

TITLE 105 INDIANA DEPARTMENT OF TRANSPORTION

Readoption Review LSA Document #26-213

I. Statement Whether the Subject Matter Covered by the Rule Remains Carried out by the Agency

Pursuant to IC 4-22-2.6-2, the Indiana Department of Transportation (INDOT) seeks to readopt rules with changes in conformity with the procedures in IC 4-22-2-23 through IC 4-22-2-36. INDOT continues to oversee and manage the prequalification of all prime contractors and subcontractors, as required by IC 8-23-10 and 23 C.F.R. § 635.110. INDOT seeks to add language to include the prequalification of consultants and to amend rules to simplify language. In addition to adding and amending rules, INDOT seeks to readopt without changes the following sixteen administrative code sections: 105 IAC 11-3-1; 105 IAC 11-3-2; 105 IAC 11-3-3; 105 IAC 11-3-6; 105 IAC 11-3-7; 105 IAC 11-3-8; 105 IAC 11-3-9; 105 IAC 11-3-10; 105 IAC 11-3-11; 105 IAC 11-3-12; 105 IAC 11-3-13; 105 IAC 11-3-14; 105 IAC 11-3-14.5; 105 IAC 11-3-15; and 105 IAC 11-3-16.

II. Rationale for the Continued Need for the Rule

Federal regulations require these rules to be in place. Under 23 C.F.R. § 635.110, states must maintain effective prequalification standards and programs as a requirement for receiving federal aid for highway projects.

Under IC 8-23-10, all prime contractors, prime consultants, subcontractors, and subconsultants must be prequalified by INDOT before bidding on any INDOT project.¹ Furthermore, all prime contractors must be qualified by INDOT to bid on local public agency (LPA) projects.² The prequalification process verifies that a contractor or consultant possesses the experience and financial capacity to perform work on behalf of INDOT or an LPA.

IC 8-23-2-6(a)(11) and IC 8-23-10-3(b) authorize INDOT to adopt rules under IC 4-22-2.

1. The rules minimize expenses by decreasing the time to process prequalification applications and simplifying the prequalification process itself. A simplified process will have a positive impact on INDOT and LPAs by making it easier for contractors and consultants to prequalify; thereby expanding the choice of contractors and consultants available to both state and local government projects.

2. With this readoption, INDOT is repealing the following thirty-two administrative code sections: 105 IAC 11-1-3; 105 IAC 11-1-4; 105 IAC 11-1-5; 105 IAC 11-1-6; 105 IAC 11-1-9; 105 IAC 11-1-10; 105 IAC 11-1-12; 105 IAC 11-1-13.3; 105 IAC 11-1-14; 105 IAC 11-1-15; 105 IAC 11-1-16; 105 IAC 11-1-17; 105 IAC 11-1-18; 105 IAC 11-1-19; 105 IAC 11-1-21; 105 IAC 11-1-22; 105 IAC 11-1-23; 105 IAC 11-1-24; 105 IAC 11-1-24.3; 105 IAC 11-1-25.5; 105 IAC 11-1-26; 105 IAC 11-1-28; 105 IAC 11-1-29; 105 IAC 11-1-31; 105 IAC 11-1-32; 105 IAC 11-2-

¹ This applies to subcontractors with more than \$300,000 in total INDOT work under contract.

² Under IC 8-23-10-0.5(d), a contractor is not required to qualify before doing any work on a public works project awarded by an LPA when the total amount of the contract awarded is less than \$300,000 and the LPA complies with IC 36-1-12 in awarding the contract for the public works project.

1; 105 IAC 11-2-2; 105 IAC 11-2-3; 105 IAC 11-2-4; 105 IAC 11-2-8; 105 IAC 11-2-10; and 105 IAC 11-2-12.

Currently, 105 IAC 11 contains 61 sections under three rules. In addition to the thirty-two sections listed above being repealed, twenty-five sections are being added. Thus, after this readoption, 105 IAC 11 will contain 54 sections under three rules. The readoption with changes will result in an 11% reduction of regulations.

3. The rules do not duplicate standards found in state or federal law. Apart from the federal requirement for states to have such rules, INDOT is unaware of any other rules, federal or Indiana, governing the prequalification of prime contractors or subcontractors for highway projects.

