

Constructing**PREQUALIFICATION OF CONTRACTORS FOR EDUCATIONAL FACILITIES
CONSTRUCTION****I. GENERAL****A. Introduction**

Section 1013.46 of Florida Statutes, and Section 4.1(8), State Requirements for Educational Facilities (2007 [SREF]), requires school boards to prequalify contractors as eligible to bid on construction or capital improvement projects. This rule is adopted for the purpose of establishing procedures and criteria for prequalifying responsible contractors on school construction projects for The School Board of Miami-Dade County, Florida (Board). The rule does not restrict competition, or prevent the submission of a bid, or prohibit the consideration of a bid submitted by a prequalified contractor, nor does the rule supersede the Board's Minority/Women Business Development Program.

B. Definitions

1. Administrative Director, Office of Compliance and Business Services.
2. Affiliate - business concerns, organizations, or individuals that directly or indirectly, (a) is controlled by another entity or either controls or has the power to control the other, or (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity that has been organized by a delinquent entity, individual, or affiliate, following a contractor being declared delinquent that has the same or similar management, ownership, or principal employees as the delinquent contractor.
3. Construction Contractor - the company that is qualified by a contractor, or the qualifier who holds a contractor's license.
4. Contractor - the person, firm, or corporation that is authorized to do business in the State of Florida and that is properly licensed or registered for the work to be performed with whom a contract may be made for the performance of School Board work.
5. Contractor Prequalification Appeals Committee (CPAC) - the committee that is responsible for hearing all appeal requests from companies that are denied contractor prequalification, or deemed

delinquent and results in contractors' certificates being suspended or revoked.

6. Contractor Prequalification Review Committee (CPRC) - the committee that is responsible for reviewing and evaluating Contractor Prequalification Applications determining the eligibility, thereof, and recommending that contractors be prequalified, or not, to bid on construction projects of a particular scope and type with a value that does not exceed a certain dollar volume.
7. Joint Venture - an association of two (2) or more business entities to carry out a single business enterprise for the purpose of combining their property, capital, efforts, skills, and knowledge into a single entity.
8. Statement of Contractor's Qualification - the Contractor Prequalification Application (FM-5896).
9. Surety Letter of Intent (FM-6696) - a statement from a surety, certifying the surety will issue a bond to a contractor for projects that are valued up to the limits for which the company is seeking contractor prequalification.

C. Responsibilities and Duties

The duties and responsibilities of district staff and organizations as it relates to contractor prequalification are as follows:

1. Superintendent - is authorized and directed to execute, and to establish such administrative procedures, as necessary, or carry out the Board's policies regarding contractor prequalification.
2. Administrative Director, Office of Compliance and Business Services – is the District Administrator who is responsible for the overall implementation, reporting, and monitoring of contractor prequalification activities, as well as serving as staff to the CPAC.
3. Contractor Prequalification Administrator – is responsible for obtaining complete Contractor Prequalification Applications, and all other information that is deemed necessary to determine whether an applicant is eligible for contractor prequalification.
4. Contractor Prequalification Review Committee (CPRC) – is responsible for evaluating applications for contractor prequalification and then recommending the acceptance or rejection of same. The District Administrator will forward the committee's decision to the Superintendent and he/she shall forward it to the Board for ratification. The Board shall act upon the

recommendation to accept or reject a company's application within sixty (60) days after a complete application is received by the district, and all deliberation will be captured in minutes or by audio and will be transmitted to the Board and Superintendent and made available to all other interested parties, as requested. The CPRC will recommend that companies be prequalified to bid projects of a particular type, dollar value, and scope. The CPRC shall be chaired by the District Administrator (a voting member of the Committee) and shall be composed of individuals from district offices and organizations, and/or their designees. Organizations and/or individuals will be selected by the Superintendent or his designee and rotated every two (2) calendar years, and resumes for organizational representatives will be collected as directed by the Superintendent. The CPRC shall be composed of the following or their designee:

