

VENDOR PREQUALIFICATION 220-RICR-30-00-4

PUBLIC COMMENTS

Received from the Office of Diversity, Equity & Opportunity

1) We have concerns that the threshold [in § 4.6(A)] is too low and may well have a negative impact on MBEs. Our request is that you consider raising the threshold to \$5,000,000.

RESPONSE: During Fiscal Year 2019, less than twenty non-RIDOT public works projects issued were valued at \$1,000,000 or over. Given the low number of non-RIDOT public works projects valued at \$1,000,000 or over, the threshold will remain at \$1,000,000. It is also of note that the threshold is higher than our neighboring states. Further, the threshold gives certainty to the market as to what projects will require pre-qualification.

2) Our concern with this section [§ 4.6(D)(1)(c)(1)] is that it may have an adverse impact on MBEs due to the historical lack of access by MBE to public works projects. We would respectfully request that you provide the option of affording MBEs credit for comparable commercial work in lieu of public works. If, however, you increase the threshold in § 4.6(A) to \$5,000,000 this issue will no longer be a concern for us.

RESPONSE: In response to this comment, the language in § 4.6(D)(1)(c)(1) was updated to specify that municipal, state or federal projects will apply to this requirement. Also in response to this comment, the language was updated to specify that work as a subcontractor on public works projects will be considered. The proposed language “[y]ears of experience performing public works projects. At least three (3) years of public works project experience is required for prequalification” was amended to the final, “[y]ears of experience performing public works projects (including municipal, state and federal public works projects). At least three (3) years of public works project experience is required for prequalification. Work as a subcontractor on public works projects may be considered.”

3) We see this issue [§ 4.6(D)(4)(a)] as a major concern for MBEs, as well as all small businesses. The requirement for “audited” financial statements would impose an undue burden on these firms. Given the fact that these are bonded projects, the requirement for expensive “audited” financials is, in our view, unreasonable. We respectfully request that you consider accepting “reviewed” financial statements, as prepared by a licensed CPA. Certainly for projects valued at over \$50,000,000 we would agree that “audited” financials would be appropriate.

RESPONSE: In response to this comment, ODEO’s suggested language was adopted. Proposed language of, “audited financial statement prepared by a licensed third party” was amended to the final, “reviewed financial statement prepared by a licensed Certified Public Accountant.”

Received from the University of Rhode Island

1) Can vendors submit qualification packages while a bid is in process but before the proposed due date? This seems unclear since they are not technically 'bidding' until they submit a response. What will the turn-around time be for review?

RESPONSE: Vendors must be prequalified prior to submitting a bid. The Division of Purchases will issue more information on the rollout of the prequalification program to vendors and agencies prior to the effective date of this regulation.

2) What is the intent of c(1) in opening it up to pre-award versus being qualified prior to bidding? What scenarios are expected with this? What is the proposed process to review the bid itself to determine which method will be applicable and when? What is the process to determine what bids will require pre-qualification and how will agencies be involved?

RESPONSE: The purpose of § 4.6(A)(1) overall is to allow the Purchasing Agent flexibility in situations where competition for a particular solicitation could be stifled due to the prequalification requirement. The purpose of § 4.6(A)(1)(c) is to allow for scenarios where either due to initial rollout of the prequalification program or due to other unique circumstances of a project, the Purchasing Agent will allow vendors who are not prequalified to submit bids. Vendors who submit bids pursuant to § 4.6(A)(1)(c) must still be prequalified prior to issuance of award. § 4.6(A)(1) was amended from the proposed “if he or she determines it is in the best interest of the State” to the final “if he or she determines competition will be limited due to the unique nature of a project” to clarify what standard the Purchasing Agent will use to determine if prequalification requirements will be altered for a specific solicitation.

3) Again, what is the criteria for the review process to determine when this method [referring to § 4.6(B)] is applicable?

RESPONSE: The proposed regulatory language was amended in response to this comment to specify the criteria. The proposed “[t]he Purchasing Agent may limit the prequalification of a vendor to a certain category of work, size of purchase order, or both” was amended to the final, “the Purchasing Agent may limit the prequalification of a vendor to certain category of work based on information provided pursuant to § 4.6(D)(3), size of purchase order based on information provided pursuant to §4.6(D)(4), or both.”

4) New section 4.6(D) Evaluation categories states in item #3 Ability to Complete Work, that vendors seeking pre-qualification must demonstrate the ability to perform 20% of work using their own forces. This will eliminate most GCs in RI. Why is this necessary for none trade specific work?

RESPONSE: The requirement was removed from the regulation based on this comment.

5) The financial evaluation criteria [in § 4.6(D)] does not seem to be in line with the requirement that pre-qualification is only done once every two years. Item 4 under financial capacity states that a vendor must provide revenue for the next 3 fiscal years but that is obviously subject to change within their 2 year qualification appointment. Was this Considered?

RESPONSE: This was considered. Even though the Division will require prequalification every two years, two years worth of revenue is not sufficient for the prequalification evaluation. As to the second point, pursuant to § 4.6(C)(3) the vendor is under a duty to supplement its prequalification packet if there is a substantial change to the information previously provided.

6) Who is evaluating the financials?

RESPONSE: Rhode Island Division of Purchases.