**600 KAR 6:040. Prequalification of firms for engineering or engineering-related services.**

RELATES TO: KRS Chapter 11A, 45A.800-45A.838, 121.056(2), 23 C.F.R. 172, 49 C.F.R. 18, 23 U.S.C. 112(b)(2)

STATUTORY AUTHORITY: KRS 45A.807(2), 45A.838

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering or engineering-related services pursuant to KRS 45A.800 to 45A.838. KRS 45A.838 requires the cabinet to promulgate administrative regulations designating the type of project and a prequalified pool of firms established for each particular project. This administrative regulation establishes the procedure and standards for the prequalification of firms for engineering or engineering-related services while implementing the provisions of KRS 45A.800 to 45A.838.

Section 1. Application for Prequalification of Engineering or Engineering-Related Services.

(1) A firm applying for prequalification shall complete one (1) or more of the following forms as applicable to the categories for which prequalification is desired:

(a) Consulting Engineer and Related Services Prequalification Application, TC Form 40-1;

(b) Prequalification Requirements for Geotechnical Drilling Services, TC Form 66-209;

(c) Prequalification Requirements for Geotechnical Engineering Services, TC Form 66-210; or

(d) Prequalification Requirements for Geotechnical Laboratory Testing Services, TC Form 66-211.

(2)

(a) A firm desiring to be considered for an award as a prime shall provide:

1. An original certificate of a continuous professional liability policy in an amount not less than $1,000,000 with the application established in subsection (1) of this section; and

2. Proof of current Kentucky workers compensation insurance coverage.

(b) A certificate of self-insurance shall not be accepted by the Transportation Cabinet.

(3) The completed prequalification form established in subsection (1) of this section and original certificate of a continuous professional liability policy shall be submitted to the Division of Professional Services, Transportation Cabinet Office Building, 200 Mero Street, Frankfort, Kentucky 40622.

(4) If a prequalified firm ceases to exist or ceases to provide engineering services as a prime, it shall continue to maintain a minimum of $1,000,000 in professional liability insurance for a project that was designed by the firm for two (2) years beyond the date the project was opened to traffic.

(5) In order to submit a proposal to the cabinet on a project, a firm shall file the proof of professional liability insurance required by subsection (2)(a) of this section.

Section 2. Evaluation of Applications for Prequalification.

(1) Each firm's qualifications for a requested prequalification category shall be reviewed by the offices or divisions within the cabinet that have expertise in the requested prequalification category.

(2) The Division of Professional Services shall review and maintain the original certificate of continuous professional liability policy for a firm desiring prequalification as a prime.

(3) The criteria for prequalification to be used by the user divisions and offices shall be the criteria established in the Procedures for Updating Prequalification for Engineering and Engineering-Related Services with the Department of Highways, located on the cabinet's Web site.

(4) The head of the user division or office shall notify the Division of Professional Services of its evaluation results.

(5)

(a) The Transportation Cabinet shall verify the financial and other information included in the application established in Section 1(1) of this administrative regulation from a firm if it is necessary to substantiate the information required by the prequalification criteria.

(b) Verification shall be accomplished in the same manner as an audit performed pursuant to 600 KAR 6:080.

(6)

(a) The Division of Professional Services shall notify each firm of the evaluation results involving that firm.

(b) If a firm is disapproved for a requested prequalification category or service, the firm shall be notified of the appeals procedure established in Section 6 of this administrative regulation.

Section 3. Annual Requalification.

(1) A prequalified firm shall annually submit the following to the Division of Professional Services on or prior to its anniversary date of prequalification:

(a) An Application for Prequalification for Engineering or Engineering-related Services with a qualification questionnaire pertaining to the categories for which requalification is desired; and

(b) An original certificate of continuous professional liability policy in an amount not less than $1,000,000.

(2) A firm that is a prime or subconsultant in the current year or during the previous calendar year shall submit an overhead submission package within five (5) months of the end of the firm's fiscal year.