- a) two (2) representatives from the construction industry or an architectural/engineering organization that are not, currently or have not within the past five (5) years, contracted with the Board;
 - b) one (1) representative from PTA / PTSA;
 - c) one (1) representative from the community-at-large;
 - d) one (1) representative from Facilities Operations, Maintenance;
 - e) one (1) representative from Region Centers;
 - f) one (1) representative from Office of School Facilities;
 - g) one (1) representative from the Educational Facilities Code Compliance Department;
 - h) the District Administrator; and
 - i) one (1) representative from the Office of Management and Compliance Audits (non-voting).
5. Contractor Prequalification Appeals Committee (CPAC) - is responsible for hearing all appeals from contractors that are denied contractor prequalification certification by the CPRC. The CPAC is authorized to recommend that the Board uphold or overturn a decision to deny a company's prequalification, after a hearing and upon consideration of the applicant's application and any supporting documents. The CPAC shall be composed of individuals

from the following district offices, and organizations as selected by the Superintendent, or their designees:

- a) one (1) representative from a construction or an architectural engineering organization that is not currently nor has within the past five (5) years contracted with the Board, and who is not currently serving as a member or designee on the CPRC;
- b) Representative from the, Office of Superintendent of Schools;
- c) Deputy Superintendent, School Operations;
- d) Chief Financial Officer, Financial Services;
- e) Inspections Officer, District Inspections, Operations and Emergency Management; and
- f) Chief Auditor, Office of Management and Compliance Audits (non-voting).

Voting members of the CPRC and CPAC must disclose any conflicts or potential conflicts of interest, and may not vote on the matter upon which there is a potential conflict. In addition, no individual may serve on the CPRC and the CPAC to review the request of a contractor to be prequalified and then hear the appeal of the same contractor.

II. CONTRACTOR PREQUALIFICATION CRITERIA

- A. Prequalified contractors must be capable of fulfilling specific project requirements for bonding, insurance, staffing and completion dates. No bid, proposal, or submittal for a school construction project shall be accepted from a contractor that does not have a valid contractor prequalification certificate, as hereinafter prescribed, nor shall any bid, proposal, or submittal be accepted from a contractor whose prequalification certificate has been revoked or suspended. The contractor prequalification criteria applies to all applicants, irrespective of the size, scope, or type of projects for which they seek certification to bid.
- B. Each entity, be it a company, joint venture, or person that requests prequalification certification must submit a Contractor Prequalification Application (FM-5896). Pursuant to School Board Rule 6Gx13- 3C-1.08, Performance and Payment Security, Declining a Bid Award, and Bonding Company Qualifications, I. Performance Security on Construction Bids and Awards, C., one-hundred (100) percent performance and payment security is required on bids over two-hundred-thousand dollars

(\$200,000). Contractors whose bids exceed the \$200,000 bond waiver threshold shall be prequalified by the Board on the basis of the following criteria:

1. Proof that the contractor holds a valid contractor's license that authorizes the contractor to supervise the work within the scope of a construction project.
2. Evidence that the applicant has financial resources to start up and follow through on projects and to respond to damages in case of default. Evidence must be provided in the form of written verification of bonding capacity that equals or exceeds the amount of any project for which the contractor seeks prequalification. The written verification must be submitted by a licensed surety company that is rated excellent "A-" or better in the current A.M. Best Guide, or as may be amended by Florida Statute and/or SREF. The surety must be qualified to do business within the State of Florida and the A.M. Best rating must be included on the Surety Letter of Intent (FM-6696). In the absence of such written verification, the Board may require any applicant to submit an audited financial statement, for a reporting period that ended not more than twelve (12) months prior to the date of the company's application date, to validate its (applicant's) financial ability to perform a project(s) and to respond to damages in the event of default.
3. Evidence of experience with construction techniques, trade standards, quality workmanship, project scheduling, cost control, management of projects, and building codes for similar projects as shown by the successful completion of at least two (2) projects, within the past five (5) years, that are similar to the size of the largest project that the company is requesting prequalification to bid. For the purpose of determining experience for an applicant company, the experience of the company or that of the applicant company's primary or secondary qualifier, may be considered, so long as the applicant presents evidence of successful completion of two projects as described herein.
4. Evidence of satisfactory resolution of claims and litigation that was initiated by or against the contractor which was asserted on a project of the same or similar size within the five (5) years preceding the submission of the application. Any claim against a contractor shall be deemed to have been satisfactorily resolved if final judgment is rendered in favor of the contractor or any final judgment rendered against the contractor is satisfied within ninety (90) days of the date the judgment becomes final.
5. Type of work for which the contractor is licensed.

