PREQUALIFICATION OF BIDDERS FOR CONSTRUCTION PROJECTS

Policy Code: **9115**

A. GENERAL

1. The purpose of this prequalification process is to impartially evaluate a contractor, and to properly determine by its responsible business practices, work experience, manpower, and equipment that it is qualified to bid on a board construction project, including prime contracts awarded by construction managers pursuant to the Construction Manager at Risk ("CM at Risk") process. The award of contracts should be the result of open competition in bidding; impartiality in the selection of contractors; integrity in business practices; and skillful performance of public contracts.

2. The administration shall be responsible for prequalifying individual contractors to bid on board construction projects when the administration believes prequalification is preferred. The administration is not required to prequalify contractors for any particular project or projects. However, a contractor shall not be allowed to submit a bid on a construction project subject to prequalification, unless it has been prequalified in accordance with board policy.

3. The construction manager and the administration shall jointly develop the assessment tool and criteria for each CM at Risk project, including the prequalification scoring values and minimum requirement score. The construction manager shall use the process outlined in this policy for the prequalification of contractors on CM at Risk projects.

4. Notwithstanding the fact that a contractor was prequalified, the board, administration, and construction manager reserve the right to reject a contractor's bid if it is determined that the contractor has not submitted the lowest responsible and responsive bid. The prequalification of the contractor shall not preclude the board, administration, or construction manager from subsequently concluding that the contractor is not a responsible bidder pursuant to G.S. 143-129. The prequalification of a contract for a project shall only apply to the individual project. All construction and repair contracts shall be awarded to the lowest responsive and responsible bidder, taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract.

B. APPLICATION PROCESS

1. The superintendent or designee shall designate a school official to oversee the prequalification process for each individual project ("School Prequalification Official").

2. Each prospective bidder on contracts identified for prequalification by the administration and all CM at Risk projects shall submit an application on the approved prequalification application form in order to become prequalified. The approved prequalification application form will require information to be provided on the ownership of the firm, experience of the firm's personnel, any affiliations with other construction firms, bonding capacity, financial resources, the type of work performed by the firm, and other objective criteria rationally related to the contract to be awarded.

3. The administration shall ensure that applications prepared for the projects comply with this policy and State law. The application is to be submitted by the deadline established in the notice of prequalification. The act of submitting the application does not permit the firm to submit a bid. Incomplete applications will be rejected or returned for further detail or correction in the sole discretion of the school system or construction manager.

C. APPLICATION

The application used by the school system or the construction manager must be approved by the School Prequalification Official and shall, at a minimum, address the following items:

1. Organizational Structure – The firm shall provide a list of all owners, officers, partners, or individuals authorized to represent or conduct business for or sign legal documents for the firm. This list must include the full legal name, typed or printed in a clear legible form. Firms experiencing changes in ownership, organizational structure, or material changes in assets must inform the school system prior to the award of a contract. Failure of the firm to comply with this requirement may result in the termination of any contract awarded by the school system or construction manager.

2. Classification – The firm shall indicate the type(s) of work the firm's workforce and equipment normally perform, licensure, and other pertinent information. The firm shall provide its MWSBE (Minority, Women, Small Business Enterprise) status.

3. Experience – The firm shall furnish information that documents the ability of the firm to undertake a project involving the type(s) of work for which prequalification is requested.

4. Financial – Firms will be required to provide a complete current annual financial statement (current within the previous 12-month period).

5. Litigation/Claims – Firms must provide information on its success at completing projects on time, including the payment of liquidated damages. The firm will be

required to submit information regarding its litigation history, including litigation with owners.

6. Capacity – Firms shall demonstrate sufficient bonding capacity, insurance, and resources for the project. Firms must provide relevant information on the personnel that will be directly responsible for the work, including the location of the office that will be primarily responsible for work. Firms shall also demonstrate an acceptable safety history for construction projects.

7. Legal Authorization – All firms must show that they are legally authorized to conduct business in the State of North Carolina and with the school system and have all required licensure for the work to be performed.

D. REVIEW OF APPLICATION – SCHOOL SYSTEM BID PROJECTS

1. Prequalification Committee – The School Prequalification Official shall establish a committee to review and score applications, including approving and denying prequalification ("Prequalification Committee"). The superintendent or designee shall not be a member of the Prequalification Committee.

2. Review of Applications – The school system's Prequalification Committee shall use the school system's objective assessment process. The prequalification criteria shall not require the firm to have previously been awarded a construction or repair project by the school system. The prequalification criteria used by the Prequalification Committee shall include prequalification scoring values and the minimum required score to be prequalified for the project. The school system's Prequalification Committee shall approve or deny the applications in accordance with the prequalification criteria and scoring system.

3. Notice of Decision – The firms shall be promptly notified of the school system's 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.

E. REVIEW OF APPLICATION – CM AT RISK PROJECTS

1. Prequalification Committee – The construction manager and the School Prequalification Official shall agree upon the members of the construction manager's Prequalification Committee. The superintendent or designee shall not be on the Prequalification Committee. The construction manager's Prequalification Committee will review prequalification applications submitted by the firms and will determine the firm's prequalification eligibility for the CM at Risk project.

2. Review of Applications – The construction manager's Prequalification Committee and the School Prequalification Official shall agree upon an objective assessment

process. The construction manager and the School Prequalification Official shall develop prequalification criteria, including prequalification scoring values and the minimum required score to be prequalified for the project. The prequalification criteria shall not require the firm to have previously been awarded a construction or repair project by the construction manager or the school system. The construction manager's Prequalification Committee shall approve or deny the applications in accordance with the prequalification criteria and scoring system.

3. Notice of Decision – The firms shall be promptly notified of the construction manager's 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.

F. APPEALS PROCEDURE

The firm may appeal from the denial of prequalification as noted below:

1. Written Appeal – A written appeal may be filed via hand-delivery or e-mail to the applicable Prequalification Committee within three business days of receipt of notice that the firm has been denied prequalification. The written appeal shall clearly articulate the reasons why the firm is contesting the denial and attach all documents and additional information supporting the firm's position. The Prequalification Committee may contact the firm regarding the information provided prior to ruling on the appeal. 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 promptly notified in writing via e-mail.

2. Hearing – The firm may appeal the Prequalification Committee's decision on the written appeal by requesting a hearing before the superintendent or designee via hand-delivery or e-mail within three (3) business days of the receipt of the Prequalification Committee's decision. The hearing shall be held within five (5) business days. The firm shall not be allowed to submit additional information without the written consent of the superintendent or designee. The firm shall be allowed thirty (30) minutes for the hearing. In the event the superintendent or designee is unable to hold a hearing in a timely manner, he/she may designate a school official to handle the appeal.

3. Decision – For projects bid by the school system, the decision of the superintendent or designee or designee shall be final, and the firm shall be promptly notified of the decision via e-mail. For CM at Risk projects, the superintendent or designee shall notify the construction manager of its recommended decision. The construction manager shall review the recommended decision and issue a final decision to the school system and firm. In the event the construction manager rejects a recommendation from the superintendent or

designee to prequalify the firm, the construction manager shall provide a written explanation of the denial to both the superintendent or designee and the firm.

4. General Rules for Appeals – Firms submitting applications shall be provided an e-mail address for communication with the construction manager or school system during the appeal process. The firm shall provide at least two e-mail addresses for use by the school system or construction manager in communicating with the firm. All appeals shall be completed prior to the date and time for the receipt and opening of bids.

Legal References: G.S. 143-128.1, -129, and -135.8; 147 art. 6E, art. 6G

Cross References:

Adopted: September 30, 2014

Revised: April 19, 2016; September 29, 2017