(3) The overhead submission package shall include the business records established in paragraphs (a) through (g) of this subsection:

(a) Schedule of Indirect Costs;

(b) Schedule of Employees, Pay Rates, and Job Classifications;

(c) Payroll register for the current year;

(d) Detailed General Ledger for the fiscal year;

(e) Audited Financial Statement for the fiscal year or a financial statement certified as accurate by an officer of the company;

(f) Certification of final indirect costs; and

(g) AASHTO Internal Control Questionnaire for Consulting Engineers.

(4)

(a) In even calendar years, the annual application, Consulting Engineer and Related Services Prequalification Application, TC Form 40-1, shall include a completed set of the applicable qualification forms and a copy of the firm's current marketing brochure, if a brochure exists, for each functional area for which the firm is requesting prequalification.

(b) In lieu of Consulting Engineer and Related Services Prequalification Application, TC Form 40-1, in odd calendar years a firm may submit a letter that certifies that substantial changes have not occurred.

(c) If a substantial change has occurred, or if the firm is requesting prequalification for an additional area, the firm shall submit Consulting Engineer and Related Services

Prequalification Application, TC Form 40-1.

(5) Failure to submit the applicable forms required in Section 1(1) of this administrative regulation or the original certificate of a continuous professional liability policy by the firm's renewal date shall cause the removal of the firm's prequalification status.

(6) The annual renewal application shall be evaluated in accordance with the requirements of Section 2 of this administrative regulation.

Section 4. Changes in Firm.

(1) A prequalified firm shall notify the Division of Professional Services of:

(a) A major change increasing or decreasing the firm's professional or financial qualifications, capabilities, or personnel; or

(b) A change in the:

1. Address of the firm;

2. Name of the firm;

3. Continuous professional liability policy on file with the Division of Professional Services; or

4. Firm's qualifications related to criteria established in Procedures for Updating Prequalification for Engineering and Engineering-Related Services with the Department of Highways.

(2) The user division or office shall review the updated information received from the firm and shall reclassify the firm with respect to types of work and capacity.

Section 5. Removal from List of Prequalified Firms.

(1) A firm may be removed from the list of prequalified firms by the Consultant Prequalification Committee for one (1) of the following reasons:

(a) Failure to submit Consulting Engineer and Related Services Prequalification Application, TC Form 40-1, on the firm's renewal date;

(b) Falsification of the firm's prequalification application as to its qualifications;

(c) Falsification of the firm's response to announcement of a project;

(d) Violation of the Executive Branch Ethics Law contained in KRS Chapter 11A;

(e) Falsification of the information provided to the Transportation Cabinet for audit purposes;

(f) Failure to have a current license from the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors;

(g) Failure to notify the Transportation Cabinet within thirty (30) days of the loss of personnel that impacts the firm's prequalification or project management;

(h) Violation of the firm's certification that the firm's owner, principals or partners, or a family member having an interest of ten (10) percent or more in a business entity involved in the performance of the contract have not contributed more than the amount established in KRS 121.056(2) to the gubernatorial campaign of the current governor;

(i) Failure to maintain with the Division of Professional Services a current certificate of a continuous professional liability policy in an amount not less than $1,000,000;

(j) Failure to annually submit an up-to-date overhead submission package to the Division of Audit Services in accordance with Section 3(2) of this administrative regulation;

(k) Failure to perform on a project; or

(l) Failure to provide the information required by 600 KAR 6:080.

(2) The chairperson of the Consultant Prequalification Committee established in KRS 45A.825 shall notify the firm in writing of its proposed removal from the list of prequalified firms, the reason for the proposed removal, and the appeals procedure established in Section 6 of this administrative regulation.

Section 6. Appeal Procedure for Firms Not Prequalified or Removed from Prequalified List.

(1) The cabinet shall establish a permanent Consultant Prequalification Committee to evaluate the statements of qualifications of firms that appeal a disapproval rating or removal from the list of prequalified firms.