6. The contractor's application for prequalification shall in all respects meet the requirements set forth in Subsection 4.1(a) © of SREF, and as may be amended.
7. A contractor that has been denied Contractor Prequalification Certification may not re-apply for a period of six (6) months after the written notice of denial.

III. **APPLICATION REQUIREMENTS**

- A. Each entity that requests prequalification certification, must do so by submitting a Contractor Prequalification Application ("Statement of Contractor's Qualifications").
- B. When two (2) or more prequalified contractors wish to combine their assets for a specific project, they each must be prequalified and must file an Affidavit of Joint Venture on a Board-prescribed form (FM-6695) and meet any and all other requirements, pursuant to Florida Statutes for joint ventures. Prequalification certificates will be issued to joint ventures for a specific project once they have complied with all requirements for Prequalification.
- C. The following information shall be included in Contractor Prequalification Applications:
 1. Information that demonstrates the applicant's competence, past performance, experience, financial resources, and capability, including a Public Entity Crime Statement and references.
 2. Evidence that the contractor has the financial ability to successfully complete Board construction work of a particular scope and complexity. In order to demonstrate that the company is financially capable of successfully completing Board work, applicants may provide either:
 - a) an audited financial statement on the company that includes an income statement, balance sheet, and all schedules and notes; or
 - b) a Surety Letter of Intent (FM-6696) to verify that in the event the contractor successfully bids Board work the surety will issue the contractor a performance and payment bond for the work.

The maximum bid limits for a prequalified contractor will be determined by the contractor's bonding capacity or ten (10) times the contractor's net quick assets.

3. Information about the organization, ownership, and management of the applicant company.
4. Information regarding all state and local licenses that are held by the applicant company.
5. Information related to projects that the applicant company has completed within the past five (5) years. The information shall include, but not limited to, project dates, delivery methods, locations, construction costs, scope, contract and actual completion dates as well as whether there were delays and whether liquidated damages were assessed against the applicant.
6. Information that demonstrates that the applicant company has the insurance that is required to perform Board work, including current worker's compensation as well as public liability and property damage insurance.
7. Information regarding all claims and/or litigation to which the company has been a party for the past five (5) years, including an explanation of each. Claims or litigation that were or have been initiated by the contractor to protect the contractor's legal rights shall not be used as a basis for rejecting the contractor's application, unless the contractor was not the prevailing party.
8. A notarized affidavit that attests to the completeness and accuracy of the information that is included in a Contractor Prequalification Application. The affidavit shall be attested to and signed by an authorized officer, owner, or agent of the company, as appropriate, and shall be notarized.
9. In the event the Office finds an application is incomplete or that it contains inaccurate or inadequate information, the Office shall request (verbally or in writing) that the company provide the information. If the information is not provided within ten (10) working days, the Office shall request, in writing, the information a second time, and the company must comply with the request within five (5) working days, or the company's application will be denied. Written requests to the applicant for information must be transmitted by certified mail with a return receipt requested, by facsimile or by email.
10. Pursuant to §287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list, following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods and services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work;

may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in §287.017, F.S., for CATEGORY TWO for a period of 36 months following from the date of being placed on the convicted vendor list.

11. Prequalified Contractors shall notify the Office of Compliance and Business Services within fifteen (15) days and provide a notarized statement whenever a change occurs in ownership, management or the financial conditions of the company. Any misrepresentation(s) shall be grounds for revoking the company's prequalification certificate or subject the company to any other penalties that are provided for in School Board rules.

IV. APPLICATION REVIEW PROCESS

Specific details (dates, print screens, etc.) regarding information that is collected through the application review verification process will be noted in/or attached to each applicant's file. In addition, reports, memoranda, and other documentation (including, but not limited to litigation/claims reports and project evaluations) will also be maintained in each applicant's file.

