

Emergency Rule
LSA Document #20-241(E)

DIGEST

Temporarily amends [105 IAC 11-2-1](#) for the length of validity of a certificate of qualification. Temporarily amends [105 IAC 11-2-2](#) to permit certain contractors to apply using financial statements that are not certified public accountant audited. Temporarily amends [105 IAC 11-2-3](#) for financial requirements for contractors seeking prequalification. Statutory authority: [IC 8-23-10-3](#). Effective April 29, 2020.

SECTION 1. (a) This SECTION supersedes [105 IAC 11-2-1](#).

(b) A contractor desiring to offer bids for the performance of contracts for the construction or maintenance of highways and bridges and appurtenances thereto must first be prequalified by the department and shall file a verified statement of experience and financial condition using the forms furnished by the department. The statement must include a complete report of the financial ability, adequacy of plant and equipment, organization, and experience of the applicant. The submission of a statement by the applicant is deemed authorization by the applicant for the prequalification committee to obtain all information that is deemed pertinent with respect to the applicant's financial worth, assets and liabilities, organization, personnel, construction experience, prosecution of work on previous contracts, condition and adequacy of equipment, and its attitude toward department regulations and the general public. A new statement is required at least once each year unless specifically requested at more frequent intervals.

(c) The commissioner or prequalification engineer may, at any time during which a certificate of qualification is in effect, demand a new statement. If the contractor does not furnish a new statement within sixty (60) days of the date of the request, the certificate of qualification held by the contractor may be considered forfeited and the contractor may not be permitted to bid on contracts of the department until a new statement has been received and acted upon by the department.

(d) Complete answers to all interrogatories and the furnishing of all information as indicated by column headings, footnotes, or otherwise throughout the statement are an essential part of compliance with [105 IAC 11](#). Failure to provide complete and true information is grounds for rejection of the application for prequalification and provides grounds for immediate disqualification.

(e) The department will act on an application within thirty (30) days of its receipt. Statements will be considered in the order received as promptly as circumstances permit, except statements from new applicants who desire to bid on projects advertised must be received no later than twenty-one (21) calendar days prior to the bid opening date to receive consideration for that bid opening. A statement from a contractor for prequalification renewal must be received at least fifteen (15) calendar days prior to the bid opening date to receive consideration for that bid opening. A contractor who meets the time frames required by this subsection may submit bids contingent upon the results of its prequalification application.

(f) No bidder shall be given a certificate of qualification unless the review of its statement shows that it possesses net current assets sufficient in the judgment of the commissioner to render it probable that it can satisfactorily execute its contracts and meet its obligations.

(g) An applicant must possess the qualifications prescribed and be determined to be a competent and responsible bidder as verified by the inquiries and investigations of the department to qualify for a certificate of qualification. The areas considered for qualification of the contractor include, but are not limited to, the following:

- (1) Organization.**
- (2) Personnel.**
- (3) Construction experience.**
- (4) Prosecution of work on previous contracts.**
- (5) Condition and adequacy of equipment.**
- (6) Financial condition and quality of financial information.**
- (7) The contractor's attitude toward department rules and the general public.**

An applicant will not be considered as competent and responsible if found to be of a character that would otherwise subject it to suspension, revocation, or disqualification.

(h) The prequalification committee shall make a recommendation to the commissioner regarding what action shall be taken. The commissioner may, in the exercise of the commissioner's sole discretion, accept or reject the recommendation of the prequalification committee. The commissioner shall promptly send the contractor written notice of the decision. The certificate of qualification becomes effective after all avenues of appeal under [105 IAC 11-2-9](#) are exhausted. Should such decision involve the addition of a classification or the increase of a rating to a certificate of qualification, the certificate of qualification shall become effective on the date the commissioner signs it and shall be in effect during administrative appeal under section 9 of this rule [[105 IAC 11-2-9](#)].

(i) For the purpose of determining competency and responsibility, the prequalification committee or the prequalification engineer may send evaluation forms either to those with whom the contractor has had present or previous business relationships or persons and entities who have utilized the past or present services of the contractor's employees. The responses received as a result of such inquiries are to be considered confidential for all purposes including, but not limited to, libel and slander. The responses received shall not be available under any circumstances to the contractor.

