in the construction process. No one is well served when an inexperienced contractor takes on a scope of work for which it is not qualified, when a contractor who can demonstrate its qualifications is not awarded the contract, or when an owner is forced to pay for remediation that delivers the project late and over budget.

**Owners Expectations are Clarified and Met in an Objective Manner:**

Pre-qualification systems allow an owner to clarify its expectations for the contractor, subcontractors, and suppliers.

**Communication/Feedback is Essential:**

The pre-qualification processes should be based on qualitative/quantitative criteria. Information that is subjective should not be used to pre-qualify a company. State and local law may impact the pre-qualification process and the information that can be used to make the final decision to allow a firm to submit a construction bid. For example, in publicly owned projects where pre-qualification is used to determine the list of contractors bidding a project, the final decision on awarding the contract should be based on the competitive bid process. In private or negotiated work, the owner may make a final decision on the contractor based on subjective criteria (the owner's preference). The same concepts apply to general contractors who pre-qualify subcontractors. In all cases, feedback is critical to the pre-qualification process. Owners and contractors should communicate why a contractor was or was not selected since this information will assist the pre-qualifying firms in improving their capabilities and standing to pre-qualify for future projects.

**Pre-qualification Does Not Include Final Contractor Selection:**

The contractor selection process is completed in two steps: first, pre-qualification and then selection. Pre-qualifying contractors results in a "short list" of firms to be considered or allowed to bid on a project. The second step, the selection of the contractor, should be based on the competitive bid process where the lowest qualified and responsible bidder is selected. Pre-qualification should not be used as the single method of making the final selection of a firm.

**Types of Pre-Qualification**

Creating a pre-qualification system requires consideration of context of the entity's needs. For example, will the contract or project be limited to only prequalified companies or can any company – prequalified or not - bid. In addition, the pre-qualification questions should be project or trade specific.

**Elements of a Pre-qualification System:**

Pre-qualification systems may be known or referred to by several different names including, but may not be limited to, a pre-qualification questionnaire, a request for qualifications (RFQ), and a qualifications statement. While the variety of labels is extensive, there is little legal authority to provide assistance in structuring, implementing, and defending a prequalification program.

Prequalification criteria should be determined by the owner and address quality, performance, cost of oversight, timely completion, performance aptitude, and any additional factors that the owner deems significant which do not impair competitive business practices. Any joint venture, despite each separate entity prequalifying, should attain separate prequalification. All pre-qualification systems should be designed to be objective rather than subjective in their evaluation process. Many pre-qualification statements use a point system to rate the qualifications of each applicant for each element being

considered. The method of evaluating the qualifications of a firm should be clearly documented in the general information or instructions to the applicant included with the pre- qualifications questionnaire.

Since any prequalification of a company expires at a date certain, renewal applications with supporting documents and affidavits should be submitted as required.

The owners' expectations for the construction process and the final construction product should be well defined and documented in the instructions to the applicant.

The design of a pre-qualifications system should place an emphasis on qualifying construction service providers, rather than on disqualifying firms.

A well-conceived, pre-qualifications system should clearly define the qualifying criteria desired, the manner in which such factors will be measured, and a clear process for appealing unfavorable determinations. Communication is essential in any qualifying process. Applicants need the ability to get answers to questions and clarifications that will result from the information requested. In order to implement a fair and objective process, the qualifying agency may need to relay answers to questions or clarifications to all applicants. Clear documentation of the evaluation process must be communicated to applicants who do not qualify to avoid the appearance of subjectivity in the process and to assist the applicant in developing their resources for future projects.

In the design of a pre-qualifications system for publicly bid construction services, the following elements should be included and considered to ensure a fair and objective measure of the applicant's qualifications:

**Experience:** The contractors' direct or relevant previous experience in completing similar work.

**Resources:** The amount of resources the project will require compared to the total resources the contractor has available. Resources include: financial, manpower, lists of management personnel, backup management personnel, resumes, key personnel lists, equipment, bonding and insurance capacity, information/communication systems used, and the capacity to complete the work.