4. INDOT proposes simplifying the rules to make them easier to understand and to assist with compliance.

5. There is practical enforcement of the rules. Failure to comply with the rules will result in contractors and consultants not being prequalified. Prequalification is a requirement to bid on any INDOT project and certain local projects.

III. Analysis of fees, fines, and civil penalties under IC 4-22-2-19.6

The rules do not include any fees, fines, or civil penalties.

IV. Cost-Benefit, Economic Impact, Fiscal Impact, or Regulatory Burden Statements

Please see the Regulatory Analysis submitted by INDOT.

V. Alternative Methods of Achieving the Purpose of the Rule

There are no alternative means of achieving the same result that would have a lower cost or economic impact or be less intrusive. Under 23 C.F.R. § 635.110, states must maintain effective prequalification standards and programs as a requirement for receiving federal aid for highway projects.

VI. Complaints and Comments

In response to complaints about the current rules, INDOT has been collaborating with the industry on remedies since the summer of 2025. Among other things, INDOT seeks to streamline the prequalification process, extend the time certificates are valid, and provide paths for new and small firms to become prequalified. INDOT has received letters from the industry in support of the proposed changes to the rules.

VII. Difficulties Encountered

Any difficulties INDOT may have encountered in administering the rules is addressed by streamlining the prequalification process, simplifying the rules, clearly defining the requirements for contractors and consultants, introducing financial-audit tiers that make it easier for new and small firms to enter the heavy-highway market, clarifying how to update a prequalification certificate, explaining the appeals process, and outlining the role of the prequalification committee. INDOT estimates these changes will result in saving staff time in processing prequalification applications and addressing questions from applicants.

VIII. Changes in Technology, Economic Conditions, or Other Factors

In 2020, INDOT moved from paper applications to INDOT's Contractor Prequalification System, where contractors and subcontractors can submit their applications electronically through the Indiana Technical Application Pathway (ITAP). This change has allowed for a secure customer experience, proper recordkeeping, and the elimination of paper. It also allows INDOT to repeal 105 IAC 11-2-2 as part of this rulemaking proceeding.

IX. Other State or Federal Requirements

The federal government requires states to adopt rules addressing the prequalification of contractors but does not have its own rules. Surrounding states approach prequalification in the following manner:

- a. Illinois – Illinois DOT allows for a 16-month prequalification certificate.³ The process is very similar to INDOT's process but is an all-paper application.⁴ Illinois has audited and unaudited financial statements based on different tiers.⁵ Illinois requires all subcontractors to register with IDOT on an annual basis.⁶ Illinois also requires contractors to obtain an Illinois Human Rights Number prior to bidding.⁷
- b. Kentucky – Kentucky Transportation Cabinet requires prequalification for all contractors in an all-paper application on an annual basis.⁸ Contractors seeking less than \$1,000,000.00 in work can submit an internal balance sheet for the financial portion of the application.⁹ Compiled or reviewed financial statements are only eligible for prequalification certificates valued at \$1,000,000.00 or less.¹⁰
- c. Michigan – Michigan Department of Transportation requires prequalification for the following: bridge, road, pavement, water main, sewer, electrical, demolition, bridge painting, signing, guardrail, fencing, seeding/sodding, landscaping, pavement marking, and railroad construction/signals.¹¹ Michigan's rules were last updated in 2009. Certificates are valid for 16 months for contractors after fiscal year end below a financial rating of \$10 million and 28 months after fiscal year end for contractors with a financial rating above \$10 million.¹² Allows for a compiled financial statement for contractors with an overall financial rating of \$2,000,000.00 or less.¹³

³ See 44 IL Admin. Code 650.100.

⁴ See 44 IL Admin. Code 650.40; <https://idot.illinois.gov/procurement/prequalification-and-registration/contractors/prequalification.html>.

⁵ See 44 IL Admin. Code 650.170.

⁶ See <https://idot.illinois.gov/procurement/prequalification-and-registration/contractors/subcontractors.html>.

⁷ See <https://idot.illinois.gov/procurement/prequalification-and-registration/contractors/prequalification.html>.

⁸ See 603 KAR 2; <https://transportation.ky.gov/Construction-Procurement/Pages/Prequalification.aspx> (requiring applications to be completed in ink or typed and submitted on revised form (10/2024)).