A. Certificates

The Board shall issue contractors that are granted contractor prequalification certification and renewal certificates that are valid for one (1) year or that are project specific. Contractor Prequalification Certificates shall include:

1. A statement that a contractor is authorized to bid for projects during a specific time period.
2. A statement establishing the maximum dollar values (single and aggregate) of work that a contractor will be permitted to have under contract with the Board at any one time.
3. A statement establishing the maximum dollar value of each individual project that a contractor will be permitted to have under contract with the Board at any one time. The maximum value of each project may be up to twice the value of the largest project that was previously completed but shall not exceed the contractor's bonding capacity or ten (10) times the net quick assets.
4. A statement establishing the type of work that a contractor will be permitted to provide.

5. The expiration date of the contractor's prequalification certificate.

V. CONTRACTOR PREQUALIFICATION CERTIFICATION RENEWAL

A. Application of the Renewal Process

1. The contractor prequalification renewal process is to substantiate whether a prequalified contractor remains eligible to bid on Board construction projects. A prequalified contractor may apply to renew its certification if its certification is current, and no significant changes have occurred in the control, management, or ownership of the company. A contractor, whose certificate has expired, must re-apply, (as if the contractor had not been prequalified by the Board). The contractor prequalification renewal process does not apply to certificates that are issued for a specific project. A contractor may renew Contractor Prequalification Certificates for four (4) uninterrupted certification periods.
2. Authority is vested in the Superintendent of Schools or his/her designee(s) to renew prequalified contractor's certifications. Eligible contractors will be issued a renewal certificate that is valid for one (1) year.

B. Prequalification Renewal Notice

1. At least forty-five (45) days before prequalification certificates expire, the Office of Compliance and Business Services will notify contractors of imminent expirations and of the need to renew their certification. As provided for in §120.60(4) Licensing, F.S., when a prequalified contractor makes timely and sufficient application for the renewal of a prequalification certificate, the existing certificate shall not expire until the contractor's application for renewal has been finally acted upon.
2. A contractor who has been declared delinquent and its certification has been suspended or revoked, shall not apply for renewal during the suspension or the revocation period.
3. At the end of the fourth prequalification certification period, the contractor must submit a new Contractor Prequalification Application (FM-5896).

C. Renewal Form and Documentation

In order for contractors to renew their prequalification certificates, contractors shall submit the following:

1. A Contractor Prequalification Renewal Application (FM-6690)
2. Financial statements or written verification of bonding capacity, shall be updated, annually. Failure to submit a current audited financial statement or verification of bonding capacity, after at least thirty (30) days written notice by the District Administrator, shall automatically revoke a contractor's prequalification certificate.

D. Requesting Changes to Prequalification Status

The Board may allow prequalified contractors to request the revision of their prequalification status at any time that they believe the dollar volume of work under contract, or the size and complexity of projects should be increased if experience, staff size, staff qualifications, and other pertinent data justify the action. All revisions require Board approval.

VI. DELINQUENCY

- A. A district administrator, project manager, architect, his/her supervisor, or the project architect/engineer, with the approval of at least the Chief Facilities Officer (or his/her designee) may, for cause, recommend initiating delinquency proceedings against a contractor, that may result in the suspension or revocation of the contractor's prequalification certificate. The request may be made at anytime and must be in writing to the District Administrator. Upon receipt of a recommendation, the District Administrator will forward the request and supporting information to the Contractor Prequalification Review Committee. Should the Committee determine that there is sufficient evidence to support declaring a contractor delinquent, it will recommend that the Superintendent declare said contractor delinquent, in accordance with Chapter 1013 F.S.
- B. Information indicating that a contractor who has been prequalified is delinquent as described in subsection VI. C. 1 through 7 below, may be presented at a hearing before the CPRC. Once information on the issue of delinquency is presented by administration, the contractor will have an opportunity to respond. Upon conclusion of the hearing, the CPRC will render a decision on the issue of delinquency by finding one of the following:
 1. that a preponderance of the evidence supports a finding of delinquency;
 2. that the evidence is insufficient to declare the contractor delinquent;
or
 3. that the contractor was not delinquent.