(j) No certificate of qualification will be valid for more than twenty-four (24) months. The certificate period will not be extended. The applicant will be notified if no certificate of qualification is issued.

(k) If, at any time during the valid period of a certificate of qualification, the latest statement on record with the department ceases to fairly and substantially represent the financial position or the construction equipment of the contractor to whom the certificate was issued, it shall be the responsibility of that contractor to so notify the prequalification engineer and to refrain from further bidding on contracts of the department until its qualification has been confirmed or revised. Failure to give such notice will constitute a violation of [105 IAC 11](#).

(l) A contractor shall not employ any scheme or device to evade [105 IAC 11](#) or the effect of actions taken by the prequalification committee. Action taken by the prequalification committee for an entity controlled by certain owners or officers may be extended to other entities controlled by those same owners or officers, if the prequalification committee determines the extension is necessary to prevent a circumvention of [105 IAC 11](#).

(m) The department reserves the right to require a personal interview with any contractor when considering qualifications as a part of its investigation procedure.

SECTION 2. (a) This SECTION supersedes [105 IAC 11-2-2](#).

(b) In order to obtain a certificate of qualification, a bidder must complete the statement of experience and financial condition in the format prescribed by the department.

(c) If the date of the statement is more than six (6) months old when submitted, the department may request a new statement.

(d) An unaudited statement more than six (6) months old will not be considered for qualification.

(e) The financial statement furnished by a bidder for an aggregate or work type rating of more than two million five hundred thousand one dollars (\$2,500,001) must be prepared and attested as audited by an independent:

- (1) certified public accountant registered and in good standing in any state; or
- (2) public accountant registered and in good standing in Indiana.

(f) The financial statement furnished by a bidder for an aggregate or work type rating of more than one million one dollars (\$1,000,001) but not more than two million five hundred thousand dollars (\$2,500,000) must be prepared and attested as reviewed by an independent:

- (1) certified public accountant registered and in good standing in any state; or
- (2) public accountant registered and in good standing in Indiana.

(g) The department may grant an aggregate rating up to one million dollars (\$1,000,000) if the

financial statement furnished by the bidder is certified as correct by an officer of the company.

(h) The accountant shall make an independent verification of assets and liabilities in accordance with generally accepted auditing standards. The accountant's execution of the certificate of audit will constitute certification that an audit in accordance with such standards has actually been performed and reported.

(i) In the event of physical dispersal of construction equipment or of subsequent use or sale of construction materials, the accountant may accept a signed statement of the contractor as evidence of possession of equipment or of materials inventory as of the date of the statement, but this shall not relieve the accountant of the usual responsibilities as to the following:

- (1) Title.
- (2) Proper and consistent depreciation.
- (3) Liens or encumbrances.
- (4) Reasonable pricing.

(j) Full and complete information, especially:

- (1) the age, date of purchase, and cost when purchased; and
- (2) the date if rebuilt;

must be provided for all major items of equipment. The nomenclature used must describe kind, manufacturer, type, and capacity, with additional details if necessary. All major items of useful equipment should be listed even though fully depreciated, but no obsolete or useless equipment is to be included.

(k) Contractors controlled by the same owners or officers desiring prequalification must use statements of a common date.

(l) The assets of a contractor shall be identified to support only one (1) prequalification at any time. If contractors controlled by the same owners or officers submit unaudited statements for prequalification, only one (1) of the entities may be prequalified unless the department is able to verify that assets and experience were not duplicated as a mechanism to artificially increase prequalification ratings.

(m) The current list of individuals authorized to execute contracts binding the corporation may be either a portion of the original articles of incorporation or some subsequent official action of the stockholders or the board of directors. If officers or authorization of individuals designated to execute contracts binding the corporation are changed in any manner, the contractor shall immediately notify and furnish the prequalification engineer with certified copies of appropriate documents.

(n) The initial statement of a foreign corporation must be accompanied either by valid evidence that it is registered and in good standing with the Indiana secretary of state or by a letter stating that, should it become the successful bidder on a department contract, authorization will be secured within fifteen (15) days after the bid opening.

SECTION 3. (a) This SECTION supersedes [105 IAC 11-2-3](#).