⁹ See 603 KAR 2.

¹⁰ *Id.*

¹¹ See <https://www.michigan.gov/mdot/business/contractors/prequalification> (construction prequalification work classifications).

¹² See Mich Admin. Code R. 247.32(4).

¹³ See Mich Admin. Code R. 247.34.

- d. Ohio – Ohio Department of Transportation allows for an online prequalification process.¹⁴ Subcontractors may work on ODOT projects without prequalification with less than \$1,000,000.00 of ODOT work with ODOT approval or jobs with no work types.¹⁵ With ODOT approval, Ohio allows subcontractors to work on a per project basis without prequalification for a value of 20% or less of the total project value, not to exceed \$5,000,000.00.¹⁶ ODOT allows for reviewed financial statements for contractors seeking a prequalification certificate of \$10,000,000.00 or less.¹⁷ For any amount above this threshold, ODOT requires an audit.¹⁸ Ohio's certificates must be renewed annually.¹⁹
- e. Idaho – The Idaho Transportation Department requires a public works license through its professional licensing body.²⁰ Idaho issues certificates for 24 months.²¹ Idaho requires financial statements, depending on the license class. There are seven types of public works licenses available, which are based on contract dollar values.²² The completed project amounts range from \$200,000 to more than \$5,000,000. Idaho charges a sliding scale fee for all license applications.²³ In comparing Indiana to Idaho, INDOT notes that Idaho has 12,000 miles of state-owned roads and 48,901 miles of total public roads. Indiana has 29,000 miles state-owned roads and 97,553 miles of total public roads. Furthermore, Indiana has a population of 6.9 million, with 6.1 million registered vehicles. Idaho has a population of 2 million, with two million registered vehicles. The disparity in numbers is reflected in the amount invested in highway infrastructure, with \$2.23 billion invested in Indiana and \$390,000,000.00 invested in Idaho. Indiana's significant investment requires more risk mitigation to ensure timely and quality work, and compliance with FHWA standards and requirements.
- f. South Dakota – South Dakota Department of Transportation requires a paper application.²⁴ SDDOT requires written requests by the prime contractor on a contract-by-contract basis for subletting work on contracts.²⁵ SDDOT requires prequalification for any work over \$250,000.00.²⁶ SDDOT allows for submission of bonding requirements for a single contract or the total value of the contractor's work or an independent audit.²⁷ In comparing Indiana to South Dakota, INDOT notes that South Dakota has 7,794 miles of state-owned roads and 82,501 miles of total public roads. Furthermore, South Dakota's population is 0.9 million, with one million

¹⁴ See <https://www.transportation.ohio.gov/working/contracts/prequal-cert/03-prequal-cert>.

¹⁵ See OAC 5501:2-3-08. See also [Contractor Prequalification Work Types | Ohio Department of Transportation](#).

¹⁶ *Id.*

¹⁷ See OAC 5501:2-3-02.

¹⁸ *Id.*

¹⁹ See OAC 5501:2-3-05.

²⁰ See Idaho Code 54-1902.

²¹ See Idaho Code 54-1912.

²² See Idaho Code 54-1004.

²³ *Id.*

²⁴ See <https://dot.sd.gov/doing-business/contractors/forms-documents/>.

²⁵ See <https://dot.sd.gov/doing-business/contractors/subcontract-requirements/>.

²⁶ See ARSD 70:07:02:03.

²⁷ See ARSD 70:07:02:04.

registered vehicles. South Dakota invests \$760,000,000.00 in highway infrastructure. Again, Indiana's substantial investment in highway infrastructure underscores the importance of a robust prequalification process.

X. Previous Amendments

INDOT last amended the rules in 1991. INDOT readopted the rules in 2001, 2007, 2013, and 2019.

XI. Integration into Indiana Code

Changes to the rules are well overdue. Because of industries' input and partnership, it is INDOT's opinion that rules should remain to allow more flexibility with working with the industries. Additionally, the industries support this approach, support the readoption of the rules, and have worked with INDOT to update and streamline the rules.

XII. Contact Information of Staff to Answer Substantive Questions

Elizabeth Kiefner
Director, Business Opportunity Initiatives
Phone: (317) 650-1689
Email: EKiefner1@indot.in.gov