- C. The decision to declare a contractor delinquent may only be made by the Superintendent and must be ratified by the Board at its next regular meeting following such decision by the Superintendent. Should a contractor be determined to be delinquent, after notice and an opportunity to a fair (due process) hearing, the District Administrator shall notify the contractor and the contractor's surety, in writing, that the contractor is disqualified from bidding work with the Board as long as the delinquent status exists. A delinquent condition may be determined to be in effect when one (1) or more of the following conditions occur without justifiable cause:
1. Substantial or repeated failure to comply with contract documents after written notice of such non-compliance.
 2. Substantial or repeated failure to provide qualified supervision and coordination of subcontractors' work after written notice of such failure.
 3. Substantial deviation from project time schedules after written notice of non-compliance.
 4. Substantial or repeated failure to pay subcontractors after the Board has paid the Contractor for the work performed by the subcontractors and in accordance with approved requisitions for payment.
 5. Substantial or repeated failure to provide quality workmanship that is compatible with trade standards for the community (industry), after written notice of such failure.
 6. Substantial or repeated failure to comply with warranty requirements of previous contracts after written notice of such failure.
 7. Failure to maintain the required insurance coverage after written notice of such failure.
- D. In order to support a decision to recommend that a contractor be declared delinquent or that the CPRC recommend suspending or revoking a contractor's prequalification certification, the CPRC will be provided information regarding the contractor's performance. The information will be collected by Facilities Planning and Construction from various departments, and may include, but not be limited to, the following:
1. Any pertinent inspection and plan reviews that were performed either internally and/or externally.
 2. Any pertinent punch list.

3. Information related to a contractor's failure to meet schedules.
4. Information related to a contractor's failure to meet quality standards, as determined by the District's system for evaluating construction quality.
5. Information related to a contractor's failure to comply with contractual requirements, including warranty issues.
6. Fully executed and completed evaluations.

VII. SUSPENSION OR REVOCATION

The Board may, for good cause, suspend a contractor for a specified period of time or revoke the contractor's prequalification certificate. Suspension or revocation of a contractor's prequalification certificate will render a contractor ineligible to bid future work. Causes for suspending or revoking a contractor's prequalification certificate shall include, but not limited to, one or more of the following:

- A. The contractor includes inaccurate or misleading statements in the Contractor Prequalification Application ("Statement of Contractor's Qualification").
- B. The contractor is declared in default by the Board.
- C. The contractor is adjudged to be bankrupt.
- D. The contractor's performance, in connection with contract work, becomes unsatisfactory to the Board based on the Board asserting and recovering liquidated damages in an action against the contractor.
- E. The contractor's payment record, in connection with the contract work, becomes unsatisfactory to the Board based on the contractor's failure to comply with the Construction Contract Prompt Payment Law (Section 715.12, F.S.).
- F. The contractor becomes delinquent on a construction project pursuant to Section VI. Delinquency, above.
- G. The contractor's license is suspended or revoked.
- H. The contractor no longer meets the uniform prequalification criteria established in Section (II.) Contractor Prequalification Criteria, above.

VIII. APPEAL

A contractor whose application has been rejected/denied or whose prequalification certificate has been suspended or revoked by the Board will be notified of the Board's decision, in writing, by return receipt requested, or any acceptable form of electronic transmission. The notice will include a summary of the facts upon which the denial, delinquency, suspension, or revocation is based and a statement of appeal rights. The contractor shall be given the benefit of reconsideration and appeal as follows:

- A. The aggrieved contractor may, within ten (10) calendar days after receiving written notification of such action, request reconsideration in writing. The contractor may submit additional information at the time of the appeal. The written request should be mailed, certified return receipt requested, to the Clerk of the School Board, Miami-Dade County Public Schools, 1450 N. E. Second Avenue, Miami, Florida 33132. Failure to timely file a written request for reconsideration appealing the rejection or denial of an application for prequalification or the suspension or revocation of a certificate shall constitute a waiver of a right to appeal the Board's decision. All appeals submitted pursuant to this section will be heard by the CPAC. The committee will submit a Recommended Order for the Board's consideration.
- B. The Board shall act upon a contractor's request within thirty (30) calendar days after the filing and shall notify the contractor of its action to adhere to, modify, or reverse its original action. The Board may require additional information to justify the reconsideration.
- C. An applicant that is denied prequalification, or that has been declared delinquent and whose prequalification certification has been suspended or revoked is entitled to an administrative hearing, pursuant to §120.569 and §120.57 Florida Statutes. A hearing may be requested in writing in accordance with School Board Rule 6Gx13- 8C-1.064, Adjudicatory Proceedings. This provision supercedes and governs over any contrary provision in this rule.
- D. If the applicant fails to submit a written request for an appeal, within the prescribed deadline, following receipt of the Notice of Denial, the denial shall be conclusive and the applicant shall be deemed to have waived its right to appeal the Board's decision.