(2) The members of the Consultant Prequalification Committee shall be the following, or the member's designee:

(a) Director, Division of Professional Services, Chairperson;

(b) Director, Division of Traffic Operations;

(c) Director, Division of Highway Design;

(d) Director, Division of Structural Design;

(e) Director, Division of Materials;

(f) Director, Division of Planning;

(g) Director, Division of Environmental Analysis;

(h) Director, Division of Maintenance; and

(i) Director, Division of Construction.

(3) An appeal of the disapproval of a prequalification category shall be made as established in Section 2 of this administrative regulation.

(4) An appeal of the removal from the list of prequalified firms shall be made pursuant to Section 5 of this administrative regulation.

(5) An appeal shall be made in writing to the Chairperson of the Consultant Prequalification Committee within thirty (30) days of notification of the action of the Transportation Cabinet.

(6) The basis of the appeal and the relief sought shall be stated in the written communication to the chairperson.

(7)

(a) Within sixty (60) days from receipt of an appeal, the committee members or their designees shall review the appeal and make a decision regarding the appeal.

(b) If the firm agrees, the committee may delay its decision for an additional sixty (60) days while the committee meets with the firm to discuss the appeal.

(8) The committee shall notify the State Highway Engineer and the firm of its decision.

(9) If the firm's appeal is denied by the committee, the firm may appeal the decision within thirty (30) days of written notice relating to:

(a) Nonqualification to the State Highway Engineer; or

(b) Removal from the cabinet's list of prequalified firms to the Secretary of the Transportation Cabinet.

(10) The State Highway Engineer or Transportation Cabinet Secretary shall notify the firm of his or her decision within thirty (30) days. The decision of the State Highway Engineer or Transportation Cabinet Secretary shall be final.

Section 7. Conditional Prequalification.

(1) The user division, office, or Consultant Prequalification Committee may grant conditional prequalification if a firm:

(a) Has no direct highway or transportation experience but has identified personnel who have technical training, education, and other types of experience that may allow the firm to perform the required services; or

(b) Performed poorly on past projects for the cabinet or has been removed from the list of prequalified firms for performance-related reasons and has restructured itself to address the problems.

(2) After the firm has performed services for the cabinet in the category of work for which it was conditionally prequalified, it may request a prequalification determination from the committee. The request for a prequalification determination shall be in accordance with Section 1 of this administrative regulation.

(3) Denial of conditional prequalification of a firm to perform services for the cabinet shall not be appealed.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Consulting Engineer and Related Services Prequalification Application", TC 40-1, August, 2013;

(b) "Prequalification Requirements for Geotechnical Drilling Services", TC Form 66-209, January, 2014;

(c) "Prequalification Requirements for Geotechnical Engineering Services", TC 66-210, January, 2014;

(d) "Prequalification Requirements for Geotechnical Laboratory Testing Services", TC 66-211, January, 2014;

(e) "AASHTO Internal Control Questionnaire for Consulting Engineers", 2012 edition, AASHTO Web site, http://audit.transportation.org/Documents/UAAG-3%20FINAL.pdf; and

(f) "Procedures for Updating Prequalification for Engineering and Engineering-Related Services with the Department of Highways", Transportation Cabinet Web site, http://transportation.ky.gov/Professional-Services/Documents/Prequalification,%20Criteria%20and%20Instructions.pdf, November 7, 2013

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Professional Services, Transportation Cabinet Office Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(22 Ky.R. 1407; 1626; 1840; eff. 4-5-1996; 24 Ky.R. 1375; 1691; eff. 2-19-1998; 29 Ky.R. 1876; 2672; eff. 5-15-2003; 33 Ky.R. 544; 1309; eff. 11-9-2006; 40 Ky.R. 2355; eff. 7-1-2014; TAm eff. 1-5-2015; Crt eff. 4-1-2019; Crt eff. 3-20-2026.)