**Litigation:** The past and current status of litigation, claims, and conflict resolution.

**Safety Qualifications:** The Company's safety record, training programs, awards, OSHA logs, and EMR (Experience Modification Rating Factor) provide a starting point.

#### **Expected Benefits Realized from a Pre-Qualification Process:**

Risk is an inherent element of all construction projects. Each project provides an opportunity of late completion, of cost over-runs, and of inferior quality. The objective of pre-qualification systems is to mitigate as many of these risks as possible. A properly designed pre-qualification system, along with a fair and objective evaluation process, will result in a list of qualified, well informed service providers who can meet the expectations for the project.

#### **Recent Trends in Pre-qualification:**

Recent trends indicate that public owners are using pre-qualification systems to qualify construction

providers. However, there are instances where the qualifying system may not be objective and fair in evaluating prospective firms. These subjective and discriminatory systems will have negative impacts on all parties to this process. Public owners, while their intentions may be good, will place themselves in a position of having a list of providers that contains only overly qualified companies and excludes competent firms. The result will be increased costs and problems. Either way, the owner and the industry are not well served.

While it is enviable to approach the pre-qualification process with lengthy considerations, courts have held some factors to be too subjective or unfair. For example, Pre-qualification statements that require applicants to have completed a project of the same or greater dollar value than the proposed project are seen as short sighted. A better evaluation method is to consider the experience of the contractor and the resources the firm will commit to the project. Many times firms have completed similar or more complex projects and can offer a greater range of services than to consider firms simply on the dollar value of projects previously completed.

Some pre-qualification processes attempt to evaluate the history of timely completion. This factor may appear to be relevant in projects that are time sensitive; however, there are other, more appropriate criteria available to determine a firm's ability to perform in a timely manner. For example, the amount of resources the firm proposes to dedicate to the project is possibly the best indicator of timely completion since construction projects are susceptible to outside influences that can effect timely completion, including weather, availability of materials, and labor influences. If the contractor is able to commit the proper amount of resources coupled with the proper experience, completing a project on time will be accomplished.

Safety is a key factor in the success of all construction projects and owners should evaluate the safety record of prospective companies; however, asking a firm to quantify the number of accidents it has encountered is misleading. A better tool to evaluate a contractor's safety record is through the firm's EMR (Experience Modification Rating Factor). The EMR will allow firms to be compared on equal footing using an objective and recognized evaluation tool.

### **Standardizing the Process and Recommended Forms:**

One of the hurdles in implementing a successful pre-qualification is the lack of a standardized form. While some companies choose to use web-based nationwide registries that provide prequalification services, these large scale databases may not consider unique factors to the project and may exclude smaller, qualified firms that choose to not pay the associated fees for inclusion.

Ideally, a standardized prequalification questionnaire and quantified point system would be mandated by the State's legislature. For example, the State of California provides an outline of model pre-qualification documents which conform to California's laws. In England, pre-qualified companies are identified in a government-owned register at [constructionline.co.uk](http://constructionline.co.uk). The recently authorized national contractor misconduct database mandated by the 2008 National Defense Authorization act may also offer a powerful tool.

In balancing the goals of simplicity, accessibility, and comprehensiveness, the Associated General Contractors of America and the American Institute of Architects have developed standard prequalification statements and forms. The following documents are recommended for use or as models when developing a custom program: AGC Document No. 221, Contractor's Statement of Qualifications for a

Specific Project, AIA Document A305, Contractors Qualification Statement, and AGC Document No.421 Design-Builder's Statement of Qualifications for a Specific Project and AIA/AGC Recommended Guidelines for Procurement of Design-Build Projects in the Public Sector. To obtain copies of these documents contact Carolinas AGC at 704.372.1450 and ask for standard contract documents.

**Conclusion:**

Developing a fair and objective pre-qualification application is critical to the success of the pre-qualification system. Public owners should always maintain the goal of qualifying, not disqualifying, firms. Firms who are not suited for a particular project should be informed and told why they do not qualify so they can use that information to improve their business and become a better partner in the construction industry..

Carolinas AGC stands ready to assist any public owner in the development of an objective pre-qualification system.

**Need More Information:**

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