(b) A contractor may be classified for one (1) or more types of work and will be rated in accordance with its financial ability, adequacy of plant and equipment, organization, prior experience, record of construction, and other pertinent and material facts that may affect its classification. The contractor will be assigned a classification which will limit the type and quantity of uncompleted work it has under contract at any one (1) time as principal or subcontractor regardless of the location of the work or with whom it is contracted.

(c) A contractor will be assigned an aggregate rating that is to be considered the largest dollar amount of uncompleted work it shall have under contract at any one (1) time, either as principal or subcontractor, or both, regardless of its location and with whom it is contracted.

(d) The contractor's maximum aggregate rating as determined from the statement will be the sum of the following rating components:

- (1) Net current assets multiplied by ten (10).
- (2) Construction equipment assets (net book value) multiplied by eight (8), but not to exceed one and one-half (1 1/2) times subdivision (1).
- (3) Net fixed and other assets multiplied by two (2), but not to exceed twenty-five percent (25%) of

subdivision (1) plus subdivision (2).

(e) Accepted net current assets will be determined from the statement submitted and will be construed as to include only those net current assets that are readily convertible into working capital. Receivables from nongovernmental agencies over one (1) year old will be deducted for prequalification purposes.

(f) Notes due within one (1) year from the financial statement date will be considered a current liability. Notes due after twelve (12) months and within twenty-four (24) months will be considered a fixed liability and deducted from net fixed assets, and the excess, if any, will be deducted from the book value of the equipment. If this is insufficient, the excess will be deducted from the net current assets.

(g) Notes due after twenty-four (24) months will not be deducted for prequalification purposes. If the applicant has guaranteed loans of any person or any entity, or has used assets as security for these loans, or has made other guarantees or commitments of activities of any person or any entity, the department may reduce or adjust the applicant's net current assets if in the judgment of the department the guaranteed loans, other guarantees, or commitments are significant when considered with the applicant's statement.

(h) Notes and accounts receivable from affiliated business firms will not be allowed as assets unless there is attached an audited financial statement showing the debtor has sufficient liquidity to discharge the debt, except an unaudited statement, certified as correct by the debtor, will be accepted if an unaudited statement is submitted for qualification. Notes and accounts receivable from partners of a partnership, or officers and stockholders of a corporation, may not be allowed as assets unless there is attached an audited financial statement.

(i) The book value and the market value for stocks and bonds are to be listed. Stocks and bonds will not be considered as working capital unless market value, determined or verified by the accountant, is given. Allowance for stocks and bonds is made for whichever is the lesser of the book or market value except that for stocks or bonds listed on the New York Stock Exchange, American Stock Exchange, or over-the-counter on the National Association of Securities Dealers Automated Quotations (NASDAQ) list, the market value will be used. Stocks of affiliates or subsidiaries that are qualified with the department will not be considered as assets.

(j) The value of useful construction equipment may be the book value listed or may be determined by the application of uniform depreciation schedules. No rating credit will be given for equipment which cannot be satisfactorily identified as to kind, type, and capacity or for that the essential information as to cost and age is not supplied.

(k) "Fixed and other assets" means those assets that have a collateral value but are not readily or normally converted into cash or not directly pertinent to the operation or financing of construction contracts. Construction equipment value in excess of the rating limitation of subsection (d)(2) will be considered as part of fixed assets.

(l) A contractor will first be given a tentative factor of one hundred percent (100%) in its aggregate and respective classified ratings. Each of these tentative factors may be reduced wholly or in part for the contractor's deficiencies in the following areas as determined from a summary of reports from field engineers, or other investigations or an interview with the contractor, or both. The areas considered for qualification of the contractor include the following:

- (1) Organization.
- (2) Personnel.
- (3) Construction experience.
- (4) Prosecution of work on previous contracts.
- (5) Quality of workmanship on contracts.
- (6) Condition and adequacy of equipment.
- (7) The contractor's attitude toward department rules, the general public, and equal employment opportunity requirements.

(m) An "unlimited" qualification shall be granted if a contractor's maximum aggregate rating exceeds one hundred million dollars (\$100,000,000).

SECTION 4. This document expires July 21, 2020.

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