

STATE BOARD OF COMMUNITY COLLEGES
Adoption of Prequalification Policy

Request: The State Board is asked to adopt the State Construction Office objective prequalification policy, assessment ratings matrix, and prequalification forms, and mandate that all community colleges use the State Construction Office prequalification policy, assessment ratings matrix, and prequalification forms when prequalifying bidders for construction projects as allowed under G.S. 143-135.8.

Background: Session Law 2014-42, House Bill 1043 clarified G.S. 143-135.8 which requires a governmental entity to “adopt an objective prequalification policy applicable to all construction or repair work prior to the advertisement of the contract for which the governmental entity intends to prequalify bidders.” Prequalification is the process of evaluating and determining whether potential bidders have the skill, judgment, integrity, sufficient financial resources, and ability necessary to the faithful performance of a contract. A governmental entity may prequalify bidders only when the following apply:

1. The governmental entity is using one of the construction methods authorized in G.S. 143-128(a1)(1) through G.S. 143-128(a1)(3).
2. The board of the governmental entity adopts an objective prequalification policy applicable to all construction or repair work prior to the advertisement of the contract for which the governmental entity intends to prequalify bidders.
3. The governmental entity has adopted the assessment tool and criteria for that specific project, which must include the prequalification scoring values and minimum required score for prequalification on that project

The objective prequalification policy must meet the criteria as outlined in G.S. 143-158(c). In order to meet the requirements of the statute, the State Construction Office has developed an objective prequalification policy, an assessment ratings matrix, and prequalification forms that complies with the statutes’ requirement for State agencies, universities, and community colleges.

Rationale: It is the goal of the System Office to ensure that all community colleges are meeting the requirements as stated in the statute. This mandate will put in place consistent standard objectives for community colleges to use when prequalifying bidders for state and non-state construction projects.

Contact:

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State of North Carolina

Prequalification Policy

A. **Governing Law (Session Law 2014-42)**

This policy is in effect for all prequalifications on State of NC work, including single prime project delivery and construction manager at risk first-tier subcontractors. G.S. 143-135.8(b)(2) requires the governmental entity to “adopt an objective prequalification policy applicable to all construction or repair work prior to the advertisement of the contract for which the governmental entity intends to prequalify bidders.” This policy satisfies this requirement for State agencies and universities and the community colleges.

B. **Requirements for Prequalification Criteria Form and Assessment**

1. Uniform, consistent, and transparent in its application to all bidders.
2. All bidders who meet the prequalification criteria to be prequalified are allowed to bid on the construction or repair work project.
3. Criteria must be rationally related to construction or repair work.
4. The bidder is not required to have been previously awarded a construction or repair project by the governmental entity.
5. Bidders are permitted to submit history or experience with projects of similar size, scope, or complexity
6. Assessment process of prequalification is stated in this policy.
7. A process for a denied bidder to protest is stated below in this policy.
8. A process for notifying a denied prequalified bidder is stated below in this policy.

C. **Review of Application**

1. **Prequalification Committee** – The owner and/or construction manager shall agree upon the members of the prequalification committee. The Prequalification Official (For State Agencies, the Director of State Construction; for Universities, the Chief Financial Officer (CFO) of the University Campus for projects under \$500,000, between \$500,000 and \$2,000,000 the Associate Vice President for Finance and Capital Planning with University of North Carolina – General Administration, for projects over \$2,000,000 the Director of State Construction; and for Community Colleges, under \$500,000 the Director of Administrative and Facility Services with Community Colleges System Office and over \$500,000 the Director of State Construction) shall not be on the prequalification committee. The prequalification committee will review prequalification applications submitted by the firms and will determine each firm’s prequalification eligibility for the project.
2. **Review of Application** – The prequalification committee shall use the objective assessment process form developed by the State Construction Office. The prequalification committee shall approve or deny the applications in accordance with the prequalification criteria and scoring system based upon the applicants’ initial response to the Owning Agency’s solicitation for qualified bidders. With the possible protests and appeals on prequalification and the times associated with responses, the owner should have the advertisement for prequalification out to potential applicants at least two (2) months prior to actual bid date.
3. **Notice of Decision** – All firms that submitted applications for prequalification shall be promptly notified of the prequalification committee’s decision, including the reason for denial, via e-mail. Notice shall be provided prior to the opening of bids for the project and with sufficient time for the firm to appeal the denial of prequalification.
4. **Informal Meeting** - Upon denial, the applicant may request an informal meeting with the owner’s representative and/or construction manager to receive feedback and suggestions for

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- improvement. The Owner's representative and/or construction manager shall hold a feedback session for the applicants who do not appeal the decision within 2 weeks of the request.
5. Firms wishing to appeal the decision shall follow the appeals process described below.

D. Appeals Procedure

1. The firm may appeal the denial of Prequalification as noted below.
 - a. **Initial Protest** – A firm denied prequalification may protest the prequalification committee's decision by filing a written appeal via hand-delivery or e-mail to the applicable prequalification committee within three (3) business days of emailed notice that the firm has been denied prequalification. The written appeal shall clearly articulate the reasons why the firm is contesting the denial (i.e., explains how the firm satisfied all required criteria for prequalification in the government's solicitation in their initial response) and attach all documents supporting the firm's position. The prequalification committee may contact the firm regarding the information provided prior to ruling on the protest. The Prequalification Committee should review the written protest within five (5) business days. If the prequalification committee is satisfied that the firm should be prequalified, the firm shall be notified that it is prequalified to bid on the project and allowed to participate in the bid process. If the prequalification committee upholds its denial, the firm shall be notified in writing via e-mail.
 - b. **Appeal** – Within three (3) business days of the owner's emailed notice of the Prequalification Committee's written protest decision, the denied prequalified firm may appeal the prequalification committee's decision, in writing, via hand-delivery or e-mail, to the Prequalification Official (see C.1 above). The Prequalification Official should review the appeal within five (5) business days. In the event the Prequalification Official is unable to review in a timely manner, he/she may designate a representative that is not a member of the prequalification committee to handle the appeal.
 - c. **Decision on Appeal** – The decision of the Prequalification Official or Representative on the appeal shall be final, and the firm shall be promptly notified of the decision.
 - d. **General Rules for Protests and Appeals** – Firms submitting prequalification applications shall be provided an e-mail address for the communication with the owner and/or construction manager during the protest and appeal process. The firm shall provide at least two e-mail addresses for use by the owner and/or construction manager in communicating with the firm. In the event the Prequalification Official or Representative is unable to render a decision on either the initial protest or the appeal prior to the bid date, the firm shall be allowed to submit a bid on the project subject to a final decision on the protest or appeal. If the firm's bid is opened prior to a final decision on the protest or appeal and the bid is not the lowest monetary bid for the project, the appeal shall be terminated and rendered moot. Bids received from firms who have been ruled disqualified to bid shall not be opened. A firm's failure to comply with any requirements of the protest and appeals procedures of this section shall result in the firm's protest or appeal being terminated and rendered moot.