IX. EFFECTS OF SUSPENSION AND REVOCATION

- A. Future Contracts

Contractors whose prequalification certificates have been suspended or revoked are excluded from receiving contracts, and no district department

shall solicit offers from, award contracts to, or consent to subcontract with these contractors, unless the Superintendent, in order to avoid an immediate and serious danger to the public health, safety or welfare, determines that an emergency exists that justifies such action, and obtains approval from the Board, at its next regularly scheduled meeting.

B. Current Contracts

1. All proposed Board contracts for construction, shall reference this Board rule and that delinquency may constitute grounds for rendering a contractor ineligible to bid if the Board suspends or revokes a contractor's prequalification certification.
2. Current Board contracts may not be renewed or otherwise extended or consent given to subcontract with suspended or revoked contractors, unless the Superintendent, in order to avoid an immediate and serious danger to the public health, safety or welfare, determines that an emergency exists that justifies the renewal or extension, or approves an extension due to delay or for reasons beyond the contractor's control, and such action is approved by the Board at its next regularly scheduled meeting.
3. No further work shall be awarded to a contractor whose prequalification certificate has been suspended or revoked in connection with a term or miscellaneous construction contract, or a term or miscellaneous contract for services, including professional services, or similar contract, where the work is divided into separate discrete groups and the Board's refusal or denial of further work under the contract will not result in a breach of such contract.

C. Subcontracting Restrictions

When a contractor whose prequalification certificate has been suspended or revoked is proposed as a subcontractor on a Board project, the department shall not consent to subcontract with such contractor unless the Superintendent, in order to avoid an immediate and serious danger to the public health, safety or welfare, determines that an emergency exists that justifies such consent, and the Board approves such decision at its next regularly scheduled meeting.

X. SUSPENDED AND REVOKED CONTRACTORS LIST

- A. The Office of Compliance and Business Services is charged with the following as it relates to maintaining and disseminating information on contractors whose prequalification certification have been revoked or suspended.

1. compiling and maintaining a current consolidated list ("List") of all contractors that have been declared delinquent. The list shall be available for public inspection and dissemination at the Office of Compliance and Business Services, Contractor Prequalification;
 2. revising and distributing the list and issuing supplements to the Board, the Superintendent, and to all district departments;
 3. maintaining records relating to each declaration of delinquency, suspension, and revocation, in accordance with mandated retention schedules;
 4. establishing procedures to provide for the effective use of the list including the internal distribution, thereof, to ensure that departments do not solicit offers from or recommend awarding contracts to contractors that are on the list, and
 5. responding to inquiries concerning contractors that are listed on the Suspended and Revoked Contractors List.
- B. The Suspended and Revoked Contractors List shall include the following information:
1. The name and address of all suspended and revoked contractors.
 2. The license or registration number for the contractors whose prequalification certificate has been suspended or revoked.
 3. The company's qualifying agent's name.
 4. The cause for suspending or revoking a contractor's prequalification certificate, as described herein, or other statutory or regulatory authority.
 5. The effects of the suspension or revocation.
 6. The effective dates of the suspension or revocation.

Specific Authority: 1001.41(1)(2); 1001.42(25); 1001.43(10), F.S.
Law Implemented, Interpreted, or Made Specific: 120.569; 120.57; 287.017;
287.133(2)(a); 489.105(3)(4)(5)(6)(7)(11); 489.113; 489.522; 715.12; 1013.46 F.S.;
Chapter 6-2, F.A.C., Sections 4.1(5) and 4.1, SREF (2007)

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